GROUND LEASE, LICENSE, AND OPERATING AGREEMENT

BETWEEN

NAPA COUNTY and SKYSERVICEUS CALIFORNIA LLC

NAPA COUNTY AGREEMENT NO. 230234B

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GROUND LEASE, LICENSE, AND OPERATING AGREEMENT

This Ground Lease, License, and Operating Agreement ("Agreement") dated this _____ day of _____ 2022 (the "Effective Date") is made by and between NAPA COUNTY, a political subdivision of the State of California, ("County") and SKYSERVICEUS CALIFORNIA LLC, a Delaware limited liability company authorized to do business in the State of California ("Lessee") and subsidiary of LEADING EDGE JET MIDCO LLC, dba SKYSERVICE US, a Delaware company.

RECITALS

WHEREAS, County is the owner and operator of the Napa County Airport ("Airport"); and

WHEREAS, County is empowered to grant the right and privilege to be a Fixed Base Operator at the Airport; and

WHEREAS, County is obligated by its Federal Aviation Administration (FAA) Grant Assurances to among other things, be as financially self-sustaining as possible, promote competition, and not grant exclusive rights; and

WHEREAS, County desires to promote competition in the Fixed Base Operator business and further the goals of those FAA Grant Assurances through the execution of this Lease; and

WHEREAS, Lessee understands and agrees with the County's intent to allow for competition of aeronautical service providers as encouraged by the FAA, and Lessee shall compete with, and not seek to merge, acquire, or otherwise control the County's other Fixed Base Operator, its successors, or assigns, or any other Fixed Base Operator that the County may, in its sole discretion, authorize to engage in such business at the Airport; and

WHEREAS, Lessee desires to receive the privilege of leasing the Premises and operating a FBO, as more particularly described herein;

NOW THEREFORE, in consideration of the terms, conditions, covenants and provisions contained in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions

Unless more precisely defined within this Agreement, capitalized terms shall have the meanings set forth in the Napa County Airport Rules and Regulations adopted by Napa County Ordinance No. 1437 on June 7, 2019. The following words, terms, or phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the meanings set forth below, unless this Agreement clearly indicates otherwise:

1.1. Activity Fee(s)

Activity Fee(s) means any reasonable fees or charges imposed by County on any and all classes of persons, firms, or organizations for the privilege of using the Airport Operations Area (e.g., landing fees and parking fees), or of entering upon the Airport to conduct business thereon, (e.g., use fees), which fees and charges are imposed on a nondiscriminatory basis for the privilege of using or entering upon the Airport. The term "Activity Fees" shall, for purposes of this Agreement, be the fees and charges referenced in Section 5.5 below. The amounts of Activity Fees shall be determined in accordance with fee schedules adopted by the Napa County Board of Supervisors, or if there is no applicable fee adopted, then pursuant to agreement of the Parties.

Lessee's payment of Activity Fees shall not affect Lessee's obligation to pay the Rent, any other Fees, and Charges as provided in this Agreement.

1.2. Adjacent FBO

Adjacent FBO means the FBO with a ground lease, license, and operating agreement for the areas on Exhibit A depicted as the South FBO.

1.3. Agreement

Agreement means this Ground Lease, License, and Operating Agreement between County and Lessee.

1.4. Airport

Airport or APC means the Napa County Airport, located in unincorporated Napa County, together with any appurtenant properties and/or facilities associated therewith, as the same may from time to time be enlarged, diminished, or otherwise modified.

1.5. Air Operations Area

Air Operations Area ("AOA") means those airfield/airside areas inside of the perimeter secured boundary of the Airport utilized for runways, taxiways, ramps, aprons, and movement of aircraft, as said areas may now exist or as they may be modified.

1.6. Base Rent / Primary Premises Rent / Pioneering Period Rent / Non-Exclusive License Area Fee

Base Rent means the combined total of Primary Premises Rent, Pioneering Period Rent, and Non-Exclusive License Area Fee as each is calculated pursuant to this Section and paid by Lessee in accordance with Section 5 of this Agreement.

Primary Premises Rent shall be calculated by using the per square foot rates set forth in Exhibit B-1, as may be administratively amended upon incorporation of legal descriptions of Primary Premises, multiplied by the combined actual square footage of those segments of the Primary Premises defined in Subsections 3.1, 3.3, 3.4, 3.5, and 3.6 that have been transferred to Lessee and incorporated into the Primary Premises pursuant to Section 3. The Primary Premises Rent

shall be subject to a CPI increase annually as of 6-years from the Effective Date and, at County's discretion, by appraisal every 5 years, as set forth in Section 5.2 below.

Pioneering Period Premises Rent, which shall be included in the Base Rent until the Pioneering Period Premises are surrendered to County at the end of the Pioneering Period in accordance with this Agreement, shall be calculated by using the per square foot rates for each portion of the Pioneering Premises as set forth in Exhibit B-2 multiplied by the actual square footage of those respective portions of the Pioneering Premises as set forth in Subsection 3.2. The Pioneering Premises Rent shall be subject to a CPI increase annually as of the Effective Date.

The Non-Exclusive License Area Fee, shall be calculated by using the per square foot rates set forth in Exhibit C-1, as may be administratively amended upon incorporation of legal descriptions of Non-Exclusive License Area, multiplied by the combined actual square footage of those segments of the Non-Exclusive License Area directly abutting those segments of the Primary Premises defined in Sections 3.3, 3.4, and 3.5. The Non-Exclusive License Area Fee is subject to a CPI increase annually as of the Effective Date and, at County's discretion, by appraisal every 5 years, in the same manner as provided for Rent in Section 5.2 below.

1.7. **Board of Supervisors**

Board of Supervisors means the Napa County Board of Supervisors.

1.8. **Business Day**

Business Day means any day other than a Saturday, Sunday, or County holiday when County offices are scheduled to be closed to the public.

1.9. **Certificate of Occupancy**

Certificate of Occupancy means any final certificate of occupancy issued by the County which allows the occupancy and use of a building for its intended purpose.

1.10. **Construction Contract**

Construction Contract means any general contract between Lessee and any general contractor to perform Work at the Premises.

1.11. **County Code**

County Code means the Napa County Code, as amended from time to time.

1.12. **County Fiscal Year**

The accounting period of the County beginning July 1st and ending June 30th.

1.13. **County Relocation Project**

The entire area constituting the Primary Premises shall not be available or transferred to Lessee's possession as of the Effective Date of this Agreement as the County needs to relocate some

existing facilities to ensure ongoing Airport operations. The County's Relocation Project includes the County relocating its existing offices out of the pre-existing terminal building, demolishing the pre-existing terminal building, vacating its storage facilities, ensuring the relocation of the self-serve island, realignment of a section of sanitary sewer main, and relocating the airfield electrical vault and associated electrical lines that run under a portion of the Premises and a rotating beacon. Collectively these County projects shall be known as the County Relocation Project.

1.14. **Days**

Days, unless otherwise specified in this Agreement, shall mean calendar days.

1.15. **Director**

Director shall mean the Director of Public Works who serves as the Director of Aviation, or other position identified during the Term as the Director of Aviation by a future resolution of the Board of Supervisors. The term shall also include the Airport Manager to the extent designated in writing by the Director of Public Works or subsequently named Director of Aviation (to exercise those rights and/or obligations empowered in the Director under this Agreement.)

1.16. **Effective Date**

This Agreement shall be effective as of the date set forth in the Preamble, which shall be the date of execution by the County (the "Effective Date").

1.17. **E & I Costs**

Costs for design review, engineering, construction coordination, and inspections.

1.18. **Environmental Laws**

Environmental Laws means and includes all applicable federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and applicable federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or superlien or environmental clean-up statutes.

1.19. **Event of Default**

Event(s) of Default includes, but is not limited to, those events described in Section 13 of this Agreement.

1.20. **Expiration Date**

Expiration Date means the date thirty (30) years from the Effective Date, subject to option terms

and earlier termination as provided in this Agreement.

1.21. **Fixed Base Operator or FBO**

Fixed Base Operator or FBO has the meaning set forth in the Napa County Airport Rules and Regulations.

1.22. **Force Majeure**

Force Majeure means any act of God (including without limitation fires, explosions, earthquakes, drought, tidal waves and floods); labor strike, lockout, or regional inability to procure fuel, materials, equipment, or labor; riot; local, state or national emergency; pandemic; war or warlike act (including without limitation cyber or physical invasion, act of foreign enemies, mobilization, requisition, embargo, rebellion, revolution, insurrection, military or usurped power, or civil war) or terrorist act; contamination, any electrical blackout or brownout for an extended duration; any failure or defect in the supply, quantity or character of electricity or water furnished to rate payers; or other serious incident. Such Force Majeure events and the period of time that the event(s) will have taken place shall be those recognized by the Director in writing.

1.23. **Fuel Flowage Fees**

Fuel Flowage Fee(s) means any fee(s) or charge(s) imposed by County for the privilege of engaging in the retailing or delivery of fuel petroleum products (both aviation and non-aviation type), lubricants, and propellants on the Premises or on authorized locations on the Airport. Any such Fuel Flowage Fee(s) will be established and revised from time to time by the County. Lessee's payment of any such Fuel Flowage Fee(s) shall not be offset against any Rent, fees, or charges otherwise due pursuant to this Agreement, except to the sole extent the Fuel Flowage Fees paid by Lessee are attributed towards meeting the Fuel Flow Minimum Annual Guarantee ("Fuel MAG") set forth in Section 5.6.

1.24. **Hazardous Materials**

Hazardous Materials means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or become listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court with jurisdiction over the Premises; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.25. **Incurable Default**

Incurable Default means a default by Lessee detailed in Sections 13.1.7, 13.1.10, or 13.1.16 that,

notwithstanding any provisions to the contrary in this Agreement, Lessee is not entitled to attempt to cure.

1.26. **Interim Facility**

Interim Facility means any facility approved by the Director intended to satisfy Lessee's requirements during the Pioneering Period. Any Interim Facility shall meet all applicable building and fire codes as evidenced through a building permit issued by the County's Building Division.

1.27. **Large Hangar**

Large Hangar means the 20,000 square feet (SF) commercial hangar situated on a leased area of approximately 58,236 SF located at 3030 Airport Rd. Napa, CA 94558, which is further depicted in Exhibit A-3.

1.28. **Laws**

Laws means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, fire codes, Airport Rules and Regulations as amended from time to time, orders and requirements and policies of all governmental authorities including without limitation County, state, municipal, or the federal government including the FAA and federal agencies, and their departments, boards, bureaus, commissions, and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

1.29. **Leasehold Improvements**

Leasehold Improvements means Lessee's capital improvements to be constructed by Lessee on the Premises pursuant to Section 6 of this Agreement.

1.30. **Lessee Address**

Lessee Address means the following information for notices to Lessee in addition to the notices requirements set forth in Section 39 below:

Name:	Ty Dubay
Title:	Manager
Mail Address:	211 King Street, Suite 310 Charleston, SC 29401
Telephone:	513.720.4882
E-mail Address: (email Notices cannot be used in lieu of Notice Required under Section 39 of this Agreement)	ty_dubay@skyservice.com

1.31. **Minimum Standards**

Minimum Standards means the Airport's General Aviation Minimum Standards adopted May 7, 2019.

1.32. **Non-Exclusive License Areas**

The Non-Exclusive License Areas are those areas depicted in Exhibit A-2 between the Primary Premises and the Adjacent FBO's leasehold and between the Primary Premises and the edge of the Movement Area. The Non-Exclusive License Areas are anticipated to (1) directly benefit Lessee's use of the Premises, and (2) be regularly used by the County, Lessee, Adjacent FBO, and other Airport users. Accordingly, the Non-Exclusive License Areas shall remain under the County's possession throughout the Term. Those Non-Exclusive License Areas (North FBO Non-Exclusive License Areas NE1, NE2, and NE3) with a coincident boundary with the Primary Premises and depicted in Exhibit A-2 by the same name shall be referred to collectively herein as the North FBO Non-Exclusive License Area and each shall be legally defined in Exhibit C. Those Non-Exclusive License Areas (South FBO Non-Exclusive License Areas NE1, NE2, and NE3) with a coincident boundary with the Adjacent FBO and depicted in Exhibit A-2 by the same name shall be referred to collectively herein as the South FBO Non-Exclusive License Area. These naming conventions shall not convey any additional or unique rights over any portion of the Non-Exclusive License Areas and are referenced as such herein solely in connection with the additional fees, reconstruction, striping, and maintenance obligations of those portions of the Non-Exclusive License Area required of Lessee under this Agreement.

1.33. **Party or Parties**

Party or Parties means, as applicable, County and/or Lessee, and their respective permitted successors and assigns.

1.34. **Permitted Activities**

Permitted Activities means Lessee's use of the Premises as provided for in Section 4 of this Agreement.

1.35. **Person**

Person means an individual, a corporation, a limited liability company, a partnership, a joint venture, a trust, or any other legal entity or form of business association.

1.36. **Pioneering Period**

In accordance with Section 1.5 of the Minimum Standards, the County is allowing a Pioneering Period where Lessee can operate for a period of time under terms and conditions less than those set forth within the Airport's Minimum Standards. The Pioneering Period for this Agreement shall run from the Effective Date until 31 months after the Effective Date. The County will diligently pursue completion of the County Relocation Project and both Parties understand the Work on the hangar and terminal required under the Leasehold Improvements cannot begin until the County Relocation Project is completed; however, if the County Relocation Project is not

completed by 16 months after the Effective Date, the Pioneering Period and the dates for Lessee's milestones/requirements set forth in Exhibit F shall each be extended by one day for each day that the Notice of Completion for the County Relocation Project is recorded beyond 16 months after the Effective Date. If delays of the completion of County Relocation Project exceed twelve (12) months, the Parties shall administratively amend this Agreement to reflect such extension of completion of the project and day-for-day extension of the Pioneering Period and dates for Lessee's milestones/requirements set forth in Exhibit F. If such an amendment is necessary, the scope of the amendment shall be limited to changing the duration of the Pioneering Period. The Pioneering Period shall also be extended by one day for each day that a force majeure exists that delays Lessee's Progress of Work.

1.37. **Plans and Specifications**

Plans and Specifications means the plans, blueprints, drawings, and construction specifications prepared by a licensed professional (architect, professional engineer, landscape architect, etc.) to be approved by the County's Building Division for construction of Lessee's Improvements.

1.38. **Rules and Regulations**

Rules and Regulations shall mean those Napa County Airport Rules and Regulations adopted by the Board of Supervisors by ordinance and incorporated into the Napa County Code by reference. The Rules and Regulations in effect at the execution of this lease were adopted by Napa County Ordinance No. 1437 on June 7, 2019.

1.39. **Work**

Work shall mean Lessee's construction, installation, repair, replacement, expansion, alteration, modification, demolition, or removal of any materials or Leasehold Improvements on the Premises.

Section 2. Term

The Term of this Agreement shall commence on the Effective Date and shall continue through the Expiration Date, unless the Agreement is terminated earlier in accordance with the terms of this Agreement. Lessee shall have the option to extend the Lease for up to two (2) consecutive, five (5) year periods (the "Option Terms") provided Lessee is not in default and has met Capital Investment Requirements in Section 6.1.2 of this Agreement. Lessee shall provide written notice of their intent to extend the Agreement no more than twelve (12) months and no less than nine (9) months prior to the Expiration Date. During the Option Terms, rents, fees, and charges shall continue to be adjusted pursuant to Section 5 of this Agreement.

Section 3. Premises

The combination of the Initial Primary Premises, Pioneering Period Premises (until those Pioneering Premises may be surrendered to the County at the end of the Pioneering Period), Supplemental Primary Premises No. 1, Supplemental Primary Premises No. 2, Supplemental Primary Premises No. 3, and Supplemental Primary Premises No. 4 in Lessee's possession pursuant to this Section shall be collectively known as the "Premises." The Premises as depicted

in Exhibit A-1, A-2, and A-3 and described in sections 3.1, 3.3, 3.4, 3.5, and 3.6 are preliminary and approximate. County will have legal descriptions of the Premises (excluding the Pioneering Period Premises) prepared by a licensed surveyor, at County's sole cost and expense, after execution of this Agreement and after submittal by Lessee of 30% civil improvement plans prepared by a professional civil engineer. Through execution of this Agreement, the Parties authorize the Director of Public Works to administratively amend this Agreement by swapping out the exhibits to incorporate the final legal description of Premises as Exhibit B and any resulting changes associated with depictions and Base Rent, Primary Premises Rent, and Non-exclusive License Area Fee in Exhibits A-1, A-2, A-3, B-1 and C-1, that may result from the final calculated areas.

The Premises shall be used by Lessee solely for the Permitted Activities. It is mutually agreed that Lessee's use and occupancy of the Premises is subject to the terms, covenants, and conditions hereof, and that Lessee covenants, as a material part of the consideration of this Agreement, to keep, perform, and observe each and all of said terms, covenants, and conditions.

3.1. **Initial Primary Premises**

The Initial Primary Premises shall consist of 20,000 [APPROXIMATE] square feet identified and generally depicted in Exhibit A as "Fuel Farm Expansion" and in Exhibit A-1. The legal description of the Initial Primary Premises shall be incorporated into Exhibit B of this Agreement by administrative amendment in accordance with Section 3. Subject to the terms and conditions herein, County leases to Lessee, and Lessee leases from County, the Initial Primary Premises from the Effective Date until the Expiration Date plus any Option Term(s).

3.2. **Pioneering Period Premises**

The Pioneering Period Premises shall consist of approximately 5,000 square feet as generally depicted in Exhibit A-2 [with final square footage to be determined by Director] to accommodate Lessee's Interim Facility (terminal building and associated vehicle parking). Subject to the terms and conditions herein, County leases to Lessee, and Lessee leases from County, the Pioneering Period Premises for the Pioneering Period.

3.3. **Supplemental Primary Premises No. 1**

Supplemental Primary Premises No. 1 shall consist of 196,350 [APPROXIMATE] square feet identified as "North FBO – SP1" and generally depicted in Exhibit A-2. The legal description of the Supplemental Primary Premises No. 1 shall be incorporated into Exhibit B of this Agreement by administrative amendment in accordance with Section 3. Subject to the terms and conditions herein, the Supplemental Primary Premises No. 1 shall be a part of Lessee's Premises from the date Lessee completes the Fuel Farm, including all those approvals included in Section 6.4, until the Expiration Date plus any Option Term(s).

3.4. **Supplemental Primary Premises No. 2**

Supplemental Primary Premises No. 2 shall consist of 129,800 [APPROXIMATE] square feet identified as "North FBO – SP2" and generally depicted in Exhibit A-2. The legal description of

the Supplemental Primary Premises No. 2 shall be incorporated into Exhibit B of this Agreement by administrative amendment in accordance with Section 3.

Lessee acknowledges that County has an existing license agreement – Napa County Agreement No. 200377B (formerly No. 6163) – with Napa Jet Center, Inc. ("Licensee") for an Avgas self-serve fuel facility ("Self-Serve Facility") that is currently located in Supplemental Primary Premises No. 2. Licensee operates and maintains the Self-Serve Facility, which is regularly accessed by the public. Under the terms of Napa County Agreement No. 200377B, as amended, Licensee is obligated to relocate the Self-Serve Facility outside of the Premises by December 31, 2022. Lessee also acknowledges that Licensee, its contractors, employees, and assigns, as well as the general public and associated aircraft, shall have access across Supplemental Primary Premises No. 2 to the Self-Serve Fuel Facility from the effective date of this Agreement until receiving written notice from the Director that the Self-Serve Facility has been relocated.

Subject to the terms and conditions herein, the Supplemental Primary Premises No. 2 shall be a part of Lessee's Premises from the date County provides notice to Lessee of the completion of all or portions of the County's Relocation Project until the Expiration Date plus any Option Term(s).

3.5. **Supplemental Primary Premises No. 3**

Supplemental Primary Premises No. 3 shall consist of 85,700 [APPROXIMATE] square feet made up of that area identified as "North FBO – SP3" and generally depicted in Exhibit A-2. The legal description of the Supplemental Primary Premises No. 3 shall be incorporated into Exhibit B of this Agreement by administrative amendment in accordance with Section 3. Subject to the terms and conditions herein, the Supplemental Primary Premises No. 3 shall be a part of Lessee's Premises from the date County provides notice to Lessee of the completion of all or portions of the County's Relocation Project until the Expiration Date plus any Option Term(s).

3.6. **Supplemental Primary Premises No. 4**

Supplemental Primary Premises No.4 shall consist of 58,236 [APPROXIMATE] square feet made up of that area identified as 20,000 square feet "Large Hangar" and approximately 38,236 square feet of surrounding area generally depicted in Exhibit A-3. The legal description of the Supplemental Primary Premises No. 4 shall be incorporated into Exhibit B of this Agreement by administrative amendment in accordance with Section 3. Subject to the terms and conditions herein, the Supplemental Primary Premises No. 4 shall be a part of Lessee's Premises from the date of Lease execution until the Expiration Date plus any Option Term(s). At the end of the Pioneering Period, the onsite fuel tank and dispensing equipment will revert to County and will be removed at County's expense within 120 days.

3.7. **Condition of Premises**

3.7.1. **"As Is" Condition**

Lessee has carefully examined the current condition of the Premises, is satisfied with the current condition of the Premises, and understands that when each portion of the Premises is transferred

to Lessee pursuant to the timeframes and events set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6 those Premises will be handed over in an “as is” condition, except as otherwise set forth herein. The County will demolish the existing terminal building (building 23 within Exhibit A) and will deliver the site with a finish grade two inches below the adjacent concrete and asphalt. Lessee shall be responsible for the demolition of buildings 25 and 26 as shown within Exhibit A. To the County’s knowledge, the operation of the Premises prior to the Effective Date has been in compliance with all requirements of Exhibit D in connection with the existence, storage, use, release, and/or disposal of Hazardous Materials on the Premises and all other obligations or requirements under any Environmental Laws relating to the Premises. The County represents that the demolition of the existing terminal building will be conducted in compliance with Environmental Laws relating to the Premises.

Lessee acknowledges that no representation or warranty has been made by County concerning the nature, quality or suitability of the Premises for the Permitted Activities, or for any other purpose. Subject to County’s obligations hereunder, Lessee accepts the Premises "as is", and as being in good, safe, and sanitary condition satisfactory for Lessee's use. Lessee assumes all risk and costs related to the development of the Leasehold Improvements and Lessee’s operation and Lessee represents that it has made sufficient investigation with regard to construction of its planned improvements and any other matters relating to the planned Leasehold Improvements and any other matters related to the Permitted Activities and the Premises to satisfy itself of all matters related thereto. No rights, easements or licenses, implied or otherwise, are or shall be acquired by Lessee hereunder except as expressly set forth in this Agreement. Without limiting the foregoing, Lessee acknowledges that, except as otherwise set forth herein, County has made no representation or warranty regarding the existence of any Hazardous Materials in, on, upon, under or about the Premises or the Airport.

3.7.2. **CEQA/NEPA**

Lessee acknowledges that it has reviewed and will comply with CEQA, including the CEQA environmental documents, inclusive of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) prepared for and Notice of Determination filed in connection with the Napa County Airport Terminal Area Redevelopment Project, as prepared by the County’s consultant and attached hereto as Exhibit H. Lessee shall coordinate with County, including expeditiously providing all information requested by the County to secure those NEPA approvals needed in advance of initiating construction on the hangars and terminal building required as part of the Leasehold Improvements.

3.8. **Release**

3.8.1. Lessee hereby waives, releases, remises, acquits and forever discharges County, its elected officials, employees, and agents, successors and assigns, of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Lessee shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of: (i) County's use, maintenance, ownership and operation of all or any portion of the Premises prior to

the Effective Date or transfer of possession to Lessee for those portions of the Premises that occur at a later date in accordance with the Agreement; or (ii) the condition, status, quality, nature, contamination or environmental state of all or any portion of the Premises as of the dates each portion is transferred as set forth in Section 3.7.1, except as otherwise set forth herein. It is the intention of the Parties to this Agreement that any and all responsibilities and obligations of County, and any and all rights or claims of Lessee against County, its successors and assigns and affiliated entities, arising by virtue of the physical or environmental condition of all or any portion of the Premises are by this release provision declared null and void and of no present or future effect as to such parties, except as otherwise set forth herein. Lessee agrees as to the matters released to waive the benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in [creditor's] favor at the time of executing the release, which if known by [creditor] must have materially affected [creditor's] settlement with the debtor."

3.8.2. In the event any Hazardous Material found on, under or incorporated into the ground portion of the Premises are determined to have been placed or discharged thereon by persons other than County or Lessee, County and Lessee agree to cooperate with each other in the pursuit of all reasonably available remedies to ensure that financial responsibility for the costs of any required cleanup is borne by such third parties to the extent such third parties are legally responsible.

3.9. Use of Non-exclusive License Area

Lessee may use the Non-exclusive License Area for access to and from the Premises, without unreasonably interfering with the use of the Non-exclusive License Area by others, and for the same or similar purposes as the Adjacent FBO and other Airport users. The Non-exclusive License Area depicted in Exhibit A-2 is preliminary and approximate. County will have a legal description of the Non-exclusive License Area prepared by a licensed surveyor, at County's sole cost and expense, after execution of this Agreement and after submittal by Lessee of 30% civil improvement plans prepared by a professional civil engineer. Through execution of this Agreement, the Parties authorize the Director of Public Works to administratively amend this Agreement by swapping out exhibits to incorporate the final legal description of the Non-exclusive License Area as Exhibit C and any resulting changes associated with Base Rent, Primary Premises Rent, and Non-exclusive License Area Fee in Exhibits B-1 and C-1 that may result from the final calculated areas.

Section 4. Uses, Privileges and Obligations

Neither Lessee, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Agreement. Lessee, as a Fixed Base Operator shall enjoy the uses and privileges, and shall incur the obligations in connection with its use of the Premises, as described herein.

County shall and does have the right, at the date of this Agreement and at any time during the Agreement term plus any Option Terms, to deal and contract with any other Persons for the leasing of other premises for general aviation purposes at the Airport. Lessee shall have the right to obtain and purchase materials, supplies, equipment and services in connection with its operations on the Airport from any Person of Lessee's choice, whether on or off the Airport; provided, that County shall retain the sole and exclusive right to license and regulate all Persons doing business on the Airport and provided, further, that County shall retain the sole and exclusive right to impose nondiscriminatory fees and charges on Persons supplying products or providing and performing services on the Airport for the privilege of conducting such business; and provided, further, that County shall retain the sole and exclusive right to require Lessee, after written notice thereof, to terminate its use of any supplier or provider if that supplier or provider fails to conform to any applicable Law or with Airport Rules and Regulations. Such County fees are not applicable to suppliers and contractors used by Lessee to perform Work associated with the improvements identified in Exhibit F and Exhibit F-2.

The Premises shall not be used, and Lessee shall not permit the Premises to be used, for any purpose(s) other than the Permitted Activities without the prior written consent of the Director, which consent may be withheld in the reasonable discretion of the Director.

4.1. **Exercise of Rights and Obligations**

Lessee shall at all times comply with the Minimum Standards. Conditions and restrictions that affect Lessee's operations include, but are not limited to, the following:

4.1.1. **Permitted Activities**

Lessee shall use and permit the use of the Premises only for those aviation activities listed in Section 3 of the Minimum Standards or expressly provided for in this Agreement. Permitted Activities include marketing and promotional activities conducted in Lessee's ordinary course of business. Lessee shall obtain written authorization from the Director prior to engaging in any other activities on the Premises. Until such time that the Board may decide to amend the Airport's Rules and Regulations to expressly allow and set appropriate parameters on such gatherings or events, including those conducted for marketing and promotional activities, gathering and events, are expressly prohibited from any hangar space or other Premises except for those with building code occupancies of Group A and B (e.g., restaurant and office space) and in accordance with any occupancy loads determined by the Fire Marshal. With prior written authorization from the Director and in accordance with occupancy loads and safety criteria determined by the Fire Marshal and County Risk Manager, respectively, Lessee may have dignified grand opening events as it completes construction on its new and upgraded facilities to promote the FBO, Lessee, County, and Airport. Such events may not be held beyond completion of the improvements contemplated in this Agreement.

4.1.2. **No Interference with Other Airport Services**

Lessee shall not do or permit to be done anything on or about the Premises or the Airport which may interfere with the safe and efficient operation, management or development of the Airport. Without limiting the foregoing, Lessee shall not take any action that would affect the drainage

and sewerage system, fire protection system, sprinkler system, alarm system, public announcement system, access control system, HVAC system, fire hydrants and hoses, if any, installed or located on, within or about the Premises or the Airport.

4.1.3. **Inspections**

Lessee shall ensure that its employees and agents make regular inspections of the Premises for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the Premises required under this Agreement.

4.1.4. **No Interference with Use and Operation of Airport**

Lessee shall conduct its operations at the Airport and on the Premises in such manner as will reasonably control the emanation from the Premises of dust, noise, vibration, movement of air fumes and odors so as not to unreasonably interfere with the use and operations of others at the Airport.

4.1.5. **No Conflict with Insurance**

Lessee shall not knowingly do or permit anything to be done, in or about the Premises that could reasonably be expected to: (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Premises, the Airport or any property located thereon; (ii) result in a refusal by casualty insurance companies to insure the Premises, the Airport or any other property located thereon in amounts and on terms and conditions required by County; (iii) subject County to any liability or responsibility for injury or damages to any Person or property by reason of any activity, use, business operation or other practice conducted on the Premises; or (iv) cause any increase in any insurance rates for the Airport or any other property located thereon.

4.1.6. **Hazardous Materials**

Lessee shall comply in all material respects with all requirements of Exhibit D in connection with the existence, storage, use, release, and/or disposal of Hazardous Materials on the Premises. The provisions of Exhibit D shall be in addition to all other obligations or requirements under any Environmental Laws relating to the Premises. In the event of any conflict between the provisions of Exhibit D and the provisions of any applicable Environmental Law, the stricter provision shall prevail.

4.1.7. **No Waste or Nuisance**

Lessee shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will unreasonably increase the risk of fire or explosion on Airport property; or create a nuisance; or in any way obstruct or unreasonably interfere with the rights of others on Airport property, injure or unreasonably annoy them; or allow any sale by auction on the Premises; or commit or suffer to be committed any waste upon the Premises; or use or allow the Premises to be used for any unlawful purposes or to be operated in such a way as to interfere with Airport operations or safety; or do or permit to be done anything that would materially to injure the reputation or appearance of the Premises.

4.1.8. **Pioneering Period Exemptions**

During the Pioneering Period, Lessee will not be required to meet those Minimum Standards applicable to the amount of Community Hangar space, Aircraft Maintenance Hangar space, or terminal space. To provide for Lessee's operations during the Pioneering Period, Lessee desires and County is willing to lease Pioneering Period Premises within Supplemental Primary Premises No. 2 as generally depicted in Exhibit A-2. Additionally, Lessee desires to lease the hangar located at 3030 Airport Road where such leasehold will include a 12,000 gallon Jet A fuel tank. During the Pioneering Period, and subsequent to the completion of its interim terminal facility, the Lessee will have the ability to utilize the existing Jet A tank to conduct commercial fueling operations within the 3030 leasehold and within any Supplemental Premises that Lessor has turned over to Lessee.

Prior to the expiration of the Pioneering Period, which may be extended pursuant to Section 1.36, the Lessee shall have completed the construction of all the Leasehold Improvements to meet the Minimum Standards. (All other Minimum Standards shall apply throughout the term of the Agreement, including the Pioneering Period.) Additionally, within 180 days after the conclusion of the Pioneering Period, Lessor shall either remove the 12,000 gallon tank located within the 3030 leasehold off the Airport, or relocate it within Lessor's Fuel Farm area.

4.2. **Access**

4.2.1. **General**

All means of access provided by County pursuant to this Section shall, without exception, be in common with such other Persons as County may authorize or permit, and all such users of access shall be subject to and comply with all applicable Laws.

4.2.2. **County's Right to Close or Alter Access**

County shall have the right at any time to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Lessee's use pursuant to this Agreement, or otherwise, either temporarily or permanently, provided that reasonable advance written notice shall be provided to Lessee and a reasonably convenient and adequate means of ingress and egress (for pedestrians, vehicles and aircraft) shall exist at all times for Lessee or be provided in lieu thereof at County's expense. County shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Lessee's obligations under this Agreement.

4.2.3. **No Interference with Access Rights**

Lessee shall possess the right of ingress to and egress from the Premises over Airport roads, taxiways, and/or other routes as may be necessary in its operations and/or in fulfillment of the terms of this Agreement subject to Airport Rules and Regulations, including without limitation those pertaining to badge, permitting, and other security requirements. Lessee agrees that in its exercise of such right of ingress and egress to and from the Premises that it (a) shall not impede or interfere unduly with the operation of the Airport by the County, its lessees, or other authorized occupants; and (b) such rights may be suspended or revoked by the Director in the event of any default that Lessee fails to make reasonable efforts to cure within thirty (30) days of receiving notice of the default from County, an emergency, or a threat to the Airport; provided

that such right of ingress and egress will be immediately restored upon the remedy of the default or conclusion of the emergency or threat.

4.2.4. **No Personal Property Outside Premises**

Except for permitted fueling and permitted off-Premises operations and notwithstanding its ongoing ingress and egress rights to the Premises, Lessee shall have no right to place any personal property or equipment on, or conduct any operations in, any areas outside the Premises. Truck routes shall be as designated from time to time by the Director. Said rights of ingress, egress and roadway use shall likewise apply to Lessee's suppliers, including without limitation the right of transport of equipment, material, cargo, machinery and other property; provided, that such right of ingress and egress shall not alter or affect whatever contractual arrangements may now or hereafter exist between County and the suppliers or furnishers of service to Lessee.

4.3. **Signs**

Lessee shall comply with Section 3.22 of the Development Standards and shall not install, erect, affix, paint or place any sign, lettering or other text or graphic production in or upon any exterior portion of the Leasehold Improvements on the Premises except with the prior written consent of the Director, which consent shall not be unreasonably withheld. Any and all signs, lettering, text or graphic production, or any replacement thereof, which may be permitted by the Director shall be subject to, and comply with, present and future Airport signing standards and County ordinances. Any and all such signs, text or graphic production shall be removed by Lessee at its sole cost and expense upon termination or expiration of this Agreement, without injury or damage to or defacement of any part of the Premises. Lessee will promptly restore to their original condition those portions of the Premises from which such advertising device or media have been so removed, normal wear and tear excepted. Under no circumstances may any advertising sign, text or graphic production be placed on the Premises (excluding approved signage as set forth above).

4.4. **Non-Rent Obligations Beyond the Minimum Standards**

In addition to all other obligations set forth in this Agreement, Lessee shall meet those other obligations set forth below:

4.4.1. **Community Benefits**

To promote the Airport, its use by the Napa County community, and the next generation of Airport users and businesses, Lessee shall use commercially reasonable efforts to highlight the services available at the Airport through charitable donations of (1) services (charter flights; flight training; etc.) or funds to Napa County based 501(c)(3) non-profit organizations, (2) scholarships to students attending Napa County schools planning to study aeronautical related majors (business, engineering, etc.), (3) County sponsored Airport events, or (4) a combination of (1), (2) and (3).

By May 1 of each year throughout the Term of the Agreement, Lessee shall provide a report to the Airport Manager detailing how Lessee participated in community benefits described above.

4.4.2. **Restaurant**

Lessee shall construct, and use commercially reasonable efforts to sublease, floor space in the terminal building to be used as a commercial restaurant, in accordance with the following terms:

i. The restaurant space shall be at least 2,500 square feet, including space suitable for use as a kitchen. Any outdoor seating or dining area shall not count towards the minimum 2,500 square feet of restaurant space.

ii. The restaurant space shall be on the second floor of the Lessee's terminal building and include windows facing the runway or tarmac, such that aircraft are visible to dining customers.

iii. The restaurant space shall include at least two restrooms, fully built out with functioning fixtures.

iv. Lessee shall use commercially reasonable efforts to ensure that restaurant tenant will provide in-flight catering.

v. The restaurant space shall be finished to the point where a reasonable restaurant tenant can complete the build out to suit its particular needs or design. Lessee is not required to provide kitchen appliances, customer seating, or other amenities typically provided by a commercial restaurant tenant.

vi. Within 60 days after receiving a permit for beneficial occupancy of the restaurant space, Lessee shall advertise the restaurant space for Agreement as a commercial restaurant, on terms similar to those for other restaurants in the City of American Canyon.

a. If Lessee has not entered into a sublease with a commercial restaurant tenant within three (3) years after receiving the Certificate of Occupancy for the restaurant space, or if any time after that date Lessee is no longer able to maintain or replace a restaurant tenant after making reasonable efforts to do so for at least one (1) year, Lessee shall notify County of its inability to lease the space and the Lessee and County shall meet within thirty (30) days to discuss altering the terms of the potential lease and any obstacles to leasing the restaurant space identified by the parties, including the possibility of leasing the restaurant space at below market value. If Lessee and County do not agree to another alternative, County shall have six (6) months from the meeting provided for herein to exercise an option to rent the restaurant space back from the Lessee at a rate not to exceed twice the then applicable per square foot rate charged by the County under this Agreement and find its own commercial restaurant tenant.

b. If County fails to exercise its option timely or fails to fill the space with its own commercial restaurant tenant within twelve (12) months of exercising its option, Lessee and the County shall meet to discuss any alternative uses that may be identified by the parties.

vii. Lessee shall ensure the restaurant is open to the general public. Membership in any group or organization shall not be a requirement to dine in the restaurant, unless the restaurant is being rented for a special event.

viii. Lessee shall continue to lease the restaurant space for use as a commercial restaurant for the duration of this Agreement unless otherwise agreed by the parties. If a sublessees' restaurant lease expires or is terminated during the term of this agreement, Lessee shall use commercially reasonable efforts to re-lease the restaurant space as a commercial restaurant pursuant to the terms of this section.

4.4.3. **Other Improvements**

Lessee shall (1) reconstruct the North FBO Non-Exclusive License Area, (2) cooperate with County, aeronautical users, emergency responders, and other commercial operators at the Airport regarding movement through the Non-Exclusive License Areas, (3) complete the construction and maintenance of those connected parking areas on Lessee's site plan as generally depicted in Exhibit F-2 and to be replaced with 30% plans upon administrative amendment of this Agreement to add legal descriptions of Premises and Non-Exclusive License Areas in Exhibit B and C, respectively , (4) coordinate with the Adjacent FBO to construct and provide County and emergency vehicles access to and through a 20' wide secure, automatic gate (connected to an Opticom system) where the Non-Exclusive License Area crosses onto the AOA, and (5) coordinate shared parking operation and maintenance, including striping, water quality elements, and aesthetically pleasing vegetation to ensure consistency of operations and maintenance across the combined Shared Parking Area of Lessee and the Adjacent FBO as depicted on Exhibit A, which shall meet reasonable operations and maintenance requirements set by the Director.

4.4.4. **Transparency in Rates, Fees, and Charges**

Lessee shall publicly publish its price for 100LL, by posting at the Lessee's facility and to standard industry websites, and the facility ramp fee with no fuel purchase on its location website.

With the exception of Fuel Flow Fees, and unless otherwise required by Federal or State policy, Lessee shall not separately charge or invoice customers for any Napa County taxes, charges, or rent recovery fees, except as approved by the Airport Manager.

4.5. **Charge For Unauthorized Services and Uses**

In the event County has reason to believe Lessee is using or permitting the use of the Premises in a manner other than as expressly authorized under this Agreement or providing unauthorized services on the Airport outside the Premises, County may provide Lessee with written notice thereof. Lessee shall respond in writing to County within ten (10) business days of receiving such notice. If Lessee breaches this Agreement by using or permitting the Premises to be used in any manner other than as expressly authorized under this Agreement or by providing unauthorized services on the Airport outside of the Premises, Lessee shall pay County a sum equal to one hundred percent (100%) of the Gross Receipts for any such service or use; provided that Lessee may request mediation pursuant to Section 38 and the payment of any such sum in this Section 4.5 shall be stayed until a resolution is obtained. Said payment shall be further subject to the interest and charges as applied to any late rent. As used in this section, the term "Lessee" shall include Lessee, its employees, agents, successors, assigns, affiliates, sublessees, concessionaires, licensees, or any person acting under contract with Lessee or on Lessee's behalf. As used in this section, the term "Gross Receipts" shall mean all revenue of every kind and nature derived by Lessee from, or attributable to, the operation of the unauthorized services on Premises whether for cash or credit, without any deduction for credit card discounts or credit card services, or any other discounts attributable to affiliation with a third party, and whether the same shall be paid or unpaid, excluding only sales or excise taxes stated separately and collected from a customer for remittance to a taxing authority. All charges for unauthorized services and

uses are due and payable as Additional Rent. Such unauthorized use shall also constitute a default of this Agreement pursuant to Section 13.1.6.

Section 5. Rent, Fees and Charges

5.1. Base Rent

Commencing on the Effective Date and continuing throughout the Term plus any Option Term(s), Lessee shall pay Base Rent subject to increases as set out below. Base Rent shall be due and payable in advance in twelve equal monthly payments on the first day of every month in accordance with the provisions of Section 5.7. In the event that the Effective Date is neither the first nor the last day of the calendar month, payment of the Base Rent for the first and last month of the Term shall be prorated. The Base Rent payment for that first partial month shall be due and payable within ten (10) days from the Effective Date. If the Expiration Date or earlier termination date occurs on a day other than the last day of a month, Base Rent for the last month of the Term shall be prorated.

5.2. Adjustments to Base Rent

The Base Rent shall be subject to the following increases (as adjusted the "Adjusted Rent"): (i) at the option of the County, on each fifth (5th) anniversary date of the Effective Date ("Appraisal Adjustment Date(s)") to reflect increases in the appraised value of the Premises; and (ii) on each one-year anniversary ("Percentage Increase Adjustment Date(s)") of the Effective Date (excluding each fifth anniversary date on which Appraisal Adjustments may be made pursuant to Section 5.2.2) in accordance with the provisions set out below ("Percentage Increase Adjustment Date(s)"):

5.2.1. Percentage Increase Adjustment Date(s)

The Base Rent shall be adjusted as of each Percentage Increase Adjustment Date (excluding any fifth anniversary of the Effective Date on which Appraisal Adjustments are made pursuant to Section 5.2.2 below), according to the following provisions:

5.2.1.1. Base Figure

The Base Figure for computing the adjustment shall be the Consumer Price Index ("CPI") for All Urban Consumers, All Items, for the San Francisco- Oakland–San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U. S. Department of Labor for the month one year prior to the Percentage Increase Adjustment Date. In the event that the CPI is not published for the applicable month, the Base Figure shall be the next succeeding CPI published.

5.2.1.2. Index Figure

The Index Figure for each Percentage Increase Adjustment Date shall be the most recent CPI for All Urban Consumers, All Items, for the San Francisco- Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor as of the Percentage Increase Adjustment Date. For example, if the Percentage Increase Adjustment Date is December 15, 2023, the Index Figure shall be the CPI for October 2023. In

the event that the CPI is not published for such month, the Index Figure shall be the CPI for the latest CPI published as of the month of the Adjustment Date.

5.2.1.3. **Percentage Increase Adjustment Date**

For each Percentage Increase Adjustment Date, if the Index Figure has increased over the Base Figure, the Adjusted Rent payable from that Percentage Increase Adjustment Date and until the next Percentage Increase Adjustment Date shall be determined by calculating the percentage increase of the Index Figure over the Base Figure. For example, assuming the Base Figure is 302 and the Index Figure is 311, the percentage to be applied is (311-302)/302=0.0298=2.98%. That percentage shall be applied to the Base Rent last in effect to calculate the Adjusted Rent for the annual period beginning on the Percentage Increase Adjustment Date.

5.2.1.4. **No Decrease in Base Rent**

Regardless of any year-to-year or cumulative decrease in the CPI during the Term of this Agreement, in no event shall there be decrease in the Base Rent (or Adjusted Rent, as applicable).

5.2.1.5. **Alternative Index**

The index for the Percentage Increase Adjustment Date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base different from the base period (1982- 84=100) used for the base figure above, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau. If the above-described Department of Labor index is no longer published, another index generally recognized as authoritative shall be substituted by the Director.

5.2.2. **Appraisal Adjustment Date(s)**

At the option of the Director, the Base Rent may be adjusted as of each Appraisal Adjustment Date, according to the provisions of this section. If the Director does not opt to adjust base rent by appraisal, base rent will be adjusted according to Section 5.2.1.

5.2.2.1. **No Decrease in Base Rent**

In no event shall the Adjusted Rent set pursuant to this Section 5.2.2 be less than the Base Rent or Adjusted Rent in effect as of the immediately preceding percentage increase adjustment date.

5.2.2.2. **Identification of One Appraiser**

The Director will notify Lessee of County's proposed appraiser to value the then-current fair market ground rent of the Premises pursuant to this Section 5.2. If the Lessee does not accept the Director's selected appraiser, Lessee may request the Parties meet and attempt for a period of thirty (30) days to agree on one appraiser to determine the then fair market rental value of the Premises. If County and Lessee are able to agree on an appraiser, during the thirty (30) day period, such appraiser shall determine the then-current fair market ground rental value of the Premises.

5.2.2.3. **Identification of Two Appraisers**

If the Parties are unable to agree upon a single appraiser, or if the parties do not meet before the one hundred fiftieth (150th) day before the Appraisal Adjustment Date, then no later than the one hundred twentieth (120th) day before the Appraisal Adjustment Date, Lessee and County each shall select an independent qualified real estate appraiser who shall be a member of a nationally or state recognized appraisal organization, who shall be certified by the State of California to conduct appraisals, who shall have at least ten (10) years of commercial real estate appraisal experience; and who has performed at least one appraisal of airport property and notify the other Party of such appraiser.

5.2.2.4. **Appraisal Process**

If the Parties agree on a single appraiser as provided in Section 5.2.2.2 above, such appraiser shall appraise the then-current fair market ground rental value of the Premises as provided in this Section 5.2.2.4. If two properly selected appraisers are selected by County and Lessee pursuant to 5.2.2.3, each such appraiser within ninety (90) days following their selection, shall conduct an appraisal to establish the then current fair market ground rental value of the Premises taking into consideration the terms of this Agreement as if the Premises were vacant, without the Leasehold Improvements placed thereupon by Lessee, and were available for lease under the same terms and conditions as this Agreement. The cost of each appraisal shall be borne by the Party selecting the appraiser who prepared the appraisal (provided the cost of an appraiser jointly selected by County and Lessee shall be borne equally by each Party). Once both such appraisers complete their appraisals, a copy of each appraisal shall be delivered to Lessee and to County not later than thirty (30) days before the Appraisal Adjustment Date. Any appraisal not delivered within the time period set out above shall be disregarded.

5.2.2.5. **Reconciliation of Appraisals**

If the higher appraisal of the fair market ground rental value of the Premises exceeds the value in the lower appraisal by ten percent (10%) or less of the lower appraisal of the fair market ground rental value of the Premises, then the two fair market values for the Premises contained in the two appraisals shall be added together and divided by two to establish the fair market ground rental value of the Premises. If only one of the two appraisals is timely delivered, then the fair market ground rental value set out in the one timely delivered appraisal shall establish the fair market ground rental value of the Premises. If the higher appraisal of the fair market rental value of the Premises is more than ten percent higher than the lower appraisal, then the fair market ground rental value of the Premises shall be determined pursuant to Section 5.2.2.6. If the fair market ground rental value of the Premises is not determined pursuant to this subsection, then within ten (10) days after Director's receipt of the last appraisal, Director shall call the two appraisers together in order for them to discuss material differences in their respective appraisals, with the intent to have them determine a single mutually agreeable fair market ground rental for the Premises.

5.2.2.6. **Selection of Third Appraiser**

If two appraisers are timely selected and the higher appraisal is not within ten percent (10%) of the lower appraisal (as described in subsection 5.2.2.5 above) or the two appraisers fail to reach

mutual agreement as to the fair market ground rental value within ten (10) days after they commence fair market ground rental value discussions as provided in subsection 5.2.2.5 above, the two appraisers shall themselves select a third, independent real estate appraiser, who shall have the same qualifications as required above. The cost of the third appraiser shall be borne equally by County and Lessee, as shall any other expenses, if any, of the costs of selecting a third appraiser. The third appraiser shall appraise the Premises taking into consideration the terms of this Agreement, as if said Premises were vacant, without the Leasehold Improvements placed thereupon by Lessee, and were available for lease under the same terms and conditions as this Agreement and shall submit said appraisal to County and Lessee within sixty (60) days of such appraiser's selection.

The three appraisers shall then, within thirty (30) days of the submission of the third appraisal, meet and attempt to agree upon the then fair market ground rental value of the Premises as set forth above. A decision joined in by a majority of the appraisers shall be final.

If a majority of the three appraisers cannot agree upon a fair market ground rental value pursuant to this subsection, then they shall so notify County and Lessee, and the fair market ground rental value of the Premises shall then be established as follows:

i. If the low appraisal and/or the high appraisal is/are more than ten percent (10%) lower or higher than the middle appraiser, then the low and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2); the resulting quotient shallthen be the fair market ground rental value of the Premises.

ii. If both the low appraisal and the high appraisal are disregarded as stated in subparagraph (i), the middle appraisal shall then be the fair market ground rental value of the Premises.

5.2.2.7. **Adjusted Rent**

Once the fair market ground rental value of the Premises has been determined, the Adjusted Rent shall be effective as and from the Appraisal Adjustment Date, and until the next following Percentage Increase Adjustment Date, at which time the Adjusted Rent shall be subject to increase pursuant to Section 5.2.1 above.

5.2.2.8. **Extensions of Time to Conduct Appraisals**

The time periods for calculating the Adjusted Rent by appraisal may be extended by the Director, provided that any Adjusted Rent shall be effective as and from the then applicable Appraisal Adjustment Date. Upon determination of the Adjusted Rent, underpayments, if any, shall be immediately paid to County.

5.3. **Additional Rent – Minimum Annual Guaranteed (MAG) – Taxes**

Not later than March 1 each year after receiving Certificates of Occupancies for hangars and/or terminal building, including the March 1st following the end of the Term of this Agreement plus any Option Term(s), Lessee shall provide a report to the Director of all property taxes paid directly to Napa County (i.e. possessory interest taxes stemming from this Agreement and personal property taxes, including based aircraft paid directly by Lessee or by an aircraft owner or operator whose personal property tax obligations to Napa County are a result of time the aircraft hangars on the Premises pursuant to an executed agreement), itemizing the total amounts of all such taxes paid by the Lessee during the preceding calendar year ("Annual Report of Taxes Paid").

Effective one (1) year after Certificate of Occupancy for terminal and hangar facilities, and subject to Lessee's right to contest a tax or charge set forth in Section 19.6, this Annual Report of Taxes Paid shall be accompanied by payment to the County, as additional rent, a sum equal to the amount, if any, that the total of such taxes actually paid by Lessee during the preceding calendar year does not exceed the minimum annual guaranteed amount for such taxes paid to Napa County of $200,000 per year. For example, if in any given calendar year the combined total of Lessee's Possessory Interest taxes, property taxes on leasehold improvements, and property taxes paid by aircraft owners subleasing space from Lessee is $175,000, then $25,000 would be paid as additional rent to the Airport.

5.4. **Security Deposits**

Lessee agrees that prior to execution of this Agreement, it will, at its own expense, deliver to the Director and thereafter maintain during the Term, either (i) a letter of credit in an amount equal to three (3) months of Base Rent based on the combined square footage of the Premises described in Sections 3.1, 3.3, 3.4, 3.5, and 3.6 payable to "Napa County" and naming County as obligee, or (ii) the same amount in cash, as a refundable non-interest bearing security deposit. The letter of credit shall be an irrevocable ("clean") letter of credit, substantially in the form attached to this Agreement as Exhibit E. The letter of credit or cash security deposit shall be maintained in full force and effect during the Term and during any holdover period at the expense of Lessee, to ensure the faithful performance by Lessee of all the covenants, terms and conditions of this Agreement, inclusive of but not restricted to the payment of all considerations provided herein. In addition to the minimum requirements set out in the form attached to this Agreement as Exhibit E, any letter of credit issued to the County under this Agreement shall, at a minimum, meet the following express requirements:

a. It shall be an irrevocable standby letter of credit, with an expiration date no earlier than twelve (12) months from the date of submittal; and

b. It shall be issued by a financial institution acceptable to the County's Auditor-Controller whose long term obligations are rated at least "B" by Thompson Bank Watch, Inc. (or a similar rating by any other rating agency) with a branch office in Napa County.

All banking charges with respect to the letter of credit shall be at the sole expense of Lessee. No

later than thirty (30) days after each Percentage Increase Adjustment date or Appraisal Adjustment Date, as applicable, Lessee shall increase the Security Deposit to equal one year of the then applicable Adjusted Rent.

5.5. **Activity Fees**

Lessee's use of land or facilities outside of the Premises is subject to reasonable and non-discriminatory Activity Fee(s) and the written permission of the Director. The Director shall provide in such written permission the Board of Supervisors-approved or agreed-upon amount of the Activity Fee(s) related to such use, any land or facilities of the Airport beyond the Premises for any purpose, use or activity not contemplated under this Agreement or any other agreement between the County and Lessee or applicable parties. Lessee shall pay the Activity Fee(s) listed in the Director's written permission within thirty (30) days, in addition to the Rent, charges or other fees for the privilege of using the Premises. The term Activity Fee(s) shall, for the purposes of this Agreement, be deemed to include, but not be limited to, parking of aircraft outside the Premises.

5.5.1. **Fuel Flowage Fees**

In addition to any other Activity Fees which Lessee is required to pay to County pursuant to Section 5.5 above, County shall assess Fuel Flowage Fees for any retailing or delivery of fuel petroleum products by Lessee pursuant to the fee schedule, and as provided by resolution of the Board of Supervisors, in amounts that will not be increased in the first four (4) years after the Effective Date, but may be amended from time to time after that. Lessee's use of gasoline and diesel fuel in its mobile refuelers and ground servicing equipment is exempt from Fuel Flowage Fees.

5.5.2. **U.S. Customs Service**

Lessee agrees that if at any point during the Term of this Agreement, the County, in consultation with Lessee, determines that it is feasible to establish U.S. Customs Services at the Airport, Lessee shall pay those costs established by the County to defray the costs of providing U.S. Customs and Border Protection Agency services which may include but is not limited to costs associated with providing space, security, and infrastructure upgrades. Lessee's proportional share of such costs shall be in proportion to the anticipated number of annual clearances to be performed for Lessee or its customers as a function of all annual clearances. Such payments shall be made in a manner, and as reasonably directed by, the County pursuant to ordinance or other official policy setting a fee and reimbursement schedule for all Airport users.

5.6. **Additional Rent – Minimum Annual Guaranteed (MAG) – Fuel Sales**

In addition to the Base Rent, effective upon Lessee's receipt of Certificate(s) of Occupancy for terminal and hangar facilities, Lessee's rent shall include Lessee's obligation to pay Fuel Flowage Fees of a Minimum Annual Guaranteed amount (i.e. Fuel MAG) each Fiscal Year of the Term. The Fuel MAG shall be set at $350,000 per County Fiscal Year (July 1st thru June 30th) of the Agreement for the first four (4) fiscal years. Beginning in the fifth (5th) fiscal year, the Fuel MAG shall be increased by two percent (2%) for each subsequent County Fiscal Year. The Fuel MAG will be prorated in the first and last years of the Term if the Effective Date does

not commence on the first day of the Fiscal Year (July 1st). In any Fiscal Year that Lessee fails to pay Fuel Flowage Fees to County equal to or in excess of the then applicable Fuel MAG, Lessee shall remit payment within thirty (30) days to County of an amount equivalent to the Fuel MAG for that Fiscal Year minus Lessee's actual payments of Fuel Flowage Fees during that Fiscal Year. This obligation to meet or exceed the Fuel MAG as additional rent shall not in any way reduce or otherwise alter Lessee's obligations to pay Fuel Flowage Fees.

At the outset of this Agreement, the Parties agree that the fuel flow fees shall be set at $0.25 per gallon for jet fuel and $0.12 per gallon for Avgas. Lessee hereby acknowledges and the Parties hereby agree that County may increase those fuel flow fees by resolution of the Board of Supervisors after the first four (4) years of the term of the Agreement, but that such increases to the per gallon fees shall not alter the Fuel MAG as provided for in this section and that such increases shall be universally applied to all Persons at the Airport.

5.6.1. **Monthly Activity Report**

On or before the tenth (10th) business day of each month following commencement of operations on the Premises, without notification from County, Lessee shall provide to the Director a monthly activity report for all Activity Fees, in such form and detail as provided by the Director, which may be updated in writing pursuant to the Notice requirements herein from time to time. For Fuel Flowage Fees, the Monthly Activity Report shall set forth at a minimum, the total amount of gallons of fuel purchased at wholesale and date of purchase, and the retail price of fuel at time of retail sale or delivery, for the past monthly period. If the monthly activity report is not provided on or before the tenth (10th) day of each month as required herein, Lessee shall pay a delinquency fee for administrative expenses incurred by County for delays and invoices in the amount of $50.00 per day that the report is late until such date as the monthly activity report is submitted to the Director. County shall provide written notice to Lessee of any delinquent activity report within ten (10) Business Days after such activity report has become delinquent. County's assessment of the delinquency fee shall be in addition to any other remedies that County may have in law or in equity, including termination and revocation of this Agreement and all rights and privileges granted to Lessee, subject to Section 13.1.6.

5.7. **Payment of Rent, Fuel Flowage Fee, Activity Fees and Charges**

Description	**Amount**	**Due Date**	**Late Fee**
Base Rent	See Section 5.1	Due on or before the first day of each month	See Section 5.7.1
Additional Rent Based Upon Tax MAG	See Section 5.3	March 1 each year	See Section 5.7.2

Fuel Flowage Fee	See Section 5.5.1	Activity Report and payment due on the 10th Business Day of each month for the prior month.	See Section 5.7.2
Additional Rent Based Upon Fuel MAG	See Section 5.6	July 30th each year	See Section 5.7.2
Activity Fees	See Section 5.5; provided in writing by Director	Activity Report and payment due on the 10th Business Day of each month for the prior month.	See Section 5.7.2
Miscellaneous and One-Time Charges (e.g., delinquency fee for monthly Activity Report (see Section 5.6.1))		Due and payable within 30 days of receipt of the County's invoice	See Section 5.7.2

5.7.1. **Base Rent, Fees and Charges Payable in Advance**

Except as set forth herein to the contrary, Base Rent and any and all other fees and charges that are payable in advance shall be paid on or before the first day of each month ("Monthly Due Date"), without any requirement of notice from the County, deduction, credit or offset. Such Base Rent, fees and charges shall be deemed delinquent if not received by County on or before fifteen (15) days from the Monthly Due Date. Lessee shall be required to pay a late payment fee (12% per annum), calculated from the Monthly Due Date, for each day, or portion thereof, in each month that payment is not timely received by County, until payment is received by County. County reserves the right to require that any late payments be made only in a reasonable form to be specified by the Director, and County further reserves the right to reject any late payment that is not in such form approved by the Director. Notwithstanding anything to the contrary contained herein, if any Monthly Due Date is not a Business Day, then such payment shall not be due on such scheduled date but shall be due on the next succeeding Business Day and no interest shall accrue on the amount of such payment of Base Rent, fee or other charge from and after such Monthly Due Date to such next succeeding Business Day

5.7.2. **Fees and Charges Payable in Arrears**

Any fees and charges from the County which are paid in arrears for the preceding month's activity, except as otherwise expressly provided, are due and payable on or before the thirtieth (30th) day from the date of the County's invoice, and shall be deemed delinquent if not received by County on or before fifteen (15) days from such date. Lessee shall include a monthly activity report, as set forth above, for all fees and charges due with each monthly payment. Lessee shall be required to pay a late payment fee (12% per annum) calculated from the first day, for each day, or portion thereof, in each month that payment is not timely received by County. County reserves the right to require that any late payments be made only in a reasonable form as specified by the Director and County further reserves the right to reject any late payment that is not in a form approved by the Director. County reserves the right to audit any monthly activity reports and payments based upon such reports, and acceptance of any payments hereunder shall not operate as a waiver of County's right to collect monies determined to be due and owing.

5.7.3. **Location and Form of Payment**

All of the Base Rent, fees and charges shall be paid by (i) check made payable to the "Napa County Airport" and delivered or mailed to the Napa County Airport, Payment Processing – Airport, 2030 Airport Road, Napa, CA 94558, or to such other address as the Director may notify Lessee in accordance with Section 39, or (ii) electronic fund transfer. All such Base Rent, fees, charges and other amounts payable by Lessee shall be in lawful money of the United States of America and in same day funds as of the due date.

5.7.4. **Late Payment Fee Not Sole Remedy**

County's assessment of a late payment fee shall be in addition to any other remedies County may have in law or in equity, including termination and revocation of this Agreement and all rights and privileges granted herein.

5.7.5. **Net Lease/No Offset or Deduction**

This Agreement shall be deemed and construed to be a "net lease" and all Base Rent payments shall be absolutely net. All Base Rent, additional rent, fees, charges and other sums due by Lessee under this Agreement shall be paid without deduction, credit or offset of any kind and exclusive of any amounts which County may now or hereafter owe to Lessee.

Section 6. Leasehold Improvements

6.1. **General Conditions for Construction/Minimum Capital Investment**

6.1.1. **Construction of Leasehold Improvements**

Lessee agrees that it shall construct, at its sole cost and expense, the Leasehold Improvements described in Exhibit F, including apron areas and hangars to accommodate the fleet mix described in Exhibit F-1 (737-700 BBJ is excepted from hangar accommodation requirements and apron design standards) and those improvements generally depicted on the site plan attached as Exhibit F-2 attached hereto and made a part hereof and to be replaced with 30% plans upon administrative amendment of this Agreement to add legal descriptions of Premises and Non-Exclusive License Areas in Exhibit B and C, respectively (collectively, the "Leasehold

Improvements"). Lessee's construction of the Leasehold Improvements shall be subject to the provisions of this Section and shall be at Lessee's sole cost and expense, without any reimbursement from County. The construction of the Leasehold Improvements will be done by Lessee pursuant to the terms of this Agreement. Lessee will occupy the Premises in its 'as is' condition. No part of the Leasehold Improvements shall be constructed, installed, expanded, modified, or removed; nor shall material modifications be made to the Leasehold Improvements without the prior written consent of the Director, which shall not be unreasonably withheld, conditioned, or delayed.

6.1.2. **Minimum Capital Investment for Construction of Leasehold Improvements**

It is expressly agreed and understood that Lessee is leasing the Premises, excluding the Large Hangar (Supplemental Primary Premises No. 4) for the purpose of developing and constructing the Leasehold Improvements in accordance with Plans and Specifications as specified in this Section 6, and maintaining and operating thereon a FBO in accordance with Section 4 of this Agreement. The Leasehold Improvements to be constructed by Lessee shall, at a minimum, include those structures and improvements as described in Lessee's Leasehold Improvements which is Exhibit F attached hereto and contains the timeframes by which Lessee must meet or otherwise be subject to the enforcement described therein, and that Lessee shall expend no less than thirteen million six hundred thousand dollars ($13,600,000) to develop such Leasehold Improvements on the Premises (excluding Supplemental Primary Premises No. 4) at Lessee's sole cost and expense in accordance with the timeframes identified in Exhibit F and any qualified extensions. As used herein, "Minimum Capital Investment" shall mean and include the following Leasehold Improvement costs and expenditures made by Lessee: hard construction costs (including demolition, excavation, grading, and construction on the Premises and general contractor overhead and profit), soft costs up to 15%, and E & I Fees; however, no such costs associated with any improvements or alterations to the Pioneering Period Premises shall be counted towards meeting the Minimum Capital Investment. Soft costs include only the following expenses: architectural and design expenses, permitting, engineering, project management and professional fees.

6.1.3. **Documentation of Minimum Capital Investment for Construction of Leasehold Improvements**

Within ninety (90) days of completing construction or the issuance of a Certificate of Occupancy for each phase of the Leasehold Improvements, whichever occurs first, Lessee shall provide to the Director sufficient documentation, in such form and detail as the Director may require, to establish the amount Lessee has expended towards the Minimum Capital Investment on the Leasehold Improvements. Additionally, within ninety (90) days after completing the last of the Leasehold Improvements, Lessee shall provide to the Director sufficient documentation, in such form and detail as the Director may require, to establish the total amount Lessee has expended towards meeting the Minimum Capital Investment on the Leasehold Improvements.

The Director may, in that individual's sole discretion, expand the time for submitting said documentation by written notice to Lessee, and may require submittal of additional

documentation. In the event that the Director determines that Lessee has failed to expend the total Minimum Capital Investment for the Leasehold Improvements, the Director shall notify Lessee of any such deficiency. If the Director notifies Lessee that there was a deficiency in the costs expended in the construction of the Leasehold Improvements, then Lessee may submit additional documentation to Director evidencing its expenditure of the Minimum Capital Investment. In the event that Director reviews the same and determines, in its reasonable discretion, that Lessee has failed to expend the total Minimum Capital Investment, Lessee shall have twelve (12) months from the receipt of said notice to expend the amount of any such deficiency on additional improvements, additions, or betterments to the Leasehold Improvements, subject to all of the provisions of this Section 6. Lessee shall, within thirty (30) days after the expiration of said twelve (12) month period, provide further documentation to the Director sufficient to establish that Lessee has expended the amount of any such deficiency on additional improvements, additions, or betterments to the Premises (excluding Supplemental Primary Premises No. 4) via the Leasehold Improvements. If the Director determines, after such further documentation has been provided, that Lessee has failed to expend the Minimum Capital Investment, then the Director shall provide written notice to Lessee of the amount of such continuing deficiency, and Lessee shall have thirty (30) days from the date of such notice to pay to County an amount equal to the difference between the Minimum Capital Investment and the actual sum expended. Payment of said sum as required herein shall be deemed to be additional rent due and payable within said thirty (30) day period, and shall be subject to the payment provisions of Section 5 of this Agreement.

6.1.4. **Minimum Capital Investment for the Large Hangar**

Lessee shall make, in addition to the minimum requirements of Section 6.1.2, a minimum capital investment no less than one million seven hundred ninety-nine thousand four hundred ninety-two dollars ($1,799,492), in qualified capital expenditures, to the Large Hangar (Supplemental Primary Premises No. 4)according to the schedule in Exhibit F. Qualifying capital expenditures to the Large Hangar may include, but are not limited to roof rehabilitation, hangar door overhaul, and repair of aircraft apron, vehicle parking pavement, or building structure. Other proposed major repairs and/or Improvements to the Large Hangar may be qualifying capital expenditures if the Director provides written approval prior to making any repairs and/or Improvements. If Lessee exercises its option to extend the lease by additional five-year Option Terms, additional qualifying capital investment required of tenants at that time shall be expended on the Large Hangar for each additional Option Term.

6.1.5. **Documentation of Minimum Capital Investment for the Large Hangar**

Lessee shall provide County with an ongoing accounting with receipts of all qualifying capital expenditures for the Large Hangar. Should Lessee fail to pay any portion of the required minimum capital investment amounts for the Large Hangar, Lessee shall pay County the difference between the approved qualifying expenditures and the minimum capital investment amounts described in Section 6.1.4, plus an additional 20% for the County’s administrative costs that will be incurred by making the improvements itself.

6.2. **Design of Leasehold Improvements**

6.2.1. **Construction Guidelines**

Lessee shall develop the Premises according to the published Development Standards dated May 7, 2019. Lessee shall cooperate with County's officers, employees, representative, and agents and shall comply with the Airport's Primary Management Compliance Documents, the County Code, and the permitting process of the County's Department of Planning, Building, and Environmental Services. If there is a conflict between the various requirements, the terms placing the most restrictions (i.e. greatest obligations) on Lessee shall prevail. Lessee acknowledges and agrees that County's representatives, including the Director, acting in their reasonable discretion, reserve the right to require modifications to any of Lessee's proposed design concepts.

6.2.2. **Lessee Responsible for Design and Construction Coordination**

Lessee's responsibility for the proper design and construction specifically includes the requirement to coordinate all civil engineering design elements within the development area, including, but not limited to the apron; building pads; water quality elements, including storm drainage; shared parking; underground piping; sewer; and utilities with any development occurring on the adjacent property at the Airport, including the anticipated development of the areas on Exhibit A-2 depicted as the ("South FBO") by the Adjacent FBO. To facilitate the connections between the two developments, Lessee agrees to utilize a mutually agreeable civil engineering firm with the Adjacent FBO for the coordinated Work described in this paragraph.

6.3. **Contract Requirements/Bonds/E&I Costs**

6.3.1. **Construction Contract Requirements**

Lessee shall incorporate into any Construction Contract for Work, and shall require its contractor to incorporate into any subcontracts, or contracts for material or equipment**:** (i) requirements related to prevention and mitigation of Hazardous Materials releases in conformity with Exhibit D; (ii) insurance and indemnity clauses naming the contractor to indemnify, defend, and hold harmless the County and requiring insurance certificates from the contractor naming the County as additional insured; (iii) Lessee provided insurance in conformance with the applicable requirements set forth in Exhibit G; and (iv) the applicable provisions from the FAA Requirements attached hereto and incorporated by reference as Exhibit I, or as modified from time to time by the FAA. Lessee also shall require any contracts or subcontracts with contractors or subcontractors to require compliance of all such contractors and subcontractors with the provisions described above.

6.3.2. **Performance and Payment Bonds**

Prior to the commencement of Work hereunder which exceeds Twenty-Five Thousand Dollars ($25,000) in cost, Lessee shall furnish to County and file with the County Clerk, at no cost to County, a performance bond and a payment bond (either from Lessee or from the contractor retained by Lessee pursuant to a Construction Contract for the Work). In addition to the specific requirements set forth below, each bond shall be issued by a surety licensed to do business in California, be in a sum of not less than one hundred percent (100%) of the total cost of the

contract or contracts for Work, be satisfactory to and approved by County's Risk Manager, the Director, and the Office of County Counsel. In the event that the County's Risk Manager, Director, or Office of County Counsel fail to approve or disapprove (which disapproval must be made in writing and must specify the deficiencies with the payment and performance bond) within ten (10) Business Days of their receipt of the same, such bond shall be deemed approved. Immediately upon completion of any Work, Lessee shall record in the Official Records of the Napa County Recorder a notice of completion complying with the requirement of California Civil Code Section 8182.

The performance bond shall be conditioned upon Lessee's contractor's faithful performance of the Construction Contract terms within the Construction Contract time, and shall name Lessee's contractor or contractors as principals, and County as an additional obligee.

The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 9100 et seq., and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. The payment bond shall protect County from any liens, liability, losses, or damages arising from the Work, and shall name Lessee's contractor or contractors as principals, and County as an additional obligee.

6.3.3. **E&I Costs**

Lessee shall pay County for its customary costs for design review, engineering, construction coordination, and inspections ("E & I Costs") related to the Work, including costs incurred prior to the date of this Agreement. County will establish a billing account (the "Account") to which E & I Costs for such Work shall be charged. County's E&I Costs will be billed from time to time against the Account at hourly rates based on the County's direct and indirect costs, including but not limited to salaries, benefits, overhead, and other administrative expenses. Fees and other costs of any consultants hired by County in connection with construction of the Work shall be billed at the rate actually incurred by the County. Lessee shall pay E & I costs directly to the responsible County Department when due and as requested by each responsible County Department. The County estimates that its costs of review, engineering and inspections related to the Work, not including charges that may be payable to the Airport for E & I Costs, will total 1% of each portion of Lessee's Leasehold Improvements ("Estimated E & I Charges"). Any portion of the E & I Charges, which may be held by the County as deposits from Lessee, after the Work is completed, which exceed the E & I Costs incurred by the County, shall be returned to Lessee within twenty-one (21) days after final accounting of all costs has been made, but in no event later than ninety (90) days after Notice of Completion of Construction of the Work has been filed.

The Estimated E & I Costs for the Airport's reasonable, out of-pocket-expenses is $50,000.00 (Airport E & I Charge) and does not include charges that may be payable to County Departments other than the Airport in connection with the Work (which Lessee shall pay directly to the responsible County Department when due and as requested by each County Department). Lessee

shall pay the Estimated Airport E & I Charges in installments ("E & I Deposits"). Prior to Lessee's delivery of the initial construction drawings, Lessee shall make an E & I Deposit of $25,000 to the Airport and concurrent with submission of final construction plans to the County of any Leasehold Improvement, Lessee shall make a second E & I Deposit of $25,000 to the Airport Any portion of the E & I Deposits held by the Airport after the Work is completed, which exceed the E & I Costs incurred by the Airport, shall be returned to Lessee within twenty-one (21) days after final accounting of all costs has been made, but in no event later than ninety (90) days after Notice of Completion of Construction of the Work has been filed. Any additional reasonable Airport E & I Charge exceeding the E&I Deposits actually made by Lessee to Airport shall be due by Lessee to Airport within fifteen (15) days after the final accounting of all costs has been made by the Airport. E & I Costs may be immediately withdrawn by Airport from the E & I Deposits held by Airport as costs are incurred by Airport. E & I Costs of approximately $0.00 have been incurred by the County prior to the Effective Date, and will be immediately reimbursed to County from the first E & I Deposit by Lessee to County.

6.4. Construction and Completion of Leasehold Improvements

6.4.1. Notice to Proceed

Lessee shall only commence construction of any of the Leasehold Improvements after the Director has issued written authorization to proceed with regard to the Leasehold Improvements, which shall be issued only after the following all have occurred:

i. All E & I Deposits required as of that date shall have been paid to the County;
ii. Lessee has submitted to County and County has approved the design and/or plans of the Leasehold Improvements.
iii. Lessee has submitted required insurance documents, including additional insured certificates acceptable to the County, with the County, meeting all of the requirements of Exhibit G;
iv. Lessee's contractor and subcontractor have complied with all applicable pre-construction provisions of the County Standard Specifications, including but not limited to the deposit of required insurance documents and certificates meeting the requirements of Exhibit G; and
v. County (through the planning and/or public works and fire departments, as the case may be) has issued all required planning and building permits and approvals for the commencement of construction of the Leasehold Improvements;

6.4.2. Progress of Work

In accordance with each milestone/requirement set forth in Exhibit F, Lessee shall present adequate documentation for each relevant subsection in Section 6.4.1 above to allow the Director to grant necessary approvals and/or issue a Notice to Proceed as appropriate in accordance with the requirements of this Agreement. Lessee shall diligently proceed to complete the work at the earliest reasonable date, but in any event, Lessee shall complete the Leasehold Improvements no later than those milestones set forth in Exhibit F. For these purposes, completion of the Leasehold Improvements shall mean the issuance by the County of a certificate of occupancy for the Leasehold Improvements. Any final inspection approval or issuance of a certificate of

occupancy for Lessee's improvements shall be coordinated through the County's Director of Public Works, Director of Planning, Building, and Environmental Services, and Fire Chief, or their designees. Lessee's failure to present adequate documentation as listed in Section 6.4.1 above to meet the milestones set forth in Exhibit F by the corresponding timeframes therein shall be subject to County's remedies as set out in Section 6.9 of this Agreement.

Lessee shall construct and complete any Leasehold Improvements in a good and competent manner in accordance in all material respects with all applicable Laws, and shall carry such insurance as provided for in Section 17 of this Agreement. Construction of Leasehold Improvements shall commence prior to (i) the expiration of any required site development or conditional use permit or other licenses or permits which may be issued by County and (ii) the expiration of any other required discretionary approvals, consents or permits which may be issued by any governmental body.

During the Work, Lessee shall have the right and obligation to supervise the construction in the field.

6.4.3. **Change Orders**

Lessee shall obtain Director's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) before signing any change order or changing the Plans and Specifications of any Work, if: (i) the change materially changes the character or quality of the Work; or (ii) the change requires any extension of the scheduled completion timeframe. Such requests shall be submitted to the Director in writing with the sufficient information on change order for the Director to approve or disapprove. If approved, Lessee shall provide the County with copies of all change orders (whether or not the Director's approval thereof is required) promptly after the execution thereof by all parties thereto. If Lessee requests Director's consent to any such change order and Director fails to approve or reject (which rejection shall be given in writing and shall specify the reasons therefor) such change order within ten (10) Business Days after Lessee's request for the same, Director's approval shall be deemed given. If Lessee proceeds, without the Director's prior written approval or deemed approval, with construction on a change order for which the Director's approval is required hereunder, the costs of reversing, removing or altering the Work covered by such change order shall be borne solely by Lessee if Director does not subsequently agree to such construction on a change order.

6.4.4. **Failure to Comply with County Requirements or Applicable Laws**

If Lessee, for any reason, fails to comply with any of County's requirements or any other applicable Law concerning Lessee's construction, County shall have the right to require Lessee, at Lessee's sole expense, to alter, repair, or replace any Leasehold Improvements or refurbishments or perform any other action to the reasonable satisfaction of the Director to bring Lessee into compliance with any applicable Laws. In the event that Lessee fails to perform any such replacements, alterations or repairs after demand from County, County may, in its sole discretion, cause such replacements, alterations, or repairs or perform any other required action as shall bring Lessee into compliance with any applicable Laws. Lessee agrees to promptly reimburse County for such costs, plus ten percent (10%) thereof for administrative overhead subject to change pursuant to ordinance, resolution, or other official policy-setting document that

may be adopted and established from time to time by the Board of Supervisors. In the event that County declines to cause the required replacements, alterations or repairs to be performed, County may, in its sole discretion, declare this Agreement in default, terminate this Agreement pursuant to the termination for default provisions in Section 13 of this Agreement. Lessee's obligation to reimburse County for such expenditures shall survive the termination of this Agreement.

6.5. **General Approvals**

Lessee, at its own cost and expense, shall procure all permits and insurance necessary for all Work (including but not limited to any required environmental permits or clearance and approvals from any governmental agency or entity, including County departments other than the Airport). Lessee shall require in any Construction Contract that its contractor comply with all applicable Laws.

All work required in the construction of Leasehold Improvements, including any site preparation work, landscaping work, utility installation work as well as actual construction work on the Premises, shall be performed only by competent contractors duly licensed under the laws of the State of California and shall be performed pursuant to written contracts with such contractors.

Unless otherwise specified, where the Director's approval is required in this Section 6, such approval shall not be deemed to include the approval of the Director of Planning, Building and Environmental Services, or any other County department or governmental or public entity which Lessee may be required to obtain.

6.6. **Liens**

Lessee shall keep the Premises free of any liens arising out of the work performed, materials furnished or obligations incurred by Lessee in the performance of any construction or installation of Leasehold Improvements. Lessee shall notify County at least ten (10) Business Days prior to the commencement of any work to be performed or materials to be furnished on the Premises which could give rise to any such lien, and County shall have the right to post and keep on the Premises any notices that may be required by law or which County may deem proper for the protection of County, or the Premises from such liens.

6.7. **Airport Obstructions**

County reserves the right to take any action it considers necessary, without liability to Lessee for any damage caused thereby, to protect the aerial approaches of the Airport against obstruction or hazard, together with the right to prevent Lessee from erecting, or permitting to be erected, or to require the removal of any building or other structure on the Premises (other than the Leasehold Improvements under construction or then-constructed as approved by County) which, in the opinion of County, would limit the usefulness of the Airport or constitute a hazard to aircraft.

6.8. **County Not Responsible for Work**

County shall not be responsible to Lessee or any other party for the performance of the

contractor or contractors under the Construction Contracts for the Work. The County shall not be required to pay or provide any moneys for the Work. Failure of the contractor or contractors to complete the acquisition, construction, notification, expansion and installation of the Leasehold Improvements in accordance with the Construction Contracts shall in no way affect the obligations of Lessee under this Agreement.

6.9. **Lessee's Failure to Diligently Pursue Construction**

In the event of unreasonable delays in the Progress of Work as provided in Section 6.4.2 above (other than force majeure) and such delays are the result of matters within the reasonable control of the Lessee, the Director shall notify the Lessee in writing of such unreasonable delay and the Lessee shall have fifteen (15) days to remedy such delay or to demonstrate that Lessee is working diligently to remedy such delay. If Lessee fails to remedy such delay or to demonstrate that Lessee is working diligently to remedy such delay within fifteen (15) days after written notice from the Director, such failure shall be considered an Event of Default hereunder, and, in addition to any remedy under Section 13.2 hereof, County shall have the right, upon written notice to Lessee, to take over the management, at Lessee's sole cost and expense, of Lessee's construction.

If after commencing any Work on the Premises, Lessee (without Director's prior written consent) ceases such Work for thirty (30) continuous days (other than cessation of Work due to force majeure), such cessation of Work shall be an Event of Default hereunder, and, in addition to any remedy under Section 13.2 hereof, County shall have the right, upon seven (7) days written notice to the Lessee, to take over the management, at Lessee's sole cost and expense, of Lessee's construction.

6.10. **Alterations/Refurbishments**

After completion of the Leasehold Improvements, Lessee may, subject to compliance with all applicable permitting and reasonable approval requirements of the County and any other regulatory agency having jurisdiction, and all of the foregoing requirements, at its own cost and expense (except as otherwise provided herein); and after having obtained the prior written consent of the Director; install any fixture or improvement or do or make alterations or do any remodeling, repair, construction or modification to the Premises collectively "Modifications". Any such Modifications shall be made in conformance with the construction provisions in this Section 6. Upon the completion of any Modifications, Lessee shall furnish the Director seven (7) complete sets of "as installed" detailed Plans and Specifications of the work as completed, and a CAD disk if requested by Director. Lessee shall provide Plans and Specifications in an alternative format if requested by Director, and such alternative format is reasonably available to Lessee.

6.11. **Title to Leasehold Improvements**

During the Term, title to the Leasehold Improvements shall remain with Lessee. Upon the expiration or earlier termination of the Term plus any Option Term(s), except as to those Leasehold Improvements that County requires Lessee to remove, title to the Leasehold

Improvements shall automatically vest in County, and Lessee shall execute, acknowledge and deliver to County a proper instrument in writing releasing and quitclaiming to County all right, title, and interest of Lessee in and to the Premises and any Leasehold Improvements thereon by virtue of this Agreement or otherwise.

6.12. Claims by Mechanics or Material Suppliers

In the event any of the persons or entities entitled to make claims pursuant to California Civil Code Sections 8400, 9100 or 9554(b) record a claim of lien (whether valid or invalid), then Lessee shall, at its sole cost and expense, and within fifteen (15) days, (i) cause the same to be removed; (ii) legally challenge the filing of the lien and clear or pay the lien within 90 days; or (iii) pay the same in full. The obligation of Lessee contained in the preceding sentence shall exist notwithstanding the fact that the general contractor or a subcontractor may have been paid for such work.

Section 7. Mortgage of Premises

7.1. Prohibited Encumbrances

Except as permitted in Section 7.2, Lessee shall not:

i. Engage in any financing or other transaction placing any mortgage or deed of trust upon the Premises herein or the Leasehold Improvements constructed thereon; or

ii. Place or suffer to be placed upon the Premises therein or the Leasehold Improvements any lien, levy attachment or other encumbrance (other than a lien upon the Premises or the Leasehold Improvements for taxes levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Lessee shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided the Lessee shall (except for a contest pursuant to Section 19.3) first furnish adequate security to the reasonable satisfaction of County to protect Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "Encumbrance") shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Lessee shall, within twenty (20) days of such date of execution or filing of record, remove such encumbrance or provide adequate security to the reasonable satisfaction of County to protect the Premises and the Leasehold Improvements thereon from such encumbrance.

7.2. Lessee's Rights to Encumber.

An encumbrance permitted pursuant to this Section 7.2 shall be referred to as a "Permitted Mortgage." Lessee may, at any time and from time to time during the term of this Agreement, encumber to any person or entity (hereinafter called "Lender") by deed of trust or mortgage or other security instrument, all, or a portion of Lessee's interest under this Lease, the leasehold

estate hereby created in Lessee and the Leasehold Improvements (collectively, "Lessee's Interest"), for the purpose of constructing the Leasehold Improvements, or to otherwise finance Lessee's business operations (including future improvements) or for the purpose of restructuring or refinancing any debt permitted by this Agreement, provided that Lessee obtains the prior written consent of County, which consent shall not be unreasonably withheld, and further provided that:

i. Except as otherwise expressly provided in this Agreement or in a separate document executed by County which shall not modify this Agreement or limit County's rights as landlord, all rights acquired by said Permitted Mortgagee under said Permitted Mortgage shall be subject and subordinate to each and all of the covenants, conditions and restrictions set forth in this Agreement, and to all rights of County hereunder, none of which covenants, conditions and restrictions is or shall be waived by County by reason of the giving of such Permitted Mortgage, except as expressly provided in this Agreement or in a separate document executed by County. Notwithstanding any foreclosure of any Permitted Mortgage and so long as the Agreement has not been terminated, Lessee shall remain liable for the payment of Ground Rental and all other fees and charges payable pursuant to this Agreement, and for the performance of all of the terms, covenants and conditions of this Agreement which by the terms hereof are to be carried out and performed by Lessee.

ii. Lessee shall give County thirty (30) days prior written notice of any such Permitted Mortgage, and shall accompany the notice with a true copy of the Permitted Mortgage.

iii. Lessee provides all reasonably requested information to County necessary or desirable in order to obtain consent.

iv. No encumbrance incurred by Lessee pursuant to this Section shall, and Lessee shall not have power to incur any encumbrance that will constitute in any way a lien or encumbrance on the fee of the Premises or any interest of County in said Premises.

v. The principal amount of the encumbrance shall not exceed (when added to the principal balances of any other then-existing Permitted Mortgages not being refinanced thereby) an amount equal to eighty percent (80%) of the greater of (a) the then fair market value of Lessee's Interest or (b) the construction cost of the Leasehold Improvements. Lessee shall submit its lender's appraisal which shall be used to determine fair market value. In the event that County disagrees with the lender's appraisal, then the appraisal process stipulated in Section 5.2.2 shall apply.

vi. No encumbrance incurred by Lessee pursuant to this Section shall extend beyond the term of this Agreement.

vii. The encumbrance shall contain provisions permitting the disposition and application

of the insurance proceeds and condemnation awards in the manner provided in this Agreement, except as County may otherwise agree in its sole discretion.

viii. An encumbrance may be given only pursuant to a bona fide loan transaction. The holder of an encumbrance is herein referred to as a Permitted Mortgagee.

In order to facilitate the approval of an initial encumbrance obtained for the purpose of constructing the Leasehold Improvements as described in Exhibit F attached hereto, Director is authorized to consent to said encumbrance provided that all provisions of this Section 7.2 are complied with by Lessee and that all documents in connection therewith are approved as to form by County Counsel, such consent not to be unreasonably delayed or withheld.

7.3. **Notice of Loan Default.**

Any Permitted Mortgage that contains a power of sale as defined by California law, shall contain a provision that a copy of any notice of default and a copy of any notice of sale under such deed of trust or mortgage shall be mailed to County at the address specified in Section 39 of this Agreement, simultaneously with any such notice to Lessee.

7.4. **Notice to and Service on Lender.**

Lessee shall at all times keep County informed in writing of the name and mailing address of Lender and any changes in Lender's mailing address. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 7 nor shall the provisions of this Section 7 be binding upon County, unless and until the name and address of the Permitted Mortgagee shall have been delivered to County, notwithstanding any other form of notice, actual or constructive.

7.5. **Rights of Lender.**

Should Lessee grant any Permitted Mortgage pursuant to Section 7.2 of this Agreement, the Lender shall have the right at any time during the term of this Agreement and the existence of the Permitted Mortgage to:

i. Do any act or thing required of Lessee under this Agreement which may be necessary and proper to be done in observance of the covenants and conditions of this Agreement, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Lessee's rights under this Agreement as if done by Lessee, provided that Lender complies with Section 7.6.

ii. Realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the Permitted Mortgage and to:

    a. Transfer, convey, or assign the title of Lessee to the leasehold estate created by the Agreement to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Permitted Mortgage; provided, however, that Lender first complies with the

provisions of Section 7.6. Such assignee shall have the same responsibilities for performance as original Lessee.

b. Acquire and succeed to the Lessee interest by virtue of any foreclosure sale, whether the foreclosure sale be conducted pursuant to a court order or pursuant to a power of sale contained in the Permitted Mortgage.

7.6. **Right of Lender to Cure Defaults.**

If Lessee, or Lessee's successors or assigns, shall mortgage this Agreement in compliance with the provisions of this Section 7, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

i. County, upon serving upon Lessee any notice of default pursuant to the provisions of Section 13 hereof, or any other notice under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon any Permitted Mortgagee at the address provided for in such notice by Lessee, and no notice by County to Lessee hereunder shall affect any rights of a Permitted Mortgagee unless and until a copy thereof has been so served to such Permitted Mortgagee.

ii. Any Permitted Mortgagee, in case Lessee shall be in default hereunder, shall, within the period provided for Lessee to cure such default and otherwise as herein provided, have the right, but not the obligation, to remedy such default or cause the same to be remedied, and County shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Lessee; provided, however, that if the breach or default is with respect to the initial construction of the Leasehold Improvements, nothing contained in this Section or any other Section or provision of this Agreement shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the Lessee's obligation to County to complete, in the manner provided in this Agreement, the improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

iii. For the purposes of this Section 7, no Event of Default, other than an Event of Default due to a default in the payment of money, shall be deemed to exist under Section 13 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Lessee or a Permitted Mortgagee within the time permitted therefore to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 13 hereof provides.

iv. Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of

money, County shall take no action to effect a termination of this Agreement without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than thirty (30) days within which to either (i) obtain possession of the mortgaged property (including possession by a receiver), or (ii) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Lessee's interest under this Agreement. A Permitted Mortgagee, upon acquiring Lessee's interest under this Agreement, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (i) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (ii) nothing herein contained shall preclude County, subject to the provisions of this Section, from exercising any rights or remedies under this Agreement with respect to any other default by Lessee during the pendency of such foreclosure proceedings; and (iii) such Permitted Mortgagee shall agree with County, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Agreement as are reasonably susceptible to being complied with by such Permitted Mortgagee. Any default by Lessee not reasonably susceptible to being cured by such Permitted Mortgagee, shall be deemed waived by County upon completion of such foreclosure proceedings or upon such acquisition of Lessee's interest in this Agreement, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Agreement through such foreclosure proceedings or by assignment of this Agreement in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Agreement through foreclosure proceedings or by an assignment of this Agreement in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Lessee's rights and obligations under this Agreement which are reasonably susceptible to being performed by such party.

v. In the event of the termination of this Agreement prior to the Expiration because of Lessee’s default, or operation of law, County shall serve upon the holder of the senior Permitted Mortgage written notice that the Agreement has been terminated, together with a statement of any and all sums which would at that time be due under this Agreement but for such termination, and of all other defaults, if any, under this Agreement then known to County. The senior Permitted Mortgagee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:

   a. Upon the written request of the Permitted Mortgagee, within sixty (60) days after service of such notice that the Agreement has been terminated, County shall enter into a new lease of the Premises and Leasehold Improvements thereon with such holder, or its designee, as follows:

b. Such new lease shall be the same priority as this Agreement, shall be effective as of the date of termination of this Agreement, and shall be for the remainder of the term of this Agreement and at the Base Rent and upon all the agreements, terms, covenants and conditions hereof. Such new lease shall require that the Lessee perform any unfulfilled obligation of Lessee under this Agreement which is reasonably susceptible to being performed by such Lessee. Upon the execution of such new lease, the Lessee named therein shall pay any and all sums which would at the time of the execution hereof be due under this Agreement but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by County in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new lease. Upon the execution of such new lease, County shall allow to the Lessee named therein and such Lessee shall be entitled to an adjustment in an amount equal to such expenses from the net income, if any, derived by County from the Premises during the period from the date of termination of this Agreement to the date of execution of such new lease.

vi. Any notice or other communication which County shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Agreement shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for in Section 39 hereof, or at such other address as shall be designated by such holder in writing given to County by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Agreement shall desire or is required to give to or serve upon County shall be deemed to have been duly given or served if (i) sent by certified mail, return receipt requested, addressed to County at County's address as set forth in Section 39 of this Agreement or at such other addresses as shall be designated by County by notice in writing given to such holder by certified mail, return receipt requested, and (ii) sent by certified mail, return receipt requested, to the County's other mortgagees, if any.

vii. Effective upon the commencement of the term of any new lease executed pursuant to Subsection e. of this Section, all subleases then in effect shall be assigned and transferred without recourse by County to the Lessee under such new lease, and all monies on deposit with County which Lessee would have been entitled to use but for the termination or expiration of this Agreement may be used by the Lessee under such new lease for the purposes of and in accordance with the provisions of such new lease.

viii. Anything herein contained to the contrary notwithstanding, the provisions of this Section 7 shall inure only to the benefit of the holders of Permitted Mortgages.

7.7. **Lender as Assignee of Agreement.**

No Lender under a Permitted Mortgage granted by Lessee pursuant to Section 7.2 of this Agreement shall be liable to County as an assignee of this Agreement unless and until such time as Lender acquires all rights of Lessee under this Agreement through foreclosure or other proceedings in the nature of foreclosure or as a result of some other action or remedy provided by law or the instrument creating the Permitted Mortgagee and in such event the Lender shall have no personal liability for the prior acts or omission of Lessee. However, Lender shall cure any default in accordance with the terms of the Agreement.

7.8. **Lender as Including Subsequent Security Holders.**

The term "Lender" as used in this Agreement shall mean not only the person, persons, or entity that loaned money to Lessee and is named as beneficiary, mortgagee, secured party, or security holder in a Permitted Mortgage but also all subsequent assignees and holders of the Permitted Mortgage.

7.9. **Affirmation of Agreement in Bankruptcy.**

In the event of the filing of a petition in bankruptcy by the Lessee, and the Lessee rejects this Agreement under Section 365 of the United States Bankruptcy Code, the County shall, upon the request of a Permitted Mortgagee, enter into a new Agreement on the same terms and conditions with the Permitted Mortgagee immediately upon Lessee's rejection of this Agreement.

Section 8. Maintenance of Premises

8.1. **“Maintenance” Defined**

Lessee shall be obligated at all times throughout the Term plus any Option Term(s), without cost to County, to maintain the Premises in good appearance, repair, clean and safe condition, and in a condition otherwise reasonably satisfactory to Director, reasonable wear and tear excepted. Lessee, at its sole cost, shall promptly make all necessary repairs and replacements. All maintenance, repair and replacement shall be performed diligently and shall be of a quality equal to or better than the original work in materials and quality, reasonable wear and tear excepted. When used in this Agreement, the term "maintenance" shall include all repairs, alterations, replacements, maintenance and/or removals deemed reasonably necessary by Director.

8.1.1. **Maintenance of Apron**

For that pavement within Lessee’s Premises within any AOA, expressly including but not limited to the existing and new apron areas illustrated in Exhibit A, as well as the North FBO Non-Exclusive License Area in County’s possession, Lessee shall be obligated to develop a Pavement Management Program (“PMP”) to the satisfaction of the Director. The PMP shall be prepared using guidance, principles, and concepts within FAA AC 150/5380-7B. Once approved by the Director, Lessee is obligated to implement the PMP and perform the prescribed routine maintenance. Any pavement failures or pavement conditions deemed to be unsafe by the Director shall be repaired promptly to the satisfaction of the Director.

8.1.2. **Maintenance**

For those improvements and equipment associated with Lessee's fueling operations (e.g., fuel farm, refueling vehicles, self-serve fuel facility, etc.), Lessee is obligated to develop an Operations and Maintenance ("O&M") Manual to the reasonable satisfaction of the Director. The O&M Manual shall identify the maintenance practices, procedures, and replacement schedules that will be used to ensure the safe and dependable dispensing of aviation fuels. The O&M Manual shall be prepared using guidance from the Air Transport Association of American (ATA) Specification 103, "Airport Fuel Facility Operations and Maintenance Guidance Manual," as well as applicable NFPA codes and FAA Advisory Circulars.

8.2. **Quality of Maintenance**

Director shall use reasonable discretion in determining the quality of maintenance of the Premises. County's employees and agents may, during normal business hours at reasonable times scheduled in advance with Lessee, enter upon the Premises to determine if maintenance satisfactory to Director is being performed, provided, Lessee and its subtenants and users shall not be unreasonably disturbed thereby. If Lessee fails to perform the maintenance or the maintenance is not being performed in a manner reasonably satisfactory to Director, Director will notify Lessee in writing. If the maintenance is not so performed by Lessee within fifteen (15) days after receipt of written notice (or such additional period of time as necessary if Lessee has commenced such cure within such time period and diligently prosecutes the same to completion), County shall have the right (but not the obligation) to enter upon the Premises at reasonable times scheduled in advance with Lessee and perform the necessary maintenance and upon receipt of the notice of maintenance cost, Lessee agrees to promptly reimburse County for the maintenance cost incurred, plus ten percent (10%) thereof for administrative overhead, subject to change pursuant to ordinance, resolution, or other official policy-setting document that may be adopted and established from time to time by the Board of Supervisors.

8.3. **Responsibility to Modernize**

Lessee acknowledges its ongoing responsibility to conduct its respective activities on or about the Premises in a manner reasonably consistent with established state-of-the art technological improvements relating to sound and air emission controls and the safety of aircraft operation generally, and agrees to utilize modern aviation designs, equipment and facilities as such become generally available and recognized in the aviation industry, except that Lessee may own, operate and/or provide equipment-appropriate pilot and support training for and repairs of antique or historic aircraft with the prior written consent of the Director, even if such training or repairs would not be state-of-the-art for modern aircraft. For purposes of this Paragraph, antique or historic aircraft shall be deemed to be aircraft more than 30 years old. At the request of the Director, Lessee shall attend meetings from time to time to review and consider incorporation of such modern developments in aviation into the conduct by Lessee of its activities on the Premises.

8.4. **Lessee's Waiver of Any Rights to Make Repairs at County's Expense**

Lessee expressly waives all statutory rights to make repairs at the expense of the County and to

deduct the cost of such repairs from the Rent. Without limiting the generality of the foregoing, Lessee hereby waives California Civil Code Sections 1932(2**)** and 1933(4), providing for termination of hiring upon destruction of the thing hired, and California Civil Code Sections 1941 and 1942, providing for repairs to and of the Premises.

8.5. **Janitorial Service**

Lessee, at its sole cost and expense and in compliance with the laws and regulations of the State of California, shall keep and maintain the Premises clean and free of rubbish, dirt, garbage, and other waste matter at all times and shall provide and pay for regular janitorial and other service necessary for the proper maintenance of the Premises in a clean and sanitary manner. Lessee, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage, recycling, compostable materials, and other waste matter to be removed from the Premises.

8.6. **No Waste**

Neither Lessee, its employees, distributors or agents shall commit, nor suffer, permit or allow to be committed, any waste or public or private nuisance on the Premises nor any other act or thing which may unreasonably disturb the quiet enjoyment of any other lessee, permittee, licensee, invitee or other person using or occupying any portion of the Airport.

8.7. **Miscellaneous**

Lessee, at its sole cost and expense, shall:

i. make all alterations, additions, or repairs to the Premises required by any applicable Law;

ii. maintain any trees or landscaping on the Premises or Leasehold Improvements, in acceptable condition, as required by any applicable Law, and in accordance with any direction of the Director;

iii. observe and comply with all applicable Laws made or issued respecting the Premises; and

iv. indemnify and hold County and the property of County including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Lessee's failure to comply with and perform the requirements of this Section 8.7.

Section 9. Books and Records

9.1. **Minimum Retention Period**

Lessee shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to fees, charges, taxes or other amounts payable by Lessee to County pursuant to this Agreement for a minimum of four (4) years from

the date of each payment to County pursuant to this Agreement.

9.2. Availability of Records

Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon the written request by the Director, County Counsel, County Auditor, County Executive Officer or a designated representative of any of these offices. Upon request, copies of such documents shall be provided for inspection at the Premises.

Where County has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Lessee's business, County may, by written request by any of the above-named officers, require that custody of records be given to County and that the records and documents be maintained at a location designated by the Director, County Counsel, County Auditor or County Executive Officer. Access to such records and documents shall be granted to any party authorized by Lessee, its representatives or its successor-in-interest**.**

9.3. Audit of Records/Discrepancy

If any examination, inspection or audit of Lessee's books and records by County discloses an underpayment by Lessee, Lessee shall promptly pay County the amount of such underpayment, and if such underpayment is in excess of two percent (2.0%) of such fees and charges that were due, Lessee shall promptly reimburse County for all costs incurred in the conduct of such examination, inspection or audit, including interest from the time such underpayment was due, at the rate of twelve (12%) per annum.

Section 10. Utilities

10.1. Utility Services

Lessee shall secure and pay directly to the respective utility companies any electrical, gas, water, sewer, garbage, recycling, internet, and telephone services to the Premises. The location, relocation and coordination of all utilities and telephone facilities to service the Premises shall be subject to the prior written approval of the Director, not to be unreasonably delayed or withheld.

10.2. Interruption of Utility Services

Lessee agrees that it shall take reasonable steps and any such other action that it deems necessary to protect Lessee's equipment from any damage that may be caused to such equipment in the event of any deficiency, impairment and/or interruption of utility services. County shall not be liable for any failure to furnish to, or for any interruption in, any services or utilities benefiting the Premises and Lessee shall not be entitled to any damages resulting from such failure or to any diminution or abatement in any Rent or other amounts payable by Lessee hereunder. Lessee waives any and all claims and/or causes of action against County for any such damages.

Section 11. Avigation Easement

County hereby reserves to itself and its successors and assigns, for the benefit and use of the

public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in the 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 operating on the Airport. For the purpose of this Agreement, all rights reserved pursuant to this Section 11 are referred to collectively herein as the "Avigation Easement." This Avigation Easement shall not operate to deprive Lessee, its agents, contractors, directors, employees, officers, and representatives, of any rights which Lessee, its agents, contractors, directors, employees, officers, and representatives, may from time to time have against any operator of aircraft or third parties responsible for any act or omission respecting the operation of aircraft.

11.1. **Lessee's Assumption of Risk**

As between Lessee and the County, except for the gross negligence or willful misconduct of County, its employees, agents, representatives, successors and assigns, Lessee agrees to voluntarily assume all risk of loss, damage, or injury to the person and property of Lessee (including the right of Lessee to occupy the Premises), its agents, contractors, directors, employees, officers, and representatives, in or about the Airport or the Premises which may be caused by or arise or occur in any manner:

i. From the flight of any aircraft of any and all kinds now or hereafter flown in, through, across, or about any portion of the air space over the Airport or the Premises; or

ii. From noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during such flight, or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up, and take-off of such aircraft, and the approach and departure of aircraft to or from the Airport.

This provision does not waive Lessee's right against third parties arising from such third parties' action or inaction.

11.2. **Waiver and Release**

Except as otherwise provided herein, Lessee hereby waives and releases County, its agents, contractors, directors, employees, officers, and representatives, from any and all claims or causes of action which it may now or hereafter have against County, its agents, contractors, directors, employees, officers, and representatives, for any such loss, damage or injury as it pertains to this reservation of Avigation Easement.

Section 12. Assignment or Transfer

County's consideration for entering into this Agreement, in addition to any other consideration provided for in this Agreement, includes facilitating competition between multiple FBOs and Lessee's unique experience and personnel that will provide for completing the Leasehold Improvements and providing those services required under the Minimum Standards. For that

reason and to ensure continued compliance with the County's obligations to the federal government, Lessee shall not assign or transfer a controlling interest in this Agreement without the prior written consent of the County, which consent shall be granted in the County's sole and absolute discretion.

12.1. **Consent For Non-Controlling Transfer or Sublease**

Except as otherwise provided for in Section 7 of this Agreement (Mortgage of Premises), Lessee shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Agreement, the Premises or any part thereof, or any rights of Lessee hereunder, whether voluntarily or by operation of law (collectively or singularly, a "Transfer"), without the prior written consent of the County acting by and through its Board of Supervisors (other than those subleases entered into in the ordinary course of its business to a (i) SASO for a portions of the Premises reasonably consistent with a SASO's required space under the Minimum Standards, or (ii) hangaring of an aircraft). Consistent with Civil Code section 1995.230, the County's discretion to consent to or deny a transfer shall be absolute. A Transfer within the meaning of this Section shall include, but is not limited to, the following: the incorporation of an individual Lessee and the transfer of Lessee's rights hereunder to the corporation which is not wholly owned by Lessee; in the event that Lessee is a partnership, incorporation of Lessee and transfer of Lessee's rights hereunder to the corporation, or the withdrawal or addition of any partner to Lessee's partnership; in the event that Lessee consists of co-tenants, the incorporation of Lessee and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of that Person's rights hereunder to a co-tenant or to a third Person; in the event that Lessee is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Lessee; and, in the event that Lessee is an unincorporated association, the incorporation of Lessee and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

12.2. **Factors County Could Consider**

While the County maintains sole and absolute discretion whether to consent to a Transfer, the County may, also in its sole discretion, consider one of more of the following factors in making its decision: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Airport, if the activity is to change from what the Lessee is then conducting; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee; (vi) any financial impacts (i.e. lost revenues) to County associated with such proposed Transfer (any costs to County shall be prohibited); (vii) any potential impacts on availability of or competition of FBO services at the Airport (a Transfer to another FBO in contract with the County or any Person associated with another FBO in contract with the County is expressly prohibited and any such attempted Transfer shall be null and void), and (viii) the impact of the Transfer on the County's compliance with any obligations to the FAA, including the Grant Assurances. In addition, County's consent to any proposed Transfer under this Agreement shall be conditioned upon, among other things, the express written assumption by the proposed transferee (if the Lessee's interest in this Agreement is being transferred) of Lessee's

obligations under this Agreement and/or performance of required or necessary repairs or maintenance to the Premises.

12.3. **Notice**

The Lessee shall notify the County in writing of its desire and the details of any proposed Transfer at least ninety (90) days prior to the proposed date of any Transfer along with that deposit required by 12.4.

If the information provided by the Lessee is not, in the sole discretion of the County, sufficient to make a decision on whether to consent to the transaction, the County shall notify the Lessee within a reasonable time after receipt of the notification what additional information is required. Any attempted Transfer in violation of the provisions hereof shall be null and void and an Event of Default as detailed further in Section 13 of this Agreement.

12.4. **Processing Fee**

Lessee shall pay County's costs for reviewing any proposed Transfer and preparing any documents in connection therewith, all staff time and expressly including County's attorneys' fees, inclusive of County's outside counsel. County shall not consider any Transfer, under its sole and absolute discretion if Lessee fails to timely provide County with full, complete, and necessary information, or to pay the processing fee.

In connection with that review, Lessee shall submit to County a Lease/Sublease Execution Deposit for the expenses incurred for the review and approval of the proposed sublease (the "Lease/Sublease Execution Deposit"). Such Lease/Sublease Execution Deposit shall equal a minimum of $5,000, and may be greater than $5,000 as determined by the Director, and shall be replenished by Lessee if and when notified by the Director that the account has fallen below $500.

12.5. **Subleases**

All subleases of hangar space, ramp parking space, and office/facility space in the ordinary course of business shall be between Lessee and sublessee. Lessee shall provide the Airport Manager copies of all subleases within fifteen (15) days following their approval. Subleases shall not have a term in excess of five (5) years unless approved in writing by the Director. Lessee shall guarantee and enforce performance of the sublease in compliance with the terms of this Lease.

Sub-subleases are prohibited and shall constitute a breach of this Lease. For avoidance of doubt, Lessee's licenses to customers of daily and monthly hangar space accommodations and supporting office accommodations are not considered subleases; however, Lessee's licensees are not permitted to sub-lease.

12.6. **Consent Does Not Constitute Waiver**

Consent by County to any Transfer shall not in any way be construed to relieve Lessee from

obtaining further authorization from County for any subsequent Transfer of any nature whatsoever. Any Transfer of the Premises, or any part thereof, in violation of the provisions of this Section 12, shall be void and shall be an Event of Default and the acceptance by County of any rent as provided herein or the continuation of the use of the Premises, as provided herein, by Lessee or Lessee's transferee, sublessee, assignee, or successor-in-interest, shall not be deemed a waiver of such Event of Default. Any and all requests by Lessee to County for authorization to make any Transfer shall be made in writing by certified mail to the Director and shall include copies of the proposed documents of Transfer.

Section 13. Default

13.1. Events of Default

In addition to the other defaults specified in this Agreement, the County may determine in its sole discretion that Lessee may be in default under this Agreement, and a breach of this Agreement may exist if any of the following events (severally "Event of Default" and collectively "Events of Default") shall occur:

13.1.1. Failure to Pay Ground Rent, Fees or Charges

Lessee shall have failed to pay when due any Rent, fee, charge, or obligation of Lessee requiring the payment of money under the terms of this Agreement and such failure shall have not been cured within ten (10) days after written notice thereof.

13.1.2. Failure to Maintain Operations

Lessee shall have abandoned, or vacated the Premises or failed to maintain continuous operations on the Premises for a period of more than forty-eight (48) hours without the consent of Director; provided, however, that if such abandonment or vacation or failure to maintain continuous operations is the result of war, strike, embargo, riot, civil commotion, pandemic, acts of public enemies, flood, earthquake or other natural disasters, casualty damage to the Premises, construction of improvements, or any other similar cause beyond Lessee's reasonable control, such involuntary day period of nonuse shall be excluded in computing the period set out above.

13.1.3. Failure to Maintain Insurance

Lessee shall have failed to maintain any insurance required under Section 17 and such failure shall have not have been cured within ten (10) days after written notice thereof.

13.1.4. Failure to Restore Security Deposit

Lessee shall have failed to restore the security deposit as required under Section 5.4 and such failure shall have not been cured within ten (10) days after written notice thereof.

13.1.5. Failure to Timely Commence or Complete Construction

As provided in Section 6.4.2 and subject to the provisions of Section 6.9, Lessee's failure either to: (a) present adequate documentation to allow Director to issue grant approvals or issue a Notice to Proceed in accordance with the requirements of this Agreement and by the timeframes

associated with such milestones in Exhibit F (other than due to force majeure); or (b) complete the Leasehold Improvements not later than the associated milestone timeframes for completing Leasehold Improvements in Exhibit F shall be deemed a Default (other than due to force majeure).

13.1.6. **Failure to Perform Other Terms**

Lessee shall have failed to perform any term, covenant, or condition of this Agreement to be performed by Lessee, except those referred to in Sections 13.1.1, 13.1.2, 13.1.3, 13.1.4 or 13.1.5 and Lessee shall have failed to cure same within thirty (30) days after written notice from County; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

13.1.7. **Actions to Remove Competition**

Consistent with the recitals to this Agreement, it is the County's intent to ensure competition for aeronautical service providers (including Fixed Base Operators) at the Airport as encouraged by the FAA. Any action by Lessee to acquire or assume control of a competing FBO at the Airport, expressly including but not limited to any action, including offers or entering negotiations, to acquire or assume control of, either directly or indirectly through any other Person, Napa County Agreement No. 3371, Napa County Agreement No. 4174, Napa County Agreement No. 4858, Napa County Agreement No. 6663, or any other ground lease, license, or operating agreement executed with the Adjacent FBO, or any other FBO, or assume control through another Person of the same, shall constitute an Incurable Default of this Agreement.

13.1.8. **Representations and Warranties**

Any representation or warranty made by Lessee hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made.

13.1.9. **Assignment of Assets to Creditors**

Lessee shall have made a general assignment of its assets for the benefit of its creditors.

13.1.10. **Unauthorized Assignment**

Lessee shall have assigned or otherwise transferred its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law (which shall be deemed an Incurable Default).

13.1.11. **Bankruptcy or Insolvency**

A court shall have made or entered any decree or order: (i) adjudging Lessee to be bankrupt or insolvent (ii) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Lessee and such decree or order shall have continued for a period of sixty (60) days; or (v) Lessee shall have voluntarily submitted to or filed a petition seeking any such decree or order.

13.1.12. **Attachment or Levy of Lessee's Interest in Agreement**

The sequestration or attachment of or execution or other levy on Lessee's interest in this Agreement or the Premises or any improvements located thereon shall have occurred and Lessee shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs.

13.1.13. **Revocation or Suspension of Required Authorizations**

The occurrence of any act or omission on the part of Lessee which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Lessee to lawfully conduct the Permitted Activities on the Premises which has not been cured within thirty (30) days after written notice to Lessee, provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

13.1.14. **Undischarged or Uncontested Liens**

Any lien shall be filed against the Premises because of any act or omission of Lessee, and shall not be discharged or contested by Lessee in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by County.

13.1.15. **Violation of Gift Prohibitions**

The violation of the Agreement Section titled "Prohibition of Gifts."

13.1.16. **Use of Premises for Illegal Activity**

Lessee knowingly uses or gives its permission to any person to use any portion of the Premises for any illegal purpose (which shall be deemed an Incurable Default).

13.1.17. **Failure to Remedy Hazardous Materials Discharge or Release**

Lessee fails to remedy any Hazardous Materials Discharge or Release as required pursuant to the terms of this Agreement, and Lessee shall have failed to cure same within thirty (30) days after written notice from County; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

13.1.18. **Failure to Remedy a Violation of Any Laws**

Failure to remedy a violation of any laws, rules or regulations as specified under Section 25.1 and 25.2 of this Agreement, now in force or which may hereafter be in force pertaining to the Premises and Lessee's operations and activities thereon, and Lessee shall have failed to cure same within thirty (30) days after written notice from County; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

13.2. **Remedies**

Upon an Event of Default, County shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Agreement, to which County may resort cumulatively, or in the alternative:

13.2.1. **County's Right to Self-Help**

To the fullest extent allowed by law, to address an urgent Airport need such as, but not limited to, a safety, security, or environmental incident that is Lessee's responsibility, County may, at any time without prior notice to Lessee and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Lessee, and without a waiver of such breach, perform any act which if performed by Lessee would otherwise cure the breach; provided that County will notify Lessee at the earliest reasonable opportunity and no later than ten (10) days after performance of the act by County. If in so doing County is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, Lessee covenants to pay to County upon demand by County, the sum or sums of money paid or incurred by County, together with interest at the maximum rate allowed by law plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows County's demand therefore.

13.2.2. **Termination of Agreement**

County may, at its election, terminate this Agreement upon written notice of termination in which event this Agreement shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve Lessee from the payment of any sums then due to County or from any claim for damages or rent previously accrued or then accruing against Lessee. In no event shall any one or more of the following actions by County, in the absence of a written election by County to terminate this Agreement, constitute a termination of this Agreement:

i. Appointment of a receiver or keeper in order to protect County's interest hereunder; or

ii. Any other action by County or its agents intended to mitigate the adverse effects of any breach of this Agreement by Lessee, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of Lessee and in the name of Lessee.

13.2.3. **Written Notice of Termination Required**

This Agreement shall not terminate following an Event of Default and an abandonment of the Premises unless County gives Lessee written notice of its election to terminate this Agreement. No act by or on behalf of County intended to mitigate the adverse effect of such breach shall constitute a termination of Lessee's right to possession unless County gives Lessee written notice of termination.

13.2.4. **Damages Resulting from Termination**

In the event County terminates this Agreement following an Event of Default, County shall be entitled to damages in the following sums:

i. The worth at the time of award of all unpaid Base Rent, Additional Rent, Fees and Charges which have been earned at the time of termination; and

ii. The worth at the time of award of the amount by which the unpaid Base Rent, Additional Rent, Fees and Charges which would have been earned after termination until the time of award exceeds the amount of such Base Rent, Additional Rent, Fees and Charges loss that Lessee proves could have been reasonably avoided; and

iii. The worth at the time of award of the amount by which the unpaid rental fees and other fees for the balance of the Term after the time of award exceeds the amount of such rental fee and other fee loss that Lessee proves could be reasonably avoided; and

iv. Any other amount necessary to compensate County for all detriment proximately caused by Lessee's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following (i) expenses for cleaning, repairing or restoring the Premises; (ii) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to Lessee, or otherwise); (iii) costs of carrying the Premises such as insurance premiums thereon, utilities and security precautions; (iv) expenses in retaking possession of the Premises; and (v) late payment fees and court costs.

v. The "worth at the time of award" of the amounts referred to in subparagraphs 13.2.5 (i), (ii) and (iii) above shall be computed by allowing interest at the rate of twelve percent (12%) per annum, and by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.2.5. **Acceptance of Partial Payments by County**

No payment by Lessee, or receipt by County, of a lesser amount than any Base Rent, Additional Rent, Fee or Charge or other amount due by Lessee hereunder shall be deemed to be other than on account, nor shall any endorsement or statement on any check from Lessee, or letter accompanying any check or payment, be deemed an accord and satisfaction. County may accept any such check or payment without prejudice to County's right to recover the balance of such Base Rent, Additional Rent, Fee or Charge or other amount or to pursue any other right or remedy available to County.

13.2.6. **Liquidated Damages**

In addition to any other rights under this Agreement, Lessee shall pay to County liquidated damages in the amount per occurrence, per day set forth in Table 13.2.6.1 that any violation by

Lessee continues or Lessee is late in timely meeting any obligations set forth in the correspondingly referenced sections of this Agreement. Lessee agrees these amounts are reasonable in light of the anticipated harm to County for each such occurrence, which would otherwise be difficult to calculate with certainty. Before liquidated damages are assessed to Lessee, County shall provide Lessee with written notice of an alleged violation; Lessee will be afforded ten (10) business days to respond and/or cure the alleged breach, or to diligently pursue the correction. Lessee agrees that County may deduct these amounts from the security deposit pursuant to section 5.4 of this Agreement and Lessee further agrees to pay any amounts that may exceed the Security Deposit within thirty (30) days. Any dispute over liquidated damages may be submitted to mediation pursuant to Section 38.

Table 13.2.6.1

Subsections 4.1, 4.2, 4.3 or 4.4.5	$200.00 /OCCURENCE/DAY (with a maximum of $4,000 in any consecutive 30-day period)
Subsection 17.2	$250.00 /OCCURENCE/DAY (with a maximum of $5,000 in any consecutive 30-day period)
Material Violation of Other Sections Not More Expressly Stated Above	$100.00 /OCCURENCE/DAY (with a maximum of $1,000 in any consecutive 30-day period)

13.2.7. **Fines and Penalties**

Violations of the Airports Rules and Regulations are subject to citation and enforcement by the Airport Manager or other authorized personnel pursuant to Chapter 11.28 of the Napa County Code.

13.2.8. **Remedies Cumulative**

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No option, right, power, remedy or privilege of County shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

13.3 **Parent Guaranty**

Lessee is owned or controlled by Alis IA Aviation LLC, a Delaware limited liability company whose industry reputation, experience, and financial strength, County is relying on as an incentive to enter into this Agreement with Lessee. Concurrent with the execution of this Agreement, County and Alis IA Aviation LLC are entering into a parent guaranty agreement to ensure Lessee's successful performance of its obligations under this Agreement. County's exercise of any remedies available to it under the parent guaranty agreement shall not affect any remedies County may have under this Agreement.

Section 14. Waiver of Claims

14.1. No Waiver by County

14.1.1. Waiver of Specific Breaches/Custom or Practice

Any express waiver in writing by County acting by and through authorized County personnel of any breach of any provision of this Agreement shall not be deemed to be a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part of any provision be construed to waive or to lessen the right of County to insist upon the performance by Lessee in strict accordance with the provisions of this Agreement.

14.1.2. Acceptance of Ground Rent, Additional Rent, Fees or Charges

The acceptance of the Base Rent, Additional Rent, Fees or Charges hereunder by County shall not be deemed to be a waiver of any preceding Event of Default, other than the failure of Lessee to pay the Base Rent, Additional Rent, Fees or Charges so accepted, regardless of County's knowledge of such Event of Default at the time of acceptance of such Base Rent, Additional Rent, Fees or Charges, nor shall County's acceptance of payment be deemed to be a waiver of any other right or remedy allowed in law or in equity. The consent or approval by County to any act of Lessee requiring County's approval shall not be deemed to waive or render unnecessary the need for County's consent to or approval of any subsequent similar act of Lessee.

14.2. Express Waivers by Lessee

In addition to the foregoing, except as may arise out of the sole active negligence or the sole willful misconduct of County, its officers, employees and agents, Lessee specifically waives any and all of the following claims or causes of action which it may now or hereafter have against County, its officers, employees, contractors and agents:

14.2.1. Other Airport Lessees or Users

For any loss, injury or damage arising or resulting from any act or omission of any occupant, licensee, sublicensee, concessionaire or other occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of County; or

14.2.2. Lessee's Use of Premises

For any loss or damage to the property of, or injury or damage to Lessee, its officers, employees, agents, contractors or any other person, from any cause or condition arising at any time on

account of Lessee's use of the Premises; or

14.2.3. **Lessee's Operations**

For damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the Premises, and for injuries or death to persons on or about the Premises from any cause or causes arising at any time.

Section 15. Indemnification

Lessee shall protect, defend, indemnify and hold harmless County, its officers, employees contractors and agents against any claim, loss, obligation or liability arising out of or resulting in any way from Lessee's occupation or use of the Premises or the Airport (including without limitation, death or injury to any person) due in whole or in part to the negligent acts (active or passive) by Lessee or to the willful actions or omissions by Lessee, Lessee's officers, employees, or, while acting on behalf of Lessee, Lessee's subcontractors, sublessees and/or agents. Lessee's obligations to indemnify and hold harmless set forth above shall not apply to any such claim, loss, obligation or liability which is due to the sole active negligence or willful misconduct of County and/or its employees, officers or agents. All of Lessee's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement and continue so long as a viable claim exists. In an action or claim against County in which Lessee is defending County, Lessee shall consult with County prior to selecting legal counsel to provide County's defense.

15.1. Environmental Indemnification/Presumption

Except as otherwise provided in this Agreement, Lessee agrees to defend (using legal counsel reasonably acceptable to the County, taking into consideration that in certain circumstances legal counsel is designated by insurance carriers), indemnify, and hold harmless the County from and against any and all actual or alleged claims, damages, expenses, costs, fees which may be imposed upon, claimed against or incurred or suffered by the County due to actual or alleged damage or loss to a third party, and which, in whole or in part, arise from any of the following that result in a Hazardous Material release: (a) any negligent or wrongful act or omission of Lessee or any partner, officer, director, employee, agent, contractor, Assignee, or a Sublessee of Lessee; (b) any use, occupation, management or control of the Premises by Lessee or any partner, officer, director, employee, agent, contractor, Assignee, or a Sublessee of Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; and (c) any breach, violation or nonperformance of any of Lessee's obligations under this Lease resulting in same. If a Hazardous Material is released at, to, or from the Premises, in violation of applicable Environmental Law is discovered, then a rebuttable presumption will exist that Lessee is responsible for all response, remediation, restoration and Environmental Costs arising from such Hazardous Substance Release, and any violation of applicable Environmental Law.

Section 16. Representations and Warranties

Lessee represents, warrants and covenants with respect to this Agreement as follows:

16.1. **Agreement Properly Authorized**

That Lessee has the power and authority to enter into this Agreement with County, that the directors, officers and members of Lessee have approved such power and authority to enter into this Agreement and bind Lessee, that this Agreement shall be executed, delivered and performed pursuant to the power and authority conferred by the members and be binding upon Lessee, and that the individual executing this Agreement is duly authorized to do so.

16.2. **No Unresolved Claims or Disputes**

That there are no unresolved claims or disputes between Lessee and County that Lessee is aware of.

16.3. **Statements, Records and Reports**

That Lessee shall furnish true and accurate, records, reports, resolutions, certifications, and other information as may be requested of Lessee by County from time to time during the term of this Agreement that related to an obligation of Lessee under this Agreement that are reasonably necessary for County to verify compliance by Lessee of the terms of this Agreement.

16.4. **Compliance with Laws**

That to the best of Lessee's knowledge, Lessee is in compliance with all Laws related to Lessee's operations in the United States and the State of California.

16.5. **Good Standing**

That it is now and will remain during the Term in good standing in the State of California, and it is now and will remain during the Term qualified to do business in the State of California.

Section 17. Insurance

17.1. **Insurance Requirements**

Lessee, at its sole cost and expense and for the full term of this Agreement or any renewal thereof, shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, the activities of Lessee (including its subcontractors, agents, representatives and employees) hereunder meeting at least all of the minimum insurance requirements set forth on Exhibit G attached to this Agreement.

17.2. **Failure to Provide**

In the event Lessee fails to procure or maintain any insurance required under this Agreement: (a) County shall have the right, but not the obligation after providing at least ten (10) days prior written notice to Lessee, without limiting or waiving any other rights or remedies it may have at law or in equity, to procure such insurance and at County's sole option charge Lessee for the cost of maintaining and procuring such insurance or to offset the cost thereof against any amount that may be due or subsequently become due to Lessee; and (b) in the event a loss occurs which would have been covered by the insurance required by this Agreement had such insurance been

maintained, Lessee shall pay all amounts that would have been paid by such coverage, minus such amounts actually received by County under a policy procured by County pursuant to this Section 17.

17.3. Waiver of Subrogation

County and Lessee hereby mutually agree that so long as their respective insurance carriers concur, County and Lessee shall waive all rights of recovery against the other on account of loss and damage occasioned to such waiving party for its property or the property of others under its control but only to the extent that such loss or damage is insured against under any insurance policies which may be in force at the time of such loss or damage.

Section 18. Right to Enter

18.1. Reasons for Entry

County reserves and shall have the right by its officers, employees, agents and contractors to enter into and upon the Premises at all reasonable times scheduled in advance with Lessee (and in emergencies at all times):

18.1.1. Inspections

To make any inspection Director may deem expedient or desirable for the proper oversight and/or enforcement of the covenants, conditions, restrictions, limitations and provisions of this Agreement;

18.1.2. Installation of Utility Lines and Sewer Lines

To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Premises, so long as the same does not unreasonably interfere with the use or enjoyment of the Premises;

18.1.3. County's Exercise of Rights Pursuant to This Agreement

To otherwise maintain, repair or replace the Premises and the Leasehold Improvements, or to do any other repair, maintenance, alteration or removal, under the conditions set forth herein; or

18.1.4. Posting of Notices

To post notices of nonresponsibility for improvements, alterations or repairs, if and when County shall desire to do so.

18.2. No Rent Abatement

Any action taken by County under this Section 18 shall be without abatement of rent or payment of damages or other amounts to Lessee for any loss of occupancy or quiet enjoyment of the Premises, without liability on the part of County for loss or damage that may be sustained by Lessee thereby, and without such action by County being construed as an eviction of Lessee or a

release of Lessee from the duty of observing and performing any of the provisions of this Agreement; provided, however, that such action shall be conducted and undertaken at times and in a manner so as not to unreasonably interfere with the normal operations and business of Lessee, and it's sublessees and users, whenever reasonably possible.

Section 19. Taxes and Assessments

19.1. Lessee to Pay Taxes

Lessee shall pay before delinquency any and all taxes, assessments, licenses, fees, possessory interest taxes and other public charges which may be levied, assessed or imposed upon any of Lessee's leasehold interest, upon Lessee's business, or upon Lessee for the privilege of conducting business within the Premises, or upon any other property of Lessee within the Airport. Payment of any possessory interest tax shall not reduce in any way any Base Rent, Additional Rent, charges, or other fees required to be paid herein.

19.2. Possessory Interest Taxes

Lessee recognizes and understands that this Agreement may create a real property possessory interest that may be subject to real property taxation, and that any such possessory interest may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the Premises, the Leasehold Improvements and/or, the Lessee's estate created by this Agreement, Lessee shall pay such tax before delinquency. County shall have no obligation to pay any possessory interest tax. No such possessory interest tax, or any other tax by any government entity, shall in any way reduce or substitute for the Base Rent, Additional Rent, Fees or Charges required in this Agreement.

19.3. No Liens or Encumbrances

Lessee shall not permit or suffer any liens or encumbrances to be imposed upon the Premises, the Airport, or any building or structure thereon as a result of its activities or failure to pay taxes without promptly discharging the same; provided, however, that Lessee may, if it so desires, contest the legality of same following prior written notice to County. In the event of a contest, Lessee shall provide a bond in an amount and in a form reasonably acceptable to County immediately following request therefor by County.

19.4. Indemnity for Lessee's Failure to Comply

Lessee shall defend, indemnify and hold County and any Leasehold Improvements now or hereafter on the Premises free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments or other charges required by this Agreement to be paid by Lessee and from all interest, penalties and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments or other charges.

19.5. Payment by County

If Lessee fails to pay any tax or charge required by this Section to be paid by Lessee, County may, but is not obligated to, on ten (10) Business Days' prior written notice to Lessee, pay,

discharge, or adjust such tax or charge for Lessee's benefit. In such event, Lessee, on receipt of written demand of County, shall reimburse County promptly for the full amount paid by County in paying, discharging, or adjusting such tax or charge together with interest thereon from its due date at the maximum interest rate then allowed by law until paid, plus pay any penalties; provided, however, County shall provide Lessee with prompt written notice (in no event less than ten (10) Business Days of County receiving notice of such claim or inquiry) of any claim or inquiry by any entity investigating whether a tax or charge may be owed by Lessee under this Agreement.

19.6. Contest of Tax or Charge

19.6.1. Notice of Contest

In the event that Lessee desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Lessee, at least ten (10) Business Days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give County written notice of its intention to contest such tax or charge.

19.6.2. Procedure for Contest

Lessee may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Agreement has expired or terminated) without delay at Lessee's sole cost and expense.

19.6.3. Payment upon Final Determination

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Lessee shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Agreement has then expired or terminated).

19.6.4. Failure to Pay Constitutes Event of Default

The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Agreement.

Section 20. Americans with Disabilities Act

Lessee shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (ADA), as amended from time to time, with respect to the Premises and its operations at the Airport. Lessee shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Lessee shall deliver to the County, upon County's request, a copy of each such report and workplan. County's approval of or acceptance of any aspect of Lessee's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Pursuant to Section 15 of this Agreement, Lessee agrees to indemnify, defend and hold the County harmless from any and all costs incurred by County with respect to Lessee's failure to comply with the ADA as it applies to operations at the Airport.

Section 21. Damage or Destruction

21.1. Lessee's Obligation to Repair

If the Premises, the Leasehold Improvements or any portion thereof, are damaged or destroyed in whole or in part by fire or other casualty, the proceeds of insurance required hereunder with respect thereto shall be available to Lessee, and Lessee, subject to such reasonable terms and conditions as may be imposed by County, including but not limited to the provisions of this Agreement regarding construction (Section 6), shall forthwith repair, reconstruct and restore (subject to unavoidable delays and force majeure) the damaged or destroyed Premises and/or Leasehold Improvements (i) to substantially the same condition, character and utility value as existed prior to the event causing such damage or destruction, or (ii) to such other condition, character and value as may be agreed upon by County and Lessee.

21.2. Insufficient Insurance Proceeds

If Lessee has complied with all the insurance requirements of this Agreement and the net proceeds of insurance on account of such damage or destruction (together with the deductible under such policy) are insufficient to restore or replace the Premises, it shall be optional with Lessee to provide such additional funds and complete repairs.

21.3. Option to Terminate Agreement

a. If Lessee fails to expeditiously commence to repair, or if Lessee fails diligently to pursue any repair to completion and to restore Lessee's Fixed Base Operations at the Premises, in addition to any other remedies County may have, on thirty (30) days' notice County may elect to terminate this Agreement.

b. Notwithstanding anything herein to the contrary, if during the last five (5) years of the Term, including Option Terms, the Premises or the Leasehold Improvements are materially damaged, Lessee may in its discretion elect to either terminate this Agreement or rebuild and repair in accordance with Section 21.1. In the event Lessee elects to so terminate this Agreement, Lessee shall be responsible for delivering the Premises in the condition required under Section 23 of this Agreement, with the understanding that while County may require Lessee to remove any remaining improvements, Lessee shall not be required to rebuild any damaged improvements. If the Agreement is so terminated, Lessee shall be entitled to retain all proceeds from insurance on the Leasehold Improvements. However, County shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Premises pursuant to the terms of this Agreement.

21.4. Restoration of Premises

If County elects pursuant to the default rights granted herein to terminate this Agreement following a damage or destruction and Lessee fails to restore as set forth herein, then at its sole cost Lessee shall remove all damaged and destroyed portions of the Premises and otherwise shall return the Premises to County in accordance with Section 23 below, with the understanding that

while County may require Lessee to remove any remaining improvements, Lessee shall not be required to rebuild any damaged improvements. If County terminates the Agreement hereunder, Lessee shall be entitled to retain all proceeds from insurance on the Leasehold Improvements; however, County shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Premises pursuant to the terms of this Agreement.

Section 22. Eminent Domain

22.1. Definitions

22.1.1. Eminent Domain

"Eminent domain" is the right of any governmental or other permitted authority to take property for public use. As used in this Section, the words "condemned" and condemnation" are coextensive with such right, and a voluntary conveyance by County or Lessee to the condemnor under threat of a taking under the power of eminent domain in lieu of or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section.

22.1.2. Total Condemnation/Total Taking

As used in this Section, the terms "total condemnation" and "total taking" mean the taking of the fee title to the entire Premises and all Leasehold Improvements on the Premises under the power of eminent domain.

22.1.3. Substantial Condemnation

As used in this Section, the terms "substantial condemnation" and "substantial taking" mean the taking of so much of the Premises or Leasehold Improvements, or both, under such power as to prevent or substantially impair the conduct of Lessee's business thereon.

22.1.4. Partial Condemnation/Partial Taking

As used in this Section, the term "partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total or substantial taking as defined in subparagraph 22.1.2 and 22.1.3 of this Section.

22.2. Notice to Other Party

The party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

a. Notice of intended taking;

b. Service of any legal process relating to condemnation of the Premises or Leasehold Improvements;

c. Notice in connection with any proceedings or negotiations with respect to such a condemnation; or

d. Notice of intent or willingness to make or negotiate a private purchase, sale, or

transfer in lieu of condemnation.

22.3. Termination of Leasehold on Total Condemnation

In the event that there shall be a total taking of the Premises during the Term under the power of eminent domain as defined in this Section, Lessee's obligation to pay rent and the leasehold estate hereby created shall cease and terminate as of the date title to the property is taken by the person who will put it to public use or at the time the condemnor is authorized to take possession of the property as stated in an order for possession, whichever is earlier.

22.4. Termination of Leasehold on Substantial Condemnation

In the event that there shall be a substantial taking of the Premises during the Term under the power of eminent domain as defined in this Section, this Agreement shall terminate as to the portion of the Premises so taken on the date title to the property is taken by the person who will put it to public use or at the time the condemnor is authorized to take possession of the property as stated in an order for possession, whichever is earlier. Lessee, at its option, may terminate this Agreement, as a result of a substantial taking of the Premises, if land taken by eminent domain results in a net loss of twenty percent (20%) or more of the total area of the Premises or if the Leasehold Improvements taken, if any, result in a net loss of twenty percent (20%) or more of the total rentable building and hangar space or if such taking substantially and detrimentally impacts Lessee's business operations from the Premises. In such event, Lessee shall notify County of its intention to terminate this Agreement within 30 days of Lessee's receipt from County of a notice of intended taking. If Lessee does not so notify County, the taking shall be deemed a partial taking. The Agreement shall terminate as of the last day of the calendar month following the calendar month in which the notice of termination is served on County. On termination of this Agreement pursuant to this Section, all subleases and subtenancies in or on said Premises or any portion or portions of said Premises created by Lessee under the Agreement shall also terminate, and said Premises shall be delivered to County free and clear of all such subleases and subtenancies. On termination of the Agreement pursuant to this Section, both parties shall be released from all obligations under this Agreement except those specified in Section 30 of this Agreement.

22.5. Rent and Term after Partial Taking

In the event that there shall be a partial taking of the Premises during the Term under the power of eminent domain as defined in this Section, this Agreement shall remain in full force and effect, covering the remaining property, except that the Base Rent shall be reduced in the same ratio as the percentage of the area of the ground taken bears to the total area of the Premises.

22.6. Restoration of Improvements after Partial Taking

Promptly after a partial taking of the Premises during the Term under the power of eminent domain as defined in this Section , at Lessee's sole expense and in the manner specified in provisions of this Agreement relating to maintenance, repairs, and alterations, Lessee shall repair, alter, modify, or reconstruct the Leasehold Improvements so as to make them economically and feasibly usable by Lessee. If Lessee does not repair, alter, modify, or

reconstruct as set forth herein, the cost of such repair shall be deducted from Lessee's share of the Award and paid to any Lender of Lessee demanding it.

22.7. **Award**

Awards and other payments on account of a taking of the Premises or the Leasehold Improvements thereon (the "Award"), or the leasehold estate created by this Agreement, shall be applied as follows:

a. Awards received on account of a total or substantial taking of the Premises or the Leasehold Improvements and/or the Leasehold Estate created by this Agreement thereon shall be paid in the following order of priority:

   i. First, to any Lender under a Permitted Mortgage, that portion of the Award attributable to the Leasehold Improvements and/or the Leasehold Estate created by this Agreement in an amount up to, but not to exceed, the unpaid balance of said Permitted Mortgage;
   ii. Second, to County that portion of the Award attributable to any land that is part of the Premises, except that the County's portion of the Award under this subparagraph shall be used in accordance with Applicable Law and paid to the FAA if required;
   iii. Third, to Lessee that portion of the Award attributable to the Leasehold Improvements that equals the percentage of the Term of this Agreement that has, at the time of the taking, not expired;
   iv. Fourth, to County that portion of the Award attributable to the Leasehold Improvements that equals the percentage of the Term of this Agreement that has, at the time of the taking, expired;
   v. Fifth, to Lessee that portion of the Award attributable to Lessee's loss of goodwill and any cost or loss that Lessee may incur in the removal and relocation of Lessee's business and its trade fixtures; and
   vi. Sixth, to County that portion of the Award attributable to severance damages.
   vii. Seventh, without duplicating any award referenced above, to Lessee that portion of the award attributable to any excess of the market value of the Leasehold Estate for the remainder of the Term over the present value of the Leasehold Estate as of the Agreement termination date under Sections 22.3 and 22.4 (commonly referred to as the "bonus value" of the Agreement).

b. Awards and payments received on account of a partial taking of the Premises or the Leasehold Improvements thereon shall be applied in the following order of priority:

   i. First, to pay the cost of restoration, repair, and reconstruction of the Premises and the Leasehold Improvements so as to make them economically and feasibly usable by Lessee;
   ii. Second, to any Lender under a Permitted Mortgage in an amount equal to the decrease (if any) in its security as a result of the partial taking, less

amounts payable or recovered pursuant to such taking, but not to exceed the unpaid balance of the Permitted Mortgage;

iii. Third, to County that portion of the Award attributable to any land that is part of the Premises; and

iv. Fourth, to the County, that portion of the award attributable to severance damages for the County's fee interest in the remainder property.

22.8. Relocation Costs

Lessee shall have the right to make a separate claim for relocation cost under Government Code Section 7262 in the event of a total or substantial taking of the Premises, the Leasehold Improvements, and/or the Premises.

22.9. Voluntary Conveyance in Lieu of Eminent Domain

A voluntary conveyance by County or Lessee of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of or under threat by such agency or entity to take the same by eminent domain proceeding shall be considered a taking of title to all or such portion of said Premises under the power of eminent domain subject to this Section.

22.10. Applicability of Section to Condemnation by County

Should County condemn the leasehold estate created by this Agreement and/or all or part of the Leasehold Improvements or the Premises during the term of this Agreement, then the provisions contained in this Section shall also apply.

Section 23. Surrender by Lessee

23.1. No Merger

The voluntary or other surrender of this Agreement by Lessee, or a mutual cancellation thereof, shall not work a merger.

23.2. Condition of Premises

On the Expiration Date, including any Option Terms (or as of the end of the Pioneering Period for the purposes of the Pioneering Period Premises), Lessee shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Premises (or portion thereof as solely related to the Pioneering Period Premises at the end of the Pioneering Period) and all alterations, additions, Leasehold Improvements and betterments which may have been made to the Premises, except: (i) movable and unattached personal property, temporary structures, furniture, equipment and trade fixtures installed at the expense of Lessee or any sublessee; and (ii) such other property, if any, which Lessee is expressly authorized in writing by Director to remove from the Premises.

23.3. Lessee's Duty to Remove

Lessee shall ascertain in writing from Director not less than one hundred eighty (180) days prior to the end of the Term, including any Option Terms (or end of the Pioneering Period for the

purposes of the Pioneering Period Premises) whether Director desires to have Lessee remove any Leasehold Improvements (including temporary structures), construction, betterment, alterations or additions which may have been made by Lessee upon the Premises and cap off all utilities. Lessee shall remove the Leasehold Improvements, construction, betterment, alterations or additions existing upon the Premises if so requested by Director to be removed and Lessee shall restore the Premises at Lessee's sole cost and expense no later than one hundred twenty (120) days after the end of the Term, including any Option Term(s). For these purposes, "restore the Premises" means removal of all facility improvements to preexisting conditions, and termination of all utilities at the Premises boundary, or the temporary connection point as determined by the Director. If Lessee fails to restore the Premises, County shall have the right, but not the obligation, to restore the Premises and seek reimbursement from Lessee through whatever remedies are allowed by law or as set forth in this Agreement. Any failure by Lessee to so notify Director shall not relieve Lessee of its obligations under this Section. At the end of the Term, including Option Terms, as to those Leasehold Improvements that County elects to have remain on the Premises, Lessee agrees to do all acts and execute and deliver all documents necessary to confirm in County title to those Leasehold Improvements.

23.4. **Removal of Personal Property**

Lessee shall, on or before the expiration or earlier termination of this Agreement (or end of the Pioneering Period for the purposes of the Pioneering Period Premises), remove all personal property (except such as it may be required to surrender under the provisions of the two immediately preceding paragraphs) from the Premises, and all such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Premises shall be deemed, at the option of Director, to have been abandoned by Lessee. County may, at the option of Director, retain any such personal property so abandoned by Lessee or remove and/or dispose of such property; Lessee shall reimburse County for any costs or expenses incurred by County in removing and/or disposing of such property promptly upon demand by County.

23.5. **Environmental Remediation**

Lessee shall on or before the expiration or earlier termination of this Agreement (or end of the Pioneering Period for the purposes of the Pioneering Period Premises) perform all environmental assessments, investigations, and remediation necessary to render the Premises free and clear of any Hazardous Materials.

Section 24. Prohibition of Gifts

Lessee is familiar with the prohibitions and limitations on gifts to public officials and their family members as defined by the Political Reform Act and Fair Political Practices Commission (FPPC) regulations as amended from time to time. Lessee understands and agrees that giving or transferring of any prohibited gift, as defined by the Political Reform Act and/or FPPC regulations as amended from time to time, to any County public official and/or any family member of a County public official may adversely impact County business, and so the giving of any such prohibited gift shall constitute a material breach of this Agreement by Lessee.

Section 25. Compliance with Laws

25.1. Governmental Requirements

Lessee shall, at its sole cost and expense, promptly and faithfully observe and comply in all material respects with all requirements of all Laws now in force or which may hereafter be in force, pertaining to the Premises and Lessee's operations and activities thereon. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceedings against Lessee, whether County be a party thereto or not, that Lessee has violated any such Law in the use of the Premises or the Airport shall be conclusive of that fact as between County and Lessee.

25.2. County Rules and Regulations

Lessee agrees to observe and obey all rules and regulations adopted by County from time to time with respect to the use of all Airport property, Terminals, the Premises and related facilities. County shall enforce all Airport Rules and Regulations in a uniform and non-discriminatory manner.

25.3. Workers' Compensation Insurance

At all times during the term of this Agreement, Lessee shall subscribe to and comply with the Workers' Compensation Laws of the State of California and pay such premiums as may be required thereunder and save County harmless from any and all liability arising from or under said act.

25.4. Status of Lessee as Independent Contractor

Lessee shall be and remain an independent contractor with respect to all installations, construction, and services performed hereunder and agrees to and hereby accepts full and exclusive liability for the payment of any and all contributions, or taxes for social security; unemployment insurance, retirement benefits, pensions, or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Lessee on work performed under the terms of this Agreement, and further agree to obey all rules and regulations which are now, or hereafter may be, issued or promulgated under Laws by any duly authorized state or federal officials; and Lessee shall indemnify and save harmless County from any such contributions or taxes or liability therefor.

Section 26. Agreements with the United States

This Agreement shall be subject and subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which Federal agreement has been or may now or hereafter be required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations ("Grant Assurances"). Lessee agrees that to the extent that any such Federal agreement shall affect Lessee and its use of the Premises and the Airport, Lessee shall act in compliance therewith. In the event of a conflict between this Agreement and the Grant Assurances, the County shall have the unilateral right to modify this

Agreement to ensure compliance with the Grant Assurances.

Section 27. Grant Agreement Covenants

27.1. Nondiscrimination

Lessee acknowledges that County is subject to Federal grant agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to, and agrees to be bound by, the nondiscrimination covenants attached to this Agreement as Exhibit I.

27.2. Fair, Equal and Just Provisions

Lessee 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. Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

27.3. County's Right to Develop and Maintain the Airport

County reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Lessee, and without interference or hindrance.

The County has the sole discretion to perform any maintenance or repairs and to construct any additions or improvements to the common or public areas of the Airport as it sees fit and to perform such maintenance or repairs and construct such additions or improvements at the times and places it deems necessary or desirable. The County shall have the right to direct the Lessee's activities as necessary in order to perform such maintenance or repairs and to construct such additions or improvements. The County shall attempt to mitigate any adverse impact to the Lessee's business if such actions can be accomplished without materially and significantly impacting the cost or schedule of the maintenance or repairs or construction. Lessee accepts that these impacts may occur and agrees that nothing in this Agreement shall give the Lessee any right to recover lost revenues, rents or profits caused by or on account of the County's maintenance or repairs and additions or improvements to the Airport.

27.4. Landing Area

County reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control activities of Lessee in this regard. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between County and the United States, relative to the development, operation or maintenance of the Airport.

There is hereby reserved to County, 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 Airport. This public right of flight shall include the right to cause in the 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 Airport.

27.5. Notice of Future Work

Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations for all future structures or buildings planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport. Lessee shall prepare, assist, and cooperate with County in the preparation and filing of FAA Form 7460-1 as required by FAA regulations for any equipment or above-ground facilities at the Airport.

27.6. No Interference

Lessee, 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 Airport or otherwise constitute a hazard. In the event this covenant is breached, County reserves the right to enter upon the Premises occupied by Lessee and cause the abatement of such interference at the expense of Lessee.

27.7. No Grant of Exclusive Right

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 308(a) of the Federal Aviation Act of 1958 (49 U.S.C.) § 1349a).

27.8. Time of War or National Emergency

This Agreement and its provisions 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 Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency.

27.9. Height Limitations

Lessee, by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises to a height above the mean sea level that would exceed Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, County reserves the right to enter upon any area utilized by Lessee and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

Section 28. Modifications for Granting FAA Funds

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Lessee agrees to consent in writing upon the request of County to such reasonable amendments, modifications,

revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable County to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Lessee hereunder. A failure by Lessee to so consent shall constitute a breach of this Agreement.

Section 29. Airport Security

29.1. Airport Master Security Plan

Lessee agrees to abide by all provisions of the Airport's security plans, including those set forth in Section 2.2 of the Rules and Regulations and all amendments or revisions to said plans during the term of this Agreement) approved by the FAA, the United States Transportation Security Administration (TSA), or any successor agency, and agrees to institute and carry out all security measures as provided in said Plan. Any violations of the Security Plan which result in fines to County by the FAA, TSA or any successor agency and which are caused by Lessee, its officers, agents, employees or invitees, will be assessed to Lessee by County and will be deemed to be additional Base Rent payable by Lessee to County following invoice thereof by County to Lessee pursuant to Section 5 of this Agreement.

29.2. Lessee Security Measures

Lessee shall be solely responsible for instituting and carrying out specific security measures required by the Airport's security plans, including but not limited to Section 3.9 of the Development Standards, in the areas where it is authorized to operate to prevent vandalism or damage to persons or property. County shall be responsible only for providing general security throughout the Airport; and County shall not be responsible for providing security at or on the Premises, and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Lessee's operation.

Lessee in recognition of the nature of the Premises and the damage that could occur as a result of vandalism on the Premises, shall institute a security plan, approved by the Director, to deter vandals and to limit access to the Premises to authorized persons.

29.3. County’s Right to Implement Security Measures

Lessee understands and acknowledges that County reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, Lessee waives all rights against County for such limitation, and County shall not be liable to Lessee for any amount, including compensation, in the form of reduction of any rent or fees.

Section 30. Survival of Indemnities

Expiration or termination of this Agreement shall not affect the right of either party to enforce any and all indemnities given or made to the other party under this Agreement, nor shall it effect any provision of this Agreement that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Agreement, the indemnitor has an immediate and independent obligation to

defend the indemnitee from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee.

Section 31. No Personal Liability

No elected official, director, officer, agent or employee of either party shall be personally liable by or to the other party pursuant to any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 32. Force Majeure

Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement which results or arises from a Force Majeure event, for so long as such event continues to persist.

Section 33. Surrender/Merger

On the last day or sooner termination of the Term, Lessee shall quit and surrender the Premises subject to the provisions of Section 23 and in accordance with the provisions of this Section 33. If Lessee has made a Transfer in accordance with the provisions of this Agreement and if Lessee's rights hereunder shall be terminated prior to the expiration of the Term, County may elect either (i) to terminate all or any existing subleases, subtenancies or other rights created by the Transfer (notwithstanding any prior consent of County) or (ii) to continue the rights created by the Transfer, in which event all rights of Lessee with regard to the Transfer shall be deemed assigned to County as of the date Lessee's rights are terminated.

Section 34. Holding Over

Lessee’s tenancy for the Primary Premises shall automatically expire at the end of the Term plus Option Terms, and Lessee’s tenancy for the Pioneering Premises shall automatically expire at the end of the Pioneering Period. Any holding over after the expiration or earlier termination of the Term, including Option Terms, or the expiration or termination of the Pioneering Period for the purposes of the Pioneering Period Premises, shall require an amendment of this Agreement. Any holding over of either the Permanent Premises or Pioneering Premises beyond their respective term, without an executed amendment of this Lease, shall be at a rent equal to one hundred fifty (150%) of the Base Rent for the last month of the Term or Pioneering Period as applicable. In addition, Lessee shall be responsible for any other damage to County caused by Lessee’s failure to comply with the Agreement terms. The Director may terminate the holdover tenancy at any time by providing thirty (30) days’ prior written notice to the Lessee.

If the Lessee shall holdover and fail to surrender the Premises upon the expiration or termination of this Agreement then, in addition to any other liabilities to the County arising therefrom, the Lessee shall and does hereby agree to indemnify, defend, and hold the County harmless from any loss or liability resulting from the Lessee’s failure to surrender the Premises, including but not limited to claims made by any succeeding tenant.

Section 35. No Third Party Beneficiary

Nothing contained in this Agreement shall be construed as conferring any benefit on any person not a party to this Agreement, nor as creating any right in any person not a party to this Agreement to enforcement of any obligation created under this Agreement.

Section 36. Recordation of Lease

Lessee may, at its sole cost and expense, cause a Memorandum of Ground Lease for this Lease to be recorded in the appropriate land records for the County, and the County agrees to execute and deliver such Memorandum of Ground Lease to Lessee in a recordable form. Lessee may, at its sole cost and expense, obtain an owner's leasehold title policy with respect to Lessee's title to the leasehold created by this Lease. The County agrees to execute and deliver to Lessee any customary consents and certifications that may be reasonably required by the title company in connection with issuing such title policy.

Section 37. Miscellaneous

37.1. Attorneys' Fees

If legal proceedings are initiated by either Party to this Agreement, whether for an alleged breach of the terms or judicial interpretation thereof, the prevailing party to such action shall, in addition to all other lawful remedies, be entitled to recover reasonable attorney's fees and court costs, to the extent permitted by the court.

37.2. Bailee Disclaimer

It is hereby understood and agreed that County in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Lessee, Lessee's contractors, agents, employees and invitees.

37.3. Consent

Unless expressly stated otherwise, whenever in this Agreement the approval or consent of a party is required, in order for such approval to be effective: (i) such approval or consent must be obtained in advance; (ii) must be in writing; and (iii) must be executed by a person having the express authority to grant such approval or consent. In addition, except to the extent expressly provided to the contrary herein, all consents or approvals required hereunder shall not be unreasonably withheld, conditioned or delayed.

37.4. Controlling Law/Consents to Jurisdiction

Except as federal law may apply, the parties agree that this Agreement shall be governed and construed by and according to the laws of the State of California without regard to the conflicts or choice of law provisions thereof. In the event that suit, action or proceeding shall be brought by either party under this Agreement, the parties agree that jurisdiction over such proceeding shall be vested in the state courts of California in the County of Napa or in the United States District Court in the Northern District of California.

37.5. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

37.6. **Entire Agreement**

This instrument contains all of the terms and conditions entered into and made by and between the parties with respect to County's lease to Lessee's use of the Premises and may not be modified orally, or in any manner, other than by an amendment to this Agreement in writing signed by all the parties hereto or their respective successors-in-interest.

37.7. **Headings**

The headings of the several Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

37.8. **Modification of Lease**

This Agreement shall not be modified, orally, or in any manner, other than by an amendment to this Agreement in writing signed by all parties hereto or their respective successors-in-interest. This does not apply to administrative amendments anticipated by this Agreement, whereby exhibits will be added or replaced by the Director based on legal descriptions prepared by a licensed surveyor describing the Premises (Exhibit B), the Non-exclusive License Area (Exhibit C), and any corresponding changes in square footage used to calculate rents and fees set forth in Exhibits B-1, B-2, and C-1.

37.9. **Resolutions**

Lessee shall submit a copy of an appropriate company resolution, if requested by County, which authorizes any director or officer to act on behalf of Lessee or which authorizes Lessee to enter into this Agreement.

37.10. **Severability**

If a court of competent jurisdiction finds or rules that any Section of this Agreement is void or unenforceable, the remaining Sections of this Agreement shall remain in effect.

37.11. **Successors and Assigns**

The provisions of this Agreement shall, subject to the provisions of this Agreement concerning transfer, apply to and bind the successors and assigns of the parties hereto.

37.12. **Time of Essence**

Time is of the essence of this Agreement and each of its provisions and failure to comply with this provision shall be a material breach of this Agreement.

37.13. Relocation Assistance – Waiver of Claims

Lessee acknowledges that it will not be a "displaced person" at the time this Agreement is terminated or expires by its own terms, regardless of any extension whether by hold- over or otherwise. By its execution of this Agreement and in consideration of its terms, Lessee fully releases, waives, and discharges forever any and all claims or other losses against and covenants not to sue the County or any County entity under any laws, including any and all claims for relocation benefits or assistance from the County under federal and state relocation assistance laws.

37.14. No Joint Venture

The relationship between Lessee and County hereunder is strictly that of County and Lessee. The parties intend and agree that County is not in any way or for any purpose, a partner of Lessee in the conduct of Lessee's business or a member of a joint enterprise with Lessee. County does not assume any responsibility for Lessee's conduct or performance under this Agreement.

37.15. Number and Gender

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

37.16. Material Considerations

Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration of County's entry into this Agreement, and any breach hereof by Lessee shall be deemed to be a material breach. Each term and provision of this Agreement performable by Lessee shall be construed to be both a covenant and a condition.

37.17. Exhibits and Addenda

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

37.18. Interpretation

The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the County or Lessee.

37.19. No Assumption

The review, approval, inspection, examination, or consent of County of or to any item to be reviewed, approved, inspected, examined, or consented to by County shall not constitute the assumption of any responsibility by County for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting County's interests. No third parties, including Lessee or persons claiming under Lessee shall have any rights hereunder resulting therefrom or otherwise.

Section 38. Dispute Resolution

38.1. Mandatory Mediation

If a dispute arises between County and Lessee relating to a Party's obligations under this Agreement that cannot be resolved through informal discussions and meetings, County and Lessee shall first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA, or any other neutral organization agreed upon by the Parties before having recourse in a court of law. Mediation must be completed prior to termination of this Agreement by County or Lessee, unless otherwise agreed in writing by the Parties.

38.2. Selection of Mediator

A single mediator that is acceptable to County and Lessee shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by JAMS, AAA, or any other agreed upon neutral organization.

38.3. Mediation Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All mediation costs, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be paid half by the County and half by Lessee unless otherwise agreed. Each Party is responsible for their own attorney's fees.

38.4. Conduct of Mediation

Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings pursuant to California Evidence Code sections 1115 through 1129, and will not be used for any other purpose unless otherwise agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. County and Lessee shall have representatives attend the mediation who are authorized to settle the dispute, though County's recommendation of settlement may be subject to the approval of the Board of Supervisors. Either Party may have attorneys, witnesses or experts present.

38.5. Mediation Results

Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

Section 39. Notices

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in

writing and shall be addressed as follows. All notices shall be sufficiently given and served upon the other party if (i) sent by U.S. mail, postage prepaid, certified or registered, return receipt requested or (ii) by facsimile to the facsimile numbers indicated herein for either party, with a copy mailed U.S. mail, first class, postage prepaid within twenty four hours or (iii) by recognized overnight courier or (iv) personally served.

If to County, the same shall be addressed to each of the following:

Director of Public Works / Director of Aviation
Napa County Department of Public Works
1195 Third Street, Suite 101
Napa, CA 94559

Airport Manager
Napa County Airport
2030 Airport Road
Napa, CA 94558

or to such other places as County may designate in writing.

If to Lessee, the same shall be addressed to:

SkyserviceUS California LLC
211 King Street, Suite 310
Charleston, SC 29401
Attention: Manager

With a copy to:

Zarren Law Group, LLC
8 Park Center Court, Suite 100
Baltimore, MD 21117
Attention: Jason C. Harmon

or such other place as Lessee may designate in writing. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as it may be amended or modified.

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IN WITNESS WHEREOF, this Agreement is executed by Napa County, acting by and through the Chair of the Board of Supervisors, and by SkyserviceUS California LLC, through its duly authorized officers.

SKYSERVICEUS CALIFORNIA LLC, a Delaware limited liability company

By: _____
STEPHEN SIMPSON, President

By: _____
SCOTT ZIMMERMAN, Vice President

NAPA COUNTY, a political subdivision of the State of California

By: _____
RYAN GREGORY, Chair
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: _____ Deputy County Counsel Date: _____	Date: _____ Processed By: _____ Deputy Clerk of the Board	By: _____

CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of a corporation.

I,_____ certify that I am the_____ secretary of the corporation named in the attached agreement; that_____signed the agreement on behalf of the corporation as the_____of the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

_____

_____

Date

_____

Corporate Seal