

CITY OF ARDMORE
Office of City Manager

Council Letter No. 4909
Meeting Date: September 21, 2020

Mayor and City Commission
City of Ardmore, Oklahoma

RE: Assignment Approval and Agreement for a Tract of Land located at the Ardmore
Downtown Executive Airport

Dear Commission Members:

The Assignment Approval and Agreement is between City of Ardmore; T & C Aviation, LLC, and Citizens Bank and Trust Company of Ardmore. T & C Aviation, LLC entered into a Ground Lease Agreement with the City of Ardmore to lease a tract of land located at the Ardmore Downtown Executive Airport known as Tract 8. T & C Aviation, LLC desires to assign the subject lease to Citizens Bank and Trust Company of Ardmore, Oklahoma as security.

Staff respectfully recommends approval of the Assignment Approval and Agreement.

Respectfully Submitted,



Kevin Boatright
Assistant City Manager

Reviewed by: _____


City Manager

ASSIGNMENT APPROVAL AND AGREEMENT

Whereas, T & C Aviation, LLC entered into a lease agreement dated February 1, 2020, with the City of Ardmore to lease a tract of land on the Ardmore Downtown Executive Airport known as Tract 8; and,

Whereas, the lease prohibits assignment of the lease unless approval is obtained from the City of Ardmore and any assignment obtained without their approval is void; and,

Whereas, T & C Aviation, LLC desires to assign the subject lease to Citizens Bank and Trust Company of Ardmore, Oklahoma, as security for a loan of money made by the bank to them.

Whereas, the lease being assigned and the proposed assignment is attached hereto as exhibit A and is incorporated herein by reference.

Now Therefore in consideration of One Dollar and the mutual promises contained herein T & C Aviation, LLC, City of Ardmore, Oklahoma and Citizens Bank and Trust Company agree as follows:

1. City of Ardmore, Oklahoma hereby consents to the assignment of the described lease to Citizens Bank and Trust Company subject to the agreements and conditions stated hereinafter.
2. T & C Aviation, LLC hereby consent to the assignment of the lease to Citizens Bank and Trust Company.
3. Citizens Bank and Trust Company agrees that if it obtains control of the lease under the terms of the assignment that it will honor and abide by all terms of the lease and provide all documents required under the lease, including proof of insurance coverage. Citizens Bank and Trust company has reviewed the lease and specifically has reviewed the rights of first refusal of the City to purchase the improvements on the property and the default provisions of the lease.
4. Citizens Bank and Trust Company shall advise the City of Ardmore immediately if it obtains possession of the leased premises under its assignment.
5. Citizens Bank and Trust Company further agrees that any provision in its assignment that is contrary to or in conflict with the terms of the lease shall be void and unenforceable and the terms of the lease shall control and prevail.

Dated this ____ day of _____, 2020.

City of Ardmore, Oklahoma

T & C Aviation, LLC

Citizens Bank & Trust Co.

Mayor

Authorized Officer

(Attach copy of Assignment & Lease)

DCN: 6D87001B89208B356174E5D8DD0B680F

WHEN RECORDED, RETURN TO:
Attn: Loan-Credit Department
Citizens Bank and Trust Company
P O Box 1689
Ardmore, OK 73402

ASSIGNMENT OF LEASES, RENTS, AND PROFITS
(INDIVIDUAL - CORPORATION - PARTNERSHIP)

ASSIGNOR NAME	ASSIGNEE NAME
T & C AVIATION LLC	Citizens Bank and Trust Company
ASSIGNOR ADDRESS	ASSIGNEE ADDRESS
2417 CHICKASAW BLVD ARDMORE, OK 73401	1100 N Commerce Ardmore, OK 73401

FOR VALUE RECEIVED, the Undersigned (called "Assignor") sells, assigns and transfers to above named Assignee, (called "Assignee" which term shall be construed to include Assignee's successors and assigns), all right, title and interest in the rents and profits (known as the "Assignment") now due and which may later become due under, or by virtue of, any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the following described Property: 1241 HANGAR #8 LAKE MURRAY DR, ARDMORE, OK 73401
SEE EXHIBIT "A"

This Assignment is conditioned on Assignor's default under a certain Mortgage dated 09/11/2020 (the "Mortgage"), and becomes effective after default (whether or not proceedings have been instituted to foreclose the Mortgage by judicial foreclosure or Power of Sale) on the earlier of: (1) Assignee taking possession of the Property, (2) the appointment of a receiver for the Property, or (3) Assignee giving Assignor and any lessee of the Property written notice to pay Assignee any rents or profits due after a specified date. Assignor agrees Assignee or its agents may, on Assignor's default under the Mortgage, take possession of the Property and collect the rents and profits to apply to any amount Assignor owes Assignee. Assignor further agrees that on Assignor's default under the mortgage, Assignee may seek to have a receiver appointed for the Property as allowed by 12 O.S. 1551, including appointment of a receiver simply when a condition of the Mortgage has not been performed and the Mortgage provides for appointment of a receiver. Assignor recognizes when Assignee receives the rents and profits after written notice, but does not enter into physical possession of the Property and exercise exclusive operating control, Assignee will not be considered a "mortgagee in possession." Assignor further recognizes Assignee may, as part of this Assignment, extend, renew or enter into new leases under terms customary for leases of the Property. If Assignee sends written notice to a lessee obligated to pay under any lease on the Property requesting lessee to direct all rents and profits under the lease to Assignee, this Assignment, when effective, shall transfer the lessee's obligation to pay rents and profits to Assignee.

Assignor agrees that no modification, termination, or renewal of a lease prior or subsequent to the effective date of this Assignment, or advance payment and collection of rents and profits, will be effective against Assignee unless Assignee consents in writing.

If any lessee obligated to pay Assignee does not do so, Assignee shall have all remedies available to collect the rents and profits including, without limitation, those available to a lessor on a lessee's failure to perform under a lease. Assignor agrees to pay to Assignee a reasonable rental for Assignor's use and occupancy of the Property if, after default, Assignee makes a demand for such payment in writing.

Assignor agrees this Assignment is separate and independent from the Mortgage and shall continue in effect in favor of any purchaser of the Property on foreclosure with respect to leases not terminated by foreclosure. However, at Assignee's election made known before any sale upon foreclosure is concluded, this Assignment shall continue in effect in favor of Assignee with respect to leases not terminated by foreclosure until any deficiency owed Assignee after foreclosure is satisfied, at which time further payments under any such lease shall accrue to the purchaser of the Property or its assigns.

Assignee is not obligated to perform or discharge any obligation under any lease or contract relating to the Property and Assignor agrees to indemnify and hold Assignee harmless from any liability, loss or damage, including costs and attorney's fees, suffered by Assignee under any lease or contract relating to the Property.

Assignor agrees not to assign or pledge the rents and profits of the Property to any other person.

SIGNATURE(S) OF ASSIGNOR(S)

Signed and Delivered on this Date:

Date: 09/11/2020

JACOB R TYNES, Managing Member of T & C AVIATION LLC

JARRED SWIRK, Member of T & C AVIATION LLC

TOOD COLLETT, Member of T & C AVIATION LLC

ACKNOWLEDGMENT On Reverse Side Hereof



DCN: 5D87001899288B360174E5D8DD0B680F

ACKNOWLEDGMENT FOR AN INDIVIDUAL ACTING IN HIS OR HER OWN RIGHT or REPRESENTING A CORPORATION, PARTNERSHIP, LLC, etc.

STATE OF _____ }
COUNTY OF _____ } ss.

The foregoing instrument was acknowledged before me on _____ by
JACOB R TYNES, Managing Member of T & C AVIATION LLC, an Oklahoma Limited Liability Company and JARRED SWINK, Member of T & C
AVIATION LLC, an Oklahoma Limited Liability Company and TODD COLLETT, Member of T & C AVIATION LLC, an Oklahoma Limited Liability
Company

My Commission Expires: _____ NOTARY PUBLIC

Form 05 0698 1

© Copyright 02/05 American Bank Systems, Inc.



EXHIBIT "A"

ARDMORE DOWNTOWN EXECUTIVE AIRPORT ADDITION NO. 2 DESCRIBED AS FOLLOWS: THAT PART OF THE SE/4 SW/4 SW/4 OF SECTION 5, TOWNSHIP 5 SOUTH, RANGE 2 EAST OF THE INDIAN MERIDIAN AND BASE LINE, CARTER COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF SAID SE/4 SW/4 SW/4 WHICH IS 165.61 FEET SOUTH OF THE NE CORNER THEREOF; THENCE S00°49'32"E ALONG THE EAST LINE THEREOF, 495.00 FEET TO THE SE CORNER THEREOF, 204.53 FEET TO A POINT ON THE EAST LINE OF THE EXISTING ARDMORE EXECUTIVE AIRPORT RUNWAY TRACT THENCE N00°49'29"W ALONG THE EAST LINE THEREOF, 495.00 FEET; THENCE S89°58'54"E, 204.52 FEET TO THE POINT OF BEGINNING. AND THE NORTH 530 FEET OF THE NW/4 NE/4 NW/4 AND THAT PART OF THE E/2 NW/4 NW/4 AND NE/4 SW/4 NW/4 OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 2 EAST OF THE INDIAN MERIDIAN AND BASE LINE, CARTER COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID E/2 NW/4 NW/4; THENCE S00°49'29"E ALONG THE EAST LINE THEREOF, 1505.00 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF THE EXISTING ARDMORE EXECUTIVE AIRPORT RUNWAY TRACT; THENCE N89°58'54"W ALONG SAID EXTENSION 201.32 FEET TO THE SW CORNER OF THE SAID RUNWAY TRACT; THENCE N00°49'29"W ALONG THE EAST LINE OF SAID RUNWAY TRACT, 1505.00 FEET TO THE NORTH LINE OF SAID E/2 NW/4 NW/4; THENCE S89°58'54"E ALONG THE NORTH LINE THEREOF, 204.53 FEET TO THE POINT OF BEGINNING AND CONTAINING 17.40 ACRES; FOR THE PURPOSE OF CONSTRUCTING, OCCUPYING AND OPERATING AN AIRCRAFT HANGER IN ACCORDANCE WITH AIRPORT REGULATIONS.

**Ardmore Downtown Executive Airport
Ground Lease Agreement**

This Lease Agreement made and entered into this **1st day of February, 2020**, by and between the **City of Ardmore**, an Oklahoma Municipal Corporation, hereinafter called the "**CITY**," and **T & C Aviation, LLC**, hereinafter referred to as "**LESSEE**." Both **CITY** and **LESSEE** are sometimes referred to collectively herein as the "**Parties**."

WITNESSETH

WHEREAS, the **CITY** is the co-sponsor, along with the State of Oklahoma, ex rel Oklahoma Planning and Resources Board, of the area known as the Ardmore Downtown Executive Airport, ("Airport") which is located in Southern Ardmore and in the northern portion of Lake Murray State Park; and

WHEREAS, the **LESSEE** desires to lease certain real property located at the Airport.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein stated and in consideration of the mutual benefits, which will accrue to the parties, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. Leased Premises. For and in consideration of the rentals as hereinafter provided, and the stipulations and conditions hereinafter set out and the mutual advantages moving to the parties hereunder, the **CITY** does hereby demise and lease and assign to the **LESSEE** the surface rights only in and to the lands described as **1241 Executive Airport Dr.**, also known as **Tract 8 (containing approximately 3,808 sq. ft.)**, the "**Leased Premises**," in the Ardmore Downtown Executive Airport, with the Airport being described *in a survey to be completed at a later date*.
2. Term. The term of the Lease shall begin on the **1st day of February, 2020**, and ends on the **31st day of January, 2030** ("**Primary Term**"), with the option of two additional five (5)-year extensions (each separate five (5)-year period hereinafter referred to as an "**Extension Term**"), unless this agreement is terminated pursuant to terms herein. If **LESSEE** desires to exercise its option for an **Extension Term** at the end of the **Primary Term** or at the end of the first **Extension Term**, written notice must be given to the **CITY** at least ninety (90) days prior to the expiration of the **Primary Term** or first **Extension Term**, as applicable. The terms and conditions applicable during any **Extension Term** shall be the same as the terms included herein.
3. Rent. The initial rental to be paid by **LESSEE** to the **CITY** for the leased premises is the sum of **Twelve and One-Half Cents (\$.125) per square foot per annum**, for a total annual rent of **Four Hundred Seventy-Six Dollars (\$476.00)**. Beginning on February 1st, 2021, and on the same date each year thereafter the annual rental will increase by the percentage amount of the Consumer Price Index increase for Urban Consumers, All U.S. City Average (CPI-U), for the previous calendar year, subject to a maximum annual increase of three percent (3%). The following shall apply:

- a. The LESSEE and CITY acknowledge, however, that the CITY's Mayor and Board of Commissioners may choose to regulate rental rates at any time by adopting an ordinance which would supersede the rate(s) for leases then in effect.
- b. An additional fee may be incurred if any check is returned for insufficient funds.
- c. Rent may be paid monthly or annually. If paid annually, rent is due upon execution of this Lease.
- d. If rent is paid monthly and is not received in full by the tenth (10th) day of each month, a late fee may be assessed. If rent is delinquent by thirty (30) days or more, LESSEE will be in default and CITY, in its sole discretion, may terminate this Lease Agreement immediately as provided for below.

4. Use of Leased Premises. The Leased Premises is leased for the purpose of constructing, occupying and operating an aircraft hangar in accordance with airport regulations and City Codes. LESSEE understands that the property and/or materials stored on the Leased Premises must be appropriate for airport activities and that if the property and/or materials stored thereon are found to be hazardous, threatening, annoying, or dangerous to others or otherwise inappropriate, in addition to other remedies, the CITY shall have the right to require removal of such property and/or materials. LESSEE shall not use the Leased Premises for any unlawful purpose or for any purpose that may constitute a nuisance. LESSEE agrees that no commercial activities will be conducted out of the Leased Premises without the prior written approval of the City Manager. It is specifically agreed that:

- a. The LESSEE shall not use the Leased Premises for the sale of aviation fuel to third parties.
- b. LESSEE shall refuel aircraft only in places designated by the Airport Director or his designee. LESSEE shall not deposit, discharge, or release water, fuel, oil, or other petroleum products at the Airport.
- c. Non-Aeronautical uses of the property are prohibited except as may be expressly approved by in writing by the FAA, under the provisions of rules found at 81 CFR 38906 or other FAA rules and regulations.

5. Right of Ingress and Egress. LESSEE shall have the right of ingress to and egress from the Leased Premises, provided access to the airfield is not otherwise reasonably restricted by the CITY. LESSEE understands that the Airport may be closed on a temporary basis and/or that airport use restrictions may be imposed from time to time for reasons including, but not limited to, hazardous conditions, special events, safety, security, noise and environmental issues. If airport use restrictions are imposed as a result of a special event, LESSEE shall not be denied access to the Leased Premises. Additionally, LESSEE shall comply with any safety and security planning efforts adopted by the CITY.

6. Memorandum of Lease and Certificates. LESSEE may, at its option and expense, record this Lease or a memorandum or short form thereof in the office of the Carter County Clerk. In

the event that LESSEE desires to do so, CITY agrees to take the necessary actions to execute such memorandum or short form. Further, the Parties agree to execute and deliver to each other, within ten (10) days after a request from the other party, a certificate stating (i) whether this Lease is in full force and effect; (ii) whether this Lease has been modified or amended in any respect and providing copies of any modifications or amendments, if any; (iii) whether there are existing defaults and specifying the nature of the such defaults, if any; and (iv) such other matters as may be reasonably requested by the other party.

7. Personal Property Taxes. LESSEE shall be liable for all personal property taxes assessed against LESSEE'S personal property or LESSEE'S improvements.

8. Environmental Matters.

- a. *Definitions.* For the purposes of this Lease Agreement, "Hazardous Substances" shall mean pollutants, contaminants, toxic wastes or any other substances, the removal of which is required or the use of which is regulated, restricted, prohibited or penalized by any Environmental Law. "Environmental Law" means any federal, state, or local law or regulation relating to pollution or the protection of the environment. "Release" means the dispersal, release, storage, treatment, generation, disposal, or escape of any Hazardous Substances.
- b. *City's Representations.* Other than the Fixed Base Operations, including fuel storage tanks and pumps, CITY has no knowledge of the existence of, or the release in, on, or under the Leased Premises and CITY has had no notice from any federal, state, county or other authority as to the existence of or Release of any Hazardous Substances at the Leased Premises or the violation of any Environmental Law related to the Leased Premises.
- c. *Phase I Environmental Study.* Within sixty (60) days after the commencement date of this Lease, LESSEE shall have the right to order a Phase I environmental study and other additional environmental, geological, or soil testing of the Leased Premises. If such studies or tests disclose the presence of Hazardous Substances or other environmental, geological, or soil conditions that are unacceptable to the LESSEE, the LESSEE shall be entitled to terminate this Lease upon written notice to CITY.

9. Conditions and Maintenance:

- a. LESSEE shall keep the Leased Premises free of debris, tall grass, weeds, parts, inoperable vehicles and any other nuisances or hazards at all times.
- b. LESSEE shall be responsible for the cleanup of hazardous materials or other spills from LESSEE's aircraft, vehicles, or containers. LESSEE shall dispose of used oil and other hazardous materials in approved receptacles only.
- c. LESSEE shall be responsible for and agrees to remedy any damage to the Leased Premises arising out of LESSEE's use of the Leased Premises.

10. Utilities. If utilities have already been extended to the Leased Premises, the CITY agrees to furnish water and sewer to the Leased Premises and LESSEE agrees to be responsible for payment of all utilities, including but not expressly limited to, the aforementioned water and sewer. If utilities have not been extended to the Leased Premises, LESSEE agrees to pay any costs necessary to extend such utilities.

11. Airport Operations. The CITY reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of the said LESSEE, and without interference or hindrance. The CITY reserves the right, but shall not be obligated to LESSEE to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport together with the right to direct and control all activities of LESSEE in this regard. The CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport, which, in the opinion of the CITY, would limit the usefulness of the airport or constitute a hazard to aircraft.

12. Improvements. LESSEE may make improvements to the Leased Premises at LESSEE's expense. If LESSEE makes additional improvements, the following shall apply:

- a. With the prior written approval of the Airport Manager, LESSEE may construct buildings and/or other improvements, such as exterior signage, on the Leased Premises.
- b. LESSEE must obtain necessary permits and/or permission before beginning any construction, including, but not limited to, any permits or permission required by the City of Ardmore, the Federal Aviation Administration, and the Oklahoma Aeronautics Commission.
- c. Any improvements constructed on the Leased Premises must conform to the City of Ardmore building codes.
- d. CITY may require removal of improvements upon termination of this Lease.
- e. Unless there is a written agreement to the contrary that specifically references this Lease Agreement, the LESSEE will have the right to remove any improvement LESSEE placed upon the Leased Premises. LESSEE shall be responsible for any damage caused by such removal. In the event that such improvement is not removed prior to the termination of this Lease Agreement, such improvement shall become the property of the CITY immediately without further notice.

13. Indemnification and Hold Harmless:

- a. LESSEE agrees to indemnify, defend, and hold CITY harmless from and against any and all injury, loss, damage, liability claims, costs or expenses, including reasonable

attorney's fees and court costs, arising directly or indirectly out of the use, maintenance, or repair of the Leased Premises or LESSEE's breach of any provision of this Lease Agreement, except in those situations arising out of the CITY's negligence or intentional act. LESSEE hereby agrees to indemnify and save harmless the CITY from all liability, loss, costs and obligations on account or arising out of any such injuries or losses however occurring, including reasonable costs and attorney fees. Further, LESSEE does hereby agree to indemnify, defend, and hold the CITY harmless from and against all claims, liabilities, losses, damages, actions, suits and all costs and expenses which may be made against LESSEE for any Release of any Hazardous Substances on, in, or under the Leased Premises by LESSEE as a result of LESSEE's actions on the Leased Premises, or the violation of any Environmental Law, at any time during LESSEE's occupancy of the Leased Premises.

- b. CITY agrees to release and hold harmless LESSEE from all claims, actions, demands, damages, liabilities or expenses which may be made against CITY arising out of the negligence or intentional act of CITY, its agents or employees, or CITY's breach of this Lease. Further, CITY shall and does hereby release LESSEE from all claims, liabilities, losses, damages, actions, suits, and costs and expenses therewith, arising from the existence of or any Release of Hazardous Substances on, in, or under the Leased Premises or for any violation of Environmental Law that occurred at any time prior to the LESSEE's occupancy of the Leased Premises.
- c. CITY and LESSEE each waives any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy that covers the Leased Premises, the building thereon, CITY's or LESSEE's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof, except when the intentional act or the negligence of the other party caused such loss.
- d. It is expressly understood that there shall be no liability whatsoever of the CITY for any buildings erected by LESSEE and that such buildings and improvements shall be at the sole cost and responsibility of LESSEE. All maintenance, repairs and improvements of such buildings shall be at the sole cost and responsibility of LESSEE.
- e. LESSEE does hereby assume sole responsibility for any liability, of whatever nature, incurred to any third parties, that arises out of the LESSEE's use of the Leased Premises.
- f. The provisions of this Paragraph 13 are intended to survive the expiration or termination of this Lease Agreement.

14. Inspections and Entry Upon Leased Premises Authorized. Authorized officers, agents, officials, and employees of the United States of America, and authorized officers, officials,

agents and employees of the Federal Aviation Administration, the Oklahoma Aeronautics Commission, and agents of the City of Ardmore, Oklahoma, appointed for such purposes by the City Commission, shall have the right and authority at all times to go upon said airport property and into buildings and structures thereon, for the purpose of viewing and inspecting the same, and for such other purposes as the CITY shall, in its sole discretion, deem fit and proper so long as said officers, officials, agents and employees do not unreasonably hinder or interfere with the operation by LESSEE of said Leased Premises.

15. Insurance Limits. LESSEE, at the sole expense of LESSEE, shall keep in force during the term of this Lease, insurance, issued by an insurance company authorized to do business in the State of Oklahoma and in form acceptable to the CITY, for the protection of CITY against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered from CITY, by reason of damages to the property of, injury to, or death of any persons on account of any manner of things which may occur on the Leased Premises during the terms of this Lease, or any extensions thereof, in a policy or policies not less than:

- a. One Hundred Thousand Dollars (**\$100,000.00**) with respect to any one person, and One Million Dollars (**\$1,000,000.00**) with respect to any one accident or disaster
- b. One Hundred Thousand Dollars (**\$100,000.00**) with respect to property damage with an aggregate limit of One Million Dollars (**\$1,000,000.00**)

16. Additional Insurance Information. In addition, LESSEE shall furnish the CITY with a complete list of all such insurance policies and LESSEE shall pay all the premiums necessary to those purposes immediately as they become due. The following shall also apply:

- a. All insurance policies shall, in addition to protecting the LESSEE, protect the CITY and all of its officials and members of Board of Commissioners authorizing this Lease Agreement; and,
- b. At the time of execution of this lease, the LESSEE shall furnish the CITY certificates of such insurance; and,
- c. All such insurance certificates shall contain a provision that the respective insurers will not cancel such insurance coverage required under this Lease without first giving thirty (30) days prior written notice to CITY; and,
- d. LESSEE'S failure to effectuate any and all such insurance and renewal policies of insurance required and to pay the premiums and renewal premiums on all such policies of insurance as they become due and payable, and to deliver all such certificates of insurance and renewals thereof of duplicate originals to the CITY, shall constitute a default by LESSEE under the terms of this Lease, and CITY, in its sole discretion, may terminate this Lease Agreement immediately as provided herein.
- e. LESSEE shall be liable for insuring LESSEE'S property located upon the Leased Premises.

17. City's Right of First Refusal to Purchase Improvements. Should this lease expire, be terminated or assigned, the CITY, at its sole option, shall have the first right to purchase any improvements owned by said LESSEE at a price equal to the best bona fide offer made to said LESSEE in writing; and any contract which may be entered into between said LESSEE and bona fide purchaser shall provide that the sale of the improvements upon the Leased Premises shall be subject to CITY'S right of first refusal. In the event that said LESSEE receives a written offer or executes a contract as above set forth, the CITY shall have the option, to be exercised within twenty (20) days ("Review Period") after receipt of written notice of the terms of such offer, to enter into a contract with said LESSEE on the same terms and conditions as said offer to purchase. If LESSEE enters into a contract to sell the improvements, LESSEE shall submit a duplicate original of the executed contract embodying all of the terms and conditions of said executed contract to CITY before the twenty (20) day Review Period shall begin. If the CITY shall fail to exercise its option by signing and returning within the twenty (20) day period, a copy of said contract to said LESSEE, said LESSEE shall have the right to conclude the proposed sale on the same terms, and no others, as in the offer or contract originally forwarded to the CITY.

18. Surrendering Possession. It is further mutually agreed that at the expiration, default or other termination of this Lease Agreement, LESSEE's rights to use the Lease Premises shall cease and LESSEE shall immediately cease operations, vacate the Leased Premises, and deliver peaceable possession of the premises to the CITY in as good condition as at the commencement of the lease, normal wear and tear excepted. If LESSEE occupies the Leased Premises beyond the expiration or other termination date, LESSEE shall be considered as holding over, and shall remain liable for payment of rent and for complying with all of the terms of this Lease Agreement. Should LESSEE remain beyond the expiration, default or other termination of this Lease Agreement, CITY retains the right to take any lawful action to regain possession of the Leased Premises.

19. Casualty or Condemnation. If any or all the Leased Premises shall be damaged by fire, earthquake, flood, or other casualty, or acquired by the right of condemnation or eminent domain for any public or quasi-public use or purpose, or be sold to a condemning authority under threat of condemnation, then, at the option of LESSEE, the Term of this Lease shall cease and terminate as of the date of such fire, earthquake, flood, or other casualty, or as of the date of title vesting pursuant to such condemnation or eminent domain proceeding (or sale), and all rental shall be paid up to that date.

20. Termination without Default. Should the CITY or the LESSEE desire to terminate this Lease for any reason or no reason at all, termination shall be effective by providing written notice to the other party of the intent to terminate and the date of termination. Such written notice must allow for a minimum of One Hundred and Eighty (180) days of notice. However, if LESSEE desires to terminate this Lease under the provision in Paragraph 8 (c), no notice period is required.

21. Default.

- a. *Generally.* Under this Lease Agreement, default generally occurs when either party fails to keep, observe, or perform any term or provision of this Lease Agreement to be kept, observed, or performed by it, and such conduct continues for a period of sixty (60) days after written notice thereof by the other party.
- b. *Specific Examples of Events of Default.* Default shall also occur should LESSEE be adjudicated as bankrupt, or insolvent, or take the benefit of any federal reorganization, or compositions proceed, or make a general assignment, or take the benefit of any insolvency law; or
 - i. If LESSEE'S leasehold interest be sold under an execution or process of law; or
 - ii. If the Leased Premises shall be abandoned or deserted; or
 - iii. LESSEE shall fail to pay any payment required to be paid to CITY under this Lease, as and when the same shall become due, and such default is not cured within ten (10) business days after written notice of default, provided CITY shall not be required to provide such notice more than once in a calendar year; or,
 - iv. If CITY fails to maintain its property abutting the Leased Premises and/or to ensure a safe, clear and consistent path for aircraft and vehicle ingress and egress.
- c. *Events of Immediate Default.* The failure of LESSEE to pay rent within thirty (30) days of the due date, the failure to obtain insurance, failure to provide proof of insurance, failure to properly dispose of and/or store hazardous materials, or the failure to obtain CITY permission prior to assigning this Lease Agreement, shall constitute immediate default and the CITY shall not have to allow sixty (60) days, or any period of time, for LESSEE to cure such default.

22. Remedies on Default:

- a. *Notice of Default.* Upon default, other than the events described in "Events of Immediate Default" above, and in addition to any other remedies available to it on account of such event or default, either party may provide the other party with notice that it intends to terminate this Lease Agreement, in writing, which identifies the conduct, act, or condition constituting default, if the default is not cured within the following sixty (60) days, or another length of time that is specifically identified herein for a particular situation.
- b. *Termination.* If CITY or LESSEE fails to cure the conduct, act or condition constituting default within sixty (60) days or another length of time that is specifically identified herein for a particular situation, the other party may immediately terminate this Lease Agreement.

- c. *Remedies Not Exclusive.* No right or remedy herein conferred upon or reserved to either of the parties is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative to any other right or remedy given hereunder or now or hereafter legally existing upon default.
- d. *No Waiver.* The failure of either party to insist upon the strict observance or performance of any of the provisions of this Lease Agreement or to exercise any right or remedy provided in this Lease Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Lease Agreement to the parties may be exercised from time to time and as often as may be deemed expedient by the parties.
- e. *Costs and Attorney's Fees.* If either party hereto brings an action because of any event of default, each party hereto agrees to pay its own costs and attorney's fees incurred in connection with such action.

23. Force Majeure. For the purposes of this Lease Agreement, an event of Force Majeure is an act of God, fire, earthquake, hurricane, flood, terrorist act or threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, or any cause of occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Lease Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party with ten (10) days of the date on which such party gains actual knowledge of such Event of Force Majeure.

In the event of damage or destruction of the Leased Premises or a material portion of the Leased Premises by reason of fire, storm, or other casualty loss that renders the Leased Premises uninhabitable, the CITY shall use reasonable efforts to make necessary repairs. If, notwithstanding such efforts, such damage or destruction is expected to render the Leased Premises or a material portion thereof uninhabitable for a period estimated to be at least One Hundred Eighty (180) days or more, either party may terminate this Lease Agreement immediately.

24. Compliance with Laws. LESSEE shall conduct its activities under the terms of this Lease Agreement in such a manner that it does not violate federal, state, or local laws or regulations applicable to the conduct of its activities under the terms of this Lease Agreement. LESSEE shall also obey and observe all rules and regulations promulgated and enforced by CITY or any other entity having jurisdiction over the conduct of the operations of the Ardmore Downtown Executive Airport, including, but not limited to, the Federal Aviation Administration.

25. Wartime and National Emergency. LESSEE understands that during time of declared war or other local, state or national emergency, as declared by the local, state or federal government, CITY shall have the right to lease the Leased Premises, or any part thereof, to the United States Government or the State of Oklahoma for military, homeland, or emergency management use, and if such lease is executed, the provisions of this lease, insofar as they are inconsistent with provisions of a government lease, shall be suspended without obligation of the CITY to the LESSEE by reason of the suspension.

26. Subordinate Lease. This Lease Agreement shall be subordinate to the provisions of any existing or future agreements with the federal or state government or any Public Trust or Authority with the City of Ardmore as a beneficiary, relative to the operation or maintenance of the Ardmore Downtown Executive Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the airport property.

27. Sublease and Assignment. The Leased Premises may not be subleased or assigned by the LESSEE without the prior written consent of the CITY. Any sublease or assignment that is executed without CITY's consent is void.

28. Bankruptcy or Insolvency. It is agreed between the parties hereto that if LESSEE shall be adjudicated as bankrupt, or insolvent, or take the benefit of any federal reorganization, or composition proceeding, or make a general assignment, or take the benefit of any insolvency law, or if LESSEE'S leasehold interest under this Lease shall be sold under an execution or process of law, or if a trustee in bankruptcy, or a receiver be appointed or elected, or had (whether under federal or state law), or if said premises shall be abandoned or deserted, or if LESSEE shall fail to perform any of the covenants or conditions of this Lease on LESSEE'S part to be performed, then and in any such events this Lease and the terms of the Lease, at CITY'S option, shall expire and end, after CITY shall give LESSEE written notice of such act, condition, or default, and LESSEE hereby agrees immediately then to quit and surrender said premises to the CITY; but this shall not impair or effect the CITY'S right to maintain summary proceedings for the recovery of the possession of the demised premises in all cases provided by law; provided, that the notice shall specify that the LESSEE shall have a thirty (30) day period upon receipt of the notice within which to correct any and all defaults. The notice will be in writing and mailed to LESSEE'S last known mailing address.

29. Binding Effect. This Lease Agreement binds the parties and any successors and assigns of the parties.

30. Severability. If any one or more of the sections, sentences, clauses, or parts of this Lease Agreement be held invalid for any reason, the invalidity of such section, sentence, clause, or part shall not affect nor prejudice the applicability and validity of any other provision of this Lease Agreement.

31. Counterparts. This Lease Agreement may be executed in any number of counterparts, and when each party has signed and delivered to the other at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts,

shall constitute one agreement; provided, however, this Lease Agreement shall not be binding upon the parties hereto until signed by all of the parties.

32. Third Party Beneficiaries. Nothing in this Lease Agreement, expressed or implied, is intended to confer upon any person other than the parties hereto and their respective assigns, any rights or remedies under or by reason of this Lease Agreement, except as provided expressly herein.

33. No Agency. It is mutually understood and agreed that nothing contained in this Lease Agreement is intended, or shall be construed, as in anywise creating or establishing the relationship or co-partners or joint ventures between the parties hereto or as constituting LESSEE as the agent or representative of the CITY for any purpose.

34. Notices. Whenever notice is required to be given in writing, such notice shall be hand-delivered or mailed by certified mail, return receipt requested, and directed to the respective parties at the following addresses:

CITY:

Attn: Airport Manager
City of Ardmore
23 South Washington
Ardmore, OK 73401

LESSEE:

T & C Aviation, LLC
c/o Jacob Tynes
2417 Chickasaw Boulevard
Ardmore, OK 73401

or at such other address as a party shall specify by like notice to the other party hereto. Notices shall be effective on the date of delivery.

35. Governmental Tort Claims Act. By entering into this Lease Agreement, CITY and its "employees," as defined by the Governmental Tort Claims Act, 51 Okla. Stat. § 151 *et seq.*, do not waive sovereign immunity, any defenses, or any limitations of liability as may be provided for by law. No provision of this Lease Agreement modifies and/or waives any provision of the Local Government Tort Claims Act.

36. Non-Discrimination. The parties covenant (1) that no person shall be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination under the terms of this Lease Agreement on the ground of race, color, age, sex, handicap, or national origin; and (2) that, in carrying out the terms and conditions of this Lease Agreement, no person shall be subjected to discrimination on the grounds of race, color, age, sex, handicap, or national origin. In the event of breach of any of the non-discrimination covenants, the CITY shall have the right

to terminate this Lease Agreement and to re-enter and re-possess said Leased Premises and hold the same as if said Lease Agreement had never issued. In the event CITY terminates this Lease subject to this provision, LESSEE shall immediately cease operations, but shall be authorized up to one hundred and twenty (120) days to remove property and structures.

37. Interpretation of Law. This Lease Agreement shall be deemed to have been made in the State of Oklahoma and shall be construed and interpreted in accordance with the laws of the State of Oklahoma.

38. Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Lease Agreement may be brought against any of the parties in the courts of the State of Oklahoma, County of Carter, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Oklahoma, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

39. Lease Construction. Captions and other headings contained in this Lease Agreement are for reference and identification purposes only and do not alter, modify, amend, limit, or restrict the contractual obligations of the parties.

40. Bargaining. The CITY and the LESSEE have had the opportunity to seek independent legal counsel before entering into this Lease Agreement. The language of this Lease Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either party.

41. Integration, Amendments, and Interpretation. This Lease Agreement constitutes the entire agreement between the parties and may not be amended, altered, modified or changed in any way except in writing signed by all parties to this Lease Agreement and which specifically references this Lease Agreement. There are no other agreements, representations or warranties, whether oral or written, regarding the subject matter of this Lease Agreement. No course of dealings involving the parties hereto and no usage of trade shall be relevant or admissible to interpret, supplement, explain or in any way vary any of the terms expressly set forth in this Lease Agreement. Any amendment to this Lease Agreement shall be attached to this Lease Agreement and all of the terms in this Lease not addressed in the amendment shall remain in full force and effect.

41. Time of the Essence. Time is of the essence of this Lease, and of each and every covenant, term condition and provision hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed on the day and year written below.

Date: 08-03-2020

“CITY”
CITY OF ARDMORE, OKLAHOMA
A Municipal Corporation,

Downtown Executive Airport
Ground Lease Agreement



By: [Signature]
Mayor

ATTEST:

[Signature]
City Clerk

Reviewed on the 21st day of July, 2020.

[Signature]
Chase Tindle, Airport Manager

Approved as to form this 21 day of July, 2020.

[Signature]
City Attorney

[Additional Signature Page Follows]

Date: 7/21/20

"Lessee"
T & C Aviation, LLC
Jacob Tynes, Manager

[Signature]
Signature

LESSEE'S ACKNOWLEDGEMENT

STATE OF Oklahoma)
) ss:
COUNTY OF Carter)

On this 21st day of July, 2020, before me, a Notary Public, in and for the above state and county, personally appeared Joseph J. Jones, known to me to be or who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same for the purposes contained therein.

Lori Linney
Notary Public

Commission Number: 14006238

My Commission Expires: 07-14-2022

