

CITY OF SAN MARCOS, TEXAS

SAN MARCOS REGIONAL AIRPORT

COMMERCIAL AVIATION GROUND LEASE AGREEMENT FOR ABOVE GROUND FUEL STORAGE FACILITY

THIS COMMERCIAL AVIATION GROUND LEASE AGREEMENT (“Lease”) is made between the City of San Marcos, a municipal corporation of the State of Texas (“**Lessor**” or “**City**”), and 2080 Airport Drive, LLC. (“**Lessee**”).

AGREEMENT:

In consideration of the covenants and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

**ARTICLE 1: AIRPORT OWNERSHIP; DEMISE; ACCEPTANCE;
CERTAIN RULES AND OTHER MATTERS**

- 1.01.** Airport. Lessor is the owner of the San Marcos Regional Airport (the “**Airport**”), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.
- 1.02.** Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein, Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, the following described real property consisting of approximately 1,424 square feet (hereinafter referred to as the “**Leased Premises**”), located at the Airport in Caldwell County, Texas:
- 1730 Airport Drive – Fuel Tank Site as described in Exhibit A attached hereto.
- 1.03.** Acceptance. Lessee acknowledges that, subject to Lessor’s express obligations herein: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purpose or the presence of environmental, geologic or other site conditions that may affect Lessee’s use of the Leased Premises; (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; (iii) Lessee has had the opportunity to inspect and perform tests and investigations of the Leased Premises for its intended purposes; and (iv) Lessee is accepting the Leased Premises in its present condition.
- 1.04.** Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations adopted November 2, 2015, pursuant to City Ordinance Number 2015-46 (the “**Rules and Regulations**”), a copy of which is attached hereto as Exhibit B, and (ii) San Marcos Regional Airport Minimum Standards last updated August 18, 2015 (the “**Minimum Standards**”), a copy of which is attached hereto as Exhibit C. Provided the same do not impair the material rights of Lessee hereunder or adversely affect Lessee’s ability to use the Leased Premises for the Authorized Use (as defined below), Lessor has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and Lessee shall comply with the same.

- 1.05. Airport Operation. During the Term, Lessor covenants and agrees to operate and maintain the Airport and appurtenant facilities as a public airport consistent with, at a minimum, current operations and the “sponsor” assurances given by Lessor to the United States of America and, as applicable, the State of Texas. In connection with such sponsor assurances, Lessee agrees that this Lease and Lessee’s rights and privileges hereunder shall be subordinate to such sponsor assurances.
- 1.06. Ingress and Egress. Lessor agrees that Lessee, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from the Leased Premises by means of roadways owned by the City for automobiles and taxiways at the Airport for aircraft, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the Rules and Regulations, applicable laws and regulations of the City, the Federal Aviation Administration (“*FAA*”) and other governmental authorities with jurisdiction over the Airport and this Lease.

ARTICLE 2: COMMENCEMENT, TERM AND RENT

- 2.01. Commencement. Rental (“*Rent*”) shall accrue commencing upon the Commencement Date (as defined below). Rent shall be payable at the place designated in Section 2.04.
- 2.02. Term. The term of this Lease (“*Term*”) will commence on April 27, 2024 (the “*Commencement Date*”) and will terminate on April 26, 2044 (the “*Expiration Date*”), subject to earlier termination or renewal as provided herein. As used herein, “*Lease Year*” means each period of twelve (12) full calendar months from and after the Commencement Date.
- 2.03. Rent. During the Term, Lessee hereby promises and agrees to pay Lessor Rent for the Leased Premises on a “per square foot per Lease Year” basis, as follows:

April 27, 2024 through April 26, 2029:	\$370.24
April 27, 2029 through April 26, 2034:	\$412.96
April 27, 2034 through April 26, 2039:	\$455.68
April 27, 2039 through April 26, 2044:	\$498.40

Rent shall be paid in equal monthly installments, which during the first five (5) years of the Term shall be in the amount of \$30.85; Rent will be prorated in the event of any partial month. Lessee, at its option, may make advance payments of Rent up to one (1) year in advance, but there will be no discount for advance payments.

Lessee agrees to pay the first (prorated, if applicable) Rent installment within three (3) business days after the Commencement Date. Such payment shall be credited against Rent due for the first month in the Term.

- 2.04. Form and Place of Payment. The monthly Rent shall be due on or before the first day of each calendar month. A payment shall be considered past due if, after the fifth (5th) day of the month in which the payment is due, Lessor has not received full payment by the end of such day (which shall end during normal working hours) physically, via ACH or wire, or by mail to 4400 Airport Highway 21, San Marcos, Texas. Payments submitted via United States Postal Service or other means, such as ACH or wire, are considered paid when received, not on the date posted.

- 2.05. Late Charges. Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5th) day of the month in which such Rent is due will be considered late, and a \$15.00 per day late charge will be assessed. In addition, Lessee shall reimburse Lessor for each check that is returned or not honored.
- 2.06. No Release. Except as expressly provided herein or in any written consent of Lessor, Lessee (i) will not be released from liability pursuant to this Lease for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any aircraft; and (ii) *is obligated to the terms and conditions of this Lease, including the payment of Rent for the entire Term, subject to earlier termination (except due to an uncured event of default by Lessee) or renewal, as provided herein.*
- 2.07. Holdover. In the event Lessee holds over after the expiration of this Lease, such hold over status will create a month-to-month tenancy. In such event, Lessee agrees to pay a monthly holdover rate in the amount of 150% of the Rent in effect on the date the Lease is terminated. Holdover tenancy will be subject to all other terms and conditions of this Lease.

ARTICLE 3: USE AND CARE OF PREMISES

- 3.01. Authorized Use: During the Term and any renewal thereof, the Leased Premises may be used and occupied by Lessee for the following, and for no other purpose: aviation fuel storage, and all other uses ancillary to any of the foregoing (herein, the “*Authorized Use*”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), Lessee may conduct incidental activities on the Leased Premises reasonably related to the Authorized Use. The Leased Premises may not be used for any other purpose without the prior written consent of Lessor, and any commercial use of the Leased Premises not expressly authorized under the terms of this Lease may, at Lessor’s election, be set forth in an amendment hereto or separate contract with Lessor.
- 3.02. Conduct of Business. Except as provided in Section 15.01.f., Lessee shall not fail to occupy and use the Leased Premises for Authorized Use and, subject to Applicable Laws, shall not fail to keep the Leased Premises open for business as required by the Minimum Standards.
- 3.03. No Unlawful Use. Lessee covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Leased Premises by any person(s) and that such unlawful use shall result in the removal from the Leased Premises by Lessor of any person(s) using the same. Lessee’s unlawful use of the Leased Premises shall constitute a breach of this Lease.
- 3.04. No Insurance Invalidation; Risk of Lessee. Lessee shall not place or keep anything on the Leased Premises or conduct any unauthorized use of the Leased Premises which invalidates any insurance policy carried on the Leased Premises without Lessor’s prior written consent. Lessee agrees that the risk of loss and damage for property kept, stored or maintained by it within the Leased Premises is that of Lessee.
- 3.05. No Waste or Nuisance; Compliance with Laws. Lessee shall not use or permit the use of the Leased Premises in any manner which results in waste of the Leased Premises or constitutes a nuisance. During the Term and any renewal thereof, Lessee shall comply with applicable laws and regulations of the City (except to the extent any of the same which are enacted after the Effective Date preclude or adversely affect Lessee’s rights hereunder),

the FAA and other governmental authorities with jurisdiction over the Leased Premises (“*Applicable Law*”).

- 3.06. Trash and Debris. Lessee shall keep the Leased Premises and adjacent areas, together with any Lessee signage on or near the Airport, neat, clean and free from dirt and trash at all times; provided, except for the obligation to remove its debris therefrom, Lessee shall have no responsibility for any of the following which are located off of the Leased Premises and used in common with others: ramps, sidewalks, service ways, loading areas and other Airport Facilities. Lessee will provide a dumpster or other suitable trash receptacles for the Leased Premises for use by Lessee, its agents, contractors, employees, invitees or licensees. Lessee shall arrange for the regular removal of the trash at Lessee’s expense.
- 3.07. Storage. Lessee shall store all equipment, materials and supplies within the confines of a building or other structure located on the Leased Premises. Outside storage is specifically prohibited without the advance written consent of Lessor.
- 3.08. Use of Airport Facilities. Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities to the same extent as other Airport users.
- 3.09. Additional Airport Facilities. Notwithstanding any provision of this Lease, any element of the Approved Plans (as defined below) or otherwise, Lessee shall have no obligation to build or construct any improvements or facilities on or off the Leased Premises which constitute Airport Facilities, including, without limitation, offsite utility lines or other improvements, and any agreement to the contrary shall be made set forth in a writing signed and dated by Lessee and identifying the specific improvement(s).

ARTICLE 4: ALTERATIONS AND FIXTURES

- 4.01. Approvals. Lessee is prohibited from undertaking or allowing any party to undertake the construction or development of any Alterations which require approval by the FAA without first submitting Form 7460-1, Notice of Proposed Construction of Alteration, or such other form as may be required by the FAA, to the FAA.
- 4.02. Intentionally Omitted.
- 4.03. Intentionally Omitted.
- 4.04. Ownership. Except for onsite improvements owned by Lessor or third parties (such as, for example, utility improvements), (i) the above ground storage tanks and all other improvements made to the Leased Premises by Lessee which constitute fixtures are owned by Lessee during the Term and any renewal thereof, and (ii) upon termination or expiration of the Term and any renewal thereof, title to the same shall vest in Lessor.
- 4.05. Alterations. Except for alterations required by Applicable Law and alterations which cost less than Five Hundred Thousand and NO/100 Dollars (\$500,000.00) and do not affect the structural integrity of the facilities, all alterations to the Leased Premises, including alterations made following a casualty or eminent domain event (“*Alterations*”) must be approved in writing by Lessor and constructed pursuant to plans approved by the City, such approval not to be unreasonably withheld, conditioned or delayed, and, if applicable, Lessee shall submit Form 7460-1, Notice of Proposed Construction of Alteration, or such other form as may be required, to the FAA. All such plans, specifications and work shall

conform to Applicable Law, including, without limitation, applicable provisions of the Americans With Disabilities Act of 1990, as amended (the “ADA”). Notwithstanding the foregoing right of Lessee to construct alterations required by Applicable Law and certain alterations without first obtaining the City’s consent, to the extent permits or other authorizations are required by Applicable Law, Lessee shall comply with the same and, if plans are required to be submitted and approved, the process in Section 4.01.a. shall apply.

4.06. Exterior Lighting and Signage.

- a. Except as set forth in any Alterations plans approved by Lessor, Lessee shall not do any of the following without Lessor’s prior written consent install any exterior lighting, shades or awnings, or any exterior decorations or paintings.
- b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Lessee agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Leased Premises shall be maintained at all times in a safe, neat, sightly and good physical condition.

4.07. Condition on Surrender. Lessee shall surrender the Leased Premises at the expiration of the Term and any renewal thereof in good condition and repair, normal wear and tear excepted.

4.08. No Liens. Lessee shall not permit, or permit any contractor or other person or entity claiming by or through Lessee, to place a lien or similar obligation on the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and Lessee shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event Lessee disputes the lien or obligation, however, Lessee shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by Lessee. **LESSEE SHALL HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE LEASED PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.**

4.09. Requirement of Payment and Performance Bonds for Construction. To the extent required by HB2518, passed by the Texas Legislation to take effect on September 1, 2023, Tenant must include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor execute a payment bond and execute a performance bond in an amount equal to the amount of the contract for the protection of the governmental entity and conditioned on the faithful performance of the contractor’s work in accordance with the plans, specifications, and contract documents; and provide to the City a notice of commencement at least ninety (90) days before the construction, alteration, or repair of any improvement to the leased property begins. The notice of commencement must identify the public property where the work will be performed, describe the work to be performed, state the total cost of the work to be performed, include copies of the performance and payment bonds, and include a written acknowledgment signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

ARTICLE 5: MAINTENANCE AND REPAIR OF PREMISES

- 5.01. Lessee Obligations.** Lessee shall, at its sole cost and expense, maintain, repair and keep in good repair the Leased Premises, the above ground fuel storage tanks and any appurtenances, including routine maintenance in accordance with federal, state, and local standards. Additionally, Lessee shall conduct annual inspections of the same, with copies of the inspection reports to be delivered to Lessor annually. Lessee shall accomplish all repairs and maintenance for which it is responsible routinely and, in all events, within thirty (30) days of receipt of written notice from Lessor. If, within such thirty (30) day period, Lessee fails to make any necessary Improvements repairs or perform any necessary Improvements maintenance for which Lessee is responsible, Lessor may, as a result of such failure, perform or have such repairs or maintenance performed and notify Lessee of the same, together with evidence of the cost thereof, and the actual, reasonable, and verifiable cost of such work shall be payable by Lessee within thirty (30) days of Lessee's receipt of an invoice from Lessor evidencing such costs.
- 5.02. Lessor's Right of Access.** When no state of emergency exists and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, shall have the right to enter the Leased Premises following at least forty-eight (48) hours' prior written notice to Lessee during Lessee's regular business hours for the purpose of (i) determining whether the Leased Premises are in good condition and repair, or (ii) performing any maintenance or repairs to the Improvements for which Lessor is responsible under this Lease. In an emergency and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, may enter the Leased Premises at any time and without prior notice to Lessee (but written notice of entry and the time and reason therefor, together with the names and contact information of each individual who entered without notice, shall be provided by Airport Management to Lessee within twenty-four [24] hours of any such entry). Lessor and Airport Management shall minimize disruption to Lessee and operations at the Leased Premises resulting from any access thereto by Lessor or Airport Management.

ARTICLE 6: UTILITIES AND TAXES

- 6.01. Utilities.** Lessee agrees and covenants that it will pay for all utilities used by it on the Leased Premises, including all costs charged or necessary for utility connection fees, impact fees, the installation of meters, any deposits and any other customary prerequisites for such utility service. Lessee further covenants and agrees that Lessee will pay all customary costs and expenses for initial service and any extension of the same to the Leased Premises and, if applicable, ***Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessor's property.*** In addition, Lessee shall maintain and repair all utility service lines located on the Leased Premises, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service. Except for its gross negligence or willful misconduct operating in its capacity as a utility provider, Lessor shall not be liable for any interruption or impairment in utility services to the Leased Premises; provided, if such interruption of City-provided utility services (i) extends beyond thirty (30) consecutive days, and (ii) is caused by Lessor or Lessor's employees, contractors, or agents, the Rent shall be equitably abated. Any such abatement shall be applicable to the period between the date of interruption and the date services are resumed.
- 6.02. Taxes.**

- a. In entering into this Lease, Lessee understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of (i) Lessee's leasehold interest in the Leased Premises, (ii) the Improvements, and (iii) Lessee's equipment, inventory and other personal property, including, but not limited to, Lessee's aircraft used for commercial purposes. Lessee shall deliver to Airport Management evidence of timely payment of all such taxes.
- b. Lessee may, at Lessee's expense, contest the validity or amount of any taxes for which Lessee is responsible under this Section 6.02, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, the Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in Lessor's reasonable judgment, it shall become necessary to do so, Lessor may, after notice to Lessee, under protest, pay such amount of the taxes as may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by Lessor shall be promptly paid on demand by Lessee to Lessor, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed to be additional Rent. Lessee shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and Lessor may, at its expense, participate therein. Notwithstanding anything herein to the contrary, in the event Lessee is successful in contesting the validity or amount of any taxes for which Lessee is responsible under this Section 6.02, in no event shall Lessee be required to pay more than the amount Lessee would have otherwise been required to pay due to such successful contest.

ARTICLE 7: RIGHTS AND PRIVILEGES OF LESSEE

- 7.01. Grant of Rights.** Lessor hereby grants to Lessee the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport:
- a. The use in common with the public generally of all public Airport Facilities for or in connection with the Authorized Use. For the purposes of this Lease, "***Airport Facilities***" includes, but is not limited to, runways, taxiways, ramps, aprons, public automobile parking areas, public roadways, sidewalks, tie-down areas and tie-down facilities and terminal facilities of Lessor located at or near the Airport and used in conjunction therewith, which areas may be expanded following the Effective Date but, to the extent the same are extant on the Effective Date, shall not as to Lessee, unless otherwise expressly permitted herein or agreed in writing by Lessee, be materially diminished or extinguished unless the same are substituted with facilities which are equivalent or better in terms of location and quality. Subject to the express provisions of this Lease, said rights shall be subject to such rules, regulations and laws which now or may hereafter have application at the Airport.

- b. Nothing in this Lease shall be construed to grant Lessee a permanent right in any particular public Airport Facility should Lessor deem it advantageous to the operation of the Airport to close or relocate any such facility.

ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF LESSOR

- 8.01. Aerial Approaches. Subject to the provisions of this Lease, Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure (exclusive of the facilities) which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.
- 8.02. Temporary Closure. Lessor reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by Lessor, without being liable to Lessee for any damages caused by disruption of Lessee's business operations or for any other reason; provided, Lessor shall take reasonable steps to avoid or mitigate interference with the operation of Lessee's business at the Leased Premises.
- 8.03. Subordination. This Lease is subject to the provisions of any agreement made between Lessor and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal or State of Texas rights or property to Lessor for the development, maintenance and repair of Airport infrastructure. Lessor covenants and agrees that it has no existing agreements with the United State of America or the State of Texas in conflict with the express provisions of this Lease and that it will not enter into any such agreements.
- 8.04. War; National Emergency. During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All Rent or other payments owing under this Lease shall likewise be suspended until Lessee's normal operations resume at the Leased Premises. In addition, if Lessee's normal business operations are materially affected for a period in excess of one hundred and fifty (150) days, Lessee may terminate this Lease upon written notice to Lessor, in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder except to the extent permitted in, and in accordance with, Section 4.07, Lessee may remove its personal and other property within thirty (30) days after the date of Lessee's notice of termination (the exercise of which right shall not constitute a holdover). Nothing contained in this Lease shall prevent Lessee from pursuing any rights which Lessee may have for reimbursement from the United States of America for the taking of any part of Lessee's leasehold estate or for any loss or damage caused to Lessee by the United States of America.
- 8.05. Operation as Public Airport. Lessor covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

ARTICLE 9: OPERATION OF THE AIRPORT

9.01. Non Discrimination Requirements.

- a. It is specifically understood and agreed that this Lease does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited by applicable FAA regulations. Lessor agrees not to lease space to other tenants or users at the Airport on terms more favorable (including, without limitation, ground rents, other rents or fees, or length of term) than those contained in this Lease and, if Lessor enters into a lease or other agreement for the same or similar use, the material terms of which are more favorable terms than those contained herein, the more favorable material terms shall be offered to Lessee and, at Lessee's election, this Lease shall be modified to reflect the more favorable material terms.
- b. Lessee, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of Lessee's use of the Airport on the basis of race, color, national origin, religion, handicap or gender. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Leased Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, Lessee covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.

IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY LESSEE, LESSEE AGREES TO HOLD HARMLESS AND INDEMNIFY LESSOR AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

- ### **9.02. Airport Development.**
- The use of a portion of the Airport property for use of the Leased Premises is subordinate to the use of Airport property for aviation purposes. Lessor reserves the right to further develop and improve the Airport as it may see fit; provided, however, such redevelopment shall endeavor to minimize disruptions to Lessee's business and operations at the Leased Premises to the extent possible. If the future development of the Airport requires the relocation of Lessee's Improvements during the Term and any renewal thereof, Lessor agrees, prior to any such relocation, to (i) provide substitute leased premises comparable to the Leased Premises for the remainder of the Term and renewal thereof, plus any then permitted extensions, (ii) provide substitute leased premises a location which is consistent with and suitable for Lessee's current business operations at the Leased Premises at the time of such relocation, (iii) minimize disruptions to Lessee's business and operations at the Leased Premises to the extent possible, and (iv) to relocate (subject to Lessee's reasonable agreement, taking into account impacts on Lessee's use thereof) or promptly reconstruct the Improvements at no cost to Lessee.

- 9.03.** Aeronautical Services Grant and Requirements. The right to furnish aeronautical services to the public is granted to Lessee by Lessor, subject to the following:
- a. Lessee shall furnish such services on a fair, equal and nondiscriminatory basis to all users.
 - b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

ARTICLE 10: INSPECTION AND PREMISES ACCEPTANCE

- 10.01.** Fire Safety. Lessee will permit the Fire Marshal to make inspection of the Leased Premises during regular business hours, except in the event of an emergency, and Lessee will comply with Applicable Laws as required to insure the Leased Premises comply with fire and building provisions regarding fire safety. Lessee shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.
- 10.02.** Acceptance. Lessee agrees and covenants that Lessee has inspected the Leased Premises and is fully advised of its own rights without reliance upon any representation made by Lessor as to the condition of the Leased Premises, and accepts same in their present condition. Lessor hereby represents and warrants that, as of the Effective Date, no restrictive covenants or other agreements exist that will or may have a detrimental impact on Lessee's Authorized Use, its ability to conduct its operations in the Leased Premises, and/or access to the Leased Premises.

ARTICLE 11: INSURANCE AND INDEMNITY

- 11.01.** Required Insurance; Title Insurance. Lessee shall procure and maintain at all times, in full force and effect, a policy or policies of insurance as set forth in the Minimum Standards and related to Lessee's lease, use and occupancy of the Leased Premises. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with the Minimum Standards. Lessee shall provide certificates of insurance which satisfy the foregoing within ten (10) Business Days of the Effective Date and at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein). Lessee may, at its sole cost and expense, obtain a policy of leasehold title insurance insuring Lessee's leasehold interest in the Leased Premises.
- 11.02.** Lessee Responsibility. In the event Lessee fails to obtain and maintain required insurance, Lessee shall nevertheless be responsible for related losses and, to the extent any obligation of Lessee hereunder is uninsurable, Lessee shall nevertheless be responsible for such obligation. To the extent that Lessee maintains insurance which does not comply with the Minimum Standards, the same does not operate to release Lessee from its obligations pursuant to Section 11.01.
- 11.03.** No Conflicts. Lessee shall not do or permit anything to be done on any portion of the Leased Premises, or bring or keep anything thereon, which (i) is in violation of any required

insurance, (ii) operates to increase the rate of insurance upon the Leased Premises, or (iii) unreasonably interferes with the rights of other tenants at the Airport.

11.04. Casualty Coverage: Notwithstanding and, as applicable, in addition to the Minimum Standards, during the Term and any renewal thereof, Lessee shall, at its sole cost and expense, cause all Improvements on the Leased Premises to be insured to the full insurable value thereof against the perils of explosion, fire, extended coverage and the like.

11.05. Indemnity and Security.

a. **Indemnity.** LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “***INDEMNIFIED PARTIES***”), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES AND COURT COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS. (“***CLAIMS***”), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSEE AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “***LESSEE PARTIES***”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSEE HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE LEASED PREMISES AND USE OF AIRPORT IMPROVEMENTS. LESSEE IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSOR’S CITY ATTORNEY.

b. **Limitation of Liability.** The foregoing and any other indemnity of Lessee herein shall not be interpreted as requiring Lessee to indemnify any of the Indemnified Parties from any liability arising solely out of willful misconduct, gross negligence, breach of this Lease or breach of any strict liability obligations.

c. **Waiver of Consequential Damages.** EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING

BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.

- d. Claims Against Lessee. If any claim, demand, suit or other action is made or brought by any person or entity against Lessee arising out of or concerning this Lease, Lessee shall give written notice thereof, to Lessor and Airport Management within fifteen (15) days after receipt of such claim, demand, suit or action.
- e. Notice. Lessee shall promptly (and in all events within three (3) Business Days) notify Lessor and Airport if it is involved in any accident on the Leased Premises or Airport. To the extent Lessee's officers are aware of any defects in Airport runways, taxiways, lighting systems or other facilities which may require immediate attention, Lessee shall promptly notify Airport Management of the same (Lessor acknowledging that inspection and reporting is not Lessee's obligation, and that such notice is provided as a courtesy to Lessor).
- f. Security. Lessor does not guarantee police protection or security to Lessee or its property and, except as provided in subsection b above, (i) Lessor and Airport Management shall not be responsible for injury to any person on the Leased Premises or for harm to any property which belongs to Lessee or those claiming by or through Lessee, or which may be stolen, destroyed or damaged; and (ii) **LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.**

ARTICLE 12: CONDEMNATION

- 12.01.** Taking in Entirety. If the entire Leased Premises are taken by any public or governmental body by right of eminent domain, this Lease shall terminate as of the date the condemning authority takes possession.
- 12.02.** Partial Taking. If less than all of the Leased Premises are taken by any public or governmental body by right of eminent domain, and in Lessee's reasonable judgment, the remainder lacks adequate area, location, configuration or improvements to carry out the purposes for which the Leased Premises were leased, Lessee shall have the right to terminate the Lease in its entirety, by giving Lessor written notice within thirty (30) days after the date Lessee's receives written notice from Lessor notifying Lessee that the condemning authority takes possession. If Lessee does not terminate the Lease, the Lease shall continue in full force and effect as to the remainder of the Leased Premises.
- 12.03.** Damage Award for Continuation of Lease. Subject to the terms and conditions of any subordination, attornment and non-disturbance agreement ("*SNDA*") executed by Lessor, Lessee and Lessee's lender, in the event of a partial taking pursuant Section 12.02 where there is not a termination of this Lease, (i) an amount equal to (a) the amount awarded for the loss of Lessee's leasehold estate, plus (b) the amount awarded for the loss of Lessee's trade fixtures and other tangible personal property, plus (c) the amount awarded for the Improvements and Alterations so taken (which shall not be less than actual costs incurred by Lessee in development and construction of the same) multiplied by a fraction, the numerator of which is the total number of months from the date of the taking until the scheduled expiration of the Term and any renewal thereof and the denominator of which is

the total number of months in the Term and any renewal thereof, shall belong to Lessee, and Lessor assigns to Lessee all right, title and interest in and to any and all such compensation; and (ii) the remainder of amounts awarded as damages shall belong to Lessor and, subject to payment of an award to Lessee of amounts due pursuant to (i) above, Lessee assigns to Lessor all right, title and interest in and to any and all such compensation. Lessee is authorized to assert a claim for, and receive, an award and compensation based on (i) above for the taking of Lessee's property.

- 12.04.** Damage Award for Termination of Lease. Subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, in the event of a termination of this Lease pursuant to this Section 12, any condemnation award shall be determined and distributed in accordance with the provisions of Section 12.03. The termination of this Lease under this Article 12 shall not affect the rights of the respective parties to such awards and compensation, which rights shall survive termination.
- 12.05.** Definition of Taking. As used in this Article 12, a taking shall include, a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

ARTICLE 13: DAMAGE BY CASUALTY

- 13.01.** Notice Required. Lessee shall give immediate notice (which may be verbal), followed by prompt written notice, to Lessor of any material damage caused to the Leased Premises by fire or other casualty.
- 13.02.** Restoration Upon Casualty Loss. Subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, if the Improvements are wholly or partially destroyed or damaged by fire or any other casualty ("*Casualty*"), Lessee shall cause the same to be restored and reconstructed with available insurance proceeds (and such other proceeds as are made available to Lessee), unless otherwise agreed by Lessor in writing, and subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, the following provisions shall apply:
- a. New Construction Requirements. The design of all portions of the Leased Premises to be restored and reconstructed shall meet the requirements of this Lease, and Lessor shall have the same rights of review, comment and approval with respect to such design as it has hereunder for new construction.
 - b. Commencement and Completion. Restoration and reconstruction shall commence by the later of six (6) months after the date of the Casualty or sixty (60) days after the plans for such construction are approved by Lessor and, as applicable, the FAA. Thereafter, construction shall be pursued with all due diligence to substantial completion.
 - c. Construction Funding. Lessee shall use available proceeds of Lessee's casualty insurance for the restoration and reconstruction of the Improvements.
- 13.03.** No Restoration Following Casualty Loss. Notwithstanding the provisions of Section 13.02, subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, the following provisions shall apply:
- a. By Agreement. If Lessee and Lessor agree not to restore and reconstruct the

Improvements, either party may elect to terminate this Lease as to the portion of the Leased Premises affected by the Casualty upon thirty (30) days' written notice to the other, and the following provisions shall apply:

1) With available proceeds of Lessee's casualty insurance, Lessee shall establish reasonable security for the Leased Premises and, as soon as practicable, remove all debris resulting from the Casualty and bring the Leased Premises to a clean and safe condition.

2) The remainder of the available proceeds of Lessee's casualty insurance shall be divided between Lessor and Lessee, Lessee's portion thereof being an amount determined by multiplying the remaining amount by a fraction, the numerator of which is the total number of months from the date of the Casualty until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof.

3) In the event of termination, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder and available proceeds of Lessee's casualty insurance shall be distributed in accordance with 1 and 2 above.

b. Cannot be Constructed Timely. If the Improvements cannot be reconstructed within two hundred forty (240) days following the date of the Casualty or the event of Casualty occurs during the last three (3) years of the Term, Lessee may elect to terminate this Lease as to the portion of the Leased Premises affected by the Casualty or in its entirety upon thirty (30) days' written notice to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder; provided, the termination of this Lease under this Article 13 shall not affect the rights of the respective parties to available proceeds of Lessee's casualty insurance, which rights shall survive termination. In such event, the available proceeds of Lessee's casualty insurance shall be divided between Lessor and Lessee, Lessee's portion thereof being an amount determined by multiplying the amount of available proceeds by a fraction, the numerator of which is the total number of months from the date of the Casualty until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof.

13.04. Rent Abatement. During any period of reconstruction or repair of the Improvements on the Leased Premises, this Lease shall continue in full force and effect except that Rent shall be abated for the length of time necessary for the reconstruction or repairs based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under the terms of this Lease.

13.05. Casualty During Last 60 Months. Notwithstanding anything to the contrary herein, the parties further agree that Lessee shall have the right to decline to repair and restore the Leased Premises if the Casualty occurs within the last sixty (60) months of the Term and any renewal thereof unless Lessor and Lessee agree, on mutually agreeable terms, to an extension. If Lessee declines to repair and restore the Leased Premises, this Lease shall

terminate upon delivery of Lessee's notice of termination to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder and available proceeds of Lessee's casualty insurance shall be distributed in accordance with Section 13.02.b. The termination of this Lease under this Article 13 shall not affect the rights of the respective parties to available proceeds of Lessee's casualty insurance, which rights shall survive termination.

ARTICLE 14: ASSIGNMENT AND SUBLETTING

14.01. Assignment by Lessee. Except as otherwise provided herein with respect to Lessee's financing and with respect to a Permitted Assignment (as defined below), Lessee may not assign this Lease, or any of its rights or obligations hereunder, in whole or in part, including by operation of law, without the prior written consent of Airport Management; provided (i) no change in the direct or indirect control of Lessee or any ownership interests therein shall be considered an assignment, and (ii) Lessor shall not unreasonably withhold, condition or delay its consent to a proposed assignment. In connection with any request by Lessee for Lessor's consent to a proposed assignment, Lessor's withholding or denial of such consent shall be deemed reasonable if based upon the following:

- a. In Lessor's judgement, the assignee (i) is of a character or engaged in a business or proposes to use the Leased Premises in a manner which is not in keeping with Airport standards or would diminish the value of the Airport, or (ii) in Lessor's reasonable opinion, is not creditworthy (provided, consent shall not be denied if Lessee agrees to remain liable under this Lease);
- b. The occupancy of the Leased Premises by the proposed assignee would cause Lessor's insurance to be cancelled (or increased, unless such costs will be reimbursed by the proposed assignee);
- c. The use is not a use generally in keeping with uses allowed at the Leased Premises; or
- d. The use is prohibited at the Airport.

Such consent shall be deemed to have been granted if written notice of non-consent is not received by Lessee within thirty (30) days of a written request for consent.

14.02. Sublease. Notwithstanding the provisions of Section 14.02, Lessee may sublease office, hangar and tie-down space to subtenants without Airport Management's prior consent provided that (i) the sublease or other use and occupancy agreement is expressly subject to and subordinate to this Lease, and (ii) the terms of the sublease or other use or occupancy agreement are consistent with the terms and conditions of this Lease. Additionally, Lessee shall provide Airport Management with a list of subtenants no less than two times per calendar year.

14.03. No Release. Except for a Permitted Assignment or assignment to a Qualified Lessee (as defined below) to which Lessor has consented pursuant to Section 14.01, no assignment, sublease or grant of use and occupancy rights shall relieve Lessee of its obligations to Lessor hereunder. Any assignment, transfer or sublease that is not permitted under this Lease and has not been authorized by Lessor in writing shall be void. As used herein:

1) “*Permitted Assignment*” means the transfer of all or part of Lessee’s interest in this Lease or all or part of the Leased Premises to the following types of entities without the written consent of Lessor:

- a) Any transfer to a trust or other entity in connection with estate planning of Lessee’s principal shareholder(s);
- b) Any transfer to an affiliate (by common ownership) or subsidiary of Lessee.
- c) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Lessee, or its corporate successors or assigns, is merged, consolidated or reorganized, so long as Lessee’s obligations hereunder are assumed by the entity surviving such merger or created by such consolidation or reorganization.
- d) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Lessee’s or of Lessee’s business operations in the Leased Premises or all of Lessee’s or any parent of Lessee’s outstanding equity or a majority in interest of Lessee’s or any parent of Lessee.
- e) Any transfer to a Qualified Lessee.

2) “*Qualified Lessee*” means a person or entity with a net worth equal to or greater than an amount equal to three hundred percent (300%) of the then-unpaid Rent obligations of Lessee hereunder for the remainder of the Term of the Lease and any extensions.

14.04. Assignment by Lessor. In the event of an assignment by Lessor of all of its interest in the Leased Premises to a person or entity that assumes all of Lessor’s obligations pursuant to this Lease, Lessee agrees to look solely to such assignee.

ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION

15.01. Events of Default by Lessee. The following shall constitute “events of default” by Lessee under this Lease:

- a. Rent. Failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee under this Lease when due where such failure continues for a period of ten (10) days after written notice by Lessor to Lessee; provided, after the second such failure in a calendar year, only the passage of time, but no further written notice, shall be required to establish an event of default in the same calendar year; or
- b. Other Breaches. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in subsection a. above, where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee; provided, if the nature of Lessee’s obligation which it has failed to perform is such that more than thirty

(30) days are reasonably required for its cure, then it shall not be deemed an event of default if Lessee commences such cure within the thirty (30) day period and, having so commenced, thereafter prosecutes with diligence and completes the curing of such failure or breach within a reasonable time; or

- c. Certain Voluntary Acts. Lessee (i) files, or consents by answer or otherwise to the filing against it, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessee or of any substantial part of Lessee's property; or
- d. Receivership; Bankruptcy. Without consent by Lessee, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessee or with respect to any substantial part of Lessee's property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Lessee; or
- e. Vacation or Failure to Operate. Except in connection with construction, alteration, casualty, eminent domain, act of Lessor, the United States of America or the State of Texas which precludes occupation and use of the Leased Premises or Force Majeure, Lessee vacates or fails to use all or any substantial portion of the Leased Premises for one hundred (120) consecutive days which time may be extended in writing by Lessor if Lessee is actively marketing the property for sublease; or Levy or Attachment. Except as permitted pursuant to a subordination, non-disturbance, and attornment agreement (SNDA) executed by Lessor, Lessee and Lessee's lender and/or any related loan documents, this Lease or any estate of Lessee hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days.

15.02. Lessor Remedies. If an event of default occurs and the applicable cure period has expired, at any time after such occurrence and prior to the cure thereof, with or without additional notice or demand and without limiting Lessor's rights or remedies as a result of the event of default, Lessor may do the following:

- a. Terminate this Lease. Provided Lessor complies with all applicable laws, Lessor may terminate this Lease on written notice to Lessee. In such event, Lessee shall immediately surrender the Leased Premises to Lessor and, if Lessee fails to do so, Lessor may enter and take possession of the Leased Premises and remove Lessee and any other person occupying the Leased Premises, using reasonable force if necessary, without prejudice to any other remedy it may have for possession or arrearages in Rent and, except as provided in Section 11.05.b., without being liable for any resulting damages Lessee agrees to pay to Lessor the actual and reasonable amount of related costs and expenses incurred by Lessor, inclusive of reasonable attorney and court costs, within thirty (30) days of Lessor's request for payment, accompanied by evidence of such costs and expenses. If Lessor terminates this

Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all Improvements, and such shall become the property of Lessor.

- b. Relet the Leased Premises and Receive the Rent. Lessor may terminate Lessee's right to possession of the Leased Premises and enjoyment of the rents, issues and profits there from without terminating this Lease or the estate created hereby. If Lessor retakes possession of the Leased Premises as provided herein, Lessor may lease, manage and operate the Leased Premises and collect the rents, issues and profits there from for the account of Lessee, and credit to the satisfaction of Lessee's obligations hereunder the net rental thus received, after deducting therefrom all reasonable, actual out-of-pocket third party costs and expenses of repossessing, leasing, managing and operating the Leased Premises.
- c. Enter and Perform. Lessor shall have the right, but not the obligation, to enter upon the Leased Premises and perform any obligation that Lessee has failed to perform. All reasonable and actual costs and expenses incurred by Lessor in performing such obligations of Lessee shall be deemed additional Rent payable by Lessee to Lessor.
- d. Other Remedies. Lessor may exercise any other right or remedy available to Lessor under this Lease or at law or in equity.

15.03. Default by Lessor. Lessor shall be deemed to be in default of this Lease (herein, a "***Lessor Default***") if Lessor shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessor and Lessor shall fail to cure such failure within thirty (30) days after delivery by Lessee to Lessor of written notice specifying the failure; provided, so long as the subject default did not occur due to Lessor's breach of an affirmative covenant herein (e.g., pursuant to Sections 1.01, 1.05, 1.06, 7.01(a), 9.02, and Article 8), if the failure is curable other than by the payment of money but cannot be cured within such thirty (30) day period, Lessor shall not be in default if Lessor commenced cure of the failure during such thirty (30) day period and thereafter diligently and continuously pursues the cure to its completion.

15.04. Lessee's Remedies. If a Lessor Default occurs, Lessee may at any time thereafter and prior to the cure thereof do any one or more of the following:

- a. Terminate this Lease. Lessee may terminate this Lease by giving Lessor written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice and, except for the obligations of the parties which survive closing and Lessee's rights under b. below (which shall survive termination), the parties shall have no further rights or obligations hereunder; or
- b. Other Remedies. Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.

ARTICLE 16: LESSOR'S LIEN

- 16.01.** Subordination of Lessor's Lien. Upon written request from Lessee, Lessor agrees to reasonably subordinate its statutory and contractual landlord's liens on the Improvements or Lessee's personal property and trade fixtures to the lien of a lender providing financing to the Lessee, consistent with the terms of this Lease.

ARTICLE 17: LESSEE'S MORTGAGE OF LEASEHOLD INTEREST

17.01. Mortgage of Leasehold Estate.

- a. Consent to Mortgage. Lessor grants permission to Lessee to mortgage of Lessee's leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. Lessee will provide written notification to Lessor of each such mortgage within ten (10) days after it is executed. Lessor agrees that any lien in its favor arising under this Lease as to the Leased Premises will be subordinate to the lien of the mortgagee under each such mortgage. This clause is self-operative and no further instrument of subordination need be required by any mortgagee of Lessee. The mortgaging by Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of Lessor. *In no event, however, shall any lien be asserted against the underlying fee simple interest of Lessor in the Leased Premises.*
- b. Lender Rights and Obligations. Lessee's lender may, in case of default by Lessee, assume the rights and obligations of Lessee under this Lease and become a substituted Lessee, with the further right to assign Lessee's interest to a third party, subject to the approval of the Airport Management. Lessee's lender's obligations under this Lease as substituted Lessee shall cease upon assignment to an Airport Management-approved third party. Lessor agrees to execute SNDAs as Lessee's lender may reasonably request consistent with this Lease. Lessor agrees to give Lessee's lender a duplicate copy of any notice of a breach of this Lease or potential event of default that Lessor gives Lessee. Except as otherwise provided in a SNDA executed by Lessor, Lessee, and Lessee's lender, the lender may then cure the breach or potential event of default, for the account of Lessee or the lender (as the lender may elect), in the same manner and in the same period of time as allowed Lessee.

ARTICLE 18: MISCELLANEOUS

- 18.01.** Gender Neutral. When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.
- 18.02.** Amendment. This Lease may be amended only by an instrument in writing signed by both parties. This Lease shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.
- 18.03.** Headings. The headings used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this lease.
- 18.04.** Nonwaiver of Rights. No waiver of default by either party of any terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants

or conditions herein contained, to be performed, kept and observed by the other party.

- 18.05. Force Majeure.** Whenever a period of time is prescribed for action to be taken by Lessor or Lessee, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of Lessor or Lessee (herein, “*force majeure*”) shall be excluded from the computation of any such period of time.
- 18.06. Quiet Enjoyment.** Lessor represents and warrants that it has the lawful authority to enter into this Lease and has title to the Leased Premises. Lessor further covenants that Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as Lessee performs its obligations under this Lease. This Lease is subject, however, to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.
- 18.07. No Partnership.** This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of Lessor and Lessee.
- 18.08. No Brokers.** Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Lessee agrees to indemnify and hold Lessor and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of Lessee with respect to this Lease.
- 18.09. Governing Law; Venue.** The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas.
- 18.10. Permits.** Lessee shall, at its sole expense, be responsible for obtaining and keeping in effect all licenses and permits necessary for the operation of its business at the Leased Premises.
- 18.11. Entire Agreement.** This Lease and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Leased Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.
- 18.12. Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been included in the Lease.
- 18.13. Charitable Immunity or Exemption.** If Lessee is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from liability for any kind of property damage or personal damage, injury or death, Lessee hereby expressly waives its rights to plead defensively any such immunity or exemption as against Lessor and Airport Management.
- 18.14. Action through Airport Management.** All parties agree that Lessor may choose to exercise any of its non-delegable powers under this Lease through its Airport Management. Unless

Lessor notifies Lessee in writing of new Airport Management, Airport Management is Texas Aviation Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.

- 18.15. Notices.** Notices required of either party pursuant to the provisions of this Lease shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested or (ii) on the date sent by electronic mail if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, to the address specified below:

If to Lessor:

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

and

4400 Highway 21
San Marcos, Texas 78666

If to Lessee:

2080 Airport Drive, LLC
ATTN: Stan Finch
1807 Airport Drive
San Marcos, Texas 78666

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.15.

- 18.16. Consent.** In any instance in which the consent of one party, or the Airport Management, is required, consideration of the matter in question is to be promptly given, consent not to be unreasonably withheld, conditioned or delayed.
- 18.17. Attorney Fees.** Each party will be required to pay its own attorneys' fees incurred in connection with the negotiation of this Lease or any action or proceeding arising between Lessor and Lessee regarding this Lease. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney's fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Lease or to enforce any provision of this Lease.
- 18.18. Recordation.** Lessor and Lessee will, at the request of the other, promptly execute a memorandum of lease in recordable form constituting a short form of this Lease, which may be filed for record in the Official Public Records of Caldwell County, Texas. This Lease itself shall not be filed of record.
- 18.19. Reservation of Immunities.** **LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE LAW AVAILABLE TO LESSOR AS A TEXAS HOME-RULE MUNICIPAL CORPORATION.**

- 18.20.** No Third Party Beneficiaries. This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.
- 18.21.** Survival. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the same.
- 18.22.** Exhibits. The exhibits to this Lease are as follows:
- Exhibit A Description of Leased Premises
 - Exhibit B Rules and Regulations
 - Exhibit C Minimum Standards
- 18.23.** Termination of Original Lease. Effective as of Effective date, the “San Marcos Municipal Airport Ground Lease of Unimproved Airport Property for Construction and Operation of Business Facilities” with a Commencement Date of May 3, 2011 between the City of San Marcos and Redbird Flight Simulations, Inc. is terminated and the parties shall have no further rights or obligations thereunder. This current Lease is authorized under the right of first refusal contained in the Commercial Building Sublease between Redbird Flight Simulations, Inc. and Berry Aviation, LLC dated October 1, 2019.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Lease effective as of the Effective Date.

LESSOR:

CITY OF SAN MARCOS, TEXAS,
a municipal corporation

By: _____
Name Printed: _____
Title: _____

LESSEE:

2080 AIRPORT DRIVE, LLC.,
a Texas limited liability company

By: _____
Name Printed: _____
Title: _____

EXHIBIT A

Description of Leased Premises

[To be inserted]

EXHIBIT B

Rules and Regulations

[To be inserted]

EXHIBIT C

Minimum Standards

[To be attached]