

**City of New Braunfels
New Braunfels Regional Airport
Land Lease Agreement
JOHN BORDANO**

THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

This lease agreement hereinafter referred to as the "Lease Agreement", by and between the City of New Braunfels, Texas, a Texas Municipal Corporation ("LESSOR") and **John Bordano**. ("LESSEE") is entered into this ____ day of _____, _____.

LESSOR is the owner of the City of New Braunfels Regional Airport (the "Airport"), situated in Guadalupe County, Texas, by virtue of deeds from the United States of America.

1. **Leased Property:** LESSOR hereby leases to LESSEE a parcel of land consisting of 18,000 square feet as depicted on the attached Exhibit "A" hereinafter referred to as the "Leased Premises" at the New Braunfels Regional Airport at 2333 FM 758, New Braunfels, Texas 78130.

2. **Construction and Improvements by LESSEE:** LESSEE shall construct upon the parcel of land (120' x 150') a hangar of approximately 6,000 square feet (100' x 60'), a ramp, entrance access, and an automobile parking area hereinafter referred to as the "Proposed Facilities" in accordance with Local, State, and Federal requirements. The LESSEE shall bear the entire cost and expense of the Proposed Facilities to be constructed and/or improved including the installation hereunder, which shall include all utility connections and any future metering that may be required, and shall bear all the risk of loss of and/or damage to any materials and/or partially completed facilities prior to the date of approval and acceptance by LESSOR. LESSOR shall approve the facilities as having been fully completed by LESSEE in accordance with the approved plans and specifications, by issuance of a Certificate of Occupancy to LESSEE; which approvals shall not be unreasonably withheld. LESSEE also shall provide all risk insurance coverage during the course of construction with LESSOR named as an additional Insured. Additionally, LESSEE shall deliver to LESSOR two (2) complete sets of as-built plans upon completion of construction and installation of all facilities.

Should Lessee fail to complete construction and obtain a Certificate of Occupancy from the City of New Braunfels within 3 years from the commencement of this lease agreement, then this lease shall immediately terminate.

3. **Lease Term:** The term of this Land Lease Agreement is for a **Thirty (30)** year period of time commencing _____, _____ and expiring _____, _____. At the end of the Land Lease, **LESSEE** has the option to Lease the hanger from the City for Two (2) additional terms of Five (5) additional years each. It is important to state that these Five (5) year extensions are a hanger Lease and the price will be calculated based on the square footage of the hanger and office space. The rate of the hanger Lease will be calculated according to the Fair Market Value of the hanger at that point in time. The Lease rate will be figured out on the 29th year of the 30 year Land Lease by an independent aviation appraiser. For the purpose of escalating the five (5) year Lease options, paragraph six (6) **Rent Modification or Escalation** of this Lease Agreement applies.
4. **Reversion Clause:** At the end of the thirty (30) year Land Lease Term, or at the end of the renewal options, whichever occurs later, the parties hereto mutually agree that all real property, including, but not limited to, the Proposed Facilities, improvements, including but not limited to hangar(s), lighting, fences, protection devices, paved areas, and/or sidewalks constructed or installed by LESSEE shall become and remain the property of LESSOR.
5. **Rent:** LESSEE agrees to pay LESSOR annual rent in accordance with the New Braunfels Regional Airport Standard Rates and Charges for Property and Fees, as amended from time to time, which for purposes of this Lease Agreement equals **\$ 3,600.00 per annum**. Rent is due annually on the effective date of the Lease and LESSEE shall deliver its annual rental payment to LESSOR at the New Braunfels Regional Airport Terminal office, without demand, and without counterclaim, deduction or setoff. Rent shall be considered late on the tenth (10th) day after the due date.

Should LESSEE fail to pay any rent when due or any other sum payable to LESSOR under the terms of this Lease Agreement, and such rent or other sum payable remains unpaid for more than ten (10) days from the due date thereof, then, in that event, interest shall accrue at the maximum legal rate allowed by law from and after the date on which any such sum shall have become due and payable, and interest shall be paid by LESSEE to LESSOR at the time of payment of the sum upon which the interest shall have accrued.

If LESSEE utilizes the property for Personal uses, then the remainder of this paragraph shall not apply. However, should LESSEE operate a commercial business on the Leased Premises, LESSEE shall pay LESSOR a Commercial Activity Fee ("CAF"). The current CAF is 1.05% of gross receipts. The CAF will be collected on a monthly basis and is due and payable on the last day of the month subsequent to the month in which said receipt was realized. For the purpose of "Commercial Activity Fee", "gross receipts" includes:

- a. The aggregate amount of all sales made, services performed, and

other income generated from aeronautical and non-aeronautical services performed on Airport for cash, credit or otherwise, of every kind, name and nature, regardless of when paid; and

- b. The aggregate amount of all exchange of goods, wares, merchandise, and services for like property or services, at the retail selling price thereof, as if the same had been sold for cash or the reasonable value thereof, whichever is the greater.

Exemptions to the CAF:

As an airport commercial operator fulfills one or more of the performance thresholds outlined in the chart below, the required CAF percentage is reduced as follows:

Performance Threshold

- 1) Operator's yearly gross income is \$2,000,000 or greater at the proposed facilities; (\$5,000,000 for a full-service FBO); and/or
- 2) Total value of Operator's assets at the proposed facilities (ad valorem & personal property) based at the Airport is \$1,000,000 or greater; and/or
- 3) Operator creates twelve (12) jobs with at least ten (10) considered full-time within twenty-four (24) months of receiving a Certificate of Occupancy from the City of New Braunfels at the proposed facilities.

Required CAF Payment if:

1 of 3 thresholds met: **.75% of gross revenues**

2 of 3 thresholds met: **.50% of gross revenues**

3 of 3 thresholds met: **0% of gross revenues**

The City understands that in order to maintain and operate the New Braunfels Regional Airport, all tenants must pay a reasonable share for the use of the facilities. For that reason, the City has enacted an Ordinance that applies to Commercial Operators that are exempt by the exemptions to the CAF. Such method of collected this reasonable share is known as the Fixed Commercial Activity Fee and it applies to CAF exempt Commercial Operators as follows:

Fixed commercial activity fee.

In the event that businesses approved by the City to conduct commercial activity on or at the Airport should qualify for exemption from the entire Commercial Activity Fee

based on the percentage of gross receipts, those persons shall be required to pay a fixed rate commercial activity fee.

The fixed commercial activity fee will be determined by the category of commercial operation. The fixed amounts are outlined in the following Table:

Category	Fixed CAF
Fixed Base Operator	\$25,000
Corporate headquarters of affiliated KBAZ commercial operation	\$10,000
Aircraft Maintenance Operator (SASO)	FAA Certified: \$10,000 Non-FAA: \$5,000
Avionics or Instrument Maintenance Operator (SASO)	FAA Certified: \$10,000 Non-FAA: \$5,000
Aircraft Rental, Flying Club, or Flight Training	FAA Certified: \$2,000 Non-FAA: \$1,000
Aircraft Charter or Aircraft Management Operator	\$5,000
Aircraft Sales Operator	\$1,000
Specialized Commercial Aeronautical Operator	\$2,000
Temporary Specialized Aviation Service Operator	\$500
Aircraft Storage Operator	\$3,000
Non-commercial hangar operator (corporate hangars)	\$2,000
Non-commercial self-service fueling operator	\$500
Non-aeronautical use	\$10,000

Multiple Commercial Categories

If a company is classified in more than one category, the fee is based upon the activity where a majority (greater than 50%) of the company's revenues is derived except in the case where the company is operating an aircraft storage operation to supplement its primary business.

If a company pays a fixed commercial activity fee as an aircraft storage operator, it must pay a fixed commercial activity fee for each hangar it owns and operates at the Airport.

Companies that have obtained higher certifications and/or licenses, such as but not limited to, Certified Repair Stations, Part 141 Flight Schools, Certified Maintenance Repair Overhaul shops (MRO), from the Federal Aviation Administration (FAA) to conduct commercial activities shall pay the fixed fee designated as "FAA Certified" in the fee table. Those Companies that possess certifications and/or licenses to operate as, but not limited to, Airframe and Powerplant shops (A&P), Part 61 Flight Schools that do not possess any certifications and/or licenses from the FAA shall pay the "Non-FAA" fixed fee

Fixed Fee Escalation Schedules

The fixed fee shall increase for all commercial operations by no greater than the annual Commercial Price Index-Urban Consumers (CPI-U) adjustment for the previous year. In no event shall the fixed fee increase more than 10% in a 3-year period, except as provided in other areas of this Code.

If a company enters into a new lease for an expansion of its operation, the percent increase in the fixed fee will be one-half proportionate to the percent increase in the amount of the land leased relative to the originating ground lease.

At no point will the Fixed CAF for LESSEE exceed any other operators of similar size or category of business.

Fixed Fee Payment Schedule

LESSEE will pay the fixed CAF for the first (1st) year according to LESSEE's purported uses within ten (10) days of receiving a Certificate of Occupancy (COO) from the City of New Braunfels. On the one-year anniversary of the issuance of the COO, LESSOR will evaluate whether LESSEE has met the income and assets requirement of the CAF ordinance. If not, the LESSEE's fixed CAF payment will be a credit towards payment of the CAF.

6. **Rent Modification or Escalation:** Effective on the first anniversary of the land lease, rent shall be adjusted annually based upon the percentage increase in the Consumer Price Index (CPI-U) all Urban Consumers, not seasonally adjusted for US City Average all items, as reported by the U.S. Department of Labor for the proceeding 12 months including as the 12th month, January of each year. Additionally, the parties further agree that should the CPI-U adjustment calculation(s) indicate a decrease in the rental rate the rent shall not decrease but shall instead remain the same as the prior year. Furthermore, the rate adjusted annually will not exceed 3%.

7. **Security Deposit:** LESSEE shall give LESSOR a refundable rent deposit in the amount of \$600.00 the first and last month's rent, which shall be deposited by LESSOR in an interest-bearing account with the interest payable to LESSOR. The Deposit becomes non-refundable in the event that LESSEE cancels or breaches the Lease Agreement prior to the end of the thirty (30) year Lease Term.
8. **Books of Account, Records, and Audit:** If LESSEE utilizes the property for Personal uses, then the remainder of this paragraph shall not apply. However, should LESSEE operate a commercial business on the Leased Premises, LESSEE shall keep and maintain complete and accurate books of accounts and records, in accordance with generally accepted accounting principles and practices (GAAP), of its operations at the Airport throughout the term of this Lease Agreement and for four (4) years thereafter. Such books of accounts and records, shall be made available within five (5) business days of written notice to LESSOR for inspection by LESSEE or its authorized representatives by appointment during regular business hours Monday through Friday at the LESSEE's premises at the Airport. LESSOR shall have the right to examine, audit and make reports of said books of accounts and records (including electronic versions).

LESSOR shall have the right to inspect and audit LESSEE's bills, receipts, and records pertaining to its operation at the Airport in support of gross revenues determination. Such audits shall be undertaken by LESSOR's staff or a firm of certified public accountants, satisfactory to LESSOR. The cost of such audit shall be paid by LESSOR, unless the results of such audit reveals a discrepancy of more than one percent (1%) between the amounts paid or reported by LESSEE and the amounts determined due for any fiscal year or pro rata fiscal year reported. If the discrepancy is greater than one percent (1%), the full cost of the audit shall be paid by LESSEE. Any additional expenses resulting from LESSEE's inability or refusal to provide records as required by LESSOR or auditor shall be paid by LESSEE. If the audit reveals a discrepancy, LESSEE shall forthwith pay to LESSOR the full amount shown in the discrepancy. LESSOR shall not audit LESSEE more than once during any twelve (12) consecutive calendar months.

9. **Use of Property:** LESSEE shall use and occupy the Leased Premises for the aeronautical purposes of operating as an aircraft hangar as defined in the New Braunfels Municipal Airport Minimum Standards in Exhibit "B" and for no other purpose without prior written approval by LESSOR.

LESSEE acknowledges that it has inspected the Leased Premises and accepts the premises in its present condition. LESSEE takes the Leased Premises "AS IS" without warranty. LESSOR assumes no responsibility for determining whether the Leased Premises are suitable for LESSEE's purposes.

LESSEE shall not, without LESSOR's prior written consent, keep anything within the Leased Premises, or use the Leased Premises for any purpose, which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises. All property kept, stored or maintained within the Leased Premises by LESSEE shall be at LESSEE's sole risk.

LESSEE shall not use, or permit the use of, the Leased Premises in any manner that could result in waste of the Leased Premises, or constitute a nuisance or violates any statute, ordinance or Policy of LESSOR. If any repairs required to be made by LESSEE are not made within thirty (30) days after written notice delivered to LESSEE by LESSOR, LESSOR may at its option make repairs without liability to LESSEE for any loss or damage by reason of such repairs, and LESSEE shall pay to LESSOR, upon demand as additional rental, the cost of the repairs. At the expiration of this Lease Agreement, LESSEE shall surrender the Leased Premises in good condition, reasonable wear and tear.

LESSEE shall maintain the Leased Premises in accordance with the minimum standards set forth in Exhibit "B" and keep the same free from waste at all times. LESSEE shall keep the Leased Premises, including but not limited to ramps, signs, sidewalks, service ways, and loading areas adjacent to the Leased Premises neat, clean, and free from dirt or rubbish at all times, and shall store all trash and garbage within the Leased Premises, arranging for the regular pick-up of such trash and garbage at LESSEE's expense.

LESSEE shall store all equipment and materials/supplies within the confines of the Hangar or repair shop. Outside storage is specifically prohibited unless separate written provisions are made with LESSOR.

During the term of this Lease, LESSOR agrees that LESSEE shall have unrestricted access to the runways, taxiways and ramps on the Airport to the same extent that any other parties may have use of the same. LESSOR's failure to continue the use of the Airport for airport and aviation purposes shall constitute a default, and upon LESSEE giving notice to LESSOR of such default, LESSOR will have ability to cure per Section twenty-four (24). LESSEE shall continue to pay rent during the time that it continues to occupy the Leased Premises after termination. The date upon which the Leased Premises are vacated by LESSEE shall be the date LESSEE is released from and relieved of all further rent obligations under this Lease.

10. **Minimum Standards/Compliance with Airport Regulations:** LESSEE acknowledges that it will comply with the New Braunfels Regional Airport Standard Operating Procedures and Regulations and the Airport Minimum Standards, as these now exist or may be amended during the term of this Lease Agreement, and any conflict between this Lease Agreement and these Procedures, Regulations and Standards will be resolved in favor of the Procedures, Regulations and Minimum Standards.

11. **Texas Department of Transportation Requirements:** The LESSOR, its successors and assigns hereby reserves for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of aircraft, now known or hereafter used for navigation or flight through the said airspace or landing at, taking off from or operating on the New Braunfels Regional Airport.

The LESSEE expressly agrees for itself, its successors and assigns to prohibit the erection of structures or allow the growth of natural objects that would constitute an obstruction to air navigation, unless review by TxDOT and FAA determines an exception.

The LESSEE expressly agrees for itself, its successors and assigns to prevent any use of or activity on the real property herein described that would interfere with or be a hazard to the flight of aircraft over the land to and from the airport, operation of aircraft on the airport, or interfere with air navigation communication facilities serving the airport.

12. **Compliance with Laws and Regulations:**

A. LESSEE agrees to observe, comply with and conform to all laws, ordinances, rules and regulations of the United States Government, the State of Texas and all agencies thereof which may be applicable to LESSEE's operations or to the operation, management or administration of the Airport and which are now in effect or may be promulgated from time to time during the term of this Lease Agreement.

B. LESSEE agrees to send on a timely basis to LESSOR, and display to the public, if required, copies of any and all permits, licenses and other evidence of compliance with such laws, ordinances, rules and regulations as set forth in Section A hereinabove.

C. LESSEE hereby recognizes the authority of the Airport Director or his/her designated representative in supervising the conduct of aviation activities at the Airport, and agrees to comply with the Airport Director's rightful direction(s) which compliance is understood to be mandatory. The direction(s) may involve such matters as temporary relocation of parked Aircraft or other vehicles and equipment, and temporary use of associated ramp areas. Continual or repeated disregard of said rightful directions shall be deemed to be a default under this Lease Agreement and LESSOR reserves the right to terminate this Agreement in accordance with the provisions of Section 23 hereof.

D. It is understood and agreed by the parties hereto that LESSOR and other interested regulatory agencies shall have the right to enter the Leased Premises

at any time during emergency or crisis situations and at other reasonable times after due notice to LESSEE for inspection of its operations, facilities and equipment, for any purpose necessary, incidental to, or connected with the performance by any such agency of its obligations or the exercise of its governmental functions. Inspections provided for hereinabove will include but not be limited to investigation as to compliance by LESSEE with federal, state, and local regulations pertaining to building codes and repairs, safety, fire protection, sanitation, flight operations and maintenance, financial status and general bookkeeping as these apply to the terms of this Lease Agreement.

E. LESSEE shall comply strictly and in all respects with the requirements of the any local, state or federal environmental ordinances by the City of New Braunfels, Texas Commission on Environmental Quality and/or the Environmental Protection Agency. Furthermore, LESSEE shall not store, generate or use any Hazardous Substances at, on, or under the Leased Premises, in violation of applicable local, state or federal environmental laws.

All LESSEE's obligations in this Section 11- E, shall survive this Agreement or any other agreement or action, including, without limitation, any consent decree, or order, among the LESSOR, LESSEE and the government of the United States or any department or agency thereof, the State and/or the Municipality.

LESSEE shall protect, indemnify, defend, and hold harmless LESSOR and any of its officers, employees and agents and their respective heirs, legal representatives, successors and assigns, from and against any and all loss, damage, cost, charge, lien, debt, fine, penalty, injunctive relief, claim, demand, expense, suit, order, judgment, adjudication, liability, or injury to person, property or natural resources, including attorneys' fees and consultants' fees (any of the foregoing being referred to in this Lease Agreement as a "Claim") arising out of, attributable to, which may accrue out of, or which may result from any violation or alleged violation of the Environmental Laws by any person or entity or other source whether related or unrelated to LESSEE, except if said violation or alleged violation is by LESSOR, or the disposal or alleged disposal of Hazardous Substances (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) by any person or entity or other source, whether related or unrelated to LESSEE except if said disposal or alleged disposal is by LESSOR.

13. **Assignment and Subletting:** LESSEE shall not assign, sublease, or in any manner transfer this Lease Agreement or any part or interest in the same without the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed. Consent by LESSOR to one or more assignments or subletting shall not operate as a waiver of LESSOR's right of approval as to any subsequent assignments and sublettings. Notwithstanding any assignment or subletting, LESSEE shall at all times remain fully responsible and liable for the payment of the rent specified and for compliance with all of its other obligations under this Lease Agreement, and specifically, the requirement that any assignee

or sublessee pay to LESSOR the CAF or the Fixed Commercial Activity Fee.

In the event of the transfer and assignment by LESSOR of its interest in this Lease Agreement and in the building on the Leased Premises to a person, firm or corporation, assuming LESSOR's obligations, LESSEE agrees to look solely to the responsibility of the successor in interest of LESSOR. Any security given by LESSEE to secure performance of its obligations may be assigned and transferred by LESSOR to the successor in interest of LESSOR and LESSOR shall be discharged of any further obligation.

In the event of a transfer or assignment LESSEE shall supply to LESSOR the information necessary for LESSOR to conduct background investigation of persons or firms who may become beneficiaries of any transfer or assignment for which approval is requested.

LESSOR may withhold, at its sole reasonable discretion, approval of any transfer or assignment for the existence of, but not limited to, the following conditions:

- A. LESSEE or any of its successors or assigns are in default of any terms, covenants or conditions of this Lease Agreement, whether notice of default has or has not been given by LESSOR to LESSEE.
- B. The prospective beneficiary of the transfer or assignment has not agreed under the provisions of the transfer or assignment document to keep, perform and be bound by all the terms, covenants and conditions of this Lease Agreement.
- C. All terms, covenants and conditions of the transfer or assignment, including the consideration therefore of any and every kind, have not been revealed in writing to LESSOR.

14. **Utilities/Taxes:** LESSEE, at its sole cost and expense, shall obtain all utility services necessary for its operation. LESSEE shall promptly pay all charges for electricity, water and sewer, telephone service, and other utilities used at the Leased Premises.

LESSOR shall not be liable for any interruption or impairment whatsoever in utility services unless the interruption is caused solely by the negligence of LESSOR, its agents, officers or employees.

LESSEE shall be solely responsible for all Federal, State, and Local taxes as a result of LESSEE's use and/or occupancy of the Leased Premises and conducting business at the Airport. The Term "Taxes" shall mean all Federal, State, and Local Taxes which may be levied or assessed upon or with respect to all or any part of the Leased Premises by the County of Guadalupe or any taxing

authority having jurisdiction over the Leased Premises.

15. **Maintenance and Repairs:** LESSEE shall make all necessary repairs to the structure and systems of the premises including exterior maintenance, roof and structural maintenance, HVAC system, electric service and components, plumbing system, and ramps and parking area maintenance. All improvements made by LESSEE to the Leased Premises which become permanent attachments to the Leased Premises shall become the property of LESSOR upon termination of this Lease Agreement. Major structural repairs and maintenance, if necessary, shall be the LESSEE's responsibility and based upon LESSOR's appropriate review, inspection and approval, and at LESSEE's expense.

LESSEE shall make all necessary repairs to the Leased Premises. Interior repairs and normal maintenance including all tenant fit-ups and modifications, grass cutting (including all grassy areas within the Leased Premises which include 15 feet from the outer walls of the Proposed Facility and 15 feet from the edge of the aircraft ramp and automobile parking areas. Additionally, refuse removal shall be the responsibility of LESSEE at its cost and expense.) LESSEE shall provide routine maintenance on all buildings located on the Leased Premises, during the entire term of this agreement, at no cost to LESSOR in accordance with the standards set forth in Exhibit "B".

Improvements on the Leased premises shall be painted as needed, including the last year of this Lease Agreement. All bituminous surfaces shall be sealed with a rubberized coal-tar emulsion as needed, including the last year of this Lease Agreement. LESSOR shall be allowed to inspect the Leased Premises at all reasonable and convenient times with proper notice to LESSEE.

16. **LESSOR to Maintain the Airport:**

A. LESSOR agrees to maintain and keep in reasonable repair the landing areas, paved areas, taxiways, vehicular ways and other Airport areas, structures and other improvements on the Airport outside the Leased Premises, subject to the availability of funds. LESSOR shall maintain clear taxiway access to LESSEE'S facility.

B. LESSOR understands and accepts the obligation, without limitation, to maintain the Airport for Aircraft operations pursuant to Federal and State regulations, and to provide for cutting of grass, maintenance of drainage and any other service necessary to the daily operation of the Airport, except on the Leased Premises.

C. LESSOR shall have no obligation for maintenance or repairs to any facilities or improvements on the Leased Premises or to the Leased Premises.

D. Nothing herein contained shall require LESSOR to enlarge the Airport or to make extensions, additions or improvements to the landing areas, runways,

taxiways, or other appurtenances of the Airport. Further, it is understood and agreed that LESSOR may abandon certain common use facilities that are no longer reasonably justified for proper and adequate operation of the Airport.

17. **Surrender of Property:** Except as otherwise expressly provided in this Lease Agreement, at the termination of this Lease Agreement, title to all buildings and improvements constructed and/or installed hereafter on the Leased Premises shall remain in the LESSOR, and all fixtures attached to the Leased Premises or to buildings or structures on the Leased Premises shall become the property of LESSOR.

LESSEE shall, not later than the last day of this Lease Agreement, surrender possession of the Leased Premises and remove all other property therefrom, and repair all damage done by or in connection with the installation or removal of property which has not become the property of the LESSOR. LESSEE shall surrender the Leased Premises in as good condition, reasonable wear is expected. All property of LESSEE remaining in or on the Leased Premises after the last day of the term of this lease shall be conclusively deemed abandoned and may be removed by LESSOR, and LESSEE shall reimburse LESSOR for the cost of such removal. LESSOR may store any such property at LESSEE's risk and expense.

18. **Improvements/Alterations/Signs:** LESSEE shall not make any alterations, additions, or improvements to the Leased Premises or building improvements without the prior written consent of LESSOR, which shall not be unreasonably withheld. All improvements, alterations, additions and fixtures (other than removable trade fixtures and equipment owned or leased by LESSEE) which may be made or installed by either party upon the Leased Premises shall become the property of LESSOR at the termination of this Lease Agreement, and at the termination of this Lease Agreement shall remain upon and be surrendered with the Leased Premises unless LESSOR requests their removal, in which event LESSEE shall remove the same and restore the Leased Premises to its original condition at LESSEE's expense. In the event LESSEE's removal of any trade fixtures, equipment or other improvements results in any damage to the Leased Premises, LESSEE shall restore the Leased Premises to its original condition at LESSEE's expense prior to the Termination Date of the Lease Agreement.

LESSEE shall prevent any lien or obligation from being credited against or imposed upon the Leased Premises by reason of an alteration, repair, labor performed or materials furnished to the Leased Premises for or on behalf of LESSEE, and LESSEE will discharge any lien or charge promptly after the lien occurs or charges become due and payable, provided that in the event LESSEE disputes the lien or the claim, LESSEE shall be entitled to contest such lien or charge and will not be required to discharge same until such time as the contest of the claim becomes final. LESSEE shall hold harmless, indemnify and defend

LESSOR, its officers, agents and employees from and against any claims related to such liens or charges.

LESSEE shall not, without LESSOR's prior written consent, and such consent will not be unreasonably withheld, (a) make any changes to the improvements or (b) install any exterior lighting, shades or awnings, or any exterior decorations or paintings or (c) erect, install or change any signs, window or door lettering, placards, decorations, or advertising of any type which can be viewed from the exterior of the Leased Premises.

19. **Fire Safety and Repairs:** LESSEE shall maintain the premises in accordance with the laws of the City of New Braunfels and the New Braunfels Municipal Airport Minimum Standards with regard to fire safety matters.
20. **Right of Inspection/Rights Reserved to the LESSOR:** LESSOR shall have the right to enter the Leased Premises at any reasonable time on reasonable notice (defined as 24-hour notice) to LESSEE for the purpose of inspection of the Leased Premises. In case of an emergency, no notice need be given to LESSEE prior to entering the Leased Premises. In no event shall LESSEE have a claim or cause of action against LESSOR by reason thereof.

The LESSOR reserves the right to develop or improve the Airport as it deems appropriate, but will give due consideration to LESSEE's operations in performing these improvements. If such improvements restrict LESSEE's ability to perform its primary business, then LESSEE may serve notice of default to the LESSOR.

21. **Indemnification and Insurance:** LESSEE shall protect, indemnify, defend, and hold harmless the LESSOR, its officers, agents and employees from and against any and all suits, actions, liability, losses, claims or damage of any character, and from and against costs and expenses, including reasonable attorneys' fees and costs incidental to the defense of such suits, actions, losses claims or liability on account of any personal injuries (including wrongful death) or property damage occasioned wholly or in part by any act or omission of LESSEE, its officers, employees, agents, students, contractors, servants, invitees, licensees, or concessionaires in their use of the Leased Premises, the runways and taxiways or any other area within the Airport or resulting from the operations under this Lease Agreement.

LESSEE shall, at its sole cost and expense, procure and maintain through the term of this Lease a policy or policies of insurance insuring against any and all liability for injury to or death of person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Leased Premises, and the Airport Facilities (including the contractual liability of the LESSEE to indemnify LESSOR contained herein). The minimum limits of such liability policy or policies to be written by insurance

companies shall be in accordance with the requirements set forth in Appendix A of Exhibit "A" according to the Uses of Property described in Paragraph 9. This coverage must include:

- a. Premises and operations;
- b. Independent contractors and their subcontractors;
- c. Real Property (fire)
- d. Hangar Keepers
- e. Personal Injury
- f. Contractual Liability;
- g. Worker's compensation with statutory limits; and
- h. Comprehensive automobile liability covering owned and non-owned automobiles, trucks and other vehicles.

The insurance policy or policies must be acceptable to the LESSOR and shall

contain a provision whereby LESSEE's insurer shall provide written notice to LESSOR in the event of cancellation, restrictive amendment or non-renewal at least thirty (30) days prior to the date of such action.

All insurance required under this Section shall be written with LESSOR as an additional insured. In any event, LESSEE is fully responsible for all losses arising out of, resulting from or connected with operations under this Lease Agreement whether or not the losses are covered by insurance.

All insurance required under this Section shall be primary over any other insurance coverage the LESSOR may have.

Prior to commencement of this Lease Agreement, LESSEE shall deliver to LESSOR, certificates of insurance to LESSOR, c/o New Braunfels Regional Airport, 2333 FM 758, 78130. Any and all renewals of these policies of insurance or, the replacement thereof, shall be delivered to LESSOR at least thirty (30) days prior to expiration of the respective policy terms.

22. Leasehold Mortgagee:

A. LESSOR acknowledges that LESSEE is not seeking financing to construct and operate the facilities on the Leased Premises. LESSEE agrees that no mortgage shall be placed on the property without the prior authorization of LESSOR and amendment filed to this agreement.

B. The Bank, and lenders approved by LESSOR under Sections J, K and L of this Section (each shall be referred to hereinafter as "Leasehold Mortgagee"),

shall be entitled to assign their leasehold mortgage(s) or, in the event such Leasehold Mortgagee forecloses upon or otherwise acquires the leasehold interest of LESSEE, to sell, sublet, assign, or otherwise dispose of such leasehold interest, provided the assignee or other party acquiring the leasehold interest is approved by LESSOR, which approval shall not be unreasonably withheld nor decision delayed or conditioned. In the event LESSEE is in default under its agreement with its Leasehold Mortgagee, LESSOR and LESSEE expressly agree that the Leasehold Mortgagee shall be entitled to enter upon the

Leased Premises, to perform such curative acts as may be necessary, and/or to operate and manage the Leased Premises, either in its own name and right or on behalf of LESSEE. LESSEE is authorized to grant a Leasehold Mortgagee a collateral assignment of leases and rents, applicable to rents payable by subtenant(s) and Concessionaire(s) of LESSEE, provided such collateral assignment of leases and rents contain a provision substantially identical to the following:

"The Assignee hereby acknowledges and agrees that no rentals or other amounts received pursuant to this Agreement shall be applied for any purpose unless all amounts then due and payable to LESSOR under the Agreement between LESSOR and the Assignor shall have been paid, and provided that the Assignee agrees to make provisions for payment of amounts which will be payable to LESSOR under this Lease Agreement at the end of that current calendar month."

LESSEE shall not grant a collateral assignment of leases or rents unless a provision substantially identical to the foregoing is contained therein. Upon the payment of the indebtedness due to such lender, and the recordation of the lender's release of its leasehold mortgage, such lender shall no longer be deemed a "Leasehold Mortgagee" hereunder.

C. LESSOR shall send separate written notice by registered or certified mail, postage prepaid, to the Leasehold Mortgagee at such address as the Leasehold Mortgagee shall designate, of any of the following events:

- 1) The failure of LESSEE to perform or comply with any of the provisions or covenants contained in this Lease Agreement, the cessation of business operations by LESSEE for reasons other than maintenance, replacement, or repair of the Leased Premises, the abandonment of the Leased Premises by LESSEE, or any other event which constitutes a default by LESSEE under this Lease Agreement or for which this Lease Agreement may be terminated (any of the foregoing shall constitute a "default" for purposes of this Section);
or

- 2) The occurrence of any event which gives rise to an election by LESSEE to cancel or terminate this Lease Agreement. All notices shall be given promptly upon the occurrence of any event requiring notice.

D. In the event LESSEE fails to cure any default of this Agreement within the time allowed, as set forth in Section 23 of this Lease Agreement, LESSOR shall provide the Leasehold Mortgagee with separate written notice of the failure of LESSEE to cure such default within the time allowed, and the Leasehold Mortgagee shall be allowed an additional period of at least thirty (30) days to cure such default (including taking possession of the Leased Premises if necessary to effect the cure) or to institute foreclosure proceeding (or otherwise acquire title to the leasehold estate). If such default is one which cannot reasonably be cured within thirty (30) days, such default by LESSEE shall not result in a termination of this Lease Agreement provided the Leasehold Mortgagee is paying all rent and proceeding to cure such default by LESSEE or to foreclose upon the leasehold estate. The State grants the Leasehold Mortgagee the right to enter upon the Leased Premises to cure any default by LESSEE. LESSOR shall accept any curative acts performed by the Leasehold Mortgagee as though they were performed timely by LESSEE.

E. No amendment to this Lease Agreement shall be made without the prior express written consent of the Leasehold Mortgagee. LESSOR and LESSEE, unless prohibited by law, shall amend this Lease Agreement from time to time upon reasonable request by the Leasehold Mortgagee in order to comply with any law or regulation applicable to the Leasehold Mortgagee or to the lending or bond issuance activities of the Bank or lender to retain and maintain the status of the bonds issued by the bank or lender to protect the interests of the Leasehold Mortgagee. Any such amendment shall not adversely affect the LESSOR's position.

F. The Leasehold Mortgagee shall not be liable for LESSEE's obligations under this Lease Agreement unless and until the Leasehold Mortgagee becomes the owner of the leasehold estate by foreclosure or by deed in lieu of foreclosure, and thereafter shall remain liable for such monetary obligations accruing only during the period it remains the owner of the leasehold estate. Monetary obligations shall include payment of the following: rent, utilities, property taxes, insurance and maintenance in accordance with the maintenance of this lease and the Airport's minimum standards.

G. The Leasehold Mortgagee shall enjoy the rights granted under this Article until such time as the loan to LESSEE is repaid and the leasehold mortgage securing such payment is released. The Leasehold Mortgagee shall be entitled but not required, to exercise such rights within its sole discretion.

I. There shall be no merger of the leasehold estate created hereby with the fee or any other estate or interest in the Leased Premises, or any part thereof by reason of

the fact that the same person may acquire, own or hold the leasehold estate and the fee or any other estate or interest.

J. In the event LESSEE is unable to obtain financing through the Bank and must obtain financing from another independent and qualified lender, such other lender shall be a Leasehold Mortgagee and shall be entitled to all of the rights and privileges granted to a Leasehold Mortgagee under this Agreement.

K. LESSOR acknowledges and agrees that LESSEE must obtain construction financing to enable LESSEE to construct the facilities contemplated under this Lease Agreement. LESSOR agrees and consents to the granting of a Leasehold Mortgage to Bank for construction financing. Such lender shall be a Leasehold Mortgagee under the terms of this Lease Agreement and entitled to all the rights and privileges granted to a Leasehold Mortgagee.

L. LESSOR acknowledges that during the term of this Lease Agreement, LESSEE may refinance its investment in the Leased Premises or assign its interest under this Lease Agreement to a secured party solely as security for its legal obligations. Such

refinancing Bank or lender shall be entitled to become a Leasehold Mortgagee and to exercise all of the rights and privileges granted to a Leasehold Mortgagee under the terms of this Lease Agreement, provided that the selection of the refinancing Bank or lender shall be subject to prior written approval by LESSOR, which approval shall not be unreasonably withheld nor decision delayed, time being of the essence.

M. LESSOR acknowledges that the contemplated financing is essential to the construction and completion of the Proposed Facilities and that the Leasehold Mortgagee may require certain changes or modifications in this Lease Agreement to protect its interests. Therefore, LESSOR agrees that it will make those changes or modifications requested by a proposed Leasehold Mortgagee in good faith, provided that they do not adversely affect the term of this Lease Agreement, or any of the economic benefits accruing to LESSOR under this Lease Agreement and that they do not increase any of the obligations or diminish any of the rights of LESSOR under this Lease Agreement.

23. **Force Majeure:** Any delays in or failure of performance by LESSOR or LESSEE shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the control of LESSOR or LESSEE, as the case may be, including but not limited to: acts of God, terrorists or the public enemy; expropriation or confiscation of facilities; act of war, rebellion or sabotage or damage resulting there from; fire, floods, explosion, accidents; riots, strikes, labor disputes or other concerted acts of workmen, whether direct or indirect; or any cases, whether or not of the same class or kind as those

specifically above named, which are not within the control of LESSOR or LESSEE and which by the exercise of reasonable diligence LESSOR or LESSEE are unable to prevent.

24. **Default and Remedies:** The following events shall be deemed to be events of default by LESSEE under this Lease:

- A. LESSEE fails to pay within ten (10) days when due any rental or any other sums or charges due under this Lease for three (3) consecutive periods.
- B. LESSEE fails to comply with any other term, provision, or covenant of this Lease Agreement, and does not cure the failure within thirty (30) days after written notice to LESSEE of the default, the nature of the default, and the required action to cure the default. For any subsequent default by LESSEE for the same reason, LESSOR may terminate the Lease Agreement if that subsequent default continues for more than ten (10) days after notice of the subsequent default. In all cases, LESSEE is responsible for the performance of any sublessee.
- C. LESSEE becomes insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.
- D. A receiver or trustee is appointed for all or substantially all of the assets of LESSEE.
- E. LESSEE deserts or vacates a substantial portion of the Leased Premises for a period of twenty (20) consecutive days.
- F. Notwithstanding the foregoing, if the nature of any default by LESSEE, save and except for the payment of rent, is such that the same cannot be cured within the foregoing cure periods, despite the diligent efforts of LESSEE, then, in that event, such cure period shall be extended for such
- G. reasonable period as is required for LESSEE to cure such default, provided LESSEE commences to cure such default within the foregoing cure period applicable and proceeds, thereafter, to cure such default with reasonable diligence.

Upon the occurrence of any of the events of default, LESSOR shall have the option to pursue any one or more of the following remedies without any further notice or demand;

- A. Terminate this Lease Agreement, in which event LESSEE shall

immediately surrender the Leased Premises to LESSOR, and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent or other monies due LESSOR, enter upon and take possession of the Leased Premises and expel or remove LESSEE and any other person who may be occupying the premises or part thereof, by force if necessary, without being liable for prosecution or any claim of damages; and LESSEE agree to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of termination, whether through inability to relet the Leased Premises on satisfactory terms or otherwise.

- B. Relet the Leased Premises and receive rent and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of the reletting.
- C. Enter upon the Leased Premises, by force if necessary, without being liable for prosecution or any claim for damages therefore, and perform such acts as LESSEE is obligated to perform under the terms of this Lease. LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in effecting compliance with LESSEE's obligations under this Lease Agreement, and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from any action, whether caused by the negligence of LESSOR or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided or any other remedies provided by law, nor shall pursuit of any of the other remedies provided constitute a forfeiture or waiver of any rent due to LESSOR or of any damages accruing to LESSOR by reason of the

violation of any of the terms, provisions and covenants of this Lease Agreement. Forbearance by LESSOR to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of default.

The following events shall be deemed to be events of default by LESSOR under this Lease:

- A. LESSOR fails to comply with any term, provision, or covenant of this Lease Agreement, and does not cure the failure within thirty (30) days after written notice to LESSOR of the default, the nature of the default, and the required action to cure the default.

- B. For any subsequent default by LESSOR for the same reason, LESSEE may terminate this Lease Agreement if that subsequent default continues for more than forty-five (45) days after notice of the subsequent default.
- C. Notwithstanding the foregoing, if the nature of any default by LESSOR is such that the same cannot be cured within the foregoing cure periods, despite the diligent efforts of LESSOR, then, in that event, such cure period shall be extended for such reasonable period as is required for LESSOR to cure such default, provided LESSOR commences to cure such default within the foregoing cure period applicable and proceeds, thereafter, to cure such default with reasonable diligence. LESSEE has ability to cease making lease, any Commercial Activity Fee and continue to occupy the premises until LESSOR's default is cured.

25. **Rights on Default:**

Default on rent or other monies due to LESSOR entitles LESSOR, at its option, to take whatever lawful action reasonably necessary to protect LESSOR's interest in the Leased Premises including, but not limited to, the storing of lien goods for payment for a reasonable time, as well as the selling of such goods at public or private auction for monies due without waiving LESSOR's right to the total amount of money due to it.

- 26. **Condemnation:** LESSEE will not be responsible for any payments of rent or fees during the period where the Airport ceases to function as an airport for general commercial traffic if LESSEE is unable to conduct its operations. In the event that the Airport is taken over by any federal or state agency as a result of which the Airport ceases to function as an Airport for general commercial traffic for a period of sixty (60) days or more, the LESSEE may terminate this Agreement and such takeover will be deemed a condemnation under the power of eminent domain. If the LESSEE does not terminate this Agreement, the original term of this Agreement shall be extended for a period of time equal to that period during which the Airport has not functioned as an Airport for general commercial traffic.
- 27. **Venue:** The parties agree that the Laws of the State of Texas shall govern this Lease Agreement and that exclusive venue for any legal action under this Lease Agreement shall lie in Comal County, Texas.
- 28. **Notice:** Any notice given by one party to the other in connection with this Lease Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested:

If to LESSOR, addressed to:
New Braunfels Regional Airport
Airport Director
2333 FM 758
New Braunfels, TX. 78130

If to LESSEE, addressed to:

Telephone: 830-221-4290

Telephone: _____

Notice shall be deemed to have been received three (3) days after the date of mailing or, in the case of personal delivery, on the date of such delivery.

29. **Miscellaneous:** This Lease Agreement constitutes the agreement relating to the leased premises between the parties, as of its effective date, and supersedes all prior agreements between the parties related to the leasing of the Leased Premises. Any change or modification hereof must be in writing signed by both parties.

It is specifically understood and agreed that nothing contained in this Lease Agreement shall be construed as a granting of or authorizing the granting of an exclusive right for exercising an aeronautical activity which is illegally discriminatory, and LESSEE specifically agrees to conduct its operations on the Leased Premises and operate the Leased Premises in a manner that does not discriminate against any person or entity and does not violate any regulations of the Federal Aviation Administration or Texas Department of Transportation's Aviation Division. LESSEE further agrees to comply with any enforcement procedures as might be required by the United States of America or the State of Texas.

If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws, the remainder of this Lease shall not be affected, and the parties declare that this Lease Agreement would have been entered into without such unenforceable portion. This Lease Agreement shall be binding on and shall ensure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

Signed this _____ day of _____, _____ to become effective on the _____ day of _____, _____.

LESSOR:
City of New Braunfels

By: _____
Robert Camareno, City Manager

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas on this day personally appeared Michael Morrison, the City Manager of the City of New Braunfels, Texas known to me to be the person whose name is subscribed to the foregoing contract and acknowledged that he has the authority and consent to bind the City of New Braunfels, Texas to this Agreement that he executed the same for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2018

Notary Public, State of Texas

LESSEE:

By: _____
NAME

STATE OF Texas

COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas on this day personally appeared _____, the _____ of _____, known to me to be the person whose name is subscribed to the foregoing contract and acknowledged that he has the authority and consent to bind _____ to this Agreement that he executed the same for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, _____.

Notary Public, State of Texas

Exhibit "A"

Airport Minimum Standards