

**SAN MARCOS REGIONAL AIRPORT  
AIRPORT FACILITY LEASE AGREEMENT**

**THE STATE OF TEXAS**

**COUNTIES OF HAYS AND CALDWELL**

**THIS SAN MARCOS REGIONAL AIRPORT FACILITY LEASE AGREEMENT** ("Lease") is made between the City of San Marcos, a municipal corporation of the State of Texas ("Lessor" OR "City"), acting by and through its Airport Manager Texas Aviation Partners, LLC., a Texas Limited Liability Corporation ("Airport Manager") and Central Texas Wing, Commemorative Air Force, Inc. ("Lessee").

The Lessor is the owner of the San Marcos Regional Airport ("Airport"), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.

This Lease is subject to approval by the Federal Aviation Administration.

**NOW, THEREFORE, for and in consideration of the covenants and obligations set forth herein, the Lessor and Lessee agree as follows:**

**ARTICLE 1: LEASE OF PREMISES; ACCEPTANCE OF EXISTING CONDITIONS;  
COMPLIANCE WITH REGULATIONS**

- 1.01. In consideration of the obligation of the Lessee to pay rent and in consideration of the other terms, covenants and conditions of this Lease, the Lessor leases to the Lessee, and the Lessee leases from the Lessor a hangar and storage building at the San Marcos Regional Airport (collectively referred to herein as the "Leased Premises") being more particularly described as:

Approximately 102,900 square foot tract of land which includes a 33,330 square foot hangar located at 2249 Airport Drive and a 2,178 square foot storage building located at 1841 Airport Drive described in Exhibit "A" of this Lease;

- 1.02. The Lessee acknowledges that, subject to the Lessor's obligations under paragraph 1.04 below: 1) the Lessor makes no representations or warranty regarding the suitability of the Leased Premises for the Lessee's intended purposes, or the presence of environmental, geologic, or other site conditions that may affect the Lessee's use of the Leased Premises; 2) the Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; 3)

the Lessee has inspected and performed all tests and investigations of the Leased Premises for its intended purposes; and 4) the Lessee is accepting the Leased Premises in their present condition, and the Lessee agrees to perform all preparation, repairs, remediation and other activities necessary to use the Leased Premises for the Lessee's intended purposes. Lessor agrees that Lessee and Airport Manager do not represent or guarantee the safety or security of the property stored within the Premises and has no duty of safety or security of any kind under any circumstances.

- 1.03. The Lessee agrees to comply with the SAN MARCOS REGIONAL AIRPORT RULES AND REGULATIONS and the MINIMUM STANDARDS, as they now exist or may be amended during the term of this Lease, and any conflict between this Lease and these procedures, regulations, and standards will be resolved in favor of the procedures, regulations, and standards.
- 1.04. The Lessor covenants and agrees that during the term of this Lease it will operate and maintain the Airport and its facilities as a public airport consistent with and pursuant to the sponsor's assurances given by the Lessor to the United States Government and/or the State of Texas through the Federal Airport Act; and the Lessee agrees that this Lease and the Lessee's rights and privileges hereunder shall be subordinate to the sponsor's assurances.
- 1.05. The Lessor agrees that the Lessee, and its agents, contractors, employees, invitees and licensees, shall have the right of ingress and egress to and from the Leased Premises by means of roadways for automobiles and taxiways for aircraft. Such rights shall be consistent with the rules and regulations with respect to the occupancy and use of airport premises as adopted from time to time by the City of San Marcos and by the Federal Aviation Administration or any other state, federal or local authority.

## **ARTICLE 2: RENT AND TERM OF AGREEMENT**

- 2.01. Rental shall accrue commencing upon execution of this Lease. Rent shall be payable at the place designated in Section 2.04a.
- 2.02. The Primary Term of this Lease will commence on April 1, 2015 (the "Commencement Date") and will extend for a period of five (5) years. The Primary Term of this Lease shall expire on March 31, 2020.
- 2.03. Any extension shall continue under the terms of this Lease, or on such changed terms, conditions, and rental rate as Lessor may give to Lessee in accordance with Section 3.01 of this Lease herein. The Term may not be extended if: (1) the Lease or Lessee's right to possession of the Premises is terminated, (2) Lessee assigns its interest in the Lease or any portion of the Premises, (3) Lessee fails to timely exercise the extension, or (4) Lessee is in default under the Lease at the time Lessee seeks to extend the Term.



- 2.04. The Lessee agrees to pay to the Lessor a fixed rental in the sum of \$1.00 per year for the entire square footage of the Leased Premises for a period of five (5) years.

As further consideration, the Lessee will operate an exhibition hall of aviation and military memorabilia and aircraft as well as a gift shop on the Leased Premises. A minimum donation of \$2.00 per person will be requested for entrance to the exhibition hall. One-half (50%) of the gross proceeds collected by Lessee from its operation of the Aviation Exhibit Hall must be paid to Lessor quarterly. As additional consideration for this Agreement, Lessee will pay to Lessor 15% of the gross revenue collected from the gift shop after sales tax has been deducted. Gross revenue includes all revenue generated at the airport by Lessee except generated from purchases by members of the Central Texas Wing of the Commemorative Air Force. Lessee will pay this percentage to Lessor quarterly.

- a. Method of Payment: Rent is payable to Airport Manager by check. Airport Manager reserves the right to require the form of payment of rent to be by check, certified or cashier's check, or money order. Cash is not an acceptable form of payment without the Airport Manager's prior written consent. Rent may be paid physically at 4400 Airport Highway 21 or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666.

- 2.04. The monthly rent payment and gross revenue payments shall be due on or before the first day of the month. A payment shall be considered past due if, after the fifth (5<sup>th</sup>) day of January, April, July, and October of each year in which the payment is due, Lessor has not received full payment during normal working hours at San Marcos Regional Airport. Payments submitted via United States Postal Service or any similar type messenger service are not considered paid on the date posted by said service.

- 2.05. Late Charges: Lessee's failure to pay sums due hereunder promptly may cause Lessee or Airport Manager to incur unanticipated costs. The exact amount of such costs is impractical or difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges. Therefore, if Airport Manager does not receive a rent payment in the full amount at the designated place of payment by 5:00 p.m. on the 5<sup>th</sup> day of the month in which it is due, Lessee will pay Airport Manager for each late payment:

- a. An initial late charge equal to \$25.00; and
- b. Additional late charges of \$10.00 per day thereafter until rent and late charges are paid in full. Additional late charges may not exceed more than 15 days in any one month.
- c. Provided, however, that if the foregoing late charge would be deemed in violation of the law, such amount shall be equal to an amount determined by multiplying the amount of monthly rent times the highest rate of interest per annum allowed under applicable law. The parties agree that late charge set forth herein represents a fair and reasonable estimate of the costs Lessee will incur by reason of such late payment.

- 2.06. Returned Checks: In addition to the foregoing late charges, Lessee shall reimburse Airport Manager or Lessor for each check Lessee tenders to Airport Manager that is returned or not honored by the institution on which it is drawn for any reason. Lessee must make any returned check good by paying such amount(s) plus any associated charges in certified funds. Any sums required to be paid hereunder and not paid when due, including attorneys' fees, shall bear interest, until paid, at the lesser of the following rates: (i) 18% per annum; or (ii) the highest rate allowed under applicable law. Interest shall accrue on monthly rental payments and late charges from the fifth day of each month until such payments are received by Airport Manager and, on returned check charges, until such returned check is made good. All agreements between Lessor and Lessee, whether herein contained or in any other instrument or agreement, whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever shall any acceleration of rents due, late charges, returned check charges, interest charges, or any other charges whatsoever, be deemed as interest charged, contracted for or received in excess of the amount permitted under applicable law, it particularly being the intention of the parties hereto to conform strictly to the laws of the State of Texas. Any portion of such charges which are deemed as interest in excess of the amount permitted under applicable law, as of the date such charge is due, shall be applied to a reduction of the rental payment next coming due hereunder, or, if such portion of charges exceeds the rental payment next coming due hereunder, such amount shall be refunded to Lessee. If a specific due date for any monetary obligation owed by Lessee to Lessor is not provided for in this Agreement, the due date for such obligation shall be that date which is ten (10) days after Lessor delivers a written request for payment to Lessee.
- 2.07. Except with the Lessor's prior written consent, Lessee will not be released from this Agreement for any reason – including but not limited to voluntary or involuntary job transfer, change of marital status, loss of co-tenant, loss of employment, bad health, or the sale or disposition of the Aircraft. **Lessee is obligated to the terms and conditions of this Agreement, including the payment of rent, for the entire Primary Term, from the Commencement Date through the Expiration Date, and for each month thereafter (if any) until this Agreement is terminated.**
- 2.08. In the event Lessee holds over after the expiration of this Lease, such hold over status will create a month-to-month tenancy. In this event, Lessee agrees to pay the rental amount set for the premises at the date of expiration of this Lease plus fifty (50%) percent, which is the holdover month-to-month tenancy rate. Said holdover tenancy will be subject to all other terms and conditions of this Lease.
- 2.09. The Lessee agrees to pay to the Lessor a monthly fee for the use of tie-down or any other Airport Facilities for aircraft, motor vehicles or any other equipment or items which are outside of the Leased Premises and under the custody and control of the Lessee or its employees, agents or customers. The Airport Facilities will be charged at the then-established standard rental or use fee prescribed by the Lessor.
- 2.10. The Lessee shall provide access to the Lessor, upon reasonable notice, to all business records necessary to verify the percentage of gross receipts rental due under this Lease. If this Lease



commences or terminates on a day other than the first (1<sup>st</sup>) day of a month, all monthly rents and fees payable by the Lessee for the first (1<sup>st</sup>) month under this Lease shall be prorated accordingly.

- 2.11. If the Lessee fails to pay any rent or any other sum payable to the Lessor under the terms of this Lease when due, then interest at the maximum legal rate in the State of Texas shall accrue from the date on which the maximum late charges described in section 2.05 have been incurred.
- 2.12. Lessee shall make available to City or Airport Manager within ten business days of any such request such books and records necessary, as determined by the City, to verify amounts payable under this Article.

### **ARTICLE 3: ADJUSTMENT IN RENT, CHARGES, AND FEES OR OTHER TERMS TO THIS AGREEMENT**

- 3.01. Except as otherwise provided for herein, during the Primary Term no change in any term or condition of this Agreement will be effective, unless Lessor and Lessee each sign and deliver a written instrument evidencing the change. Following the Expiration Date of the Primary Term, Lessor may in its sole discretion make changes to this Agreement (including, without limitation, changes regarding the amount of rent) without Lessee's consent or agreement; provided, however, that such changes shall not be effective until the first day of the month next following the expiration of thirty (30) days after the date Lessor gives notice of such changes to Lessee.

### **ARTICLE 4: USE AND CARE OF PREMISES**

- 4.01. During the terms of this Lease or any renewal thereof, the Premises are to be used by Lessee exclusively for aviation activities. The Lessee shall use the Leased Premises in good faith continuously for this purpose throughout the term of this Lease. The Lessee will use good faith efforts to ensure that the Leased Premises are occupied through the term of this Lease. Permitted aviation activities include but are not limited to the following:
  - a. The storage and maintenance of vintage and/or unique aircraft;
  - b. Operation of an Aviation Exhibition hall;
  - c. Operation of a gift shop;
  - d. Conducting non-commercial meetings and social events; and
  - e. Operation of a fraternal organization.

The Leased Premises may not be used for any other purpose without the prior written consent of Lessor. Any commercial use of the Leased Premises not expressly authorized under the terms of this Lease shall be negotiated under separate contract with Lessor. Lessee shall not at any time leave the Leased Premises vacant, but shall in good faith continuously, throughout the term of this Lease, conduct on the Leased Premises the type of business described, and shall keep the Leased Premises open to the public for business during reasonable business hours as established by the Lessee in light of good business practices.

- 4.02. The Lessee shall not place or keep anything on the Leased Premises or use the Leased Premises for any purpose which invalidates any insurance policy carried on the Leased Premises without the Lessor's prior written consent. The Lessee agrees that the risk of loss and damage for all property kept, stored or maintained by it within the Leased Premises shall be the Lessee's.
- 4.03. The 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, or violates any statute, ordinance, rule or regulation that applies to the Leased Premises.
- 4.04. The Lessee shall keep the Leased Premises, including ramps, signs, sidewalks, service ways, and loading areas adjacent to the Leased Premises, neat, clean, and free from dirt and trash at all times. The Lessee shall provide containers for all trash on the Leased Premises, and shall arrange for the regular removal of the trash at the Lessee's expense. The Lessee will provide a dumpster or dumpsters for the Leased Premises for use by Lessee and its agents, contractors, employees, invitees, and licensees.
- 4.05. The Lessee shall store all equipment, materials and supplies within the confines of the building located on the Leased Premises. Outside storage is specifically prohibited without the advance written consent of the Lessor.
- 4.06. The Lessor agrees that the Lessee shall have access to the runways, taxiways and ramps at the Airport to the same extent as other Airport users.

#### **ARTICLE 5: MAINTENANCE AND REPAIR OF PREMISES**

- 5.01. The Lessee shall maintain the Leased Premises in good, clean condition and shall make all repairs to structures and improvements on the premises needed to maintain their function, safety and appearance. The Lessee shall comply with all governmental laws, ordinances, and regulations that apply to the Leased Premises, at its sole cost and expense. Lessee shall remove unauthorized additions or modifications and maintain the Leased Premises, with the exception of normal wear and tear and gaining consistent with normal usage and passage of time, and will repair damages to any part of the Leased Premises caused by the actions or by the negligence or misconduct of Lessee, its agents, servants, employees, contractors, subcontractors, licensees, patrons, invitees, or trespassers.
- 5.02. Lessor and Airport Manager shall have the right and privilege, through its officers, agents, servants, and employees, to make inspections of the Leased Premises, and thereafter to make recommendations to Lessee of any repairs that, in Lessor's opinion, are necessary to be performed upon the Premises in accordance with the foregoing. If the Lessee fails to make any required repairs within thirty (30) days after written notice from the Lessor, the Lessor may make the repairs without liability to the Lessee for any loss or damage which may result to the Lessee by reason of the repairs, and the Lessee shall pay to the Lessor the full cost of the repairs within



thirty (30) days of the Lessor's issuance of a written invoice to the Lessee. At the expiration of this Lease, the Lessee shall surrender the Leased Premises in good condition, reasonable wear and tear excepted.

- 5.03. The Lessor will use Airport revenue funds to maintain the existing runways, taxiways, and entrance roads on the Airport. The Lessor shall not be obligated to use general, operating, or bond funds for this maintenance.
- 5.04. Lessee, at Lessee's sole cost and expense, shall be responsible for obtaining all items necessary or desirable for the use and operation of the Premises, including, without limitation, items such as light bulbs and bathroom supplies, if applicable. Lessee agrees to provide Lessee's own lock and to lock the Premises immediately after execution of this Lease. Lessee agrees to keep the Premises locked when Lessee is not on the Premises. If the Premises are found unlocked by Lessor or Airport Manager, Lessor may overlock the Premises until Lessee's lock is replaced and Lessee notifies Lessor that the Premises have been locked by Lessee. At all times during the term of this Lease, Lessee shall provide Lessor with a currently operative key or any combination to locks placed on hangar by Lessee.

#### **ARTICLE 6: CONSTRUCTION, ALTERATIONS, AND FIXTURES**

- 6.01. The Lessee shall not make any alterations, additions, or improvements to the Leased Premises without the prior written consent of Lessor. **All buildings, structures, improvements, alterations, additions, and fixtures which may be made or installed upon the Leased Premises shall become the property of the Lessor upon the expiration of the term of this Lease unless the Lessor requests their removal, in which event the Lessee shall remove them and restore the Leased Premises at the Lessee's expense.**
- 6.02. If Lessee chooses to make discretionary improvements or any modifications mandated by County or Municipal code, state law, or federal law, all plans and specifications must receive the written, prior approval of Lessor, which approval shall not be unreasonably withheld. All discretionary improvements, and/or modifications mandated by County or municipal Code, state law, or federal law and any other facilities (including landscaping) shall be constructed in accordance with plans and specifications approved by the Airport Manager, and shall be subject to inspection. No construction, modification or installation may be undertaken until written approval is obtained. All plans, specifications and work shall conform to all local, state and federal rules, regulations, and laws, now in force or hereafter prescribed. Notwithstanding the permissive nature of Lessee's discretionary improvements, and/or modifications, Lessee agrees to make all discretionary improvements, modifications, and/or alterations necessary to make the premises comply with all applicable provisions of the Americans With Disabilities Act of 1990, as amended; any modifications mandated by governmental Codes, state law, or federal law which Lessee agrees to perform, whether paid for in full or in part by Lessee, shall also conform with said Act.

- 6.03. The Lessee shall ensure that no lien or similar obligation is imposed upon the Leased Premises for any alteration, repair, labor performed, or materials furnished to the Leased Premises, and the Lessee shall immediately discharge any lien or charge after the lien occurs or charges become due and payable. In the event the Lessee disputes the lien or obligation, however, the Lessee shall have the right to promptly pursue settlement or litigation without paying the claim until the claim becomes final and subject to no further appeal by the Lessee. **The Lessee shall hold harmless, indemnify and defend the Lessor and Airport Manager, its officers, agents, and employees from and against any claims, demands or suits related to such liens or obligations.**
- 6.04. The Lessee shall not do any of the following without the Lessor's prior written consent, which consent will not be unreasonably withheld: 1) install any exterior lighting, shades or awnings, or any exterior decorations or paintings on the Facilities; or 2) erect, install or change any signs, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Facilities.
- 6.05. Signs: No signs, posters, or other similar devices shall be placed on the exterior of the hangar or any portion of the Leased Premises (excluding the interior of the hangar) without the prior written consent of Lessor or Airport Manager. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all such 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 Lessor for any damages, injury or repairs resulting from the installation, maintenance or 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. Any such sign, poster, or other similar device shall be removed from the Leased Premises immediately upon receipt of instructions for the removal of same from Lessor or Airport Manager.

#### **ARTICLE 7: UTILITIES AND TAXES**

- 7.01. The Lessee shall promptly pay all charges for electricity, water, telephone service, and other utilities furnished to the Leased Premises. Lessee further covenants and agrees that Lessee will pay all costs and expenses for initial service and any extension, installation, maintenance or repair of any and all utilities serving the Leased Premises. Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessee's property. All heating equipment and electricity operated equipment which may be used on the Leased Premises shall be of such kind and character as to comply with any applicable mechanical, fire, and building codes.
- 7.02. The Lessor shall not be liable for any interruption or impairment whatsoever in utility services to the Leased Premises.



- 7.03. 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 the Leased Premises, the equipment, inventory, personal property, including but not limited to aircraft used for commercial purposes. Lessee agrees to pay all such taxes and assessments when due and to promptly pay any invoices for taxes and assessments forwarded to it by Lessor.
- 7.04. The Lessee shall also pay when due all sales, excise, income and other taxes levied upon its business operations on the Leased Premises.

#### **ARTICLE 8: INSURANCE AND INDEMNITY**

- 8.01. Liability Insurance: The Lessee shall procure and maintain insurance in full force at its expense as set forth in the Minimum Standards, covering claims which arise out of or in connection with the Lessee's use or maintenance of the Leased Premises. This insurance shall be written so that the Lessor must be notified in writing at least thirty (30) days in advance of cancellation, restrictive amendment or non-renewal. The Lessee shall file certificates of insurance with the Lessor upon execution of this Lease and annually during the Lease term. All insurance required under this paragraph shall be primary over any other insurance coverage the Lessor may have, and shall be written with the Lessor and Airport Manager as an additional insured. In any event, the Lessee is fully responsible for all losses arising out of, resulting from or connected with operations under this Lease whether or not the losses are covered by insurance. The Lessor's acceptance of insurance certificates that do not comply with these requirements will not release the Lessee from compliance with these provisions.
- 8.02. Casualty Coverage: The Lessee shall maintain in full force and effect during the term of this Lease a policy of insurance on the Texas Standard form of fire and extended coverage for all contents, goods, stock, and any personal property which is or may be situated upon the Leased Premises.
- 8.03. **Indemnity and Hold Harmless**
- a. **LESSEE AGREES TO HOLD HARMLESS, INDEMNIFY, AND DEFEND THE LESSOR AND AIRPORT MANAGER AND THEIR OFFICERS, AGENTS, OWNERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND ACTIONS BY THIRD PARTIES FOR LOSS OF LIFE, PERSONAL INJURY, OR PROPERTY DAMAGE ARISING IN CONNECTION WITH THE USE OF LESSEE'S PREMISES OR ANY AREAS OF THE AIRPORT BY LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SERVANTS, INVITEES, OR LICENSEES.**
  - b. **LESSEE SHALL USE THE AIRPORT AND USE, OCCUPY, AND STORE PROPERTY ON ITS PREMISES AND ON ANY AREAS OF THE AIRPORT AT ITS OWN RISK, AND LESSEE AGREES TO HOLD HARMLESS AND RELEASE LESSOR AND AIRPORT MANAGER AND THEIR OFFICERS, AGENTS,**

OWNERS, AND EMPLOYEES FROM ALL CLAIMS, SUITS, AND ACTIONS BY LESSEE OR ITS OFFICERS, AGENTS, OWNERS, EMPLOYEES, SERVANTS, INVITEES, OR LICENSEES FOR LOSS OF LIFE, PERSONAL INJURY, OR PROPERTY DAMAGE OCCURRING ON LESSEE'S PREMISES OR ON ANY AREAS OF THE AIRPORT, INCLUDING THOSE RESULTING FROM THE SOLE NEGLIGENCE OR OTHER ACTIONABLE CONDUCT OF THE LESSOR OR AIRPORT MANAGER, THEIR OFFICERS, AGENTS, OWNERS, OR EMPLOYEES, OR FROM ACTS OR OMISSIONS OF THIRD PERSONS.

- c. LESSEE SHALL GIVE PROMPT NOTICE TO LESSOR AND AIRPORT MANAGER OF ANY ACCIDENT ON ITS PREMISES OR ANY AREAS OF THE AIRPORT, AND OF ANY DEFECTS IN THE RUNWAYS, TAXIWAYS, LIGHTING SYSTEMS, OR OTHER FACILITIES AT THE AIRPORT OF WHICH THE LESSEE IS AWARE.
- d. IN CASE LESSOR OR AIRPORT MANAGER, OR ANY OF THEIR OFFICERS, AGENTS, OWNERS, OR EMPLOYEES ARE MADE A PARTY TO ANY LITIGATION COMMENCED BY OR AGAINST LESSEE THAT IS COVERED BY THIS SECTION, THEN LESSEE SHALL HOLD LESSOR AND AIRPORT MANAGER, AND THEIR OFFICERS, AGENTS, OWNERS, AND EMPLOYEES HARMLESS FROM, AND LESSEE SHALL PAY, ALL COSTS AND EXPENSES RELATED TO THE LITIGATION, INCLUDING THE FEES OF ATTORNEYS AND EXPERT WITNESSES.
- e. LESSEE ASSUMES ALL RESPONSIBILITY AND AGREES TO PAY LESSOR AND AIRPORT MANAGER FOR ANY AND ALL INJURY OR DAMAGE TO LESSOR'S OR AIRPORT MANAGER'S PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF LESSEE, ITS OFFICERS, OWNERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES.
- f. NEITHER LESSOR NOR AIRPORT MANAGER GUARANTEES POLICE PROTECTION OR SECURITY TO LESSEE OR ITS PROPERTY, AND LESSOR AND AIRPORT MANAGER SHALL NOT BE RESPONSIBLE FOR INJURY TO ANY PERSON ON THE LESSEE'S PREMISES OR FOR HARM TO ANY PROPERTY WHICH BELONGS TO LESSEE, ITS OFFICERS, OWNERS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES OR PATRONS, OR WHICH MAY BE STOLEN, DESTROYED OR IN ANY WAY DAMAGED; AND LESSEE HEREBY INDEMNIFIES AND HOLDS HARMLESS LESSOR AND AIRPORT MANAGER, THEIR OFFICERS, OWNERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUCH CLAIMS.



## **ARTICLE 9: CONDEMNATION**

- 9.01. Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the proceeding.
- 9.02. Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the remaining portion unsuitable for the business of the Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the premises unsuitable for the business of the Lessee, then this Lease shall continue in effect, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.
- 9.03. If this Lease is terminated as provided in this section, rent shall be paid up to the date that possession is taken by the condemning authority, and the Lessor shall make an equitable refund of any rent paid by the Lessee in advance.
- 9.04. Division of Award: The Lessor and the Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. Without limiting the generality of the preceding sentence, the Lessor has no interest in any award made to Lessee for Lessee's moving and relocation expenses or for the loss of Lessee's leasehold interest, fixtures and other tangible personal property if a separate award for such items is made to Lessee. The termination of this Lease under this Paragraph shall not affect the rights of the respective parties to such awards.

## **ARTICLE 10: DAMAGE BY CASUALTY**

- 10.01. The Lessee shall give immediate verbal notice, and prompt written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.
- 10.02. If the Premises are totally destroyed by fire, tornado, or other casualty not the fault (in whole or in part) of Lessee or any person in or about the Premises with the express or implied consent of Lessee, or if not totally destroyed, if it should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within 180 working days after the date of Lessor's receipt of insurance proceeds in connection with the casualty, this Lease shall terminate, and rent shall be abated for the unexpired portion of this Agreement, effective as of the date of written notification.
- 10.03. If the Premises are damaged by fire, tornado, or other casualty not the fault of Lessee or any person in or about the Premises with the express or implied consent of Lessee, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 180 days after the date of Lessor's receipt of insurance proceeds in connection with the casualty, this Lease shall not terminate except as provided in subsection below:
- a. If such damage to the Premises occurs during the Term hereof, Lessor may, at its sole cost and in its sole discretion, proceed to rebuild or repair the Premises to substantially the

condition in which they existed upon commencement of this Lease. Lessee shall, at its sole cost and risk, be responsible for rebuilding or repairing any damaged improvements made by Lessee. If the Premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be adjusted equitably. In the event that Lessor should elect not to so rebuild or repair the Premises or fails to complete such rebuilding or repairs within 180 working days after the date of Lessor's receipt of insurance proceeds in connection with the casualty, Lessor or Lessee may terminate this Lease by written notification. Upon such notification, all rights and obligations under this Lease shall cease.

- 10.04. If the destruction (in whole or in part) of the Premises is the result of or caused by (in whole or in part) any act or omission of Lessee, or any person in or about the Premises with the express or implied consent of Lessee (including, without limitation, Lessee's representatives, agents, invitees, and contractors), Lessor may elect (at its sole option and in its sole discretion) to rebuild the Premises and the building or structure of which the Premises may be a part. If Lessor so elects to rebuild, Lessee shall pay Lessor the difference between the actual cost of rebuilding and any insurance proceeds received by Lessor as a result of the casualty destruction. Lessee's obligations under this paragraph shall survive the termination of this Lease.

#### **ARTICLE 11: ASSIGNMENT AND SUBLETTING**

- 11.01. The Lessee shall not assign or sublet all or part of its interest in this Lease without the advance written consent of the Lessor. Consent by the Lessor to one (1) or more assignments or sublettings shall not operate as a waiver of the Lessor's rights as to any subsequent assignments or sublettings. Notwithstanding subletting, the Lessee shall remain fully responsible and liable for the payment of the rent and for compliance with all of its other obligations under this Lease.
- 11.02. In the event of an assignment by the Lessor of all of its interest in this Lease to a person, firm or corporation that assumes all of the Lessor's obligations, the Lessee agrees to look solely to the responsibility of the successor-in-interest of the Lessor. Any security given by the Lessee to secure performance of its obligations may be assigned and transferred by the Lessor to its successor-in-interest, and the Lessor shall be released of any further obligations under this Lease.

#### **ARTICLE 12: EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

- 12.01. The following events shall be events of default by the Lessee under this Lease:
- a. The Lessee fails to pay when due any rental or any other sums or charges due under this Lease, and such failure continues for seven (7) days following written notice thereof (provided, however, that Lessor shall be obligated to give only two such notices in any calendar year, and after such two notices, Lessor will no longer be obligated to give any other notice under this Section within such calendar year).



- b. The Lessee fails to comply with any other term, provision, or covenant of this Lease, and does not cure the failure within thirty (30) days after written notice to the Lessee. However, if Lessee's failure to comply cannot reasonably be cured within thirty (30) days, Lessee shall be allowed additional time (not to exceed sixty (60) days) as is reasonably necessary to cure the failure so long as Lessee commences to cure the failure within fifteen (15) days and Lessee diligently pursues a course of action that will cure the failure. For any subsequent default by the Lessee for the same or any other reason, the Lessor may terminate the Lease if that subsequent default continues for more than three (3) days after notice of the subsequent default.
  - c. The Lessee becomes insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.
  - d. The Lessee commences, or another party commences against the Lessee, proceedings in bankruptcy, for reorganization, or for the readjustment or arrangement of its debts under the bankruptcy laws of the United States or under any other law.
  - e. A receiver or trustee is appointed for all or substantially all of the assets of the Lessee.
  - f. The Lessee abandons or vacates all or any substantial portion of the Leased Premises for 120 consecutive days.
  - g. Lessee defaults on any mortgage advanced by a lender to finance the Facilities, improvements, or fixtures for the Leased Premises
- 12.02. The acceptance by the Lessor of the Lessee's monthly payments subsequent to the occurrence of any event of default shall be considered to be compensation for Lessee's use and occupancy of the Leased Premises, and shall in no way constitute a waiver by the Lessor of its right to exercise any remedy provided for any event of default.
- 12.03. Upon the occurrence of any of the events of default, the Lessor shall have the option to pursue any one (1) or more of the following remedies without any notice or demand whatsoever:
- a. Terminate this Lease. In this event the Lessee shall immediately surrender the Leased Premises to the Lessor, and if the Lessee fails to do so, the Lessor may enter and take possession of the Leased Premises and remove the Lessee and any other person occupying the premises, by force if necessary, without prejudice to any other remedy it may have for possession or arrearages in rent, and without being liable for any resulting damages. The Lessee agrees to pay to the Lessor the amount of all resulting costs, losses, and damages incurred by the Lessor within thirty (30) days of the Lessor's issuance of a statement to the Lessee. If Lessor terminates this Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all real property improvements and the Facilities on the Leased Premises and such shall become the property of the Lessor.

- b. Relet the Leased Premises and receive the rent. The Lessee agrees to pay to the Lessor any resulting costs, and any deficiency that may arise by reason of reletting, within thirty (30) days of the Lessor's issuance of a statement to the Lessee.
  - c. Enter the Leased Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever the Lessee is obligated to do under the terms of this Lease. The Lessee agrees to reimburse the Lessor for any expenses the Lessor incurs in effecting compliance with the Lessee's obligations under this Lease, within thirty (30) days of the Lessor's issuance of a statement for the expenses to the Lessee. The Lessor and its officers, agents and employees shall not be liable for any damages or injuries that result to the Lessee from any action taken under this paragraph, whether caused by the negligence of the Lessor or otherwise.
- 12.04. The Lessor's pursuit of any of these remedies will not preclude pursuit of any other remedies provided under this Lease or by law, nor will pursuit of any remedy constitute a waiver of any rent due to the Lessor or of any damages caused to the lessor by any violation of this lease by the Lessee. Any failure by the Lessor to enforce a remedy upon an event of default shall not be deemed to constitute a waiver of the default or of the Lessor's right to insist on strict compliance with this Lease.
- 12.05. If it becomes necessary for the Lessor to employ an attorney to enforce or defend any of the Lessor's rights or remedies because of any breach or default by the Lessee under this Lease, the Lessee agrees to pay all reasonable attorney's fees incurred by the Lessor, within thirty (30) days of the Lessor's issuance of a statement for the fees to the Lessee.

#### **ARTICLE 13: LESSOR'S LIEN**

- 13.01. The Lessee grants to the Lessor a valid first security interest upon all of the Lessee's goods, chattels, furniture, trade fixtures, inventory and other property upon the Leased Premises to secure all rents and other sums due or to become due to the Lessor. The Lessee expressly waives all exemption laws in favor of this security interest; and it is agreed that this express security interest shall be in addition to, and not as a waiver of or substitute for any statutory or other liens of the Lessor. In connection with this security interest, it is agreed that in the event of a breach or default by the Lessee, the Lessor may exercise all rights and remedies provided to a secured party after default under the Uniform Commercial Code ("UCC"), as adopted and emended in Texas, with respect to all such property, including, without limitation, the right to take and retain possession of the property and to sell it at public or private sale, or to use it in any other manner authorized or provided in the UCC. Upon request by the Lessor, the Lessee agrees to execute and deliver UCC Financing Statements to the Lessor from time to time as the Lessor deems necessary to perfect the Lessor's security interest in the property, and proceeds thereof under the provisions of the UCC.



#### **ARTICLE 14: LESSEE'S MORTGAGE OF LEASEHOLD INTEREST**

- 14.01. The Lessor grants permission to the Lessee for the mortgaging of the Lessee's leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. The Lessee will provide written notification to the Lessor of each such mortgage within Ten (10) days after it is executed. The 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 the Lessee. The mortgaging by the Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of the Lessor. **In no event, however, shall any lien be asserted or foreclosed against the underlying fee simple interest of Lessor in the Leased Premises.**

#### **ARTICLE 15: OPERATION OF THE AIRPORT AND LESSOR'S ACCESS TO LEASED PREMISES**

- 15.01 This Lease, and any interest granted to any lender or other third party by Lessee, shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States Government or the State of Texas, which relates to the operation or maintenance of the Airport and is required as a condition for the expenditure of federal funds for the development, maintenance or repair of Airport infrastructure. In the event that any such existing or future agreement directly causes a material restriction, impairment or interference with Lessee's primary operations on the Leased Premises ("**Limitation**") for a period of less than seven (7) calendar days, this Lease shall continue in full force and effect. If the Limitation lasts more than seven (7) calendar days, Lessee and Lessor shall negotiate in good faith to resolve or mitigate the effect of the Limitation. If Lessee and Lessor are in good faith unable to resolve or mitigate the effect of the Limitation, and the Limitation lasts between seven (7) and one hundred eighty (180) days, then for such period (i) Lessee may suspend the payment of any rent due hereunder, but only if Lessee first provides adequate proof to Lessor that the Limitation has directly caused Lessee a material loss in revenue; (ii) subject to ordinary wear and tear, Lessor shall maintain and preserve the Leased Premises and its improvements in the same condition as they existed on the date such Limitation commenced; and (iii) the term of this Lease shall be extended, at Lessee's option, for a period equal to the duration of such Limitation. If the Limitation lasts more than one hundred eighty (180) days, then (i) Lessor and Lessee may, but shall not be required to, (a) further adjust the payment of rent and other fees or charges, (b) renegotiate maintenance responsibilities and (c) extend the term of this Lease, or (ii) Lessee may terminate this Lease upon thirty (30) days' written notice to Lessor.
- 15.02 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. The Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited

by Federal Aviation Administration Regulations. The Lessee further agrees to comply with any nondiscrimination enforcement procedures required by the Federal government.

- 15.03 The Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions; and to limit the Lessee from erecting any building or structure on the Airport or on the Leased Premises that would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 15.04 The Lessor reserves the right to further develop the Airport as it sees fit regardless of the desires of the Lessee, and without any hindrance or interference from the Lessee. The Lessor expressly reserves the right to grant leases and privileges to other persons with respect to the Airport, even though the purposes for which these leases are given are the same and duplicate those contained in this Lease.
- 15.05 This Lease shall be subject to and in conformance with all City, State and Federal ordinances, statutes and regulations.
- 15.06 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 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 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 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 amendments to this regulation which may hereafter be enacted.

**IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY LESSEE, ITS PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST OR ASSIGNS, USER AGREES TO INDEMNIFY LESSOR AND AIRPORT MANAGER AND THEIR OFFICERS, OWNERS, AGENTS, SERVANTS, AND EMPLOYEES AND HOLD THEM HARMLESS FROM ANY LOSS OR LIABILITY.**

- 15.07 During the time of war or national emergency, the Lessor shall have the right to Lease all or part of the landing areas at the Airport to the Federal government for military use, and, if a Lease is executed, the provisions of this Lease shall be suspended to the extent they are inconsistent with the provisions of the Lease to the government.
- 15.08 Lessor or Airport Manager, through their officers, agents, servants, or employees, shall have the full reasonable right to enter the Leased Premises during normal business hours, except in the



event of an emergency, for the purposes of doing any and all things Lessor is authorized or required to do under the terms of this Lease, or for the purpose of performing proper inspections under Health, Mechanical, Building, Electrical, Plumbing, and Fire Codes, or other health, safety, and general welfare regulations. The Lessor shall not be liable to the Lessee for any expense, loss, or damage from any such entry upon the Leased Premises. Lessor shall provide Lessee with advance notice of inspection as is reasonable under the circumstance.

15.09 The right to furnish aeronautical services to the public is granted to the Lessee subject to the Lessee agreeing:

- a. To furnish the services on a fair, equal and nondiscriminatory basis to all users, and
- b. To charge fair, reasonable and nondiscriminatory discounts, rebates, or similar price reductions to volume purchasers.

#### **ARTICLE 16: MISCELLANEOUS**

- 16.01. 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.
- 16.02. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, this Lease will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.
- 16.03. 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 upon their respective successors in interest and legal representatives, unless otherwise expressly provided in this Lease.
- 16.04. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.
- 16.05. One (1) or more waivers of any covenant, term or condition of this Lease by either party shall not be deemed as a waiver by that party as to any subsequent similar act or omission.
- 16.06. Whenever a period of time is prescribed for action to be taken by the 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 the Lessor or Lessee shall be excluded from the computation of any such period of time.
- 16.07. The Lessor further covenants that the Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as the Lessee fully complies with this Lease. This Lease is subject, however, to the right of the Federal government to use and control the Airport during periods of national emergency; and is also subject to the right of the Federal government to take all or a portion of the Airport for federal activities.

- 16.08. 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 only that of Lessor and Lessee.
- 16.09. The Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease and the **Lessee agrees to indemnify and hold the Lessor harmless from and against any and all costs, expense or liability for commissions or other compensation and charges claimed by any other broker or agent with respect to this Lease.**
- 16.10. 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.
- 16.11. 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 Manager.
- 16.12. Wherever any notice is required or permitted under this Lease, the notice shall be in writing and sent by certified mail, return receipt requested, addressed to the respective party at the following addresses. The Lessee shall provide the Lessor and Airport Manager with advance written notice of any change in its address.

Lessor:  
City of San Marcos  
630 East Hopkins Street  
San Marcos, Texas 78666

Lessee:  
Central Texas Wing,  
Commemorative Air Force, Inc.  
1841 Airport Dr., Bldg. #2249  
San Marcos, TX 78666

Airport Manager:  
Texas Aviation Partners  
1807 Airport Drive Suite 200  
San Marcos, TX 78666

#### **ARTICLE 17: Airport Manager**

- 17.01. All parties agree that City may choose to exercise any of its powers under this Lease through its duly-appointed Airport Manager. The currently-appointed Airport Manager is Texas Aviation Partners, LLC with a physical address of 4400 HWY 21, San Marcos, Texas 78666 and a mailing address as indicated above.



EXECUTED BY THE CITY OF SAN MARCOS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, proved to me through \_\_\_\_\_ to be the person whose name is subscribed to this instrument.

Notary Seal

\_\_\_\_\_  
Notary Public – State of Texas

EXECUTED BY MANAGER THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, proved to me through \_\_\_\_\_ to be the person whose name is subscribed to this instrument.

Notary Seal

\_\_\_\_\_  
Notary Public – State of Texas

EXECUTED BY TENANT THIS 3<sup>rd</sup> DAY OF April, 20 15.

TENANT OF SPACE: CAR

BY: Ralph P. Black Jr

Printed Name: Ralph P. Black, Jr

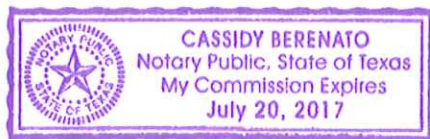
STATE OF TEXAS

COUNTY OF Caldwell

This instrument was acknowledged before me on this 3 day of April, 20 15, by Ralph Black, proved to me through personally known to be the person whose name is subscribed to this instrument.

Notary Seal

[Signature]  
Notary Public – State of Texas





Commemorative Air Force (CAF)  
hangar, ramp area and storage building



EXHIBIT A