

**FIXED BASE OPERATOR  
GROUND LEASE AND OPERATING AGREEMENT**

**THIS LEASE AGREEMENT** (“Lease”) is made and entered into as of \_\_\_\_\_, **2022** (“Effective Date”), between the City of Pueblo, a Municipal Corporation, with an address of One City Hall Place, Pueblo, Colorado 81003, (“Lessor”) and Freeman Holdings of Colorado, LLC, a Colorado limited liability company, d/b/a Freeman Jet Center Pueblo, with an address of 16221 Foster Street, Overland Park, Kansas 66085, (“Lessee”) and Rocky Mountain FBO, LLC, a Colorado limited liability company, d/b/a/ Flower Aviation FBO, with an address of 31000 Bryan Circle, Pueblo, Colorado 81001 (“Flower”).

WHEREAS, the Lessor is the owner and operator of the Pueblo Memorial Airport (“Airport”), together with the land on which said Airport is situated; and

WHEREAS, Lessee is desirous of leasing certain real property, ramp space, and fuel tanks on said Airport property for the purpose of the sale of aviation fuels and other related aviation services; and

WHEREAS, Lessor entered into a certain Ground Lease and Operating Agreement dated June 25, 2005 (“Lease No. 1”) with Travelaire Service, Inc., a Colorado corporation, (“Travelaire”) for the parcel commonly known as 525 Skyway Street, Pueblo, Colorado, and Jet-A Tank No. 4, the legal description for which is contained in Lease No. 1; and

WHEREAS, Lessor entered into Amendment No. 1 (“Amendment”) to the Lease No. 1 dated April 24, 2006 with Travelaire and Flower, evidenced by Resolution No. 10700, where several changes were made, including but not limited to, the initial term of Lease No. 1 being amended to end April 30, 2026, AV-Fuel Tank No. B being added to the lease, and Lessor consenting to assignment of Lease No. 1 from Travelaire to Flower; and

WHEREAS, Lessor entered into the Fuel Tank Agreement (“FT Agreement”) dated May 1, 2008 with Flower, where Lease No. 1 was further amended to substitute AV-Fuel Tank No. C for AV-Fuel Tank No. B and more specific terms were set out with regards to use of the fuel tanks under the lease; and

WHEREAS, Lessor executed the Consent to Assignment evidenced by Resolution No. 13354 on December 28, 2015, consenting to and assigning Lease No. 1 from Flower to PDC Acquisition Corp., a Colorado corporation (“PDC”); and

WHEREAS, Lessor entered into the Assignment of Lease Agreement (“Assignment”) to the Lease No. 1 dated March 24, 2017 with PDC and Flower, where Lease No. 1, was assigned back to Flower; and

WHEREAS, Lessor entered into a certain Ground Lease and Operating Agreement dated October 26, 2015 (“Lease No. 2”) with PDC for Parcel C, more commonly known as 31000 and 30900 Bryan Circle, Pueblo, Colorado, and attached spaces; and

WHEREAS, Lessor executed the Assignment of Lease Agreement dated December 31,

2016 with PDC and Flower, assigning Lease No. 2 from PDC to Flower; and

WHEREAS, Flower is selling all of its assets to Lessee in accordance with the Asset Purchase Agreement, including its interests in Lease No. 1 and Lease No. 2, as each were amended and assigned, and Lessor does not object to the sale and transfer; and

WHEREAS, the parties desire to condense the aforementioned documents and create a single agreement with which to bind the parties.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

**1. Leased Property:**

- A. The Lessor hereby leases unto the Lessee and Lessee hereby leases from Lessor for the term and upon the requirements and conditions hereinafter stated, the real property marked as “Leased Premises” on the plot plan, attached hereto and incorporated herein as Exhibit B, (“Leased Premises”) situated in the County of Pueblo, State of Colorado, subject to existing easements and deed restrictions, including all structures thereon which Lessee acknowledges are the property of Lessor, including but not limited to:
- i. 525 Skyway Street: six thousand four hundred (6,400) square foot hangar and two thousand four hundred seventy-two (2,472) square feet of office space that includes one thousand three hundred fifty-two (1,352) square feet of ground floor and one thousand one hundred twenty (1,120) square feet of second story. Land leased for 525 Skyway Street is 36,216 square feet.
  - ii. 30900 Bryan Circle: ten thousand (10,000) square foot hangar, two thousand five hundred (2,500) square foot ground floor office and garage, thousand five hundred (2,500) square foot of second story improved space, two thousand (2,000) square foot attached shop, two thousand (2,000) square foot second story storage, three thousand (3,000) square foot ground floor vehicle shop, and five hundred eighty-eight (588) square foot second story improved space.
  - iii. 31000 Bryan Circle: four thousand three hundred sixty-seven (4,367) square feet of improved space. Land leased for 30900 Bryan Circle and 31000 Bryan Circle totals 79,335 square feet.

The term Leased Premises as used herein, means and includes the real property and structures described above, as well as any improvement hereafter constructed or added thereto.

- B. Subject to the terms of this Lease, Lessor hereby leases to Lessee 83,626 square feet of ramp space, meaning and including that ramp space indicated as “Ramp” on the plot plan attached hereto and incorporated herein as Exhibit C, (“Ramp”)

situated in the County of Pueblo, State of Colorado. The Leased Premises and Ramp do not include gates through the Airport fence, including but not limited to Gate D or the FBO Pedestrian Gate adjacent to the Ramp, and Lessor, its staff, and all users of the Airport may use such gates in accordance with applicable rules and regulations. Lessor, its staff, and all users of the Airport may use such areas of the Ramp as necessary for persons to access and use Airport gates for ingress and egress.

- C. Subject to the terms of this Lease, Lessor hereby leases to Lessee four fuel tanks designated as (i) 40-3a, (ii) 40-2, (iii) 40-2a, (iv) 40-1, (v) 20-3, and (vi) 20-1 (together the "Fuel Tanks") at Lessor's fuel farm, indicated as "Fuel Tanks" on the plot plan attached hereto and incorporated herein as Exhibit D, situated in the County of Pueblo, State of Colorado.
- D. The Leased Premises will be used for the regular business of a full service fixed base operator ("FBO"), including the sale of aviation fuel and related products and services. Any aircraft stored on the Leased Premises must be continually registered with the Federal Aviation Administration ("FAA") throughout the life of this Lease and the tail numbers for same must be reported to Lessor. Lessee agrees to report any changes in aircraft tail numbers to Lessor within fourteen (14) days, in order for Lessor to comply with FAA reporting requirements.
- E. This Lease and Lessee's use of the Leased Premises, Ramp, and Fuel Tanks, together on the plot plan attached hereto and incorporated herein as Exhibit A, are subject to the easements, rights of way, covenants, conditions, restrictions, reservations, and limitations appearing of record, and all applicable zoning and land use laws, ordinances, codes, and regulations, including but not limited to all conditions, regulations, restrictions, and requirements imposed by the FAA, governing and regulating the Leased Premises, Ramp, and Fuel Tanks and their respective uses. Lessee shall have exclusive use of the Leased Premises, Ramp, and Fuel Tanks subject to the terms of this Lease.

**2. Term:**

- A. The term of this Lease is for a period of twenty (20) years commencing on the Effective Date ("Commencement Date") and ending midnight on July 31, 2042, ("Initial Term") unless sooner terminated as herein provided. Provided that Lessee is not in default beyond any applicable cure period, the Lessee shall have the option to renew this Lease for one additional term of ten (10) years ("First Extension Term"). After the end of the First Extension Term, provided that Lessee is not in default beyond any applicable cure period, Lessee shall have the option to renew this Lease for an additional term of ten (10) years ("Second Extension Term") (the First Extension Term and Second Extension Term together the "Extension Terms").
- B. These Extension Terms shall automatically be deemed exercised by the Lessee unless it provides the Lessor with written notice of its intention not to do so at least

sixty (60) days prior to the end of the then current term. Should either the Lessor or Lessee not wish to renew this Lease for the Second Extension Term, a party may provide the other written notice of its intention not to renew this Lease. This written notice shall be given not earlier than one hundred eighty (180) days nor less than one hundred twenty (120) days prior to the expiration of the Initial Term or either Extension Term.

- C. All conditions and covenants contained herein shall remain in full force and effect during any and all extension periods.

**3. Rental Rate, Other Fees, and Commercial Charge:**

- A. Lessee shall pay to Lessor monthly as rent for the land and structures covered by this Lease, the following amounts: \$1,529.86 per month for the land portion of Leased Premises; and \$8,551.13 per month for the structures located on the Leased Premises; and \$567.81 per month for exclusive use Ramp. The total monthly rent for the land, structures, and Ramp is equal to \$10,648.80.
- B. Lessee shall also pay as rent and for the privilege to sell or dispense aviation fuel from the Leased Premises a monthly fuel flow fee of nine and four-tenths cents (\$0.094) per gallon, starting with the month of August 2022 and each month thereafter for each gallon of aviation fuel delivered, or caused to be delivered to the Fuel Tanks, or if Lessee constructs its own fuel storage facilities, either alone or with Lessor or other lessees, or uses other fuel storage facilities at the Airport, delivered, or caused to be delivered by Lessee to such fuel storage facilities. Lessee shall not construct its own fuel storage facilities, either alone or with Lessor or other lessees, or use other fuel storage facilities at the Airport, without Lessor's prior written consent and an agreement governing the work and use. Lessee may choose, at its sole and absolute expense, to install fuel meters on the dispensing units of the fuel tanks. Such dispensing meters shall not be installed without the prior written approval of the Airport.
- C. In addition, Lessee shall pay a monthly fee to Lessor for the Lease herein granted of two percent (2%) of Lessee's monthly gross revenues derived from all sales, operations, and services made, furnished, or conducted on or from the Leased Premises, Ramp, and Fuel Tanks, with the exception of revenue derived from the sale and dispensing of aviation fuel. Lessee shall file with Pueblo Memorial Airport monthly activity reports on or before the tenth (10th) day of each calendar month throughout the effective term indicating gross revenues and commissions derived from activity on any part of the Airport.
- D. The rents for land, structures, and the Ramp shall be increased biennially based upon the consumer price index for all urban consumers, CPI-U (all items 1982-1984=100) or comparable index if the Department of Labor changes or modifies the CPI-U or no longer publishes the CPI-U. The rents shall be increased by a percentage equal to the percentage increase in the CPI-U during each preceding two-year period over the comparable CPI-U for the first month of each 2-year

period. If there is no percentage increase in the CPI-U for any preceding 2-year period, the rents will remain the same as the preceding 2-year period for the next 2-year period. In no event, shall the percentage increase for the rents be greater than five percent (5%) for any 2-year period.

- E. At the option of the Lessor, the monthly fuel flow fee may be increased by up to three cents (\$0.03) every four (4) years, the first increase being available and effective in 2024 immediately upon expiration or termination of Lessee's now current Domestic-Into-Plane Purchase Program contract with the Defense Logistics Agency – Energy ("DLA Energy"), and every four (4) years thereafter. Any increase in the fuel flow fee shall not take effect until the then current Domestic-Into-Plane Purchase Program contract with DLA Energy entered into by Lessee expires or terminates after its four (4) year term. Notwithstanding the foregoing, in no event may any increase in fees be deferred for more than one calendar year from whenever such an increase would normally become available, where Lessor may increase the fee after the additional calendar year if the Domestic-Into-Plane Purchase Program contract is extended or otherwise modified to continue after its standard four (4) year period. Such a deferral shall not otherwise alter when a fee increase becomes available.
- F. The Lessee hereby agrees to pay when due all rent, fees, and charges imposed by the Lessor for the use and operation of the Airport. The fees and charges include, but are not limited to, fuel flowage fees, landing fees, permit fees, security charges, and administrative or service fees.
- G. Such rents shall be paid monthly without notice, offset, or deduction on or before the tenth (10th) of the month, and fees shall be paid monthly without notice, offset, or deduction on or before the tenth (10th) of the following month, at the City of Pueblo Director of Aviation's office and shall be accompanied with such reporting forms as the Director of Finance shall determine. Rent not paid by the tenth (10th) of the month shall accrue a late fee of eight percent (8%) per month. Lessor shall have the right to examine and audit Lessee's and its subtenant's books and records to determine the accuracy of the numbers of gallons sold and the revenues derived by Lessee, fees, and their calculation.

**4. Deposit:**

- A. Lessee agrees to pay a security deposit to the Lessor equal to one month's rent of \$10,648.80. The security deposit and first month's rent shall be paid immediately upon execution of this agreement. Deposit shall be refunded following termination of this agreement, less any rent due or damages to the Leased Premises, Ramp, or Fuel Tanks.
- B. In the event that Lessee fails, neglects, or refuses to pay any rent, fee, or other sum due, or fails to perform any obligation under this Lease, then Lessor may, in its sole and absolute discretion, draw from the security deposit to remedy Lessee's default. Nothing contained in this Lease shall require Lessor to remedy Lessee's default in this manner, and Lessor may instead, in its sole and absolute discretion, refuse to

remedy Lessee's default by drawing on the security deposit, and instead pursue the remedies for default provided in this Lease or by law.

- C. In the event that Lessor draws from this security deposit to remedy Lessee's default, Lessor shall notify Lessee in writing and require Lessee to replenish the deposit to its original level. Failure of Lessee to comply with this section shall constitute a material breach of this Lease.

**5. Use of Leased Premises:**

- A. The Leased Premises shall be used and occupied by Lessee as a full service fixed base operator and facility for the sale of aviation fuel and other related aeronautical services and products. The office areas shall be used for Lessee's business, flight preparation, and other incidental office work. The Leased Premises shall not be used for the storage of non-aeronautical personal property, living accommodations, or in any other way inconsistent with this Lease. Failure to abide by this provision shall constitute a material breach of this Lease.
- B. All aircraft stored on the Leased Premises for more than seven (7) days must be reported to Airport administration. Lessee may perform maintenance and repairs to aircraft in accordance with the Airport's minimum standards, including routine maintenance, preventative maintenance, and regular maintenance required prior to flight. Lessee may wash aircraft within the Leased Premises but shall at all times protect the Lessor's stormwater system and abide by any requirements Lessor places on Lessee with regards to the cleaning of aircraft, including for the disposal of used water and other products.
- C. Lessor retains and Lessee grants to the Lessor the right to enter the Leased Premises to do what is necessary for the purposes of repairing, replacing, and/or maintaining any and all utility lines under the Leased Premises which serve other uses at the Pueblo Memorial Airport, it being understood that the Lessor will repair, in a good and workmanlike fashion, any and all damage done to the Leased Premises as the result of work done hereunder.
- D. Lessee shall maintain the Leased Premises, Ramp, and Fuel Tanks in accordance with the requirements and regulations of the Lessor and Lessor's fire code. The Lessee shall be responsible for all costs, fees, charges, and penalties associated with the discharge or release of any hazardous material (including petroleum products) or mitigating the containment or removal of any contamination or hazardous material (including petroleum products) on, over, or under the Leased Premises, Ramp, and Fuel Tanks which is caused by the Lessee, its officers, agents, or employees. The storage and accumulation of aviation fuel, flammables, explosive liquids, or solids, waste, debris, or other hazardous materials within or on the Leased Premises, Ramp, and Fuel Tanks shall be in an environmentally sound manner and comply with all federal, state, and local laws and regulations. Lessee agrees that no flammable liquids or hazardous materials shall be used or stored on the Leased Premises or Ramp, excepting those used in accordance with all laws and regulations and in the

furtherance of Lessee's authorized use of the leased premises, to include, but not limited to, the fuel in the Fuel Tanks, the aircraft fuel tanks, or in the tank of a stored automobile, properly parked. Lessee agrees to provide drip pans of a non-flammable material under aircraft to prevent damage to the floor, should any aircraft leak any fluids.

- E. Lessee, at its sole cost and expense, may cause to be constructed and installed upon the Leased Premises and Fuel Tanks additional improvements in accordance with plans and specification approved by Lessor, including architectural approval, which consent will not be unreasonably withheld or arbitrarily denied. The improvements shall be constructed in a good and workmanlike manner in accordance with the applicable laws, ordinances, and building codes and pursuant to a building permit issued by the Regional Building Department. Lessee will not modify, alter, or improve any structure or improvements upon the Leased Premises whether now existing or hereafter constructed without the prior written approval of Lessor, which approval shall not be unreasonably or arbitrarily denied. Lessee may paint any improvements upon the Leased Premises and the Fuels Tanks with the approval of Lessor.
- F. Lessee shall not park or leave, or allow to be parked or left, aircraft on the taxiways or on pavement adjacent to the Leased Premises, Ramp, or Fuel Tanks in a manner which interferes with or obstructs access to adjacent hangars or public areas. Parking of automobiles will be permitted only in designated spaces outside of the airport fence. No person or public roadway going automobile shall go beyond the immediate vicinity of the Leased Premises without the express written consent of the Director of Aviation. Automobiles must be parked in designated parking spaces or within the Hangar, except that the Hangar cannot be used solely for storage of automobiles. Nothing in this agreement provides exclusive access to the entrance and exit gates into and out of the Airport to Lessee.
- G. Lessee, its employees, and invitees shall have the right of ingress and egress between designated Airport access points and the Leased Premises over, upon, and through such streets and not others as from time to time shall be designated by the Director of Aviation. Driveways from existing streets into the Leased Premises shall be located as designated by the Lessor through the Director of Aviation.
- H. Hangar doors shall remain closed and locked except during periods when the Hangar is attended by Lessee. This is to prevent damage from sudden storms and the creation of foreign object debris.
- I. On the Effective Date and annually thereafter, Lessee shall provide Lessor with a list of the Airport areas and any Airport tenants it intends to access when

providing services. Lessee shall keep this list current and report any changes to the Lessor upon such change being made.

- J. Lessee shall not have exclusive use of any area of the Airport or of any Lessor equipment, unless Lessee contracts with Lessor for such use, and all such uses shall be as determined by the Director of Aviation in his or her sole discretion. All areas of the Airport and all Airport equipment will be inspected by Airport staff prior to use by Lessee, and Lessee shall be required to sign-off on Airport staff's inspection prior to said use.
- K. Lessee acknowledges and agrees that Lessor's primary obligation is to operate the Airport for the use and benefit of the public and that the leased premises and ramp are prime locations for full service fixed-based operations at the Airport. Therefore, in view of the foregoing and long-term nature of this Lease, Lessee and Lessor shall meet at least annually to discuss Lessee's plans for the development and use of the Leased Premises, Ramp, and Fuel Tanks and the types, kinds, and classes of aeronautical activities then reasonably anticipated to be provided in the future, and Lessee's planned additions to and/or modifications of the Leased Premises and Fuel Tanks.

**6. Ramp Use:**

- A. Lessee's use of the common ramp area, taxiways, and runways is non-exclusive and same may be used by the Airport, other tenants, users, and occupants of the Airport ("Airport Users"). Use of the Ramp shall be limited to the movement of aircraft, fueling of aircraft, movement, and parking of aircraft service vehicles, temporary parking of aircraft, servicing, and tie-down of aircraft. Lessee shall not use common area ramp space for the fueling of aircraft, temporary parking of aircraft, servicing and tie-down of aircraft, parking or storage of aircraft service vehicles, or any other purpose without the prior express written consent of the City of Pueblo. If Lessee collects a fee for any use of common areas at the Airport, it shall pay to Lessor as commission ten percent (10%) of said fees.
- B. Lessee shall use the Ramp and common ramp area in compliance with Lessor's ground traffic and aircraft parking plans and regulations, which will reasonably accommodate Lessee's current and future use for the purposes set forth in this Lease.
- C. Lessee acknowledges that portions of the Ramp, common ramp area, taxiways, and runways are currently in need of repairs and resurfacing and accept in whole the Ramp, common ramp area, taxiways, and runways in their present condition "AS IS" and "WITH ALL ITS FAULTS," without warranty or representation, express or implied, including, without limitation, any warranties of

merchantability or fitness for a particular purpose or condition or usability in their present condition. Lessee agrees that Lessor shall have no obligation to upgrade, repair, resurface, or maintain the Ramp, common ramp area, taxiways, and runways. Lessor maintains the right to close any portion of the Airport not limiting Lessee's access to airport runways.

- D. Lessee shall maintain the surface of the Ramp free and clear of debris, snow, sand, and ice and shall be responsible to remove same from the Ramp as soon as reasonably possible in order for the Ramp to be continuously available for use.

7. **Fuel Tank Use:**

- A. The Fuel Tanks and accessory equipment, including, but not limited to, pumps, motors, and fuel meter calibrations for each tank, are being leased "AS IS" "WITH ALL ITS FAULTS," without warranty or representation, express or implied, including, but not limited to, any warranties of merchantability or fitness for a particular purpose or condition or usability in their present condition.
- B. Lessor has registered the above ground storage tanks located in its fuel farm with the Director of the Colorado Division of Oil and Public Safety pursuant to C.R.S. 8-20-.5-105 and updated its Spill Prevention Control and Countermeasure ("SPCC") Plan as required by law. Lessor shall continue to maintain compliance with those requirements.
- C. Lessee shall be responsible for quality control of fuel, loading and unloading fuel to and from the Fuel Tanks, and compliance with the SPCC Plan for the fuel farm and leased fuel tanks. Lessee shall properly train its employees in the use of the fuel farm, Fuel Tanks, and the SPCC Plan.
- D. Except for structural repairs not caused by the acts or omissions of Lessee, its officers, agents, employees, contractors, or fuel suppliers, Lessee shall be responsible to maintain and keep in good and safe repair and working condition the Fuel Tanks and accessory equipment, ordinary wear and tear excepted. Lessee will not be responsible for any reconstruction, remodeling, alteration, or modification of the fuel tanks of the fuel farm required to meet environmental standards not currently satisfied, unless caused by the acts or omissions of Lessee, its officers, agents, employees, contractors, or fuel suppliers.

If any such activity is required by the Lessor or if Lessor is required to make structural or other repairs to or replace the Fuel Tanks or any other fuel tanks located at the fuel farm for any reason, including fire or other casualty, or if Lessor is required to remediate or remove any contamination or hazardous materials

(including petroleum products) at or from the fuel farm, Lessor may, at its sole option, either (1) complete, at its cost, the required activities, replacement, or repairs, (2) negotiate a cost-sharing arrangement with Lessee to complete the required activities, replacement, and repairs, or (3) upon thirty (30) days prior written notice, terminate the Fuel Tanks lease and Lessee's right to store aviation fuel in the Fuel Tanks. In the event the Lessor terminates the fuel tanks lease as provided in (3) above, Lessor will, at the request of Lessee, negotiate in good faith with Lessee to lease sufficient land to construct and operate its own farm storage facilities for its own use at a location mutually agreeable to Lessor and Lessee.

E. Lessee shall:

- (1) Maintain fuel meter calibration on the fuel tanks and provide required testing and copies thereof to the Lessor.
- (2) Provide filters, hoses, and nozzles required for the Fuel Tanks.
- (3) Immediately notify the Lessor of any fuel release or spills during the loading or unloading of the fuel storage tanks or when fueling or maintaining aircraft. Lessee shall be responsible for clean up to the satisfaction of Lessor of any such fuel releases or spills whether caused by Lessee, its officers, agents, employees, contractors, or fuel suppliers.

F. Lessee's mobile refuelers (fuel trucks) and Lessee's use thereof shall meet and comply with all applicable EPA spill prevention control and countermeasure regulations including, if required, drafting and implementing an SPCC Plan therefor.

G. At the time of the signing of this Lease, the fuel tanks 40-1 and 40-3a each need a significant capital expenditure to bring them to an operational state and all Fuel Tanks need Skully Systems installed. More specifically, the fuel tanks need the following repairs:

a. Tank 40-1 needs:

- i. Hose replacement;
- ii. Single point installation;
- iii. Filter change;
- iv. Water slug valve installation;
- v. Deadman installation;
- vi. Filter diff gauge installation; and
- vii. Relief valve installation.

b. Tank 40-3a needs:

- i. Water slub valve repair;
- ii. Relieve valve repair;
- iii. Filter diff gauge repair; and

iv. Deadman installation.

In exchange for Lessee's use of the Fuel Tanks however it sees fit to meet its operational needs but subject to this Lease, Lessee agrees to expend the funds necessary to make all leased Fuel Tanks operational by completing the above listed repairs, installing Skully Systems, and making other repairs and installations directed by Lessor. Once the Fuel Tanks are made operational and compliant with law, all remaining expenditures for maintenance and repair of the Fuel Tanks will be in accordance with the remaining terms of this Lease. After ten (10) years from the Effective Date, if any of the Fuel Tanks have not been used to store fuel within the preceding six (6) months, the parties may negotiate a monthly rent for the lease of unused fuel tanks.

**8. Maintenance Obligations:**

- A. Lessee shall, at its own expense, keep the premises neat, clean, safe, and orderly at all times, free of waste, rubbish, and debris, and shall provide a complete and proper arrangement for the sanitary handling and disposal of all trash, garbage, and other refuse resulting from Lessee's activities at the Airport. No outside storage of parts, materials, equipment, inventory, or other materials shall be permitted.
- B. Lessee will at all times, at its sole cost and expense, keep and maintain in good repair the interior of all buildings and grounds designated for the Lessee's exclusive use. The maintenance of the interior of the Leased Premises shall include, but not be limited to, the hangar door and the operation thereof, other entry/exit doors, ventilation filters, sprinkler systems, all interior walls, interior ceilings, floors/floor coverings, wiring, plumbing fixtures, and other interior utility fixtures. However, the Lessee's obligation for the maintenance of the exterior of the Leased Premises shall not include any repairs or replacement of the roof, foundation, or exterior walls. Lessee shall perform routine service and maintenance on all heating and air conditioning equipment and appurtenances thereto, except to the extent such repairs are occasioned by the negligence or fault of the Lessor. At the termination of the Lease, or any extension thereof, Lessee shall return the Leased Premises to the Lessor in good order and condition, ordinary wear and tear excepted.
- C. Lessee, at its sole cost and discretion, shall maintain all walkways, sidewalks, and apron access on the Leased Premises and Fuel Tanks, including to the public taxiway or ramp area. This includes pavement maintenance, pest control, and other such activities necessary to access said areas. At no time shall snow, dirt, or other debris be piled or stored on these areas. It is the Lessee's responsibility to keep these areas free and clear of all snow, dirt, and other debris. Lessee understands that snow removal within six (6) feet of the Leased Premises, Ramp, and Fuel Tanks is always the responsibility of Lessee. However, Lessor, at its sole cost and discretion, shall be responsible for all major repairs of the public areas.

**9. Utility Costs:**

Lessee shall be responsible for all utilities supplied to the Leased Premises, Ramp, and Fuel Tanks. Agreements for service with utility providers are the responsibility of Lessee. Additions, deletions, or adjustments to utilities extended to the Leased Premises shall not be made without prior written approval from the Director of Aviation.

**10. Signs:**

Lessee shall not erect, paint, or maintain any signs whatsoever upon the Leased Premises, Ramp, or Fuel Tanks without first securing the written consent of the Lessor. Any such signs shall comply with all ordinances and regulations of the Lessor and standards which might be developed by the Department of Aviation. All worn, faded, damaged, or outdated signs will be repaired or corrected by Lessee upon notice from the Director of Aviation.

**11. Right of Inspection:**

The Lessor reserves and retains for its officers, employees, and authorized representatives the right to enter the Leased Premises, Ramp, and Fuel Tanks during reasonable business hours, and after prior notice, for the purpose of inspecting and protecting the Leased Premises, Ramp, and Fuel Tanks and for doing any and all things which the Lessor may deem necessary for the proper general conduct and operation of the Pueblo Memorial Airport and in the exercise of the Lessor's police power.

**12. Title to Improvements:**

A. All structures and improvements constructed or erected by Flower on the Leased Premises and Fuel Tanks, excluding movable trade fixtures, constitute a part of the Leased Premises and Fuel Tanks and may not be removed from the land. Flower and Lessee acknowledge and agree that fee simple title to these structures and improvements vested in Lessor immediately upon completion of construction of same, free of all liens and encumbrances. Notwithstanding the foregoing, Lessor shall not be responsible for any defects in the Leased Premises, Fuel Tanks, structures, or improvements and shall have no obligation or responsibility to maintain, repair, or restore the same; all such obligation and responsibility shall be held by Lessee.

B. The structures leased to Lessee hereunder and any improvements constructed or erected hereunder by Lessee, excluding movable trade fixtures, shall constitute a part of the Leased Premises and Fuel Tanks and therefore such structures and improvements cannot be removed from the land. Fee simple title to the structures are in the Lessor and fee simple title to subsequently constructed improvements shall vest with Lessor immediately upon completion of construction of same, free of all liens and encumbrances. Notwithstanding that title is in or vests in Lessor, Lessor shall not be responsible for any defects in the Leased Premises, Fuel Tanks, structures, or improvements and shall have no obligation or responsibility to maintain, repair, or restore the same; all such obligation and responsibility shall be that of Lessee.

**13. Taxes, Licenses, and Liens:**

- A. Lessee covenants and agrees to pay promptly when due all taxes, fees, licenses, and other governmental charges of whatever nature assessed against or applicable to Lessee, the Leased Premises, Ramp, and Fuel Tanks, or to Lessee's property and operations thereon. Possessory interest tax is assessed by the County of Pueblo and is the responsibility of the Lessee. The Lessor is a tax-exempt entity and shall not be liable for any tax of the Lessee. All applicable taxes and costs shall be paid by Lessee, even if Lessee was unaware of such taxes and costs.
- B. At all times during the term of this Lease, and of any renewal or extension hereof, Lessee shall, at its own cost and expense, provide and keep in good standing business licenses with the City of Pueblo and the State of Colorado. Lessee shall obtain and maintain any other licenses or certifications required by law, including those required by the FAA. Upon request, Lessee will provide Lessor with certificates of good standing evidencing that all licenses or certifications are current and not subject to discipline.
- C. Lessee also covenants and agrees not to permit any mechanic's or material man's lien to be filed against the Leased Premises, Ramp, or Fuel Tanks or any part or parcel thereof by reason of any work or labor performed or materials furnished by any contractor, subcontractor, mechanic, or material man. Lessee further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations on the Leased Premises, Ramp, and Fuel Tanks, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment, or execution to be filed against the Leased Premises without the Lessor's prior consent which will not be unreasonably withheld, except that in no instance will the lien, mortgage, judgment, or execution be in any way an impairment of the rights of Lessor.
- D. Lessees performing services using Airport Operations Areas ("AOA") must annually undergo American Association of Airport Executives ("AAAE") Airport News Training Network ("ANTN") Digicast Signatory Training and hold a current signatory certificate that must be filed yearly with Airport Administration. Such Lessees shall keep a record of all documentation related to badging and produce it upon request.

**14. Indemnification:**

Lessee assumes the risk of loss or damage to the Leased Premises, Ramp, and Fuel Tanks and property thereon and therein, including but not limited to aircraft and personal property, whether from windstorm, fire, earthquake, snow, water run-off, or any other causes whatsoever except for loss or damage caused by the gross negligence and/or willful misconduct of Lessor, its agents, officer, representatives, and employees. Lessee covenants and agrees to indemnify, defend, and save the Lessor, its agents, officer, representatives, and employees, harmless from and against any and all penalties, liability, or loss, including costs and attorney fees and all expenses incurred by Lessor in investigating or resisting the same, resulting from claims or court action, whether civil, criminal, or in equity, and arising directly or indirectly out of: (i) acts of the Lessee, its agents, employees, or representatives;

(ii) occurring in on or about the Leased Premises, Ramp, or Fuel Tanks; (iii) arising out of or resulting from the Leased Premises, Ramp, or Fuel Tanks, or any condition thereon, or from Lessee's use and occupancy of the Leased Premises, Ramp, or Fuel Tanks, or any equipment thereon or appurtenances thereto, or any activity conducted therein; or (iv) through any injury or damage that may be caused or occasioned. Except, Lessee is not required to indemnify, defend and save Lessor, its agents, officer, representatives, and employees from any and all penalties, liability, or loss, including costs and attorney fees and all expenses incurred by Lessor in investigating or resisting the same, resulting from claims or court action, whether civil, criminal, or in equity, and arising directly or indirectly out of Lessor's gross negligence or willful misconduct. Lessee shall not hold or attempt to hold Lessor liable for any injury, including loss of life, to any person, or for damage to any property while on the Leased Premises, Ramp, or Fuel Tanks or the Airport, irrespective of how such injury or damage may be caused or occasioned, unless that injury, including loss of life, to any person, or for damage to any property is caused by the gross negligence or willful misconduct of Lessor, its agents, officer, representatives, and employees. However, nothing herein shall limit the applicability of the Colorado Governmental Immunity Act or other law limiting the Lessor's liability. The provisions of this Section 14 shall survive the termination of this Lease.

**15. Insurance and Damage:**

- A. Lessee assumes all risk of loss, damage, injury and liability for the same that may occur to Lessee, Lessee's guests, Lessee's aircraft and Lessee's improvements and property in or upon the Leased Premises, Ramp, and Fuel Tanks and Lessor shall not be liable or responsible for any such loss, damage or injury, regardless of the cause thereof, except any loss, damage, injury and liability for the same that may occur to Lessee, Lessee's guests, Lessee's aircraft and Lessee's improvements and property in or upon the Leased Premises, Ramp, and Fuel Tanks caused by the gross negligence or willful misconduct of Lessor, its agents, officer, representatives, and employees.
- B. Lessor shall maintain storage tank pollution liability insurance covering the Fuel Tanks located within the fuel farm which are being used by Lessee. This policy shall name Lessee as an additional insured and loss payee for the policy and waive subrogation. So long as Lessee uses the Fuel Tanks for storage of aviation fuel, Lessee shall pay annually to Lessor, on the anniversary dates of the Commencement Date, a proportional share of Lessor's cost for storage tank pollution liability insurance. Lessee's portion of such charges shall be the ratio of the gallon capacity of Fuel Tanks Lessee leases hereunder compared to the total gallon capacity of the fuel tanks in Lessor's fuel farm being used by Lessor, Lessee, and other parties.
- C. Lessee, at its sole cost and expense, shall, during the life of this agreement, procure, pay for and keep in full force and affect the following types of insurance:
  - (1) Aviation General Liability Insurance: A comprehensive policy of aviation general liability insurance, including but not limited to personal injury, products liability, hangar keepers' liability, and property damage. The policy shall have limits in an amount of not less than One Million Dollars

(\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Leased Premises, Ramp, and Fuel Tanks (including acts or omissions of the Lessee).

- (2) Automobile Insurance: At all times during the term of this Lease, and any renewal or extension hereof, Lessee shall, at its own cost and expense, provide, and keep in force commercial automobile liability insurance with a combined single limit for all owned, hired, and non-owned autos of not less than one million dollars (\$1,000,000.00).
- (3) Workers Compensation Insurance: Lessee shall obtain statutory workers' compensation insurance which shall contain an endorsement waiving subrogation against the City of Pueblo. Such insurance shall cover all employees and agents of Lessee performing work at the Leased Premises or Airport irrespective of whether such employees may be shareholders, managers, partners, or owners of Lessee or exempt employees under the Act. Any independent contractors of Lessee shall be covered under Lessee's workers' compensation insurance and/or participant accident insurance policy or show evidence that said independent contractor is covered under its own workers' compensation insurance policy. Lessee shall have full and sole responsibility for ensuring compliance with this Section, including without limitation indemnification required under this Lease. All insurance policies required hereunder shall provide that such policies not be cancelled or reduced without thirty (30) days' advance written notice to the Lessor.
- (4) Storage Tank Pollution Liability Insurance: Lessee shall maintain storage tank pollution liability insurance covering the Fuel Tanks located within the fuel farm which are being used by Lessee. This policy shall name Lessor as an additional insured and loss payee for the policy and waive subrogation.

D. Lessee shall insure the structures and other improvements, except fuel tanks, in an amount equal to their full insurable value naming Lessor as a loss payee. These policies shall name the City of Pueblo as additional insured and loss payee for the policy and waive subrogation. The policies shall contain a provision that the policy cannot be canceled or materially altered either by the insured or the insurance company unless thirty (30) days prior written notice thereof is given to the Lessee and Lessor. Upon issuance or renewal of any such insurance policy, the Lessee shall furnish to the Lessor a certificate of insurance evidencing coverage required under this contract.

E. If the structures or other improvements (the "Improvements"), except for the fuel tanks, are damaged or destroyed by fire or other casualty, Lessee shall within one hundred twenty (120) days from the occurrence of such casualty either (1) repair and restore the damaged or destroyed Improvements, (2) demolish the damaged or

destroyed Improvements, restore the Leased Premises to their original condition, and terminate this Lease, in which event the net proceeds of the property damage insurance required to be provided by Lessee shall be retained by Lessor, or (3) demolish the damaged or destroyed Improvements and commence construction of replacement Improvements, and thereafter complete such construction as soon as practicable, but at least within eighteen (18) months from the occurrence of such casualty, unless Lessor approves additional time which shall not be unreasonably withheld. All repairs to or restoration of Improvements and/or construction of replacement Improvements shall be in compliance with applicable laws and codes, and in accordance with plans and specifications therefor approved by Lessor, which approval will not be unreasonably withheld. Except in the event of (2) above, the net proceeds of property damage insurance provided by Lessee shall be released by Lessor and paid to Lessee for the purpose of Lessee repairing, restoring, or replacing improvements damaged or destroyed by such insured fire or other casualty.

- F. Lessee shall not violate the terms or prohibitions of any insurance policy herein required to be furnished by Lessee. Coverage and limits enumerated in this insurance section represent only the minimum insurance required, and Lessee should rely on its expertise to obtain any additional insurance coverage needed for the Lessor and Lessee in its performance under this Lease. Failure of Lessee to comply with the provisions of this section shall constitute a material breach of this Lease.

**16. Waivers and Holdovers:**

No provision of this Lease may be waived except by an agreement signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision. Should Lessee holdover the use of or continue to occupy the Leased Premises after the termination or cancellation of this Lease, such holding over shall be deemed merely a tenancy for successive monthly terms upon the same conditions as provided in this Lease subject to termination upon thirty (30) days prior written notice.

**17. Inconvenience During Construction:**

Lessee recognizes that from time to time it will be necessary for the Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair at and to the Airport in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt Lessee's operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconvenience or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages or other consideration therefore, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from willful misconduct of the Lessor, its officers, agents, employees, contractors, subcontractors, and representatives. The Lessee shall be obligated to be pay all

rent and fulfill all obligations of this Lease at all times, including, but not limited to, when access to the Airport is temporarily restricted due to routine construction, reconstruction, expansion, or other potential alteration of the airfield.

**18. Place and Manner of Payments:**

In all cases where Lessee is required by this Lease to pay any rentals, rates, fees or other charges or to make other payments to Lessor, such payments shall be made at the Department of Aviation, or at such other place as Lessor may hereafter designate by notice in writing to Lessee and shall be made in legal tender of the United States and any check shall be received by Lessor subject to collection. Lessee agrees to pay any bank charges made for the collection of any such checks. All payments of rent shall be made on the first of each month.

**19. Assignments and Subletting:**

- A. Lessee may not assign this Lease, in whole or in part, without the written consent of Lessor which may be granted or denied in its sole and absolute discretion, except that Lessee may assign this Lease to a successor legal entity which has merged with, or acquired substantially all the assets of the Lessee, if such successor legal entity should specifically agree in writing to perform this Lease, unless Lessor determines in its sole and absolute discretion based upon written information supplied to Lessor by Lessee at least sixty (60) days prior to the effective date of the assignment that the successor legal entity does not have the ability to fulfill the obligations of this Lease in a competent or financially responsible manner. Failure of Lessee to provide adequate written information concerning subtenants is sufficient for Lessor to make such determination and shall be, in and of itself, a sufficient basis for the Lessor to deny its consent to any proposed assignment.
- B. Lessee, with the prior written consent of Lessor, the consent of which may be granted or denied in Lessor's sole and absolute discretion, may sublet a portion of the Leased Premises to a subtenant or subtenants ("Subtenant") pursuant to a written sublease, which shall contain among other provisions the following:
- (1) The sublease must be subject to and governed by all of the covenants and provisions of this Lease. Subtenant must abide by all of the terms and conditions thereof applicable to the Leased Premises, Ramp, and Fuel Tanks and use thereof. The sublease may only be for a lesser term than specified in Section 2.
  - (2) The Subtenant shall maintain and keep in force aviation general liability insurance as described in Section 15.C. with a combined single limit not less than one million dollars (\$1,000,000). Such insurance requirement will be satisfied if Subtenant is provided with coverage under Lessee's master liability insurance policy.
  - (3) The sublease must contain an Indemnification provision, substantially the same as set forth in Section 14 hereof, indemnifying Lessor.

(4) The sublease shall not become effective until an executed copy thereof is delivered to Lessor's Department of Aviation.

C. Subtenants for Hangaring of Aircraft: Lessee may, upon notice to Lessor but without Lessor's prior written consent, sublet to an entity or person sufficient hangar space to hangar the Sublessee's aircraft and any needed office space to perform Subtenant's aircraft operations pursuant to a template sublease agreement ("Template Agreement") that was prior approved by Lessor. Should Lessee wish to sublease a portion of the Leased Premises other than through a Template Agreement, it must obtain Lessor prior written approval in accordance with Section 19.B. above. All Subtenants intending to conduct business at the Airport must first obtain a commercial permit from the Director of Aviation. Upon entering into a sublease with a Subtenant, Lessee will provide written notice to Lessor that includes the name, address, tail number, aircraft model, length of term of sublease, and a copy of the sublease.

**20. Agreements with United States:**

This Lease is subject and subordinate to the terms, reservations, restrictions, provisions, and conditions of the deed of conveyance from the United States Government to the Lessor and of any other existing or future agreement between the Lessor and the United States, relative to the use, operation, or maintenance of the Pueblo Memorial Airport and its appurtenant facilities, the execution of which has been or may be required as a condition precedent to the participation by any Federal Agency in the extension, expansions, or development of said Airport and its facilities.

**21. Lessee's Default:**

A. Any one of the following shall constitute an event of default by Lessee hereunder:

(1) Failure of Lessee to pay in full all installments of rent, fees, additional rent, or pro rata portion of fuel farm insurance due by the first day of each month or immediately after written notice and demand therefor are given by Lessor to Lessee.

(2) Failure of Lessee to perform or comply with any obligation, covenant, or agreement of Lessee hereunder other than payment of money for a period of fourteen (14) days after written notice specifying such failure is given by Lessor to Lessee, except that if such obligation, covenant, or agreement is not capable of being performed within said fourteen (14) day period, Lessee shall not be in default if Lessee shall commence such performance within said fourteen (14) day period and thereafter prosecute the same with diligence and continuity to completion.

B. Lessee shall have thirty (30) days to cure any default. In the case of a continuing event of default by Lessee, Lessor shall have the following remedies in addition to

all other rights and remedies provided by law or in equity, including without limitation, damages and specific performance:

- (1) Terminate this Lease by sixty (60) days prior written notice given to Lessee specifying the date of termination, and Lessee shall within said sixty (60) day period vacate the Leased Premises, Ramp, and Fuel Tanks and surrender possession thereof to Lessor.
  - (2) Without terminating this Lease, retake possession of the leased areas and relet the same or any part thereof for such term or terms and upon such other conditions as Lessee in its reasonable judgment shall determine. If the rent, fees, and other charges are less than those provided for herein, Lessee shall be responsible and liable for any deficiency between the amount of the rent, fees and charges provided for herein and those received through such reletting. Lessor shall not be responsible or liable for any failure to relet the leased premises or any part thereof, or failure to collect any rent, fees, or other charges due upon such reletting. No notices from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right following any such reentry and/or reletting to exercise its right to terminate this Lease as provided in Section 21.B.(1) above.
- C. If the Lessee shall be declared insolvent or bankrupt, or if any assignment of the Lessee's property shall be made for the benefit of creditors or otherwise, or if Lessee's leasehold interest herein shall be levied upon under execution, or seized by virtue of any writ of any Court of Law, or a Trustee in Bankruptcy or a Receiver appointed for the property of the Lessee, whether under the operation of the State or the Federal statutes, then and in any such case, the Lessor may, at his option, immediately with or without notice, notice being expressly waived, terminate this Lease and immediately retake possession of the Leased Premises without the same working any forfeiture of any accrued obligations of the Lessee hereunder.
- D. After the expiration of this Lease or any violation of any term or provision as herein provided for, if Lessee shall refuse to surrender and deliver possession of the Leased Premises after notice of termination, then in that event Lessor may, without further notice or demand, enter into and upon said premises, or any part thereof, and take possession thereof and repossess them, and expel, remove, and put out of possession the Lessee, using such help, assistance and force in so doing as may be needful and proper, without prejudice to any remedy allowed by law, available in such cases.
- E. That in case the Leased Premises are left vacant and any part of the rent herein reserved be due and unpaid, then the Lessor may, without in anyway being obligated to do so, and without terminating this Lease, retake possession of said premises and rent the same for such rent, and upon such conditions as the Lessor may think best, making such changes and repairs as may be required, giving credit for the amount of rent so received less all expenses of such changes and repairs,

and said Lessee shall be liable for the balance of the rent herein reserved until the expiration of this Lease.

- F. Lessee agrees to pay the Lessor all costs, including reasonable attorney fees, incurred by Lessor in recovering any rent or other money due and unpaid under the terms of this Lease or to recover possession of the Leased Premises after termination of this Lease.

**22. Notices:**

All notices, required to be given to Lessor hereunder, shall be in writing and be sent by certified mail to Pueblo Memorial Airport, Administration Office, 31201 Bryan Circle, Pueblo, Colorado 81001 with a copy to City of Pueblo, City Attorney's Office, 1 City Hall Place, Pueblo, Colorado 81003. All notices required to be given to Lessee hereunder shall be in writing and sent by certified mail, addressed to Freeman Holdings of Colorado, LLC, Attn: Scott Freeman, 16221 Foster Street, Overland Park, Kansas 66085, email: sffreeman@pville.com; with a copy to Freeman Holdings Group, Attn: Reese Hays, 16221 Foster Street, Overland Park, Kansas 66085, email: rhays@freemanholdingsgroup.com, provided that the parties, or either of them, may designate in writing from time to time subsequent or supplementary persons or address in connection with said notices. The effective date or service of any such notice shall be the date such notice is mailed by Lessee or Lessor.

**23. Environmental Provisions:**

- A. For the purpose of this Lease, "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local government authority, the State of Colorado, or the United States government and shall include, but not be limited to: (i) substances defined as "hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any applicable federal, state, or local law or regulation (Environmental Regulations); (ii) asbestos-containing materials; (iii) PCBs; (iv) petroleum or petroleum based products; and (v) lead.
- B. Lessee will comply with Environmental Regulations that are applicable to Lessee and its use of the Leased Premises, Ramp, and Fuel Tanks. No activity shall be undertaken by Lessee, its guests, employees, agents, contractors, or subcontractors, on all or any portion of the Leased Premises, Ramp, and Fuel Tanks which would cause or permit: (i) the presence, use, generation, release, discharge, storage or disposal of any Hazardous Material in, on, under, about, or from the Leased Premises, Ramp, and Fuel Tanks or any part thereof in violation of any Environmental Regulations; (ii) any portion of the Leased Premises, Ramp, and Fuel Tanks to become a hazardous waste treatment, storage or disposal facility without receiving proper governmental authorization, and in compliance with all Environmental Regulations; or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions without receiving proper governmental authorization, and in compliance with all Environmental Regulations, including, without limitation, the Federal Water

Pollution Control Act, U.S.C. Section 1251 et seq. and the Clean Air Act, 42 U.S.C. Section 7401 et seq.

- C. Except to the extent Lessor is covered by an insurance policy, Lessee agrees to defend, indemnify, and forever hold harmless Lessor, and its officers, employees, agents, successors, and assigns, from all claims, losses, damages, penalties, expenses and costs, including, but not limited to, attorneys' fees, characterization, remediation and cleanup costs, incurred by reason of the use, storage, generation, release, discharge, maintenance, disposal, or removal of Hazardous Materials in, on, under, about, or from the Leased Premises, Ramp, and Fuel Tanks, or any part thereof, by Lessee, its employees, agents, guests, contractors and subcontractors.

**24. Law, Rules and Regulations:**

- A. Lessee, its officers, agents, and employees shall faithfully observe and comply with all applicable federal, state, and local laws, regulations, and ordinances now existing or hereafter adopted relating to the use and occupancy of the Airport or Leased Premises, Ramp, and Fuel Tanks, including without limitation Chapter 1 of Title III of the Pueblo Municipal Code and rules affecting the operation of motor vehicles upon, to, and from the Airport. The Lessee, and all officers, agents, and employees of Lessee, hereby agree to be bound by and subject to all police ordinances of the City of Pueblo at all times while on the Airport, whether acting in the course of Lessee's business or otherwise.
- B. Lessee, its officers, agents, and employees shall faithfully observe and comply with all minimum standards and rules regulating operations and activities from and upon the Airport adopted from time to time by Lessor. Such minimum standards and rules shall not be applied arbitrarily, discriminatorily, or unreasonably. If any provision of this Lease shall conflict with any provision of the minimum standards or rules adopted or amended by Lessor after commencement date, the conflicting provision of this Lease shall control.
- C. It is expressly understood by Lessee that security within the air operations area of the Airport is vital. The drive through gate entering the air operations area shall be kept closed and secured at all times except for ingress and egress. Only public road going automobiles under escort will be permitted on the air operations area. Any public road going automobile brought by Lessee shall be the sole responsibility of the Lessee. Violation of airport security rules as now, or in the future may, exist shall be grounds for immediate termination of this Lease.

**25. F.A.A. Lease Requirements:**

- A. The Lessor reserves the right, without any obligation on its part to do so, to develop, modify, change, improve, or abandon the Pueblo Memorial Airport or any part thereof, as it may determine in its sole discretion, at any time, regardless of the desires or view of Lessee, and without interference or hindrance from Lessee or liability to Lessee.

- B. The Lessor reserves the right, without any obligation on its part to do so, 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.
- C. Lessor shall have full and unrestricted right to enter upon those portions of the Airport occupied and leased herein by the Lessee, and Lessor, its agents, or representatives shall be permitted to inspect same during any regular business hours or upon twenty-four (24) hours' notice to Lessee.
- D. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the use, development, operation, and maintenance of the Airport.
- E. Lessee shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations with respect to the construction of any structure or building on the Leased Premises, Ramp, and Fuel Tanks, or in the event of any planned modification or alteration of any present or future building or structure on the Leased Premises, Ramp, or Fuel Tanks.
- F. All rights not herein granted to the Lessee are reserved to Lessor and nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 as amended.
- G. Lessor reserves for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, Ramp, and Fuel Tanks, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation or flight in said airspace, and for use of said airspace for landing on, taking off from, or operations on or over the Pueblo Memorial Airport.
- H. By accepting this Lease, Lessee expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure, building, or object nor permit the growth of any tree on the Leased Premises, Ramp, and Fuel Tanks to a height not to exceed twenty-five (25) feet above ground level. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Leased Premises, Ramp, and Fuel Tanks and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.
- I. Lessee shall not make use of the Leased Premises, Ramp, and Fuel Tanks in any manner which might interfere with the landing and taking off of aircraft at Pueblo Memorial Airport or otherwise constitute a hazard to aviation. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Leased Premises, Ramp, and Fuel Tanks and cause the abatement of such interference at the expense of the Lessee.

- J. If during the term of this Lease, all or part of the Leased Premises, Ramp, or Fuel Tanks should be taken or threatened to be taken for any public or quasi-public use under any governmental law or by right of eminent domain or sold to the condemning authority under threat of condemnation, this Lease shall terminate and the proceeds, if any, from such taking or sale shall be allocated between Lessor and Lessee in accordance with applicable condemnation law.
- K. Lessor reserves the right to grant and to take easements or rights of way in, under, over, and across the Leased Premises, Ramp, and Fuel Tanks, in which event, Lessee shall only be entitled to compensation for damages to improvements of the Lessee destroyed or damaged thereby, but not to damages for loss of use of the Leased Premises, Ramp, and Fuel Tanks. Lessor will attempt to ensure such easements or rights of way will not impede, prohibit, or infringe upon Lessee's ability to carry out its authorized uses of the Leased Premises, but makes no guarantees as to such.
- L. Lessee agrees to annually complete and submit a Department of Transportation - Federal Aviation Administration Airport Activity Survey (FAA Form 1800-31), as may be amended, that documents Lessee's air taxi-commercial passenger enplanements for each calendar year.
- M. It is not the intent of this Lease to grant to Lessee the exclusive right to provide any or all of the services which Lessee may engage in at any time during the term of this agreement. Accordingly, the Lessor reserves the right, to grant others certain rights and privileges upon the Airport which may be similar in part or in whole to those granted to Lessee, in accordance with any applicable minimum standards and procedures adopted by the Lessor and amended from time to time for the Airport. Nothing herein shall prevent Lessor from entering into leases or subleases with other tenants who may be in competition with the rights and privileges granted to Lessee hereunder.

**26. Nondiscrimination Assurances**

- A. The Lessee, for itself, its successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises or ramp, for a purpose for which Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lease shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as the regulations may be amended.
- B. The Lessee, for itself, its successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
  - (i) no person on the grounds of race, color, religion, sex, sexual orientation, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased

Premises or ramp; (ii) that in construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, sexual orientation, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that the Lessee shall use the Leased Premises and ramp in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as the regulations may be amended.

- C. 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 on the grounds of race, creed, color, religion, disability, national origin, sex, or sexual orientation be excluded from participating in any contracting, leasing, or employment activities covered in 14 CFR Part 152, Subpart E. 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 suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- D. Lessee agrees to operate the Leased Premises, Ramp, and Fuel Tanks for the use and benefit of the public and to furnish good, prompt and efficient services adequate to meet all the demands for its services at the Airport, to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit of service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- E. Notwithstanding anything contained herein that may be or appear to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Lessor reserves the right to grant similar privileges to another operator or operators on other parts of the Airport. It is not the intent of the Lease to grant to Lessee the exclusive right to provide any or all of the services Lessee may engage in at any time during the term of the Lease. Accordingly:
  - (1) Lessor reserves the right, to grant others certain rights and privileges upon the Airport which may be similar in part or in whole to those granted to Lessee, in accordance which any applicable minimum standards and procedures adopted by Lessor and amended from time to time.
  - (2) Nothing shall prevent Lessor from entering into leases or subleases with other tenants who may be in competition with the rights and privileges granted to Lessee hereunder. However, the Lessor agrees not to enter into any sublease, lease, contract or other agreement with any similarly situated full service fixed base operator at the Airport, which contains more favorable terms than this lease or grants rights, privileges or concessions which are not granted to Lessee herein, to the extent required by FAA Grant

Assurances, except where such differences are nondiscriminatory and substantially comparable.

- (3) Lessor will require that a competitor make an investment sufficient to meet the full requirements of the Airport's applicable minimum standards prior to competitor's operation.
- F. The Lessee for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- (1) In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, religion, national origin, sex, disability, or age, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - (2) In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the agreement had never been made or issued.

**27. Prior Agreements:**

Upon the Effective Date, Lease No. 1 and Lease No. 2, as each were amended and assigned, will immediately terminate and all of Flower's interests in Lease No. 1, Lease No. 2, the Leased Premises, Ramp, and Fuel Tanks shall terminate and Flower's rights to the same will cease and be of no force nor effect. All other agreements entered into between Lessor and Flower and all other interests in property at the Airport held by Flower will also terminate on the Effective Date. All interest in the Leased Premises, Ramp, and Fuel Tanks shall be held solely by Lessee in accordance with the terms of this Lease. All parties acknowledge and agree that the Leased Premises, Ramp, and Fuel Tanks, and all structures and improvements thereon, are owned solely by Lessor and Lessor has all rights and powers to lease the same.

**28. Miscellaneous:**

- A. This Lease and all of its covenants and provisions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, subtenants, and approved assigns.

- B. This Lease and any amendments hereto are subject to prior approval of the Federal Aviation Administration.
- C. Lessee is leasing the Leased Premises, Ramp, and Fuel Tanks “AS IS, WHERE IS, WITH ALL FAULTS” in their present condition. Lessor makes no representation or warranties of any kind or character, express or implied, with respect to the Leased Premises, Ramp, and Fuel Tanks, including but not limited to, any warranty or representation as to suitability or fitness for a particular purpose, title, zoning, physical or environment conditions, utilities, governmental approvals, the compliance of the Leased Premises, Ramp, and Fuel Tanks with governmental and environment laws and regulations, the truth, accuracy or completeness of any document or other information provided to Lessee by Lessor or any other person, or any other matter or thing regarding the Leased Premises, Ramp, and Fuel Tanks. Lessor shall be under no obligation to maintain the Leased Premises, Ramp, and Fuel Tanks or the Pueblo Memorial Airport or any part thereof in a particular location or condition. If the Pueblo Memorial Airport shall permanently close or relocate, the use restrictions herein shall not apply, and the Lessee may use the Leased Premises, Ramp, and Fuel Tanks for any lawful use or purpose allowed by the then existing Pueblo Municipal Code, or in the alternative, Lessee may terminate this Lease upon thirty (30) days prior written notice given to Lessor.
- D. The Lessee represents that it has inspected the Airport, Leased Premises, Ramp, Fuel Tanks, and facilities and accepts the conditions of same and fully assumes the risk incident to the use thereof. The Lessor shall not be liable to the Lessee for any damages or injuries to the property or personnel of the Lessee which result from hidden, latent, or other dangerous conditions on the Airport or Leased Premises, Ramp, and Fuel Tanks. Lessee's taking of possession of the Leased Premises, Ramp, and Fuel Tanks shall be conclusive evidence that Lessee accepts the Leased Premises, Ramp, and Fuel Tanks in their present condition and that the Leased Premises, Ramp, and Fuel Tanks are in good and satisfactory condition at the time such possession was taken.
- E. The acts and omissions of Lessee's employees, agents, contractors, and guests shall be imputed to Lessee for purposes of this Lease.
- F. This Lease is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Lease, with respect to any financial obligation of Lessor which may arise under this Lease in any fiscal year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this Lease, including any sub-agreement, attachment, schedule or exhibit thereto, by the Lessor.

- G. Nothing in this Lease is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred upon the Lessor under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.
- H. This Lease contains the entire and exclusive agreement between the parties relating to the Leased Premises, Ramp, and Fuel Tanks and may not be amended except by written instrument signed by the parties. Neither party shall be, or hold itself out as, agent of the other or as joint venturers or partners under this Lease.
- I. This Lease shall be governed by the laws of the State of Colorado. Venue for any action arising under this Lease or for the enforcement of this Lease shall be in a state court with jurisdiction located in Pueblo County, Colorado.
- J. Each person signing this Lease on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Lease on behalf of such party and that this Lease is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

**LESSOR:**

CITY OF PUEBLO  
a Municipal Corporation

By \_\_\_\_\_  
Nicholas A. Gradisar

Title: Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**LESSEE:**

Freeman Holdings of Colorado, LLC  
a Colorado limited liability company

By \_\_\_\_\_  
Francis B. Freeman Jr.

Title: Managing Member

**FLOWER:**

Rocky Mountain FBO, LLC  
a Colorado limited liability company  
d/b/a/ Flower Aviation FBO

By \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

FIXED BASE OPERATOR  
GROUND LEASE AND OPERATING AGREEMENT  
JULY 11, 1022

Exhibit A  
All Leased Areas



Exhibit B  
Structures and Ground Lease



FIXED BASE OPERATOR  
GROUND LEASE AND OPERATING AGREEMENT  
JULY 11, 1022

Exhibit C  
Ramp Area



FIXED BASE OPERATOR  
GROUND LEASE AND OPERATING AGREEMENT  
JULY 11, 1022

Exhibit D  
Fuel Tanks

