

## SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT ("Agreement") is made as of \_\_\_\_\_ Date \_\_\_\_\_, by and between City of San Antonio, a Texas municipal corporation ("City"), and \_\_\_\_\_ Bank Name \_\_\_\_\_, a state banking corporation (the "Lender"), and \_\_\_\_\_ Tenant \_\_\_\_\_ (the "Tenant").

### I. FACTUAL BACKGROUND

- A. City is the owner of those certain premises located at \_\_\_\_\_ San Antonio International Airport or Stinson Municipal Airport \_\_\_\_\_, Address \_\_\_\_\_ which is further described as follows ("Premises") and as set out in **Exhibit 1**:

*Premises Description; and*

- B. City leases said Premises to \_\_\_\_\_ ("Tenant"), subject to a lease agreement dated \_\_\_\_\_ Date \_\_\_\_\_ and numbered \_\_\_\_\_ Lease Number \_\_\_\_\_, as authorized pursuant to Ordinance No. \_\_\_\_\_ by and between City and Tenant ("Lease"); and
- C. Lender has agreed to make Tenant one or more loans (collectively "Loans") to be secured by the certain property as more fully described on **Exhibit 2** attached hereto and made a part hereof (the "Collateral"). Notwithstanding the foregoing, this Agreement solely relates to Collateral consisting of inventory, equipment, furniture and Tenant's leasehold interest. Nothing contained herein shall be construed to grant any security interest to Lender in City's fee simple interest in the Premises.
- D. Provisions contained in the Lease prohibit Tenant from assigning or otherwise transferring the Lease, or any portion of the Premises, without the prior written consent of the City.
- E. Whereas this Agreement grants City's consent to and approval of the mortgaging of Tenant's leasehold interest in the Leased Premises and certain other rights with respect to the Lease as set out in and limited by this Agreement.

### II. AGREEMENT

**NOW THEREFORE**, in consideration of these premises, the promises, mutual covenants and agreements contained herein and for good and valuable consideration, the receipt of which is hereby acknowledged, City and Lender hereby agree as follows:

- A. **CONSENT.** Pursuant to the pertinent provisions of the Lease, the City hereby consents to the assignment and mortgaging by Tenant, for the benefit of Lender, of all Tenant's right, title, and interest in, to and under the Lease and the leasehold estate in and to the Leased Premise created by the Lease, for the purpose of securing the Loans.
- B. **PERMITTED USE.** Notwithstanding anything to the contrary expressed or implied herein or in any security instruments, Lender and Tenant acknowledge and agree that the Premises are comprised solely of Grantor's leasehold estate in the Premises under the Lease. The parties agree further that Lender's rights and remedies hereunder, and otherwise with regard to the Premises, are subject in all respects to the rights and interests of the City, the fee owner of the Premises and landlord under the Lease. This includes, without limitation, the agreement set forth in the Lease providing that the Premises are permitted to be used solely for aviation purposes and no other use, and that in the event of the foreclosure under the security instruments, Lender shall be restricted to such aviation use under the

Lease.

- C. COVENANTS OF THE CITY AND TENANT. Notwithstanding the terms and provisions of the Lease, the City and Tenant agree that, during the term of the Lease, for so long as any of the Loans are unpaid and in effect:
- a. Lender's Right to Notice. City shall notify Lender by written notice at address set forth below within thirty (30) days from the date that Tenant defaults on the Lease or abandons the Premises pursuant to the provisions of the Lease. Lender shall not be required to take any action in the event either of these circumstances occurs.
  - b. Lender's Right to Cure All Defaults. In the event Tenant is in default under the Lease, Lender shall have, within the "cure" period and otherwise as provided in the Lease, the right to remedy such default, or cause the same to be remedied, and the City shall accept such performance by Lender as if the same had been made by Tenant.
  - c. Modification, Etc. City shall provide Lender at least thirty (30) days prior written notice of any agreement between the City and Tenant modifying, cancelling, or amending the Lease.
  - d. In the event that the City financed certain portions of the project (the "Tax-Exempt Facilities") with the proceeds of tax-exempt debt (the "Tax-Exempt Bonds"), the City, in connection with the issuance of the Tax-Exempt Bonds, has made or will make covenants (the "Bond Covenants") with the holders of the Tax-Exempt Bonds that the Tax-Exempt Facilities will be used in a manner that assures that the Tax-Exempt Bonds continue to qualify as obligations within the meaning of section 103 of the Internal Revenue Code (the "Code"). The Tenant agrees not to use or permit the use of the Tax-Exempt Facilities in a manner which it knows or should know would result in a violation of the Bond Covenants or which would otherwise adversely affect the federal income tax status of the Tax-Exempt Bonds under section 103 or 142(a)(1) of the Code. Moreover, in furtherance thereof, if the Tenant is notified by City or the trustee for the Tax-Exempt Bonds that the Tax-Exempt Bonds have been selected for audit by the Internal Revenue Service, then the Tenant agrees to provide to City or the trustee such information in its possession with respect to the Tax-Exempt Facilities in order that City or the trustee may timely respond to any questions posed to it by the Internal Revenue Service."
- D. LENDER'S RIGHT TO ASSIGN AND THE CITY'S RIGHT TO APPROVE. If Lender acquires Tenant's leasehold interest in the Lease, by foreclosure of any lien securing the Loans or by assignment in lieu of foreclosure, Lender may assign the Lease and shall thereupon be released from all liability for the performance or observance of the covenants contained in such lease on any such tenant's part to be performed and observed from and after the date of such assignment; provided that the assignee or assignees from Lender shall have assumed such lease in accordance with the terms of the Lease, including, but not limited to, the limitation to use the Premises only for aviation-related purposes. The City, in the event of such assignment, shall have the right to approve such assignment and the proposed business to be conducted by the proposed assignee upon the Premises; provided however, the City's consent shall not be unreasonably withheld.
- E. LEASE IN EXISTENCE. The City and Tenant each certify to each other and to Lender that there are no defaults on the part of the City or Tenant under the Lease, that the lease is a complete statement of the agreement of the parties, that the Lease is in full force and effect and that all required rentals have been paid.
- F. SUBORDINATION OF LANDLORD'S LIEN. City subordinates to Lender all rights to maintain or enforce a landlord's lien (whether statutory or contractual) or any other claim against the Collateral which may now or hereafter be situated upon the Premises, regardless of whether or not Tenant (a) fails to

perform any obligation or term of the Lease, (b) otherwise defaults under the Lease, or (c) abandons the Premises and the Collateral is either moved to a new location without the prior written consent of Lender, or the Collateral remains at the Premises. Notwithstanding the foregoing, nothing contained herein shall be construed to grant any security interest in City's fee interest in the Premises to Lender or subordinate any rights or remedies associated with such fee interest under the lease.

- G. **AGREEMENT CONTROLS.** Notwithstanding any provisions to the contrary set forth in any of the loan documents evidencing any of the Loans, this Agreement and its terms and conditions control the method and manner in which the Premises may be foreclosed upon by Lender and, as part of the foreclosure process, conveyed, transferred or assigned to a third party, and this Agreement supersedes and modifies any term in such loan documents which creates a conflict herewith. Additionally, to the extent of any conflict between the terms and the provisions of the Lease and this Agreement, the terms and provisions of this Agreement shall govern and control as between the Lender and the City, so long as any amounts are outstanding under the Loans or Lender is committed to advance available funds under any of the Loans.
- H. **TERM.** This Agreement shall remain in full force and effect so long as any indebtedness secured by the Collateral remains outstanding to Lender. Lender, or its assigns may, without affecting the validity of this Agreement, extend the times of payment of any indebtedness secured by the Collateral, or the performance of any of the terms and conditions of any loan agreement or other documents evidencing the pledge to Lender of the Collateral, without the consent of the City and without giving notice thereof to the City.
- I. **NOTICES.** Any notice shall be in writing and shall be deemed to have been given or served if sent by certified mail, return receipt requested, postage fully prepaid, at least five (5) days before the related action to the address of City or Lender, at their respective addresses indicated at the end of this City's Subordination Agreement, or to such other address as any party may designate by written notice to the other party. Each notice, request and demand shall be deemed given or made, if sent by certified mail, return receipt requested, postage fully prepaid, properly addressed, upon the earlier of the date of receipt or five (5) days after deposit in the U.S. Mail, or if sent by any other means, upon delivery.
- J. **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of Lender, the City, Tenant and their respective successors or assigns.

EXECUTED as of the date first above written.

LANDLORD:

CITY OF SAN ANTONIO

LENDER:

By:  
Name:  
Title:

Address: 9800 Airport Blvd.  
San Antonio, TX 78216

Address:

Approved as to form:

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City Attorney

THE STATE OF TEXAS

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§  
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COUNTY OF BEXAR

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, Aviation Director, City of San Antonio, a Texas Municipal Corporation,  
on behalf of said City of San Antonio.

[ S E A L ]

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit 1**  
**Leased Premises**

**Exhibit 2**  
**Collateral**