

**LESSOR'S SUBORDINATION**

**STATE OF TEXAS**

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§

**COUNTY OF CALDWELL**

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THIS AGREEMENT IS made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and among **CITY OF SAN MARCOS, TEXAS**, a Texas Municipal Corporation (“Lessor”), **COMPASS BANK**, an Alabama state chartered bank (“Lender”) and **BERRY AVIATION, INC.**, a Texas corporation (“Lessee”).

**WITNESSETH:**

WHEREAS, Lessor owns fee simple title to the land being approximately 28,860 square feet more particularly described in Exhibit “A” attached hereto and made a part hereof located and being a portion of the property locally known as the San Marcos Municipal Airport, San Marcos, Caldwell and Hays Counties, Texas (the “Leased Premises”); and

WHEREAS, Lessor has leased the Leased Premises and the improvements constructed or to be constructed on the Leased Premises to Lessee under that certain Revised Lease of Unimproved Airport Property dated effective as of April 12, 1999 (said Revised Lease of Airport Property, as it may have been or may be further amended, supplemented or restated, being hereinafter called the “Lease”); and

WHEREAS, Lessee has signed (i) a revolving promissory note dated February 1, 2018, and made payable to the order of Lender in the stated principal amount of \$8,000,000.00 and (ii) a promissory note dated February 1, 2018, and made payable to the order of Lender in the stated principal amount of \$30,000,000.00 (such promissory notes, as the same may have been, or may at any time be, modified and amended, being hereinafter called the “Note”); and

WHEREAS, payment of the indebtedness evidenced by the Note is secured by various Aircraft Mortgages (the “Aircraft Mortgages”) dated September 12, 2011, July 25, 2013, September 18, 2013, December 15, 2014, April 28, 2015 and February 1, 2018, including any amendments thereto, by which Lessee has granted Lender security interests in Lessee’s assets (the “Collateral”), including certain aircraft, propellers and engines as more particularly described therein. The aircraft, propellers and engines are referred to for purposes of this Agreement as “the Aircraft Collateral”; and

WHEREAS, various other documents (the “Credit Documents”) have been signed in connection with the Note;

NOW, THEREFORE, the parties hereto, for and in consideration of the premises and the transactions to which this Agreement is incident and supplemental, do hereby agree as follows:

1. Lessor agrees that any landlord’s lien that Lessor may now or hereafter have, as a result of the Lease against Lessee’s Aircraft Collateral shall be subordinate and inferior to any

security interest in, or lien against the Aircraft Collateral that is held by Lender but not subordinate or inferior as to any other property subject to said landlord's lien pursuant to the Lease or under state law.

2. Lessor further consents to the location of the Aircraft Collateral on the Leased Premises, and hereby authorizes and empowers Lender, its agents, attorneys, employees, successors and assigns, subject to compliance with applicable law, to enter the Leased Premises and remove the Aircraft Collateral under the provisions of the Aircraft Mortgages and Credit Documents.

3. This Agreement shall bind and benefit the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement embodies the entire agreement and understanding of Lessor, Lessee and Lender relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings related to such subject matter.

4. This Agreement may not be discharged or modified orally or in any manner other than by an agreement in writing specifically referring to this Agreement and signed by the party or parties to be charged thereby.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America. This Agreement may be executed in one or more counterparts which shall be construed together as one document. Any party who executes a counterpart of this Agreement shall be fully liable hereunder, whether or not any other party named herein executes that counterpart or any other counterpart of this Agreement, and the obligations of any party hereunder may be proved by production of the counterpart of this Agreement executed by such party without the production of any other counterparts of this Agreement.

IN TESTIMONY WHEREOF, this instrument is executed, effective as of the date stated above.

LESSOR:  
CITY OF SAN MARCOS, TEXAS

LENDER:  
COMPASS BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:  
BERRY AVIATION, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Harry M. Berry, III, Chief Executive  
Officer

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2018, by \_\_\_\_\_, \_\_\_\_\_ of City of San Marcos, a Texas  
Municipal Corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2018, by \_\_\_\_\_, \_\_\_\_\_ of Compass Bank, an Alabama state  
chartered bank, on behalf of said bank.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2018, by Harry M. Berry, III, Chief Executive Officer of Berry Aviation, Inc., a Texas  
corporation, on behalf of said corporation.

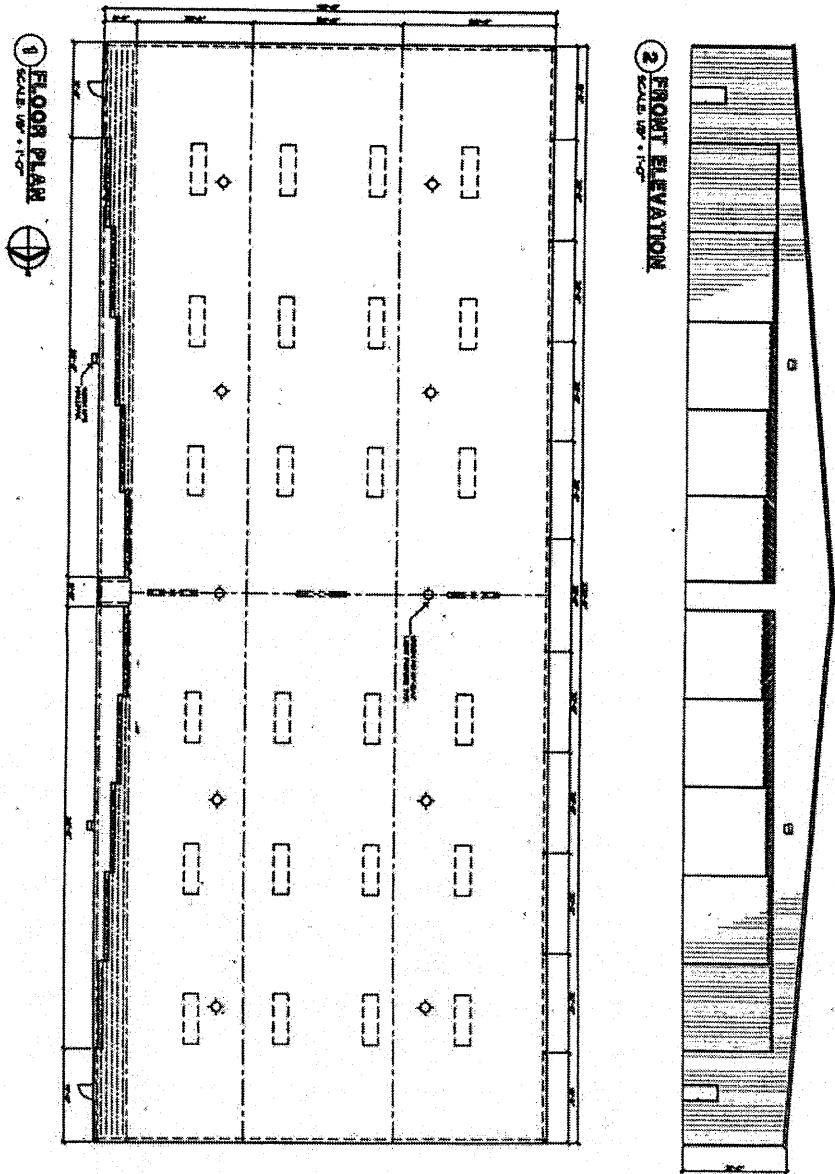
\_\_\_\_\_

Notary Public in and for the State of Texas

WRT: (\$30.0MM Loan-1-18)  
Lessor's subordination-4-12-1999

# Exhibit A

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<b>A-1</b> SHEET NO. OF 1	 T.B.A.R.T. CONSTRUCTION, INC. P.O. BOX 107 DALLAS, TX 75260 PHONE: 214-343-8888 FAX: 214-343-8889	<b>BERRY AVIATION AIRCRAFT HANGAR SAN MARCOS AIRPORT SAN MARCOS, TEXAS</b>	NO. REV. DESCRIPTION _____ _____ _____	
			DATE _____ _____	

DESCRIPTION OF 28,860 SQUARE FEET, MORE OR LESS, OF LAND AREA IN THE WILLIAM PETTUS TWO LEAGUE GRANT SURVEY, CITY OF SAN MARCOS, CALDWELL COUNTY, TEXAS, BEING A PORTION OF THAT TRACT DESCRIBED AS 1303.055 ACRES IN A DEED FROM THE UNITED STATES OF AMERICA TO THE CITY OF SAN MARCOS DATED FEBRUARY 18, 1966 AND RECORDED IN VOLUME 313, PAGE 463 OF THE CALDWELL COUNTY DEED RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a chiseled "X" found in concrete in the approximate northeast line of that tract described as 3.489 acres in a lease agreement from the City of San Marcos to GT+3 Flight Operations, Inc. dated January 10, 1984 and recorded in Volume 472, Page 36 of the Caldwell County Deed Records for an interior corner in the south line of the City of San Marcos 1303.055 acre tract and the north corner of that tract described as "Tract Two - 11.050 acres" in a deed from the United States of America to the City of San Marcos dated February 26, 1976 and recorded in Volume 376, Page 257 of the Caldwell County Deed Records, from which a 1/2" iron rod found in a seam in concrete for another interior corner in the south line of the City of San Marcos 1303.055 acre tract and east corner of the City of San Marcos 11.050 acre tract bears S 25° 26' 00" E (this being the Bearing Basis for this description) 375.92 feet;

THENCE crossing the GT+3 3.489 acre lease tract with the common south line of the City of San Marcos 1303.055 acre tract and northwest line of the City of San Marcos 11.050 acre Tract Two, S 50° 00' 00" W 413.88 feet to a point in the southwest line of the GT+3 3.489 acre lease tract;

THENCE leaving the City of San Marcos 11.050 acre tract entering the City of San Marcos 1303.055 acre tract with the southwest line of the GT+3 3.489 acre lease tract, N 25° 34' 47" W 39.19 feet to a 1/2" iron rod set for the east corner and PLACE OF BEGINNING of this tract;

THENCE leaving the GT+3 3.489 acre tract and the PLACE OF BEGINNING as shown on that plat numbered 24603-99-02-b dated February 17, 1999 as prepared for Berry Aviation by Byrn & Associates, Inc. of San Marcos, Texas, S 64° 25' 13" W 120.00 feet to a 1/2" iron rod set for the south corner of this tract;

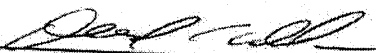
THENCE N 25° 34' 47" W 240.50 feet to a 1/2" iron rod set for the west corner of this tract;

THENCE N 64° 25' 13" E 120.00 feet to a 1/2" iron rod set in the southwest line of the GT+3 3.489 acre lease tract for the north corner of this tract, from which an iron rod found with an aluminum "Swart" cap for the west corner of the GT+3 3.489 acre lease tract bears N 25° 34' 47" W 87.89 feet;

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THENCE with the sou west line of the GT+3 3.48. acre lease tract,  
S 25° 34' 47" E 240.50 feet to the PLACE OF BEGINNING.

There are contained within these metes and bounds 28,860 square feet, more or less, of land area as prepared from public records and a survey made on the ground on February 17, 1999 by Byrn & Associates, Inc. of San Marcos, Texas. All ½" iron rods set are capped with a plastic cap stamped "Byrn Survey".

  
David C. Williamson, R.P.L.S. #4190

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FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS  
On: Jul 24, 2002 at 10:31A

Document Number: 02020134  
Amount 45.00

Lee Carlisle  
County Clerk  
By  
Lynn Curry, Deputy  
Hays County

CLIENT: Berry Aviation  
DATE: February 17, 1999  
SURVEY: Pettus, Wm  
COUNTY: Caldwell, Texas  
JOB NO.: 24603-99-02  
FND28860SQ.FT