

THIRD PARTY DEVELOPMENT AND GROUND LEASE
at
THE MINNESOTA REGIONAL AIRPORT
By and Between
THE CITY OF MARSHALL
And
LOCK PROP, LLC

Date: October 24, 2023

THIRD PARTY DEVELOPMENT AND GROUND LEASE

This Third-Party Development and Ground Lease (the “**Lease**” or “**Agreement**”) is made effective on October 24, 2023 (“**Effective Date**”), by and between the City of Marshall as lessor (“**City**”) and Lock Prop, LLC, as lessee (“**Lessee**”). The City and the Lessee may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The City owns the Southwest Minnesota Regional Airport (“**Airport**”), located at 1650 West College Drive in Marshall, Minnesota.
- B. The Airport is governed by the City and the City owns the real property on which the Airport is located.
- C. The Lessee is a Minnesota limited liability company that is authorized to conduct business in the State of Minnesota.
- D. The Lessee desires to lease an approximately 10,500 square foot portion of land at the Airport as depicted on the attached Exhibit A (“**Leased Premises**”) for the purposes of constructing and operating a hanger, associated parking area, and other related improvements as further described in the attached Exhibit B (collectively, the “**Improvements**”).
- E. To facilitate the construction of the hanger, the Lessee requested, and the City agreed, to enter into a temporary license agreement (“**License Agreement**”) to allow the Lessee to store gravel near the Leased Premises. Under its terms, the License Agreement terminates upon the effective date of this Agreement and the construction of the Improvements are to continue pursuant to the terms of this Agreement.
- F. The City desires to enter into this Agreement to allow the Lease to lease the Leased Premises and to construct and operate the Improvements in accordance with the terms and conditions of this Agreement.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound, the parties hereby agree as follows:

- 1. **Leased Premises:** The City hereby leases to the Lessee the Leased Premises under the terms and conditions of this Agreement. This Agreement includes the right of the Lessee to cross Airport property to access the Leased Premises and to use the Airport Facilities, in common with others, that are open for use by the general public. For purposes of this Agreement, “**Airport Facilities**” includes runways, taxiways, public ramps, roadways, sidewalks, navigation and terminal aids, lighting facilities, terminal facilities, or other public use facilities that have been constructed by the City and are the direct control of the City.
- 2. **Base Term:** This Lease shall be for a base term of twenty (20) years (“**Base Term**”). This Agreement, and the rights hereunder, shall begin as of the Effective Date, but January 1, 2024 shall be the date used for determining the start of the Base Term.

3. **First Option:** The Lessee has the option to extend this Agreement for an additional twenty (20) years past the Base Term ("**First Option**"), provided the Lessee is in compliance with the terms and conditions of this Agreement. The term of the First Option shall commence on January 1, 2044. To exercise the First Option, the Lessee must provide the City written notice of its intent to exercise the option so that it is received between January 1, 2043 and July 3, 2043. Any notice provided outside of that period shall not be effective. If the City does not receive the notice by July 3, 2043, the First Option shall cease and the Base Term shall expire on December 31, 2043. If the First Option is properly exercised, the City may provide the Lessee written notice within sixty (60) days of receipt of the notice that the City desires to amend the Agreement for the extension period. Upon such notice from the City, the parties agree to work in good faith to develop any agreed upon amendments to this Agreement.
4. **Section Option:** If the Lessee exercises the First Option, and if the Lessee is in compliance with the terms and conditions of the Lease, the Lessee has the option to extend this Agreement for an additional ten (10) years beyond the end of the First Option ("**Second Option**"). The term of the Second Option shall commence on January 1, 2064. To exercise the Second Option, the Lessee must provide the City written notice of its intent to exercise the option so that it is received between January 1, 2063 and July 3, 2063. Any notice provided outside of that period shall not be effective. If the City does not receive the notice by July 3, 2063, the Second Option shall cease and the First Option shall expire on December 31, 2063. If the Second Option is properly exercised, the City may provide the Lessee written notice within sixty (60) days of receipt of the notice that the City desires to amend the Agreement for the extension period. Upon such notice from the City, the parties agree to work in good faith to develop any agreed upon amendments to this Agreement.
5. **FAA Consent:** The exercise of the First Option and the Second Option are both contingent on the Federal Aviation Administration ("**FAA**") not disapprove the extension. If the FAA disapproves either extension, the option to extend is canceled.
6. **Construction Contingency:** This Agreement shall be subject to cancellation if construction of the Improvements does not commence by May 1, 2024, and is completed by April 30, 2025. Commencement, for the purposes of this Paragraph, shall include the submission of complete construction drawings to the City for review and approval, submission of the plans for applicable permitting, the issuance of the appropriate building permits, and the execution of a contract with the Lessee's contractor.
7. **Improvements:** The Lessee shall provide the City with "as built" drawings of all new construction within thirty (30) calendar days following the issuance of a Certificate of Occupancy. The City's representative will verify Improved Area and Unimproved Area dimensions of the Leased Premises within thirty (30) calendar days following notice from the Lessee of completion to calculate the final rental rate. The parties agree that the final drawings and applicable rental rate calculation, if adjusted, will be substituted and incorporated into this Agreement without the need for an amendment.
8. **Project Costs:** Lessee shall be solely responsible for all costs associated with the Improvements constructed on the Leased Premises, plus the following one-time project related charges assessed by the City:
 - (a) A one-time charge of \$7,000 for the scope of services identified in the attached Exhibit B by the City selected engineer. Payment shall be due and payable within thirty (30)

calendar days following receipt of invoice.

(b) Upon the installation of the natural gas line infrastructure to the Airport, a one-time charge of \$5,000 for the connection of the natural gas line to the Leased Premises. Once the natural gas line infrastructure, is installed, Lessee shall permanently abandon the propane use of all liquid propane tanks servicing the Leased Premises. Payment shall be due and payable within thirty (30) calendar days following receipt of invoice.

9. **Ground Rent and Rental Adjustments:** The Lessee agrees to pay rent as provided in this Paragraph for leasing the Leased Premises ("**Ground Rent**"). The total annual Ground Rent amount is due and payable prior to January 1 of the upcoming year for each year during the term of the lease, including any renewals provided for in this Agreement. The Ground Rent for the first year shall include the prorated amount of the Ground Rent from the Effective Date to the end of 2023, plus the Ground Rent for 2024. The Ground Rent shall be assessed based on the gross square footage of the Leased Premises, included in the approved site plan attached as Exhibit A. The following Ground Rent rates shall be applicable to the Leased Premises depending upon use:

(a) Non-commercial rate: 2023 Rate of \$0.217 per square foot per year.

(b) Commercial rate: 2023 Rate of \$0.30 per square foot per year.

Ground Rent shall be determined according to the use of the Leased Premises (non-commercial versus commercial) and calculated annually from the commencement date and each January 1st date thereafter ("**Anniversary Date**"). Payment shall be made to the City in advance to the following address, which address may be changed from time to time upon ten (10) calendar days written notice:

City of Marshall
344 West Main St.
Marshall, MN 56258
Attn: Finance

Leased Premises Ground Rent for non-commercial use for the period commencing from the Effective Date to December 31, 2024 will be \$0.216 per square foot per year. Ground Rent will be increased by seven percent (7%) every five (5) years during the term of this Agreement and any extensions. The first five (5) year period shall commence on January 1, 2024. If Lessee changes the use of the Leased Premises to revenue generating aeronautical use, the Ground Rent applicable will be adjusted to the then applicable commercial rate effective upon the date the use is modified through an amendment to the Agreement and the alternate commercial use identified in the amendment. No commercial use of the Leased Premises may occur except upon an amendment to this Agreement expressly approving such commercial use.

From the Effective Date until a Certificate of Occupancy has been issued, the amount of Ground Rent due will be discounted by fifty percent (50%). Lessee shall pay the full Ground Rent amount for the period from the Effective Date through the first full year of this Agreement, and upon the issuance of a Certificate of Occupancy, the City will issue a credit on the Ground Rent for the pro rata portion of the year for the applicable discount period from the Effective Date to the date of issuance of the Certificate of Occupancy.

10. **Agent:** The City appoints the City Administrator, or designee, as agent to receive all Rent, notices and reports under this Lease.
11. **Use of Leased Premises:** Lessee shall use the Leased Premises for the non-commercial purposes as defined in this Paragraph and for no other purpose without an amendment to this Agreement expressly allowing such commercial use. The Improvements on the Leased Premises shall be used for the storage and maintenance of aircraft and related aeronautical activities. The use of the Leased Premises must, at all times, be in compliance with the City's Minimum Standards for General Aviation and Aeronautical Operations ("**Minimum Standards**") as adopted by the City and as may be amended from time to time. The City and Lessee will cooperate in developing appropriate plans in the event a change in the Minimum Standards requires a change to the Leased Premises. Aircraft maintenance conducted on the Leased Premises shall be accomplished in accordance with Minimum Standards, applicable Building and Fire Codes, and adopted rules and regulations. Aircraft must be removed from any structure during fueling operations. In no case shall the Lessee use the Leased Premises in a way that causes the City to be out of compliance with any agreements it has with the FAA or the State of Minnesota.
12. **Parking:** The Leased Premises may be used for vehicle parking of business-related automobiles, trucks, vans, trailers and similar vehicles without the payment of any additional fees to City. In the event Lessee requires more parking than can be accommodated on the Leased Premises, Lessee shall utilize public parking as designated and approved by the City.
13. **Signs:** Lessee may install City ordinance compliant signs or other corporate identification of the business on the Leased Premises at its sole cost, provided, however, that the Lessee or its designee has obtained an approved City sign permit prior to installation.
14. **Right to Amend:** If the FAA or its successor, requires modifications or changes in this Agreement as a condition precedent to issuing the City a grant, Lessee agrees to consent to the amendments, modifications, or changes of this Agreement as may be reasonably required and to incorporate such required changes into an amendment to this Agreement; however, Lessee will not be required to pay increased Ground Rent, change the use of the Leased Premises, or accept a relocation or reduction in size of the Leased Premises until Lessee and the City have fully executed an amendment to this Agreement that is mutually satisfactory to the parties.
15. **Subordination to Government Requirements:** This Agreement is subordinate to the provisions of any existing or future agreement between the City and the United States of America or the State of Minnesota relating to the operation or maintenance of the Airport.
16. **Development of Improvements:** Throughout the Term of the Agreement, all plans and specifications for Lessee's improvements and all renovations, remodeling, refurbishment, and construction upon the Leased Premises must meet all fire, building, and other applicable city, state and federal regulations and code requirements. Lessee shall be responsible for obtaining required building permits and FAA permits, if applicable, and for paying all permit fees associated with the development. Upon final completion and acceptance of the improvements by the City, Lessee must provide one electronic copy of the record documents to the City Administrator, who will keep one set of plans on file at the City's administrative offices.

Lessee must keep said documents current, by providing one electronic copy of all record documents showing any alteration in excess of twenty-five thousand dollars (\$25,000) to the Leased Premises during the term of this Lease to City Administrator, which plans are to be attached to this Lease in the same manner as provided for the original plans and specifications. No substantial changes or alterations shall be made to said plans or specifications after initial approval by the City without further written approval by the City.

Lessee will be responsible for arranging and paying for, at its sole cost, water, sewer, and electrical connections to the site. Utility usage will be billed directly to the Lessee and payment will be the sole responsibility of the Lessee. Lessee shall be granted the right to place and use a liquid propane tank on the Leased Premises until the City installs a natural gas line at which time the use of the propane must be suspended, and Lessee shall connect to the natural gas line as called for in this Agreement. All costs associated with the placement of the propane tank and the propane shall be at the sole cost of the Lessee. Lessee shall submit to the City a detailed plan for the placement and connection of the propane and the City shall have thirty (30) calendar days to approve such plans. The parties agree to work cooperatively to identify a mutually agreeable location for the propane.

The Lessee and contractor will coordinate placement of the facility, design, staging, and construction with the City.

Lessee shall be responsible for causing the Leased Premises and adjacent properties to be maintained in good order and condition during construction and upon completion of the improvements in accordance with commercially reasonable standards at no cost to the City.

Lessee, at its sole expense, shall obtain all licenses and permits required prior to performing any maintenance, repairs, construction on, or use of the Leased Premises. The costs of developing all plans and specifications as provided herein and the construction of improvements and facilities upon the Leased Premises shall be paid solely by the Lessee, without any cost or expense to the City whatsoever.

Upon termination of this Lease as called for herein, ownership of the Improvements constructed by Lessee on the Leased Premises shall revert to the City, free and clear of all liens, claims and other encumbrances or adverse interest in the Leased Premises or the improvements thereon or, at the discretion of the Lessee, shall be removed by the Lessee at its sole expense and the ground returned to its original condition, normal wear and tear excepted. Facilities reverting to the City shall be in commercially reasonable condition, normal wear and tear excepted. All personal property of the Lessee shall be removed from the facility within seven (7) calendar days following termination as called for in this Agreement

During the construction of the improvements, the City Administrator, or designee, may enter upon the Leased Premises during normal business hours and make inspections as may be necessary to ensure that the construction of the improvements is performed in accordance with the requirements of this Lease and in accordance with the submitted plans and specifications.

During this Lease, Lessee shall, subject to the terms and conditions of this Lease, have the continuing right to remodel, renovate and refurbish the Leased Premises subject to the submission of a written request and a complete set of plans to the City and after obtaining the prior written consent of the City and the appropriate permits.

In the event a lien is attached to the Leased Premises or Lessee's leasehold interest, Lessee shall satisfy and remove any such lien within ten (14) calendar days of notice of such lien. Lessee shall notify the City in writing immediately upon receipt of such notice of a lien being filed and within twenty-four (24) hours of the removal of such lien.

In the event of any foreclosure by any lender, financing agency, or guarantor of its lien or liens on the improvements constructed by Lessee, fixtures, or trade fixtures located on the Leased Premises, said lender, financing agency, or guarantor succeeds hereunder to all rights, privileges, and duties of Lessee, including without limitation paying Rent, as if said lender was originally named Lessee herein, and said lender, financing agency, or guarantor will have a reasonable time after the date of foreclosure (not less than three hundred sixty five (365) calendar days) to sublease any available improvements. Lessee covenants that all construction, including all workmanship and materials, will be of first-class quality. As used herein, the term "first-class quality" means of the same quality as materials used to construct other buildings used for the same or similar purposes already constructed on the Airport property.

After completing construction of improvements on the Leased Premises, Lessee must certify to the City that the improvements were completed according to the approved plans and specifications and that Lessee has complied with all applicable federal, state, and local laws, and regulations.

Lessee must include in all construction contracts entered into, a provision requiring the contractor, or in the alternative, Lessee, to indemnify, hold harmless, defend and insure the City, including its officers, agents, elected officials, and employees, against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the contractor's or its agents' presence on the Leased Premises or the Airport and performance of any or all of the construction work thereon, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of the City, its officers, agents, or employees. Lessee must furnish, or require the contractor to furnish, insurance as required herein.

17. **Repair and Maintenance:** Lessee, at its own expense, shall make, or cause to be made, any and all repairs and replacements necessary to keep the Leased Premises in a commercially reasonable first-class condition and in safe repair and shall make any and all repairs and replacements necessary to remedy defects of a structural nature. Lessee shall provide maintenance to keep the interior and exterior of the Leased Premises in a clean, attractive and sanitary condition at all times.
18. **Hazardous Substances:** Lessee shall comply and shall require any sublessee to comply with all environmental laws, rules, regulations, orders and permits applicable to the use of the Leased Premises, including but not limited to, required National Pollutant Discharge Elimination System Permits and all applicable laws relating to the use, storage, generation, treatment, transportation, or disposal of hazardous or regulated substances. Except for the Hazardous Substances governed by and transported in full compliance with the transportation laws of the state or federal government, Lessee must not knowingly use, store, generate, treat, transport, or dispose of any hazardous or regulated substances or waste on or near the Leased Premises without first obtaining all required permits and approvals from all authorities having jurisdiction over the operations conducted on the Leased Premises.

If Lessee determines that a threat to the environment, including but not limited to a release, discharge, spill or deposit of a hazardous or regulated substance, has occurred or is occurring which affects or threatens to affect the Leased Premises, or the persons, structures, equipment, or other property thereon, Lessee must notify immediately by oral report, in person or by telephone, to be promptly confirmed in writing within twenty four (24) hours to the City Administrator as required by law or regulation.

Lessee or its designee shall keep a readily accessible file of Materials Safety Data Sheets ("**MSDS**") for each Hazardous Substance on site or transported, in accordance with federal and state transportation laws, which file must be posted and immediately available to any City employee or Airport tenant who responds to report of a discharge of a Hazardous Substance on the Leased Premises.

Lessee will cause prompt remediation and the payment of all costs associated with any action or inaction of Lessee that directly or indirectly prevents the Airport from materially conforming to all then applicable environmental laws, rules, regulations, orders, or permits. In the event Lessee fails to fulfill this obligation following written notice and a reasonable cure period, the City may perform any such remediation and the direct and indirect cost of such action shall be invoiced to the Lessee plus a fifteen percent (15%) administrative fee. Payment of such charges is due and payable upon demand and may not be contested. The rights and obligations set forth in this Paragraph shall survive the earlier expiration or termination of this Lease.

19. Nondiscrimination/Affirmative Action:

- (a) Nondiscrimination – General- Lessee for itself, and as a requirement for any sublessee, their personal representatives, successors in interest, and assigns, as a part of the consideration hereof covenants that: (1) no person on the grounds of race, creed, color, religion, sex, age, national origin, sexual orientation, marital status, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the use of the Leased Premises; (2) in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, national origin, sexual orientation, marital status, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.
- (b) Nondiscrimination - Business Owner - This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Lessee for itself, and as a requirement for any sublessee, agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award of performance or any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (c) Remedy for Breach – If Lessee is found by a final verdict of a court of competent jurisdiction to have deliberately breached a non-discrimination covenant, or to have permitted any sublessee to deliberately breach a non-discrimination covenant, the City may immediately enforce the remedies directed by the Court's decision, which

may include the City's right to reenter the Leased Premises, retake possession thereof and terminate the Lease. This provision is not effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are completed, including exercise of any rights to appeal.

- (d) Affirmative Action - Lessee shall cause to be implemented an affirmative action program as required by 14 CFR Part 152, Subpart E, to provide (i) that no person on the grounds of race, creed, color, religion, sex, age, national origin, disability, or political belief or affiliation is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E; (ii) that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that Subpart; (iii) that third parties otherwise retained by Lessee or its designee shall provide similar assurances to Lessee or its designee to undertake affirmative action programs and to require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E. Lessee or its designee at no expense to the City shall comply with any applicable requirements of the Americans with Disabilities (ADA) as it may be amended, with respect to the Leased Premises.

20. Compliance with Laws:

- (a) General - Lessee covenants to promptly observe, comply with, and execute, and shall cause any sublessee to promptly observe, comply with, and execute, the provisions of any and all present and future governmental laws, ordinances, rules, regulations, requirements, orders and directions applicable to the use and occupancy of the Leased Premises. A material breach of this covenant, which is not remedied following written notice and a reasonable cure period, may be cause for the City to exercise its rights under **Paragraph 20** of the Lease. During any period of Lessee's or any sublessee's good faith challenge to any such laws, ordinances, rules, regulations, requirements, orders and directions in a court of competent jurisdiction shall not be deemed a breach of this Lease.
- (b) Federal - Lessee shall comply and shall require any sublessee to comply with all applicable Federal laws, rules, and regulations, including without limitation the Drug Free Workplace Act, the Violence in the Workplace Act, the Americans with Disabilities Act, and any other acts that the U.S. Congress passes that apply to the uses and operations at the Leased Premises.
- (c) State - Lessee shall comply with all applicable state laws, rules, and regulations of the State of Minnesota.
- (d) Local - Lessee shall comply with all applicable City ordinances, and rules and regulations promulgated by the City.

21. Termination:

- (a) Termination By Lessee - Without limiting any other rights and remedies to which Lessee may be entitled by common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by Lessee at any time after the happening, and during the existence, if one of more of the following events occurs:

- (1) The City's permanent abandonment of the Leased Premises at the Airport;
 - (2) The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, that substantially restricts any sublessee from operating for at least one hundred fifty (150) calendar days;
 - (3) The issuance by any court of competent jurisdiction of an injunction that prevents or restrains the use of the Airport or the Leased Premises, that continues for at least one hundred fifty (150) calendar days; or
 - (4) The default by the City in the performance of any covenant or obligation on the part of the City to be performed, and the failure of the City to remedy the default for sixty (60) calendar days after receipt from Lessee of written notice to remedy the same.
- (b) Termination by City- Without limiting any other rights and remedies to which City may be entitled at common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by the City if Lessee:
- (1) Is in arrears in paying the Rent, fees, or other charges due under this Lease for thirty (30) calendar days after written notice, or such other time as may be provided herein;
 - (2) Makes a general assignment for the benefit of creditors;
 - (3) Abandons the Leased Premises ("abandon" shall mean failing to occupy the Leased Premises for a period in excess of one (1) year); or
 - (4) Otherwise defaults in the performance of any of other material covenant of this Lease and continues the default for thirty (30) calendar days, or such other time as may be provided herein, after receipt of written notice from the City of the default. If the default cannot reasonably be cured within said thirty (30) calendar days or within any other time as set out in the notice of default, Lessee shall be deemed to have cured the default if it commences the remedy process within the applicable period and thereafter diligently prosecutes the same to completion.
- (c) City's Right to Entry Upon Termination - If the City terminates this Lease or if Lessee abandons the Leased Premises, the City may enter upon the Leased Premises. The City Administrator, or designee, may enter onto the Leased Premises to remove any and all persons or property from the Leased Premises and place any property in storage for the account of and at the expense of Lessee. All property on the Leased Premises is hereby subjected to a contractual landlord's lien to secure payment of delinquent Rent and other sums due and unpaid under this Lease, any and all exemption laws are hereby expressly waived in favor of said landlord's lien; and it is agreed that said landlord's lien is not a waiver of any statutory or other lien given or which may be given to City but is in addition thereto.

In the case of default, if Lessee fails to remove any of its property on the Leased Premises within thirty (30) calendar days following the written notice of default, the City may sell the property found on the Leased Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Lessee, with the surplus, if any, to be mailed to Lessee at the address herein designated. If the City terminates the Lease and re-enters the Leased Premises, the City may relet the Leased Premises and if a sufficient sum is not realized, after paying expenses of the reletting, to pay the Rent and other sums agreed to be paid by Lessee, Lessee agrees to pay any deficiency within thirty (30) calendar days after City's written demand, therefore. Lessee further agrees to

hold harmless and indemnify the City including its officers, agents, elected officials, and employees against, from any loss or damage or claim arising out of the City's action in collecting monies owed to it under this paragraph, except for any loss, damage, or claim caused by the negligence or willful misconduct of the City or its employees.

- (d) Notice of Termination - If an event of material default occurs, and after due written notice identifying the default, the defaulting party has failed to cure or failed to commence to cure as called for in the notice of default, the complaining party may at any time after the expiration of any such cure period terminate this Lease by providing written notice of termination to the defaulting party. The Lease will be terminated on the date specified in the notice but not sooner than thirty (30) calendar days after the postmarked date of the notice.
- (e) Partial Destruction - If the Leased Premises or the facilities reasonably necessary to operate Sublessee's business are partially damaged, due to acts of God or other acts outside the control of the Lessee or City, to the extent that Lessee cannot use the Leased Premises for its intended use, then, at Lessee's option, this Lease may be terminated or instead may be suspended until the damage is repaired. If the Lease is suspended, Lessee and the City will mutually agree on a time period for Lessee to repair the damages to the Leased Premises or Improvements. If the Lease is terminated, as provided for herein, the Rent will be abated from the date of the casualty; provided however, Lessee as the case may be, must use its insurance proceeds to either replace the improvements or remove all traces of the improvements and return the Leased Premises to a state of raw land. All remaining insurance proceeds will be paid to Lessee, as the case may be. The City Administrator is the sole judge of the extent of damage to the Airport.

22. Property Rights upon Expiration or Termination:

- (a) Removal of Equipment - Upon the expiration or earlier termination or expiration of this Lease as called for herein, the City shall, by written notice to the Lessee, permit any Lessee to remove all removable furniture, fixtures and equipment and other personal property installed or furnished by the Lessee, so long as it removes same within the time period set forth in the notice, but in no event less than seven (7) calendar days after termination or expiration of the Lease. The City may require any damage to the Leased Premises caused by any Lessee's removal of its property to be repaired at the Lessee's expense within fifteen (15) calendar days after termination or expiration of the Lease. Such repairs must be made to the reasonable satisfaction of the City Administrator, or designee. Any fuel storage facilities installed by Lessee must be removed and any required remediation completed prior to vacating the Leased Premises, regardless of circumstances. In the event Lessee does not perform such removal and remediation in compliance with this Agreement, the City may contract for such removal and remediation and the direct and indirect cost of such, plus a fifteen percent (15%) administrative fee, will be the sole responsibility of the Lessee and shall be due and payable upon demand. Notwithstanding the foregoing, if any Lessee fails to remove its removable furniture, fixtures and equipment within thirty (30) calendar days after the date determined in the notice, then the City may, at its option, take title to the said property and sell, lease or salvage the same, as permitted by law. Any net expense the City incurs in disposing of the any Lessee's personal property shall be billed to the Lessee. The City will provide a written itemized breakdown of the costs recaptured, if any, by the sale, lease or salvage

of the property, and the balance due, which is expected to be paid by the Lessee upon receipt of said itemized breakdown.

- (b) New Lease - Do Not Remove Equipment - If the City and Lessee negotiate a new Lease after the expiration or earlier termination of this Lease as called for herein, there shall be no requirement to remove its furniture, fixtures and equipment from the Leased Premises.
- (c) Improvements Revert to the City - Except for the right of any Lessee to remove personal property, at the termination of the Lease as called for herein, all permanent improvements placed or constructed on the Leased Premises by Lessee revert to the City.
- (d) Holdover - Any holding over by Lessee of the Leased Premises after the expiration or other earlier termination of this Lease shall be on a month-to-month tenancy at sufferance, at a monthly Rent determined at the sole discretion of the City, and subject to surrender upon thirty (30) calendar days prior written notice.

23. Re-delivery of Leased Premises: Upon the expiration or earlier termination of this Lease, Lessee shall deliver the Leased Premises to the City peaceably, quietly and in as good condition as the same now are or may be hereafter improved by the Lessee, normal use and wear thereof excepted. In addition to a landlord's lien provided by the law of the State of Minnesota, the City has a contractual lien on all property of the Lessee on the Leased Premises as security for nonpayment of Rent.

24. City Obligations:

- (a) To operate the Airport as a public airport during the term of this Agreement, subject to the assurances given by the City to the United States Government.
- (b) To make water, gas, electricity, and wastewater service available to or near the Leased Premises property line on the same basis as it is made available to all business operating at the Airport. Lessee must promptly pay in full all utility usage charges for water, gas, wastewater, electricity, and other utilities supplied to the Leased Premises during the Lease Term as the charges become due and payable.
- (c) To mow the grass within the setback area from the structure to the lot line.

25. Indemnification:

- (a) General – Lessee must indemnify, hold harmless, defend and insure the City, its officers, agents, elected officials, and employees from and against any and all claims and causes of action, administrative proceedings, judgments, penalties, fines, damages, losses, demands, liabilities, or expenses whatsoever (including reasonable attorney's fees and costs of litigation, mediation and/or administrative proceedings) which may be brought, alleged, or imposed against the City, its officers, agents, or employees arising directly or indirectly from or in any way connected with (i) Lessee's or Lessee's agents' or employees' presence on the Leased Premises or the Airport; (ii) Lessee's or Lessee's agents or employees' performance of services authorized under any agreement with City, excepting only that liability as may result from the negligence or the willful misconduct of

the City, including its officers, agents, and employees; The rights and obligations set forth in this Paragraph shall survive the termination of this Lease.

(b) **Special Claims** - Lessee agrees to defend, at its own cost, and to protect, indemnify, and otherwise hold harmless, the City, including its officers, agents, elected officials, and employees (including but not restricted to the posting of bond and release of attachment) from and against any and all claims in any way arising out of or in connection with the construction, repair, or maintenance work undertaken hereunder by, through or on behalf of Lessee, including but not restricted to attachments, liens or levies, and whether or not the claim is meritorious, made, failed or asserted by any party other than Lessee against the City, including its officers, agents, and employees or the Leased Premises or improvements thereon or part thereof, or monies owing to the City.

(c) **Notice** - Notwithstanding the above identifications, Lessee must give the City Administrator notice of any matter covered hereby and forward to the City Administrator copies of every demand, notice, summons, or other process received in any claim or legal proceeding covered hereby within ten (10) calendar days of Lessee's receipt of said notice, demand, summons, or other process.

26. Insurance: During the term of this Lease, Lessee shall maintain General Liability, Aviation and other required coverages as described herein, with limits equal to the City's current base insurance requirements as shown below, or as the same may be amended from time to time. In addition, any independent contractor that Lessee may hire shall have limits at least equal to the City's then current base insurance requirements as shown below, or as the same may be amended from time to time. The City will provide Lessee with a six (6) month notice as well as a mutually agreed upon length of time within which to comply if the City's base insurance requirements are amended. Lessee shall provide copies of its current Certificates of Insurance for the General Liability, Aviation and other required coverages prior to execution of the Lease, and again annually as the Certificates are renewed through the term(s) of the Lease.

(a) General Liability:

Includes: Leased Premises, Completed Operations, Product Liability, XCU coverage and Independent Contractors coverage, and apply on a per location basis.

Generate Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Legal	\$50,000
Leased Premises Medical Payments	\$5,000

(b) Automobile Liability:

Combined Single Limit Liability	\$1,000,000
To Include Hired and Non- Owned autos	

(c)

(c) Aviation Liability Insurance \$2,000,000

(d) Excess or Umbrella Liability:

General Aggregate

\$1,000,000

27. **Rights to Sublease and Assignment:** Lessee has the right to sublease any or all of the Leased Premises; however, Lessee must ensure that any sublessee abides by the terms and conditions of this Agreement. The Lessee shall not assign or transfer this Agreement, or any right of leasehold interests granted to it by this Agreement or sublet or otherwise transfer any interest in or to the Leased Premises without the prior written consent of the City. The consent to subleasing all or part of the Leased Premises or for assignment or transfer of this Agreement will not be unreasonably withheld.
28. **Notice:** Notices are sufficient if in writing and sent by certified mail, return receipt requested, postage prepaid, or by overnight delivery service with proof of delivery, or by facsimile (followed by written notice confirmed by mail or other delivery service, as addressed below:

If to City:

City of Marshall
344 West Main St.
Marshall, MN 56258
Attn: City Administrator

If to Lessee:

Chester Lockwood
Lock Prop, LLC
1310 E College Drive
Marshall, MN 56258

Or to any other address that may be designated in writing from time to time.

29. **General Provisions:**

- (a) Mineral Rights - City expressly reserves all water, gas, oil and mineral rights in and under the soil beneath the Leased Premises but testing for and/or removal of any such gas, oil, or minerals shall be done in a manner so as not to disturb the Leased Premises or disrupt the operation of the business being conducted thereon.
- (b) No Waiver of Forfeiture - Any failure or neglect of the City or Lessee at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder does not waive the City's or Lessee's right thereafter to declare a forfeiture for like or other or succeeding breach or default.
- (c) Force Majeure - Neither City nor Lessee will be deemed to be in breach of this Lease if either is prevented from performing any of its obligations hereunder by reason of Force Majeure. Force Majeure means any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, including inclement weather and/or periods of rain or snow, inability to obtain labor or materials, or reasonable substitutes therefore, governmental restrictions or requirements, governmental regulations, governmental controls, inability to timely obtain governmental approvals, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. All of the foregoing events excuse the performance by either party for a period equal to

any prevention, delay, or stoppage, including the obligations imposed with regard to commencement or payment of rental and other charges to be paid by Lessee pursuant to this Lease and the obligation of the City to deliver the Leased Premises.

- (d) Quiet Enjoyment - City covenants that it has the authority to execute this Lease, that at commencement of the Lease, City has good title to the Leased Premises and that throughout the term hereof, Lessee will have peaceful and uninterrupted possession of the Leased Premises subject to Lessee's payment of Rent and other charges and to its performance of the covenants of this Lease. The City agrees to remedy any violation of quiet enjoyment caused by the City or one of the other tenants and to honor Lessee's tenancy for the term of the Lease.
- (e) Minimum Standards and Rules and Regulations – The City has adopted and will enforce Minimum Standards and reasonable rules and regulations to be uniformly applied to similar uses and users of similar space, which Lessee agrees to observe and obey with respect to the use of the Leased Premises and the, and the health, safety and welfare of those using the Leased Premises and the health, safety, and welfare of those using the Leased Premises. The Minimum Standards and rules and regulations may be amended from time-to-time following notice to Lessee.
- (f) Governing Law and Venue - This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota and action brought under this Agreement shall be venued in Lyon County, Minnesota.
- (g) No Third-Party Benefit - No provision of this Lease creates a third-party claim against the City, the Airport, or the Lessee beyond that which may legally exist in the absence of any such provision.
- (h) Taxes and Licenses - Lessee must cause to be paid any and all taxes of whatever character, including ad valorem and intangible taxes, that may be levied or charged upon the Leased Premises, leasehold improvements, or operations hereunder and upon Lessee's rights to use the Leased Premises, whether the taxes are assessed against Lessee or the City, prior to the past due date. Lessee shall cause to be paid any and all sales taxes arising in connection with the occupancy or use of the Leased Premises whether the taxes are assessed against the Lessee, any sublessee or City. Lessee must obtain and pay for all licenses or permits necessary or required by law for the construction of improvements and must require any sublessee to must obtain and pay for all licenses and permits necessary or required by law for the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. If Lessee or any sublessee wishes to contest any tax or charge, that contest will not be a default under the Lease so long as Lessee or sublessee diligently prosecutes the contest to conclusion and promptly pays whatever tax is ultimately owed. Further, Lessee shall cause any taxes not being contested to be paid prior to the past due date.
- (i) Trash and Refuse - Lessee must arrange for the collection and lawful disposal of all trash and other refuse resulting from operations on the Leased Premises; must provide and use suitable sealed fireproof receptacles approved by the City for all trash and other refuse generated by the use of the Leased Premises; must prohibit piling of boxes, barrels or other similar items in or within view from a public area; must comply with all applicable laws and regulations relative to trash disposal; and

must pay or cause to be paid the costs associated with trash removal and disposal.

- (j) Terms Binding on Successors and Assigns - All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of Lessee and the City.
- (k) Estoppel - Both parties agree that at any time and from time to time at reasonable intervals, within fifteen (15) business days after written request by the other party, said party will execute, acknowledge and deliver to the party designated by the other party, a certificate in a form as may from time to time be provided, certifying to the extent true and correct the following, as well as any other provision reasonably requested by the other party: (a) that Lessee has entered into occupancy of the Leased Premises and the date of said entry if requested; (b) that this Lease is in full force and effect, and has not been assigned, transferred, modified, supplemented, or amended in any way (or if there has been any assignment, modification, supplement or amendment, identifying the same); (c) that this Lease represents the entire agreement between City and Lessee as to the subject matter hereof (or if there has been any assignment, modification, supplement or amendment, identifying the same); (d) the date of commencement and expiration of the term; (e) that all conditions under this Lease to be performed by City, if any, have been satisfied (and if not, what conditions remain unperformed); (f) that to the knowledge of the signor of said writing, no default exists in the performance or observance of any covenant or condition in this Lease and there are no then existing defense or offsets against the enforcement of this Lease by the City, or instead specifying each default, defense or offset of which the signor may have knowledge; and (g) the amount of Rent or other charges , if any, that has been paid in advance and the amount of security, if any, that has been deposited with the City.
- (l) Leasehold Mortgage - As used herein, "**Leasehold Mortgage**" means the mortgage or deed of trust covering Lessee's leasehold interest in this Lease given by Lessee to Leasehold Mortgagee to secure repayment of funds advanced or to be advanced by a Leasehold Mortgagee to Lessee to construct the Development. As used herein, "**Leasehold Mortgagee**" means the mortgagee or beneficiary under the Leasehold Mortgage. As used herein, "**mortgage**" means any mortgage, deed of trust or other indenture consisting of a lien on Lessee's leasehold interest created hereunder, together with a promissory note or obligation or bond which it secures. Subject to the conditions set forth herein, Lessee may mortgage its leasehold interest created hereunder, solely for the purpose of (1) obtaining financing to construct the Development, including any additional construction or alteration thereof, made subsequent to the initial construction, (2) refinancing said construction mortgage, and (3) providing financing in connection with the assignment or transfer by Lessee of its interest in this Lease and its leasehold interest created hereunder; provided however, that with respect to the financing described in clauses (2) and (3) above, the principal amount of any mortgage must not be greater than the original principal amount of the mortgage obtained to construct the Development, including any additional construction or alteration thereof, made subsequent to the initial construction as provided:
 1. Said mortgage in no way affects or diminishes City's interest in the Leased Premises, or its rights under this Lease, nor relieves Lessee of any of its obligations hereunder;
 2. Under no circumstances is City's fee interest in the Leased Premises or

rights under this Lease subordinate to said mortgage;

3. Said mortgage covers no interests in any real property other than Lessee's leasehold interest in the Leased Premises hereunder; and

4. The making of said mortgage by Lessee will not be deemed to constitute an assignment or transfer of this Lease, nor will any mortgagee be deemed an assignee or transferee of this Lease.

5. Rights of Leasehold Mortgagees:

a. No Leasehold Mortgage is binding upon the City in the enforcement of its rights and remedies under this Lease unless and until a copy thereof has been delivered to the City Administrator;

b. The City agrees to execute an estoppel certificate and any other similar documentation as may reasonably be required by Leasehold Mortgagee so as to certify to the status of this Lease and to the performance of Lessee hereunder as of the date of said certification;

c. Lessee shall furnish the City Administrator a written notice setting forth the name and address of any Leasehold Mortgagee; and

d. If a Leasehold Mortgage or purchaser at foreclosure of the mortgage acquires Lessee's leasehold interest in the Leased Premises by virtue of the default of Lessee under the mortgage or otherwise, this Lease will continue in full force and effect so long as Leasehold Mortgagee or purchaser at foreclosure is not in default hereunder, including the obligation to timely pay Rent. For the period of time during which Leasehold Mortgagee or any purchaser at foreclosure of a mortgage holds Lessee's leasehold interest in the Leased Premises, Leasehold Mortgagee or said purchaser becomes liable and fully bound by the provisions of this Lease.

6. With respect to any Leasehold Mortgagee of the Leased Premises, City agrees that the following apply:

a. If requested by a Leasehold Mortgagee, who is duly registered in writing with the City, any notice from the City affecting the Leased Premises must be simultaneously delivered to Lessee and said Leasehold Mortgagee at its registered address, and if so registered, no notice of default or termination of this Lease affecting the Leased Premises given by the City shall be deemed legally effective until and unless like notice has been given by the City to said Leasehold Mortgagee;

b. Any Leasehold Mortgagee entitled to said notice shall have any and all rights of Lessee with respect to the curing of any default hereunder by Lessee; and

c. City will not enter into any material modification of this Lease affecting the Leased Premises without the prior written consent thereto of each Leasehold Mortgagee entitled to notice as provided herein. The foregoing does not apply, nor may it be construed to apply to any right the City may have to terminate this Lease pursuant to its terms. Lessee must provide any Leasehold Mortgagee with notice of any proposed modification.

7. If the City elects to terminate this Lease for any material default by Lessee with respect to the Leased Premises, the Leasehold Mortgagee that has become entitled to notice as provided in this Paragraph has not only any and all rights of Lessee with respect to the curing of any default, but also the right to postpone and extend the specified termination date of the Lease (**"Leasehold Mortgagee's Right to Postpone"**), contained in any notice of termination by City to Lessee (**"Termination Notice"**), for a maximum of ninety (90) calendar days, subject to the following conditions:

a. Leasehold Mortgagee must give the City Administrator written notice of the exercise of Leasehold Mortgagee's Right to Postpone at least ten (10) calendar days prior to the date of termination specified by Aviation Director in the Termination Notice and simultaneously pay to City all amounts required to cure all defaults then existing (as of the date of the exercise of Leasehold Mortgagee's Right to Postpone) which may be cured by the payment of a sum of money.

b. If Leasehold Mortgagee's Right to Postpone is exercised, Leasehold Mortgagee must pay any sums and charges which may be due and owing by Lessee and promptly undertake to cure, diligently prosecute, and as soon as reasonably possible, complete the cure of all defaults of Lessee with respect to the Leased Premises which are susceptible to being cured by Leasehold Mortgagee. Leasehold Mortgagee's exercise of its Right to Postpone may extend the date for the termination of this Lease specified in the Termination Notice for a maximum of six (6) months.

c. If, before the date specified for the termination of this Lease as extended by a Leasehold Mortgagee's exercise of its Right to Postpone, Leasehold Mortgagee has performed and observed all of Lessee's covenants and conditions under the Lease with respect to the Leased Premises and no further defaults with respect to the Leased Premises have occurred which have not been timely cured, then all defaults under this Lease, with respect to the Leased Premises, will be deemed to have been cured and City's Termination Notice will be deemed to have been withdrawn.

d. Nothing herein may be deemed to impose any obligation on the City's part to deliver physical possession of the Leased Premises to a Leasehold Mortgagee.

e. If more than one Leasehold Mortgagee seeks to exercise any of the rights provided for in this **Paragraph 32**, the most senior lien holder is entitled, as against the others, to exercise said rights. Should a dispute arise among Leasehold Mortgagees regarding the priority of lien, Leasehold Mortgagees must provide evidence substantiating the correct priority of the competing liens to the satisfaction of the City Attorney prior to taking any action with respect to exercising said lienholder rights.

- (j) Radio Antenna - Subject to the City's prior written approval as to height and location, which will not be unreasonably withheld, conditioned or delayed, Lessee or any sublessee, as the case may be, may furnish and install at its own expense, a radio antenna either adjacent to the improvements or on the roof of the improvements on the Leased Premises subject to (a) any and all federal, state and local laws, ordinances, statutes, rules, regulations and orders applicable thereto; (b) Lessee, as the case may be, obtaining any and all building and other permits, licenses and other approvals with respect thereto; (c) the antenna and building both must be structurally sound and not adversely affect the soundness of, or the condition of, the roof and/or other parts of the building; and (d) any and all costs of maintaining and operating the same must be paid entirely by the Lessee. Upon the expiration or earlier termination of this Lease as identified herein, Lessee shall cause the removal of the antenna(s) and the restoration of any damage to the improvements and Leased Premises caused by the installation and/or removal thereof. Lessee shall be responsible for all costs for the repair and maintenance of said installation of the antenna.
- (k) Severability - Each provision, paragraph, section, sentence, clause, phrase, and word of this lease is intended to be severable. If any provision, paragraph, section,

sentence, clause, phrase, and/or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this lease.

- (l) Voluntary and Knowing Action - The parties, by executing this lease, state that they have carefully reviewed this lease and understand fully the contents hereof; that in executing this lease they voluntarily accept all terms described in this lease without duress coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- (m) Authorized Signatories - The parties each represent and warrant to the other that (1) the persons signing this lease are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this lease against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- (n) Government Data Practices - Pursuant to Minnesota Statutes Chapter 13, et seq., the Lessee and the City must comply with the Minnesota Government Data Practices Act as it applies to all data provided by the City under this Agreement, and it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Lessee under this Agreement. The civil remedies of Minnesota Statute Section 13.08 apply to release of the data referred to in this clause by either the Lessee or the City. If Lessee receives a request to release any data referred to in this clause, the Lessee must immediately notify the City. The City must give the Lessee instructions concerning the release of the data before the data is released. The Lessee's response to the request must comply with the applicable law.
- (o) No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Lessor and Lessee, it being understood that the sole relationship created hereby is one of landlord and tenant.
- (p) Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, to the extent applicable, the Lessee agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Lessee and involve transactions relating to this Lease. The Lessee agrees to maintain these records for a period of six (6) years from the date of termination of this Lease.
- (q) Waiver and Assumption of the Risk: Lessee knows, understands and acknowledges the risks and hazards associated with using the Facilities, Building and Leased Premises and hereby assumes any and all risks and hazards associated therewith. Lessee hereby irrevocably waives any and all claims against Lessor or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Lessee as a result of using the Facilities, Building or Leased Premises and hereby irrevocably releases and discharges Lessor and any of its officials, employees or agents from any and all claims of liability.
- (r) Attorney Fees: Lessee shall pay all costs, attorney fees, and expenses incurred by

Lessor to enforce this agreement.

30. **Property Subject to Taxation:** All real and personal property contained in the Leased Premises shall be subject to taxation in accordance with Minnesota Statute, Section 272.01 as may be amended from time to time.

EXECUTED IN DUPLICATE ORIGINALS this 24th day of October, 2023, by the authorized representative of the parties.

Attest

Date: _____

CITY OF MARSHALL
Name: _____
Its: _____
Date: _____

Attest:

Date: _____

LESSEE: LOCK PROP, LLC
Name: _____
Chester Lockwood
Title: President
Date: _____
