GS
06/09/2011
Item No. 7

AN ORDINANCE 2011-06-09-0476

AUTHORIZING A FIVE-YEAR LEASE WITH HH AVIATION LLC FOR PREMISES AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, HH AVIATION LLC has requested a five-year lease for premises at San Antonio International Airport (Airport); and

WHEREAS, Aviation staff has negotiated a five-year lease with HH Aviation LLC for premises at the Airport; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute a five-year lease with HH Aviation LLC at the San Antonio International Airport. The lease in substantially final form is set out in **Attachment I**.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 51001000 per the table below:

Amount	General Ledger	Internal Order
$71,247.50	4409040	233000000004
$55,967.40	4409016	233000000004
Total Amount: $127,214.90		

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 9th day of June, 2011.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 7

Name:	6, 7, 9, 10, 11, 12A, 12B, 12C, 13, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J, 15K, 15L, 15M, 15N, 15O, 16, 17, 19A, 19B, 21, 24
Date:	06/09/2011
Time:	09:31:23 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a five-year lease agreement with H H Aviation, LLC for office/warehouse space and ground space at the San Antonio International Airport for the annual rental rate of $25,442.98. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

SAN ANTONIO INTERNATIONAL AIRPORT LEASE

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This San Antonio International Airport Lease (hereinafter "Lease") is entered into by and between the **CITY OF SAN ANTONIO** ("Lessor"), a Texas home-rule municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____, and HH Aviation, LLC ("Lessee"), a Texas limited liability company, acting by and through its duly authorized officers. The initial addresses of the parties are as follows:

City	Lessee
Aviation Director	HH Aviation, LLC
City of San Antonio	ATTN: Charles C. Strickland, Vice President
9800 Airport Blvd.	903 Paul Wilkins
San Antonio, Texas 78216	San Antonio, TX 78216

ARTICLE 1. DEFINITIONS

As used herein, the following words and phrases shall have the meanings set forth below:

1.01 Affiliate. "Affiliate" is any corporation or other entity which directly or indirectly controls or is directly or indirectly controlled by or is under common control with Lessee; "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

1.02 Airport. "Airport" means San Antonio International Airport.

1.03 Appraisal Process. "Appraisal Process" shall mean the process followed by the parties to arrive at a fair market value, that will be utilized to set rental rates during the term of this Lease Agreement. Said process consists of the following: Lessor shall, at Lessor's cost, cause an appraisal to be conducted of the Leased Premises (Lessor's Appraisal). The appraisal shall be undertaken by a recognized, qualified and impartial MAI or equivalent appraiser, experienced in airport appraisals, selected by the Aviation Director, and be performed within the twelve (12) month period preceding the date upon which a change in rental rates, based upon the Appraisal Process, is due to be implemented. In the event that Lessee states, in writing, to the Aviation Director that it does not agree with the Lessor's Appraisal, then and in such event Lessee shall appoint a recognized, qualified and impartial MAI or equivalent appraiser, experienced in airport appraisals (hereinafter, "Lessee Appraiser") to conduct an appraisal of the Leased Premises at Lessee's cost (hereinafter "Lessee's Appraisal"). Such appointment shall be signed and noticed in writing, by Lessee to Lessor. The Lessor's Appraiser along with Lessee's Appraiser shall, in turn, appoint a third appraiser, qualified as stated above to render an opinion of value of the ground and building premises and the cost of such opinion shall be shared and paid equally by Lessee and Lessor. If Lessee shall fail to so appoint an appraiser for a period of twenty (20) days after written notice from Lessor to make such appointment, then the Lessor's Appraisal

shall stand as if uncontested. No two (2) appraisers may be employed by, or office within, the same company, firm or organization, or family of organizations or companies.

1.04 Aviation Director. "Aviation Director" means the Aviation Director of the City of San Antonio or Assistant Aviation Director.

1.05 DOT. "DOT" means the United States Department of Transportation, and any federal agency succeeding to its jurisdiction.

1.06 EDIF Fund. "EDIF Fund" is a fund controlled by the City of San Antonio, funded with non-airport revenues.

1.07 FAA. "FAA" means the Federal Aviation Administration of the United States government, and any federal agency succeeding to its jurisdiction.

1.08 Sign. "Sign" means any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content.

1.09 Leased Premises. "Leased Premises" means those certain premises at Airport more particularly described in Article 2.

1.10 Fiscal Year. "Fiscal Year" means a period of twelve (12) consecutive months commencing on October 1 and ending on September 30.

1.11 Subsidiary. "Subsidiary" shall mean any corporation or other entity not less than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) shall, at the time, be owned directly or indirectly by Lessee or the entity owning directly or indirectly 50% or more of Lessee, as applicable.

1.12 Trade Fixtures. "Trade Fixtures" shall mean, but shall not be limited to, any signs (electrical or otherwise) used to identify Lessee's business; all shelves, bins, racking, machinery and equipment used in connection with Lessee's required or permitted activities pursuant to this Lease Agreement, whether or not such machinery or equipment is bolted or otherwise attached to the Leased Premises; and all other miscellaneous office equipment, furnishings, and personal property.

1.13 TSA. "TSA" means the Transportation Security Administration, and any federal agency succeeding to its jurisdiction.

ARTICLE 2. DESCRIPTION OF LEASED PREMISES

2.01 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, and Lessee does hereby accept from Lessor, the property listed below (collectively referred to as "Leased Premises") located at San Antonio International Airport in San Antonio, Bexar County, Texas and identified in Exhibit 1 which is attached hereto and made a part hereof for all intents and purposes.

2.01.01 Ground Space: 27,099 square feet of land upon which the Building Space is situated plus 1,400 square feet on which a fuel farm is situated.

2.01.02 Building Space: a one story metal building with an area of 6,018 square feet, commonly known as Building 1120, and located at 911 Paul Wilkins Rd.

2.02 If no survey of the premises exist that is acceptable to both Lessor and Lessee, the Lessee shall perform a meets and bounds survey of the Leased Premises, at Lessee's expense, within 180 days of the start of the Lease. Said survey shall be incorporated into and become part of this Lease, and shall become the controlling description of the Ground Space.

ARTICLE 3. RENTAL

3.01 Lessee agrees to pay Lessor as rental as indicated on the table below, monthly in advance (without notice or demand, both of which are expressly waived) for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided. All rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in equal monthly installments on or before the first day of each calendar month beginning on the Commencement Date and continuing throughout the remainder of the term of this Lease Agreement and any extension(s) hereof. In the event that the term of this Lease Agreement shall commence on the day other than the first day of any calendar month or expire on a day other than the last day of a calendar month, then, and in such event, rental installments will be prorated for the first or last month as the case may be.

Premises	Area (Sq. Ft.)	Annual Rate Per Sq. Ft.	Annual Rental	Monthly Rental
Ground space	28,499	$0.50	$14,249.50	$1,187.46
Bldg. 1120	6,018	$1.86	$11,193.48	$932.79

3.02 Fees and charges for miscellaneous items and services, including, but not limited to, employee badges, parking charges, airfield driver's and security classes, personal property storage, shall be agreed to, in writing, by the parties hereto or be assessed by City ordinance, in connection with the ordinary usage of Airport facilities.

3.03 All rentals and payments that become due and payable by the Lessee shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas, 78216 unless otherwise notified in writing. All rentals and payments unpaid for ten (10) days after the date due shall bear interest at the rate of eighteen (18) percent per annum from that date.

3.04 All rentals, fees and charges payable by Lessee to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

ARTICLE 4. USE OF LEASED PREMISES

Lessee shall use the premises for its corporate flight operations, related activities such as aircraft storage, maintenance, and other activities reasonably related thereto. No other activities shall be conducted on the Leased Premises unless authorized in writing by the Aviation Director.

ARTICLE 5. LEASE TERM

The term of this Lease Agreement shall be five (5) years that shall commence on May 1, 2011 ("Commencement Date") and shall terminate at midnight on April 30, 2016 unless earlier terminated in accordance with this Lease.

ARTICLE 6. INDEMNIFICATION

6.01 **LESSEE** covenants and agrees to **FULLY INDEMNIFY, DEFEND** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LESSEE's** activities under this **LEASE**, including any acts or omissions of **LESSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LESSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **LEASE**, all without however, the City waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LESSEE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE's** activities under this **LEASE** and shall see to the investigation and defense of such claim or demand at **LESSEE's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

6.02 It is the **EXPRESS INTENT** of the parties to this **LEASE**, that the **INDEMNITY** provided for in this Article 6, is an **INDEMNITY** extended by **LESSEE** to **INDEMNIFY, PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY's OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this Article **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LESSEE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

ARTICLE 7. INSURANCE

7.01 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish original Certificates of Insurance to City and all applicable endorsements, which shall be completed by an agent authorized to bind the named underwriter(s) and their

company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Lessor will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

7.02 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

7.03 LESSEE's financial integrity is of interest to the City; therefore, subject to LESSEE's right to maintain reasonable deductibles in such amounts as are approved by the City, LESSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at LESSEE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

	Type	**Amount**
(1)	Worker's Compensation & Employer's Liability	Statutory $1,000,000/$1,000,000/$1,000,000
**(2)	Broad Form Commercial General Liability Aviation Policy to include coverage for the following: (A) Premises Operations * (B) Independent Contractors (C) Products/Completed Operations (D) Personal Injury (E) Contractual Liability (F) Damage to Rented Premises	Combined Single Limit for Bodily Injury and Property Damage of $5,000,000 per occurrence or its equivalent with an aggregate of not less than $5,000,000
(3)	Property Insurance for physical damage to the property of Lessee, including improvements and betterments the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Lessee's property
*(4)	Automobile Liability (any auto)	Combined Single Limit for Bodily Injury and Property Damage of $5,000,000 per occurrence or its equivalent.
*(5)	Above Ground and/or Underground Storage Tank Storage Tank Liability	$10,000,000 per claim
*(6)	Aircraft Liability	$10,000,000 per occurrence, Combined

single limit, written on an occurrence form

* If applicable
** In the event third party aircraft are stored/maintained on the Leased Premises, a Hangar Keeper's Liability Endorsement will be required.

7.04 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LESSEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. LESSEE shall pay any costs incurred resulting from said changes.

Aviation Director
CITY OF SAN ANTONIO
9800 Airport Blvd.
San Antonio, Texas 78216-9990

7.05 LESSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices:

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

7.06 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LESSEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend LESSEE's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

7.07 Nothing herein contained shall be construed as limiting in any way the extent to which LESSEE may be held responsible for payments of damages to persons or property resulting from LESSEE's or its subcontractors' performance of the work covered under this Agreement.

7.08 It is agreed that LESSEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

7.09 All personal property placed in the Leased Premises shall be at the sole risk of LESSEE. CITY shall not be liable, and LESSEE waives all claims for any damage either to the person or property of LESSEE or to other persons: (i) due to the Leased Premises or any part of appurtenances thereof becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of CITY or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. LESSEE shall save and hold harmless CITY from any claims arising out of damage to LESSEE'S property or damage to LESSEE'S business, including subrogation claims by LESSEE'S insurers.

7.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

ARTICLE 8. PERFORMANCE GUARANTEE & LANDLORDS LIEN

8.01 Lessee shall deliver to the Aviation Director, on or before the execution of this Lease, and shall keep in force throughout the term hereof, an irrevocable standby letter of credit in favor of Lessor, drawn upon a bank satisfactory to Lessor and payable to City of San Antonio, Aviation Department. The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. The amount of the irrevocable standby letter of credit shall be at least THIRTEEN THOUSAND DOLLARS ($13,000.00). Said amount shall be adjusted, as necessary, so that it shall at all times equal at least one-half (1/2) of the total annual rental payable by Lessee to Lessor hereunder.

8.02 Lessee hereby gives to Lessor a lien upon all of its property now, or at any time hereafter, in or upon the Leased Premises, to secure the prompt payment of charges herein stipulated to be paid for the use of said Premises; all exemptions of such property, or any of it, being hereby waived.

8.03 In the event that the amount of the Performance Guarantee provided by Lessee under the terms of this Lease Agreement, at all times during the term hereof, shall equal the greater of the rentals, fees and charges payable by Lessee to Lessor for the current calendar year, or double the amount of the Performance Guarantee set forth in Section 8.01 above, then the provisions set forth in Section 8.02 above, shall not apply hereto.

ARTICLES 9. RESERVED

ARTICLE 10. RENTAL ADJUSTMENTS & OTHER FEES

10.1. Rental Adjustment Based on Economic Index. This Section shall apply only if the lease term is longer than five-years.

A. On August 1, preceding the fifth anniversary date of this Lease Agreement, and every five (5) years thereafter during the term of this Lease Agreement and any renewal or extension thereof, the basic rental shall be adjusted for the ensuing five (5) year period, according to any increase or decrease in:

(a) the average of the monthly indices, published by the Bureau of Labor Statistics, U.S. Department of Labor, for AGGREGATE WEEKLY PAYROLLS OF PRODUCTION-MANUFACTURING and for PRODUCER PRICES - ALL COMMODITIES for the twelve (12) month period, ending with December 31, of the preceding calendar year,

as compared to:

(b) the average of the above-named indices for the twelve (12) month period, ending with December 31, of the year in which this lease became effective..

The computation for said adjustment shall be as follows:

$$\frac{(a)}{(b)} \times \text{Base Rental Rate(s)} = \text{Adjusted Rental Rate(s)}$$

That is, the BASE RENTAL RATE shall be multiplied by a fraction, the denominator of which shall be the common average of the two (2) averages of the twelve (12) monthly indices of AGGREGATE WEEKLY PAYROLLS OF PRODUCTION-MANUFACTURING and of PRODUCER PRICES - ALL COMMODITIES for the twelve (12) month period, ending December 31 of the year in which this lease became effective, and the numerator of which shall be the similar common average for the twelve (12) months ending December 31st of the calendar year immediately preceding the adjustment date. All index figures must be final.

B. The BASE RENTAL RATE(S) shall be the rental rate(s), without any adjustment whatsoever, set forth in this Lease Agreement at the start of term, and the ADJUSTED RENTAL RATE(S) shall be such BASE RENTAL RATE(S), plus or minus any increase or decrease, computed according to the formula set out in Section 10.1.A, above.

C. This Section 10.1 shall be effective in this manner as long as both above-mentioned indices are published by the said government authorities in the same form and based on the same data as at the date of the granting of this Lease Agreement. In the event the Bureau of Labor Statistics amends its method of calculating the indices, or changes the base year on which such indices are calculated, such amendments and changes shall govern calculations or adjustments.

D. Notwithstanding anything contrary herein, the parties agree that, for all buildings transferred to City ownership, the denominator for the building rental adjustment shall be the average of the above-named indices for the twelve (12) month period, ending with December 31st of the year in which ownership is transferred to the City.

10. 3 <u>ADDITIONAL FEES AND CHARGES</u>

A. Fuel flowage fees shall be paid by Lessee, its sublessees, permittees and licensees (hereinafter, for purposes of Section 10.3, collectively "Lessee"), to the Lessor for fuel delivered to Lessee at the Airport, in the amount per gallon, now or hereafter, established by City

ordinance. Lessee agrees to keep accurate books, records and accounts of its purchase and sale of aircraft fuel delivered to it on the Airport premises. All such books, records, accounts, and supporting documentation, shall be preserved by Lessee for thirty-six (36) months, either at the Leased Premises or at the home or regional offices of Lessee, and made available, for audit purposes, to Lessor and its authorized agents or representatives, at the Leased Premises, upon request. Lessee agrees to remit, to the Aviation Director, payment and related statements, certified by the various suppliers, as to the amount of aircraft fuel delivered to the Leased Premises, by the 10th day of the month following such delivery. If no such delivery is made during a particular month, Lessee shall provide the Aviation Director with a written statement to that effect.

B. Lessee and all tenants and operators at the Airport, other than those engaged in the carriage of persons, cargo, mail or other property for hire (commercial aircraft operators), pursuant to City ordinance, are obligated to pay a fuel flowage fee on aircraft fuel delivered to them. Nothing herein shall relieve Lessee, its customers or others, from any field use charges levied generally by Lessor, directly or indirectly, upon the operation of aircraft at the Airport.

C. Fees and charges for miscellaneous items and services, including, but not limited to, employee badges, shall be assessed, by City ordinance, in connection with the ordinary usage of Airport facilities.

D. All rentals, fees and charges payable by Lessee to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

ARTICLE 11. PRIVILEGES AND CONDITIONS

11.01 Lessor hereby grants to Lessee the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:

A. The general use by Lessee, for commercial aviation activities, of all common aircraft facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to said Airport, except as hereinafter provided. "Common airport facilities" shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, taxiways, aprons, roadways, sidewalks, navigational and aviation aids, lighting facilities, terminal facilities or other common or public facilities appurtenant to said Airport.

B. The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Airport for Lessee, its agents, servants, patrons, invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Airport.

11.02 The granting and acceptance of this Lease Agreement is conditioned upon compliance with the covenant that the right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with the laws of the United States, State of Texas and City of San Antonio, the rules and regulations promulgated by their authority with reference to aviation and navigation, and all reasonable and applicable rules, regulations and ordinances of Lessor, now in force or hereafter prescribed or promulgated by charter authority or by law.

11.03 Lessor reserves the right to enter the Leased Premises at any reasonable time for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Lease Agreement are being adhered to by Lessee.

ARTICLE 12. AS IS ACCEPTANCE AND CONDITION OF PREMISES

12.01 The parties agree that this Lease is granted by Lessor, at Lessee's request, and that the Leased Premises were formerly leased to and occupied by Lessee.

12.02 Lessee has had full opportunity to examine the Leased Premises. Except for environmental matters not caused by or reasonably discoverable by Lessee prior to the commencement of this Lease Agreement, Lessee's taking possession of the Leased Premises shall be conclusive evidence of Lessee's acceptance thereof in an "AS IS" condition, and Lessee hereby accepts same in its present condition as suitable for the purpose for which leased.

12.03 Lessee agrees that no representations respecting the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by Lessor or its agents to Lessee, unless contained herein or made a part hereof by specific reference.

ARTICLE 13. CONSTRUCTION BY LESSEE

13.01 Lessee shall have the right to erect, alter, remodel and renovate buildings and other improvements on the Leased Premises, provided that it shall submit to the Aviation Director plans and specifications prepared by registered architects and engineers setting forth the renovations, construction, alterations or improvements that Lessee desires to perform, in such detail as may be required by the Aviation Director, and provided that approval of such plans and specifications by said Director is obtained as set forth below.

13.02 Lessor agrees to examine and approve or disapprove plans and specifications submitted in accordance with the provisions above, within sixty (60) business days after receipt thereof, and to give Lessee written notification of same. The approval by Lessor of such plans and specifications refers only to the conformity of same to the general architectural plan for the Leased Premises, as opposed to their architectural or engineering design. Lessor, by giving its approval, assumes no liability or responsibility therefor or for any defect in any work performed according to such plans and specifications. Lessee agrees not to commence any renovations, construction, alterations or improvements until Lessor, through the Aviation Director, has given written approval regarding Lessee's plans and specifications.

13.03 Further, prior to the commencement of construction, Lessee shall procure any and all additional approvals of the plans and specifications for its buildings and improvements required by any federal, state or municipal authorities, agencies, officers and departments having jurisdiction thereof and shall obtain any and all requisite building or construction licenses, permits or approvals. Construction shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, state or municipal agency or department having jurisdiction thereof. Lessee specifically agrees that it shall hold Lessor completely harmless from and against any and all claims, causes of action or liabilities, whether actual or potential, associated with any construction undertaken by Lessee hereunder.

13.04 The cost of any renovations, construction, alterations or improvements upon the Leased Premises shall be borne and paid for solely by Lessee. Except as may be otherwise set forth herein, Lessor has no financial or other obligation of any kind under this Lease Agreement, other than the renting to Lessee of the premises which are the subject hereof for the term and consideration hereinbefore set forth.

13.05 Upon completion of all renovations, construction, alterations or improvements, a conformed set of "as built" plans and a Certificate of Occupancy shall be provided by Lessee to the Aviation Director.

13.06 In undertaking any such renovations, construction, alterations or improvements, it is expressly understood that, where applicable, unless otherwise agreed to in writing by the parties, Lessee shall be responsible, at its sole expense, for any and all construction and maintenance of taxiways and connections to the Airport's runway and taxiway system, along an alignment and in accordance with designs and plans approved in advance, in writing, by the Aviation Director. It is further expressly understood and agreed that any improvements and access thereto constructed by Lessee on the Leased Premises shall be performed in such a manner that shall not cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system.

ARTICLE 14. LIENS PROHIBITED

14.01 Lessee shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Lessee's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Lessee or to anyone holding the Leased Premises, or any part thereof, through or under Lessee.

14.02 If any such mechanics' lien or materialmen's lien described in Section 14.01 above shall be recorded against the Leased Premises, or any improvements thereon, Lessee shall cause the same to be removed or, bonded around pursuant to the terms of the Texas Property Code. In the alternative, if Lessee, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

ARTICLE 15. MAINTENANCE AND REPAIR

15.01 Lessee shall pay or cause to be paid, any and all charges for water, heat, gas, electricity, sewer and any and all other utilities used on the Leased Premises, throughout the term of, or any extension of, this Lease Agreement, including, but not limited to, any connection fees and any and all additional costs related to utility connection, metering, maintenance, repair and usage.

15.02 Except as may be otherwise provided herein, Lessee shall, throughout the term of this Lease Agreement and any extension hereof, assume the entire responsibility, cost and expense, for all repair and maintenance of the Leased Premises and all buildings and improvements thereon, whether such repair or maintenance be ordinary, extraordinary, structural or otherwise. Additionally, without limiting the foregoing, Lessee shall:

A. at all times maintain the buildings and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and

B. replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements; and

C. at all times keep the Leased Premises, its buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance; and

D. provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including Lessor and Aviation Director; and

E. observe all insurance regulations and requirements concerning the use and condition of the Leased Premises, for the purpose of reducing fire hazards and insurance rates on the Airport; and

F. repair any damage caused by Lessee to paving or other surfaces of the Leased Premises or the Airport, in connection with the scope of the Lease Agreement, caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and

G. take measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of the Leased Premises; the planting, maintaining and replanting of any landscaped areas; the designing and constructing of improvements on the Leased Premises; and the preservation of as many trees as possible, consistent with Lessee's construction and operations; and

H. be responsible for the maintenance and repair of all utility services lines upon the Leased Premises, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers; and

I. keep and maintain all vehicles and equipment operated by Lessee on the Airport in safe condition, good repair and insured, as required by this Lease Agreement; and

J. replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises and, where applicable, mow the grass; and

K. provide and use suitable covered metal receptacles for all garbage, trash and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Aviation Director, for the adequate sanitary handling and disposal away from the Airport, of all trash, garbage and refuse caused as a result of the operation of Lessee's business.

15.03 The adequacy of the performance of the foregoing maintenance and repair by Lessee shall be determined by the Aviation Director, whose reasonably exercised judgment shall be conclusive. Should Lessee refuse or neglect to undertake any such maintenance or repair, or if

Lessor is required to perform any maintenance or repair necessitated by the negligent acts or omissions of Lessee, its employees, agents, assignees, subtenants or licensees, then Lessor shall have the right, but not the obligation, to perform such maintenance or repair on behalf of and for Lessee. The costs of such maintenance or repair, plus any associated overhead reasonably determined by Lessor, shall be reimbursed by Lessee to Lessor no later than ten (10) days following receipt by Lessee of written demand from Lessor for same. In cases not involving maintenance or repair requiring exigent action, Lessor shall provide Lessee a written request that Lessee perform such maintenance or repair, at least thirty (30) days before Lessor effects such maintenance or repair on behalf of Lessee.

ARTICLE 16. TITLE

16.01 It is expressly understood and agreed that any and all items of personal property owned, placed or maintained by Lessee on the Leased Premises during the term hereof shall be and remain Lessee's property. Provided that Lessee is not in default under this Lease Agreement, it may remove or cause to be removed all such items from the Leased Premises. At Lessor's sole election, any such items remaining on the Leased Premises more than thirty (30) days after the expiration of the term hereof, shall then belong to Lessor without payment of consideration therefor.

16.02 All foundations, buildings, alterations, additions or improvements (hereinafter "Improvements") made upon the Leased Premises by Lessee are and shall be the property of Lessee during the Lease Term hereof. During said term, absent the Aviation Director's written approval, such Improvements shall be conveyed, transferred or assigned, only to a person or entity to whom this Lease Agreement simultaneously is being transferred or assigned, whereupon the holder of the leasehold interest hereunder shall own the Improvements. Absent such written approval of the Director any attempted conveyance, transfer or assignment of Improvements, to any person or entity, whether voluntary, by operation of law or otherwise, shall be void and of no effect.

16.03 With the exception of fuel storage facilities as set forth in Article 17 below, at Lessor's sole option, title to Improvements made upon the Leased Premises by Lessee, and fixtures annexed thereto, shall vest in and become the property of Lessor, at no cost to Lessor and without any instrument of conveyance, upon the expiration of the primary term of this Lease Agreement or upon earlier termination thereof. Notwithstanding the foregoing, Lessee covenants and agrees, upon Lessor's demand, on or after termination of the Lease Agreement, to execute any instruments requested by Lessor in connection with the conveyance of such Improvements. Lessor shall notify Lessee whether or not Lessor intends take title to Improvements, or any portion thereof, as herein provided, at least sixty (60) days prior to the expiration of the primary term of this Lease Agreement or earlier termination thereof. Lessor's failure to provide such notice, however, shall not act as a waiver of its rights hereunder; provided that Lessor, within a reasonable time after receipt of Lessee's written request, advises Lessee of its election hereunder.

16.04 Should Lessor elect not to take title to Improvements, or any portion thereof, as provided in Section 16.03 above, same shall be removed by Lessee, at its sole cost and risk, in compliance with all applicable laws and regulations and, to the degree reasonably possible, the Leased Premises shall be restored to the condition that existed prior to the construction of same. Should Lessee fail to undertake such removal within ninety (90) days following the expiration or termination of this Lease Agreement, Lessor may undertake such removal at

Lessee's expense. The Performance Guarantee, required under this Lease Agreement, may, at Lessor's option, be applied towards any costs incurred by Lessor for such removal.

ARTICLE 17. ENVIRONMENTAL COMPLIANCE

17.01 Lessee acknowledges that it is the owner of any and all fuel storage facilities presently existing upon the Leased Premises and any fuel storage facilities that may in the future be placed by Lessee, its sublessees, licensees or permittees in, on or upon the Leased Premises. (For purposes of this provision, "facilities" are defined as any mobile or fixed, onshore building, structure, installation, equipment, pipe, or pipeline used in fuel storage, fuel gathering, fuel transfer, or fuel distribution.) Lessee agrees that it shall, at its sole expense, comply with all applicable federal, state and local statutes, laws, ordinances, rules and regulations concerning fuel storage facilities, including, but not limited to, regulations promulgated by the Environmental Protection Agency, as well as all inspection, financial liability and inventory control recording requirements, and that it shall provide Lessor with copies of certificates of registration from the Texas Commission on Environmental Quality (hereinafter "TCEQ") for any existing or new fuel storage facilities, together with copies of any required proof of financial responsibility and other documentation reasonably required by the Aviation Director or applicable regulatory agency.

17.02 During the term of this Lease Agreement and any extensions thereof, should changes in applicable statutes, laws, rules or regulations regarding fuel storage facilities necessitate the removal, modification or replacement of such fuel storage facilities in, on, upon or under the Leased Premises, then such removal, modification or replacement shall be timely undertaken and performed by Lessee, at its sole cost and expense. Ownership of the fuel storage facilities shall, at all times, remain in the Lessee, its sublessees, licensees and permittees. Furthermore, if requested by Lessor, Lessee shall within ninety (90) days following the termination or expiration of this Lease Agreement, at its sole cost, remove said Items from the Leased Premises, perform any required soil or other investigations, perform regulatory remediation and restore the Leased Premises to a condition in compliance with all applicable statutes, laws, rules, or regulations governing fuel storage facilities. The Performance Guarantee required under the terms of this Lease Agreement shall not be returned or restored to Lessee until such removal, if requested, is accomplished and/or remediation is accomplished to the satisfaction of TCEQ.

17.03 Lessee shall, in conducting any activity or business on the Leased Premises, including environmental response or remedial activities, comply with all environmental laws, including, but not limited to, those regarding the generation, storage, use, transportation and disposal of solid wastes, hazardous materials, toxic chemicals, special wastes or other contaminants, and all laws, regulations and notice requirements pertaining to releases or threatened releases of hazardous materials, toxic chemicals, special wastes or other contaminants into the environment. Lessee shall not cause the release, or permit its employees, agents, permittees, contractors, subcontractors, sublessees, or others in Lessee's control, supervision, or employment, to release (whether by way of uncapping, pouring, spilling, spraying, spreading, attaching or otherwise), into or onto the Leased Premises or any other location upon or above the Airport (including the air, ground and ground water thereunder and the sewer and storm water drainage systems thereon), any quantity of hazardous substances (as defined or established from time to time by applicable local, state, or federal law and including, among other things, hazardous waste and any other substances that have been or may in the future be determined to be toxic, hazardous or unsafe). To the extent any such release may exceed quantities or volumes permitted by applicable federal, Texas or local law, Lessee shall immediately notify the Aviation Director, TCEQ, and Local Emergency Planning Committee, as

may be required under the federal Emergency Planning and Community Right To Know Act. The Lessee, or any occupant of Leased Premises, shall be responsible for compliance with said Act, in the event of any such release.

17.04 Lessee shall remedy any release or threatened release caused by Lessee's operations at the Airport, as described above and, whether resulting from such release or otherwise, remove any hazardous materials, special wastes and any other environmental contamination caused by Lessee on, under or upon the Leased Premises, as may be required by a governmental or regulatory agency responsible for enforcing environmental laws and regulations. Such work shall be performed, at Lessee's sole expense, after Lessee submits to Lessor a written plan for completing such work. Lessor shall have the right to review and inspect all such work at any time, using consultants and representatives of its choice, at Lessor's sole cost and expense. Specific cleanup levels for any environmental remedial work shall be designed to meet all of the applicable environmental laws and regulations, to the satisfaction of the appropriate government or regulatory agency responsible for enforcing environmental laws and regulations.

17.05 **Lessee agrees to defend, indemnify and hold harmless Lessor, its elected and appointed officials, officers, agents and employees, from and against any and all reasonable losses, claims, liability, damages, injunctive relief, injuries to person, property or natural resources, costs, expenses, enforcement actions, actions or causes of action, fines and penalties, arising as a result of action or inaction of Lessee, its employees, agents or contractors, in connection with the release, threatened release or presence of any hazardous material, contaminants, or toxic chemicals at, on, under, over or upon the Leased Premises and Airport, whether or not foreseeable, regardless of the source or timing of occurrence, release, threatened release, presence or discovery of same. The foregoing indemnity includes, without limitation, all reasonable costs at law or in equity for removal, clean-up, remediation and disposal of any kind, as well as all reasonable costs associated with determining whether the Airport is in compliance, and causing the Airport to be in compliance with, all applicable environmental laws and regulations and all reasonable costs associated with claims for damages to persons, property or natural resources. In the event that Lessor is named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Leased Premises caused by the action or inaction of the Lessee, Lessee shall defend Lessor and indemnify and hold harmless Lessor from any reasonable costs, damages, fines and penalties resulting therefrom.**

17.06 In addition to any other rights of access herein regarding the Leased Premises, Lessor shall, upon reasonable notice, have access thereto in order to inspect and confirm that the Lessee is using same in accordance with all applicable environmental laws and regulations. Lessee shall, upon the Aviation Director's demand and at Lessee's sole expense, demonstrate to said Director (through such tests, professional inspections, samplings, or other methods as may be reasonably required by said Director) that Lessee has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, Texas or local law. Qualified independent experts, chosen by Lessee, subject to Lessor's approval, which approval shall not be unreasonably withheld, shall conduct any such tests and assessments. Lessee shall provide copies of reports from any such testing or assessments to Lessor upon receipt. Should Lessee not provide same to Lessor, Lessor

may conduct, or cause to be conducted, such tests, inspections, samplings and assessments, and Lessee shall reimburse Lessor for all costs of such actions, no later than thirty (30) days following receipt by Lessee of invoices therefor. Lessor reserves the right to conduct any of the above actions, at the Aviation Director's discretion, when in the opinion of same, additional or supplemental assessments are in Lessor's best interest.

17.07 Lessee, at Lessor's request, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the non-privileged documents and materials Lessee has prepared pursuant to any environmental law or regulation, which may be retained by Lessor or submitted to any governmental regulatory agency; provided, such documents and materials relate to environmental regulatory compliance and pertain to the Airport or the Leased Premises. If any environmental law or regulation requires Lessee to file any notice or report of a release or threatened release of regulated materials on, under or about the Leased Premises or the Airport, Lessee shall promptly submit such notice or report to the appropriate governmental agency and simultaneously provide a copy of such report or notice to Lessor. In the event that any written allegation, claim, demand, action or notice is made against Lessee regarding Lessee's failure or alleged failure to comply with any environmental law or regulation, Lessee, as soon as practicable, shall notify Lessor in writing and provide same with copies of any such written allegations, claims, demands, notices or actions so made.

17.08 The parties to this Lease Agreement, including the tenants or sublessees who may enjoy a future right of occupation through Lessee, acknowledge a right and a duty in Lessor, exercised by the Aviation Director, to review safety and potential environmental impacts of any proposed operation, business, maintenance or other activity of the Lessee and its sublessees. To this end, said Director shall have authority to disapprove an activity of the Lessee and/or any sublessee, on the basis of a risk assessment. The parties understand that Airport premises are not intended for use involving refining, processing, manufacturing, maintenance, overhaul, or similar heavy industrial activities entailing use, storage, manufacture, or transport of critical volumes of regulated or hazardous materials or toxic chemicals. For purposes of this Lease Agreement, "critical volumes" are those which, in the discretion and judgment of the Aviation Director, pose or may pose an unreasonable risk to Airport property, its occupants, employees or the traveling public. Discretion and judgment are reserved to the Aviation Director due to the fact that combinations and proximity of such materials are synergistic. The Aviation Director's decision in this regard is final, and said Director shall exercise such review prior to any lease or sublease, from time to time, as he may deem necessary for appropriate risk assessment of existing leases and subleases.

ARTICLE 18. SIGNS

Lessee shall neither erect signs nor distribute advertising matter upon Airport Premises, without the prior written consent of the Aviation Director.

ARTICLE 19. REGULATIONS

Lessee's officers, agents, employees and servants shall obey all rules and regulations promulgated by Lessor, its authorized agents in charge of the Airport, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

ARTICLE 20. QUALITY OF SERVICES

Lessee shall, at all times, furnish good, prompt and efficient commercial aviation services, adequate to meet demand for same at the Airport, furnish said services on a non-discriminatory basis to all users thereof, and charge non-discriminatory prices for each unit of sale or service; provided, however, that Lessee will be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

ARTICLE 21. TIME OF 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 for government use, and, if such lease is executed, the provisions of this Lease Agreement, insofar as they are inconsistent with those of the Government lease, shall be suspended.

ARTICLE 22. SUBORDINATION OF LEASE & RIGHT OF RECAPTURE

22.01 This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States Of America regarding operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under lease, or substantially alter or destroy the commercial value of the leasehold interest granted herein, Lessor shall not be held liable therefore, but, in such event, Lessee may cancel this Lease Agreement upon ten (10) days' written notice to Lessor. Notwithstanding the foregoing, Lessor agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, Lessor shall utilize its best efforts to (i) give the maximum possible notice thereof to Lessee. Any portion of the Leased Premises recaptured from Lessee under this provision shall result in a proportionate abatement of rent as of the date the recapture is effectuated.

22.02 Lessor shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for the City's development, improvement, and or maintenance of the Airport's runways and taxiways; for protection or enhancement of flight operations; or for other development in compliance with any current or future Airport Master Plan. In the event of any such recapture, Lessee and Lessor shall execute a writing reflecting a corresponding adjustment to the Leased premises and rent. If Lessee is required to relocate to other Airport premises pursuant to this Section 22.02, Lessor shall assist Lessee to identify other substitute premises on the Airport, if available. Lessor shall assist Lessee with relocation costs without impact to the rental terms of this Lease Agreement. If no suitable relocation premises shall be identified, Lessor shall compensate Lessee in an amount equal to the net present value of the remaining rental due under this Lease Agreement, excluding extension periods.

ARTICLE 23. SECURITY

23.01 Lessee shall provide for the security of the Air Operations Area (hereinafter "A.0.A.") and/or Security Identification Display Area (hereinafter "S.I.D.A.") to prevent entry or movement of unauthorized persons thereupon, in accordance with Chapter 3 , Section 3-23, of the City Code of San Antonio, Texas, as currently written, or as amended or replaced in future. In appropriate cases, physical barriers to prevent access to the A.O.A. and/or the S.I.D.A. must be placed and supervised by Lessee during construction upon the Leased Premises.

23.02 Lessee shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States or State of Texas, regarding Airport security requirements or measures.

23.03 Lessee shall comply with all current and future mandates of the Transportation Security Administration, of successor agency, for background investigations of its personnel.

23.04 **Lessee shall indemnify and hold harmless Lessor, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or State of Texas, by reason of Lessee's failure to comply with any applicable security provision and/or requirement for compliance set forth herein.**

ARTICLE 24. DEFAULT AND REMEDIES

24.01 Each of the following shall constitute an event of default by Lessee:

A. Lessee shall fail to pay any rent as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days after receipt by Lessee of written notice thereof.

B. Lessee shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Lessee of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if Lessee shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

C. Lessee shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

D. An Order of Relief shall be entered, at the request of Lessee or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.

E. A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Lessee and shall not be dismissed within thirty (30) days after the filing thereof.

F. Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Lessee and such possession or control shall continue in effect for a period of fifteen (15) days.

G. Lessee shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.

H. The rights of Lessee hereunder shall be transferred to, pass to or devolve upon, by operations of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceeding or occurrence described in Paragraphs C through G of this Section 24.01.

I. Lessee shall voluntarily discontinue its operations at the Airport for a period of sixty (60) consecutive days.

24.02 In the event any default shall occur, Lessor then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, either to terminate this Lease Agreement, by giving at least five (5) days written notice to Lessee, at which time Lessee will then quit and surrender the Leased Premises to Lessor, but Lessee shall remain liable as hereinafter provided, or enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the Lessor's former estate, expelling Lessee and those claiming under Lessee, forcibly if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Lessee or those claiming under Lessee for such repossession.

24.03 Lessor's repossession of the Leased Premises shall not be construed as an election to terminate this Lease Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Lessee, or unless such termination is decreed by a court of competent jurisdiction.

24.04 Upon repossession, Lessor shall have the right, at its election and whether or not this Lease Agreement shall be terminated, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as Lessor may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Lessee and Lessor agree that Lessor's duty to relet the Leased Premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. Lessor shall in no event be liable, and Lessee's liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the Lessor uses objectively reasonable efforts to comply with said Property Code. Lessor and Lessee agree that any such duty shall be satisfied and Lessor shall be deemed to have used objective reasonable efforts to relet the Leased Premises and mitigate Lessor's damages by: (1) posting a "For Lease" sign on the Leased Premises; (2) advising Lessor's lease agent, if any, of the availability of the Leased Premises; and (3) advising at least one (1) outside commercial brokerage entity of the availability of the Premises.

24.05 In the event that Lessor elects to relet, rentals received by same from such reletting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Lessee under this Lease Agreement; second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by Lessor and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor,

as soon as ascertained, any costs and expenses incurred by Lessor in such reletting not covered by the rentals received from such reletting of the Leased Premises.

24.06 If Lessor shall terminate this Lease Agreement or take possession of the Leased Premises by reason of a condition of default, Lessee and those holding under Lessee, shall forthwith remove their goods and effects from the Leased Premises. If Lessee or any such claimant shall fail to effect such removal forthwith, Lessor may, without liability to Lessee or those claiming under Lessee, remove such goods and effects and store same for the account of Lessee or of the owner thereof at any place selected by Lessor, or, at Lessor's election, and upon giving fifteen (15) days' written notice to Lessee of date, time and location of sale, Lessor may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as Lessor in its sole discretion may deem advisable. If, in Lessor's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, Lessor shall have the right to dispose of such goods in any manner Lessor may deem advisable.

24.7 Lessee shall be responsible for all costs of removal, storage and sale, and Lessor shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by Lessor. If any surplus sale proceeds remain after such reimbursement, Lessor may deduct from such surplus any other sum due to Lessor hereunder and shall pay over to Lessee any remaining balance of such surplus sale proceeds.

24.08 If Lessor shall enter into and repossess the Leased Premises as a result of Lessee's default in the performance of any of the terms, covenants or conditions herein contained, then Lessee hereby covenants and agrees that it will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease Agreement, and Lessee hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Lessee, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Lessee shall have made default under any of the covenants of the Lease Agreement and to claim any subrogation of the rights of Lessee under these presents, or any of the covenants thereof, by reason of such payment.

24.09 All rights and remedies of Lessor herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as deemed desirable.

24.10 If proceedings shall, at any time, be commenced for recovery of possession, as aforesaid, and compromise or settlement shall be effected either before or after judgment whereby Lessee shall be permitted to retain possession of the Leased Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to this Agreement.

24.11 Any amount paid or expense or liability incurred by Lessor for the account of Lessee may be deemed to be additional rental and the same may, at the option of Lessor, be added to any rent then due or thereafter falling due hereunder.

ARTICLE 25. HOLDING OVER

It is agreed and understood that any holding over by Lessee, with Lessor's consent, after the termination of this Lease Agreement, shall not renew and extend same, but shall operate and be construed as a tenancy from month-to-month, upon all the terms and conditions set forth herein, except that rental shall be paid to Lessor by Lessee for all buildings on the Leased Premises at one hundred fifteen percent (115%) the total rental in effect as of the end of the primary term of this Lease Agreement or the ground rental rate established through appraisal. In the event that Title to any buildings shall vest upon City at the end of the primary term, then Lessee shall also pay rent for such building at rental rates established by the Appraisal Processs. Should Lessee hold over against Lessor's will, Lessee agrees to pay to Lessor, as monthly rent during such period of holding over, for such Premises (including all buildings located thereon, whether title to such buildings is in the name of Lessor or Lessee) for each month of such tenancy, one hundred and fifty percent (150%) the Ground and Building Rental paid for the last month of the Lease Agreement term, plus all applicable fees including but not limited to, Fuel Flowage Fees and any other fees authorized by this Agreement and/or authorized by Ordinance. Lessee shall be liable to Lessor for all loss or damage resulting from such holding over against Lessor's will after the termination of this Lease Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by Lessor, in the event that Lessee fails or refuses to surrender possession, shall not operate to give Lessee any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by Lessor of its right to immediate possession thereafter.

ARTICLE 26. ASSIGNMENT AND SUBLET

26.01 Lessee shall not transfer or assign this Lease Agreement or Lessee's interest in or to the Leased Premises, or any part thereof, without having first obtained Lessor's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio, Texas; provided, however, that the foregoing shall not apply to and prevent the assignment of this Lease Agreement to any corporation, or other entity with which Lessee may merge. Notwithstanding the foregoing and for so long as any pledge or collateral assignment of Lessee's interest in the Lease Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of Lessor to such pledge or collateral assignment may be given by Lessor acting by and through the Aviation Director. For purposes of any assignment, Lessor shall have the right to renegotiate rental rates and all other terms of this Lease Agreement.

26.02 Lessee shall not sublet the Leased Premises or any part thereof without having first obtained the Aviation Director's written consent. In the event Lessee requests permission to sublease, the request shall be submitted to the said Director, prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information requested by said Director shall be specified. Lessee shall not sublease a total of more than fifty percent (50%) of the Leased Premises and/or or its component building and ground premises. If such limit is exceeded, Lessor shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Lease Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Lessee's rental payments shall be adjusted

on a pro-rata basis; provided, however, that all options of Lessor contained in the Default and Remedies Article shall be available to Lessor.

26.03 In the event of a sublease where the rental per square foot established in the sublease exceeds the rental for same established in the Lease Agreement, Lessee shall pay to Lessor, as additional rent, the excess of the rental received from the sublessee over that specified to be paid by Lessee herein per square foot, provided that Lessee may charge a reasonable fee for administrative costs in addition to the sublease rental, not to exceed fifteen-15 percent (15%) of the specified sublease rental. Such fifteen percent (15%) shall not be considered as excess rental. Nothing herein shall prevent Lessee from charging a reasonable fee to others for the use of capital equipment and facilities on the subleased premises and charging for use of utilities and other services being paid for by Lessee. Should any method of computation of rental to be paid by a sublessee, other than computation based upon a rental rate per square foot be employed, the provisions of this paragraph will apply if the rental received for the proportionate area of the Leased Premises by Lessee exceeds the rental paid to Lessor for said proportionate area of the Leased Premises.

26.04 Each transfer, assignment or subletting to which there has been consent shall be by written instrument, in a form satisfactory to Lessor, and shall be executed by the transferee, assignee or sublessee who shall agree, in writing, for the benefit of Lessor to be bound by and to perform the terms, covenants and conditions of this Lease Agreement. Four (4) executed copies of such written instrument shall be delivered to Lessor. Failure either to obtain Lessor's prior written consent or to comply with the provisions herein contained, shall operate to prevent any such transfer, assignment or subletting from becoming effective.

26.05 Should the subletting of the Leased Premises be approved by Lessor, however, Lessee agrees and acknowledges that it shall remain fully and primarily liable under this Lease Agreement, notwithstanding any such sublease and that any such sublessee shall be required to attorn to Lessor hereunder.

26.06 The receipt by the Lessor of rent from an assignee, subtenant or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Lessee from further observance or performance by Lessee of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the Lessor, unless such waiver be in writing, signed by the Aviation Director.

ARTICLE 27. FIRE AND OTHER DAMAGE

27.01 In the event a City-owned building on the Leased Premises shall be partially damaged by fire or other casualty through no fault of Lessee, Lessee shall give immediate notice thereof to Lessor and the same shall be repaired, at Lessor's expense, without unreasonable delay, unless Lessor determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until repair, monthly rental payments hereunder shall abate based on the proportion the part of the building destroyed, or rendered untenantable, bears to the total building space; provided, however, that if said building shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy, the rent hereunder shall not cease or be abated during any repair period. In the event that the damage to the building, by fire or other casualty, is so extensive that the building is rendered wholly untenantable, and such damage to the building, in the exclusive judgment of Lessor, makes rebuilding same to be

impractical, then at the option of the Lessor, and upon notice to Lessee, this Lease Agreement, as it applies to said building, shall cease, and the rent hereunder shall be apportioned and paid up to date of such damage. If Lessor elects to rebuild such building, Lessor shall notify Lessee of such intention within thirty (30) days of the date of the damage, otherwise the Lease Agreement, as applicable to said building, shall be deemed canceled and of no further force or effect. Notwithstanding any provision above, should the destruction or damage to said building (to the extent of work that is to be provided as part of Lessor's obligation) be so great that it will not be reasonably repaired or restored by Lessor within one hundred twenty (120) days to the state of fitness that existed prior to the commencement of improvements, if any, performed by Lessee, Lessee may, at its option, terminate this Lease Agreement, as it applies to said building, by written notification of same given to Lessor within thirty (30) days after the occurrence of such casualty, or upon notification that the work will not be completed within the one hundred twenty (120) days.

27.02 Lessor's obligations to rebuild or repair under this Article shall, in any event, be limited to restoring said building to substantially the condition that existed prior to the commencement of improvements, if any, performed by Lessee and shall further be limited to the extent of the insurance proceeds available to Lessor for such restoration. Lessee agrees that if Lessor elects to repair or rebuild as set forth in this Article, then Lessee will proceed with reasonable diligence, at its sole cost and expense, to rebuild, repair and restore its improvements, signs, fixtures, furnishings, equipment and other items provided or installed by Lessee in or about the Leased Premises in a manner and to a condition at least equal to that which existed prior to the damage or destruction.

27.03 In the event that the building or other improvements upon the Leased Premises constructed by and/or owned by Lessee are damaged or destroyed by fire or any other casualty during the term of this Lease Agreement or any extension hereof, regardless of the extent of such damage or destruction, the rent payable hereunder shall not abate. Furthermore, Lessee shall, no later than one hundred twenty (120) days following the date of such damage or destruction, commence to repair, reconstruct or replace the damaged or destroyed building or improvement and prosecute the same with reasonable diligence, so that the building or improvement shall, at Lessee's sole expense, be restored no later than one (1) year following such damage or destruction to substantially the condition it was in prior to said damage or destruction. Should the commencement, construction or completion of said repair, reconstruction or replacement be prevented or delayed by reason of war, civil commotion, acts of God, strikes, governmental restrictions or regulations, fire or other casualty, or any other reason beyond the control of Lessee, the time for commencing or completing the repair, reconstruction or replacement, as the case may be, shall automatically be extended for the period of each such delay.

ARTICLE 28. LAWS AND ORDINANCES

Lessee agrees to comply promptly with all laws, ordinances, orders and regulations affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use and business operations. Lessee shall comply with all Federal and State regulations concerning its operation on the Airport and shall indemnify and hold harmless Lessor, its officers and employees, from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or the State of Texas, by reason of Lessee's failure to comply with the terms of this Article or with any other terms set forth in this Lease Agreement.

ARTICLE 29. TAXES AND LICENSES

Lessee shall, at its sole cost and expense, pay on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon the Lessee, Leased Premises, the business conducted thereon or upon any of Lessee's property used in connection therewith including, but not limited to, any possessory interest taxes. .Lessee shall also maintain, in current status, all Federal, State and local licenses and permits required for the operation of its business.

ARTICLE 30. NONDISCRIMINATION & AFFIRMATIVE ACTION REGULATIONS

30.01 Any discrimination by Lessee, its sublessees, agents or employees, based on race, color, creed, sex, age, religion, national origin or handicap, in employment practices, use of or admission to the Leased Premises, is prohibited.

30.02 Lessee for itself, its heirs, representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the Leased Premises, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

30.03 Lessee for itself, its representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person, on the grounds of race, color, creed, sex, age, religion, national origin or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, sex, age, religion, national origin or handicap shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

30.04 Lessee agrees that it will comply with applicable statutes, Executive Orders and such rules as are promulgated by applicable state, federal or municipal agencies to assure that no person shall be excluded from participating in any activity conducted with or benefiting from Federal assistance on the basis of race, creed, color, national origin, sex age, or handicap. Lessee, is successors and assigns, shall be obligated to comply with the provisions of this Section 30.04 for the period during which Federal assistance is extended to the Airport, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures of improvements thereon. In these cases, this Section 30.04 shall apply to Lessee, its successors and assigns, through the later of: (a) the period during which such property is used by Lessor, its successors and assigns for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which Lessor, is successors or assigns, retains ownership or possession of the Leased Premises.

ARTICLE 31. WAGES

Lessee shall pay at least the minimum wage, as required by Federal and State statutes and City ordinances, to employees of its operations hereunder.

ARTICLE 32. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the control of the party obligated (the financial inability of the party excepted), performance of such act shall be extended by a period equal to the period of such delay; provided, however, that nothing in this paragraph shall excuse Lessee from the prompt payment of any rental except as may be expressly provided otherwise in this Lease; and further provided that the party relying on this paragraph shall provide written notice to the other party notifying such other party of the force majeure event promptly after such force majeure event, and shall proceed with all diligence to complete the performance of the act upon the cessation of the force majeure event.

ARTICLE 33. ATTORNEYS' FEES

In the event that Lessor brings an action under this Lease Agreement, and prevails therein, it shall be entitled to recover from Lessee its reasonable attorneys' fees, not to exceed the actual amount of attorneys' fees incurred in the defense or prosecution thereof.

ARTICLE 34. SEVERABILITY

If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws, it is the parties' intention that the remainder hereof not be affected. In lieu of each clause or provision that is illegal, invalid or unenforceable, the parties intend that there be added, as a part of this Lease Agreement, a clause or provision, as similar in terms to such illegal, invalid or unenforceable clause or provision, as may be possible, yet be legal, valid and enforceable.

ARTICLE 35. AMENDMENT

This Lease Agreement, together with its authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding, unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

ARTICLE 36. NOTICES

Notices to Lessor shall be deemed sufficient if in writing and sent, registered or certified mail, postage prepaid, addressed to City Clerk, P. 0. Box 839966, San Antonio, Texas 78283-3966 and to Aviation Director, City of San Antonio, Department of Aviation, 9800 Airport Boulevard, San Antonio, Texas 78216, and to such other address as may be designated, in writing, by the Aviation Director from time to time. Notices to Lessee shall be deemed sufficient if in writing and sent, registered or certified mail, postage prepaid, addressed to Lessee at the address shown herein. Either party to this Lease Agreement may change its address by giving notice of such change as herein provided.

ARTICLE 37. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than one of Lessor and Lessee.

ARTICLE 38. CUMULATIVE REMEDIES NO WAIVER - NO ORAL CHANGE

The specific remedies of the parties under this Lease Agreement are cumulative and do not exclude any other remedies to which they may be lawfully entitled, in the event of a breach or threatened breach hereof. The failure of either party ever to insist upon the strict performance of any covenant of this Lease Agreement, or to exercise any option herein contained, shall not be construed as its future waiver or relinquishment thereof. Lessor's receipt of a rent payment, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach. Further, no waiver, change, modification or discharge by either party of any provision of this Lease Agreement shall be deemed to have been made or be effective, unless in writing and signed by the party to be charged. In addition to other remedies herein, the parties shall be entitled to an injunction restraining the violation, or attempted violation, of any of the covenants, conditions or provisions hereof, or to a decree compelling performance of same; subject, however, to other provisions herein.

ARTICLE 39. CONFLICT OF INTEREST

Lessee acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, Lessee warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Lessee further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE 40. GENERAL PROVISIONS

40.01 Incorporation of Exhibits. All exhibits referred to in this Lease Agreement are intended to be and hereby are specifically made a part of this Lease Agreement.

40.02 Incorporation of Required Provisions. Lessor and Lessee incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

40.03 Nonexclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant to Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to exclusive possession of the Leased Premises.

40.04 Removal of Disabled Aircraft. Lessee shall promptly remove any disabled aircraft that is in the care, custody, or control of Lessee from any part of the Airport (other than the Leased Premises) (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such storage areas as may be designated by the Aviation Director. Except as to aircraft subject to bailment and/or for which Lessee is owed money from a customer, Lessee may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by Lessor. If Lessee fails to remove any of disabled aircraft promptly, the Aviation Director may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, the obligation to remove or store such disabled aircraft shall not be inconsistent with federal laws and regulations and Lessee agrees to reimburse Lessor for all costs of such removal, and Lessee further hereby releases Lessor from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by Lessor unless caused by the negligence or recklessness of Lessor.

40.05 Airport Access License/Permit. Lessor reserves the right to establish a licensing or permit procedure for vehicles requiring access to the Airport operational areas and to levy directly against Lessee or its suppliers a reasonable regulatory or administrative charge (to recover the cost of any such program) for issuance of such Airport access license or permit.

40.06 Compliance with Part 77, Title 14, CFR. Lessee agrees to comply with the notification and review requirements covered in Part 77, Title 14, Code of Federal Regulations, FAA Regulations, in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

40.07 Reservations re: Airspace and Noise There is hereby reserved to Lessor, its successors, and assigns, 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 Leased Premises.

40.08 Inspection of Books and Records. Each party hereto, at its expense and on reasonable notice, shall have the right from time to time to inspect and copy the books, records, and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours and such is not prohibited by the U.S. Government.

40.09 Independent Contractor. Lessee is not an employee or agent of City by reason of this Lease Agreement, or otherwise. Lessee shall be solely responsible for its acts and omissions arising from or relating to its operations or activities at Airport, or lease of property herein.

40.10 Authority of Agreement. Lessee warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Lease Agreement, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Lease Agreement by the undersigned Lessee representatives have been duly authorized by all necessary corporate action of Lessee, and this Lease Agreement will constitute a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.

40.11 Authority of the Aviation Director. The Aviation Director shall administer this Lease Agreement on behalf of Lessor. Whenever this Lease Agreement calls for approval by Lessor, such approval shall be evidenced, in writing, by either the Aviation Director or the City Manager of the City of San Antonio or his designee. In no event shall this language be considered a waiver by Lessee to object to decisions by the Aviation Director which it considers to be arbitrary, capricious or inconsistent with any express obligations to act reasonably set forth herein.

40.12 Consent. Whenever the consent or approval of either party hereto is required or authorized hereunder, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

40.13 Net Agreement. It is the intent and purpose of the City and Lessee that all rental payable by Lessee herein shall be absolutely net to the City so that this Lease Agreement shall yield to City the entire rent specified, in each year of this Lease Agreement, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Lessee or the Leased Premises, without abatement, deduction or set-off by Lessee.

40.14 Noise Control. Lessee, for itself and each of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Aviation Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Lease Agreement except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.

40.15 Time is of the Essence. Time shall be of the essence in complying with the terms, conditions and provisions of this Lease Agreement.

40.16 Vehicular and Equipment Parking. Vehicular and equipment parking in areas other than the Leased Premises by Lessee, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, suppliers or other invitees shall be restricted to such areas at Airport as are designated by the Airport Director.

ARTICLE 41. PARTIES BOUND

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted hereby.

ARTICLE 42. TEXAS LAW TO APPLY

All obligations under this Lease Agreement are performable in Bexar County, Texas, and shall be construed pursuant to the laws of the State of Texas, except where state law shall be preempted by any rules, laws or regulations of the United States.

ARTICLE 43. GENDER

Words of either gender used in this Lease Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE 44. CAPTIONS

The captions of the provisions contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provision of this Lease Agreement.

ARTICLE 45. ENTIRE AGREEMENT

This Lease Agreement comprises the final and entire agreement, including all terms and conditions thereof, between the parties hereto, and supersedes all other agreements, oral or otherwise, regarding the subject matter hereof, none of which shall hereafter be deemed to exist or to bind the parties hereto. The parties intend that neither shall be bound by any term, condition or representation not herein written.

IN WITNESS WHEREOF, the undersigned have duly executed this Lease Agreement as of the dates set forth below.

LESSOR: CITY OF SAN ANTONIO

By:_____
Sheryl Sculley, City Manager

Date:_____

ATTEST:

_____
City Clerk

Approved as to form:

_____
City Attorney

LESSEE: HH AVIATION, LLC

By:_____
Charles C. Strickland, Vice President

Date:_____