

**GROUND LEASE  
BETWEEN  
CITY OF MCKINNEY, TEXAS  
AND  
WESTERNTKILEASING INC.,**

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**GROUND LEASE  
BETWEEN  
CITY OF MCKINNEY, TEXAS  
AND  
WESTERNTKILEASING, INC**

THIS GROUND LEASE (this "Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF MCKINNEY**, a Texas home-rule municipal corporation ("City") and **WESTERNTKILEASING INC.**, a Delaware Corporation ("Lessee").

**WITNESSETH:**

WHEREAS, the City is the owner and operator of the McKinney National Airport ("Airport") which is located in the City of McKinney, Collin County, Texas; and

WHEREAS, Lessee desires to lease, and then develop certain Airport land more specifically described herein,

WHEREAS, The City intends to sublease such land and the improvements to be constructed by Lessee thereon from the Lessee upon Lessee's construction of those improvements as more specifically described herein, and upon terms more specifically described in that certain sublease between the City and Lessee.

NOW, THEREFORE, for and in consideration of the rents, fees, covenants, promises, and agreements contained herein, and for other good and valuable consideration, the City and Lessee agree as follows:

**ARTICLE 1. DEFINITIONS**

Definitions of the terms and phrases used in this Agreement, which are not otherwise defined in this Agreement, are provided in the attached Exhibit A.

**ARTICLE 2. PREMISES**

A. The City hereby leases to Lessee, and Lessee hereby leases from the City, in accordance with the terms and conditions of this Agreement, that certain real property of the Airport described as:

1500 Industrial Blvd.  
McKinney Texas, 75069

- B. A legal description of the Premises constituting a Hangar Parcel and an FBO Operating Parcel, as described therein, is attached hereto as Exhibit B and incorporated herein by reference.
- C. Lessee warrants and represents that Lessee has carefully and completely examined and inspected the entire Premises, is fully informed of the condition of the Premises, and is completely satisfied as to the suitability of the Premises for all of the activities contemplated by this Agreement.
- D. Shown on the attached Site Plan, but not a part thereof or of the leased Premises are all of the Offsite Improvements to be constructed by the Lessee as depicted on the attached Exhibit C.

### **ARTICLE 3. TEMPORARY CONSTRUCTION EASEMENT**

- A. The City shall grant a temporary construction easement to Lessee for construction of the Improvements. The temporary construction easement shall encompass only as much City property as is reasonably necessary to accomplish construction of the Improvements, with rights of ingress and egress for the construction. Said temporary construction easement shall terminate upon the earlier of (a) completion of Lessee's construction of the Improvements on the Premises, or (b) January 1, 2020.
- B. In connection with any entry or work conducted by Lessee on the Premises or on other Airport property, Lessee shall indemnify and hold the City and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers harmless from any loss or damage, including costs, expenses and attorney's fees resulting from such entry or work, but excluding any loss or damage resulting from the gross negligence or misconduct of the City, its City Council or any of their representatives, officers, officials, employees, agents or volunteers.

### **ARTICLE 4. USE OF PREMISES**

- A. Lessee and its sublessees and tenants are granted the use and occupancy of the Premises for all uses allowed for a commercial aeronautical activity, as provided by the Minimum Standards (Sec. 7-64), including, without limitation, storage of privately owned aircraft (whether one or more) and any and all activities associated with maintaining and operating such aircraft, including, but not limited to, flight personnel, offices and aircraft maintenance areas related thereto ("Activities") in accordance with the Airport Minimum Standards (the "Minimum Standards").
- B. Lessee agrees not to engage in any other activity on the Premises other than those Activities specifically permitted under this Agreement, and agrees not to

use, develop, or occupy the Premises in any manner contrary to the Airport Layout Plan or the Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned.

- C. **Prohibited Products, Services, and/or Uses:** The following products, services, and/or uses are prohibited on the Premises:
1. Commercial or retail products and/or services;
  2. Any products, services, and/or uses prohibited by law; and
  3. Use of hangar or office space for any activity unrelated to aviation, other than as an incidental or temporary use as shall be reasonably approved by the Airport Director.

In accordance with the Sponsor's assurances given to the federal and/or state government as a condition to receiving federal and/or state funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive right, other than the exclusive use of the Premises and any land and/or improvements that may be leased to Lessee, and then only to the extent provided in this Agreement. Accordingly, the City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Premises.

- D. **Use of Airport:** Lessee may use, in common with others, the existing and future aeronautical and/or public facilities at the Airport (the "Public Facilities"), subject to and in full compliance with all applicable rules and regulations. The Public Facilities shall mean the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing, and departing of aircraft.

Lessee shall be solely liable for and shall reimburse the City for all costs incurred by the City for the repair of any damage to the Public Facilities, excluding ordinary wear and tear, caused by Lessee's negligence or willful misconduct.

- E. **Ingress and Egress:** Lessee, its employees, sublessees, guests, patrons, suppliers, vendors, and invitees shall have the right of ingress and egress to and from the Premises. If the rights granted by this provision adversely affect Airport operations, the City shall have the right to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Premises.
- F. **Quiet Enjoyment:** Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by

Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Premises and privileges granted for the term of this Agreement free from hindrance or interruption by the City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Premises, provided same do not materially adversely affect Lessee's ability to access and use the Premises.

## **ARTICLE 5. TERM**

The primary term of this Agreement shall commence on the date hereof (the "Commencement Date"), with rent payments commencing on the rent commencement date under that certain Sublease Agreement between Lessee, as Landlord, and the City, as Tenant, for certain improvements to be constructed by Lessee on the Premises (the "Western Lease") (the "Rent Commencement Date"), and shall expire on the expiration or earlier termination of the Western Lease, unless terminated at an earlier time as permitted by the terms of this Agreement (the "Primary Lease Term"). Any partial month of occupancy by Lessee under (ii) above shall be paid with and in addition to the first rent payment. At the end of the Primary Lease Term, the parties may negotiate for an additional lease term. Prior to the Rent Commencement Date, Lessee shall have possession of the Premises for the exclusive purpose of construction of the improvements to be constructed by Lessee pursuant to the Western Lease.

## **ARTICLE 6. RENT**

As rent for the Premises, Lessee shall pay in lawful money of the United States of America the following amounts to the City. Rent payments shall begin on the Rent Commencement Date as more fully described in Article 5.

- A. Rent: Initial annual rent of fifty cents (\$.50) per square foot per year for the exclusive use of the Premises, subject to rent adjustment as described hereinafter.
- B. Adjustment: Rent shall be adjusted according to the sequencing and methodology contained herein. The rental rate for the Premises shall be Fifty cents (\$.50) per square foot per year commencing on the Rent Commencement Date until the fifth (5th) anniversary date following the Rent Commencement Date (the "First Modification Date"). At the First Modification Date, the rental rate per year shall be modified to be the lesser of either (i) the then current lease rate for Improved Land leased to like commercial uses at the Airport as established from time to time by the City Council of the City; or (ii) the then current market rate for Improved Land (charged or identified as a separate component of rent as "ground rent", exclusive of any component of rent charged for occupation and use of building improvements) leased to commercial aeronautical uses in the DFW-Metroplex to be determined by computing the average per square foot rate

for Improved Land leased at the following reliever airports: Addison, Arlington, Dallas-Executive, Denton, Fort Worth-Alliance, Fort Worth-Meacham, Fort Worth-Spinks, Grand Prairie, Lancaster, Mesquite and McKinney International. "Improved Land" in this paragraph shall mean a tract(s) of land which has public utilities and infrastructure serving the site or located on the airport such that the extension thereof can be reasonably made by a developer under guidelines of the governing jurisdiction, including utility and infrastructure extensions subject to future reimbursement by subsequent developers or the governing jurisdiction or land which is offered for development in a tiered pricing structure as "improved" or "developed" versus "unimproved" or "undeveloped" land. If any of the foregoing reliever airports do not have a correlative rate for leased land which is categorized in a format reasonably similar to the format utilized in this Agreement or if any of the airports listed above are not at the time of such computation designated as "FAA Reliever" airports, the rates at the remaining reliever airports shall be used in computing the average per square foot rate under this paragraph. Thereafter, the rental rate per year for the Premises shall be modified on each fifth (5<sup>th</sup>) anniversary date following the First Modification Date (collectively, the "Subsequent Modification Dates"). Each rent modification on the Subsequent Modification Dates shall be computed in the same manner as the rate determined on the First Modification Date, and the new rate shall be effective until the next Subsequent Modification Date or until the end of the term (for the last Subsequent Modification Date), whichever is applicable.

C. Payment:

1. Payments of rents shall be made monthly to the City (in installments equal to 1/12 of the annual rent) in advance on the first (1<sup>st</sup>) day of each month without notice or demand. Payment shall be absolutely net to the City and, except for set-off against payments due from the City to Lessee under the Western Lease, shall be made without any other abatement, deductions, reductions, set-offs, or counterclaims. The rent for any partial month will be prorated.
2. A late charge of 1.5% per month shall be automatically added to any installment of rent not received by the City by the close of business of the 15<sup>th</sup> day following the date when such payment is due. The late charge shall become part of the rent due and owing to the City. Additional late charges of 1.5% shall be imposed for each 30 day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City.
3. All payments shall be made to the City of McKinney and sent to the attention of the Airport Director, at the City's address stated in Article 39. The failure to make any payment when due, except as a result of the City's default under its payment obligations to Lessee under the Western

Lease, may result in a termination of the Agreement as provided in Article 13.

## **ARTICLE 7. FEES**

Lessee will pay, and will provide in its written lease agreement with any sublessee that sublessee shall pay, any and all applicable fees as established by the City.

## **ARTICLE 8. IMPROVEMENTS AND ALTERATIONS**

- A. Within 45 days after the effective date of this Agreement, pursuant to specifications set forth by the City, Lessee agrees to commence construction of the Improvements depicted on the plans and specifications prepared by CaCO Architecture, LLC dated November 1, 2017 (the "Final Plans") in conformance with the Minimum Standards and at its own cost and expense, subject to application of the Deposit as provided in the Western Lease, including the construction of certain Offsite Improvements. Subject to force majeure, and the City's compliance with the terms of this Agreement and the Western Lease, all Improvements shall be completed by May 31<sup>st</sup>, 2019. In the event the Improvements are not completed the City shall be entitled to delay damages in the amount of \$150.00 per day from such date until the Improvements are completed and the certificate of occupancy issued.
- B. Within twenty (20) days from the date of this Agreement, Lessee shall submit for the City's approval the final plans and specifications ("Final Plans") for the proposed Improvements. Such submission shall include, at a minimum, a site plan showing the location of the Improvements and Offsite Improvements in relation to the boundaries of the Premises, elevated views, architectural renderings, landscaping plans, and complete detailed construction plans, specifications, and related details and schedules.
- C. The size, scale, quality, and quantity of the Final Plans shall be in accordance with City ordinances and shall be approved by the City as suitable for its intended use under the Western Lease. The Final Plans shall be consistent with any preliminary plans and shall provide for construction and/or alterations which are first class, safe, fire resistant, and architecturally compatible with the character of the Airport.
- D. The Final Plans shall be accompanied by a certified statement by Lessee's architects and engineers indicating the expected life and estimated costs of the Improvements and/or Offsite Improvements, and certifying that the Final Plans are in compliance with all applicable laws, ordinances, regulations, and codes. Such statement shall be re-certified upon the City's approval of the proposed Final Plans.



- E. Once the Final Plans have been approved by the City and re-certified, Lessee shall, at its own cost and expense, construct the Improvements in accordance with the Final Plans and requirements of this Agreement. Lessee shall be entitled to receive a certificate of occupancy when all Improvements are completed in accordance with City ordinances.
- F. The construction and/or alterations shall be performed by qualified, responsible and reputable contractors, subcontractors and suppliers, all of whom shall be subject to the City's approval in advance of commencing work which approval shall not be unreasonably withheld, and all work shall be secured with payment and performance bonds. Such contractors, subcontractors and suppliers at all times shall be compatible with other employees and workers at the Airport so as to avoid the occurrence of any disturbance, disruptions, or conflict in all or any part of the Airport or in connection with its operations. The construction shall be completed in a good and workmanlike manner and in compliance with all applicable laws, ordinances, regulations, and codes.
- G. Lessee shall fund all costs necessary in connection with construction of the Improvements, in addition to the Deposit made available pursuant to the Western Lease. Lessee shall, at its own expense, subject to application of the Deposit provided under the Western Lease pay all costs associated with installation of water lines, sewer lines, telephones and telephone lines, electrical lines, gas lines, and any other utilities or equipment. Lessee shall construct any required security fencing in accordance with City standards. Lessee shall, at its own expense, subject to reimbursement or offset by payments due Lessee under the Western Lease, procure all governmental permits and approvals required for or in connection with the construction of the Improvements.
- H. During the construction of the Improvements, Lessee shall store all materials, supplies, machinery and equipment associated therewith in a safe and orderly fashion so as to not interfere with the work and operations of Lessee and any other Airport users. Lessee shall comply with the Airport's Development Guidelines and all contractors, subcontractors, and suppliers shall comply with the Airport Minimum Standards, rules and regulations and all other applicable regulatory measures. Upon completion of the Improvements, Lessee shall deliver one set of "as built" drawings to the City. The building materials and design shall substantially conform to the graphic renderings submitted to the City during the site plan approval process.
- I. In the event that Lessee fails to comply with the provisions of this section of this Agreement and after delivery of any required notice and any opportunity to cure under Article 13, including a failure to construct the Improvements only in accordance with the approved Site Plan unless otherwise agreed to by the City, the City may, in addition to any other remedies available to the City, terminate this Agreement.

- J. Subject to Lessee's right to transfer ownership of the Improvements during the Primary Lease Term in accordance with this Paragraph J, ownership of the Improvements shall revert to the City upon the expiration of the Primary Lease Term. **Lessee's right to transfer ownership of the Improvements shall be expressly conditioned upon Lessee's and any transferee's obtaining appropriate consent to such transferee's use and enjoyment of the Premises through an approved sublease or assignment of this Agreement pursuant to Articles 23 and 24.**

## **ARTICLE 9. RIGHTS AND PRIVILEGES OF LESSEE**

The City does hereby grant to Lessee and Lessee does take from the City the following rights and privileges, subject in all cases to the rights of the City pursuant to the Western Lease:

Lessee may install in or upon the Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee located on the Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee. The City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee, any subtenant, or any customer of Lessee. Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Minimum Standards in order to engage in the authorized Activities. Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement and as provided under the Western Lease upon termination or expiration of this Agreement. At the termination of the Lease and subject to the consent of any party holding a security interest therein, the City may purchase personal property of Lessee which the City deems essential to operation of Airport at its then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Premises upon termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures and systems, and Lessee agrees to pay the City for such expense within fifteen (15) days after receipt of an invoice from the City.

## ARTICLE 10. RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by the City including those outlined under federal and/or state Sponsor's assurances, the City reserves the following rights and privileges.

- A. City Authority: While the Airport Director has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an aeronautical activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to the City through the City Council.
- B. Airport Development: The City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. The City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, the City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of the Premises. The City shall provide advance notice of any closures to the extent possible.
- C. Aerial Approaches: The City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee or any sublessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- D. War, National Emergency, Riot, or Natural Disaster: During time of war, national emergency, riot or natural disaster, the City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- E. Access to the Premises: The City and/or its representatives shall have the right to enter the Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the

performance of Lessee and/or the City's obligations under this Agreement. The City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when the City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.

- F. Performance of Acts: All acts performable under this Agreement by the City or the City Council may, at the option of the City and without right of objection by Lessee, be performed by a representative or delegate of the City.
- G. Exercising Rights: No exercise of any rights reserved by the City shall be deemed or construed as an eviction of Lessee or its sub-Lessees nor shall such exercise be grounds for any abatement of rents, fees, or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.

## **ARTICLE 11. OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided, Lessee shall have the following obligations:

- A. Conduct: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- B. Disturbance: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably annoy, disturb, or interfere with others conducting business or other operations at the Airport. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard.

Lessee agrees that it will not intentionally or knowingly disturb the City or any tenant of the Airport by creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely affect the environment or do anything or permit anything to be done that would violate any regulatory measure (including the primary guiding documents). Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Premises and shall neither use, allow the use of, nor occupy Premises for any improper, immoral or unlawful purpose.

- C. Hazardous Materials: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable Environmental Protection Agency ("EPA"), Texas Commission on Environmental Quality ("TCEQ") and local regulations. Lessee shall not cause or suffer any hazardous materials to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Premises unless Lessee has complied with the following:
1. Lessee shall obtain the City's prior express written consent. The City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.
  2. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and orders relating to health, safety and protection of persons, the public, and/or the environment.
  3. Lessee shall limit the presence of such Hazardous Materials to the minimal amount reasonably necessary for Lessee's use of the Premises as authorized by this Agreement.
  4. Upon the request of the City, Lessee shall furnish reports, assessments or other evidence satisfactory to the City showing that the Premises are not being used nor have the Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by the City.
  5. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Premises, the Airport, the City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee, Lessee's officers, agents, employees, contractors, permittees, invitees, lessees or sublessees or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Premises, the Airport, the underlying groundwater, the City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
  6. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Director of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.

7. Upon discovery of any Hazardous Materials on, in, under or emanating from the Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
  8. In addition to all other rights and remedies of the City, if the removal of such release of Hazardous Materials from the Premises, the Airport, the City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from the City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the EPA, the City, in its discretion, may pay to have same removed and Lessee shall reimburse the City within thirty (30) days of the City's demand for payment. If the City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Premises and/or the Airport, Lessee shall reimburse the City for all costs and expenses incurred in so doing. In its sole discretion, the City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.
  9. Immediately upon receipt thereof, Lessee shall provide the City with copies of any notices, claims, complaints, demands, lawsuits, hearings, investigations, or governmental requests for information relating to the environmental condition on or of the Premises and/or Hazardous Materials on, in, under or emanating from the Premises during Lessee's occupancy thereof.
- D. Storage, Handling, and Dispensing of Fuels, Gasolines and Lubricants: Fueling requirements are governed by McKinney Code of Ordinance, Chapter 7, Division 4 (Fueling Requirements).

The storage of fuels, gasolines, and lubricants in bulk quantities shall be limited to the City's fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's or sublessee's installation, operation and maintenance of the fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee and sublessee must abide by all applicable regulatory measures pertaining to the storage, handling, and dispensing of aviation fuels, gasolines and lubricants.

- E. Utilities: Lessee shall directly procure and promptly pay or cause to be paid for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Premises during the term of this Agreement.
- F. Taxes, Assessments, and Fees: Lessee shall pay and discharge, or cause to be paid and discharged, all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Premises, the Improvements located thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. Lessee acknowledges and understands that it holds record title to the Improvements on the Premises, and the Improvements shall be taxed under Lessee's account in a manner designed to determine the market value of the Improvements as of January 1 of each tax year. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, is illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with the City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by the City, in trust, until the conclusion of any tax contest and payment of any final determination.
- G. Costs, Expenses, and Other Charges: Lessee shall pay or cause to be paid all costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.
- H. Maintenance: Except as otherwise specifically provided in this Agreement, Lessee, at its own cost and expense, shall keep the interior and exterior (including all structural and non-structural) portions of the Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Premises in good order and condition and will make all necessary repairs to the Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair. Lessee shall be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.

In the event Lessee fails to comply with this paragraph, the City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of the City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, the City or its authorized designee may enter the Premises and provide the necessary maintenance or repair services, and Lessee agrees to reimburse the City for its expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of the City to make any repair or perform any work or cleaning which Lessee is required to make or perform.

- I. Refuse Disposal: Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles for all garbage, trash and other refuse at the Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- J. Affirmative Action: As applicable, Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E on the grounds of race, sex, creed, color or national origin. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations as required by 14 CFR Part 152, Subpart E, to the same effect.
- K. Non-Discrimination: Lessee, in the conduct of its authorized Activities on or from the Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers, or classes of purchasers.

Lessee, in its operation and use of the Airport, covenants that it shall not on the grounds of sex, race, color, or national origin discriminate or permit discrimination



against any person or group of persons in any manner prohibited by Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21; and in the event of such discrimination, Lessee agrees that the City has the right to take such action against Lessee as the City may determine to enforce this covenant.

In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

- L. Based Aircraft Report: Lessee in its written lease agreement with sublessees shall ensure that sublessees maintain and furnish by the \_\_\_\_\_ of \_\_\_\_\_ each year and at any time upon request of the Airport Director, a report identifying all aircraft based at or on the Premises. The report shall identify the owner, the owner's billing address, the year of manufacture, make and model of the aircraft, the gross takeoff operating weight and aircraft registration number.
- M. Signage: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Manager.
- N. Special Events: Lessee shall not conduct or hold air shows or any other special events including any non-aeronautical event at the Airport without the prior express written consent of the Airport Director.

## **ARTICLE 12. OBLIGATIONS OF CITY**

- A. The City covenants and agrees that at all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- B. Encumbrance of Fee Title. If the City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of the City's right, title or interest in the Premises, then any such mortgage, deed of trust, security agreement or other instrument will at all times be, and will expressly state that it is, subject and subordinate to this Agreement and the rights, titles and interests of Lessee and any leasehold mortgagee arising by virtue of this Agreement.

## **ARTICLE 13. DEFAULTS AND REMEDIES**

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.

- A. The filing by Lessee of a voluntary petition in bankruptcy.
- B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
- C. A court making or entering any decree or order:
  - 1. adjudging Lessee to be bankrupt or insolvent;
  - 2. approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
  - 3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;
  - 4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by the City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The failure of Lessee to complete the construction of all improvements to be constructed pursuant to Article 8.A. by January 1, 2020.
- F. The transfer of Lessee's interest herein by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of thirty (30) days after the time such payments become due, and Lessee receives written notice that such payment has not been received and is overdue, unless such payment default is the result of the City's monetary default under the Western Lease.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. Except for monetary defaults as described in Paragraph K below, the failure by Lessee to perform any of the covenants, conditions or obligations imposed on it

by this Agreement or any other Agreement with the City where the failure continues for a period of thirty (30) days after written notice from the City, except where such default is unable to be reasonably cured with a thirty (30) day period. In such event, Lessee shall not be in default under this Agreement ,or any other Agreement with the City so long as Lessee is undertaking diligent ongoing efforts to cure such default.

- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of the City, such approval not to be unreasonably withheld, conditioned or delayed. It shall be understood for the purpose of this part that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as an “attempted transfer.”
- K. In the event of any default by Lessee that is not attributable to Lessor’s failure to make Ground Rent Reimbursement Payments pursuant to the Western Lease and is not cured within 30 days of receiving notice from City or within such longer period as provided in Section 13.I. above, the City may, in addition to any other remedies available to the City, terminate this Agreement. If this Agreement is terminated, the security deposit and any other payments made to the City shall be forfeited to the City and Lessee shall have no rights to recover the security deposit and payments. This forfeiture shall not diminish nor limit the City’s right to recover such damages as may result from the default by Lessee.
- L. Notwithstanding the foregoing, no failure to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.
- M. In addition to the termination and forfeiture right described in the preceding paragraph, the City shall have the following rights and remedies upon default by Lessee:
  - 1. The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that would have been made if the Agreement had not been breached by Lessee.
  - 2. The recovery of any damages, costs, fees and expenses incurred by the City as a result of the breach of the Agreement by Lessee, including reasonable attorneys’ fees and expenses.
  - 3. The removal of all persons from the Premises and the removal and storage at Lessee's expense of all property on the Premises, in accordance with the law.

4. Any other right or remedy, legal or equitable, including specific performance, that the City is entitled to under applicable law, whether stated in this Agreement or not.
- N. No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue except as provided in the Western Lease.
- O. In the event of any such termination as above enumerated, the City shall have the right at once and without further notice to Lessee to enter and take full possession of the Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said Premises, facilities, fixtures and equipment to the City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- P. In the event of the failure of Lessee upon termination of this Agreement to immediately remove from the Premises all property owned by Lessee, the City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by the City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Premises, restoring the Premises and Improvements to the condition required by this Agreement, and protecting the Premises.
- Q. The failure of the City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of the City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to the City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of the City to terminate this Agreement.

#### **ARTICLE 14. TERMINATION BY LESSEE**

Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:

- A. Permanent closure of the Airport.
- B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary

construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a decision is rendered; however, not during any appeals therefrom.

- C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.
- D. The default by the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, the City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
- E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminate operations at the Airport and which suspension or termination materially affects the operations or rights of Lessee hereunder.

Lessee shall exercise such right of termination by written notice to the City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the City.

As an alternative to the right of termination, Lessee shall be entitled to seek injunctive relief against the City relating to an event of default under subsection E above, together with costs and attorneys' fees expended by Lessee in such action if Lessee judicially obtains the relief sought; however, in no event shall rent abate during the pendency of any proceeding.

## **ARTICLE 15. REMEDIES CUMULATIVE**

All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable regulatory measures, whether legal or equitable in nature, whether stated in this Agreement or not; however, Lessee's sole remedies upon the City's default are contained in Article 14.

## **ARTICLE 16. NO WAIVER**

No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

#### **ARTICLE 17. COMPLIANCE WITH LAWS**

At its own expense, Lessee shall comply with all federal, state and/or local regulatory measures, including, without limitation, the regulations of the United States Department of Transportation, Federal Aviation Administration and the City, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fines or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

#### **ARTICLE 18. COMPLIANCE WITH ORDINANCES**

Lessee shall comply with all ordinances affecting or regulating the use of the Airport as all may be promulgated by the City (and in effect from time to time). Any violation of this paragraph shall be construed as a material breach of this Agreement authorizing the termination thereof in accordance with Article 13.

#### **ARTICLE 19. LICENSES, CERTIFICATES, AND PERMITS**

At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Premises or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or on the Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

#### **ARTICLE 20. INSURANCE**

- A. Lessee shall keep and maintain all insurance required by law including, for example and without limitation, all insurance as required under the City's Code of Ordinances, and insurance as required by the workers compensation laws of the State of Texas with Employers Liability limits of \$500,000 Each Accident, \$500,000 Disease Policy Limit, and \$500,000 Disease Each Employee.
- B. Lessee shall also, at its sole cost and expense, procure and maintain insurance in full force and effect during the term of this Agreement in the minimum coverages and amounts specified in the Minimum Standards for each Activity. The insurance company underwriting the required policy(s) shall be licensed or

admitted to write such insurance in the State of Texas or otherwise be approved in writing by the City.

- C. All insurance which Lessee is required by the City to carry and keep in force shall name the City, its City Council (individually and collectively), and its representatives, officials, officers, employees, agents and volunteers, including the Airport Board of the Airport as additional named insureds. All liability policies shall contain or be endorsed to contain the following provisions:
1. "The City of McKinney and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional named insureds with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by the City of McKinney or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be excess of Lessee's and shall not contribute with it."
  2. "Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City of McKinney or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- D. Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Premises and Improvements and shall supply the City with new certificates of insurance within thirty (30) days of any change.
- E. The applicable insurance coverage shall be in full force upon execution of the Agreement and Lessee shall provide certificates and/or policy endorsements to the City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.
- F. Lessee shall, at its sole cost and expense, insure the Premises continuously against loss or damage. The Improvements shall be insured (80% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism.
- G. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring or

reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by the City, in writing.

- H. Insurance coverages and policy limits are subject to periodic review and modification at the discretion of the City.

## **ARTICLE 21. DAMAGE TO PREMISES AND PROPERTY**

- A. Damages to Premises. If any part of the Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sublessees and subcontractors), Lessee, with such proceeds received from the insurance policies detailed in Article 21, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Premises immediately prior to damage ("Restoration"), unless, pursuant to Section 22 of the Western Lease, the City exercises its right (which may or may not be made, in City's discretion) to purchase the Improvements.

If at any time during the term of this Agreement, any part of the Premises is damaged or destroyed, the City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Premises. The City shall have no obligation to Lessee or any sublessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.

If Lessee fails to restore Premises and the City does not exercise its right to purchase the Improvements pursuant to the Western Lease, Lessee shall relinquish to the City, upon demand, the insurance proceeds available to restore the premises as provided in this Article 21. Upon said payment, the City will restore the Premises, but the City shall not receive a conveyance of such newly constructed improvements except pursuant to the Purchase Option of Paragraph 22 of the Western Lease.

- B. Use of Insurance Proceeds for Rebuilding.

1. If, by reason of any damage or destruction mentioned in Article 21, Section A, any sums are paid under any insurance policy mentioned in Article 20, such sums will be paid to any leasehold mortgagee, if one exists, or to the City if no leasehold mortgage exists, (such entity holding the insurance proceeds hereinafter referred to as "Depository") and will be used to defray the cost of repairing, restoring, or reconstructing the Improvements as required in Article 21 herein. If there is no leasehold mortgagee at the time of such damage or destruction, as such sums shall



be paid to the City to be held and applied as set forth below. Any amounts applied by a leasehold mortgagee to reduce the debt secured by the leasehold mortgage shall reduce, dollar-for-dollar, the purchase price to be paid by the City for the Improvements pursuant to Section 22 of the Western Lease.

2. Upon receipt by the Depository, of:
  - a. A certificate of Lessee dated not more than thirty (30) days prior to the date of such receipt (i) requesting the payment of a specified amount of such monies; (ii) describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Lessee; (iii) stating that such specified amount does not exceed the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (iv) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;
  - b. A certificate of an independent engineer or any independent architect designated by Lessee and approved by the City (which approval will not be unreasonably withheld) and by the Leasehold Mortgagee, if any, stating (i) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate and desirable to the Restoration in accordance with the plans and specifications therefor and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all governmental authorities; (ii) that the amount specified in such certificate of Lessee is not in excess of the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (iii) the additional amount, if any, required to complete the Restoration;
  - c. Evidence satisfactory to the leasehold mortgagee and the City that the cost of such work and materials has been paid in full or will be paid in full out of such advance;
  - d. Either (i) a written opinion of Lessee's counsel, or (ii) the certification of a title company licensed to do business in the State of Texas, in either case that as of a date not more than twenty (20) days prior to the date of payment described below there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of the City, and that neither the Premises nor the Improvements are subject to any filed or recorded

mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to the City adequate security for the payment thereof, and in addition to the foregoing, a certificate from the Secretary of State of Texas and the County Clerk of Collin County, Texas, evidencing that any fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to the City; and

- e. Evidence satisfactory to the leasehold mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to the City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and by a corporate surety reasonably satisfactory to the City, with each such bond naming the City and leasehold mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to the City, and evidence satisfactory to the leasehold mortgagee and the City that such bonds remain in full force and effect; the Depository will pay to Lessee the amount of such insurance monies specified in such certificate of Lessee, provided that the balance will be sufficient for the completion of the Restoration.
3. The Depository will pay to Lessee the ten percent (10%) retainage reserved during the Restoration, upon the completion of Restoration as evidenced by a certificate of such independent engineer or independent architect, and upon the receipt by the Depository of:
- a. A certificate of Lessee (i) requesting the payment of the ten percent (10%) retainage reserved by the Depository during the Restoration; (ii) stating that the Restoration was completed at least thirty (30) days prior to the date of the certificate and was finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all governmental authorities; and (iii) stating that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance;
  - b. A certification of an independent engineer or an independent architect designated by Lessee and approved by the City and by the leasehold mortgagee(s), if any, stating that the Restoration has

been finally completed in accordance with the plans and specifications therefor and in accordance with all laws, ordinances, rules regulations, specifications and standards of all governmental authorities;

- c. Evidence satisfactory to the leasehold mortgagee and the City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, subcontractors and materialmen which engaged in the Restoration);
  - d. The certification of a title company licensed to do business in the State of Texas, in either case that, as of date not more than five (5) days prior to the date of payment described below, there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of the City (except for a fee mortgage, if any), and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to the City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Collin County, Texas, evidencing that fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to the City.
- 4. Any balance of insurance proceeds after the completion of Restoration, as evidenced by a certificate of such independent engineer or independent architect, will be paid to Lessee or to leasehold mortgagee(s), if required under the terms of the leasehold mortgage then in effect. Depository shall notify the City and leasehold mortgagee of each amount paid to Lessee and the date of each such payment.
  - 5. Upon the expiration or sooner termination of this Agreement, any insurance proceeds not theretofore applied to the cost of Restoration or not theretofore paid to Lessee or a leasehold mortgagee will be paid to City.

## **ARTICLE 22. INDEMNIFICATION**

Lessee shall indemnify, protect, defend, save and completely hold harmless the City and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers from any and all liens, claims, charges, encumbrances, demands, damages, fines, obligations, suits, judgments, penalties, causes of action, losses, liabilities, administrative proceedings, arbitration, or costs of any nature whatsoever including attorney's fees, at any time received, incurred, or accrued by the City, its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers relating to this Agreement or arising from damage or injury of any nature whatsoever which may result from Lessee's possession, use, occupancy, management, maintenance, or control of the Premises and/or Airport land and/or improvements and/or the conduct of Lessee's Activities at the Airport or arising out of Lessee's actions or inactions. In the event the City is in part responsible for the loss, Lessee shall not be relieved of the obligation to indemnify; however, in such case, final liability shall be shared in accordance with Texas law. The foregoing notwithstanding, Lessee shall not be liable for damages caused solely by neglect or intentional acts of the City.

The City shall give Lessee prompt notice of any such demand, claim, lawsuit or proceeding against the City that relates to this Agreement. If such demand, claim, lawsuit or proceeding is brought, the City shall have the right, but not the duty, to: (1) investigate and settle the demand, claim, lawsuit or proceeding and (2) participate in the defense of the demand, claim, lawsuit or proceeding.

In this Article, the "City" also includes the Airport, the Airport Board and all of its members. The indemnification provisions of this Agreement shall survive its expiration or termination.

## **ARTICLE 23. SUBLEASE AND SUBCONTRACTS**

- A. Lessee shall have the right and is expressly hereby authorized, subject to the rights of the City under the Western Lease, to sublease such portions of the Premises as it shall deem appropriate; provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Article 4. During the existence of this Agreement, all revenues from any sublease shall belong to Lessee.
- B. Lessee shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before the expiration date of this Agreement, without the prior written consent of the City.

## **ARTICLE 24. ASSIGNMENT**

This Agreement may not be assigned, nor may any part of it be assigned, without the prior express written consent of the City. In the event this Agreement is assigned, Lessee shall remain liable to the City for the remainder of the term of the Agreement to pay to the City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of the City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without the City's prior express written consent shall be null and void and, at the City's election, shall constitute a default.

## **ARTICLE 25. ENCUMBRANCES**

Except as permitted in Article 26 below, Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the Premises, and Lessee shall not suffer the Premises, or any improvements thereon, to be or become subject to any non-consensual lien (including mechanic's liens), charge or encumbrance whatsoever.

## **ARTICLE 26. MORTGAGE**

Lessee shall not mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Premises without the prior express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 27. BOOKS AND RECORDS**

Lessee shall maintain complete financial records of its Activities on the Premises. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to the City.

Any information, records and reports provided to or obtained by the City pursuant to this Article or which the City otherwise comes into possession of pursuant to this Agreement, shall be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

## **ARTICLE 28. HOLDOVER POSSESSION**

In the event that Lessee should hold over and remain in possession of the Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at

any time by the Airport Director or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by the City at the time the Agreement expired.

#### **ARTICLE 29. INDEPENDENT ENTITIES**

Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between the City and Lessee or as constituting Lessee as the agent or representative or employee of the City for any purpose or in any manner whatsoever.

#### **ARTICLE 30. BINDING EFFECT**

This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

#### **ARTICLE 31. SUBORDINATION**

This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport, the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport, and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of the City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

#### **ARTICLE 32. GOVERNING LAW**

This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Collin County, Texas.

#### **ARTICLE 33. PARAGRAPH HEADINGS**

All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience of reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

#### **ARTICLE 34. SEVERABILITY**

In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does

not materially prejudice either the City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.

### **ARTICLE 35. COUNTERPARTS**

This Agreement has been executed in several counterparts, each of which shall be deemed an original.

### **ARTICLE 36. MODIFICATION**

Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

### **ARTICLE 37. ENTIRE AGREEMENT**

This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

### **ARTICLE 38. NOTICES**

Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:

Mr. Paul Grimes  
City Manager  
City of McKinney  
222 N. Tennessee  
118  
McKinney, Texas 75069

with a copy to:

Mr. Kenneth F. Wiegand, A.A.E.  
Airport Director  
McKinney National Airport  
1500 E. Industrial Boulevard, Suite  
McKinney, Texas 75069

Lessee:

WESTERNTKILEASING INC.,  
c/o Brad Henderson  
341 S. Main Street, Suite 102  
Elizabeth, CO 80107

with a copy to:

Dickinson Wright PLLC  
c/o Timothy I. McCulloch  
1850 N Central Ave, Suite 1400  
Phoenix, AZ 85003

All payments shall be made payable to the City and sent to the attention of the Airport Director at the Airport address stated above.

The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

#### **ARTICLE 39. MISCELLANEOUS**

- A. Recognition of Subleases. In the event of termination of this Agreement because of any breach or default by Lessee, the City shall recognize any existing subleases.
- B. Merger of Title. No merger of Lessee's interest in this Agreement or of the leasehold estate created by this Agreement with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (i) Lessee's interest in this Agreement or the leasehold created by this Agreement and (ii) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (i) and (ii) above join in a written instrument effecting such merger and record same.

#### **ARTICLE 40. EXHIBITS AND APPENDICES**

Exhibits and Appendices attached hereto are expressly made a part hereof.

- A. Definitions
- B. Description of Leased Premises
- C. Site Plan



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF MCKINNEY**

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

**WesternTKI Leasing Inc.,**

By:  \_\_\_\_\_  
BRAD HENDERSON  
President

Date Signed: 11/30/17

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

## EXHIBIT A

### Definitions

1. *Airport* means the McKinney National Airport, located at 1500 E. Industrial Drive, Suite 118, McKinney, Texas 75069
2. *Airport Development Guidelines* means . . .
3. *Airport Layout Plan* means . . .
4. *City* means the City of McKinney, a Texas home rule municipal corporation.
5. *Federal Airport Act* means . . .
6. *Hazardous Materials* is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.
7. *Improvements* means a hangar containing approximately 39,000 square feet of space, with approximately 8,500 square feet of attached core-and-shell office space, and approximately 3,100 square feet of individually enclosed garage spaces. Wet fire suppression will be included on the Hangar Tract Portion of the Ground Lease Premises. A fixed base operations terminal containing approximately 17,000 gross square feet of space on the FBO Tract Portion of the Ground Lease Premises, 148 parking spaces.
8. *Lessee* means WesternTKI Leasing Inc., whose principal place of business is c/o Brad Henderson, 341 S. Main Street, Suite 102, Elizabeth, CO 80107.
9. *Offsite Improvements* means any public infrastructure constructed by Lessee and required to serve the Premises.
10. *Premises* means the land only described in Exhibit B which is owned by the City and leased to Lessee.
11. *Site Plan* means, for purposes of this Agreement, the area depicted in the attached Exhibit C, including hangars, taxiways, aprons, driveways, fences and drainage culverts, detention ponds and related improvements, including Offsite Improvements to be constructed by Lessee.
12. *Sponsor* means the City of McKinney, Texas.

## **EXHIBIT B**

### **Premises (legal description)**

## EXHIBIT C

### Site Plan

PHOENIX 74794-1 415207v1

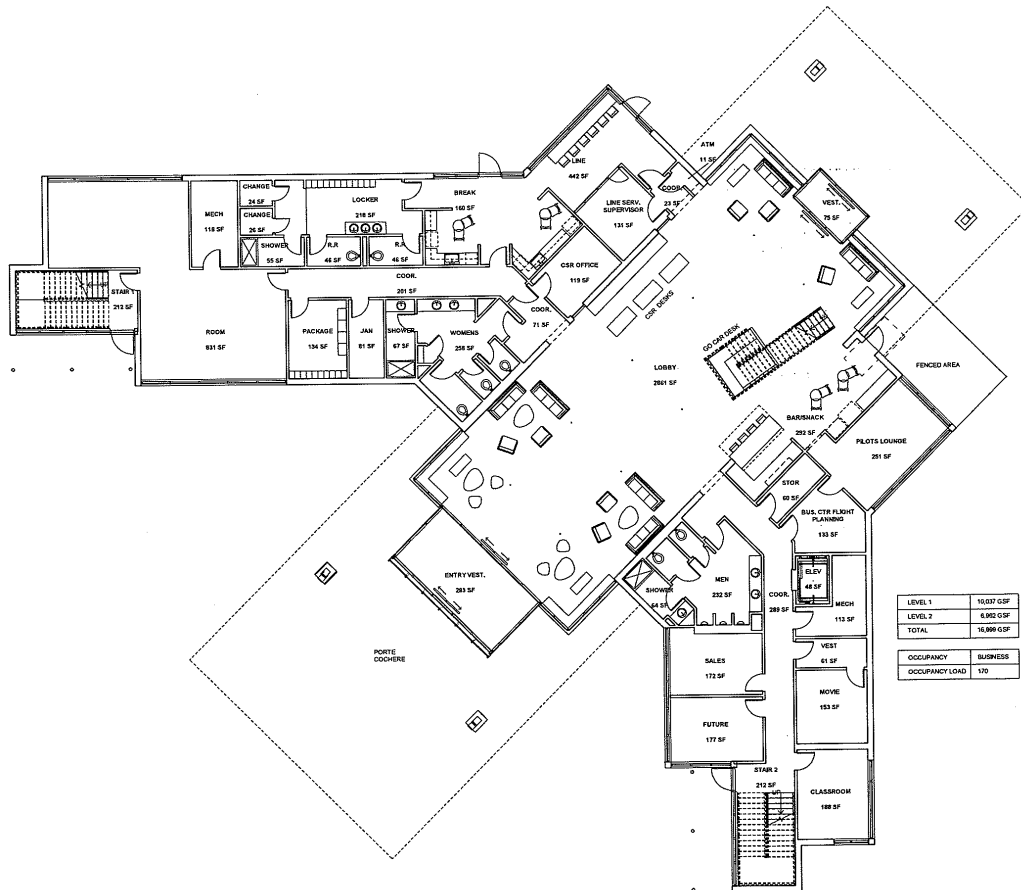
# McKINNEY FBO TERMINAL

WESTERNKILEASING INC.  
1500 INDUSTRIAL BLVD. MCKINNEY, TX 75069

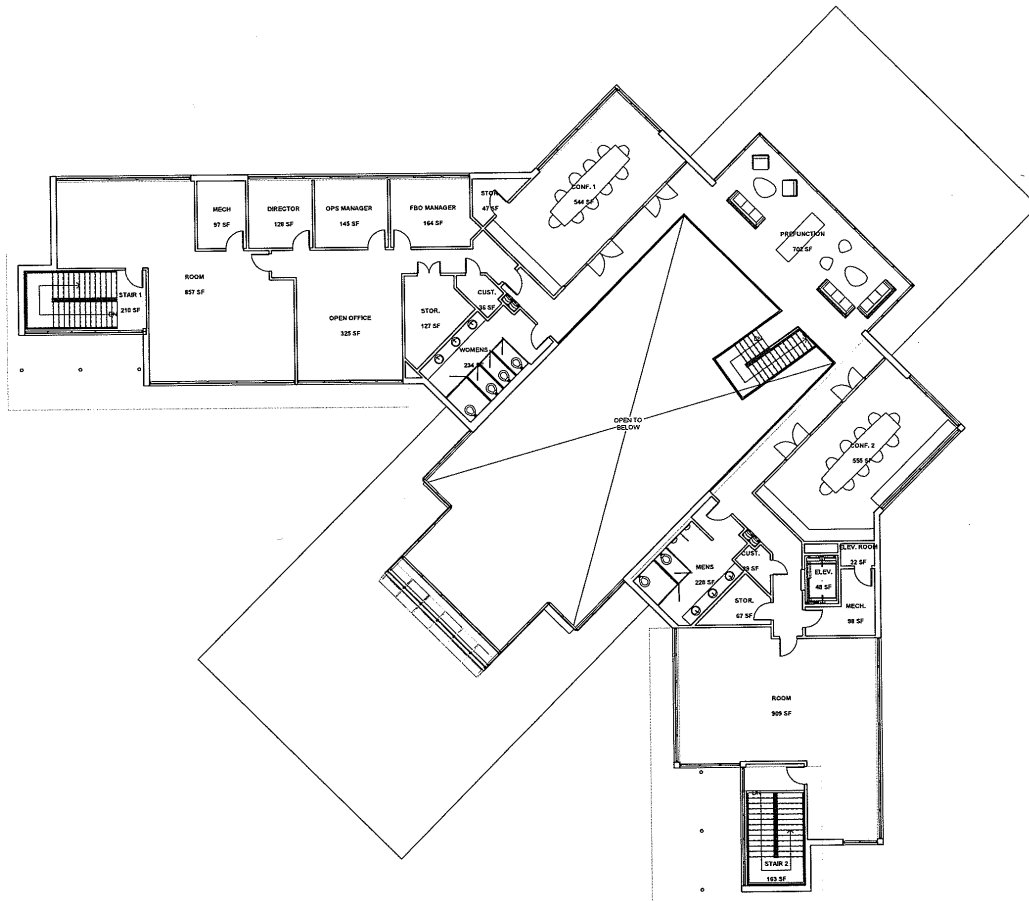
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Project Number  
1715.001  
Drawn By  
EM  
Issue  
11/01/17  
Revised:

Sheet Title  
FLOORPLAN -  
LEVEL 1  
Sheet Number

**A2.0**



LEVEL 1	10,037 GSF
LEVEL 2	6,982 GSF
TOTAL	16,896 GSF
OCCUPANCY	BUSINESS
OCCUPANCY LOAD	170



① Level 2  
1/8" = 1'-0"

**CaCo**  
architecture

CaCo Architecture, LLC  
921 N. Riverfront Blvd, Suite 500  
Dallas, TX 75207  
Tel 972.334.7600 Fax 972.334.7601

## McKINNEY FBO TERMINAL

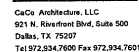
WESTERNKILEASING INC.  
1500 INDUSTRIAL BLVD. MCKINNEY, TX 75069

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Project Number  
1715.001  
Drawn By  
Author  
Issue  
11/01/17  
Revised:

Sheet Title  
FLOORPLAN -  
LEVEL 2  
Sheet Number

**A2.2**

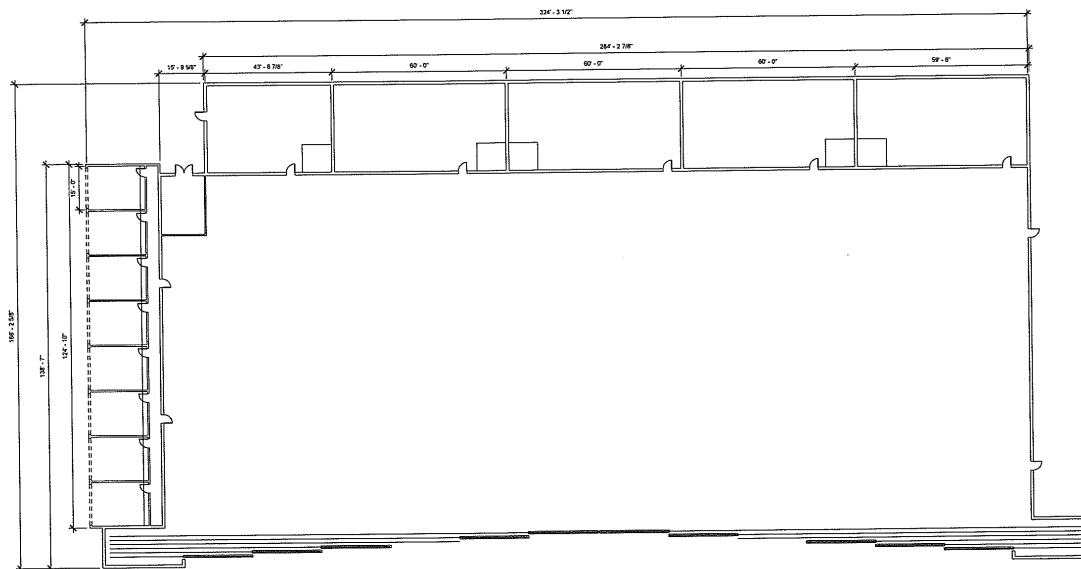


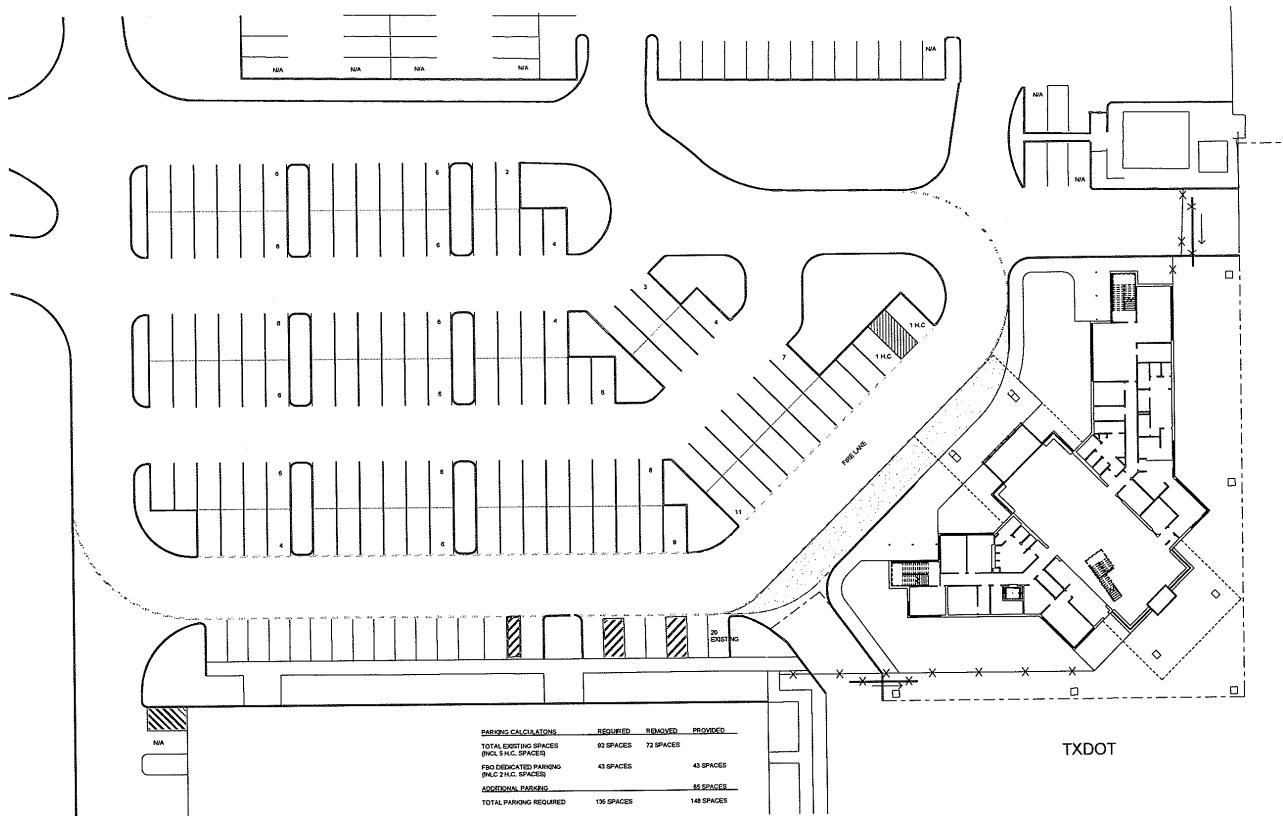
WESTERNKILEASING INC.  
1500 INDUSTRIAL BLVD. MCKINNEY, TX 75069

Project Number  
1715.002  
Drawn By  
EM  
Issue  
11/08/17  
Revised:

Sheet Number

A2.0





① Site Plan - Enlarged  
1" = 20'-0"



CaCo Architecture, LLC  
921 N. Riverfront Blvd, Suite 500  
Dallas, TX 75207  
Tel 972.934.7600 Fax 972.934.7601



**McKINNEY FBO TERMINAL**  
WESTERNKILEASING INC.  
1500 INDUSTRIAL BLVD. MCKINNEY, TX 75069

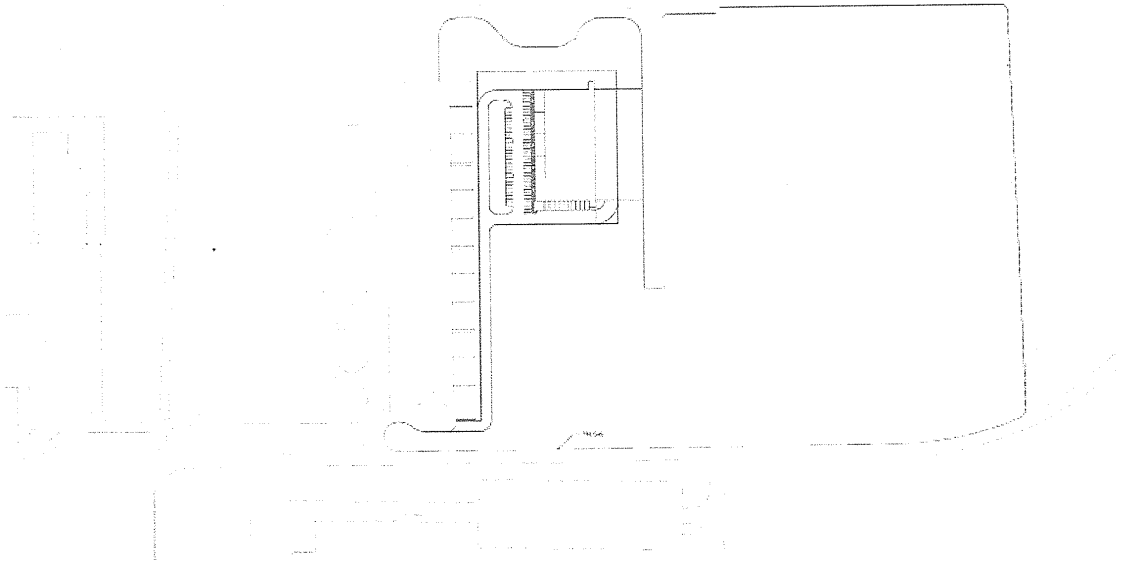
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Project Number  
1715.001  
Drawn By  
Author  
Issue  
11/08/17  
Revised:

Sheet Title  
SITE PLAN

Sheet Number  
**A1.1**





Scale: 1" = 100'  
ARCH D

McKimsey National Airport (TKO)  
CONCEPTUAL SITE DEVELOPMENT PLAN  
WESTERN TKLEASING INC.



DATE: 07/24/03  
BY: JLC  
PROJECT

07/24/03



McKinney National Airport (TKL)  
CONCEPTUAL SITE DEVELOPMENT PLAN  
WESTERNTKLEASING INC.

FM 546