

North Carolina  
Rowan County

### **Limited Fixed Base Operator Agreement**

This limited Fixed Base Operator's Agreement (the "Agreement") entered into as of the 1<sup>st</sup> day of July 2014, by and between Rowan County, a body politic and corporate created by the State of North Carolina ("Lessor"), and Alpha One Flight School, a corporation with authority to do business in the State of North Carolina (Lessee").

#### **WITNESSETH:**

WHEREAS, Lessor owns, controls and operates the Rowan County Airport (the "Airport") in the County of Rowan, State of North Carolina;

WHEREAS, fixed base operation services, including but not limited to aircraft and general aviation mechanic services, maintenance, repair, inspection and support are essential to the proper accommodation of general and commercial aviation at the airport; and

WHEREAS, Lessor desires to make certain hangar and storage space available at the Airport for lease to Lessee in furtherance of the above stated desires and Lessee is qualified, ready, willing and able to provide such services, to wit airplane and general aviation mechanic services, maintenance, repair, and support;

NOW, THEREFORE, in consideration of the premises, services performed by Lessee and the mutual covenants contained in this Agreement, the parties hereby agree as follows:

#### **ARTICLE I TERM**

The term of this agreement shall be for a period of three (3) years, commencing on the 1<sup>st</sup> day of July, 2014 and continuing through the 31<sup>st</sup> day of June, 2017 (the "Termination Date"), unless earlier terminated under the provisions of this agreement.

## **ARTICLE II**

### **LEASED PREMISES**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the following premises, identified below and the right of ingress and egress for both vehicles and aircraft:

A. Real Property as follows:

1. One office in the terminal/administration building, representing approximately 360 square feet including utilities (electricity) with heat and air condition (or other facilities as agreed upon by both parties);
2. Three aircraft tie down spaces on the ramp to be used in the performance of the FBO agreement. The spaces if not used, cannot be sub-leased by the Lessee to other airport users.

B. Personal Property and Equipment as follows: NONE

## **ARTICLE III**

### **RIGHTS AND OBLIGATIONS OF LESSEE**

A. **Authorized Services.** Lessee is hereby granted the nonexclusive privilege to engage in, and Lessee agrees to engage in, the business of providing flight instruction and training as a limited fixed base operator at the Rowan County Airport. Lessee shall furnish to the Lessor an operations plan that describes the scope of services to be provided including hours of operations and shall become a part of this agreement, as Exhibit A. Such plan may be revised from time to time with revisions being provided to the Lessor. At a minimum, the Lessee shall conduct its services at a minimum of eight (8) hours per day, for five (5) days per week, except for holidays, unless both parties mutually agree upon other times.

The Lessee agrees to maintain a complete record of all activities and operations, including invoicing and inventory, in such detail as may be required by the Lessor or by federal regulations.

B. **Operating Standards.** In providing any of the required and/or authorized services or activities specified in this Agreement, Lessee shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. Lessee shall at all times comply with the Rowan County Airport Rules and Regulations as provided in Exhibit "B". Such rules and regulations may be amended or revised from time to time by the Lessor.
2. Lessee shall provide trained and licensed employees in carrying out the limited FBO services. The Lessee shall provide at the request of the Lessor, any and all licenses, certifications, etc. that may be required by the FAA and other federal/state agencies to conduct business.
3. Lessee shall provide, at a minimum, a policy of premises liability and professional liability coverage in a minimum amount of \$1,000,000.00 to protect the Lessor from any and all claims arising from the condition of the premises as well as all work performed by its employees or officers, as set forth in more detail below. The Lessee agrees to hold the Lessor harmless from any and all claims, damages, and suits, including reasonable attorney fees, as described in the insurance policy. Such insurance policy shall name the Lessor as additional insured and shall provide Lessor with at least 30 days notice of insurer's intent to terminate the coverage. A copy of the insurance policy shall be provided upon the signing of this Lease, and annually thereafter on the anniversary of this Lease. Lessee shall also maintain at its sole cost a policy of insurance covering its contents within the hangar building.
4. Lessee shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business contemplated, including rules and regulations promulgated by Lessor, and Lessee shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.
5. Except as otherwise provided herein, Lessee shall maintain the Premises in good condition, order and repair, and shall surrender the same upon the expiration of this Agreement, in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by Lessee's negligence excepted.
6. Lessee shall be responsible for paying all sales taxes applicable to its operations and sales.

**C. Signs.** During the term of this agreement, Lessee shall have the right, at its expense, to place in or on the Premises a sign or signs identifying Lessee. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved by Lessor and in conformance with any overall directional graphics or sign program established by Lessor. Lessee shall remove, at its expense, all lettering, signs and placards so erected on the Premises at the expiration of the term of this Agreement.

**D. Non-Exclusive Right.** It is not the intent of this Agreement to grant to Lessee the exclusive right to provide any service described in this article at any time during the term of this Agreement. Lessor reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Lessee. However, Lessor does covenant and agree that:

1. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport.
2. Any other operator of aeronautical endeavors or activities will not be permitted to operate on the Airport under rates, terms of conditions which are more favorable than those set forth in this Agreement; and
3. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease and operating agreement.

**E. Maintenance of Airport Facilities.**

1. The Lessor at its sole expense, shall maintain the landing area and surrounding areas of the Airport and other facilities such as the landing lighting system for use of the Airport by aircraft and will keep the landing area and surrounding areas and facilities in good order and repair during the term of this lease.

2. Lessor at its sole expense, shall maintain property insurance (fire and extended coverage) on the hangar building, and Lessor shall also provide regular maintenance on the building.

(A) Lessor, at its sole cost and expense, shall maintain and keep the exterior portions of the Premises in reasonable repair, including but not limited to, exterior and supporting walls, the electrical wiring, the water line and the sanitary sewer and/or septic to the Premises; provided, however, that the cost of any such repairs, as a result of negligence or willful act of Lessee, licensees, agents, servants or employees, shall be borne by Lessee. Lessee, except due to Lessor's negligence or willful misconduct, shall maintain the interior portions of the Premises, including all plate glass, storefronts and doors. Lessor shall also maintain Lessee's heating and air conditioning equipment throughout the term of this Lease and any extensions thereof. Furthermore, Lessor shall maintain all plumbing, electrical, water, sewer, and sprinklers serving the Premises.

(B) If any repairs required to be made by Lessor hereunder, are not made immediately and completed within Fourteen (14) days, or in case of emergency if said repairs are not made immediately, Lessee, without limiting any other right or remedy it may have therefore, may at its option, make such repairs and Lessor shall pay to Lessee, upon demand the cost of such repairs.

In the event Lessor shall fail to make any necessary repairs, Lessor shall be strictly liable for all damages, including consequential damages, incurred by Lessee

for said failure including but not limited to fixtures, stock, inventory, equipment and all other items that may be stored within the premises.

(C) Lessee will surrender the Premises at the expiration or earlier termination of this Lease, in as good condition as when initially completed, excepting only ordinary wear and tear. All replacement and modifications shall become the property of Lessor at the end of the Lease Term, subject to the other provisions of this Lease.

3. The Lessor shall be responsible for notification to the FAA and other regulatory agencies of NOTAMS, and other special information of flight activity at the Airport.

4. The Lessor shall operate and maintain a fueling operations facility at the Airport and shall provide fuel to the Lessee. Pricing for fuel shall be established and adjusted from time-to-time by the Lessor in accordance with its fuel pricing policies and practices.

#### **ARTICLE IV** **APPURTENANT PRIVILEGES**

A. **Use of Airport Facilities.** Lessee shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by Lessor.

B. **Maintenance of Airport Facilities.** Lessor shall maintain all public and common or joint use areas of the Airport, including the Air Operations Area, in good repair, and shall make such repairs, replacements or additions thereto as are required and necessary for the safe and efficient operation of the Airport.

C. **Aerial Approaches.** Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

#### **ARTICLE V** **LEASEHOLD IMPROVEMENTS/CURRENT CONDITION**

All leasehold improvements to be made in the leased facilities and on airport property shall be reviewed and approved by the Lessor prior to being undertaken by the Lessee. All improvements shall remain the property of the Lessor in the event that this agreement is terminated by either party.

Lessee hereby agrees that Lessee accepts the Property in its current condition, subject to those rights of Lessee and obligations of Lessor set forth above as to repairs and maintenance.

## **ARTICLE VI PAYMENTS**

A. **Rent and Fees.** In consideration of the rights and privileges granted by this Agreement, Lessee agrees to pay to Lessor during the term of this Agreement the following:

1. **Rent.** A rental rate of \$330 per month for the Office Premises for the term of this agreement.

2. **Tie-Downs.** The use of three (3) tie-downs is included with this lease. Additional tie-down spaces may be leased by the Lessee at a rate of \$15.00 per month, or one-half the current tie-down rate, whichever is less. Lessee may request to lease additional tie-down spaces on a daily basis at a rate of \$2.00 per day in order to better accommodate its clients.

B. **Delinquency Charge.** A delinquency charge of 5% per month shall be added to the payment required by Paragraph A above for each and every month, which payment is rendered more than ten (10) days delinquent and remains unpaid.

C. **Place of Payment.** All payments due Lessor from Lessee shall be delivered to the Rowan County Airport, 3670 Airport Loop Road, Salisbury, NC 28144. All checks shall be made payable to Rowan County.

D. **Records.** Lessee shall provide and maintain accurate records of services provided under this Agreement, for a period of three (3) years from the date the record is made.

## **ARTICLE VII UTILITIES**

A. Omitted

## **ARTICLE VIII INSURANCE**

A. Please refer to Exhibit C for this section.

## **ARTICLE IX INDEMNIFICATION**

To the extent not covered by insurance carried in favor of Lessor, Lessee shall keep and hold harmless Lessor from and against any and all claims, demands, suits, judgments, costs and expenses, including reasonable attorney fees, asserted by any person or persons, including agents or employees of Lessor or Lessee, by reason of death or injury to persons or loss or damage to property, resulting from Lessee's operation, or anything done or omitted by Lessee, under this Agreement except to the extent that such claims, demands, suits, judgments, costs and expenses may be attributed to the acts or omissions of Lessor or its agents or employees, in which, Lessor shall immediately and without delay, indemnify Lessee from any claims, demands, suits, judgments, costs and expenses, including reasonable attorney fees, asserted by any person or persons, including agents or employees of Lessee or Lessee, by reason of death or injury to persons or loss or damage to property, resulting from Lessor's responsibility herein or anything negligently done or omitted by Lessor

## **ARTICLE X LESSEE AS INDEPENDENT CONTRACTOR**

In conducting its business hereunder, Lessee acts as an independent contractor and not as an agent of Lessor. The selection, retention, assignment, direction and payment of Lessee's employees shall be the sole responsibility of Lessee, and Lessor shall not attempt to exercise any control over the daily performance of duties by Lessee's employees.

## **ARTICLE XI ASSIGNMENT**

This agreement, or any part thereof, may not be assigned, transferred or subleased by Lessee, by process or operation of law or in any other manner whatsoever, without the prior written consent of Lessor, unless such Assignment is to a wholly owned subsidiary of Lessee, in which any Assignment is herein approved for all purposes

## **ARTICLE XII NON-DISCRIMINATION**

Notwithstanding any other or inconsistent provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration for this Agreement, does hereby covenant and agree, as a covenant running with the land, that:

A. No person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in, the use of the Premises.

B. In the construction of any improvement on, over or under the Premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

C. Lessee 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.

D. In the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Agreement and to enter and repossess the Premises and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 have been followed and completed, including expiration of appeal rights.

### **ARTICLE XIII**

#### **REQUIREMENTS OF THE UNITED STATES**

This Agreement shall be subjected and subordinate to the provisions of any existing or future agreement between Lessor and the United States, or any agency thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the Airport; provided, however, that Lessor shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Lessee in and to the Premises, and compensation for the taking thereof, interference therewith damage thereto, caused by such agreement or by actions of Lessor or the United States pursuant thereto.

### **ARTICLE XIV**

#### **DEFAULT AND TERMINATION**

A. **Termination by Lessee.** This Agreement shall be subject to termination by Lessee in the event of any one or more of the following events:

1. The abandonment of the Airport as an airport or airfield for any type, class or category of aircraft.

2. The default by Lessor in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of Lessor to remedy, or undertake to remedy, such default for a period of thirty (30) days after receipts of notice from Lessee to remedy the same.

3. Damage to or destruction of all or material part of the Premises of Airport.

4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially Lessee from conducting business operations for a period in excess of ninety (90) days.



5. The assignment by the Lessor of the primary fixed base operations at the Airport to any other private or public entity.

**B. Termination by Lessor.** This Agreement shall be subject to termination by Lessor in the event of any one or more of the following events:

1. The default by the Lessee in the performance of any of the terms, covenants or conditions of the Agreement, and the failure of the Lessee to remedy, or undertake to remedy, to Lessor's satisfaction, such default for a period of thirty (30) days after receipt of notices from Lessor to remedy the same.

2. Lessee files a voluntary petition in bankruptcy; including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of Lessee and such receivership is not vacated within thirty (30) days after the appointment of such a receiver.

**C. Exercise.** Exercise of the rights of termination set forth in Paragraphs A and B, above, shall be by notice to the other party within thirty (30) days following the event giving rise to the termination.

**D. Removal of Property.** Upon termination of this Agreement for any reason, Lessee at its sole expense, shall remove from the Premises all signs, trade fixtures, furnishings, personal property equipment and materials that Lessee was permitted to install or maintain under the rights granted herein. If Lessee shall fail to do so within thirty (30) days, then Lessor may effect such removal or restoration at Lessee's expense, and Lessee agrees to pay Lessor such expense promptly upon receipt of a proper invoice therefore.

**E. Causes of Breach; Waiver.**

1. Neither party shall be held to be in breach of this Agreement because of any failure to perform any of its obligations hereunder if said failure is due to any cause for which it is not responsible and over which it has no control; provided, however, that the foregoing provision shall not apply to failures by Lessee to pay fees, rents or other charges to Lessor.

2. The waiver of any breach, violation or default on or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

## ARTICLE XV ARBITRATION

All claims or disputes arising out of or relating to this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Notice of demand of arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association and shall be made within a reasonable time after the claim or dispute has arisen. The award rendered

by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Agreement shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law; (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration; and (3) the interest or responsibility of such person or entity in the matter is not insubstantial.

The agreement of the parties to arbitrate claims and disputes shall be specifically enforceable under the prevailing arbitration law.

Pending final decision of the arbitrator or arbitrators, the parties shall proceed diligently with the performance of their obligations under this Agreement.

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

A. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.

B. **Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

C. **Notice.** Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by registered mail, return receipt requested, with postage and registration fees prepaid:

1. If to Lessor, Addressed to:

Rowan County Manager's Office  
130 W. Innes St.  
Salisbury, NC 28144

2. If to Lessee, addressed to:

Alpha One Flight School  
Randy Dean Fleming  
PO Box 727  
Landis, NC 28088

Notices shall be deemed to have been received on the date of receipt as shown on the return receipt.

D.     **Headings.** The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

E.     **Governing Law.** This Agreement is to be construed in accordance with the laws of the State of North Carolina.

F.     **Memorandum.** The parties shall execute a recordable memorandum of this Agreement for filing by the Rowan County Attorney.

{Signature Page Follows}

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

LESSOR: ROWAN COUNTY

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

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

LESSEE: Alpha One Air Service, LLC

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

Randy Fleming

**Rowan County**  
**Risk Management**  
**130 West Innes Street, Salisbury, NC 28144-4326**  
**Phone (704) 216-8109 FAX (704) 216-8110**  
**yvonne.moebs@rowancountync.gov**

## **Exhibit (C)**

### **Rowan County Airport** **Limited Fixed Base Operator Agreement Required Insurance**

A. **Required Insurance.** Lessee shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Lessee's sole expense, the following insurance associated with the leased facilities described in Article II:

1. **Commercial general liability insurance** protecting Lessor against any and all liability by reason of Lessee's conduct incident to the use of the premises, or resulting from any accident occurring on or about the roads, driveways or other public places, including runways and taxiways, used by Lessee at the Airport, caused by or arising out of any wrongful act or omission of Lessee, in the minimum amount of \$1,000,000, and shall provide proof of such coverage to Lessor annually.

Lessee shall provide adequate fire and extended coverage insurance to protect all fixed improvements erected by Lessee on or in the Premises to the full insurable value.

The insurance specified above, shall name Lessor as an additional insured and provide 30 days notice to Lessor of insurance company's intent to terminate the policy. A copy of all insurance policies shall be delivered to Lessor within 30 days of the signing of this Lease, and annually thereafter, and attached hereto as Exhibit C as provided above.

2. **Aircraft Liability Insurance** Coverage written to protect and indemnify the insured for potential exposure to passenger, cargo or baggage claims and to third party liability claims including property damage, bodily injury or death caused by, or arising from the insured's operations. See below for required limits

B. **Notice.** Lessor agrees to notify Lessee in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Lessor has knowledge, and to cooperate with Lessee in the investigation thereof.

C. **Casualty.** In the event of any loss, damage, destruction or other casualty to any of the Premises, Lessor shall promptly replace, repair or rebuild the affected part of the Premises, with the Lessee receiving an equitable abatement of rent until the affected part of the Premises is replaced, repaired or rebuilt.

D. **Workers Compensation.** If required by statute or regulation, Lessee shall secure liability for industrial injury or illness to its employees in accordance with the provisions, laws and regulations of the State of North Carolina. Lessee shall within 30 days of the signing of this Lease and annually thereafter, provide a copy of the declaration page of the Workers Compensation policy as proof of coverage. Workers Compensation coverage shall not be terminated reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the Lessor.

**Rowan County  
Risk Management  
130 West Innes Street, Salisbury, NC 28144-4326  
Phone (704) 216-8109 FAX (704) 216-8110  
yvonne.moebs@rowancountync.gov**

**Date:** 07/01/2014

**TO:** Alpha One Air Service

**FROM:** Yvonne Moebs  
Risk Manager, Rowan County

**RE:** Limited Fixed Based Operator Required Insurance

Please note the following minimum requirements for your certificate of insurance. Please provide a copy of this letter to your Agent. Your Agent may forward the COI via one of the following:

**EMAIL:** [Tanya.logan@rowancountync.gov](mailto:Tanya.logan@rowancountync.gov)

**FAX:** 704-637-9019 Attn: Tanya Logan

**Mail:** Rowan County Airport  
Attn: Tanya Logan  
3670 Airport Loop Rd  
Salisbury, NC 28147

If you have any questions please contact Tanya Logan at 704-216-7751. Thank you.

**Workers' Compensation** – (If required by statute or regulation) – Statutory Limits

\$500,000 - Employers Liability – Each Accident

\$500,000 - Disease – Each Employee

\$500,000 – Disease – Policy Limit

**Commercial General Liability** –

\$1,000,000 – Each Occurrence

\$2,000,000 – General Aggregate

\$2,000,000 – Products/Completed Operations Aggregate

\$1,000,000 – Personal & Advertising Injury

\$5,000 – Medical Expense

**Aircraft Liability Insurance-**

Hull Coverage- Equal to value of plane

Aircraft Liability for persons or property-

\$1,000,000 each occurrence

\$100,000 per person bodily injury

**Rowan County, its officers, agents, and employees are included as additional insured with respects to the General Liability Insurance Policy when required by written contract. Insurance is primary and non-contributory. Waiver of subrogation applies when required by written contract.**

**The Certificate Holder should be listed as follows:**

Rowan County

Attn: Risk Management

130 West Innes Street

Salisbury, NC 28144