



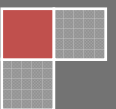
# Santa Barbara Municipal Airport LEASE AGREEMENT

with

\_\_\_\_\_  
A \_\_\_\_\_ CORPORATION

**DRAFT**

AGREEMENT NO. \_\_\_\_\_



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## LEASE

Agreement No. \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014,

by and between

**CITY OF SANTA BARBARA,  
a Municipal Corporation,**  
hereinafter referred to as "City",

and

\_\_\_\_\_,  
**a \_\_\_\_\_ Corporation,**  
hereinafter referred to as "Tenant".

### WITNESSETH:

**WHEREAS**, City is owner of certain property at the Santa Barbara Municipal Airport; and

**WHEREAS**, Tenant is desirous of leasing a certain portion of property at the Santa Barbara Municipal airport in an Aviation Facilities (AF) zone;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree that:

#### 1. PREMISES

City hereby agrees to lease to Tenant the real property located at 101-A&B Cyril Hartley Place, Santa Barbara, CA, encompassing approximately 18,691 square feet of ramp, including one 3,522 square foot hangar, and one 3,000 square foot hangar, as indicated on the attached Exhibit A, hereinafter referred to as the "Premises".

#### 2. USE

A. **Premises.** The Premises shall be used for \_\_\_\_\_  
\_\_\_\_\_.

Tenant shall not use or permit the use of said Premises for any purpose other than expressly allowed in this Agreement.

**B. Vehicle Parking.** So long as Tenant is not in default, and subject to the parking rules and regulations included herein, and as established by City from time to time, Tenant shall be entitled to use in common with other tenants City licensees, and authorized use by the public one parking space adjacent to the Premises, on Cyril Hartley Place. Tenant shall lease seven (7) additional parking spaces at \$14 per space per month.

- (1) Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. City will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area. Tenant shall post and distribute sufficient references to these conditions of use as necessary to provide reasonable notice.
- (2) Tenant shall be responsible for ensuring that all of its employees, agents, and invitees comply with the applicable parking requirements, laws and agreements. If Tenant commits, permits or allows any of the prohibited activities described in this Article 2, or other violation of these rules, then City shall have the right without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by City. Tenant shall post reasonable notice of such provision.
- (3) All parking use shall be subject to the following rules:
  - (a) Tenant shall not park or store motor homes, campers, trailers, non-operational vehicles, boats or any vehicle not directly related to Tenant's activities on the Premises.
  - (b) Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by City for that particular activity.
  - (c) Users of the parking area will observe all posted signs and park only in the areas designated for vehicle parking.
  - (d) The maintenance, washing, waxing or cleaning of vehicles on the Premises is prohibited.

City reserves the right to modify these requirements and/or adopt such other reasonable requirements as the Airport Director may determine to be necessary for the proper operation of the parking area and the Airport. City reserves the right to relocate all or a part of parking spaces to other Airport property upon thirty (30) days advance written notice.

**3. INGRESS AND EGRESS**

Tenant shall allow pedestrians, including employees, vendors, agents and customers of Jacob Stern, ingress and egress through and across the external portion of Tenant's Leasehold Premises to access the Jacob Stern leasehold premises, as depicted on Exhibit B, attached hereto and incorporated herein by this reference. Such persons shall not be considered customers or invitees of Tenant for any purpose.

**4. TERM**

The term of this agreement shall commence July 1, 2014 and end July 31, 2016.

**5. RENTAL**

As rental for the Premises during the term of this Agreement, Tenant shall pay to City, in advance on or before the first day of each calendar month, a rental of FOUR THOUSAND SIXTEEN DOLLARS (\$4,016), exclusive of all charges for utilities.

**Land:**            **East Area:**      18,691 sq. ft. x \$ .054 psf = \$1,009 per month

**Building:**      **Hangar:**            3,288 sq. ft. x \$.429 psf = \$1,411  
                         **Office:**            234 sq. ft. x \$.903 psf = \$ 211  
                         **Hangar:**            3,000 sq. ft. x \$.429 psf = \$1,287

**Parking:** 7 additional parking spots at \$14/month = \$98

**Total:      \$4,016 per month**

**6. RENTAL ADJUSTMENT**

Annually, on the anniversary date of the Agreement ("Adjustment Date"), the monthly rent shall be adjusted to reflect the percentage increase of the Consumer Price Index – All Urban Consumers (Los Angeles-Riverside-Orange County, CA, All Items, Base 1982-84-100) as published by the United States Department of Labor, Bureau of Labor Statistics (hereinafter referred to as the "Cost-of-Living Increase").

In the event the index specified above is not available, the Bureau of Labor Statistics shall be requested to supply a formula for conversion of the index to an existing index and said formula shall be the basis for computation of the rental increase. If the parties are unable to agree on the new index supplied by the Bureau of Labor Statistics, then a substituted index shall be selected by the Santa Barbara City Council, upon the application of either party and that selection shall be binding on both parties.

The amount of the Cost of Living Increase under this Article 6, "**RENTAL ADJUSTMENT**" shall be computed by determining the percentage increase of the standard Cost-of-Living index during the one-year period ending in the month of April preceding the Adjustment Date. After said percentage is determined, the rent for the month of the Adjustment Date shall be increased by said percentage and the increased amount shall be the new monthly minimum base rental. However, no adjustment to the monthly Rent on any Adjustment Date shall be less than three percent (3%) or more than eight percent (8%) of the monthly Rent in effect immediately prior to the Adjustment.

## **7. UTILITIES**

Tenant hereby acknowledges the satisfactory provision of public utilities to the Premises for Tenant's anticipated and allowed use of the Premises. The Airport will provide water at \$80.54 or the metered amount, whichever is greater, and sewer service at the rate of \$36.86 per month. Said charges shall be paid monthly with the Monthly Base Rent payments. The charges specified herein will be adjusted annually on July 1<sup>st</sup> by the Airport Director to reflect any increase in costs of providing these services. Said charges will be computed in conformity with the calculations for other similarly situated tenants at the Airport.

Tenant shall contract directly with public utilities for the provision of all other utility services and shall pay all charges associated those utility services received by Tenant.

Any changes, alterations or improvements to the utilities on the Premises in connection with the construction or installation of any Improvements to the Premises by Tenant shall be made at Tenant's sole cost and expense.

## **8. DEPOSIT**

Upon execution of this Agreement, Tenant shall deposit with City a Security Deposit in the form of cash, check, money order, cashier's check, or Irrevocable Letter of Credit in favor of the City, by a financial institution acceptable to the City, where the form and terms of such an Irrevocable Letter of Credit is issued prior to the City's execution of this Agreement, in the amount of **one and one-half month's rent**, as security for Tenant's faithful performance of its obligations under this Agreement. If Tenant fails to pay rent, or otherwise defaults under this Agreement, City may use, apply or retain all or any portion of the Security Deposit for the payment of any amount due City or to reimburse or compensate City for any liability, expense, loss or damage which City has suffered or incurred by reason thereof. If City uses or applies all or any portion of the Security Deposit, Tenant shall, within ten (10) days after written request therefore, deposit monies with City sufficient to restore the Security Deposit to the full amount required by this Agreement.

If the rent increases during the term of this Agreement, Tenant shall, upon written request from City, deposit additional monies with City so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased rent as the initial Security deposit bore to the initial rent.

City shall not be required to keep the Security Deposit separate from its general accounts. Within thirty (30) days, after the Premises have been vacated by Tenant, City shall return that portion of the Security deposit not used or applied by City. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be a prepayment of any monies to be paid by Tenant under this Agreement.

**9. CHARGE FOR LATE PAYMENT (LIQUIDATED DAMAGES)**

Tenant hereby acknowledges that the late payment of fees or any other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs and expenses will include but are not limited to internal administrative processing, accounting, and review.

Accordingly, if any rental payments as specified in Article 5, "RENTAL" of this Agreement or any other sum due City is not received by City within five (5) days of the due date, a late charge of one and one-half percent (1.5%) of the payment due shall be added to the payment, and the total sum shall become immediately due and payable to City. An additional charge of one and one-half percent (1.5%) of said payment, exclusive of late charges, shall be added for each additional month or portion thereof that said payment remains unpaid.

Tenant and City hereby agree that such late charges represent a fair and reasonable estimate of the costs that City will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by City shall not constitute a waiver of Tenant's default with respect to such overdue payment, or prevent City from exercising any of the other rights and remedies granted hereunder.

**10. MINIMUM STANDARDS FOR AERONAUTICAL ACTIVITIES**

In addition to the privileges granted to Tenant elsewhere in this Lease and conditioned upon Tenant remaining in compliance with all terms, covenants and conditions of this lease, City hereby grants to Tenant the non-exclusive right to engage in the business of an Aircraft, Airframe, Engine and Accessory Maintenance and Repair Service on the Premises and at the Airport. In the course of operating a repair station in accordance with the "Minimum Standards for Airport Aeronautical Services" attached hereto and made a part hereof as Exhibit C (Minimum Standards) as such standards may be revised from time to time, Tenant shall provide the Mandatory Minimum Services for each type of service provided as listed in the Minimum Standards.



Tenant shall ensure compliance with the Minimum Standards and all terms, covenants and conditions of this Lease.

## **11. LIABILITY: INSURANCE AND INDEMNIFICATION**

A. **Required Insurance Coverage.** Tenant shall maintain and keep in force during the term of this Agreement, for the mutual benefit of City and Tenant, at Tenant's sole cost and expense, the following insurance applicable to the Premises and all buildings, improvements, equipment and fixtures on the Premises:

- (1) Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) for each occurrence combined single limit for bodily injury and property damage. Coverage thereunder shall include contractual liability, bodily injury, owners' and contractors' protection, fire legal, and broad property damage coverage.
- (2) Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage for all vehicles owned or operated by Tenant.
- (3) Worker's Compensation: In accordance with the provisions of the California Labor Code, Tenant is required to be insured against liability for Worker's Compensation or to undertake self-insurance. Statutory Worker's Compensation and Employer's Liability of at least \$1,000,000 shall cover all Tenant's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major change in coverage or expiration shall be effective or occur until at least thirty (30) days after the receipt of such written notice by City.

### **B. General Insurance Policy Requirements**

- (1) All insurance provided for in this Section shall be enacted under valid and enforceable policies in form and substance satisfactory to City issued by insurers satisfactory to City and authorized to do business in the State of California. Such insurance shall apply as primary and not in excess of or contributing with any insurance, which City may carry. The policies required shall name City, its officers, employees and agents as additional insured. Tenant's insurance policies shall apply separately to each named or additional insured as if separate policies had been issued to each. Tenant's insurance, as required by this Agreement, shall not be subject to cancellation or material reduction without at least thirty (30) days prior written notice to the City. Tenant shall furnish to City a Certificate of Insurance evidencing that the above requirements have been met on or before the commencement of this Agreement and upon the renewal of each policy.

- (2) Tenant hereby expressly waives on behalf of its insurers hereunder any right of subrogation against City, which any such insurers may have against City by reason of any claim, liability, loss or expense arising under this Agreement.
- (3) City shall retain the right to review at any time the coverage, form and amount of insurance required hereby. If, in the opinion of City, the insurance provisions in this Agreement do not provide adequate protection for City and for members of the public using the Premises. City may require Tenant to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks that exist at the time a change in insurance is required.
- (4) The procuring, or City waiver, of such required policy or policies of insurance shall not be construed as a limit to Tenant's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Agreement or with use or occupancy of the Premises.

C. **Indemnification.** Tenant shall, to the extent permitted by law, investigate, defend, indemnify and hold harmless the City, its officers, agents and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which City may incur, sustain, or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents, and invitees of each party hereto) arising out of or in any way connected with Tenant's use or possession of the Premises.

## **12. ASSUMPTION OF RISKS**

Tenant represents that Tenant has inspected the condition and location of the Premises. Tenant hereby accepts the condition of the Premises and all improvements thereon and fully assumes all risks incidental to the use thereof, including any risks associated with the location of the Premises being in a Flood Plain and in close proximity to a working commercial airport. City shall not be liable to Tenant for any damages or injuries to the property or person, or to the agents, employees or business visitors of Tenant, which may result from hidden, latent or other dangerous conditions upon the Premises, or which may result from the negligence of the City, its agents, officers or employees, or which may result from any condition of fire, earthquake, flood, rainfall, or escape of water from any channel, regardless of the cause thereof.

### **13. GENERAL**

- A. **Compliance with Law.** Tenant shall comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof in Tenant's use of the Premises.
- B. **City Business License.** Tenant shall obtain, and maintain throughout the term of this Agreement, a valid City Business License and pay all taxes and fees required. Failure to possess a current City Business License and pay all required fees and taxes shall be a material breach of this Agreement.
- C. **Possessory Interest/Taxes.** Pursuant to Section 107.6 of the California Revenue and Taxation Code, City states that Tenant's Leasehold interest in the Premises may be subject to property taxation on the possessory interest created by this Agreement. Tenant agrees to pay, before delinquency, all lawful taxes, assessments or charges, including taxes on Tenant's possessory interest, which, during the term hereof, may be or become a lien or may be levied upon the real property, improvements or personal property situated upon the Premises, or upon the subject matter of this Agreement.
- D. **Nondiscrimination.** Tenant agrees to comply with all the terms of the Tenant's Obligation for Nondiscrimination Certificate attached hereto as Exhibit D and incorporated herein.
- E. **No Animals.** No animals are allowed or permitted on the Premises unless expressly authorized in writing by the Airport Director.
- F. **Time.** Time is of the essence of this Agreement and all of the terms and covenants hereof are conditions.
- G. **Captions.** The title or headings to the Sections and the Table of Contents of this Agreement are for convenience only and are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.
- H. **Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Agreement shall be, in all cases, construed according to its fair meaning and not strictly for or against City or Tenant.

#### **14. MAINTENANCE OF LEASED PREMISES**

- A. Tenant shall, at Tenant's own cost and expense, maintain the Premises and every part thereof, in good order and repair, except as such maintenance obligations are expressly assumed by City in Section E below.
- B. Any repairs made by Tenant are to be made by craftsmen skilled in work done and performing such work regularly as a trade. Any tenant specific improvements shall require prior written consent of the Airport Director as specified in Article 20, "ALTERATIONS AND IMPROVEMENTS."
- C. In the event the Tenant fails, and after five (5) days notice in writing from the Airport Director, continues to fail to provide the Maintenance required in Section D. of this Article 14, "MAINTENANCE OF LEASED PREMISES," the Airport Director may, without thereby waiving or otherwise excluding or limiting any other remedy of the City for such failure to perform, make repairs to the Premises with private personnel or City's personnel. If City causes the work to be performed, the cost of the work will be billed to Tenant.
- D. Tenant's Responsibility: Tenant's maintenance responsibility shall include, but not be limited to, performance of the following:
- (1) Supplying janitorial services, and restocking of janitorial supplies;
  - (2) Washing windows;
  - (3) Clearing stoppages in interior plumbing fixtures and drain lines caused by Tenant's use of the Premises to the first manhole or cleanout outside the building;
  - (4) Cleaning of floor covering in offices;
  - (5) Repairing or replacing all electrical, mechanical, or plumbing improvements, including HVAC, installed by Tenant for Tenant's own use and enjoyment.
  - (6) Maintaining electrical loads within the designed capacity of the electrical system. Any increase in the electrical load that will exceed the system's capacity shall require prior written consent of the Airport Director.
  - (7) Providing and maintaining ABC rated fire extinguishers appropriately sized to the Premises.
  - (8) Re-keying of the Premises by Tenant is prohibited. Should re-keying of the Premises become necessary due to lost keys or employee turnover, the Airport will provide such services at a nominal cost to Tenant.

- (9) Assisting the Airport in determining the cause, in the event of damage to Airport property, including: building structure, equipment, streets lighting system or utilities.
  - (10) Maintaining the aircraft ramp in good order and repair.
  - (11) Reimbursing the City for repair or replacement of any exterior or interior surface, including the ramp, or fixture determined to have been damaged as a result of any act or omission of Tenant.
- E. City's Responsibility: City's maintenance responsibility shall be limited to the following, all at its sole cost and expense, notwithstanding Section D-10 above:
- (1) Maintaining the building exterior, including walls, roof, doors, windows, associated operating systems, and lighting.
  - (2) Maintaining all interior walls, doors, glass partitions (if any), including painting, repair or replacement, including structural failures;
  - (3) Repairing or replacing any plumbing, HVAC, or lighting fixture, including changing light bulbs, installed by the City at the time Tenant took possession of the Premises that fails by virtue of having exceeded its useful life or due to normal wear and tear.
  - (4) Crack sealing the aircraft ramp.

## **15. CLEANLINESS AND LANDSCAPING**

- A. Tenant shall keep the Premises free and clear of all litter, garbage, debris and refuse and shall keep the Premises in an orderly and sanitary condition at all times. Tenant's responsibility shall include:
- (1) Trash removal – the regular removal of useless materials and equipment.
  - (2) Recycling – recycling all eligible materials under the City of Santa Barbara Solid Waste Program.
  - (3) Containers – maintaining, for the temporary storage of garbage, refuse or recycling, bins and/or containers of a type and at a location approved by the Airport Director.
  - (4) Weeds on Ramp – the regular removal of weeds on the ramp and along the fence line of the Premises.

- B. In the event the Tenant fails, and after five (5) days notice in writing from the Airport Director, continues to fail to provide the cleanliness required in Section A. of this Article 15, "CLEANLINESS AND LANDSCAPING" the Airport Director may, without thereby waiving or otherwise excluding or limiting any other remedy of the City for such failure to perform, clean the Premises with private personnel or City's personnel. If City causes the work to be performed, the cost of the work will be billed to Tenant.

## **16. STORM WATER POLLUTION PREVENTION**

The City of Santa Barbara, Airport Department complies with the federal Clean Water Act and must maintain a General Industrial Permit and General Municipal Separate Storm Sewer System (MS4) Permit. These permits are implemented through a Storm Water Pollution Prevention Plan (SWPPP) and a pending Storm Water Management Plan (SWWP). These plans identify specific best management practices the Airport and tenants must employ to prevent storm water pollution.

- A. Tenant shall reduce non-storm water discharges to the maximum extent practicable by:
- (1) Inspecting vehicles and any equipment stored outside the Premises, for leaks frequently – repair leaks promptly;
  - (2) Cleaning up and properly disposing of spills – notifying Airport Director immediately of any spills of Hazardous materials; and
  - (3) Educating employees in the reduction of storm water pollution by sound environmental practices as required by this Article 16.
- B. The following practices are prohibited on Airport property:
- (1) Hosing down any exterior area where wash water will discharge to a storm drain or conveyance ditch: and
  - (2) Washing, waxing, cleaning or repairing vehicles on the Premises.
- C. **Storm Water Pollution Prevention Plan.** Tenant shall provide, upon written request, a Storm Water Pollution Prevention Plan (SWPPP) specific to the Tenant's use of the Premises. Such plan will include: A set of written site, or activity specific best management practices developed to eliminate non-storm water discharges. The SWPPP must eliminate non-storm water discharges to the maximum extent possible or control discharges using the best available control technology. Non-storm water discharges include discharge of any material other than clean storm

water that will lead to pollutants, including sediments, entering the Airport storm water collection system.

#### **17. RESTRICTION ON USE OF PREMISES**

Tenant shall not discharge into the sewer system any substances, of whatever nature, that may prove harmful to the sewage system or require any abnormal treatment by the sewage treatment plant. City reserves the right to enter upon the Premises to take samples and to examine the discharge into the sewer system. If harmful or clogging substances are being discharged, Tenant hereby agrees to install and operate the treatment facilities necessary for the business.

City reserves the right to make rules regulating type and character of sewage that will be deposited in the system, such rules to be in conformity with usual practices.

No flammable liquids or gases shall be stored in the Premises in quantities aggregating more than thirty-five (35) gallons, and said storage shall be in metal cabinets. Oil in sealed containers or in drums with hand operating dispensing pumps shall not be deemed to be flammable liquids.

#### **18. STORAGE AND DISCHARGE OF HAZARDOUS MATERIALS**

- A. **Legal Compliance.** Tenant shall comply with all municipal, state and federal laws, rules and regulations concerning the storage, use, manufacture, disposal, transportation or release of Hazardous Materials on the Premises.
- B. **Definition.** The term "Hazardous Materials" as used in this Agreement shall mean any product, substance or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of City to any governmental agency or third party under any applicable statute or common law theory. Hazardous Materials shall include, but not be limited to, all materials so defined by Title 22 of the California Code of Regulations, any federal law, and, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof.
- C. **Consent Required.** Tenant shall not cause, permit or suffer the storage, use, manufacture or transport of any Hazardous Material on the Premises without the express prior written consent of the City, which consent shall not be unreasonably withheld. Before taking possession of the Premises, Tenant shall provide the City with a business plan describing Tenant's intended use of the Premises and any Hazardous Materials associated with Tenant's intended use of the Premises. City

may condition its consent to store, use, manufacture or transport any Hazardous Material on the Premises upon receiving such additional assurances from Tenant as City reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability including, but not limited to, the procurement of environmental insurance coverage in a form acceptable to City and naming the City as an additional insured, the installation (and removal on or before Agreement expiration or termination) of protective modifications (such as impervious encasements), periodic inspections by City officials or agents to inspect for the presence of Hazardous Materials and to verify compliance with any municipal, state and federal laws, rules and regulations concerning the storage, use, manufacture, disposal of, transport, or release any Hazardous Material on the Premises and/or increasing the security deposit. Any inspection conducted by City or City's agents pursuant to this Agreement shall be for the benefit of City in its proprietary capacity and shall not establish Tenant's compliance with any government rule, regulation or provision of law or estop City from later asserting or enforcing any right or obligation under this Agreement. City may charge Tenant for the reasonable cost of conducting such inspections.

- D. **Notice.** If Tenant knows or has reasonable cause to believe, that a Hazardous Material has come to be located in, on, under or about the Premises, other than as previously consented by City, Tenant shall immediately give written notice of such fact to City, and provide City with a copy of any report, notice, claim or other documentation which Tenant has concerning the presence of such Hazardous Material. Tenant shall provide City with copies of all inspection reports and correspondence by or from all local, state or federal licensing, permitting or regulatory agencies.
- E. **Investigation and Remediation.** Tenant shall not cause or permit any Hazardous Material to be spilled or released in, on, under, or about the Premises (including though the plumbing or sanitary sewer system) and shall immediately, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Material spilled or released onto the Premises during the term of this agreement, by Tenant or any third party. In the course of any recommended or required remediation, Tenant shall properly dispose of any contaminated soil or other material under its own invoice and provide City with a copy of such invoice indicating the proper disposal of such contaminated soil or material.
- F. **Indemnity.** Tenant shall indemnify, defend and hold City, its officers, employees and agents harmless from and against any and all loss, damages, liabilities, judgments, claims, expenses, penalties, costs and attorneys' and consultants' fees



arising out of or involving any Hazardous Material stored, used manufactured, disposed of, transported, or released on the Premises during the term of this Agreement by Tenant or any third party (provided, however, Tenant shall have no liability under this Agreement with respect to underground migration of any Hazardous Material under the Premises from an identified location on a property adjacent to the Premises). Tenant's obligations hereunder shall include, but not be limited to, the effects of any contamination or injury to any person, property or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Agreement, No termination, cancellation or release agreement entered into by City and Tenant shall release Tenant from its obligations under this Agreement with respect to Hazardous Materials, unless specifically agreed to by City in writing at the time of such agreement.

- G. **Final Report.** Upon the expiration or termination of this Agreement or Tenant's possession and occupancy of the Premises for any reason, the City may require Tenant to provide to City, at Tenant's sole cost and expense, a Phase I Environmental Site Assessment in conformance with a protocol recommended by the American Society for Testing and Materials (ASTM) or an equivalent organization and approved by City and conducted by a licensed professional approved by City. If the Phase I Assessment identifies any "Recognized Environmental Conditions" (as defined by ASTM E-1527 or an equivalent protocol) that developed during the term of this Agreement, Tenant shall pay for and provide to City a Phase II Environmental Site Assessment in conformance with a protocol recommended by ASTM or an equivalent organization and approved by City and conducted by a licensed professional approved by City. If the Phase II Environmental Site Assessment identifies soil and/or ground water in, on or under the Premises that contains Hazardous Materials at levels requiring remediation under any municipal, state or federal law, rule or regulation, Tenant shall undertake, at Tenant's sole cost and expense, any and all actions reasonably recommended, whether or not formally ordered, for the cleanup of said contamination and for the maintenance, security and/or monitoring of the Premises or neighboring properties arising out of or involving any Hazardous Material stored, used, manufactured, disposed of, transported or released on the Premises during the term of this Agreement, by Tenant.

## **19. INSPECTION**

City's officers, employees and agents, shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance of Tenant with this Agreement.

Tenant shall not re-key the Premises. Should re-keying of the Premises become necessary due to lost keys or employee turnover, Airport Maintenance will provide such services at a nominal cost to Tenant.

## **20. ALTERATIONS AND IMPROVEMENTS**

Tenant shall make no structural alterations, additions or improvements upon said the Premises, without the prior written consent of City. Any alterations, additions or improvements shall be at the sole cost and expense of Tenant. To prevent voiding roof warranties or guarantees and to maintain correct records by the Airport, any penetration of the roof shall be considered a structural change requiring prior written consent of the Airport Director.

- A. **Ownership:** All alterations, additions or improvements to the Premises made by Tenant shall be the property of Tenant, but considered part of the Premises. Unless otherwise instructed by City, all alterations, additions or improvements shall, at the expiration or termination of this Agreement, become the property of City and shall be surrendered by Tenant with the Premises.
- B. **Removal:** By delivery to Tenant of written notice not later than thirty (30) days prior to the end of the term of this Agreement, City may require Tenant to remove any alterations, additions or improvements that Tenant made to the Premises by the expiration or termination of this Agreement. City may require the removal at any time of all or any part of any alterations, additions or improvements made to the Premises by Tenant without the required consent.
- C. **Surrender:** Tenant shall surrender the Premises with all improvements, parts and surfaces broom clean and free of debris, and in good operating order, condition and repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice. Tenant shall repair any damage occasioned by Tenant's installation, maintenance or removal or any alterations, additions, improvements or equipment on the Premises. Trade fixtures shall remain the property of Tenant and shall be removed by Tenant.

## **21. ADVERTISING AND SIGNAGE**

Tenant may install and operate, at its own expense, only such signs and advertising materials on the Premises as shall be expressly approved by the Airport Director. The Airport Director shall review signs and advertising materials for size, design, color, quality, number, location, content and general conformity with the architectural and general character of the Airport. All signs and advertising materials must comply with all applicable laws, rules, and regulations.

## **22. SUBLETTING AND ASSIGNMENT**

- A. **Assignment During Lease Term.** Either voluntarily or by operation of law, Tenant shall not assign its interest in the Agreement or in all or any part of the Premises or allow any other person or entity (except Tenant's authorized representatives or employees) to occupy or use all or any part of the Premises without the prior written consent of the City.

In giving its consent pursuant to the above paragraph, City shall, in addition to any other reasonable requirements or conditions, require compliance with the following:

- (1) Any proposed assignee or transferee shall have the qualifications necessary and adequate to fulfill the obligations undertaken in the Agreement by Tenant;
- (2) Any proposed assignee or transferee, by instrument in writing, shall have, for itself and its successors and assignees, and expressly for the benefit of City, expressly assumed all of the obligations of Tenant under the Agreement and agreed to be subject to all of the conditions and restrictions to which Tenant is subject; including, but not limited to, providing the City with a personal or corporate guarantee (as the case may be) letter of credit, or other form of leasehold performance security acceptable to the City; provided, however, that the fact that any assignee or transferee of the Agreement (or any other successor in interest whatsoever to the Agreement whatsoever the reason) shall not have expressly assumed such obligations, shall not relieve such transferee from such obligations, conditions or restrictions or deprive or limit City with respect to any rights or remedies or controls with respect to the Agreement, the Premises or the construction of any required improvements. It is the intent of the Agreement, to the fullest extent permitted by law and equity (specifically, Calif. Civil Code Sections 1995.010 et seq.), and excepting only in the manner and to the extent specifically provided otherwise in this Agreement, that no assignment or transfer of this Agreement, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises and the construction of necessary improvements that City would have had, had there been no such transfer or change;
- (3) There has been submitted to City for review, and the City has approved, all instruments and other legal documents involved in effecting the transfer and paid to the City a processing or transfer fee of \$3,000 to reimburse the City for its time (including legal expenses) in reviewing and approving or disapproving the assignment documents.
- (4) Any assignment agreements between Tenant and a proposed new operator shall be in form and substance satisfactory to City; provided, however, that in the

absence of specific written agreement by City to the contrary, no such transfer or approval by City thereof shall be deemed to relieve Tenant or any other party bound in any way by the Agreement or otherwise of or from any term, covenant and condition of this Agreement, including, but not limited to, obligations regarding the construction, maintenance, and reconstruction of any required improvements, or any obligations with respect thereto.

- A. **Transfers By Operation of Law.** If, notwithstanding the provisions of this Section, the Agreement is assigned by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, City shall have a right of first refusal to purchase the Agreement. If any trustee or debtor in possession (collectively "trustee") receives an offer to purchase this Agreement, such trustee shall notify City in writing of the terms of such offer. If City, within thirty (30) days after receipt of such notice indicates in writing its agreement to purchase the Agreement on the terms stated, the trustee shall sell and convey the Agreement to City on the terms stated in the notice. If the City does not indicate its agreement within thirty (30) days, the trustee shall thereafter have the right to assign the Agreement to the party making the offer on the terms of such offer. If such offeror does not purchase the Agreement on such terms and conditions, City shall have a right of first refusal to purchase the Agreement in the event of any later offer for the purchase of this Agreement. If an offeror purchases the Agreement in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, City shall have the option to purchase the Agreement from such party for an amount equal to the amount such party paid for the Agreement (as the case may be), at any time within one (1) year from the date of such offeror's purchase thereof.
- B. **Transfers of Control.** If Tenant is (a) a corporation the stock of which is not publicly traded over a national exchange or (b) an unincorporated association, limited liability company, or partnership, then the transfer, assignment or hypothecation of any stock or ownership interest in such corporation, association, limited liability company or partnership in the aggregate in excess of fifty percent (50%), whether in one or in multiple transactions, shall be deemed an assignment for purposes of this Article 22 which requires the prior written approval of the City, which approval shall be granted upon the same terms and conditions as set forth in Section B of this Article 22.
- C. **General Provisions.** No assignment of any interest in the Agreement made with City's consent, or as herein otherwise permitted, shall be effective until there shall have been delivered to City an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under the Agreement to the end of the term hereof.

The consent by City to an assignment hereunder shall not in any way be construed to relieve Tenant, or an approved assignee, from obtaining the express consent in writing of City to any further assignment.

Notwithstanding an assignment by Tenant hereunder to which City has consented, Tenant shall remain liable for all liabilities and obligations hereunder.

- D. **Subleases.** Tenant covenants not to sublet the Premises or any part thereof, nor to grant any concession to be operated on the premises, nor to assign this Agreement, or any portion of the premises without first obtained the written consent of City, which consent shall not be unreasonably withheld.

### **23. WAIVER OF BREACH**

No waiver by City of any default or breach of any term, covenant or condition on the part of Tenant shall be construed as a waiver of any other term, covenant or condition or of any subsequent default or breach of the same or any other term, covenant or condition; nor shall any custom or practice, which may develop between the parties in the course of administering this instrument, be construed so as to waive or to lessen the right of City to insist upon the performance by Tenant of any term, covenant or condition hereof, or to exercise any rights given them on account of any default.

### **24. DEFAULT, REMEDIES, BREACH**

- A. **Default; Breach.** A "Default" is defined as a failure by Tenant to comply with or perform any of the terms, covenants, conditions or rules under this Agreement. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within any applicable grace period.

- (1) The abandonment of the Premises.
- (2) The failure of Tenant to fulfill any obligation under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) business days following written notice to Tenant.
- (3) The failure of Tenant to make any payment of rent or any other amount required under this Agreement where such failure continues for a period of five (5) days following written notice to Tenant.
- (4) The failure of Tenant to observe and comply with any of the terms, covenants or provisions of this Agreement, except those terms, covenants and conditions covered in Subsections 1-5 of this Subsection A or any applicable laws, covenants or restrictions of record, building codes, regulations and ordinances in

the occupancy and use of the Premises where the failure continues for a period of more than ten (10) days following written notice to Tenant; provided, however, if the nature of the Default is such that more than ten (10) days is reasonably required for its cure, then it shall not be deemed to be a Breach if Tenant commences such cure within the ten (10) day period and thereafter diligently prosecutes the cure to completion.

- (5) The occurrence of any of the following events: (a) the making of any general arrangement or assignment for the benefit of creditors; (b) becoming a “debtor” as defined in 11 U.S.C. § 101 or any successor statute thereto; (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets located at the Premises or Tenant’s interest in this Agreement, where possession is not restored to Tenant within thirty (30) days; the attachment, execution or other judicial seizure of substantially all of Tenant’s assets located at the Premises or Tenant’s interest in this Agreement, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect and shall not affect the validity of the remaining provisions.

#### **B. Remedies.**

- (1) **Termination Upon Two or More Defaults.** In the event City issues two (2) or more notices of Default to Tenant in any twelve (12) month period, City may terminate Tenant’s right to possession of the Premises by any lawful means, in which case this Agreement and term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Tenant:
- (a) The worth at the time of award of any unpaid rent and other charges which had been earned at the time of such termination; and
  - (b) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by City in maintaining or preserving the Premises after such default, preparing the Premises for re-letting to a new Tenant and any repairs or alterations to the Premises.
- (2) **Breach.** In the event of a Breach of this Agreement by Tenant, with or without further notice or demand, and without limiting City in the exercise of any right or remedy which City may have by reason of such Breach, City may:

- (a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Agreement and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Tenant:
  - (i) The worth at the time of award of any unpaid rent and other charges which had been earned at the time of such termination; and
  - (ii) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by City in maintaining or preserving the Premises after such default, preparing the Premises for re-letting to a new Tenant and any repairs or alterations to the Premises.
  
- (3) **Performance by City on Tenant's Behalf.** If Tenant fails to perform any affirmative duty or obligation of Tenant under this Agreement, within the grace period assigned above (or in the case of an emergency without notice). City may at its option (but without obligation to do so), perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by City shall be due and payable by Tenant to City upon invoice therefore. If any check given to City by Tenant or any permitted transferee shall not be honored by the bank upon which it is drawn, City, at its own option, may require all future payments to be made under this Agreement by Tenant or any permitted transferee to be made only by cashier's check.
  
- (4) **Remedies Not Exclusive.** No right or remedy herein conferred upon or reserved to City or Tenant is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.
  
- (5) **Waiver of Rights of Redemption.** Tenant hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (a) to redeem the Premises after termination of Tenant's right of occupancy by order or judgment of any court or by any legal

process or writ or (b) which exempts property from liability for debt or for distress for rent.

- C. **Default by City.** In the event City shall fail to perform or observe any of the covenants or provision contained in this Agreement on the part of City to be performed or observed within thirty (30) days after written notice from Tenant to City specifying the particulars of such default or breach of performance, or if more than thirty (30) days shall be reasonably required because of the nature of the default, if City shall fail to proceed diligently to cure such default after such notice, then in that event, Tenant shall have all rights and remedies provided by law.

## **25. DAMAGE OR DESTRUCTION**

If during the term of this Agreement the Premises is:

- A. **Destroyed**, then this Agreement shall cease and terminate. The term “Destroyed” is defined as the destruction of the safe, tenantable use or occupancy of the Premises.
- B. **Damaged in excess of forty percent (40%)**, then City or Tenant may elect to terminate this Agreement. City or Tenant shall exercise this election within thirty (30) days of the event of damage by delivering written notice of the election to the other party. If either City or Tenant elect to terminate this Agreement, this Agreement shall cease and terminate as of the effective date of the notice as established by Article 30, “NOTICES”. Tenant shall surrender the Premises within ten (10) days from the effective date of the termination.

The term “Damaged in excess of forty percent (40%)” is defined as damage to the Premises, including improvements, (excluding damage solely by water used in extinguishing fire) that will require an expenditure in excess of forty percent (40%) of the market value of the Premises (measured prior to the damage) in order to make the necessary repairs.

- C. **Damages to an extent less than forty percent (40%)**, or in excess of forty percent (40%) and neither City nor Tenant exercise their option to terminate this Agreement, then City shall:
- (1) Repair the Premises with due diligence, and this Agreement shall continue to full force and effect subject only to a reduction in rental from the date of the damage and until the repairs have been completed. The reduced rent shall be based upon the proportion of the Premises which Tenant shall be reasonably able to use in continuing Tenant’s business during the time the repairs are being made;  
or



- (2) Elect not to repair the improvement and amend the Lease to remove that portion of the Premises which Tenant will no longer be able to use for its leased purposes and proportionally reduce the rent; provided, however, Tenant shall thereupon have the right to terminate this Lease by thirty (30) days written notice to the City if it determines the remaining portion of the Premises is not sufficient for its purposes.

## **26. SURRENDER; HOLDING OVER**

- A. **Surrender of the Premises.** At the end of the term or other sooner termination of this Agreement, Tenant shall surrender possession of the Premises to City.
- B. **Holding Over.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Agreement. In the event that Tenant holds over, then the rent shall be increased to one hundred fifty percent (150%) of the rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by City to any holding over by Tenant.

## **27. PEACEABLE POSSESSION**

City agrees that Tenant, paying the rental and performing the covenants herein contained on Tenant's part to be paid, observed, kept and performed, Tenant shall and may, peaceably and quietly have, hold and enjoy said Premises during the term aforesaid. Tenant, in turn, agrees to quit and deliver up possession of said Premises peaceably and quietly at the expiration of said term, or any sooner termination as contained within this Agreement.

## **28. REPRESENTATION**

Tenant hereby affirms that this Agreement is entered into upon the sole reliance of Tenant's own observations and not because of any influence or representation of City or any other person.

## **29. SUCCESSORS**

This Agreement is intended to and does bind and shall inure to the benefit of all the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

## **30. NOTICES**

All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by

regular, certified or registered mail with the U.S. Postal Service, with postage prepaid, and shall be deemed sufficiently given if served in the manner specified herein. If such notice is intended for City it shall be addressed to:

Airport Director,  
Airport Department  
601 Norman Firestone Road  
Santa Barbara, CA 93117

and if intended for Tenant it shall be addressed to:

\_\_\_\_\_  
101 Cyril Hartley Place  
Santa Barbara, CA 93117

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Notices sent by regular mail shall be deemed given forty-eight (48) hours after the date of deposit in the United States Postal service and mailed postage prepaid. Notices sent by overnight courier services that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received on Saturday, Sunday or a legal holiday, it shall be deemed received on the next business day.

### **31. COMPLETE UNDERSTANDING AND AMENDMENTS**

This Agreement sets forth all of the agreements and understandings of the parties and any modification must be written and properly executed by both parties.

### **32. NONINTERFERENCE WITH OPERATION OF AIRPORT**

Tenant covenants and agrees that it will not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the operation, or maintenance of the Airport or its facilities; nor will Tenant use or permit the Premises to be used in any manner which might interfere with landing and take-off of aircraft from the Airport or otherwise constitute a hazard.

If any proscribed or prohibited condition or activity, as described above, shall be permitted to exist on the Premises, or on any part thereof, then, as an alternative to termination of this Agreement under the provisions of Article 33, "SUBORDINATION TO RIGHTS OF FEDERAL GOVERNMENT", the City, after giving thirty (30) days written notice to Tenant, during which period Tenant may abate or correct the omission or objection so set forth in City's notice, may thereupon correct such omission or objection by entering the Premises itself, or by its agents, servants or employees, without such entering causing or constituting a termination of this Agreement or an interference with

possession of the Premises by Tenant, and the City may cause abatement of such proscribed or prohibited condition or activity; and, in such event, the Tenant agrees to pay the City the expenses of the City incurred in the above connection as additional rent within thirty (30) days after the submission of an invoice showing the reasonable expenditure or the incurring of any such reasonable expenditure by the City.

### **33. SUBORDINATION TO RIGHTS OF FEDERAL GOVERNMENT**

It is understood and agreed that Tenant accepts all of the terms of this Agreement subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operations, regulation or taking over of said Airport; and Tenant agrees to hold harmless and without liability the City in the event that the United States Government, for any reason, exercises any such right, resulting in the City being unable to comply with any or all of the terms of this Agreement.

This Agreement and all of the provisions hereof shall be subject and subordinate at all times to all of the terms and conditions of the instruments and documents under which City acquired said leased property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with such terms and conditions.

### **34. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

In addition to the foregoing terms, covenants and conditions of this Agreement, the following covenants and agreements are hereby made an integral part of this Agreement by reason of the requirements of the Federal Aviation Administration:

- A. **Compliance with requirements of Department of Transportation.** Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
  
- B. **Discrimination prohibited.** Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the

- construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- C. **Breach.** That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate the Agreement and to reenter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.
- D. **Accommodations, services.** Tenant shall furnish its accommodations and/or services on a fair equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- E. **Non-compliance with Section D.** Non-compliance with Section D. above shall constitute a material breach thereof and in the event of such non-compliance City shall have the right to terminate this Agreement and the estate hereby created without liability therefore or at the election of City or the United States either or both said Governments shall have the right to judicially enforce those provisions.
- F. **Agreements with Tenant.** Tenant agrees that it shall insert the above five provisions in any agreement, contract, etc. by which said Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the leased Premises.
- G. **Affirmative Action.** Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant 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. Tenant assures that it will require that its covered sub-organizations provide assurances to Tenant that they similarly will undertake affirmative action programs

and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effort.

- H. **Future Development.** City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Tenant, and without interference or hindrance.
- I. **Right to repair.** City reserves the right, but shall not be obligated to Tenant 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 the Tenant in this regard.
- J. **Subordinate to right of United States Government.** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.
- K. **Right of flight.** There is hereby reserved to City, its successors and assigns, 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 Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Santa Barbara Municipal Airport.
- L. **Approach protection.** Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises, or in the event of any planned modification or alteration of any present or future construction of a building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
- M. **Maximum elevation, right to cure.** Tenant by accepting this Agreement expressly agrees for itself, its successors and assigns that it will not erect or permit the erection of any structure or project, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of 147 feet.
- N. **Interference with Operations.** Tenant by accepting this Agreement agrees for itself, its successors and assigns that it will not make use of the Premises in any manner, which might interfere with the landing and taking off of aircraft from the Santa Barbara Municipal Airport or otherwise constitute a hazard.

In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Tenant.

- O. **Exclusive use prohibited.** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).
- P. **War or National Emergency.** This Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

### **35. CONSTRUCTION DURING TERM**

It is understood by Tenant that dirt and dust will be created from time to time by the maintenance or construction of the Airline Terminal and associated facilities. Due to the close proximity of the Premises to said maintenance or construction, the Premises and any vehicles parked in the designated area adjacent to the Premises may be subject to dirt and dust. Tenant accepts this condition without reservation as part of this Agreement and as such, shall not be entitled to a reduction in its fees to City as a result of any dirt and dust landing on Tenant's office space or vehicles.

Tenant further understands that construction may cause inconvenience and disruption of business. Tenant accepts this condition without reservation as part of this Agreement and as such, shall not be allowed any compensation or reduction in its fees to City for losses suffered as a result of said construction.

### **36. CORPORATE AUTHORITY**

If Tenant signs as a corporation, Tenant covenants that each of the persons executing this Agreement on behalf of Tenant is a duly authorized and existing officer of the corporation, that Tenant has, is and shall remain during the term of this Agreement qualified to do business in the State of California, that the corporation has full right and authority to enter into this Agreement and that each, both or all of the persons signing on behalf of the corporation were authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties.

**37. NO JOINT VENTURE**

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other party or cause City to be responsible in any way for the debts or obligations of Tenant or any other party.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the day and year first written above.

**CITY OF SANTA BARBARA,  
a Municipal Corporation**

\_\_\_\_\_,  
a \_\_\_\_\_ Corporation

\_\_\_\_\_  
Hazel Johns  
Acting Airport Director

\_\_\_\_\_  
Signature

APPROVED AS TO FORM:  
Ariel P. Calonne  
City Attorney

\_\_\_\_\_  
Type or Print

By \_\_\_\_\_  
Sarah J. Knecht  
Assistant City Attorney

\_\_\_\_\_  
Title

BUSINESS TAX COMPLIANCE:  
Certificate No. \_\_\_\_\_

\_\_\_\_\_  
Address

By \_\_\_\_\_

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Risk Manager

\_\_\_\_\_  
Phone Number