

SUBLEASE AGREEMENT

This Sublease Agreement (this “**Sublease**”), dated as of the 21st day of May, 2024 (the “**Effective Date**”), is entered into between 2080 Airport Drive, LLC, a Texas limited liability company (“**Sublandlord**”) and Berry Aviation, Inc., a Texas corporation (“**Subtenant**” and, together with Sublandlord, collectively referred to herein as the “**Parties**” or individually as a “**Party**”).

RECITALS

WHEREAS, Sublandlord is the tenant under that certain Commercial Aviation Ground Lease Agreement dated May 21, 2024, attached hereto as Exhibit A (the “**Primary Lease**”) with the City of San Marcos, a municipal corporation in the State of Texas (“**Prime Landlord**”), as landlord thereunder; and

WHEREAS, pursuant to the Primary Lease, Sublandlord leased those certain premises more particularly described in the Primary Lease and having a street address of 2080 Airport Drive, San Marcos, Texas 78666, comprised of a building, hangar, and parking lot site containing approximately 115,129 square feet (collectively, the “**Subleased Premises**”) and more particularly described on Exhibit B attached hereto; and

WHEREAS, Sublandlord desires to sublease the Subleased Premises to Subtenant, and Subtenant desires to sublease the Subleased Premises from Sublandlord, in accordance with the terms and conditions of this Sublease.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Demise**. For and in consideration of, and subject to, the terms, conditions and covenants herein, Sublandlord hereby leases and demises to Subtenant, and Subtenant hereby leases from Sublandlord, the Subleased Premises.

2. **Term**.

(a) The term of this Sublease (“**Term**”) will commence on the Effective Date (“**Sublease Commencement Date**”) and shall expire at midnight on May 21, 2024 (“**Sublease Expiration Date**”), unless sooner terminated or cancelled in accordance with the terms and conditions of this Sublease.

(b) Intentionally Omitted.

(c) If for any reason the term of the Primary Lease is terminated prior to the Sublease Expiration Date, this Sublease shall terminate on the date of such termination and Sublandlord shall not be liable to Subtenant for such termination.

(d) Pursuant to Section 2.09 of the Primary Lease, Sublandlord has the option to enter a lease for two (2) additional five (5) year terms at the then current rates for improved airport property under a new negotiated lease with Prime Landlord (the “**Facility Lease**”). No

later than one hundred twenty (120) days prior to the Sublease Expiration Date, Sublandlord shall give Subtenant written notice of its intent to exercise or to not exercise its option under Section 2.09 of the Primary Lease. If Sublandlord exercises its option, Subtenant shall have the option to sublease the Subleased Premises under the Facility Lease for two (2) successive periods of five (5) years, subject to any required consents thereunder, and Sublandlord and Subtenant shall amend this Sublease accordingly or enter into a new sublease, in each case, on mutually agreeable terms. If Sublandlord does not exercise its option or fails to give Subtenant timely notice pursuant to this Section 2(d), and Subtenant desires to continue occupying the Subleased Premises, it shall give notice to Sublandlord, and Sublandlord shall either timely exercise its option under Section 2.09 of the Primary Lease or assign to Subtenant the Primary Lease, subject to any required consents thereunder, and, in such case, Sublandlord and Subtenant shall use commercially reasonable efforts to cooperate with each other and obtain all required consents to such assignment.

3. Permitted Use and Minimum Standards. Subtenant may use and occupy the Subleased Premises solely in accordance with, and as permitted under, the terms of the Primary Lease and for no other purpose. Subtenant agrees to comply with the San Marcos Regional Airport Rules and Regulations and the Minimum Standards as the same exist on the Effective Date, together with any amendments thereto which do not adversely impair or affect Subtenant’s rights herein.

4. Payment of Rent; Triple Net Lease.

(a) Throughout the Term of this Sublease, Subtenant shall timely and fully pay to Prime Landlord base rent (“**Primary Lease Base Rent**”) at the rates set forth below, which in all events shall be equal to the base rent due under the Primary Lease:

<u>Period</u>	<u>Annual Primary Lease Base Rent</u>	<u>Monthly Primary Lease Base Rent</u>
Rent Commencement Date through Sublease Year 5	\$29,933.54	\$2,494.46
Sublease Year 6 through Sublease Year 10	\$33,387.41	\$2,782.28
Sublease Year 11 through Sublease Year 15	\$36,841.28	\$3,070.11
Sublease Year 16 through Sublease Year 20	\$40,295.15	\$3,357.93

(b) Throughout the Term of this Sublease, Subtenant shall timely and fully pay to Sublandlord base rent (“**Sublease Base Rent**” and together with Primary Lease Base Rent, collectively, “**Base Rent**”) at the rates set forth below:

<u>Period</u>	<u>Annual Sublease Base Rent</u>	<u>Monthly Sublease Base Rent</u>
Rent Commencement Date through Sublease Year 1	\$324,000.00	\$27,000.00

Beginning on the first day of Sublease Year 2 and thereafter on the first day of every subsequent Sublease Year during the Term, Sublease Base Rent rate shall increase as follows: the Sublease Base Rent payment for the immediately preceding Sublease Year multiplied

by the greater of (a) five percent (5.0%) or (b) the percentage increase in the Consumer Price Index for All Urban Consumers, United States City Average published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984=100), during the last month of such preceding Sublease Year. In no event shall the Sublease Base Rent for a subsequent Sublease Year be less than the Sublease Base Rent for the preceding Sublease Year.

(c) In addition to Base Rent, commencing on the Sublease Commencement Date and continuing throughout the Term of this Sublease, Subtenant shall timely and fully pay to Sublandlord or Prime Landlord, as applicable, all amounts due and payable by Sublandlord under the Primary Lease due or attributable to the Subleased Premises or the actions or omissions of Subtenant, including, but not limited to, utilities, taxes, insurance and all other costs and expenses incurred by Sublandlord in connection with its subleasing of the Subleased Premises to Subtenant (collectively, "**Additional Rent**" and together with Base Rent, collectively, "**Rent**").

(d) Except as otherwise expressly set forth in this Lease, all Rent shall be due and payable on the first (1st) day of each and every month, without demand therefor unless otherwise designated by Sublandlord and without any deduction, offset, abatement, counterclaim, or defense. The monthly installments of Base Rent payable on account of any partial calendar month during the Term of this Sublease, if any, will be prorated based on the number of days in such partial calendar month.

(e) If Subtenant fails to pay any installment of Base Rent or Additional Rent within five (5) days after the due date of such payment, Subtenant shall pay to Sublandlord, as Additional Rent, a "**late charge**" of \$15.00 per day for the purposes of defraying the expense of handling such delinquent payment. In addition, such overdue payment shall accrue interest at the Default Rate until fully paid. As used herein, "**Default Rate**" means a rate equal to twelve percent (12%) per annum.

(f) This Sublease shall be deemed and construed to be a triple net sublease, absolutely net to Sublandlord, and Subtenant shall pay to Sublandlord or Prime Landlord, as applicable, absolutely net throughout the Term, the Rent, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off whatsoever. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Sublandlord be expected or required to make any payment of any kind whatsoever or be under any other express or implied obligation or liability hereunder. Subtenant shall pay all costs, expenses and charges of every kind and nature relating to the Subleased Premises and/or in connection with this Sublease from and after the Sublease Commencement Date, including, without limitation, all taxes, costs of improvements, maintenance, repairs, alterations, additions, replacements, and insurance and other components of Additional Rent, except debt service on any indebtedness of Sublandlord, income taxes of Sublandlord, or any rent or other charges under the Primary Lease, which may arise or become due or payable prior to, during or after (but attributable to a period falling prior to or within) the Term. Unless otherwise expressly provided in this Sublease or in connection with a termination of the Primary Lease in accordance with the terms and conditions therein, Subtenant's obligation to pay Rent hereunder shall not terminate prior to the Sublease Expiration Date (May ____, 2044, subject to extension in accordance with the terms and conditions of Section 2(d) hereof). The parties hereto intend that the obligations of Subtenant under this Sublease shall be separate and

independent covenants and agreements and shall continue unaffected unless such obligations have been modified or terminated pursuant to an express provision of this Sublease.

5. Security Deposit. Simultaneously with the execution and delivery of this Sublease, Subtenant shall deposit with Sublandlord a security deposit (“**Security Deposit**”) in the amount of Twenty-Seven Thousand and No/100 (\$27,000.00) as security for the full and faithful performance by Subtenant of Subtenant’s obligations hereunder. Upon the occurrence of any Subtenant Events of Default (as defined in Section 15), Sublandlord may, but shall not be obligated to, draw upon the Security Deposit in whole or in part to reduce Sublandlord’s damages. Neither the posting of the Security Deposit nor any such draw, however, shall be deemed to make the Security Deposit a measure of liquidated damages or Sublandlord’s sole and exclusive remedy. Sublandlord’s rights to use the Security Deposit are in addition to, and not in lieu of, Sublandlord’s other remedies under this Sublease or at law or in equity. Within five (5) days after each and every draw on the Security Deposit, Subtenant shall deposit additional sums with Sublandlord in an amount sufficient to restore the Security Deposit to its original principal amount. Within thirty (30) days after the fulfillment of all of Subtenant’s obligations under this Sublease, Sublandlord shall return the original principal balance of the Security Deposit, less any amounts drawn by Sublandlord and not replenished by Subtenant as required above.

6. Incorporation of Primary Lease by Reference; Subordination to Primary Lease.

(a) The terms, covenants, and conditions of the Primary Lease, in the form attached hereto as Exhibit A, are incorporated herein by reference, except to the extent they are expressly deleted or modified by the provisions of this Sublease. Every term, covenant, and condition of the Primary Lease binding on or inuring to the benefit of Prime Landlord is, in respect of this Sublease, binding on or inures to the benefit of Sublandlord, and every term, covenant, and condition of the Primary Lease binding on or inuring to the benefit of Sublandlord is, in respect of this Sublease, binding on and inures to the benefit of Subtenant. Whenever the term “**Lessor**” or “**Landlord**” appears in the Primary Lease, the word “**Sublandlord**” is substituted therefor; whenever the term “**Lessee**” or “**Tenant**” appears in the Primary Lease, the word “**Subtenant**” is substituted therefor; and whenever the word “**Premises**” appears in the Primary Lease, the word “**Subleased Premises**” is substituted therefor.

(b) Notwithstanding the foregoing, the time limits contained in the Primary Lease for Sublandlord, as tenant, to give notices, make demands, or perform any act, covenant, or condition or to exercise any right, remedy, or option, are modified herein by shortening the same in each instance by ten (10) days, unless otherwise expressly provided herein. In case such time limits in the Primary Lease are for less than ten (10) days, those time limits are modified herein by shortening the same by twenty-five percent (25%). If any of the express provisions of this Sublease conflict with any of the provisions of the Primary Lease, the provisions of the Primary Lease govern.

(c) This Sublease is subject and subordinate to the Primary Lease. A copy of the Primary Lease is attached hereto as Exhibit A and made a part of this Sublease.

7. Representations and Warranties of Sublandlord. Sublandlord hereby represents and warrants to Subtenant that the following are true and correct as of the Effective Date:

(a) Sublandlord is the “Lessee” under the Primary Lease and has the capacity to enter into this Sublease with Subtenant, subject to Prime Landlord’s consent.

(b) All actions required to authorize the execution and performance of this Sublease by Sublandlord have been taken, and this Sublease constitutes a valid and binding agreement, enforceable against Sublandlord. Except for Sublandlord pursuant to the Primary Lease, no person or entity has any right or option to lease, sublease, occupy, or acquire the Subleased Premises.

(c) The Primary Lease attached hereto as Exhibit A is a true, correct, and complete copy of the Primary Lease, is in full force and effect, and has not been further modified, amended, or supplemented except as expressly set out herein.

(d) Neither Sublandlord nor, to Sublandlord’s Knowledge (as hereinafter defined), Prime Landlord, are in default under the Primary Lease and Sublandlord has not received written notification of any fact or condition that, with the giving of notice or the lapse of time, would constitute a default under the Primary Lease by either party thereunder. Sublandlord has performed all of Sublandlord’s obligations under the Primary Lease, and the Primary Lease is in full force and effect. Sublandlord has made no claim against the Prime Landlord alleging the Prime Landlord’s default under the Primary Lease.

(e) Sublandlord has not assigned or transferred any of its rights or duties under this Sublease.

(f) All rent and other sums due by Sublandlord pursuant to the Primary Lease have been paid in full, and there are no amounts due or outstanding.

(g) Sublandlord has not received any notice of violation of any applicable law relating to the Subleased Premises or its operation thereof.

(h) To Sublandlord’s Knowledge, the Subleased Premises and Sublandlord’s use thereof is in compliance with all existing building codes and applicable laws relating thereto.

(i) Sublandlord has not received any written notice with respect to, and has no Knowledge of, any facts which would constitute a violation of any Environmental Laws (as hereinafter defined) relating to the use, ownership or occupancy of the Subleased Premises. Sublandlord has not (and to Sublandlord’s Knowledge, no third party has) engaged in the generation, storage, treatment, recycling, transportation or disposal of any Hazardous Materials (as hereinafter defined) on, under, above or about the Subleased Premises (herein, a “**Regulated Activity**”) and, to Sublandlord’s Knowledge, no Regulated Activity has occurred on, under, above or about the Subleased Premises. As used herein, “**Environmental Law**” shall mean any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or agency affecting the Subleased Premises and pertaining to health or the environment including Hazardous Materials, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1982 (“**CERCLA**”) and the Resource Conservation and Recovery Act of 1986. “**Hazardous Materials**” means any substance that poses a threat to, or is regulated to protect, human health, safety, public welfare, or the environment, including without limitation: (i) any “hazardous substance,” “pollutant” or “contaminant,” and any “petroleum” or

“natural gas liquids” as those terms are defined or used under Section 101 of CERCLA, (ii) “solid waste” as defined by the federal Solid Waste Disposal Act (42 U.S.C. § 6901, et seq.), (iii) asbestos or a material containing asbestos, (iv) any material that contains lead or lead based paint, (v) polychlorinated biphenyls, (vi) any radioactive material; (vii) urea formaldehyde, (viii) putrescible materials, (ix) infectious materials, (x) toxic microorganisms, including mold, or (xi) any substance the presence or release of which required reporting, investigation or remediation under any Environmental Laws.

(j) Sublandlord is duly organized and validly existing under the laws of the State of Texas and, subject to receipt of Prime Landlord’s approval of this Sublease, has full power and authority to enter into this Sublease.

(k) Sublandlord is not a party to any agreement or litigation, or subject to any pending proceeding, which could (i) adversely affect the ability of Sublandlord to enter into or perform its obligations under this Sublease, (ii) constitute a default on the part of Sublandlord under the Primary Lease or this Sublease, or (iii) adversely affect Subtenant’s rights or entitlements under the Primary Lease or this Sublease.

For the purposes of this Sublease, the phrase “**to Sublandlord’s Knowledge**” or term “**Knowledge**” or words of similar import, shall be deemed to refer to the current, actual present and conscious awareness or knowledge only, without any duty of inquiry or independent investigation, of John Heskin, as President of Sublandlord, as of the Effective Date; provided that so qualifying Sublandlord’s Knowledge shall in no event give rise to any personal liability on the part of such named individual, or any other officer or employee or representative of Sublandlord, on account of any breach of any representation or warranty made by Sublandlord herein. Sublandlord shall have no liability whatsoever to Subtenant with respect to a breach of any of the representations and warranties in this Sublease if Subtenant obtains, prior to the Effective Date, knowledge of a fact or circumstance the existence of which would constitute a breach of Sublandlord’s representations and warranties hereunder and proceeds to sign this Sublease notwithstanding its actual knowledge of such fact or circumstance. In the event that, prior to the Effective Date, Subtenant gains knowledge of a fact or circumstance which, by its nature, indicates that a representation or warranty by Sublandlord hereunder was or has become untrue or inaccurate, then Subtenant shall not have the right to bring any lawsuit or other legal action against Sublandlord, nor pursue any other remedies against Sublandlord, as a result of the breach of the representation or warranty, but Subtenant’s sole and exclusive right and remedy shall be to terminate this Sublease; provided, however, that such right of termination shall not be available for breaches of representations or warranties that have no material adverse impact on Subtenant’s ability to use the Subleased Premises in accordance with the terms and conditions of this Sublease.

8. Representations and Warranties of Subtenant. Subtenant hereby represents and warrants to Sublandlord that the following are true and correct as of the Effective Date:

(a) All actions required to authorize the execution and performance of this Sublease by Subtenant have been taken, and this Sublease constitutes a valid and binding agreement, enforceable against Subtenant.

(b) Subtenant is not aware of any notice of violation of any applicable law (including any Environmental Law) relating to the Subleased Premises or its operation thereof.

(c) Subtenant is duly organized and validly existing under the laws of the State of Texas and, subject to receipt of Prime Landlord's approval of this Sublease, has full power and authority to enter into this Sublease.

(d) Subtenant is not a party to any agreement or litigation, or subject to any pending proceeding, which could (i) adversely affect the ability of Subtenant to enter into or perform its obligations under this Sublease, (ii) constitute a default on the part of Sublandlord under the Primary Lease or this Sublease or constitute a default by Subtenant under this Sublease, or (iii) adversely affect Sublandlord's rights or entitlements under the Primary Lease or this Sublease.

9. Covenants of Sublandlord. From the Effective Date until the Sublease Expiration Date, Sublandlord shall take or not take, as applicable, the following actions:

(a) Not do or permit to be done any act or thing, or omit to do anything, that may (i) constitute a breach or violation of any term, covenant, or condition of the Primary Lease beyond all applicable notice and cure periods thereunder, (ii) cause the Primary Lease to be terminated, or (iii) cause the Primary Lease to be amended or modified or enter into any other agreement with the Prime Landlord relating to the Primary Lease without the prior written consent of Subtenant (which consent may be withheld, conditioned or delayed by Subtenant in its sole and absolute discretion), unless such acts, things, or omissions (A) are permitted under the terms of this Sublease, and (B) with respect to clause (i) above, will not adversely affect Subtenant's rights and obligations under this Sublease.

(b) Give any required consents under the Primary Lease for the benefit of Subtenant.

(c) Promptly deliver to Subtenant a copy of any notice received from Prime Landlord under the Primary Lease.

(d) Promptly and diligently enforce the rights of "Lessee" under the Primary Lease, in the event of any default or failure by Prime Landlord under the Primary Lease.

10. Covenants of Subtenant. From the Effective Date until the Sublease Expiration Date, Subtenant shall conform to, and use the Subleased Premises in accordance with, all the terms, covenants, and conditions of the Primary Lease, and will do no act, or fail to do any act, which will result in a violation of such terms, covenants, or conditions. Subtenant shall perform all of the terms, obligations, covenants, and conditions of the Primary Lease to be performed on the part of the "Lessee" therein named. Subtenant shall carry and maintain all insurance coverage required of the "Lessee" under the Primary Lease with respect to the Subleased Premises and Subtenant's use and occupancy thereof, and such insurance shall name Prime Landlord and Sublandlord as additional insureds. Subtenant shall provide Prime Landlord and Sublandlord with insurance certificates or other required evidence and proof of payment thereof (or, to the extent required by Sublandlord and/or the Primary Lease, copies of Subtenant's insurance policy or a binder of insurance), proving the foregoing insurance is in place prior to Subtenant's taking possession of

the Subleased Premises, and shall update same if and as when required by the Primary Lease. If Subtenant fails timely to perform any of its duties under this Sublease, Sublandlord shall have the right (but not the obligation), after the expiration of any grace or notice and cure period elsewhere under this Sublease expressly granted to Subtenant for the performance of such duty or upon ten (10) days' notice, whichever is less, to perform such duty on behalf and at the expense of Subtenant without further prior notice to Subtenant, and all sums expended or expenses incurred by Sublandlord in performing such duty shall be deemed to be Additional Rent under this Sublease and shall be due and payable upon demand by Sublandlord. Within fifteen (15) days) after Sublandlord's reasonable request, Subtenant shall deliver or make available to Sublandlord (a) Subtenant's most recent quarterly financial statements (including any notes to them) and (b) evidence of Subtenant's payment of Primary Lease Base Rent and any Additional Rent payable under the Primary Lease. Sublandlord shall keep confidential all financial statements and other information Sublandlord designates as confidential and shall not use such statements or information for any purpose other than verifying satisfaction of Subtenant's obligations under this Sublease.

11. AS-IS Condition.

(a) Subtenant accepts the Subleased Premises in its current, "as-is", "where is" condition, with all faults, and without any representation and warranty whatsoever (except as otherwise may be expressly set forth in this Sublease). Subtenant acknowledges and agrees that, except as set forth in this Sublease, Sublandlord has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to any matter with respect to the Subleased Premises. Sublandlord has no obligation to furnish or supply any work, services, furniture, fixtures, equipment, or decorations. On or before the Sublease Expiration Date or earlier termination or expiration of this Sublease, Subtenant must restore the Subleased Premises to the condition existing as of the Sublease Commencement Date (including, without limitation, the removal of any Permitted Alterations, if required by Sublandlord), ordinary wear and tear excepted. The obligations of Subtenant hereunder shall survive the expiration or earlier termination of this Sublease.

(b) Subtenant must, at its sole cost and expense, maintain, repair, or replace as necessary any part or portion of the Subleased Premises throughout the entirety of the Term. Subtenant further must, at its sole cost and expense, maintain the Subleased Premises, the furniture, fixtures, equipment, and signs therein and thereon in good condition and repair throughout the entirety of the Term. The above-stated responsibilities and obligations of Subtenant must at a minimum comply with the standards set forth in the Primary Lease.

12. Performance by Sublandlord. Notwithstanding any other provision of this Sublease, Sublandlord has no obligation: (a) to furnish or provide, or cause to be furnished or provided, any repairs, restoration, alterations, or other work, or electricity, heating, ventilation, air-conditioning, water, elevator, cleaning, or other utilities or services; or (b) to comply with or perform or, except as expressly provided in this Sublease, to cause the compliance with or performance of, any of the terms and conditions required to be performed by Prime Landlord under the terms of the Primary Lease. Notwithstanding the foregoing, on the written request of

Subtenant, Sublandlord shall make a written demand on Prime Landlord to perform its obligations under the Primary Lease with respect to the Subleased Premises if Prime Landlord fails to perform same within the time frame and in the manner required under the Primary Lease; provided, however, Sublandlord shall not be required to bring any action against the Prime Landlord to enforce its obligations. Notwithstanding anything contained in this Sublease to the contrary, Subtenant acknowledges and agrees that: (i) Sublandlord shall not be responsible for or deemed a guarantor with respect to any representations, warranties, covenants or other obligations or liabilities of Prime Landlord under the Primary Lease, and Subtenant agrees to look solely to the Prime Landlord for the performance of Prime Landlord's obligations, (ii) Sublandlord's sole obligation to Subtenant under the Primary Lease shall be, at Subtenant's written request and on Subtenant's behalf, to use commercially reasonable efforts to require Prime Landlord to perform specific obligations of Prime Landlord under the Primary Lease if necessary, and (iii) Sublandlord shall have no liability to Subtenant for any misrepresentation, warranty, default or other act or omission of Prime Landlord under the Primary Lease and Sublandlord shall not be obligated to provide any services to Subtenant or otherwise to perform any obligations in connection with this Sublease. Subtenant shall reimburse Sublandlord for any commercially reasonable costs incurred by Sublandlord in connection with Sublandlord's commercially reasonable efforts to require Prime Landlord to perform specific obligations of Prime Landlord under the Primary Lease (to the extent such efforts are intended primarily to benefit Subtenant or the Subleased Premises). Subtenant shall reimburse Sublandlord within ten (10) days after Subtenant's receipt of reasonable supporting documentation relating to such costs. Should Sublandlord fail to enforce any terms, covenants, or conditions of the Primary Lease against Prime Landlord pursuant to this Section 12, Subtenant shall have the right, at its sole cost and expense, to take any lawful action directly against the Prime Landlord to enforce such terms of the Primary Lease and Sublandlord agrees to reasonably cooperate with Subtenant in connection with such action. This right shall be exercisable by the Subtenant only if the Sublandlord has declined to take such action and such failure to act could reasonably be expected to adversely affect the Subtenant's lawful rights or use of the Subleased Premises. If Subtenant shall commence any such proceeding or takes any other action to enforce the obligations of the Prime Landlord insofar as such obligations relate to the Subleased Premises, Subtenant will indemnify, defend (using counsel reasonably determined by Sublandlord), and hold Sublandlord harmless from and against any and all costs, expenses, attorneys' fees, claims, lawsuits, causes of action judgments, charges, liabilities damages, and losses (collectively, "Losses") relating to, or arising from, directly or indirectly, Subtenant's failure to comply with the terms hereof, as well as any such action taken by Subtenant. Notwithstanding anything contained in the foregoing to the contrary, Subtenant shall not commence any proceeding or take any other action to enforce the obligations of the Prime Landlord without Sublandlord's prior written consent, which may be withheld in Sublandlord's sole discretion.

13. No Breach of Primary Lease. Subtenant shall not do or permit to be done any act or thing, or omit to do anything, that may constitute a breach or violation of any term, covenant, or condition of the Primary Lease, even if such act, thing, or omission is permitted under the terms of this Sublease.

14. Alterations. Except for alterations required by applicable law and alterations which cost less than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) and do not affect the structural integrity of the Subleased Premises or materially change the use of the Subleased Premises (collectively, "Permitted Alterations"), Subtenant shall not make any alterations in or

to the Subleased Premises without the prior written consent of Sublandlord (which such consent shall not be unreasonably withheld, conditioned, or delayed), and the Prime Landlord in each instance, and without complying with the provisions of the Primary Lease. To the extent Sublandlord incurs any costs or expenses (whether on its own and/or as a result of charges by the Prime Landlord under the Primary Lease), Subtenant shall reimburse Sublandlord for all such costs and charges within ten (10) days after being billed therefor. Subtenant hereby: (a) releases Sublandlord from any and all liability in connection with the installation, operation, and/or removal any alterations made by Subtenant; and (b) covenants and agrees to indemnify, defend (using counsel reasonably acceptable to Sublandlord), and hold Sublandlord, its officers, directors, employees, and assigns harmless from and against any and all Losses that Sublandlord, its officers, directors, members, managers, employees, successors or assigns may incur arising out of the installation, operation, and/or removal of such alterations, including, but not limited to, any Losses which occur as a result of Sublandlord's breach of the Primary Lease, which are directly or indirectly, and in whole or in part, due to the installation, operation, and/or removal of such alterations.

15. Events of Default; Sublandlord Remedies.

(a) Subtenant shall be in default under this Sublease for any of the following (collectively, "**Subtenant Events of Default**"): (1) any act or omission by Subtenant that would constitute a default by Sublandlord under the Primary Lease, (2) any failure by Subtenant to pay any installment of Base Rent, Additional Rent, or any other payment due to Sublandlord under this Sublease when due which is not cured within any applicable cure periods, or (3) any failure by Subtenant to perform any other obligation required under this Sublease, and such failure shall continue for a period of twenty (20) days after written notice thereof from Sublandlord to Subtenant, or, in the case of a non-monetary breach which cannot with due diligence be cured within such period, Subtenant fails to proceed in good faith with all due diligence within such period to cure the same and thereafter to prosecute the cure of such default with all due diligence. In the event of such Subtenant Event of Default(s), Sublandlord shall have all the rights and remedies against Subtenant available under the Primary Lease, at law or equity. In addition to the foregoing, if a Subtenant Event of Default is of such a nature that if said Subtenant Event of Default is not promptly cured it will result in a default by Sublandlord under the Primary Lease, Sublandlord may cure such Subtenant Event of Default, and Subtenant shall reimburse Sublandlord for the actual, reasonable costs and expenses (including reasonably attorney's fees) of effecting such a cure upon demand from Sublandlord.

(b) Sublandlord shall be in default under this Sublease for any of the following (collectively, "**Sublandlord Events of Default**"): (1) any act or omission by Sublandlord that would constitute a default by Sublandlord under the Primary Lease beyond all applicable notice and cure periods thereunder that is not the obligation of Subtenant hereunder, (2) any failure by Sublandlord to pay any payment due from Sublandlord under the Primary Lease when due which is not cured within any applicable cure periods and so long as such failure is not due to Subtenant's failure to make timely payment of rent hereunder, or (3) any failure by Sublandlord to perform any other obligation required under this Sublease, and such failure shall continue for a period of twenty (20) days after Sublandlord's receipt of written notice thereof from Subtenant, or, in the case of a non-monetary breach which cannot with due diligence be cured within such period, Sublandlord fails to proceed in good faith with all due diligence within such period to cure the same and

thereafter to prosecute the cure of such default with all due diligence. In the event of such Sublandlord Event of Default, Subtenant shall have all the rights and remedies against Sublandlord available under this Sublease, at law or equity, including termination of this Sublease. In addition to the foregoing, if a Sublandlord Event of Default is of such a nature that if said Sublandlord Event of Default is not promptly cured it will result in a default by Sublandlord under the Primary Lease beyond all applicable notice and cure periods thereunder, Subtenant may cure the Sublandlord Event of Default, and Sublandlord shall reimburse Subtenant for the actual, reasonable costs and expenses (including reasonably attorney's fees) of effecting such a cure upon demand from Subtenant.

(c) In addition to the other remedies reserved to Sublandlord herein, under the Primary Lease, or at law or in equity, and to the extent not prohibited by applicable law, if Sublandlord desires to terminate this Sublease following the occurrence of a Subtenant Event(s) of Default, then, prior to such termination, if the Primary Lease has not been terminated as a result of such Event(s) of Default, Subtenant shall have the right to exercise the Purchase Option pursuant to Section 22 and, in addition to the Purchase Price, Subtenant shall pay any and all amounts due or payable to Sublandlord under this Sublease (including all Rent hereunder) and any and all amounts due or payable to Prime Landlord under the Primary Lease (including all Primary Lease Base Rent and any additional rent thereunder), in each case, through the closing of the sale pursuant to the Purchase Option. If Subtenant does not elect to exercise the Purchase Option and Sublandlord elects to terminate this Sublease, then Sublandlord shall be entitled to recover from Subtenant, as liquidated damages and not as a penalty, an amount equal to the lesser of (1) \$2,500,000.00 *plus* all Primary Lease Base Rent due or payable to Prime Landlord under the Primary Lease through the remaining term of the Primary Lease *plus* any and all other amounts due or payable to Prime Landlord under the Primary Lease through the earlier of the day prior to the date the Subleased Premises are subleased by Sublandlord and the remaining term of the Primary Lease and (2) the aggregate of: (i) the worth at the time of award of the unpaid Rent earned as of the date of the termination hereof; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after the date of termination hereof until the time of award exceeds the amount of such rental loss that Subtenant conclusively proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Subtenant conclusively proves could have been reasonably avoided; (iv) any other amount necessary to compensate Sublandlord for the detriment proximately caused by Subtenant's failure to perform its obligations under this Sublease or which, in the ordinary course of things, would be likely to result therefrom; and (v) any other amount which Sublandlord may hereafter be permitted to recover from Subtenant to compensate Sublandlord for the detriment caused by the Subtenant Event(s) of Default. For the purposes hereof, "Rent" shall be deemed to be and to mean all sums of every nature required to be paid by Subtenant pursuant to the terms of this Sublease, the "**time of award**" shall mean the date upon which the judgment in any action brought by Sublandlord against Subtenant by reason of such Subtenant Event of Default is entered or such earlier date as the court may determine; the "**worth at the time of award**" of the amounts referred to in subclauses (i) and (ii) of this paragraph shall be computed by allowing interest on such amounts at the Default Rate; and the "worth at the time of award" of the amount referred to in subclause (iii) of this paragraph shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of Dallas at the time of award plus one percent (1%) per annum. Nothing contained in this Section 15 shall be deemed to limit or preclude the recovery by Sublandlord from Subtenant

of (i) the maximum amount allowed to be obtained as damages by any statute, rule of law, or equitable judgment, (ii) any other sums or damages to which Sublandlord may be entitled in addition to the damages set forth in this Section 15, or (iii) any sums or damages to which Sublandlord may be entitled to under Section 19 of this Sublease. Any and all duties or liabilities of Subtenant hereunder which accrue on or before the date of expiration or termination of this Sublease shall not be terminated with this Sublease, but instead shall survive such termination. Notwithstanding anything contained herein to the contrary, Subtenant hereby waives any right of redemption it may have under this Sublease, applicable law, otherwise. For the sake of clarity, Subtenant acknowledges and agrees that Subtenant's obligations under this Section 15 shall survive the termination of the Sublease.

16. Consents. Whenever the consent or approval of Sublandlord is required hereunder, Sublandlord must also obtain the written consent or approval of Prime Landlord, if required under the terms of the Primary Lease. Sublandlord must promptly make such consent request on behalf of Subtenant, and Subtenant must promptly provide any information or documentation that Prime Landlord may request.

17. Prime Landlord Consent to Sublease. To the extent required by Prime Landlord, this Sublease is expressly conditioned on obtaining the written consent of Prime Landlord (the, "**Prime Landlord Consent**"). Any fees and expenses incurred by the Prime Landlord (or any mortgagee or other third party) in connection with requesting and obtaining the Prime Landlord Consent will be paid by Sublandlord and will thereafter be reimbursed by Subtenant to Sublandlord as Additional Rent not later than ten (10) days after Subtenant's receipt of the fully executed Prime Landlord Consent. Subtenant shall reasonably cooperate with Prime Landlord and supply all information and documentation requested by Prime Landlord in connection with the Prime Landlord Consent. Sublandlord is not required to perform any acts, expend any funds, or bring any legal proceedings to obtain the Prime Landlord Consent. This Section 17 shall survive the expiration or earlier termination of this Sublease.

18. Assignment or Subletting. Subtenant shall not, under any circumstances, assign this Sublease, undergo a direct or indirect change in control (such change being deemed an assignment hereof), sub-lease the Subleased Premises or permit the use of the Subleased Premises by any person other than Subtenant and its employees without first obtaining (a) Sublandlord's prior written consent, which consent shall not be unreasonably withheld or delayed, and (b) Prime Landlord's consent pursuant to the Primary Lease, if such consent is required pursuant to the Primary Lease. Subtenant shall reimburse Sublandlord for any and all expenses (including reasonable attorneys' fees) incurred by Sublandlord in connection with any proposed assignment or sublease, whether or not Sublandlord or Prime Landlord consents to such assignment or subletting. For the sake of clarity, if Subtenant is a corporation whose stock is not publicly traded, any transaction or series of transactions (including, without limitation, any dissolution, merger, consolidation or other reorganization of Subtenant, or any issuance, sale, gift, transfer or redemption of any capital stock of Subtenant, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Subtenant, shall be deemed to be a voluntary assignment of this Sublease by Subtenant and subject to the provisions of this Section 18. As used in this Section 18, the term "**control**" means possession of the power to vote not less than a majority interest of any class of voting securities and partnership or limited liability company interests or to direct or cause the

direction (directly or indirectly) of the management or policies of a corporation, or partnership or limited liability company through the ownership of voting securities, partnership interests or limited liability company interests, respectively.

19. Indemnity.

(a) By Subtenant of Sublandlord. Subtenant, for itself and its successors and assigns, hereby agrees to indemnify, defend and hold Sublandlord, Sublandlord's affiliates, and any of Sublandlord's shareholders, partners, members, managers employees, agents, and representatives (collectively, "**Sublandlord Indemnified Parties**"), free and harmless from and against any and all any and all Losses arising in connection with or arising out of (i) any loss of life, personal injury and/or damage to the Subleased Premises arising from or out of any occurrence in, upon or at the Subleased Premises, (ii) the occupancy or use of the Subleased Premises, or any part thereof, (iii) Subtenant's failure to comply with any provision of this Sublease beyond the expiration of any notice and cure period stated herein, (iv) agents, contractors, servants, employees, subtenants, licensees, assignees or other parties claiming through Subtenant; and (v) the performance of any labor or services or the furnishing of any materials or other property in respect of the Subleased Premises or any part thereof; excepting from the foregoing any Losses caused solely by the gross negligence or willful misconduct of Sublandlord or Sublandlord Indemnified Parties or as a result of a Sublandlord Event of Default under this Sublease.

(b) By Sublandlord of Subtenant. Subject to the waiver of subrogation in Section 20(e) of this Sublease, Sublandlord, for itself and its successors and assigns, hereby agrees to indemnify Subtenant and any of Subtenant's shareholders, partners, members, managers, employees, agents and representatives ("**Subtenant Indemnified Parties**") free and harmless from and against any and all Losses in connection with or arising out of Sublandlord's failure to comply with any provision of this Sublease beyond the expiration of any notice and cure period stated herein; excepting from the foregoing any Losses caused solely by the act, omission, negligence, or willful misconduct of Subtenant or Subtenant's Indemnified Parties or as a result of a Subtenant Event of Default under this Sublease.

(c) Procedure. Whenever any claim arises for indemnification under this Sublease, the party seeking indemnification (in each such case, the "**Indemnified Party**") must notify the party or parties from whom indemnification is being sought (in each such case, the "**Indemnifying Party**") of such claim in writing promptly and in no case later than ten (10) business days after such Indemnified Party has actual knowledge of the facts constituting the basis for such claim. Each Indemnified Party will also so notify the Indemnifying Party promptly and in no case later than fifteen (15) days after the Indemnified Party has actual knowledge of the commencement of any legal proceedings with respect to any such claim. The failure of any Indemnified Party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent that the Indemnifying Party has been damaged by such failure. Such notice will specify all facts known to such Indemnified Party giving rise to the indemnification sought and the amount or an estimate of the amount of the obligation or liability arising from such indemnifying event. If any lawsuit or enforcement action is filed by a third party against any Indemnified Party, written notice thereof shall be given to the Indemnifying Party as promptly as practicable (and in any event within fifteen (15) days after the service of the citation or summons). The failure of any Indemnified Party to give timely notice hereunder shall not affect

rights to indemnification hereunder, except to the extent that the Indemnifying Party has been damaged by such failure. After such notice, the Indemnifying Party shall at its own cost, risk and expense, (i) take control of the defense and investigation of such lawsuit or action, and (ii) employ and engage legal counsel of its own choice, but, in any event, reasonably acceptable to the Indemnified Party, to handle and defend the same. The Indemnifying Party shall not, without the written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed, settle or compromise any claim in connection with any Losses or consent to the entry of any judgment which does not include an unconditional written release by the claimant or plaintiff of the Indemnified Party from all liability in respect of such claim in connection with any Losses, or settle or compromise any claim in connection with any Losses if the settlement imposes equitable remedies or material obligations on the Indemnified Party other than financial obligations for which such Indemnified Party will be indemnified hereunder. No claim in connection with any Losses which is being defended in good faith by the Indemnifying Party in accordance with the terms of this Sublease shall be settled or compromised by the Indemnified Party without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. If the Indemnifying Party fails to assume the defense of such lawsuit or action within thirty (30) days after receipt of the claim notice, the Indemnified Party against which such lawsuit or action has been asserted will (upon delivering notice to such effect to the Indemnifying Party) have the right to undertake, at the Indemnifying Party's cost and expense, the defense, compromise or settlement of such lawsuit or action on behalf of and for the account and risk of the Indemnifying Party; provided, however, that such lawsuit or action shall not be compromised or settled without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. If the Indemnified Party settles or compromises such lawsuit or action without the prior written consent of the Indemnifying Party, the Indemnifying Party will bear no liability hereunder for or with respect to such lawsuit or action. In the event either party assumes the defense of a particular lawsuit or action in the manner contemplated above, the party assuming such defense will keep the other party reasonably informed of the progress of any such defense, compromise or settlement. The indemnification obligations of Subtenant and Sublandlord under this Section 19 shall survive the expiration of the term, or the termination, of this Sublease.

20. Insurance.

(a) Subtenant shall not do or permit to be done any act or thing in or upon the Subleased Premises which will invalidate or be in conflict with the terms of the insurance policies covering the Subleased Premises and the fixtures and property therein; and Subtenant, at its expense, shall comply with all applicable rules, orders, regulations or requirements of any federal, state, county, city, municipal or other similar body having jurisdiction.

(b) Intentionally Omitted.

(c) Subtenant, at its expense, shall procure and maintain all insurance policies required by the Primary Lease in the amounts stated therein and having such endorsements denying Subtenant's insurers the right of subrogation against Sublandlord and Prime Landlord, and naming Sublandlord and Prime Landlord as additional insured and as loss payees as required by the Primary Lease. All such insurance shall be effected under valid and enforceable policies, shall be issued by insurers of recognized responsibility, and shall contain a provision whereby the insurer

agrees not to cancel, refuse to renew or affect any material change in the insurance policy without thirty (30) days' prior written notice. Subtenant shall, upon request, furnish Sublandlord and Prime Landlord with certificates evidencing such insurance coverages. .

(d) Intentionally Omitted.

(e) Subtenant hereby releases Sublandlord or anyone claiming through or under Sublandlord by way of subrogation or otherwise. Subtenant hereby releases Prime Landlord or anyone claiming through or under Prime Landlord by way of subrogation or otherwise to the extent that Sublandlord releases Prime Landlord under the terms of the Primary Lease. Subtenant must cause its insurance carriers to include any clauses or endorsements in favor of Sublandlord, Prime Landlord, and any additional parties, that Sublandlord is required to provide under the provisions of the Primary Lease.

21. Enjoyment of Subleased Premises. Subject to the terms of this Sublease, and conditioned upon the timely payment of Base Rent and Additional Rent and the timely performance of all of the provisions to be performed by Subtenant hereunder (subject to all applicable notice and cure periods), Sublandlord covenants and agrees that Subtenant shall and may peaceably hold and enjoy the Subleased Premises during the Term hereof, without any interruption or disturbance from Sublandlord or any party or entity holding an interest in the Subleased Premises by, through, or under Sublandlord, except as otherwise provided herein or in connection with the Primary Lease.

22. Purchase Option.

(a) Purchase Option. For and in consideration of Ten and No/100 Dollars (\$10.00), at any time during the Term (including any extension thereof), Subtenant shall have the right and option (the "**Purchase Option**") to purchase Sublandlord's leasehold interest in the Primary Lease and all of Sublandlord's right, title and interest in and to all improvements located thereon (collectively, "**Sublandlord's Property**") for an amount equal to \$2,500,000.00 (the "**Purchase Price**") by giving written notice thereof (the "**Exercise Notice**") to Sublandlord. Subtenant and Sublandlord agree that Subtenant's exercise of the Purchase Option will be deemed to be Subtenant's exercise of the purchase option in Section 22(a) of that certain Sublease Agreement dated as of May ____, 2024 between Sublandlord and Subtenant with respect to those certain premises described therein and having a street address of 1730 Airport Drive, San Marcos, Texas 78666. The closing of any sale of the Sublandlord's Property to Subtenant pursuant to this Section 22(a), including Subtenant's payment of the Purchase Price to Sublandlord, shall occur within one hundred twenty (120) days after Sublandlord's receipt of the Exercise Notice.

(b) Intentionally Omitted.

(c) Right to Injunctive Relief. Sublandlord and Subtenant understand and agreed that money damages would not be a sufficient remedy for Sublandlord's or Subtenant's breach of any of the provisions of this Section 22 and, accordingly, agree that Subtenant and Sublandlord, as appropriate, shall be entitled to specific performance, including, without limitation, injunctive relief, as a remedy for Sublandlord's or Subtenant's breach of any of the

provisions of this Section 22. Such remedy shall not be deemed to be the exclusive remedy for breach but shall be in addition to all other remedies available to Subtenant or Sublandlord herein.

23. Holdover. In the event that Subtenant retains possession of the Subleased Premises or any part thereof after the termination of the Term by lapse of time or otherwise, Subtenant shall pay Sublandlord the monthly Rent at one hundred fifty percent (150%) of the rate payable for the month immediately preceding said holding over (the "**Base Holdover Rent**"), computed on a per-month basis, for each month or part thereof (without reduction for any such partial month) that Subtenant thus remains in possession, and in addition thereto, Subtenant shall pay Sublandlord all damages sustained by reason of Subtenant's retention of possession, including, but not limited to, any amount that Sublandlord is responsible to pay for the Subleased Premises to Prime Landlord under the Primary Lease in excess of the Base Holdover Rent and any other liability of Sublandlord to Prime Landlord sustained as a result thereof. The foregoing shall be in addition to, and shall in no way limit, any other right Sublandlord may have under this Sublease, at law, or in equity and Sublandlord's acceptance of the Base Holdover Rent shall in no way be a consent to Subtenant's continued occupancy of the Subleased Premises.

24. Limitation of Liability. Sublandlord shall not, under any circumstances, be liable to pay for any work, labor or services rendered or materials furnished to or for the account of Subtenant upon or in connection with the Subleased Premises, and no mechanic's or other lien for such work, labor or services or material furnished shall, under any circumstances, attach to or affect the reversionary interest of Prime Landlord in and to the Subleased Premises or any alterations, repairs, or improvements to be erected or made thereon. Nothing contained in this Sublease shall be deemed or construed in any way as constituting the request or consent of Sublandlord, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Subleased Premises or any part thereof, nor as giving Subtenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials on behalf of Sublandlord or Prime Landlord that would give rise to the filing of any lien against the Subleased Premises. Subject to Section 19 hereof, neither Sublandlord nor Sublandlord Indemnified Parties shall be liable for any loss of or damage to the property of Subtenant or others by reason of casualty, theft or otherwise, or due to any interruption or failure of any services or use or the operation or management of the Subleased Premises, or due to any improvements on the Subleased Premises being defective or improperly constructed, or being or becoming out of repair, or for any injury or damage to persons or property resulting from any cause of whatsoever nature, except to the extent such loss or damage is caused by or arises from the gross negligence or willful misconduct of Sublandlord or any Sublandlord's Indemnified Parties. Absent fraud or willful misconduct, the members, managers, employees, partners, shareholders, officers, directors, agents, and representatives of Sublandlord and Subtenant shall not have any personal liability under this Sublease whatsoever.

25. Miscellaneous.

(a) No Privity of Estate; No Privity of Contract. Nothing in this Sublease should be construed to create privity of estate or privity of contract between Subtenant and Prime Landlord.

(b) Notices. All notices and other communications required or permitted under this Sublease must be given in the same manner as in the Primary Lease. Notices shall be addressed to the addresses set out below:

If to Sublandlord: 2080 Airport Drive, LLC
Attn: John Heskin
c/o Acorn Growth Companies
621 N. Robinson Avenue, Suite
550
Oklahoma City, Oklahoma 73102
jheskin@altaerofin.com

With a copy to: Vedder Price P.C.
Attn: Adam Beringer
300 Crescent Court, Suite 400,
Dallas, Texas 75201
aberinger@vedderprice.com

If to Subtenant: Berry Aviation, Inc.
Attn: Stan Finch
1807 Airport Drive
San Marcos, Texas 78666
stan@berryaviation.com

With a copy to: Hartzog Conger Cason LLP
Attn: Naomi D. Smith
201 Robert S. Kerr Ave, Suite 1600
Oklahoma City, Oklahoma 73102
nsmith@hartzoglaw.com

(c) Brokers. Sublandlord and Subtenant each represent to the other that it has not dealt any broker in connection with this Sublease and the transactions contemplated hereby. Sublandlord and Subtenant each indemnify and hold harmless the other from and against all claims, liabilities, damages, costs, and expenses (including without limitation reasonable attorneys' fees and other charges) arising out of any claim, demand, or proceeding for commissions, fees, reimbursement for expenses, or other compensation by any person or entity who claims to have dealt with the indemnifying party in connection with the Sublease. This Section 25(c) shall survive the expiration or earlier termination of this Sublease.

(d) Entire Agreement. This Sublease contains the entire agreement between the parties regarding the subject matter contained herein, and all prior negotiations and agreements are merged herein. If any provisions of this Sublease are held to be invalid or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions of this Sublease will remain unaffected. The submission to Subtenant of this Sublease shall not constitute an option or offer for the subleasing of the Subleased Premises, and the execution and/or delivery of this Sublease by Subtenant shall have no binding force or effect on Sublandlord unless and until each

of Sublandlord and Subtenant shall have (i) executed this Sublease and (ii) exchanged a fully executed copy of this Sublease.

(e) Amendments and Modifications. This Sublease may not be modified or amended in any manner other than by a written agreement signed by the party to be charged.

(f) Successors and Assigns. The covenants and agreements contained in this Sublease bind and inure to the benefit of Sublandlord and Subtenant and their respective permitted successors and assigns.

(g) Counterparts. This Sublease may be executed in any number of counterparts, each of which when so executed and delivered is deemed an original for all purposes, and all such counterparts will together constitute but one and the same instrument. A signed copy of this Sublease delivered by either facsimile or email is deemed to have the same legal effect as delivery of an original signed copy of this Sublease.

(h) Defined Terms; Recitals. All capitalized terms not otherwise defined in this Sublease have the definitions contained in the Primary Lease. The Recitals are incorporated herein as part of this Sublease.

(i) Choice of Law. This Sublease is governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of law rules.

(j) Acknowledgment and Interpretation. Subtenant, with Subtenant's counsel, Has fully reviewed the terms and conditions of this Sublease. Subtenant acknowledges and agrees that (i) the waivers, disclaimers, and other agreements set forth in this Sublease are an integral part of this Sublease, and (ii) Sublandlord would not have agreed to sublease the Subleased Premises to Subtenant for the Rent stated herein without the waivers, disclaimers, and other agreements set forth in this Lease. Sublandlord and Subtenant acknowledge and agree that each party and its counsel have reviewed and revised this Sublease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Sublease or any amendments or exhibits hereto.

(k) Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Sublease or any provision contained herein, the party prevailing in such suit, as determined by a final, non-appealable order entered by a court of competent jurisdiction, shall be entitled to recover, in addition to all other remedies or damages, as provided herein, reasonable attorneys' fees and court costs incurred in such suit.

(l) Time of Essence. Time is of the essence of this Sublease.

(m) Estoppel. If Sublandlord or the Prime Landlord requests that Subtenant provide an estoppel certificate or a subordination and attornment agreement, or a document of similar import, Subtenant shall provide Sublandlord and Prime Landlord with same within five (5) business days after Prime Landlord's or Sublandlord's request for same, as the case may be. Similarly, if Subtenant requests that Sublandlord and/or Prime Landlord provide an estoppel certificate or a document of similar import, Sublandlord shall make commercially reasonable efforts to provide Subtenant with same within five (5) business days after Subtenant's request for

same, as the case may be (with the understanding that Sublandlord cannot compel Prime Landlord to provide Subtenant with an estoppel).

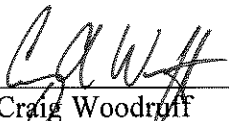
(n) Business Day. As used in this Sublease, a (a) “**business day**” shall mean a day that is not (i) a Saturday or Sunday, or (ii) a Holiday, and (b) “**Holiday**” means New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Sublease to be executed as of the Effective Date.

SUBLANDLORD:

2080 Airport Drive, LLC,
a Texas limited liability company

By 
Name: Craig Woodruff
Title: Vice President

SUBTENANT:

Berry Aviation, Inc.,
a Texas corporation

By _____
Name: Stan Finch
Title: President

IN WITNESS WHEREOF, the parties have caused this Sublease to be executed as of the Effective Date.

SUBLANDLORD:

2080 Airport Drive, LLC,
a Texas limited liability company

By _____

Name: Craig Woodruff

Title: Vice President

SUBTENANT:

Berry Aviation, Inc.,
a Texas corporation

By  _____

Name: Stan Finch

Title: President

EXHIBIT A
PRIMARY LEASE

[To be attached]

CITY OF SAN MARCOS, TEXAS
SAN MARCOS REGIONAL AIRPORT
COMMERCIAL AVIATION GROUND LEASE AGREEMENT

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 115,129 square feet (hereinafter referred to as the “**Leased Premises**”), located at the Airport in Caldwell County, Texas:
- 2080 Airport Drive – Hangar, Main Building, and Parking Lot Site as described and depicted in Exhibit A attached hereto; and
- 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 C, 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 D. 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 May 21, 2024 (the “*Commencement Date*”) and will terminate on May 21, 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:

<u>May 21</u> , 2024 through <u>May 21</u> , 2029:	\$29,933.54
<u>May 22</u> , 2029 through <u>May 21</u> , 2034:	\$33,387.41
<u>May 22</u> , 2034 through <u>May 21</u> , 2039:	\$36,841.28
<u>May 22</u> , 2039 through <u>May 21</u> , 2044:	\$40,295.15

Rent shall be paid in equal monthly installments, which during the first five (5) years of the Term shall be in the amount of \$2,494.46; 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.
- 2.08. Other Fees and Charges. Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, Lessee agrees to pay for such use, in addition to Rent, in an amount equal to the lowest amount Lessor charges similar tenants and users at the Airport for use (and in no event shall Lessor charge Lessee for use unless all other tenants at the Airport are also required to, and do, pay for such use). New charges for Airport Facilities (including, without limitation, tie-down fees), if any, will be established by resolution hereafter adopted by Lessor; provided, however, written notice of such new charges shall be provided to Lessee before such charges are adopted.
- 2.09. Renewal. Lessee shall have the option to enter a lease for two additional five (5) year terms at the then current rates for improved airport property under a new negotiated 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 related activities and business, including but not limited to, aircraft and aircraft parts storage, aviation fuel sales, aircraft sales, aircraft maintenance, modification, integration, refurbishment and repair, aircraft repair station, air carrier services, air taxi operations, FAA approved flight training/school, pilots lounge, aircraft part sales, parts refurbishment, parts manufacturing, avionics businesses, aircraft management; aviation related equipment, fixed base operations, hangar space, general office, parts manufacturing and refurbishment, and training, 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.** Parking. Except during any period of construction of any Alterations (as defined below) approved by Lessor, during any period of repair or reconstruction following the occurrence of a casualty or eminent domain event, or as indicated on any Plans (as defined below) approved by Lessor, Lessee agrees that (i) neither it, nor any of its officers, directors, employees, contractors, subcontractors, licensees or invitees, will park or allow any non-aviation-related motor vehicle to be parked on the Leased Premises; and (ii) all aviation-related or business-related motor vehicles brought onto the Leased Premises in connection with Lessee's business will be parked only in areas designated as motor vehicle parking areas.
- 3.04.** 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.
- 3.05.** 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.
- 3.06.** 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*").
- 3.07.** 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.
- 3.08.** 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.
- 3.09.** 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.

- 3.10. 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 facilities, Parking Lot 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: (i) install any exterior lighting, shades or awnings, or any exterior decorations or paintings on any buildings, or (ii) erect, install or change any windows (but Lessee may replace windows with windows of the same size and dimensions), or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of any building. Notwithstanding the foregoing to the contrary, Lessee may install construction signage during construction of the facilities and permitted or approved Alterations and "for sale" or "for lease" signs on the Leased Premises

without the consent of Lessor, subject to compliance with applicable sign ordinances and rules.

- b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Further, Lessee will install a sign indicating that the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be approved by Lessor prior to installation. 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 facilities, including routine maintenance and repair of the Parking Lot, vehicular driveway and ramp tie-in, landscaping, equipment, electrical, mechanical, plumbing and fire protection systems, roofs, floors, load-bearing and exterior walls and utilities on the Leased Premises and, subject to Section 6.01, all other fixtures

constructed or installed on the Leased Premises by Lessee, including exterior lighting facilities (collectively, the “**Improvements**”). In addition, Lessee shall maintain landscaping on the Leased Premises. 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 and Depiction 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. (“*Redbird*”) is terminated and the parties shall have no further rights or obligations thereunder, it being acknowledged that Redbird’s rights and obligations remaining under such lease have been assigned to and assumed by 2080 Airport Drive, LLC, for which the City hereby gives its consent. This current Lease is authorized under the right of first refusal contained in the Commercial Building Sublease between Redbird and Berry Aviation, Inc. 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: Stephanie Reyes
Name Printed: Stephanie Reyes
Title: City Manager

LESSEE:

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

By: _____
Name Printed: Craig Woodruff
Title: Vice President

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

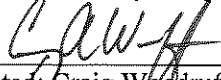
By:  _____
Name Printed: Craig Woodruff
Title: Vice President

EXHIBIT A

Description of Leased Premises

BEING 2.643 AGRES OF LAND, SURVEYED BY LANDESIGN SERVICES, INC., OUT OF THE WILLIAM PETTUS TWO LEAGUE GRANT, IN CALDWELL COUNTY, TEXAS AND BEING A PART OF A CALLED 42.47 ACRE TRACT DESCRIBED IN DEED WITHOUT WARRANTY TO THE CITY OF SAN MARCOS RECORDED IN VOLUME 77, PAGE 628 IN DEED RECORDS OF CALDWELL COUNTY, TEXAS (D.R.C.C.T.) AND RECORDED IN VOLUME 856, PAGE 127 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.); AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found 100D nail in the west end of a curve on the south line of said 42.47 acre tract,

THENCE North 87°21'56" East 103.19 feet with the south line of said 42.47 acre tract to a calculated point:

THENCE North 02°24'10" West 24.01 feet through said 42.47 acre tract to a calculated point at the southwest corner of said 2.643 acre tract for the POINT OF BEGINNING;

THENCE North 02°24'10" West 372.56 feet through said 42.47 acre tract to a calculated point at the northwest corner of said 2.643 acre tract;

THENCE North 87°35'50" East 309.00 feet through said 42.47 acre tract to a calculated point at the northeast corner of said 2.643 acre tract from which Airport monument RAB2767 bears North 21°39'05" East 1038.18 feet;

THENCE South 62°24'10" East 372.56 feet through said 42.47 acre tract to a calculated point at the southeast corner of said 2.643 acre tract:

THENCE South 87°35'50" West 309.00 feet through said 42.47 acre tract to the POINT OF BEGINNING.

EXHIBIT A

Depiction of Leased Premises

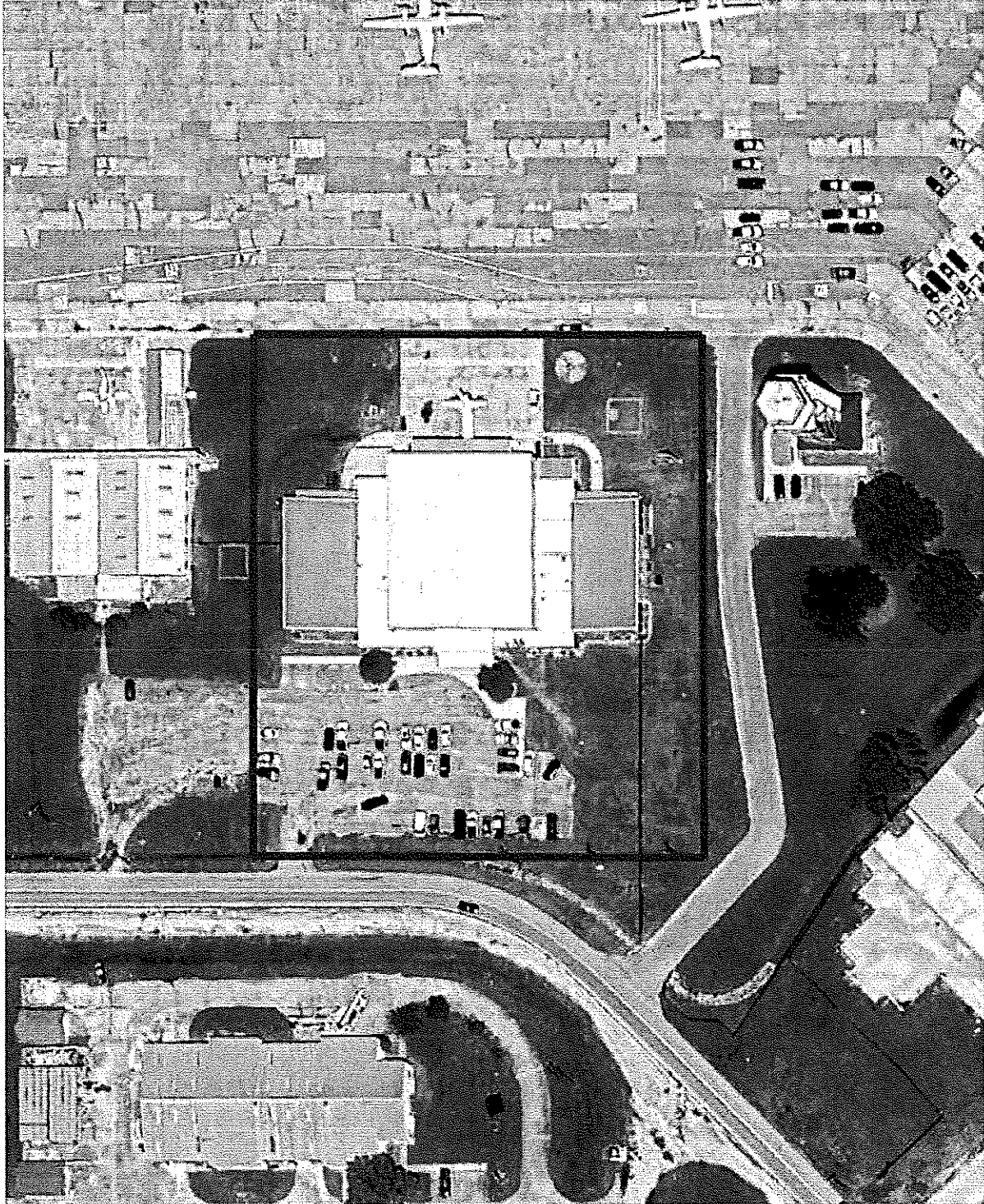


EXHIBIT B

Rules and Regulations

Chapter 10 - AVIATION^[1]

ARTICLE 1. - GENERAL

Sec. 10.001. - Minimum standards for commercial aeronautical activities.

- (a) The minimum standards for commercial aeronautical activities at the regional airport owned by the city are approved and adopted by resolution and filed in the office of the city clerk, the same as if set out fully in this section. The minimum standards govern the activities of all tenants at the airport including fixed base operators and operators of specialized aviation services. The adoption of minimum standards is recommended by Federal Aviation Administration Advisory Circular 150/5190-7.
- (b) Copies of the minimum standards adopted in subsection (a) of this section are maintained for public inspection in the office of the city clerk and airport management.

(Ord. No. 2015-46, § 1, 11-2-15)

Secs. 10.002—10.025. - Reserved.

ARTICLE 2. - STANDARD OPERATING PROCEDURES AND REGULATIONS

Sec. 10.026. - Definitions.

In this article:

Accident means an unintentional occurrence which results in property damage, personal injury or death.

Airport means all lands within the legal boundaries of the San Marcos Regional Airport under the control of the city.

Airport management means the company or entity contracted by the city to operate, maintain, manage and develop the airport on behalf of the city.

Commercial activities means the activities and operations of any aeronautical business or nonprofit organization with a valid lease agreement authorized by the city council including fixed-based operators, specialized aviation services, flight schools, flight clubs, and any other aeronautically related activity.

Federal Aviation Administration (FAA) means the federal agency established by the Federal Aviation Act of 1958 and reestablished in 1967 under the Department of Transportation.

Fixed base operator (FBO) means any person engaged in a business of an aviation nature under provisions, contracts or leases with the city and in accordance with applicable federal air regulations.

Motor vehicle means any self-propelled ground conveyance other than an aircraft.

Movement area means the area of the airport containing taxiways and runways separated from the ramp by two yellow lines, one solid and one dashed, requiring direct communication with the air traffic control tower during operating hours.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.027. - Authority.

The procedures and regulations in this article are promulgated under the power granted to the city under Federal Law (Title 49 of the Code of Federal Register) and State Law (Chapter 22 of the Texas Transportation Code) and the home-rule authority granted to the city under Article XI, Section 5 of the Texas Constitution.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.028. - Enforcement.

- (a) *Applicability.* All aircraft, pilots, operators, companies, business organizations, government agencies and all persons coming upon airport property for any purpose are subject to this article.
- (b) *Compliance.* The city council and airport management and its duly authorized representatives are empowered to enforce compliance with this article. In addition to the penalty prescribed in [section 1.015](#), violators can be removed or evicted from the airport premises or denied use of the airport or its facilities if the action is determined by airport management or a city official charged with enforcing City code provisions to be reasonably necessary to protect public property or persons or ensure

safety.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.029. - Revisions; validity; liability.

- (a) *Revisions.* The city council reserve the right to revise, make changes to or waive the procedures and regulations in this article with only notice required by state law.
- (b) *Validity.* The voiding of any particular procedure or regulation in this article does not affect the validity of the remainder of these procedures and regulations.
- (c) *Liability.* The city assumes no responsibility for loss, injury or damage to persons or property because of fire, theft, vandalism, wind, flood, earthquake or collision, nor does it assume any liability for injury to persons while at the airport.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.030. - Safety.

- (a) *Policy.* The policy of the airport is that safety is of primary and overriding priority. All persons on the airport are required to comply with this policy. This article is intended to promote safety as well as good operating practices. If any deviation is required in the interest of safety, such deviation is both authorized and encouraged. However, any deviation shall be reported to airport management as soon as practical after the occurrence.
- (b) *Hazard identification.* Hazard identification and abatement are continuing programs at this airport. Any person with knowledge of a hazard at the airport shall immediately report this information to airport management.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.031. - Operations.

- (a) *Aeronautical activities.* All aeronautical activities at the airport shall be conducted in conformity with the current regulations of the Federal Aviation Administration and other laws and rules promulgated by applicable federal, state and local agencies with jurisdiction over airport matters. Only properly registered aircraft and legally certified pilots are authorized to operate at the airport.
- (b) *Tiedown of aircraft.* Aircraft not hangared will be tied down and secured. The aircraft owner and the owner's agent and the pilot are legally responsible for tiedown and security of the aircraft at all times including inclement weather. Inspection of tiedown equipment is the responsibility of the owner and the owner's agent and the pilot.
- (c) *Parking of aircraft.*
 - (1) Aircraft will not be parked in a manner that impedes the normal movement of other aircraft and traffic. It is the responsibility of the pilot when leaving a parked aircraft on the airport to ensure the brakes are set, the aircraft is properly chocked, and the aircraft is tied down.
 - (2) Aircraft will not park within or under a structure for which they are not the rightful lessee or owner. Any unauthorized aircraft may be towed, seized, impounded, and/or locked by airport management at the owner's expense. Airport management will not be held liable for any damage that may occur as a result.
- (d) *Unairworthy and/or abandoned aircraft.* Unairworthy aircraft shall not be parked or stored anywhere on the airport. Exception: aircraft awaiting repairs to return the aircraft to an airworthy condition may be parked or stored up to six months. Any parking or outside storage of unairworthy aircraft in excess of six months shall require written permission of airport management. In the event of failure to comply with this provision, such disabled aircraft and any abandoned or unairworthy aircraft may be removed by airport management at the owner's expense and without liability on the part of the airport for any damage which may result in the course of such removal. Airport management may recommend parking fees to the city council.
- (e) *Responsibility for disposal of disabled aircraft.* The owner of wrecked and disabled aircraft shall be responsible for the prompt removal and disposal of such aircraft after release by airport management and the Federal Aviation Administration or National Transportation Safety Board.
- (f) *Damage.* Any person damaging any light fixture, or other airport property will immediately report the damage to airport management. Persons causing damage to approach, runway and/or taxiway lights or fixtures, or other airport property as a result of negligent acts may be liable for the replacement or repair costs. Tenants shall be held fully responsible for any damage to any building, equipment, or real property owned by the airport. Any damage to or malfunctioning of buildings, structures, utilities or other property owned by the airport shall be reported to airport management.
- (g) *Taxiing aircraft.*
 - (1) *Speed.* Aircraft will be taxied at safe and prudent speed and under full control of the pilot at all times in accordance with Federal Aviation Administration Advisory Circular 120-74B.
 - (2) *Consideration.* No person will start or run an aircraft in a manner to risk damage to other aircraft or property or in a

manner to blow paper, debris or other objects across the taxiway or runway or in a manner to endanger any operations on the airport.

- (h) *Air traffic control tower and radio procedures.* All pilots are required to communicate with the tower during operating hours prior to entering the movement area. The airport frequencies are: tower 126.825 and ground 120.125. Pilots are encouraged to announce their intentions and communicate with other pilots via CTAF when the tower is closed, in accordance with Federal Aviation Administration Advisory Circular 90-66.
- (i) *Traffic patterns.*
 - (1) *Direction.* All VFR traffic is expected to make left traffic patterns to all runways when the tower is closed.
 - (2) *Altitude.* Recommended traffic pattern altitude for the airport is 1600 feet MSL/1000 feet AGL.
- (j) *Authority to suspend operations.* Airport management or its designated representative may suspend or restrict any or all operations on the airport whenever such action is determined necessary.
- (k) *Closing of airport.* In the event airport management believes conditions at the airport are unsafe, it is within its authority to close the entire airport or any part thereof. A notice to airmen (NOTAM) will be immediately filed with Federal Aviation Administrative Flight Safety Services.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.032. - Public and tenant usage.

- (a) *Commercial activities.* No person will use the airport for business or commercial activities without obtaining the approval of the city council through airport management.
- (b) *Advertisements.* No person shall post, distribute, or display signs, advertisements, circulars, or any other printed material on airport property without the prior approval of airport management. Airport management is authorized to rescind any permission granted if the advertisement does not remain in compliance with this ordinance and the minimum standards adopted by the city council.
- (c) *Demonstrations, shows and exhibitions.* No person will engage in any show, demonstration, or exhibition without prior written permission from airport management.
- (d) *Lost articles.* Any person finding lost articles on the airport will deposit them at the airport management office located at 4400 Airport Highway 21, San Marcos, TX 78666. Articles unclaimed after 60 days by the owner may be turned over to the finder or otherwise legally disposed of by the city as determined by the city manager or his designee.
- (e) *Right of entry.* Airport management has the right of entry at reasonable times for repairs, maintenance, modification or inspection of all rooms, areas and buildings on the airport.
- (f) *Construction or alteration.* No construction work or alterations to grounds or structures, other than minor repairs or maintenance, will be performed on the airport without written permission from the city as determined by the city manager or his designee. No person may modify any equipment or building, or change any mechanical, electrical, electronic, or plumbing equipment owned by the airport without first obtaining written permission from airport management. No person may move or install any equipment, signs, or other structure in the public areas of the airport without first obtaining written permission from airport management.
- (g) *Restricted areas.* No person shall enter any restricted area on the airport without the authorization of airport management.
- (h) *Sanitation.*
 - (1) *Disposal.* No person will dispose of garbage, papers, refuse or other waste materials on the airport, except as provided by city ordinance.
 - (2) *Burning.* No open fires are allowed on the airport without the approval of the city fire marshal or his designee. No trash or refuse will be burned on the airport at any time.
 - (3) *Use of sewers and drains.* No materials may be put in the sanitary sewer system, or any other drainage system, which do not conform to the regulations of the city.
- (i) *Alcohol and narcotics.*
 - (1) *Legal compliance.* All applicable local, state and federal laws pertaining to handling or use of alcoholic beverages, narcotics, and drugs apply on the airport.
 - (2) *Under the influence.* No person under the influence of alcohol or other substance shall operate a motor vehicle or aircraft on the airport. The city, through its appropriate law enforcement agency, reserves the right to remove or evict violators from the airport premises or deny use of the airport or its facilities by the violator.
- (j) *Disorderly conduct.* No person on the airport shall commit any disorderly, obscene, or indecent act or commit any act prohibited by Texas Penal Code § 42.01.
- (k) *Preservation of property.* It is unlawful for any person to:
 - (1) Destroy, injure, deface or disturb any building, sign, equipment, marker, structure, lawn, or public property on the airport.

- (2) Trespass on agricultural areas without the approval of airport management.
- (3) Abandon property on the airport.
- (4) Interfere with, tamper, or injure any part of the airport operation, or any aircraft on the airport.
- (l) *Hunting and firearms.* Except as authorized by state law, no person may carry firearms on the airport. No hunting or shooting is allowed on the airport.
- (m) *Storage.* No person shall use any property of the airport for outside storage without first obtaining written permission from airport management. No tenant or lessee of airport property shall store or stock material or equipment in such a manner as to constitute a hazard to any person or property, or in such a manner as to create an unattractive appearance.
- (n) *Pets and animals.* It is unlawful for the owner or person responsible for a pet or animal to permit same to be at large. The term "at large" means a dog or cat which is not restrained by leash and which is also off the premises of its owner or the person responsible for it. Pets and animals found running at large will be picked up and impounded.
- (o) *Drip pans.* Whenever oil leakage, dripping or spillage is possible, drip pans shall be placed under each engine of an aircraft.
- (p) *Authority to detain aircraft.* Airport management has the authority to detain any aircraft for non-payment of any debt due to the airport.
- (q) *Denial of use.* Airport management is authorized to deny use of the airport to any aircraft or pilot violating these or Federal Regulations at the airport or elsewhere.
- (r) *Special events.* Special event(s) means an activity which may not completely comply with these rules or which, although it may comply with these rules, will require an accommodation by other users of the airport. Special events include, but are not limited to, fly-ins, ramp space rentals, skydiving exhibitions, balloon operations, or similar events or activities. Any person wishing to sponsor a special event shall obtain the prior written approval of airport management. Airport management shall require such safeguards as deemed necessary to protect the airport, the city, the county, aircraft using the airport, and the general public. These requirements may include, but are not limited to, bonds, insurance policies, additional security personnel, facilities, special operating procedures, city permits, and any required waiver/authorization to the Federal Aviation Regulations issued by the FAA. Airport management is prohibited by the FAA from closing the airport for any activity which is not an aeronautical activity. The city council may establish, upon recommendation from airport management, general reasonable fees and requirements for special events. The fee schedule adopted by the city council will provide limited flexibility to allow airport management, with the approval of the city manager or his designee, to adjust fees for special events that may require specialized accommodations. Any signage for the special event must be approved by airport management.
- (s) *Unlawful to drop handbills or other matter.* It is unlawful for any person in any aircraft flying over the airport or over the territory within the boundaries of the airport to cause or permit to be thrown out, discharged, or dropped, any handbills, circulars, card or other matter whatsoever which falls upon the airport property.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.033. - Fire prevention.

- (a) *Applicability and compliance.* All persons, companies, and agencies engaged in any activity at the airport, whether occupying airport-owned facilities or otherwise, shall comply with fire regulations as issued by the city and shall comply with all applicable county, state and federal laws and regulations related to fire prevention or safety.
- (b) *Enforcement.* Airport management or other duly authorized officials may direct the removal of fire hazards, arrangement and modification of equipment, or alter operating procedures in the interest of fire prevention.
- (c) *Fire prevention.* All persons using the airport, or the facilities of the airport will exercise the utmost care to guard against fire and injury to persons and property.
- (d) *Cleaning of parts.* The cleaning of engine parts or other parts of aircraft will be with non-flammable liquids unless the engine or aircraft part being cleaned is located a safe distance away from other aircraft or airport facilities. If volatile liquids are employed, cleaning operations must be in open and clear areas or in a suitable room of the repair facility and separated from storage and operational areas by fire resistant partitions in compliance with the requirements of the National Board of Fire Underwriters.
- (e) *Hangar floors.* Floors will be kept clean and free from oil.
- (f) *Empty containers.* All empty oil, paint and varnish cans, bottles and other containers will be removed immediately from the premises and not allowed to remain on floors, wall stringers, or overhead storage areas in or about hangars, shops and other buildings. Empty containers must be disposed of in accordance with the stormwater pollution prevention plan for the airport.
- (g) *Trash.* No boxes, crates, rubbish, paper, or litter of any kind will be stored in or about hangars, except in proper receptacles provided for this purpose. Commercial operators shall be responsible for providing containers for all trash on their leased premises and shall arrange for the regular removal of the trash. Commercial operators will provide an appropriate receptacle for trash removal to be used by its contractors, employees, and invitees.
- (h) *Flammable, corrosive and toxic materials.* Containers of gasoline, kerosene or other flammable liquids, explosives, toxic or corrosive substances will not be stored in hangars.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.034. - Fueling and flammables.

- (a) *Fueling and defueling procedures.*
- (1) *Hot refueling.* Hot refueling is the fueling of aircraft while the engine is running. Hot refueling shall be permitted only under special circumstances and then only when authorized by airport management. Hot refueling may be permitted only by appropriately trained and certified FBO personnel in accordance with generally accepted industry standards.
 - (2) *Electrical storm.* No aircraft will be fueled or defueled during an electrical storm.
 - (3) *Smoking.* No person will smoke within 100 feet of an aircraft being fueled or defueled.
 - (4) *Radio operation.* No person will operate a radio transmitter or electrical systems in an aircraft while it is being fueled or defueled.
 - (5) *Grounding.* During fueling and defueling, the aircraft and dispensing apparatus will both be properly grounded.
 - (6) *Equipment status.* Fueling hoses and equipment will be maintained in a safe, operational, and non-leaking condition and will be approved by the National Board of Fire Underwriters, or equivalent standard.
 - (7) *Spillage.* No person will start the engine where fuel spillage is on the ground in the vicinity of the aircraft. A person responsible for spillage will take proper measures to ensure removal of the spilled fuel pursuant to the stormwater pollution prevention plan for the airport.
 - (8) *Fire extinguishers.* Adequate fire extinguishers will be within reach of all persons engaged in fueling or defueling operations. All extinguishers will be inspected and recertified as required by law. All persons engaged in fueling and defueling will be familiar with the proper use of fire extinguishers.
 - (9) *Passengers.* No aircraft will be fueled or defueled while passengers are on board the aircraft unless the aircraft doors are in the open position.
 - (10) *Location of aircraft.* No aircraft will be fueled while parked in a hangar.
- (b) *Cleaning of aircraft.* No person will use volatile liquids in the cleaning of an aircraft, aircraft engines, propellers, parts, or for any other purposes, unless such operations are conducted in the open or in a facility specifically equipped and approved for that purpose.
- (c) *Storage.*
- (1) *Flammables.* No person will keep or store any flammable liquids, gases, signal flares or other similar material in the hangars or in any building on the airport, unless such materials are kept in an aircraft in the proper receptacles installed in the aircraft for such purposes or in rooms or areas specifically approved for such storage.
 - (2) *Waste oil.* No person will keep or store waste oils in or about the hangars unless stored in a proper receptacle pending removal. Waste oil must be disposed of in accordance with the storm water pollution prevention plan for the airport.
- (d) *Liquid disposal.* No fuels, oils, dopes, paints, solvents, or acids will be disposed of or dumped on the ramp area, agricultural lands or elsewhere on the airport. All disposal will be in accordance with city ordinances, Environmental Protection Agency (EPA) rules, and FAA standards.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.035. - Motor vehicles.

- (a) *General requirements.* Persons will operate motor vehicles on the airport in accordance with the procedures and regulations of this section and in full compliance with all state licensing, registration, and operating requirements.
- (b) *Speed.* No person will operate a motor vehicle on the airport in a reckless or negligent manner, or in excess of a safe and prudent speed. Posted speed limits will not be exceeded. The posted speed limit for the ramp is 15 miles per hour and the posted speed limit for roadways is 35 miles per hour.
- (c) *Parking.*
- (1) *Location.* No person will park a motor vehicle at the airport other than in areas specifically established for public and tenant parking. No persons shall park a motor vehicle so as to obstruct roadways or taxiways. No person shall park a motor vehicle in public aircraft parking areas.
 - (2) *Abandoned vehicles.* No person shall park a motor vehicle on the airport for an extended period of time without prior notification to airport management.
 - (3) *Towing for violation.* Airport management has the authority to tow or otherwise remove motor vehicles which are parked on the airport in violation of this section. The vehicle will be towed at the owner's expense and without liability for damage which may result in the course of such moving.
- (d) *Vehicle repairs.* No person will clean or make any repairs to motor vehicles on the airport, except for airport support vehicles and minor emergency repairs.

(e) *Operation restrictions.*

- (1) *Ramp.* No motor vehicles, other than support vehicles, are permitted to operate on the airport parking ramp, except for the loading and unloading of aircraft occupants or cargo without the approval of airport management. Vehicle operators must utilize the ramp vehicle lane and will obey all markings pertaining to speed and stops.
- (2) *Runways and taxiways.* No person or motor vehicle is permitted within the movement area except as specifically authorized by airport management or air traffic control.
- (3) *Right-of-way procedures.* All motor vehicles will pass to the rear of taxiing aircraft and no vehicle will approach closer than 100 feet of any aircraft when an aircraft's engine is operating.
- (4) *Airport based support vehicles.* Support vehicles regularly using the ramp, such as fuel trucks or tugs, shall be equipped with a two-way radio that can communicate with air traffic control and an amber strobe, LED, or rotating beacon visible from at least 300 feet.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.036. - Emergency procedures.

(a) *Emergency notification and response.* Emergency notification and response procedures are as follows:

- (1) *Generally.* The city provides emergency services of fire, police, and medical response to the airport.
 - (2) *Notification procedures.* In addition to standard FAA emergency notification procedures, local emergency notification may be initiated during emergencies by contacting the air traffic control tower, operating hours through San Marcos Tower/CTAF on 126.825. During all hours, emergency notification can be initiated by calling San Marcos Police 911. Airport management can be notified at (512) 216-6039.
- (b) *Volunteer assistance.* Volunteer assistance and/or access to the scene of any aircraft accident will be approved and controlled by the authorized emergency response personnel and the appropriate law enforcement authorities, and air traffic control if during operating hours.
- (c) *Accident reporting.* In addition to required FAA notification and reporting actions, the operator of any aircraft involved in an incident or accident at the airport will notify airport management within 24 hours. When a written report is required by the FAA, a copy of such report will suffice for the airport requirement.

(Ord. No. 2015-46, § 1, 11-2-15)

EXHIBIT C

Minimum Standards

Airport Management Office
4400 Airport Highway 21
San Marcos, Texas 78666
Phone: (512) 216-6039
Fax: (512) 216-6043

Updated August 18, 2015



SAN MARCOS
REGIONAL AIRPORT

Minimum Standards

San Marcos Regional Airport Minimum Standards

Table of Contents

Section 1: General

1.1	Introduction	3
1.2	Purpose	3
1.3	Policy	4
1.4	Objective	4
1.5	Application of Minimum Standards	5
1.6	Insurance.....	5
1.7	Personnel	5
1.8	Common Rights and Privileges.....	6
1.9	Land and Facility Use	6
1.10	Compliance	6

Section 2: Aeronautical Operators & Tenants

2.1	Authority	7
2.2	Fixed Base Operator (FBO).....	7
2.3	Specialized Aviation Service Operation (SASO).....	8
2.4	Temporary Aeronautical Commercial Activity(TACA).....	8
2.5	Executive Hangar	9
2.6	Nonprofit.....	9

Section 3: Application Process

3.1	Improvements to Airport Property	9
3.2	Temporary Aeronautical Commercial Activities (TACA)	10
3.3	Additional Requirements	10
3.4	Action on Application.....	10

Appendix

A	Insurance Requirements.....	11
B	Temporary Permit Application.....	14

San Marcos Regional Airport Minimum Standards

Section 1 General

1.1 Introduction

The City of San Marcos, as Owner of the San Marcos Airport, establishes these Minimum Standards for persons who are or wish to become Commercial Operators, or anyone who leases land, and/or who makes use of Airport property. These Minimum Standards consider the significant role of the Airport in aviation, facilities that currently exist at the Airport, services being offered at the Airport, and the future development planned for the Airport. These Minimum Standards serve the following purposes:

1. Ensure that all commercial operators, tenants, and the City of San Marcos are not exposed to illegal, unsafe, or irresponsible practices.
2. Serve the public interest and discourage substandard business practices and construction, thereby protecting both the established aeronautical activity and the San Marcos Airport customers.

1.2 Purpose*

In accordance with the Airport and Airway Improvement Act of 1982 and the Airport Improvement Program (AIP) sponsor assurances, the owner or operator of the Airport (the Airport Sponsor) that has been developed or improved with federal grant assistance or conveyances of Federal property assistance is required to operate the Airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.

These federal obligations involve several distinct requirements. Most important is that the Airport and its facilities must be available for public use as an Airport. The terms imposed on those who use the Airport and its services must be reasonable and applied without unjust discrimination, whether by the Airport Sponsor or by a contractor or licensee who has been granted a right by the Airport sponsor to offer services or commodities normally required to serve aeronautical users of the Airport.

Federal law requires that recipients of federal grants sign a grant agreement or covenant in a conveyance of property that sets out the obligations that an Airport Sponsor assumes in exchange for federal assistance. The FAA's policy recommending minimum standards stems from the Airport Sponsor's grant assurances and similar property conveyance obligations to make the Airport available for public use on reasonable conditions and without unjust discrimination.

San Marcos Regional Airport Minimum Standards

1.3 Policy*

The Airport Sponsor of a federally obligated Airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the Airport Sponsor. The Airport Sponsor's purpose in imposing standards is to ensure a safe, efficient, and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory.

1.4 Objective*

The FAA objective in recommending the development of minimum standards serves to promote safety in all Airport activities, protect Airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all Airport users, promote the orderly development of Airport land, and ensure efficiency of operations. Therefore, Airport Sponsors should strive to develop minimum standards that are fair and reasonable to all on-Airport aeronautical service providers and relevant to the aeronautical activity to which it is applied.

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. Under certain circumstances, an Airport Sponsor could deny Airport users the opportunity to conduct aeronautical activities at the Airport for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. These standards should be tailored to the specific aeronautical activity and the Airport to which they are to be applied. Considerations for applying these standards may include the following:

1. Apply standards to all providers of aeronautical services, from full service FBOs to single service providers;
2. Impose conditions that ensure safe and efficient operation of the Airport in accordance with FAA rules, regulations, and guidance;
3. Ensure standards are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment;
4. Ensure standards are relevant to the activity to which they apply; and
5. Ensure standards provide the opportunity for newcomers to meet the minimum standards to offer their aeronautical services within the market demand for such services.

* Federal Aviation Administration Advisory Circular Number 150/5190-7, August 28, 2006

San Marcos Regional Airport Minimum Standards

1.5 Application of Minimum Standards

Any Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must comply with these Minimum Standards and any amendments thereto. If there is a conflict between a Minimum Standard and the provision of a lease, permit, or agreement, the provision in the lease, permit, or agreement governs.

Whenever an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant conducts multiple aeronautical activities under one lease, permit or agreement with the City, the Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant must comply with these Minimum Standards for each activity being conducted. If the Minimum Standards for one of the aeronautical activities are inconsistent with the Minimum Standards for another aeronautical activity, the City may apply the Minimum Standards that are most beneficial to Airport operations.

The City may waive or modify any Minimum Standard for the benefit of any governmental agency or when the City determines that a waiver or modification is in the best interest of Airport operations and will not result in unjust discrimination among Aeronautical Commercial Operators, Nonprofits, or Executive Hangar Tenants.

In addition to the requirements set forth in this document, an annual review of existing leases may be conducted for each tenant/lessee at any time to ensure compliance with these Minimum Standards.

1.6 Insurance

All individuals and entities providing commercial aeronautical activities shall protect the public generally, its customers or clients, and the City of San Marcos from any and all unlawful damages, claims, or liability and shall carry comprehensive general liability insurance with a company authorized to do business in the State of Texas with limits of not less than that specified herein; and such policies must be written with the City of San Marcos named as an additional insured; such policies must be approved by the Airport and a certificate of insurance furnished to same. It is further understood that as circumstances may justify in the future, the City may modify these insurance requirements.

All tenants will have three months, or until expiration date of current insurance policy, whichever is greater, to update their insurance coverage in order to comply with these Minimum Standards.

All insurance requirements can be found in Appendix A of this document.

1.7 Personnel

Each Aeronautical Commercial Operator must employ a sufficient number of trained, on-duty personnel to provide for the safe, efficient, and orderly conduct of all its operations utilizing the

San Marcos Regional Airport Minimum Standards

Airport, and for proper compliance with its obligations under its lease, permit, or agreement. Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must control the conduct and demeanor of its personnel, subtenants, invitees, and, upon objection by the City concerning the conduct or demeanor of any such person, the Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must immediately take all lawful steps necessary to remove the cause of the objection.

Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must conduct its operations in a safe, orderly, efficient, and proper manner so as not to unreasonably disturb, endanger, or be offensive to others.

1.8 Common Rights and Privileges

All Aeronautical Commercial Operators, Nonprofits, and Executive Hangar Tenants shall have the right to use common areas of the airport (including runways, taxiways, and roadways).

The City reserves the right to take any actions it considers necessary to protect the aerial approaches to the Airport against obstructions.

The City reserves the right to enter upon any premises at reasonable times for the purpose of making such inspections as it may deem expedient to the proper enforcement of these Minimum Standards.

1.9 Land and Facility Use

The City reserves the right to lease an existing facility or any portion of an existing facility to an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant in order to maximize facility use and business opportunities. A lease of this nature shall be at the City's sole discretion, and shall be considered to meet the minimum facility requirements as specified in these Minimum Standards.

1.10 Compliance

In the event modified or updated Minimum Standards create a situation whereby an existing tenant is not in compliance, the City has the sole right to establish a plan for correcting such non-compliance. The City will work with the tenant to help provide a fair and reasonable solution in a timely manner.

San Marcos Regional Airport Minimum Standards

Section 2 Aeronautical Operators & Tenants

2.1 Authority

Airport Management reserves the right to adjust and/or combine the square footage of building space or area if more than one category of service is provided by one individual, firm, or corporation. Airport Management also reserves the right to make any changes to these Minimum Standards dictated by changing conditions or circumstances. The time of operations shown for each category is considered reasonable but may be adjusted from time to time as agreed on by Airport Management and the Lessee in writing.

2.2 Fixed Base Operator (FBO)

A Fixed Base Operator (FBO) is an Aeronautical Commercial Operator engaged in the sale of products, services, and facilities to aircraft operators including aviation fuels and lubricants; ground services and support; tie-down, hangar, and parking; aircraft maintenance, and aircraft rental/flight training.

A Fixed Base Operator shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with FBOs.
2. Provide at least one type of fuel for aircraft use (100LL or Jet A).
3. Maintain one metered and filter equipped dispenser, fixed or mobile, for dispensing each separate type of fuel offered.
 - For mobile fuel dispensing of each type of fuel offered, lessee shall furnish a separate fuel truck or fuel trailer with a minimum capacity of five hundred (500) gallons each. Mobile dispensing equipment shall be properly maintained, operated, and equipped in accordance with applicable Federal Aviation Administration, Airport Lessor, and National Fire Protection Association recommendations, requirements, and regulations.
 - For fixed fuel dispensing, lessee shall furnish separate dispensing pumps and meters for each type of fuel offered. Such fixed fuel dispensing equipment shall be attended or automated so that fuel is available to the public without discrimination, any unusual requirements, or any advance arrangements of any kind.

San Marcos Regional Airport Minimum Standards

4. Furnish fuel storage tanks with a minimum capacity of ten thousand (10,000) gallons each for either 100LL or Jet A. Fuel storage tanks shall be ground mounted in properly bunkered and approved closures in a location approved by the Airport Lessor and shall comply with applicable uniform building code standards, fire codes and ordinances, and the recommendations of the National Fire Protection Association.
5. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.
6. Provide personnel on duty during normal business hours seven days a week.

2.3 Specialized Aviation Service Operation (SASO)

A Specialized Aviation Service Operation (SASO) is an Aeronautical Commercial Operator that is authorized to offer a single or limited service according to established Minimum Standards. Examples of a SASO include, but are not limited to, the following commercial aeronautical activities: aircraft maintenance, avionics maintenance, avionics sales, flight training, aircraft charter, aircraft sales, aircraft storage, specialized commercial aeronautical operations, and aircraft refurbishing.

A SASO shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with the intended facility use.
2. Ensure that customers, clients, and/or employees have the appropriate and current FAA pilot's license and current Airman Medical Certificate as necessary.
3. Have adequate facilities or arrangements for storing, parking, servicing, and repairing all of its aircraft.
4. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

2.4 Temporary Aeronautical Commercial Activity(TACA)

A Temporary Aeronautical Commercial Activity is a single aeronautical service offered on a temporary basis without an established place of business on the Airport. Examples of a TACA include, but are not limited to, mobile versions of Specialized Aviation Service Operations (SASO). The TACA must be permitted by San Marcos Airport and may be denied access to the Airport. San Marcos Airport may or may not allow this type of servicing to exist on the Airport.

San Marcos Regional Airport Minimum Standards

2.5 Executive Hangar

An Executive Hangar is a small to medium size hangar, owned or leased by an individual or business to store their own aircraft. The uses of an Executive Hangar shall be limited to the storage of wholly owned or leased aircraft and service and maintenance on wholly owned or leased aircraft. Executive Hangar Tenants may not hangar aircraft owned by others nor offer, nor provide, any services whatsoever to others, except however, other's aircraft may be temporarily hangared without compensation.

Executive Hangar Tenants shall:

1. Construct a hangar with a minimum structure size of 50' x 50'.
2. Determine the necessity of certain Development Design Standards, such as restroom facilities and vehicle parking, with the assistance of Airport Management prior to construction.

2.6 Nonprofit

A Nonprofit serves and/or educates the aviation community without the intent to distribute profits or dividends or without the intent to operate as a commercial business. The City may request articles of incorporation filed with the Secretary of State to ascertain nonprofit status.

Due to the variety of nonprofit aviation organizations, minimum leased area, building size, and insurance requirements will be determined on a case-by-case basis.

Section 3 Application Process

3.1 Improvements to Airport Property

Prospective tenants wishing to establish a permanent business on Airport property or to construct a hangar for personal use must first complete a Project Development Questionnaire.

All improvements constructed on Airport property are subject to the requirements of these Minimum Standards, the Airport's Development Design Standards, and all applicable municipal, state, and federal codes. Plans for construction will be approved by the City and Airport Management prior to the commencement of work.

A Project Development Questionnaire packet may be found at Airport Management office.

San Marcos Regional Airport Minimum Standards

3.2 Temporary Aeronautical Commercial Activities (TACA)

Temporary or mobile business activities are permitted after the proper Temporary Permit Application has been completed and approved by Airport Management, all applicable fees have been paid, and proper proof of insurance has been provided.

A Temporary Permit Application may be found in Appendix B of this document or online.

3.3 Additional Requirements

The City or designated representative may require the Applicant to provide additional information to ensure compliance with the City of San Marcos ordinances, Airport Standard Operating Procedures and Regulations, or these Minimum Standards.

Applicant shall satisfy the Airport that they are technically and financially able to perform the services associated with the proposed nature of their business. This may include the responsibility for demonstrating continued financial solvency and business ability by submitting financial statements, credit references, a business plan, and any other data that Airport Management and the City may require from time to time. In each instance, the City shall make the final determination as to qualifications and financial ability of the applicant.

3.4 Action on Application

All applications will be reviewed and acted upon by Airport Management within 30 days from the receipt of the application. Applications may be denied for one more of the following reasons:

1. The applicant does not meet qualifications, standards, and requirements established by these Minimum Standards.
2. The applicant's proposed operations or construction will create a safety hazard on the Airport.
3. The granting of the application will require the expenditure of local funds, labor, or materials on the facilities described in or related to the application, or the operation will result in a financial loss to the Airport.
4. There is no appropriate or adequate available space or building on the Airport to accommodate the entire activity of the applicant.
5. The proposed operation, development, or construction does not comply with the approved Airport Layout Plan (ALP).

San Marcos Regional Airport Minimum Standards

Appendix A: Insurance Requirements

San Marcos Airport Minimum Insurance Requirements

Basic airport operations minimum requirements:

CLASSIFICATION	COMPREHENSIVE AIRPORT LIABILITY	AIRCRAFT LIABILITY	HANGARKEEPERS
FBO	≥ \$2,000,000	≥ \$1,000,000	Value of aircraft in care, custody, or control
SASO	\$1,000,000	≥ \$1,000,000	Value of aircraft in care, custody, or control
TEMPORARY AERONAUTICAL ACTIVITY	\$1,000,000	N/A	N/A
NONPROFIT	\$1,000,000	≥ \$1,000,000	N/A
EXECUTIVE HANGAR	N/A	≥ \$1,000,000	N/A
T-HANGAR/T-SHELTER	N/A	≥ \$1,000,000	N/A
REMARKS	All: CSL with coverage for Bodily Injury & Property Damage		
	All: CSL with coverage for Bodily Injury & Property Damage		

Other minimum requirements based on other miscellaneous activities:

ACTIVITY	COMPREHENSIVE AIRPORT LIABILITY	AIRCRAFT LIABILITY
AIR CHARTER	≥ \$1,000,000	≥ \$2,000,000*
AIR CARGO	\$1,000,000	\$5,000,000
AIRCRAFT SALES	\$1,000,000	\$2,000,000
FUEL STORAGE TANKS	≥ \$1,000,000	N/A
PRODUCT LIABILITY	≥ \$1,000,000	N/A
REMARKS	* Minimums increase based on passenger capacity	

Property Insurance:

All tenants who own or lease property at the Airport are required to carry Property Liability insurance. If the hangar/facility is owned, the lessee must carry insurance equal to the market replacement value of the building and underlying slab. If the hangar/facility is leased, lessee must insure the contents of the facility.

Auto Insurance:

Any vehicle operating in the Aircraft Operations Area (AOA), whether owned, not owned, or hired, must carry Automobile Liability of at least \$500,000.

San Marcos Regional Airport Minimum Standards

Appendix B: Temporary Permit Application

San Marcos Regional Airport Temporary Permit Application

Brief description of temporary business or activity, event, or signage:

Requested permit date(s): _____ to _____

These activities are governed by the Airport minimum standards.

Applicant: _____

Authorized Representative: _____ Title: _____

Address: _____

City, State, Zip: _____

Phone (work): _____ (fax): _____ (emergency): _____

Email Address: _____

The Applicant hereby requests the above action(s) from the city for the privilege of conducting commercial aeronautical activities on the Airport in consideration of this request being granted agrees to the following:

FEE PAYMENT: Based on requested activity and date range.

PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to only the approved business activity listed above for the approved date(s).

INFORMATION CHANGES: The Applicant shall notify Airport Management Office in writing within fifteen (15) days of any change to the information provided on this form.

COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations.

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of copy of this permit.

Authorized Representative's Signature

Date

For office use only:

Application has been APPROVED.

Approved permit use:

Approved permit date(s): _____

Approved by: _____ On: _____

Application has been DENIED.

Reason for denial:

Denied by: _____ On: _____

EXHIBIT B

DESCRIPTION OF SUBLEASED PREMISES

BEING 2.643 AGRES OF LAND, SURVEYED BY LANDESIGN SERVICES, INC., OUT OF THE WILLIAM PETTUS TWO LEAGUE GRANT, IN CALDWELL COUNTY, TEXAS AND BEING A PART OF A CALLED 42.47 ACRE TRACT DESCRIBED IN DEED WITHOUT WARRANTY TO THE CITY OF SAN MARCOS RECORDED IN VOLUME 77, PAGE 628 IN DEED RECORDS OF CALDWELL COUNTY, TEXAS (D.R.C.C.T.) AND RECORDED IN VOLUME 856, PAGE 127 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS (D.R.H.C.T.); AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found 100D nail in the west end of a curve on the south line of said 42.47 acre tract,

THENCE North 87°21'56" East 103.19 feet with the south line of said 42.47 acre tract to a calculated point:

THENCE North 02°24'10" West 24.01 feet through said 42.47 acre tract to a calculated point at the southwest corner of said 2.643 acre tract for the POINT OF BEGINNING;

THENCE North 02°24'10" West 372.56 feet through said 42.47 acre tract to a calculated point at the northwest corner of said 2.643 acre tract;

THENCE North 87°35'50" East 309.00 feet through said 42.47 acre tract to a calculated point at the northeast corner of said 2.643 acre tract from which Airport monument RAB2767 bears North 21°39'05" East 1038.18 feet;

THENCE South 62°24'10" East 372.56 feet through said 42.47 acre tract to a calculated point at the southeast corner of said 2.643 acre tract:

THENCE South 87°35'50" West 309.00 feet through said 42.47 acre tract to the POINT OF BEGINNING.

EXHIBIT C

CONSENT TO SUBLEASE

The undersigned, Prime Landlord, does hereby consent to the foregoing Sublease and expressly reserves all rights and privileges it may have as Landlord under the lease against the original Tenant.

IN WITNESS WHEREOF, the Prime Landlord represents and warrants that the 21st day of May, 2024, the Primary Lease is in full force and effect and there are no defaults existing under the Primary Lease. By execution hereof, Prime Landlord agrees to be bound by all provisions in the foregoing Sublease applicable to Prime Landlord.

PRIME LANDLORD:

CITY OF SAN MARCOS, TEXAS

By: Stephanie Reyes
Name: Stephanie Reyes
Title: City Manager