

ORDINANCE NO. HCAA 08-28-14-B

AN ORDINANCE OF THE HAMILTON COUNTY AIRPORT AUTHORITY
ESTABLISHING A LEASING POLICY FOR EXECUTIVE HANGARS
AT THE INDIANAPOLIS EXECUTIVE AIRPORT

WHEREAS, the Hamilton County Airport Authority (“Authority”) is the owner of the Indianapolis Executive Airport (“the Airport”) located in Boone County, Indiana, which contains approximately six hundred twenty-five (625) acres of land; and,

WHEREAS, the Authority has submitted an Airport Layout Plan as part of its Master Plan which Master Plan has been approved by the FAA; and,

WHEREAS, since the acquisition of the Airport by Hamilton County in 2003, there has been continuous and substantial growth in the public use of the Airport by both based and non-based aircraft; and,

WHEREAS, Airport Layout Plan, which was submitted with the Master Plan, designates areas for executive and corporate hangars, which areas are designated as Areas 5 and 8 on part of the Airport Layout Plan, which is attached as Exhibit A; and,

WHEREAS, the Master Plan for the Airport, is a plan for the long term growth of the Airport; and,

WHEREAS, from time to time, individuals, corporations, or other entities may be desirous of leasing land at the Airport for the construction of personal use hangars (Executive Hangars”); and,

WHEREAS, the Authority desires to pass an Ordinance to establish uniform practices and procedures for individuals to acquire leases for the construction of personal use hangars (“Executive Hangars”) at the Airport.

IT IS THEREBY ORDAINED by the Hamilton County Airport Authority as follows:

I. This Ordinance shall establish procedures and requirements for the Authority to lease Airport property ("the Leased Premises") to individuals, corporations, or other entities ("Lessee") for the construction of Executive Hangars.

II. A Lessee may only lease space for an Executive Hangar in those areas designated for such use on the Airport Layout Plan as amended, a current copy of which is attached as Exhibit A. The Authority reserves the right to further modify and amend the Airport Layout Plan from time to time.

III. Any potential Lessee may file an application to lease space for an Executive Hangar. Such application shall include the name and address of the applicant, the location of the proposed Executive Hangar, a proposed preliminary site plan, and preliminary drawings of the elevations of the proposed Executive Hangar. If the Lessee is a partnership the names and addresses of the partnership members shall be stated in the application.

IV. All leases shall be on the form available from the Authority and shall be subject to the restrictions specified in this Ordinance.

V. PERMITTED USES OF THE LEASED PREMISES.

A. Lessee shall use the Leased Premises for the construction, maintenance, and use of an aircraft hangar for storage of aircraft owned or exclusively leased and operated by Lessee, and for other necessary and incidental purposes related to Lessee's aircraft operations, and for no other purpose, however, aircraft owned and operated by personal or business invitees of Lessee

may be stored in the hangar for short periods of time, not to exceed thirty (30) total days per year without the written approval of the Authority. Storage in excess of thirty (30) days shall be subject to written approval of Authority. Any storage of Lessees personal or business invitee's aircraft shall be without cost or rent to such personal or business invitees.

B. Lessee shall have the right to perform with its own employee's or through contracted third parties that have adequate insurance (except that no self-fueling activities may be contracted through third parties), maintenance and repair activities and cleaning and other support related services to aircraft owned or exclusively leased, by the Lessee ("Owned Aircraft"). The Lessee shall not perform work on any non-owned aircraft.

C. No aircraft other than the Owned Aircraft identified in the Lease shall occupy or be stored within or on the Leased Premises without the expressed prior written consent and approval of the Authority except aircraft owned or operated by personal or business invitees of Lessee as specified above. The Airport Manager must be informed in writing by Lessee of the tail numbers and owners of any temporary occupants of the Executive Hangar prior to the temporary occupancy.

D. Lessee shall covenant and agree that no additional shareholders, members, partners, or other persons may be added to a Lessee with respect to an equity interest in the Owned Aircraft without the express prior written consent and approval of the Authority, which consent shall not be unreasonably withheld, conditioned, or delayed.

E. Lessee may apply to Authority for a Non-Public Aircraft Fuel Dispensing Permit pursuant to Ordinance HCAA 8-28-14-A, as amended. The Authority may issue Lessee a Non-Public Aircraft Fuel Dispensing Permit ("Fuel Permit") and upon issuance of said Permit,

Lessee may fuel aircraft owned or exclusively leased by Lessee in accordance with the provisions of the above referenced Ordinance and the Fuel Permit.

F. Lessee may use its Leased Premises for the construction, maintenance, and operation of above ground aircraft fuel storage tanks fuel dispensing system, only if: (1) the Lessee has obtained a Fuel Permit issued by the Authority; and (2) the Lessee provides acceptable evidence to the Authority that Lessee reasonably anticipates use of at least one hundred twenty thousand (120,000) gallons of fuel per calendar year.

G. In partial consideration for allowing a fuel storage tank upon the Leased Premises, the Lessee shall pay to the Authority an "Additional Rental Fee." The Additional Rental Fee shall equal the greater of: 1) the amount of flowage fees paid by the Lessee during the first three (3) years of use of the Lessee's tank; or, 2) the uniform flowage fees imposed during the three (3) year period, multiplied by 10,000 gallons per month. The amount of any Additional Rental Fee shall be calculated at the flowage fee rate in place at the end of the three (3) year period. The Additional Rental Fee shall be imposed during four (4) additional three (3) year periods beginning on the first day of the month following the end of the previous three (3) year period.

VI. PROHIBITED USES.

A. All aircraft maintenance and repair shall be performed inside the Executive Hangar, and not outside the Hangar, other than draining fuel necessary for pre-flight or maintenance purposes.

B. Lessee will not store, fuel or dispense fuel on Lessee's Leased Premises except as approved and authorized by Authority by a Lessee's Fuel Permit and such fuel storage and dispensing thereof shall be in compliance with all applicable laws, ordinances, and regulations.

C. Lessee will not block the taxiway or apron. All tugs, ground equipment, and aircraft fuel trucks shall be stored and parked in a sightly manner on Lessee's Leased Premises, in designated vehicle/equipment parking areas.

D. Lessee shall not store any oil drums, maintenance equipment or material of any kind or character outside of the Executive Hangar.

E. Lessee shall not engage in or permit the sale or distribution of any product or equipment of any type to any person or entity who is not the Lessee on the Leased Premises.

F. Lessee shall not permit the loading, unloading or storage of any hazardous materials or objects in violation of any applicable law or regulation. Lessee shall not store or transport Class 1, Division 1.1 Explosive as defined in 49 CFR Part 1 173.50 (as the same may amended, superseded or replaced from time to time). Lessee's handling of any hazardous substances shall be in accordance with 49 CFR, Parts 100-199, dated December 31, 1976, as same may be amended, superseded or replaced from time to time; and the provisions of the Lease. In no event shall Lessee handle, store, or use any materials that would adversely affect the insurance coverage of the Leased Premises.

G. Lessee shall not use or permit the Leased Premises to be used for any other purpose without the prior written approval of the Authority.

VII. LEASE TERM.

The initial term of the Lease may be a thirty (30) year term, with two (2) additional ten (10) year periods. As authorized by Indiana Code 8-22-3-11-(20), the Authority may, in its sole discretion, extend the period of the original Lease for up to nine (9) additional five (5) year terms if the Authority determines that the character, experience, and financial responsibility of the Lessee is satisfactory to erect a permanent structure that facilitates and is consistent with the operation, use, and purpose of the Airport, and to ensure that the Leased Premises will continue to be used for an active aviation purpose during such additional terms. At the end of the Lease,

or upon the termination thereof, an Executive Hangar and all attached equipment and fixtures thereon or therein, including all fuel tanks and attached equipment shall become the sole property of the Authority.

VIII. THE LEASED PREMISES.

Leases shall be at an annual per square foot rental rate as established in Section IX below for and the area of the Leased Premises described in the Lease which shall include the following:

A. The footprint of the proposed Executive Hangar including vehicle and equipment parking areas.

B. A three (3') foot buffer extending in all directions beyond the footers of the Hangar and vehicle and equipment parking areas and those areas of the access points necessary to connect the Executive Hangar to a taxiway or ramp.

C. A reasonable number of parking places as approved by the Authority with a minimum of one (1) parking space for each passenger seat installed, or which could be installed, in each aircraft occupying the Hangar.

D. The elevations of the Hangar including windows, doors, window breaks, site plan, and proposed colors shall be submitted to the Authority in advance of construction. The Hangar exterior shall be reasonably compatible, in the sole opinion of the Authority, to existing buildings at the Airport.

E. The Lessee shall be responsible for obtaining all state and local approvals for the construction of the Executive Hangar. The Authority will take all reasonable steps, short of litigation, to exercise its authority to permit the construction of the Executive Hangar.

F. In the event utilities are not available to the Leased Premises, a Lessee shall have the right to construct at its expense, all necessary utility lines to serve the Leased Premises with the Authority's written consent. A Lessee shall also pave all vehicle and equipment parking and install all necessary drainage improvements upon, or serving the Leased Premises, and shall

construct any connecting roads or taxiways necessary to connect the Executive Hangar to existing roads, taxiways, or driveways.

G. The Authority will provide an irrevocable license and easement to the extent necessary for the utility lines, which easements shall not restrict further development of the

Airport as shown in the most recent Airport Layout Plan. The Authority may, but will not be obligated, to share in the cost of the extension or oversizing of the utilities to accommodate future utility needs at the Airport.

IX. AMOUNT OF RENT.

A. The initial annual rent for the Executive Hangar Leased Premises shall either: 1) be based upon an opinion of the annual fair market rental value of the Leased Premises as established by an appraiser licensed in the State of Indiana, and selected by Authority. The Authority shall obtain a quote for the cost of the appraisal and the Lessee shall pay to Authority the cost of the appraisal in advance. The appraisal of fair market rental value of the Leased Premises, shall consider the contributory value of any utilities to the Leased Premises if said utilities are available; or, 2) the rent may be based upon the annual rental rate per square foot of the highest existing land lease rate being paid by an existing Executive Hangar or other hangar Lessee at the Airport. The Authority may adjust the existing rate by up to ten (10%) percent based upon the comparable desirability of the proposed Executive Hangar available sites considering:

1. Convenience of access to the Leased Premises both by motor vehicles and aircraft.
2. Availability and/or accessibility to utilities.
3. Any other factors deemed relevant by the Authority.

B. The initial rent in the Lease shall include a cost of living escalator, which shall be based upon the increase of the Consumer Price Index ("CPI"). The per square foot lease rate

shall be adjusted on the fifth anniversary of the Lease and every five (5) years thereafter by the percentage increase of the CPI in the past five (5) years, or five (5%) percent, whichever is less. In the event the Consumer Price Index of the United States Bureau of Labor Statistics is discontinued, calculations shall be based upon comparable statistics on the purchasing power of the consumer dollar as published at the time of the discontinuance by a responsible financial periodical of a recognized authority.

C. The monthly lease payments shall begin on the first day of the month following issuance of a building permit and payable on the 10th day of the subsequent month.

X. CONDITION OF THE LEASED PREMISES.

During construction and during the term of the Lease, the Lessee shall maintain the Leased Premises in a neat, safe, and attractive condition and shall not permit any loose trash, paper, or debris on the premises. The Lessee shall be responsible for all maintenance of the Leased Premises and any property damage or other liability caused by the Lessee, its contractors, agents, or invitees.

XI. MORTGAGE OF LEASEHOLD INTEREST.

A Lessee shall have the right to place a first mortgage lien upon its leasehold interest and the improvements constructed upon the Leased Premises. The lender shall have the right, in case of default by the Lessee, to assume the rights and obligations of the Lessee, to foreclose its interest under the mortgage, and convey for aviation use only, the interest of the Lessee to a new Lessee approved by the Authority, which approval shall not be unreasonably withheld, conditioned or delayed. However, the rights of the lender and any person or entity claiming an interest in the Leased Premises and the improvements thereon, shall be subject to the lender fully assuming all duties of the Lessee including maintenance and use of the Leased Premises, payment of lease payments, collection costs, and attorney's fees due under the Lease.

XII. DEFAULT.

The following shall be defined as an event of default under the Lease:

A. The institution of bankruptcy insolvency reorganization liquidation dissolution of receivership of proceedings, in which it is alleged that the Lessee is insolvent, and in the case of an involuntary proceeding, the same is not dismissed within sixty (60) days.

B. The breach of any covenant representation or obligation of the Lessee under this Lease other than unforeseen circumstances.

C. The failure to pay any fee, monetary charge, or payment due to the Authority within thirty (30) days of written demand.

D. The abandonment of the Leased Premises by the Lessee for more than sixty (60) days during any calendar year.

E. The failure of the Lessee to cure any other violation within thirty (30) days of written demand by the Authority.

XIII. In the event of default, the Authority may terminate the Lease and obtain a judgment to terminate all rights of the Lessee in all improvements located upon the Leased Premises, including fuel tanks and other attached equipment and fixtures; obtain a judgment for all unpaid past and future rent or other costs and damages that it may have, including costs of collection and reasonable attorney's fees; obtain a judgment against the Lessee; and obtain a judgment lien for all damages due to the Authority against the leasehold interests of the Lessee, the Executive Hangar, and any property or equipment of the Lessee located at or on the Leased Premises.

XIV. CONSTRUCTION OF IMPROVEMENTS.

Upon execution of the Lease, the Lessee shall commence construction of the Executive Hangar within one hundred eighty (180) days and complete construction within eighteen (18) months, unless waived in writing by the Authority. No construction activity shall begin until a building permit is issued by the Authority. The Application for a building permit shall include the following:

A. A final site plan, including elevations and color(s) of all sides of the Executive Hangar;

B. A Release from the appropriate department of the State of Indiana which approves plans for non-residential structures;

C. A Certificate of Insurance naming the Authority and Hamilton County as additional named insureds, including liability coverage for the acts or omissions of the Lessee and its contractor with minimum coverages of Ten Million Dollars (\$10,000,000) per person; Three Million Dollars (\$3,000,000) per occurrence; and property damage of One Million Dollars (\$1,000,000) or such other amounts as approved by Authority.

D. Prior to construction Lessee shall provide Authority with a Performance and Payment Bond, an irrevocable Letter of Credit, cash bond or other approved security in the full amount of the estimated construction cost of the Executive Hangar in order to assure completion of the Executive Hangar in conformance with the approved plans. In the event of default prior to completion of the Executive Hangar, or if the Lessee fails to complete construction in the time period by the Lease, the Authority shall have the right to execute upon the aforementioned security.

E. No aviation equipment or aircraft shall be stored in the Executive Hangar until the hangar is substantially complete and certified by a licensed architect or structural engineer as ready for occupancy.

XV. LIABILITY INSURANCE.

A. Lessee shall, at its expense, procure and keep in force at all times during the term of the Lease, from a financially sound and reputable company reasonably acceptable to Authority, a comprehensive general liability and aircraft public liability insurance, insuring the Lessee and the Authority, and Hamilton County, as additional named insureds, and providing coverages for bodily injury, including wrongful death, personal injury and property damage and insurance necessary to protect the Lessee and the Authority and Hamilton County from such claims and actions. Without limiting its liability, a Lessee shall carry and keep in force insurance with liability limits for bodily injury, including wrongful death, personal injury and property damage in a sum not less than Three Million Dollars (\$3,000,000) per person/Ten Million Dollars (\$10,000,000) per occurrence, for bodily injury and Ten Million Dollars (\$10,000,000) for property damage liability. The Lessee shall provide the Authority with a Certificate of Insurance designating the Authority and Hamilton County as additional named insureds on all policies. Proof of Insurance shall be provided to Authority and Hamilton County by a policy declaration page or policy endorsement evidencing such coverage. The policies shall contain severability of interest provisions, and all such policies shall be deemed as "primary" with respect to the Authority's and Hamilton County's insurance. A Lessee shall furnish Authority and Hamilton County with a copy of the insurance declarations page or endorsement to the policy as evidence of such coverage and designation of the additional named insureds. Said insurance shall not be cancelled or materially modified except upon thirty (30) days advance written notice to Authority and Hamilton County upon said notice, the Lessee shall immediately

replace all coverages designated in the notice of cancellation. A Lessee shall provide a complete copy of all such policies upon request of the Authority or Hamilton County. Coverage is to be written on the broadest liability form which is customarily available.

B. A Lessee shall also provide a copy of the declarations page and Certificate of Insurance or endorsement for a policy for Motor Vehicle Liability including coverage for bodily injury, including death, or damage to the property of others caused by the operation of an automobile owned/leased/borrowed or used by the Lessee. The minimum coverages shall be: One Million Dollars (\$1,000,000) per person, Five Million Dollars (\$5,000,000) per occurrence, and One Million Dollars (\$1,000,000) Property Damage or such other amounts as approved by Authority.

C. A Lessee's insurance coverage provided to Authority and Hamilton County shall be primary and non-contributory insurance with respect to all other available sources.

D. Coverage provided by the Lessee shall not be limited to the liability assumed under the indemnification provisions of this Ordinance.

E. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Ordinance shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to Airport Authority and Hamilton County. Such notice shall be sent directly to the Authority with a copy to the Airport Manager and to Hamilton County by certified mail, return receipt requested, or by hand delivery.

F. Acceptability of Insurers. All insurance must be written by an insurance company authorized to do business in the State of Indiana, to be evidenced by a Certificate of

Authority, a copy of which certificate is to be attached to the applicable Certificate of Insurance policy or binder.

G. Duplicate Copies of Evidence of Insurance Coverage. Lessee shall, at Lessee's cost and expense, furnish to the Authority from time to time, upon the Authority's written request, duplicate copies of the insurance policies that Lessee is required to maintain pursuant to the preceding provisions. The duplicate copies of the insurance policies shall be certified to the Authority and Hamilton County by Lessee's insurance carrier as being true, complete and correct photocopies of those policies.

XVI. INDEMNIFICATION.

The Authority and Hamilton County ("County") shall be indemnified by Lessee as herein provided. A Lessee shall be deemed to be an independent contractor and operator responsible to all parties for its acts and omissions, and Authority shall in no way be responsible therefor. A Lessee shall be required to indemnify, hold harmless and defend the Authority, the County, and their respective directors, officers, agents, servants, and employees from and against any and all claims or incidents directly or indirectly related to a Lessee's aircraft operations and the use and occupancy of the Leased Premises by a Lessee and the Lessee's directors, its employees, patrons, contractors, subcontractors, and invitees, and the Lessee will be required to indemnify Authority and County, and their respective directors, officers, agents, servants, and employees from and against all liability, and responsibility for injuries, claims or suits for damages, to persons or property of whatsoever kind or character, whether real or asserted, including cost of defense and attorney's fees, occurring during the term of the Lease issued to a Lessee pursuant to this

Ordinance directly or indirectly relating to Lessee's aircraft operation and Lessee's use or occupancy of the Executive Hangar by Lessee and the Lessee's directors, officers, employees, patrons, contractors, subcontractors, or invitees. A Lessee shall indemnify Authority and County against any and all mechanics and materialmen's liens or other types of liens imposed upon the Lessee's Leased Premises arising as a result of the Lessee's or Lessee's contractors conduct, acts or omissions. The indemnities of Lessee under this Paragraph XVI shall not, as to any indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnitee. The provisions of this Paragraph XVI shall survive the expiration or early termination of a Lease with Authority.

XVII. TRANSFERABILITY.

A Lessee's leasehold interest in the Executive Hangar may be assigned by the Lessee to a successor Lessee, with the prior written approval of the Authority.

XVIII. SUBORDINATION TO U.S. GOVERNMENT.

Any Lease subject to this Ordinance shall be subordinate to the provisions of any existing or future agreement(s) between the Authority and the United States Government or agency thereof, relative to the operation and maintenance of the Airport, the terms and conditions and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Authority for Federal funds for the development of the Airport and in the event an amendment to any Lease subject to this Ordinance is necessary in order to comply with any existing or future agreement(s) subsequent to the execution of such Lease by Authority and a Lessee, the Lessee shall be required to amend such Lease in order for Authority and Lessee to be in compliance with such agreement(s) with the United States Government.

XIX. NON-DISCRIMINATION.

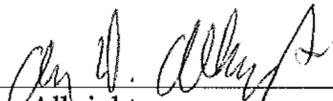
Any Lease subject to this Ordinance shall include the non-discrimination and civil rights clauses as required by the U.S. Government or any agency thereof.

XX. EFFECTIVE DATE.

This Ordinance is in full force and effect upon passage and shall apply to all Leases of Airport land to be used primarily for the construction of Executive Hangars which are approved by the Authority subsequent to the date of passage.

ALL OF WHICH IS ORDAINED by the Hamilton County Airport Authority on this 12 day of November, 2014.

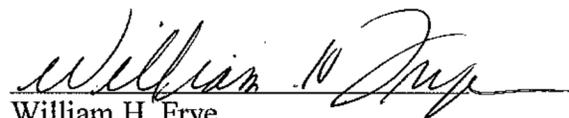
HAMILTON COUNTY AIRPORT
AUTHORITY



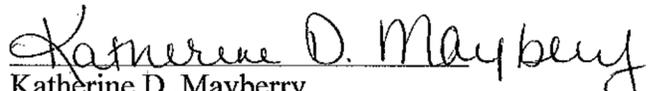
Alan Albright



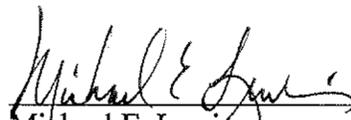
Allyn Beaver



William H. Frye

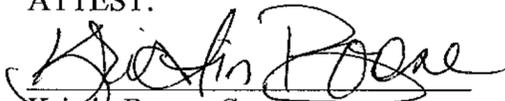


Katherine D. Mayberry



Michael E. Lewis

ATTEST:



Kristin Boone, Secretary

