

**CITY OF SAN MARCOS, TEXAS  
SAN MARCOS REGIONAL AIRPORT**

**AIRPORT FACILITY LEASE AGREEMENT  
FOR COMMERCIAL USE**

**THIS AIRPORT FACILITY LEASE AGREEMENT FOR COMMERCIAL USE (“*Lease*”)** is made between the City of San Marcos, a municipal corporation of the State of Texas (“*Lessor*” or “*City*”), and Gryphon Aviation, Inc., a Texas corporation (“*Lessee*”).

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

- 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 (hereinafter referred to as the “*Leased Premises*”), located at the Airport in Caldwell County, Texas:
  - a. a 9,600 square foot hangar facility with an address of 2049 Airport Drive (the “*Hangar*”), the location of which is more particularly described in Exhibit A attached hereto.
- 1.03 Acceptance. Lessee acknowledges that, subject to Lessor’s obligations under paragraph 1.05 below: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purposes, or the presence of environmental, geologic, or other site conditions that may affect Lessee’s use of the Leased Premises; and (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes.
- 1.04 Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations (the “*Rules and Regulations*”), and (ii) San Marcos Regional Airport Minimum Standards (the “*Minimum Standards*”). 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 (including, without limitation, runways, taxiways, landing areas, entrance roads, driveways and existing parking lots leading to and/or contiguous to the Leased Premises) 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 and gated entrances 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. Security codes for any gated entrances shall be provided to Lessee by Lessor. Such rights shall be consistent with the Rules and Regulations and applicable laws, rules and regulations (“**Applicable Law**”) 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 October 1, 2020 (the “**Effective Date**”). Rent shall be payable at the place designated in Section 2.04.
- 2.02 **Term.** The term of this Lease (“**Term**”) will commence on the Effective Date and will terminate 18 months thereafter, on March 31, 2022 (the “**Expiration Date**”), subject to earlier termination or renewal as provided herein. Upon the expiration, and provided Lessee is not in default, this Lease may continue as month-to-month tenancy at the rate of \$2,200 per month for up to six additional months (the “**Renewal Term**”). Lessee may only terminate the Lease on the last day of any month during the Renewal Term and Lessor must receive written notification of non-renewal at least 60 days prior to the last day of that month.
- 2.03 **Rent.** Lessee hereby promises and agrees to pay Lessor “fixed rent” for use of the Hangar equal to \$2,000 per month.
- Fixed Rent shall be paid, in advance, in monthly installments. Rent will be prorated in the event of any partial calendar 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.
- 2.04 **Form and Place of Payment.** 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 (5<sup>th</sup>) day of the calendar 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 at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666. Payments submitted via United States Postal Service or other means 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 (5<sup>th</sup>) day of the calendar quarter 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 tenancy from calendar month to calendar month. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the month-to-

month holdover rate. 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 offsite of the Leased Premises, in addition to Rent, in an amount equal to the lowest amount Lessor charges similar tenants and users at the Airport for use.

### **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 storage; flight training; and aviation-related office use; 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.
- a. Except during any period of repair, reconstruction or Alteration, Lessee shall not fail to occupy and use the Leased Premises for the Authorized Use.
  - b. Lessee agrees to keep the Hangar locked when Lessee is not present therein. If the Hangar is found unlocked by Lessor or Airport Manager, Lessor may overlock the Hangar until Lessee’s lock is replaced, and Lessee notifies Lessor that the Hangar has been locked by Lessee. At all times during the Term, Lessee shall provide Lessor with a currently operative key to the Hangar.
  - c. 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).
- 3.03 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.
- 3.04 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 of the City, the FAA and other governmental authorities with jurisdiction over the Leased Premises.
- 3.05 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.

- 3.06 No Outside Storage. Lessee shall store all equipment, materials and supplies within the confines of the Hangar, and outside storage is specifically prohibited without the advance written consent of Lessor.
- 3.07 Use of Airport Facilities. Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities at the Airport to the same extent as other Airport users.
- 3.08 Parking. Lessee shall have nonexclusive use of the public parking lot adjacent to the Hangar for Lessee's employees and customers.

#### **ARTICLE 4: MAINTENANCE AND REPAIR OF PREMISES**

- 4.01 Lessee Obligations. Lessee shall, at its sole cost and expense, perform day-to-day (i.e. non-capital) repair and maintenance of the interior of the Hangar, keeping the same in a safe condition and good state of repair, as existing upon lease commencement, reasonable wear and tear excepted, including, without limitation, items such as light bulbs and bathroom supplies, if applicable, and heating and ventilation equipment to the extent of repairs, but not replacement. In addition, from and after the Effective Date, Lessee shall (a) be responsible for janitorial and pest control services interior of the Hangar, and (b) be responsible for fire alarm monitoring with respect to the Hangar (if applicable). In no event shall Lessee be responsible for the cost of maintenance, repair and/or replacement occasioned by the gross negligence or willful misconduct of Lessor or any person or entity claiming by or through Lessor. Lessee shall keep all fixtures constructed or installed on the Leased Premises by Lessee (collectively, the "***Lessee Improvements***"), in as good condition and repair as existing upon lease commencement, reasonable wear and tear excepted. In addition, Lessee shall be responsible for the cost of repair and/or replacement directly attributable to the gross negligence or willful misconduct of Lessee, its employees, sublessees, concessionaires, contractors, licensees, and invitees. 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 repairs or perform any other necessary repair and/or 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 cost of such work shall be payable by Lessee within thirty (30) days of Lessee's receipt of such notice. **Lessee acknowledges that at no time shall Lessor be obligated to make any repairs to the facility nor shall Lessor provide any credits for repairs made by Lessee.**
- 4.02 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 reasonable 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 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.

- a. Consent of Lessee to Market Property. Lessee acknowledges and agrees Lessor may immediately begin marketing the property for redevelopment, including but not limited to placing signs on the property at any time after October 1, 2021, and at any time advertising online, and/or offering tours to interested parties. Notification of any such tours shall follow the same non-emergency notice procedures under paragraph 4.02 above.

#### **ARTICLE 5: CONSTRUCTION, ALTERATIONS, AND FIXTURES**

- 5.01 Alterations. All alterations to the Leased Premises, including alterations which do not require permitting and/or 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. 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*”).
- 5.02 Condition on Surrender. Subject to the provisions of Section 4.01, 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.
- 5.03 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.
- 5.04 Exterior Lighting and Signage.
  - a. Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any 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 permitted or approved Alterations, 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. 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.

- c. To the extent applicable, Lessee will install signage indicating that portions of the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be reasonably approved by Lessor prior to installation.

#### **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, the installation of meters, any deposits and any other customary prerequisites for such utility service or replacements thereof. 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 and serving 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, in the event utility service is not available to the Leased Premises for a period of forty-five (45) consecutive days or longer, Rent shall be 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) the Improvements, (ii) Lessee's equipment, inventory and other personal property, including, but not limited to, any Lessee aircraft used for commercial purposes, or (iii) Lessee's interest in the leasehold estate. For the avoidance of doubt, Lessee's obligations under this subsection include payment on behalf of the City of any ad valorem taxes assessed directly to the City.
- b. Lessee shall pay, when due, all sales, excise, income and other taxes levied upon its business operations at the Leased Premises.
- c. Lessee may, at Lessee's expense, contest the validity or amount of any taxes for which Lessee is responsible, 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, any 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 an event of default under Article 15.01(a). 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.

## **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, landing areas, 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 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 eighty (180) 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. 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 in 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**

- 10.01 Fire Safety. Lessee will permit the Fire Marshal and building inspector 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 ensure 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.

#### **ARTICLE 11: INSURANCE AND INDEMNITY**

- 11.01 Insurance: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of insurance as set forth in the Minimum Standards as they exist now or may be amended in the future 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. To the extent not already in Lessor's possession, Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, 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). Lessor does not carry insurance on Lessee's personal property.
- 11.02 Indemnity and Hold Harmless.
- Indemnity. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE "**LESSOR 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 LESSOR INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE LESSOR INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE LESSOR INDEMNIFIED PARTIES; PROVIDED, HOWEVER, LESSEE IS NOT OBLIGATED TO ASSUME THE DEFENSE OF ANY CLAIMS TO THE EXTENT CAUSED BY LESSOR INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE LESSOR INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE SUBJECT TO THE TERMS OF THIS SECTION 11.03a. 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.

TO THE EXTENT PERMITTED BY LAW, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSEE AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE “**LESSEE INDEMNIFIED PARTIES**”), FROM AND AGAINST ALL **CLAIMS**, TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSOR AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE “**LESSEE PARTIES**”), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSOR HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSOR PARTIES IN CONNECTION WITH THIS LEASE. LESSOR 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 LESSOR PARTIES CONCURRENT WITH THAT OF THE LESSEE INDEMNIFIED PARTIES. LESSOR SHALL ASSUME ON BEHALF OF THE LESSEE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE LESSEE INDEMNIFIED PARTIES; PROVIDED, HOWEVER, LESSEE IS NOT OBLIGATED TO ASSUME THE DEFENSE OF ANY CLAIMS TO THE EXTENT CAUSED BY LESSEE INDEMNIFIED PARTIES. LESSOR MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE LESSEE INDEMNIFIED PARTIES OR LESSOR, AS LESSOR MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSOR SUBJECT TO THE TERMS OF THIS SECTION 11.03.a. IN NO EVENT MAY LESSOR ADMIT LIABILITY ON THE

PART OF LESSEE WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSEE.

- a. Limitation of Liability. The foregoing and any other indemnity herein shall not be interpreted as requiring either Party 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 by such Indemnified Parties.
- b. 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.
- c. 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 ten (10) days after receipt of such claim, demand, suit or action.
- d. Notice. Lessee shall promptly (and in all events within three Business Days) notify Lessor and Airport if it is involved in any material or significant accident on the Leased Premises or Airport. To the extent Lessee's officers are aware of any material or significant defects in Airport runways, taxiways, landing areas, 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).
- e. Security. Lessor does not guarantee police protection or security to Lessee or its property and, (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 directly attributable to a third party not subject to Lessor's control; and (ii) LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

#### **ARTICLE 12: CONDEMNATION**

- 12.01 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 condemning authority.
- 12.02 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the Hangar unsuitable for the business of Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the Hangar unsuitable for the business of Lessee, then this Lease shall continue in effect with respect to the remainder of the Leased Premises, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.
- 12.03 Rent. If this Lease is terminated as provided in this section, rent shall be paid up to the earlier of: (a) the date that title vests in the condemning authority, or (b) the date Lessee is unable to utilize the Leased Premises as contemplated by this Lease, and Lessor shall make an equitable refund of any rent paid by Lessee in advance.

- 12.04 Division of Award: Lessor and 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, 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 section shall not affect the rights of the respective parties to such awards.
- 12.05 Definition of Taking. As used in this Article 12, "taken" or "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 verbal notice (within one [1] hour of knowledge), 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.
- a. If the Leased 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 Leased Premises with the express or implied consent of Lessee, Lessor, at its option, may elect to rebuild or terminate the Lease.
  - b. If Lessor elects to not rebuild, this Lease shall terminate, and rent shall be abated from the date of the casualty.
  - c. If Lessor elects to rebuild or repair the Leased Premises, Lessee shall, at its sole cost and risk, be responsible for rebuilding or repairing any damaged Improvements made by Lessee. If the Leased Premises are untenantable in whole or in part following such damage, the rent payable during the period in which they are untenantable shall be adjusted 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. Prior to the completion of any repairs or construction, Lessee and Lessor shall negotiate a new Lease and the parties shall have no further rights or obligations under this Lease.

### **ARTICLE 14: ASSIGNMENT AND SUBLETTING**

- 14.01 Assignment or Sublease by Lessee. Lessee may not sublease any portion of the Leased Premises or assign any portion of this Lease without prior written consent of Lessor.
- 14.02 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. The following events shall constitute “events of default” by Lessee under this Lease:

- a. Rent. Lessee fails to pay when due any rental or any other sums or charges due under this Lease, and such failure continues for ten (10) 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. 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 if, 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; or
- f. Levy or Attachment. Except as permitted pursuant to a 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. 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 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 (exclusive of Lessee's removable trade fixtures and equipment), and the same 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.
  - e. 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, 3.08, 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.
- 15.03 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.
- 15.04 Acceptance of Rent. The acceptance by Lessor of 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 Lessor of its right to exercise any remedy provided for any event of default.

#### **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. Lessor grants permission to Lessee for the mortgaging 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.***

#### **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 Severability. 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.
- 18.03 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.
- 18.04 Headings. 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.
- 18.05 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.

- 18.06 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.
- 18.07 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.
- 18.08 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.
- 18.09 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.
- 18.10 Governing Law; Venue; Dispute Resolution. 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. In the event a claim, dispute, or controversy (defined for the purposes of this Lease as “Claim”) arises out of or relates to this Lease, Lessor and Lessee agree that, as a condition precedent to litigation, Lessor (or, at Lessor’s direction, Airport Manager) shall meet and attempt to resolve the matter within five (5) business days of a party’s request.
- 18.11 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.
- 18.12 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, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

If to Lessor:

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

and

1807 Airport Drive, Suite 200  
San Marcos, Texas 78666



If to Lessee:

Gryphon Aviation, Inc.  
2049 Airport Drive  
San Marcos, Texas 78666  
Attn: Erik Landrum

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.12.

- 18.13 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.
- 18.14 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 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.
- 18.16 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.
- 18.17 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.
- 18.18 Reservation of Immunities. TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, LESSOR WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS LEASE BY LESSOR OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY LESSEE SEEKING THE REMEDIES OF LESSEE SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE LAW AVAILABLE TO LESSOR AS A TEXAS HOME-RULE MUNICIPAL CORPORATION. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE FOREGOING WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CONTRACT CLAIMS UNDER THIS LEASE.
- 18.19 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.

18.20 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.

18.21 Exhibits. The exhibits to this Lease are as follows:

Exhibit A      Location of Hangar

18.22 Termination of Current Lease. Effective as of the Effective Date, the Current Lease ("Lease of Airport Property for a Business Facility" for the hangar located at 2049 Airport Drive) is terminated and the parties shall have no further rights or obligations thereunder.

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

**LESSOR:**

CITY OF SAN MARCOS, TEXAS

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

**LESSEE:**

GRYPHON AVIATION, INC., A TEXAS CORPORATION

DocuSigned by:  
By: Erik G Landrum

Name Printed: Erik G Landrum

Title: President

**EXHIBIT A**  
Location of Hangar

