

EC-23-236




Mayor Timothy M. Keller

**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

**INTER-OFFICE MEMORANDUM**

01/19/23

**TO:** Pat Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** Land Lease and Agreement between the City of Albuquerque and High Flying Hangars LLC

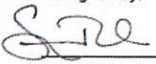
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I transmit herewith for City Council approval a proposed Land Lease and Agreement between the City of Albuquerque and High Flying Hangars, LLC, a New Mexico limited liability company.

This Land Lease will allow the local developer, High Flying Hangars, LLC, to design and build approximately 48 aircraft hangars for general aviation use at the Double Eagle II airport.

City Council approval of this agreement is required pursuant to Section 5-2-6 ROA 1994, Leasing of Real Property.

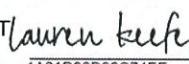
**Approved:****Approved as to Legal Form:**

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Lawrence Rael  
Chief Administrative Officer

Date


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Lauren Keefe  
City Attorney

Date

**Recommended:**

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Richard G. McCurley  
Director of Aviation

Date



## **Cover Analysis**

### **1. What is it?**

The subject of this Executive Communication is a proposed Land Lease and Agreement (hereafter, "Land Lease") between the City of Albuquerque, as lessor, and High Flying Hangars, LLC ("Developer") as lessee.

### **2. What will this piece of legislation do?**

The Land Lease will grant Developer the right to design and construct aircraft hangars on a five-acre portion of the Double Eagle II airport midfield. The Land Lease term is forty years. Upon the expiration of the term, title to all building improvements and hangars will vest in the City of Albuquerque.

### **3. Why is this project needed?**

Much of the Double Eagle II airport midfield is currently vacant, but the Land Lease would allow construction of aircraft hangars to satisfy strong local and regional demand for general aviation aircraft hangars.

### **4. How much will it cost and what is the funding source?**

There is no cost to the City as this is a revenue-producing agreement.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

The Land Lease will generate revenue to the Aviation Department in the amount of \$0.315 per square foot of leaseable hangar space constructed on the leased premises. Beginning one (1) year following the commencement date of the Agreement, the rent shall be escalated based on the average of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 as published by the U.S. Bureau of Labor Statistics Division of Consumer Prices for the immediately preceding one (1) year period

**FISCAL IMPACT ANALYSIS**

TITLE: Land Lease and Agreement between the City of Albuquerque  
and High Flying Hangars, LLC

R: O:  
FUND: 611

DEPT: 7000611

- ☒ [X] No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ [ ] (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2023	Fiscal Years 2024	2025	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input checked="" type="checkbox"/> [x] Estimated revenues not affected				
<input type="checkbox"/> [ ] Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

\* Range if not easily quantifiable.

Number of Positions created

**COMMENTS:** This Land Lease will allow the developer, High Flying hangars, LLC, to design and construct aircraft hangars on approximately 5 acres of land at the Double Eagle II Airport. As the hangars are completed, the amount of rent (\$0.315/SF of leasable hangar space) will be incorporated into the appropriate Fiscal Year budget.

**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

PREPARED BY:

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FISCAL ANALYST  
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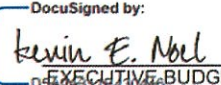
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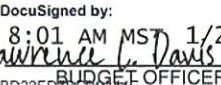
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DIRECTOR  
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REVIEWED BY:

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EXECUTIVE BUDGET ANALYST  
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1/28/2023

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CITY ECONOMIST  
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**LAND LEASE AND AGREEMENT**  
**between**  
**THE CITY OF ALBUQUERQUE**  
**and**  
**HIGH FLYING HANGARS, LLC**

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**LAND LEASE AND AGREEMENT**  
**between**  
**THE CITY OF ALBUQUERQUE**  
**and**  
**HIGH FLYING HANGARS, LLC**

This **Land Lease and Agreement** ("Agreement") is made and entered into as of the date of the last signature below ("Effective Date") by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City"), and **High Flying Hangars, LLC**, a New Mexico limited liability company ("Lessee", and together with City, the "Parties", and each, a "Party").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, the Parties agree as follows:

**Section 1. Recitals.**

**1.1** City owns and operates through its Aviation Department the Double Eagle II Airport ("Airport") as shown in **Exhibit A** attached hereto and incorporated herein, located in the County of Bernalillo, State of New Mexico; and

**1.2** Lessee desires to lease, and City desires to grant the lease of, five and 8/10ths (5.8) acres of City-owned real property at the Airport's midfield development area for Lessee's planned construction and use of airplane hangars, in accordance with the terms and conditions of this Agreement; and

**1.3** The Parties have the right and power to enter into this Agreement.

**Section 2. Premises.**

**2.1 General.** City, for and in consideration of the rents reserved in this Agreement and each of the covenants, conditions, and agreements set forth hereafter to be kept and performed by Lessee, hereby leases to Lessee for its exclusive use, and Lessee hires and takes from City, upon the conditions, covenants, and agreements set forth in this Agreement, all of which Lessee accepts, the realty consisting of Two Hundred Fifty-two Thousand Six Hundred Forty-eight (252,648) square feet of land, more or less, as depicted in the diagram attached hereto as **Exhibit B** (the "Premises"). Within fifteen (15) days from the Effective Date, Lessee, at its expense, shall furnish City with a survey of the Premises prepared and certified by a registered land surveyor, architect or engineer, which upon City's receipt shall be incorporated and made a part of this Agreement as an exhibit. Unless otherwise stated in this Agreement, all references herein to "days" mean business days.

**2.2 Acceptance of Premises.** Lessee hereby acknowledges that it has conducted all necessary due diligence and has independently determined that the Premises is suitable for the use permitted under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Lessee acknowledges that it has fully inspected the Premises in its present condition and it is understood and agreed that the Premises is accepted AS IS, WHERE IS, AND WITH ALL FAULTS, WITHOUT ANY REPRESENTATION OR WARRANTY FROM CITY. LESSEE

ACKNOWLEDGES THAT CITY HAS MADE NO EXPRESSED OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE CONDITION OF THE PREMISES, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING COMPLIANCE WITH ENVIRONMENTAL LAWS OR THE SUITABILITY FOR THE USE ANTICIPATED IN THIS AGREEMENT.

### **Section 3. Use of Premises.**

**3.1 Limited Use.** As of the Effective Date, Lessee shall have the right, subject to any specific limitations or requirements contained in this Agreement, to use and occupy the Premises solely for the purpose of building, rebuilding, locating, relocating, changing, removing, replacing, modifying, operating and maintaining aircraft hangars and other closely related uses. Lessee shall not use the Premises for any other purpose than as specified herein without the prior written consent of City. Lessee shall abide by all applicable ordinances, rules, and regulations established by any federal, state, or local government agency or by City in connection with its use of the Premises. Lessee's proposed uses shall conform to all City, state and federal laws and environmental requirements, as well as City's Minimum Standards and Requirements on the Conduct of Commercial Aeronautical Services and Activities at Double Eagle II Airport. Lessee shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal, or extra hazardous business, use, or purpose, or in such manner as to constitute a nuisance of any kind (public or private), or for any purpose or in any way may make void or voidable any insurance then in force on the Premises. Lessee shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal, or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use.

**3.2 Termination of Use.** Lessee shall begin construction pursuant to the use allowed in Section 3.1 above within six (6) months following the Effective Date ("Construction Commencement Deadline"), and shall have four (4) years from the Effective Date to complete all planned improvements. The Construction Commencement Deadline shall be tolled by the actual number of calendar days that the City and the Director of Aviation ("Director") use to review plans required hereunder that are submitted to City by Lessee. The number of tolled days shall be computed from the date on which the City receives plans requiring review hereunder to the date the City provides Lessee with notification of approval, conditional approval, or rejection. In the event that construction does not commence within six (6) months of the Effective date, as extended by any tolling days provided for herein, the City may, in its sole discretion, terminate this Agreement. Upon such termination, Lessee shall vacate and peaceably surrender the Premises, remove all Lessee property, and restore the Premises to its original condition. Failure to complete construction of planned improvements shall be resolved in accordance with Section 4.6 below.

**Section 4. Construction of Improvements to Premises.** Lessee shall have the right, at its sole cost and expense, to construct improvements to the Premises (sometimes referred to herein as Lessee's "building improvements" or "hangars"), provided that it receives prior written approval from the Director.

**4.1 Approval by the Director of Aviation.** Lessee shall submit to Director complete plans sufficient to obtain a building permit from the City of Albuquerque. Lessee shall obtain

written approval for same from Director prior to beginning construction and installation. Approval by Director shall include but not be limited to architectural and aesthetic matters, and Director shall be entitled to reject designs submitted and require Lessee to re-submit designs until approval by Director is given. The standard of care used in designing all building improvements shall be a standard consistent with the level of skill and care ordinarily exercised by members of the architectural profession for a project of a similar size, scope, and complexity in a similar geographic location at the time the design services are being provided pursuant to this Agreement. Designs shall be consistent with the requirements of all applicable laws. City agrees to act promptly upon Lessee's request for approval of plans, specifications, and modifications thereto.

Any review or approval by Director of Lessee's plans or any inspection by City of the work or materials, shall not be deemed to constitute a waiver or release by City of any obligation or responsibility of Lessee under this Agreement, or an assumption of any risk or liability by City with respect thereto, and Lessee shall make no claim against City on account of such review, approval, or inspection. City reviews, approvals, and inspections shall not constitute assumption by City of any responsibility for the adequacy of the design or construction. Such responsibility shall remain totally with Lessee and its architects, engineers, and contractors. Lessee shall cause all building improvements authorized under this Agreement to be constructed only by a contractor properly licensed by the State of New Mexico to construct such building improvements.

**4.2 Construction Plans and Specifications.** No building improvements of any kind shall be erected, placed, assembled, constructed or permitted on the Premises until preliminary and final plans showing the type of use, location, size, and design have been approved by City. When applicable, such plans must be prepared and stamped by an architect and/or engineer licensed to practice in the State of New Mexico. Prior to the preparation of preliminary plans, Lessee shall contact Director to schedule a pre-project meeting to brief City staff on the proposed building improvements.

**4.2.1 Preliminary Plans.** In the event the building improvements proposed by Lessee are of a nature such that the services of an architect and/or engineer are required, then electronic sets of preliminary plans prepared and stamped by the architect and/or engineer must be submitted to the Director. Such preliminary plans shall show the full extent of the building improvements to be constructed, including but not limited to, grading, drainage, landscaping, paving, signs, structural details and utility locations, showing the relationship of each proposed building improvement to other building improvements and to all adjacent Airport parcels, public roadways, or service roadways. Plans shall include complete specifications in sufficient detail for Director to determine compatibility with any and all Aviation Department Development Guidelines and their overall objectives for the aesthetic character and quality of the building improvements. Architectural submittals shall include an accurate architectural perspective color rendering of the building improvements, including the proposed exterior color scheme, style, materials, and wording and placement of all signs.

Within thirty (30) days following receipt thereof, Director shall review such preliminary plans, and transmit to Lessee written approval or rejection thereof, in whole or in part. In the event of rejection, within thirty (30) days after receipt of the rejection notice, Lessee shall amend such plans to comply with the items set forth in the rejection notice and submit amended plans to



Director for approval. Director shall notify Lessee within fifteen (15) days thereafter of City's decision regarding the revised plans.

**4.2.2 Final Plans and Construction Schedule.** Within thirty (30) days following Lessee's receipt of Director's approval of the preliminary plans, Lessee shall deliver to Director for approval electronic sets of final construction plans and specifications for construction of the building improvements, together with a schedule for construction of the building improvements. Such final plans and specifications shall substantially conform to the preliminary plans previously approved by Director and shall be submitted to Director prior to submitting the plans to other applicable agencies. There shall be no substantial changes or alterations made in the final plans and specifications after the approval by Director without the advance written approval of Director. Director's approval of such plans shall not infer approval by other City or controlling agencies. After approval of the plans by Director, Lessee shall have complete responsibility for obtaining all other required approvals and permits for the building improvements.

Lessee warrants that City may use all plans and specifications submitted by or on behalf of Lessee only for purposes relevant to and consistent with this Agreement.

**4.2.3 Modification of Final Plans.** Any modifications to the approved final plans and specifications, which may be required following review by the City of Albuquerque Code Enforcement Division, the New Mexico Environment Department, the City of Albuquerque Planning Department, the City of Albuquerque Fire Department, or other governmental agencies, shall be submitted to Director for approval prior to construction.

**4.3 Permits, Licenses, and Approvals.** Lessee shall, at its sole expense, obtain all necessary licenses, permits, and approvals required for construction of any building improvements on the Premises from City, State, and Federal agencies. These shall include, but not be limited to:

**4.3.1** Permits, licenses, and approvals for fuel storage tanks, if such tanks are approved by City; and

**4.3.2** Permits, licenses, and approvals of a) the City of Albuquerque Planning Department, the City of Albuquerque Fire Department, and the City of Albuquerque Building and Safety Division and b) the National Board of Fire Underwriters or other similar organizations for the prevention of fire or for the correction of unhealthy or hazardous conditions; and

**4.3.3** Permits, licenses and approvals for compliance with storm water management, sediment, and erosion control requirements pursuant to the regulations of the New Mexico Environment Department.

**4.4 Notice to Proceed, Construction Bonds, and Insurance.** Director's approval of Lessee's final plans and specifications and time schedule shall constitute Lessee's notice to proceed with construction of building improvements, provided that, in addition to any other insurance and indemnity requirements provided hereinafter, Lessee satisfies the following requirements:

**4.4.1** Lessee has delivered to Director for approval, and Director has approved, certificates of insurance for coverage evidencing Lessee's construction contractor's a) "all risk" type builders' risk insurance coverage and workers' compensation insurance coverage, and b) compliance with the applicable insurance provision of **Exhibit D**; and

**4.4.2** Lessee's construction contractor has duly executed a Labor and Materials Payment Bond or Letter of Credit with a surety authorized to do so in the State of New Mexico, in an amount equal to the value of its contract for construction of the building improvements to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport property. Lessee shall provide City with a true copy of such executed bond, upon request by Director.

Lessee shall be solely responsible for payment, promptly when due, to all persons supplying labor and materials to its contractor(s) for all elements of construction of building improvements on the Premises. Lessee shall keep the Premises free and clear of all liens resulting from any construction and shall permit no lien or claim to be filed or prosecuted against City on account of any such construction or materials furnished. Lessee may contest the correctness or validity of any such lien, but Lessee shall indemnify, defend, and hold harmless City, its elected representatives, officers, agents, and employees and the Premises from any and all claims and liability for payment of any such lien and related attorney's fees.

**4.4.3** Lessee's construction contractor has duly executed a Performance Bond with a surety authorized to do so in the State of New Mexico securing contractor's performance of its obligations relating to the construction of the building improvements, in an amount equal to the value of its construction contract, naming City as obligee thereunder. Lessee shall provide City with a true copy of such executed bond, upon request by Director. In the alternative, subject to the approval of City, Lessee may submit to Director in lieu of a Performance Bond, a cash deposit in an amount equal to the total value of Lessee's construction contract; and

**4.4.4** Lessee has obtained at its sole expense all necessary licenses and permits required for construction of building improvements on the Premises; and

**4.4.5** Lessee shall provide City with copies of the building permits issued to Lessee by the City of Albuquerque Building Inspection Division or similar City entity, upon request by Director; and

**4.4.6** Lessee shall notify Director of Lessee's intention to commence construction of the building improvements at least forty-eight (48) hours prior to commencement of such work or delivery of any material to be used in such work at the Premises.

**4.5 Contractor Indemnification.** Lessee shall include in all construction contracts entered into in connection with the construction of the building improvements, a provision requiring the contractor and subcontractors party to such contracts to indemnify, hold harmless, defend and insure Airport, City, and their directors, officers, and employees, from and against the risk of third party legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or

all such construction work, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of the indemnified parties. To the extent NMSA 1978 § 56-7-1 (2005) is applicable to this Section 4.5 or any other provisions of this Agreement, any indemnification requirements of Lessee, its contractors, or agents shall be deemed not extend to or be construed to require Lessee or its agents to defend, indemnify and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury or damage to persons or property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

**4.6 Coordination of Construction.** Lessee shall cooperate with the Aviation Department in the construction of the building improvements. Lessee agrees that all construction and installation of said improvements at the Airport shall be accomplished without interfering with other users of the Airport, and that Lessee and its construction contractor and subcontractors shall at all times keep the construction site and surrounding areas clean, orderly, safe, free of accumulated construction debris and waste materials, and shall be solely responsible for removal of all construction debris and waste materials to a suitable licensed landfill away from the Airport.

Lessee shall be responsible for obtaining and paying for any temporary utilities needed during construction of the improvements.

Lessee shall begin construction by the Construction Commencement Deadline, tolled as applicable and in accordance with Section 3.2, and shall have four (4) years from the Effective Date to complete all planned improvements. If Lessee fails to complete all building improvements within four (4) years from the Effective Date, Lessee shall have the option to pay City the difference between the Building Rent collected by the Hangar Owners' Management Entity (as defined in Section 7.3) on building improvements and the sum representing the Building Rent owing to the City as though the entirety of the building improvements were constructed and certificated for occupancy ("Bridge Rent"). By way of example, if City approves a construction plan providing for the construction of 86,000 square feet of Gross Leaseable Area (as the same is defined in Section 7.1 "Building Rent" below) of hangars on the Premises, and on the fourth (4th) anniversary of the Effective Date, Lessee has developed 43,000 square feet of Gross Leaseable Area, then Lessee, in its sole discretion, shall have the option either to pay the City Building Rent based on 86,000 square feet of Gross Leaseable Area and continue construction, or elect to cease construction and surrender the balance of the unimproved portion of the Premises to the City. If Lessee surrenders any portion of the Premises as provided herein, within ninety (90) business days after the fourth (4th) anniversary of the Effective Date, Lessee, at its expense, shall furnish City with an updated survey of the Premises (as modified by Lessee's surrender) prepared and certified by a registered land surveyor, architect or engineer, which upon City's receipt shall be incorporated and made a part of this Agreement as an exhibit.

**4.7 Certificate of Occupancy.** Within ten (10) days following the completion of the construction of the building improvements, Lessee shall submit a copy of the City of Albuquerque certificate of occupancy to Director. Within ten (10) days following receipt of the certificate of occupancy, Director may schedule an inspection of the building improvements to be accompanied by Lessee for purposes of confirming compliance with the final plans and any subsequent modifications to the final plans.

**4.8 As-Built/Certified Drawings.** Within sixty (60) days following receipt of a Certificate of Occupancy, Lessee shall furnish to City certified drawings showing the "as-built" building improvements. Certified drawings shall be dated and stamped by the architect or Warchitect or registered engineer to provide the same and Lessee shall be liable for the cost of said drawings, plus a fifty percent (50%) overhead administrative fee. Upon request of City, Lessee shall inspect the building improvements jointly with City to verify compliance with the "as-built" drawings.

**4.9 Removal of Unapproved Improvements.** Improvements made on the Premises without the Director's written approval as required or portions of the improvements that are not constructed as indicated and specified on approved plans will be considered to be unapproved improvements constructed in violation of the provisions of this Agreement. Unapproved improvements shall be removed by Lessee, at Lessee's sole expense, within sixty (60) calendar days following Lessee's receipt of written notice from the Director.

**4.10 Improvements by Lessee to Remain Throughout Term.** All of Lessee's building improvements shall remain on the Premises throughout the Term, unless otherwise approved in writing by the Director.

**4.11 Ownership of Improvements.** All building improvements constructed on the Premises by Lessee shall be owned by Lessee until expiration or earlier termination of this Agreement. Lessee shall not, however, remove any of its building improvements from the Premises, nor waste, destroy, demolish, or alter any of the building improvements on the Premises except as permitted pursuant to this Agreement. Unless specifically rejected by the City, all building improvements on the Premises at the expiration or earlier termination of this Agreement shall automatically, without compensation to Lessee, become the property of City, free and clear of any and all rights to possession and all claims to or against them created by Lessee.

Notwithstanding the above, all personal property installed, erected, or placed by Lessee in, on, or about the Premises shall be, and shall remain the property of Lessee, except as otherwise provided herein. Lessee shall have the right at any time during the Term to remove any or all of such personal property subject to Lessee's obligation to repair damage resulting from such removal.

**4.12 Pavement and Landscaping.** Lessee shall construct pavement outside of the footprint of the building improvements at its expense, upon approval by City. Thereafter, City shall maintain the pavement outside of the footprint of Lessee's building improvements. Lessee shall not be required to install or maintain trees, shrubs, or other plantings. Any landscaping installed must be approved by City, and must be installed and maintained by Lessee at Lessee's expense.

**4.13 Future Building Improvements.** Lessee shall make no alterations to the Premises following completion of the construction of the building improvements, nor construct additional building improvements upon the Premises without the prior written approval of Director in accordance with the procedures set forth in this Section 4.

**4.14 Real Time Crime Center.** If Lessee installs security cameras on its Premises, Lessee agrees to cooperate in establishing camera links to the Albuquerque Police Department Real Time Crime Center to the extent feasible.

**Section 5. Term.** The term of this Agreement shall be for forty (40) years ("Term"), commencing on the date this Agreement is signed by the City's Chief Administrative Officer (i.e., the Effective Date), unless earlier terminated pursuant to any provisions of this Agreement.

Holding over by Lessee after the expiration of the Term whether with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy on the same terms and conditions of this Agreement then in effect, except only as to (i) the Term of this Agreement, and (ii) the monthly rent, which during such tenancy shall be equal to one hundred ten percent (110%) of the monthly rent paid by Lessee during the last month of the Term of this Agreement.

## **Section 6. Subleasing and Sale of Hangars.**

**6.1 Transfer of Agreement.** Lessee shall not assign, sublet, mortgage, or otherwise transfer, in whole or in part, any of the rights to the Premises without the prior written approval of City or except as provided in this Agreement.

**6.2 Initial Sale and Sublease of Hangars.** In connection with Lessee's initial sale of any constructed hangar, Lessee shall, without the necessity of prior written approval of City, assign its leasehold interest in the corresponding hangar unit footprint to the Hangar Owners' Management Entity, with such entity referenced in Section 7.3 of this Agreement. Upon an assignment contemplated under this Section 6.2, Lessee shall immediately furnish the Director with written documentation identifying the hangar unit so assigned. The Hangar Owners' Management Entity may sublease its leasehold interest in any individual hangar unit footprint assigned to it by Lessee to an initial hangar unit purchaser in connection with an initial hangar unit sale transaction, provided that (i) any sublease executed under this Section 6.2 shall be null and void unless executed on the form sublease reviewed and approved by City that is attached hereto as Exhibit H, and (ii) the Hangar Owners' Management Entity immediately provides a copy of the fully executed sublease to the Director.

**6.3 Subsequent Subleasing and Rental of Hangars.** Purchasers of hangars who become initial sublessees as contemplated in Section 6.2 of this Agreement may not sublease or otherwise rent any hangar on the Premises to any subsequent purchaser or sublessee except as provided in Section 6.3.1.

**6.3.1** If an initial hangar purchaser possesses a bona fide intention to assign or partially assign its sublease under this agreement or to sublease or partially sublease any portion of its demised premises it shall first submit in writing to City:

(i) The name and address and current audited credit information of the proposed assignee or sublessee,

(ii) A copy of the proposed assignment or sublease, and

(iii) Information and documentation as to the nature and character of the business of the proposed assignee or sublessee.

**6.3.2** City shall either consent to the proposed assignment or sublease or reject same.

**6.3.3** It is mutually agreed and understood that Lessor shall be deemed reasonable in withholding its consent to any proposed assignment or subletting for any of the following reasons, including, without limitation:

(i) The proposed assignment or sublease is for the conduct of a business which is not in keeping with the standards and the general character of the Airport or the Premises.

(ii) The proposed use is different from the use permitted under this Lease, or would violate any exclusives granted by City to any other lessee of the Airport.

(iii) The assignment or sublease is not at "market rent," in City's judgment.

(iv) The proposed assignee or sublessee is not creditworthy, in City's judgment.

(v) The proposed assignee or sublessee is a tenant in any property owned by City or is currently negotiating with City to become such a tenant.

**6.3.4** Notwithstanding the foregoing, if a lender of Lessee takes possession of the Premises after a Lessee default, the right to assign this Agreement shall be unrestricted.

**6.4 Sale and Subleasing of Hangars.** Subject to Section 6.2, Lessee may market constructed hangars as for sale, with permitted uses to include limited overnight stay of hangar owners and their sublessees, subject to FAA limitations. If a hangar is assigned or subleased, City shall not be entitled to any percentage of gross revenue from Lessee's assignment or sublease of such hangar, but if the assignee or sublessee thereof subsequently reassigns or sub-subleases the hangar, the transferee shall be required to pay Percentage of Gross Revenue Fees. Assignment or sublease of a hangar shall be subject to all Agreement provisions, including term and termination provisions. Any hangar assignee, sublessee, or tenant thereof engaged in any commercial business activity allowed by Airport Minimum Standards on the Property must enter into an operating agreement directly with City, including the negotiation of commercial tenant/owner percentage of gross revenue fees between such tenant/owner and City. Lessee shall not be responsible for negotiating such agreements between tenants/owners and City.

**6.5 Construction Financing.** At the commercially reasonable request of Lessee or its prospective lenders, or as City deems appropriate, City and/or Lessee may enter into non-disturbance agreement(s), attornment agreement(s), or other related leasehold mortgage or financing agreements with such prospective lenders. City shall not unreasonably refuse to enter into said agreements, provided they are subject and subordinate to City's fee interest in the Premises and any and all existing or future agreements made between City and the United States.

**Section 7. Rent and Fees.** Upon issuance of a certificate of occupancy for building improvements on the Premises, Lessee shall be liable to City for rents and fees. Lessee shall pay in advance without invoice, on the first day of each calendar month, for the use of the Premises and for the rights granted pursuant to this Agreement the following rents and fees:

**7.1 Building Rent.** Lessee shall owe to City rent at a rate of \$0.315 per square foot of Gross Leaseable Area of building improvements constructed on the Premises ("Building Rent"). "Gross Leaseable Area" means the number of square feet measured from the outside dimensions of the buildings or structures situated on the Premises, without deduction for any space occupied by or used for columns, stairs, or other interior construction or equipment. Lessee shall furnish to City in writing the final measurement of the constructed building improvements' Gross Leaseable Area promptly upon the issuance of a certificate of occupancy. Lessee shall not owe, and the City will not charge, rents or fees on aprons, taxiways, parking lot, or any other areas of the Premises on which no building improvements are constructed. If the expiration date or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, rent shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed.

**7.2 Percentage Fees.** Hangar owners and their permitted assignees and sublessees that engage in commercial activity shall owe to City a monthly Percentage of Gross Revenue Fee of 10% of all gross revenue generated from the assignment, sublease, rental, or other use of hangars or buildings of any type. The Percentage of Gross Revenues Fee is due and payable without invoice, no later than the fifteenth (15th) day of each month for the preceding month, and shall be reported on the Monthly Statement of Gross Revenues Form in conformity with **Exhibit C**.

**7.3 Hangar Owners' Management Entity.** Prior to the issuance of a certificate of occupancy for building improvements on the Premises, Lessee shall establish a hangar owners' management entity duly organized under New Mexico law (the "Hangar Owners' Management Entity"). Lessee may undertake the duties of the Hangar Owners' Management Entity under this Agreement itself, through an affiliate entity, or through an independent entity duly organized under New Mexico law. The Hangar Owners Management Entity shall collect from hangar owners and forward to City the Building Rent. Failure of any authorized occupant of any hangar improvement to remit rent to the Hangar Owners' Management Entity shall not relieve Lessee of its obligations under Section 7.1.

**7.4 Building Rent Adjustment.** Beginning one (1) year following the Effective Date, City shall increase the Building Rent annually, based on the average of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 as published by the U.S. Bureau of Labor Statistics Division of Consumer Prices for the immediately preceding one (1) year period.

**7.5 Periodic Rent Adjustment.** Beginning ten (10) years from the Effective Date, and every ten (10) years thereafter, the fair market rental rate and escalation method for the Premises will be determined based on an appraisal of fair market rental value of the Premises as compared with other similarly used land at the Airport, assuming that the Premises is vacant and

contains none of the contemplated Lessee building improvements. Each periodic rent adjustment as calculated on each of the adjustment dates shall not be less than the fair market rental value set by any proceeding annual rent adjustment or on any preceding adjustment date. The method for establishing the appraised rate for the Premises is as follows:

**Step 1: City Appraisal.** City at its sole expense shall commission a MAI appraiser to prepare an appraisal report in accordance with this section (the "City Appraisal"). If Lessee accepts the appraisal results and provides written notice of acceptance to City within thirty (30) calendar days of City providing the City Appraisal to the Lessee, the rent shall be adjusted accordingly.

**Step 2: Lessee Appraisal.** If the Lessee rejects City's appraisal in Step 1 above or otherwise fails to notify City of acceptance of appraisal results set forth in Step 1 above, Lessee shall promptly select a MAI appraiser to prepare a second appraisal ("Challenge Appraisal"). Lessee shall bear all costs of the Challenge Appraisal. A copy of the completed Challenge Appraisal shall be made available to the Director no later than sixty (60) calendar days following delivery of the City Appraisal to the Lessee, and the Director shall immediately fix the time and place for a conference ("Appraiser Conference") between City and the Lessee and the two appraisers that were selected. At the Appraiser Conference, City and Lessee shall attempt to reach an agreement on the fair market value of the Premises. If City and Lessee reach an agreement, the rent shall be adjusted accordingly. If Lessee fails to provide the completed Challenge Appraisal within the period established in this Step 2, then the rent shall be adjusted in accordance with the City Appraisal.

**Step 3: Third Appraiser.** If Lessee and City fail to reach an agreement in Step 2, the two appraisers shall select another MAI Appraiser ("Third Appraiser") within ten (10) days following the Appraiser Conference. If the parties' respective appraisers do not reach an agreement on the selection of a Third Appraiser, the Director, after consultation with Lessee, shall appoint the Third appraiser. The City and Lessee shall each pay 50% of the fees and expenses of the Third Appraiser. The Third Appraiser will be allowed access to the City Appraisal and Challenge Appraisal reports, will prepare a third appraisal, and shall simultaneously submit a copy of the third appraisal to the City and Lessee. If the third appraisal is no greater than the higher and no less than the lower of the two values established by the City Appraisal and the Challenge Appraisal, the third appraisal shall be used to establish the rent commencing on the applicable Adjustment Date. If the third appraisal falls outside the range established by the City and Lessee's appraisals, the Rent commencing on the applicable Adjustment Date shall be established by the appraisal of either whichever party that is closest to the third appraisal.

**7.6 Place of Payment.** Lessee shall deliver payments of Building Rent to the office of the City's Director of Aviation ("Director") or at such other place as may be designated by City from time to time. Payment shall be made to the order of the "City of Albuquerque".

**7.7 Late Payment Fee.** If the Building Rent required by this Agreement is not received by City on or before the date specified in this Agreement, Lessee shall pay an interest charge to City of one and one-half percent (1½%) per month (eighteen (18%) annually) for each month or partial month that any payment due is not paid.



In addition, Lessee shall pay an administrative fee to City of **Fifty and No/100 Dollars (\$50.00)** if City sends Lessee a late payment notice.

**7.8 Net Lease.** Except as otherwise explicitly provided in this Agreement, Lessee shall pay, in addition to the taxes, water, sewer charges, assessments, and insurance premiums elsewhere provided for in this Agreement:

**7.9.1** All maintenance, operation, and repair expenses of every kind, nature, or description, now or hereafter existing in the Premises, and each part thereof, both inside and out, including, but specifically not limited to roofs, windows, fronts, sidewalks, vaults, plumbing and heating systems, air-conditioning systems, and any street in front of and adjoining said Premises, to the persons, firms, or corporations performing, furnishing, or rendering such services.

**7.9.2** Cost of all alterations of whatever nature, whether structural or otherwise, undertaken by Lessee at any time during the Term, to the persons, firms, or corporations performing, furnishing, or rendering such services.

**Section 8. Provisions Incorporated by Exhibits.** Throughout the term of this Agreement, Lessee shall comply with the provisions of the following exhibits, attached hereto and incorporated herein as though set forth in full:

**8.1 Exhibit D: Insurance and Indemnity Provisions.** Insurance shall conform to the requirements provided in **Exhibit D**. Insurance with limits required by this Agreement are as follows:

**8.1.1 Commercial General Liability Insurance.** Lessee shall have liability limits in amounts not less than **Two Million and No/100 Dollars (\$2,000,000.00)**.

**8.1.2 Commercial Automobile Liability Insurance.** Lessee shall have liability limits in amounts not less than **One Million and No/100 Dollars (\$1,000,000.00)** should Lessee, its officers, agents or employees access the Premises using Lessee-owned automobiles.

**8.1.3 Workers' Compensation and Employers Liability Insurance** as required by New Mexico Law.

**8.1.4 Commercial Property Insurance** shall in an amount equal to the replacement cost of Lessee's improvements and all personal property situated on the Lessee's Premises.

**8.1.5 Builders Risk Insurance** during any period of construction or reconstruction for which Lessee contracts. Lessee shall carry, or shall require its contractor or contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work.

**8.1.6 Aircraft Liability Insurance** in an amount not less than **One Hundred Thousand and No/100 Dollars (\$100,000.00)** for injury to or death of one or more persons,

including occupants, and not less than **One Million and No/100 Dollars (\$1,000,000.00)** for damage to property. Said policy or policies of aircraft liability insurance covering bodily injury and property damage shall be related to all owned, non-owned, leased, or hired aircraft operated by Lessee upon or from the Premises or the Airport.

**8.2 Exhibit E: Security Deposit Provisions.** Per the terms of the Letter of Intent between the Lessee and the City, effective June 11, 2022, Lessee has deposited **Ten Thousand and No/100 Dollars (\$10,000.00)** in a form that conforms to the requirements provided in Exhibit D, attached hereto and incorporated herein, with the City for consideration for keeping the Premises off of the market. In accordance with the terms of the Letter of Intent, this amount will be credited as a security deposit for this Agreement upon commencement of building improvements.

**8.3 Exhibit F: Environmental Provisions.**

**8.4 Exhibit G: General Conditions.**

## **Section 9. Termination of Agreement.**

**9.1 Termination by City: 15-Day Cure Period.** This subsection shall govern Lessee's failure to comply with the following provisions (collectively, "Events of Default"):

**9.1.1** pay rents and fees;

**9.1.2** provide and maintain insurance;

**9.1.3** begin construction within six (6) months of the signing of this Agreement.

In the event Lessee fails to comply with any or all of the aforementioned provisions for a period of fifteen (15) days following receipt by Lessee of City's written notice of an Event of Default, City shall be entitled to terminate this Agreement by sending a Notice of Termination to Lessee, provided, however, that no Notice of Termination shall be effective if Lessee has fully cured all Events of Default identified in the fifteen (15) day notice prior to Lessee's receipt of the Notice of Termination. Termination of this Agreement will take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise therein. Upon Lessee's receipt of a Notice of Termination, Lessee shall immediately quit and surrender the Premises and City shall have the right to immediate sole possession of same without any requirement of City to give notice to Lessee to quit possession.

**9.2 Termination by City: 30-Day Cure Period.** Except for Events of Default which are governed by subsection 9.1 above, if Lessee fails to comply with any covenant or provision herein required for a period of thirty (30) days following receipt from City of written Notice of Non-Compliance, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination, Lessee has fully complied with all covenants and provisions identified in the Notice of Non-Compliance, then this

Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

For events of non-compliance, which cannot reasonably be cured within a period of thirty (30) days following receipt from City of written Notice of Non-Compliance, Lessee shall commence corrective action within said thirty (30) day period, and shall continue appropriate curative action until such default has been fully cured. In the event Lessee fails to meet its obligation as provided for herein, City shall be entitled to terminate this Agreement by sending Lessee a written Notice of Termination. Termination of this Agreement shall take effect immediately upon Lessee's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to Lessee's receipt of the Notice of Termination Lessee has commenced corrective action, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

**9.3 City's Non-Waiver.** City's performance of all or any part of this Agreement for or during any period or periods following a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Lessee, shall not be deemed a waiver of any rights on the part of City to terminate this Agreement for failure by Lessee to perform, keep, or observe any of the terms, covenants, or conditions herein contained and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Lessee.

**9.4 Termination by Lessee: 30-Day Cure Period.** If City fails to comply with any covenant or provision herein required for a period of thirty (30) days following receipt from Lessee of written Notice of Non-Compliance, Lessee shall be entitled to terminate this Agreement by sending City a written Notice of Termination. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to City's receipt of the Notice of Termination, City has fully complied with all covenants and provisions identified in the Notice of Non-Compliance, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void. Upon any such default by City, which is not cured in a timely manner, whether or not Lessee terminates this Agreement, Lessee shall have all remedies available to it at law or in equity or pursuant to any applicable statute.

For events of non-compliance, which cannot reasonably be cured within a period of thirty (30) days following receipt from Lessee of written Notice of Non-Compliance, City shall commence corrective action within said thirty (30) day period, and shall continue appropriate curative action until such default has been fully cured. In the event City fails to meet its obligation as provided for herein, Lessee shall be entitled to terminate this Agreement by sending City a written Notice of Termination. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to City's receipt of the Notice of Termination City has commenced corrective action, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

**9.5 Other Termination by Lessee.** Lessee may terminate this Agreement any time that Lessee is not in default in its payments to City hereunder, by giving City sixty (60) days

advance written notice as hereinafter provided, based upon one of the following events:

**9.5.1** The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof for aeronautical purposes, and the remaining in force of such injunction for a period of at least ninety (90) days;

**9.5.2** The inability of Lessee to use, for a period in excess of ninety (90) days, the Airport or any of the Premises, facilities, rights, licenses, services or privileges leased to Lessee hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy, provided that same is not caused by negligence or willful acts or failure to act on the part of Lessee;

**9.5.3** The lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as substantially to restrict Lessee for a period of at least ninety (90) days, from operating at the Airport and/or from exercising its rights upon the Premises pursuant hereto.

**Section 10. Approvals, Consents, and Notices.** All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile or email transmission to the "FAX" number or e-mail address given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address and/or FAX number and e-mail address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

<b>City:</b>	Director of Aviation
<b>Certified Mail:</b>	Albuquerque International Sunport
	PO Box 9948
<b>Personal Delivery:</b>	Albuquerque, NM 87119-1048
	2200 Sunport Blvd. SE - 3rd Floor
<b>Telephone:</b>	Albuquerque, NM 87106
<b>FAX Transmission:</b>	(505) 244-7700
<b>Email:</b>	(505) 842-4278
	rmccurley@cabq.gov
<b>Lessee:</b>	High Flying Hangars, LLC
<b>Lessee Official:</b>	Kenny Hinkes
<b>Title:</b>	Owner/Qualifying Broker
<b>Certified Mail and Personal Delivery:</b>	PO Box 25782
	Albuquerque, NM 87125
<b>Telephone:</b>	(505) 615-8613
<b>Email:</b>	kenhinkes@gmail.com

If notice, consent, or approval is given in any other manner or at any other place, it will

also be given at the place and in the manner specified above

The effective date of such notice, consent, or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile or email transmission, unless provided otherwise in this Agreement.

**Section 11. Savings.** The Parties acknowledge they have thoroughly read this Agreement, including all exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. The Parties further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either Party by reason of that Party's preparation of all or part of this Agreement.

**Section 12. Approval of Agreement.** This Agreement shall not become effective or binding until approved by the Albuquerque City Council and signed by the Chief Administrative Officer of the City of Albuquerque.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its Chief Administrative Officer, and Lessee has caused the same to be executed by its appropriate and authorized officer.

**City of Albuquerque:**

By: \_\_\_\_\_  
**Lawrence Rael**  
**Chief Administrative Officer**

Date: \_\_\_\_\_

**Recommended:**

\_\_\_\_\_  
**Richard G. McCurley**  
**Director of Aviation**

Date: \_\_\_\_\_

**High Flying Hangars, LLC:**

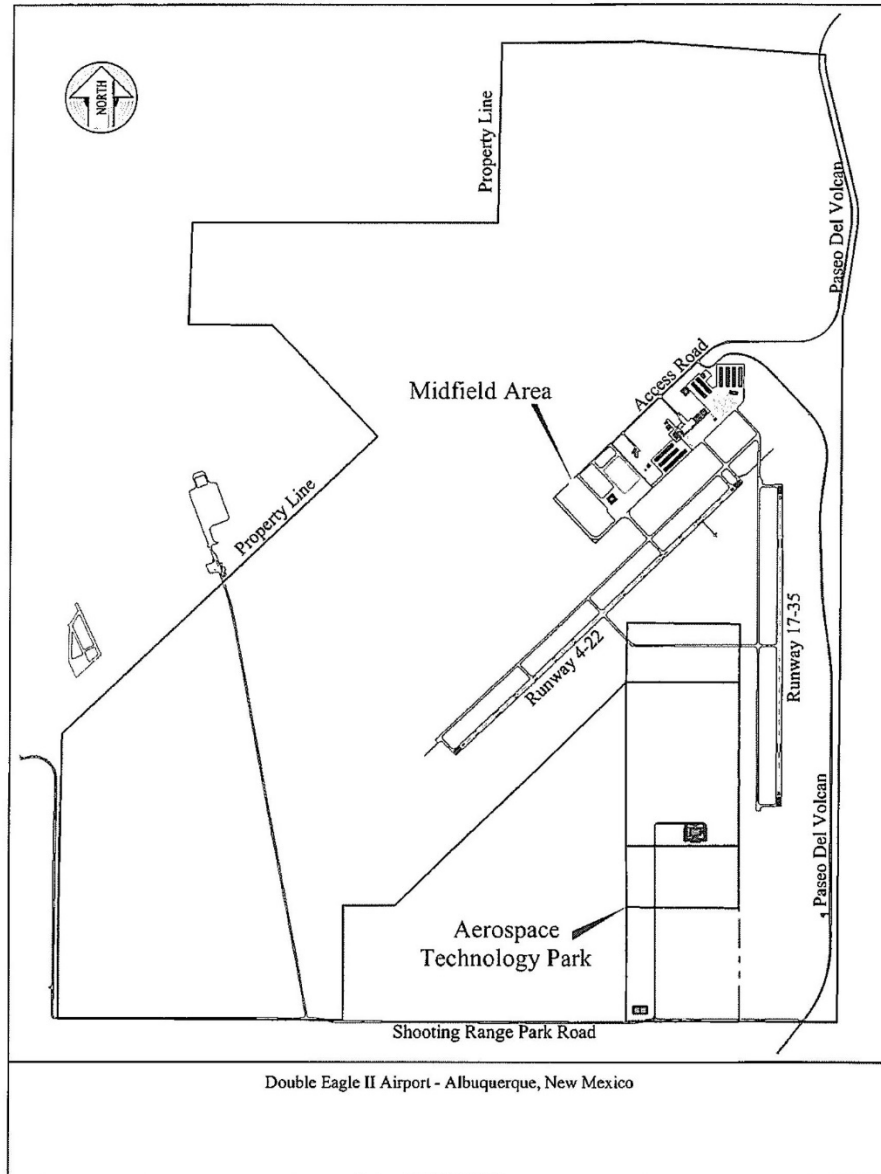
By: \_\_\_\_\_  
**Kenny Hinkes**  
**Owner**

Date: \_\_\_\_\_

**Exhibit A**  
**Double Eagle II Airport – Aerial View**



## Exhibit B Premises





**Exhibit C**  
**Gross Revenues, Reporting Requirements**  
**&**  
**Monthly Gross Revenues Report Form**

**1. Definition of Gross Revenues.** Gross Revenues means the total amount of money or the value of other considerations received from the performance of Lessee's services anticipated under this Agreement, whether for cash or on credit, whether collected or not.

**1.1 Specific Inclusions.** Gross Revenues include but are not limited to the following:

(a) The total amount of money or the value of other consideration received, whether payment is for cash or on credit and whether or not such amount is collected.

(b) All credit losses, credit charges, or credit deductions incurred by Lessee or imposed on Lessee by reason of Lessee's acceptance or use of credit cards or other credit or charge arrangement.

(c) All Aviation Department Airport fees and charges required of Lessee under the terms and conditions of this Agreement with Lessee shall remain part of the Gross Revenues and shall not be deducted or excluded from Gross revenues. Under no circumstances shall Airport fees and charges required of Lessee be added to customer charges.

**1.2 Specific Exclusions.** Excluded or deducted from Gross Revenues are the following:

(a) Federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Lessee directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Lessee to any governmental agency.

(b) Receipts from the sale or trade-in value of any equipment used on the Airport and owned by Lessee.

(c) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Lessee where such exchanges or transfers are not made for the purpose of avoiding a sale by Lessee which otherwise would be made from or at the Airport.

(d) Receipts in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers.

(e) Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Lessee, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

(f) Receipts from the sale to Lessee's employees of uniforms or clothing to Lessee's employees where such uniforms or clothing are required to be worn by such employees as a condition of their employment.

**2. Monthly Statement of Gross Revenues.** Within fifteen (15) days after the close of each calendar month during the Term, Hangar Owners/Assignees (referred to herein as "Hangar

Owners" or "Owners") that are engaged in commercial activity as defined above, and have written agreements with the City shall submit to City, on the Monthly Statement of Gross Revenues Form provided herewith, information concerning its Gross Revenues derived from Lessee's services performed at the Airport for the preceding month. This form shall include all Gross Revenues for the preceding month upon which the Administrative Fee payment required was computed. Lessee must submit the Administrative Fee payment with the Monthly Statement of Gross Revenues Form. This statement shall be signed by a responsible accounting officer of Lessee. City shall have the right to change the format of the Monthly Statement of Gross Revenues Form and to require Lessee to submit other information pertaining to its Gross Revenues, and Lessee agrees to use such form and provide such additional information.

**3. Annual Reporting.** Not later than ninety (90) days following the end of each Calendar Year throughout the Term, Hangar Owners shall furnish to City a statement of its Gross Revenues ("Annual Report") for that Calendar Year, prepared by an independent Certified Public Accountant ("CPA").

Hangar Owner's Annual Report must be itemized for each month of the Calendar Year, and detail Owner's a) Gross Revenues as previously reported to City, b) Gross Revenues as reported by the independent CPA, c) total monthly fees due to City, and d) schedule of payments made to City by Lessee. If such Annual Report shows an underpayment of the required fees due to City, Lessee shall submit payment for such underpayment to City with the Annual Report.

**3.1** For each Calendar Year in which Hangar Owner's Gross Revenues do not exceed \$4,000,000.00, Owners shall furnish to City, at its sole expense, a compiled Annual Report prepared in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

**3.2** For each Calendar Year in which Hangar Owners Gross Revenues exceed \$4,000,000.00, Owners shall furnish to City, at its sole expense, an Annual Report prepared in accordance with Generally Accepted Auditing Standards. Such Annual Report shall contain an unqualified opinion on the financial information presented.

Within a reasonable period of time following City's receipt of Owners Annual Report, City's Auditor shall perform an independent reconciliation of Owners monthly reports against the Annual Report. If such reconciliation reveals an overpayment or underpayment by Lessee of the required fees, City's Auditor shall notify Owners, in writing, of such overpayment or underpayment and issue the appropriate credit or invoice to Lessee. If a credit is issued, it shall be taken in the month immediately following such notification.

**4. Accounting Records.** Owners agrees to keep full and accurate books showing all of its Gross Revenues derived from its operations at the Airport, and City shall have the right to inspect, examine, copy and audit such books and records, including, but not limited to Owners federal, state and local tax returns and New Mexico Gross Receipts tax return records as filed with the state of New Mexico, as further provided in subsection 6.5 below. Such books and records shall include separately maintained original records, which shall include: a) daily dated cash register tapes, including tapes from temporary registers; b) serially numbered sales slips; c) Owners bank account statements; d) daily and/or weekly transaction reports; and e) such other records, if any,

which would normally be examined by an independent certified public accountant in performing an examination of Owners Gross Revenues in accordance with Generally Accepted Auditing Standards.

**5. Auditing by City.** City shall have the right at any time within three (3) years after receipt of Owners Annual Statements or Monthly Statements to have the books and records of Owners audited during reasonable hours by a certified public accountant including but not limited to the Aviation Department's Auditor, the City's Office of Internal Audit, or its successor agency, or a private Certified Public Accountant; and, in the event that such audit shows Owners Gross Revenues as reported by said certified Annual Statements to be more than one percent (1%) in error, detrimental to City, Owner shall reimburse City for the expense to City of such audit; otherwise, City shall bear the entire cost of such audit. Any additional fees found due by such audit shall be paid to City within thirty (30) days of the audit and shall bear interest at the Late Payment Fee interest rate from the date such payment was due until paid; and if Lessee has overpaid such fees, Owner shall deduct such excess from the fees to City next falling due, if any, or be paid such excess by City if no fees are owed. Owner shall not be entitled to charge City any interest on such overpayments.

Owner shall maintain records of its Gross Revenues for a period of at least three (3) years following the end of each Calendar Year and such records shall be available to City for audit or review on request during usual office hours. Owner shall maintain such records at its corporate office and provide them to City, in Albuquerque, New Mexico, upon fifteen (15) days written request.

**6. Copying of Records.** Owner shall allow City's representatives to photocopy any records the representatives determine to be necessary to conduct and support their audit. Owner shall provide City's representatives with retrievals of computer-based records or transactions the representatives determine to be necessary to conduct the audit. Owner shall not charge City for reasonable use of Owner photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette and/or printing any records or transactions stored in magnetic, optical, microform or other media.

**7. Failure to Record.** In the event Owner fails to create and preserve part or all of the Gross Revenues records required in this Agreement, Owner shall pay City the Administrative Fee based on an estimated amount of Gross Revenues for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Revenues shall be made by City and shall be based on historical Gross Revenues of Owner, or other Owners situated in similar circumstances as Owner Failure of Owner to create and preserve such records shall be a material breach of this Agreement by Owner.



Albuquerque International Sunport  
Monthly Gross Revenues Received Report

COMPANY NAME:		
MONTH/YEAR:		
(Due by the 15th day of the following month)		
City of Albuquerque Aviation Department P.O. Box 9948 Albuquerque, NM 87119-1048		Email To: <div>aviar@cabq.gov</div>
MONTHLY GROSS REVENUES REPORTING		
List of Companies	Monthly Revenues Received Amount	
1.)	\$	-
2.)	\$	-
3.)	\$	-
4.)	\$	-
5.)	\$	-
6.)	\$	-
7.)	\$	-
8.)	\$	-
9.)	\$	-
10.)	\$	-
11.)	\$	-
12.)	\$	-
*Attach List for Additional Companies		
Monthly Gross Revenues Received Before Exclusions:		\$ -
Less: Exclusions from Gross Revenues - See Page 2 of 2		
a.) Deductible taxes	\$	-
b.) Equipment sales/trade-in (receipts required)	\$	-
c.) Equipment or merchandise exchanged	\$	-
d.) Supplies/merchandise exchanged (receipts required)	\$	-
e.) Refunds to customers (receipts required)	\$	-
f.) Sales of uniforms to employees (receipts required)	\$	-
Total Exclusions:		\$ -
TOTAL Gross Amount Revenues Received After Exclusions:		\$ -
COMPUTATION OF % FEE DUE:		
10% of Monthly Gross Revenues Received:		\$ -
Payment included in Check No:		#
Amount Paid:		
Date:		
Oath of Operator: The undersigned, being first duly sworn, deposes and says that the gross revenues detailed of this statement are true and just, and the percentage fee shown is due the City of Albuquerque in accordance with the Operating Agreement.		
Authorized Officer:		Signature & Date:



## Albuquerque International Sunport Percentage of Gross Revenues Fee

**Gross Revenues** - means the total amount of money or the value of other considerations received from the performance of Operator's services anticipated under this Agreement, whether for cash or on credit, whether collected or not.

**Specific Inclusions** - Gross Revenues include but are not limited to the following: (a) the total amount of money or the value of other consideration received whether payment is for cash or on credit and whether or not such amount is collected; (b) all credit losses, credit charges, credit deductions incurred by Operator or imposed on Operator by reason of Operator's acceptance or use of credit cards or other credit or charge arrangements.

**Specific Exclusions - Excluded or deducted from Gross Revenues are the following:**  
*(not all may be applicable)*

- a.) Federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Operator directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Operator to any governmental agency;
- b.) **Receipts** from the sale or trade-in value of any equipment used on the Airport and owned by Operator;
- c.) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Operator where such exchanges or transfers are not made for the purpose of avoiding a sale by Operator which otherwise would be made from or at the Airport;
- d.) **Receipts** in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers;
- e.) **Receipts** with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Operator, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
- f.) **Receipts** from the sale to Operator's employees of uniforms or clothing where such uniforms or clothing are required to be worn by such employees as a condition of their employment;

**Note:** Receipts for exclusions b), d), e) and f) must accompany payment in order for exclusion to be considered.

The Aviation Department reserves the right to modify this form at any time.

## **Exhibit D**

### **Insurance and Indemnity Provisions**

#### **1. Insurance**

**1.1 General Requirements.** For the term of this Agreement Lessee shall, at its sole cost and expense, procure and maintain insurance in conformance with the requirements set forth in this Section. Lessee will use insurance companies authorized to do business in the State of New Mexico and with a minimum A.M. Best rating of A-VII or its equivalent, or as approved by City, covering all operations under this Agreement, whether performed by it or its agents. Various types of required insurance may be written in one or more policies.

When requested by City, Lessee shall allow City to review in the presence of Lessee's insurance representatives any or all policies of insurance for the insurance coverage required herein. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided below.

Lessee shall not violate the terms or prohibitions of insurance policies required to be furnished by Lessee. Lessee shall promptly notify City of any claim or loss at the Airport or on the Premises exceeding the amount of the deductible under any liability insurance policies, and certify that proper notice has been given to the appropriate insurance carrier.

**1.2 Additional Insured.** With respect to all coverage required other than workers' compensation, the City shall be a certificate holder and endorsed as an additional insured or loss payee. All coverage afforded shall be primary and non-contributory with respect to operations provided. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not make City a partner or joint venturer with Lessee in its operations on the Airport.

Coverage for an additional insured shall **not** be limited to its vicarious liability, and coverage shall extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Lessee, its officers, agents, employees, and independent contractors on the Airport, notwithstanding City's status as an additional insured.

**1.3 Insurance Certificates and Endorsements.** On or before the Effective Date and on the renewal of all coverage, Lessee shall furnish to the Director of Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119-1048, all necessary certificates and additional insured endorsements in form satisfactory to the City showing that it has complied with this Section. All insurance certificates shall provide that thirty (30) days written notice, seven (7) days in the case of War & Allied Perils, ten (10) days for non-payment of premium, be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. Acceptance of the Certificates of Insurance and endorsements by City shall not relieve Lessee of any of the insurance requirements set forth herein, nor decrease the liability of Lessee. Neither Lessee nor any contractors, assignees or other transferees of Lessee shall begin any operations pursuant to this Agreement until the required insurance has been obtained and

proper certificates of insurance delivered to the Director.

Lessee agrees to provide written notice to the City of any material changes in coverage including cancellation and non-renewal as soon as possible.

**1.4 General Insurance Specifications.** To the extent any of the below types of insurance are required in this Agreement, they must meet the following specifications:

**1.4.1 Aircraft Liability Insurance.** The Lessee shall procure and maintain policies of insurance for aircraft liability in an amount not less than as required by this Agreement for bodily injury and property damage including passengers, which shall include but not necessarily be limited to all of the following coverages: Contractual Liability, Hangar Keepers Legal Liability, Motor Vehicle Liability within the confines of the Airport, Mail and Cargo Legal Liability, and Fueling and Refueling (if such operations are conducted by Lessee). Such coverage shall include War & Allied Perils.

**1.4.2 Commercial General Liability Insurance.** The Lessee shall procure and maintain policies of insurance for aviation commercial general liability in an amount not less than as required by this Agreement including bodily injury and property damage, Premises, Products, Completed Operations, Mobile Equipment, Independent Contractors, Personal and Advertising Injury and Contractual Liability. Such coverage shall include War & Allied Perils.

**1.4.3 Commercial Automobile Liability Insurance.** The Lessee shall procure and maintain policies of insurance for commercial automobile liability in an amount not less than as required by this Agreement covering owned, non-owned and hired autos for bodily injury and property damage arising from activities on, or operations with respect to Airport premises, both on and off work.

**1.4.4 Environmental Impairment Liability Insurance.** The Lessee shall procure and maintain policies of insurance of not less than the amount required in this agreement per occurrence, as necessary to insure the indemnification provisions of this Agreement. Environmental Impairment Liability Insurance shall be obtained by Lessee and evidence of compliant coverage provided to the City no less than 15 days prior to the start of fueling operations. Lessee shall not perform fueling operations before City has acknowledged and approved evidence of Environmental Impairment Liability Insurance in writing.

City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment, statutory requirements, and inflationary trends.

The liability insurance required in paragraphs 1-4 above must:

- a) be written on an occurrence basis.
- b) include coverage for Lessee's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provisions of this Agreement.

- c) include a severability of interest provision applicable to all insureds and additional insureds separately, except with respect to the insurer's limits of liability.

**1.4.5 Workers' Compensation and Employers Liability Insurance.** Lessee shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Lessee shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include coverage permitted under NMSA 1978 § 52-1-10 for safety devices. The insurance shall also include a waiver of subrogation against the City and its employees and agents.

With respect to Workers' Compensation Insurance, if Lessee elects to be self-insured, Lessee shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Lessee shall require the sublessees similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Lessee hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Lessee's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Lessee are not City employees for any purpose.

**1.4.6 Commercial Property Insurance** in an amount equal to the replacement cost of Lessee's improvements and all personal property situated on the Lessee's Premises.

**1.4.7 Builders Risk Insurance** during any period of construction or reconstruction for which Lessee contracts. Lessee shall carry, or shall require its contractor or contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work.

**1.5 Minimum Insurance.** The insurance requirements of this Agreement shall be the greater of (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Lessee under this Agreement.

**1.6. Self-Insurance Retention.** In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision, for each such amount, Lessee shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to City, or provide City with evidence that its net worth (as shown by independently audited financial statements) is in excess of the amount of the total self-insurance retentions.



## **2. Indemnification**

**2.1 General Indemnification.** Lessee agrees to defend, indemnify and hold harmless City and its officers, employees, and agents from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Lessee, its agents or its employees arising out of the operations of Lessee under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

**2.2 Environmental Harm Indemnification.** Without limiting any provisions of this Agreement, Lessee shall also defend, indemnify and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' and consultants' fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

**2.2.1** any actual or alleged contamination by Hazardous Substances of the Premises or the Airport by Lessee or its agents;

**2.2.2** the presence, disposal, or release of Hazardous Substances by Lessee or its agents at the Airport that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise;

**2.2.3** any bodily injury (including wrongful death), property damage, or personal injury arising out of or related to the use of Hazardous Substances by Lessee at the Airport;

**2.2.4** any violation by Lessee of any Environmental Laws.

Lessee's obligations and liabilities under this subsection shall survive the termination of this Agreement and the transactions contemplated in this Agreement.

**2.3 Limitations.** To the extent, if at all, NMSA 1978 § 56-7-1 is applicable to this Agreement, these Insurance and Indemnity Provisions shall not extend to or be construed to require Lessee to defend, indemnify and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury or damage to persons or property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

**2.4 Scope of Indemnification.** In addition, with respect to any claims, actions,

suits, damages or judgments caused by or resulting from the negligent acts, omissions or operations of Lessee, its agents, servants, or employees, Lessee shall (1) investigate or cause the investigation of accidents involving such injuries; (2) negotiate or cause to be negotiated all claims made as may be deemed expedient by Lessee, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages, in the name and on behalf of City; (3) pay and satisfy judgments finally establishing the liability of City in all actions defended by Lessee pursuant to this Section; (4) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws, utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls; and (5) pay or cause to be paid: a) all costs taxed against City in any legal proceeding defended or caused to be defended by Lessee as aforesaid; b) any interest accruing up to the date of payment by Lessee; c) all premiums charged upon appeal bonds required in such proceedings; and d) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred, should Lessee fail to provide the defense and indemnification required herein.

By way of further clarification, these requirements do not apply to the extent the claims, actions, suits, damages, or judgments are caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

**2.5 Miscellaneous.** City shall, promptly upon receipt, give Lessee every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City shall fail to give Lessee notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Lessee in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Lessee of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing herein shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions of this Section shall not be construed to prohibit Lessee from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Lessee indemnified City.

**3. Non-liability of City.** City shall not in any event be liable for any acts or omissions of Lessee, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Lessee, Lessee's agents, servants, employees, or independent contractors working for, or on behalf of, Lessee.

City shall not be liable for Lessee's failure to perform any of its obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

## **Exhibit E**

### **Security Deposit Provisions**

**Purpose of Security Deposit.** The irrevocable letter of credit ("LOC") or security bond ("Bond") will be held by City as security ("Security Deposit") for the full and faithful performance of all the terms, covenants and conditions to be performed by Lessee under this Agreement.

**Form of Security Deposit.** Such Security Deposit shall be a Bond or LOC in a form substantially the same as attached hereto and incorporated herein. The Bond shall be made payable on demand to the City of Albuquerque. The LOC shall be made to the order of the City of Albuquerque.

The LOC or Bond shall expressly permit partial payment and shall be issued exclusively to City of Albuquerque. The LOC or Bond shall allow presentment of claims by City by mail and shall not restrict such presentment to in-person appearances at a particular place. If a Bond is provided, such Bond shall be issued with City of Albuquerque as obligee by a surety licensed to conduct business in the State of New Mexico that has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing the Security Deposit shall provide that it shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement, and shall allow City to make a partial draw on such Security Deposit. In the event of a partial draw, Lessee shall immediately reinstate the Security Deposit to the full amount required in this Section. Documents establishing the continuation or replacement of a LOC or Bond shall be received by the Aviation Department no less than thirty (30) days prior to the expiration of the existing LOC or Bond. If payments required by Lessee under the terms of this Agreement are not made in accordance with the payment provisions set forth in Section 6 above, City shall have the right to forfeit, take, and use as much of such Security Deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. The LOC or Bond shall be released by City within sixty (60) days following expiration or termination of this Agreement, provided Lessee has fully performed.

City shall have the option of accepting cash security deposits. City shall not be required to place cash Security Deposits in interest-bearing accounts; however, should City elect to do so, City shall be entitled to all interest earned from such account as compensation for handling such account. City shall not be required to keep cash Security Deposits in separate accounts.

At any time, this Agreement requires the return of the Security Deposit, such provision shall be deemed to require the return of all deposits held by City under the terms of this Agreement, and the release of any supporting rights and documentation, including Uniform Commercial Code security interests and control agreements.

**PERFORMANCE BOND**

*(sample format)*

**Bond No.** \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)** lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the above bonded Principal has signed a \_\_\_\_\_ ("Agreement") with the City of Albuquerque, dated \_\_\_\_\_.

**NOW, THEREFORE**, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of \_\_\_\_\_ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section \_\_\_ of the above-referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days' notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their Bonds and seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

\_\_\_\_\_

Principal

By: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_

Surety

By: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, do hereby certify that \_\_\_\_\_ of the \_\_\_\_\_ who is personally known to me, appeared before me this day and acknowledged that he/she signed, sealed and delivered the foregoing instrument as his/her free and voluntary act as \_\_\_\_\_ of the \_\_\_\_\_, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**Irrevocable Letter of Credit**  
(sample format)

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

City of Albuquerque  
Aviation Department  
Albuquerque International Sunport  
P. O. Box 9948  
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the account of

\_\_\_\_\_ available by your draft at sight when accompanied by:  
[name of Lessee]

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that [name of Lessee] has failed to perform the terms, covenants and conditions to be performed as required by the [exact title of the agreement] \_\_\_\_\_ ("Agreement") dated \_\_\_\_\_.

**This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.**

Drafts under this credit must bear upon their face the words:

Drawn under \_\_\_\_\_ Bank

Letter of Credit No. \_\_\_\_\_ Dated \_\_\_\_\_.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before \_\_\_\_\_.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

\_\_\_\_\_  
[name of bank]

By: \_\_\_\_\_  
Authorized Signature

## **Exhibit F**

### **Environmental Provisions**

**1. Definitions.** The following words and phrases, wherever used in the Agreement and this Exhibit F, shall have the following meanings:

**1.1 “Environmental Laws”** shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, ordinances, regulations, rules, policies, procedures, or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, wildlife, safety or the environment, without limitation.

**1.2 “Hazardous Substances” or “Contaminants”** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health, the environment, or public welfare when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, or toxic substances under any applicable Environmental Laws.

**1.3 “Remediation Equipment”** means all equipment used or useful in connection with corrective action, including but not limited to groundwater monitoring, extraction, sparging wells, piping, and equipment.

**2. Compliance with Environmental Laws.** In connection with its operations or any other activity at the Airport, Lessee shall at all times and in all respects comply with all applicable Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Premises and Lessee's operations at the Airport. Upon expiration or earlier termination of this Agreement, Lessee shall cause all Hazardous Substances introduced to the Premises and the Airport by Lessee or its agents or invitees to be removed from the Premises and the Airport as required by and in compliance with applicable Environmental Laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws.

**3. Waste Disposal.** Lessee shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Lessee shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency

approval is required for such disposal. All disposal shall comply with applicable regulations of the United States Department of Agriculture, Environmental Laws, Federal Stormwater Regulations, and Section 2 above or Section 4 below of this Exhibit.

#### **4. Federal Stormwater Regulations.**

**4.1.** Notwithstanding any other provisions or terms of this Agreement, Lessee acknowledges that the Airport is subject to all applicable federal, state, and local stormwater regulations. Lessee further acknowledges that it is familiar with these stormwater regulations; that it may conduct or operate from time to time aircraft, vehicle, or ground support equipment maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, deicing activities, or other activities as defined in the federal stormwater regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

**4.2.** Notwithstanding any other provisions or terms of this Agreement, including Lessee's right to quiet enjoyment, City and Lessee both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that it may be necessary to undertake measures to minimize the exposure of stormwater to significant materials generated, stored, handled or otherwise used by Lessee as defined in the federal stormwater regulations, by implementing and maintaining best management practices.

**4.3.** Lessee acknowledges that City's stormwater discharge permit ("Stormwater Permit") is incorporated by reference into this Agreement and any subsequent renewals. Lessee agrees to be bound by all applicable portions of said permit. The City agrees to utilize its best efforts to obtain reasonable and cost-effective terms and conditions, provide an opportunity for Lessee to participate in the development of the terms of the Stormwater Permit and follow the procedures provided below in subsection 4.4 of this Exhibit.

**4.4.** City shall provide Lessee with written notice of those Stormwater Permit requirements that Lessee shall be obligated to perform from time to time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or "best management practices"; corrective actions to identified findings or noted violations as a result of an inspection; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee within twenty (20) days of receipt of such written notice, shall notify City in writing if it disputes any of the Stormwater Permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed to assent to undertake such requirements. If Lessee provides City with written notice, as required above, that it disputes such Stormwater Permit requirements, City and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to City notices required pursuant to this paragraph for purposes of delay or avoiding compliance.

**4.5.** Subject to the dispute resolution provision of subsection 4.4 above, Lessee agrees to undertake at its sole expense, unless otherwise agreed to in writing between City and Lessee, those Stormwater Permit requirements for which it has received written notice from City. Lessee



warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Lessee. Lessee agrees that time is of the essence.

**4.6.** City and Lessee agree to provide each other upon request with any non-privileged information collected and submitted to any government entity(ies) pursuant to applicable stormwater regulations.

**4.7.** Lessee agrees that the terms and conditions of City's Stormwater Permit may change from time to time. City will notify Lessee and provide Lessee with an opportunity to confer with City on any proposed changes to City's Stormwater Permit.

**4.8.** Lessee agrees to participate, to the extent reasonably possible, in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

**4.9.** All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

**5. Prior Written Consent.** Lessee shall not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees without providing notice to the Aviation Department Environmental Manager. City may require removal of Hazardous Substances unless Lessee demonstrates to City's reasonable satisfaction that such Hazardous Substance is necessary or useful to Lessee's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance brought upon, used or kept in or about the Premises.

**6. Liability and Remediation.** If Lessee breaches the obligations stated in the preceding paragraph, or if the presence of a Hazardous Substance on the property caused or permitted by Lessee results in Contamination of the Premises, or if Contamination of the Premises by such Hazardous Substance otherwise occurs for which Lessee is legally liable to City for damage resulting therefrom, Lessee shall indemnify, defend and hold City harmless from any claims, judgments, damages, penalties, fines, costs, liabilities or losses (including but not limited to, diminution in value of the Premises and sums paid in settlement of claims, reasonable attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such Contamination. This indemnification of City by Lessee includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of such Hazardous Substance present in the soil or ground water on or under the Premises as the result of Lessee's conduct.

Without limiting the foregoing, if the presence of any Hazardous Substance on the Premises caused or permitted by Lessee results in any Contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to remediate the release on the Premises to the extent required by government agencies having jurisdiction. Lessee shall not have any liability to City for any environmental, investigatory, monitoring, or cleanup costs except as ordered by a federal, state, or local agency of competent jurisdiction. In the event such an order is issued, City shall immediately notify Lessee and provide it the opportunity to negotiate with the acting

government authority and enter the Premises to conduct investigatory, monitoring, or cleanup work. In the event Lessee is responsible for any investigatory remediation or cleanup work on the Premises after expiration or earlier termination of this Agreement, Lessee shall have the right to enter the Premises for performance of such obligation. In no event shall City be responsible for any damages or costs of Lessee.

The indemnification required by these provisions shall not apply to any Hazardous Substance existing on, under or about the Premises prior to the date of full execution of this Agreement, except to the extent that such Hazardous Substance(s) are released as a result of the negligent, willful, or intentional actions or omissions of Lessee. However, the Parties recognize that there has been no environmental assessment establishing the presence or absence of any Hazardous Substance on, under or about the Premises as of the date of full execution of this Agreement. The Parties agree that, as of the date of full execution of this Agreement, they are not aware of the existence of any Hazardous Substance on, under or about the Premises.

**7. Notices.** Lessee shall immediately notify City in writing of any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Environmental Laws related to its operations on the Premises. Except as otherwise provided below, Lessee shall also provide City as promptly as possible, and in any event within ten (10) business days after Lessee first receives or sends the same, with copies of all claims, reports, complaints, notices or warnings or asserted violations relating in any way to the Premises or Lessee's use thereof.

**8. Environmental Notices; Indemnification Notices.** Lessee shall provide City with a copy of any written release notices or reports that Lessee is required to submit to any environmental agency with respect to releases of any and all Hazardous Substances or Contaminants at the Premises during the Term. Lessee shall, within twenty-four (24) hours, provide City written notification of liquid petroleum product releases in excess of five (5) gallons or any amount that enters the storm drains, soil, or groundwater on or under the Premises. City and Lessee each shall promptly provide the other with a copy of 1) any claim or demand for corrective action that any environmental agency issues and 2) any other claim giving rise to either Party's indemnification obligations herein.

**9. City's Right of Entry.** During the Term, Director, or those authorized by Director, shall have the right of entry to test and determine the extent of any Hazardous Substance Contamination of the Premises. Entry for this purpose shall be with advance notice, at reasonable times, except in case of emergency, and shall not unreasonably interfere with Lessee's use of the Premises.

**10. Lessee's Corrective Action Obligation.** Lessee shall undertake corrective action to remove Contaminants released by Lessee, its agents, employees, contractors, or representative during Lessee's occupancy of the Premises, if and to the extent required by any environmental agency. Lessee shall, in consultation with City, determine the schedule, technique, method, and design of the corrective action, subject to environmental agency requirements and approval, provided, however that Lessee may contest and appeal any environmental agency decision or directive. Lessee shall have no further obligations for corrective action under this Agreement following receipt by Lessee and City of a "No Further Action" letter or equivalent written directive,

if applicable, from the appropriate regulatory agency(ies) indicating that no further corrective action is required to satisfy applicable law and regulations.

**11. Lessee's Environmental Access Right.** In the event Lessee's Remediation Equipment remains on the Premises following the expiration or earlier termination of this Agreement, Lessee and its representatives and contractors will have the right of access to the Premises during normal business hours and business days, to install additional Remediation Equipment; to maintain, modify, monitor, operate, or repair Lessee's Remediation Equipment; and to verify with the applicable environmental agency that Lessee's corrective action has been completed. Lessee or its representative or contractor shall provide City written notice of its intent to exercise its access right at least two (2) business days prior to exercising such right. Lessee will attempt to minimize, to the extent reasonably possible, any interference with the operation of any business conducted at the Premises, except in the case of an emergency as determined by Lessee. In conducting its operations at the Premises following the expiration or earlier termination of this Agreement, City shall attempt to minimize, to the extent reasonably possible, any interference with Lessee's corrective action. The access right will terminate when the applicable environmental agency issues a letter to Lessee stating that, based on certain assumptions and conditions, no further corrective action will be necessary and Lessee removes its existing Remediation Equipment. If, however, following the environmental agency's issuance of such letter, the environmental agency requires Lessee to perform further corrective action, then the access right provided herein will resume.

**12. Post Termination Restoration of Affected Areas.** If Lessee is required to perform corrective action to remove Contaminants, Lessee shall restore the areas at the Airport containing or impacted by such Contaminants ("Affected Areas") as closely as reasonably possible to the state that the Affected Areas were in when Lessee, its employees, agents, or contractors first entered upon the Affected Areas following execution of this Agreement, unless the restoration is prohibited by applicable law.

**13. Holdover Tenancy.** In the event Lessee requires possession of the Affected Areas in excess of thirty (30) days following the expiration or earlier termination of this Agreement in order to install Remediation Equipment, or perform any corrective action that would materially impair ingress, egress, parking, business operations, or City's redevelopment of the Airport, or if a law, governmental order, or court order requires Lessee to be in possession of the Affected Areas after such thirty (30) day period, this Agreement will not be considered to be renewed. Instead, Lessee will be considered to be in possession of the Affected Areas under a month-to-month holdover tenancy until Lessee can surrender the Affected Areas to City in a condition that will not materially impair City's redevelopment or use of the Affected Areas. For each month during such holdover tenancy, Lessee shall perform and be bound by all terms, conditions, and covenants contained in this Agreement.

## **Exhibit G**

### **General Conditions**

**1. Maintenance of Premises.** During the term of this Agreement, it shall be Lessee's obligation, without cost to City, to maintain the Premises and building improvements, employ ordinary preventative maintenance to same, and perform ordinary upkeep and repair of the Premises and building improvements, to include the maintenance of walls, hangar doors, floors, roof, and all mechanical, electrical, and plumbing systems. In addition, Lessee shall maintain, repair, and when necessary, replace all personal property, trade fixtures, equipment, and other building improvements placed or installed on the Premises by Lessee. City shall maintain and repair the ramp and any parking area, provided that Lessee shall be responsible for repairing any accidental or tortious damage to these areas, systems, and components caused by Lessee's operations and activities at the Premises.

Lessee shall at all times keep the Premises in good repair and in neat, orderly, sanitary, and presentable condition. Lessee shall provide for snow and ice removal, and cause to be removed at Lessee's own expense from the Premises all safety hazards and all waste, garbage, debris, and rubbish, collectively referred to herein as "Refuse," and agrees not to deposit same on any part of Airport. City shall be entitled to remove Lessee's Refuse from the Premises and charge Lessee a reasonable fee if Lessee fails to remove such Refuse within five (5) business days after receiving written notice from City of improper disposal.

**2. Utilities.** Lessee, at its sole cost and expense, shall make its own arrangements, and pay for all fees so assessed, for any and all of its utilities at the Premises including but not limited to electrical power, natural gas, water, sanitary sewer, refuse collection and disposal, telephone and communication services, and for any other utility service or other service supplied to or used on the Premises, including any and all connection and metering fees, as billed directly to Lessee by utility companies furnishing such services or as invoiced by City. If invoiced by City, Lessee shall pay City such costs and fees based upon standard Airport rates and fees as may be established from time to time by City, and meter readings, if any, for amounts used by Lessee, within thirty (30) days following the date of such invoice. Lessee agrees that any and all such fees for any and all such services shall be paid before delinquency, provided however, that Lessee may contest the amount or validity of, and may compromise, any such fees in good faith. Lessee shall at all times protect and hold City harmless from liens or charges against City or the Premises caused by Lessee's actions.

City shall not be liable to Lessee for any interruption in or curtailment of any utility service. City shall not be liable for damages to persons or property for any such interruption, nor shall such interruption in any way be construed as cause for abatement of rents or fees or operate to release Lessee from any of its obligations hereunder, except that, in the event the interruption is caused solely by the act or omission of City and the interruption continues for more than seventy-two (72) hours, rents will be abated for the duration of the interruption.

**3. Surrender of Premises.** Lessee covenants and agrees that upon expiration or earlier termination of this Agreement, including termination for Events of Default, Lessee will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, acts of God, fire, and other casualties excepted, and City shall have the right to take possession of the Premises. City shall not be required to give notice to quit possession at the expiration of the Agreement.

**3.1 Removal of Personal Property.** Upon expiration or earlier termination of this Agreement, Lessee shall, immediately, remove any and all non-permanent equipment, trade fixtures, materials, supplies, and other personal property on or about the Premises, subject to any valid lien that City may have thereon for unpaid rents and fees, provided, however, that City shall have the right to occupy and use the Premises immediately upon the expiration of this Agreement. Following the removal of the personal property, Lessee shall be required to return the Premises to the same or comparable condition as existed on the Effective Date of this Agreement, reasonable wear and tear excepted.

**3.2 Ownership of Property Not Removed.** In the event Lessee fails to remove its personal property, City shall have the options of: a) removing Lessee's personal property at Lessee's expense but only in the event Lessee takes possession of such personal property immediately upon such removal; or b) if Lessee refuses to take possession of Lessee's personal property within forty-five (45) calendar days, taking title to Lessee's personal property in lieu of Lessee's removal.

In the event City takes title to such personal property, City shall be entitled to all proceeds of sale of such Lessee personal property as liquidated damages for the breach of Lessee's covenant to remove.

**4. Title to Land.** Fee simple title to the real property underlying the Airport is and shall remain vested in City. Nothing contained in this Agreement or any action or inaction by City shall be deemed or construed to mean that City has granted to Lessee any right, power or permission to do any act or to make any agreement that may create, give rise to, or be the foundation for any right, title, interest, lien, charge or other encumbrance upon the fee simple title of City in the land underlying the Airport.

**5. Compliance with Law.** Lessee shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, contractors, sublessees, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable regulations, ordinances, and laws of any city, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

Lessee shall comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Lessee or Lessee's operations and activities under this Agreement.

**6. Rules, Regulations and Procedures.** Lessee shall observe and obey all lawful and applicable executive instructions, administrative instructions, Airport security requirements, access control procedures, minimum standards, and other rules and regulations governing conduct on and operations at the Airport and use of its facilities promulgated by City from time to time during the Term hereof or during any Renewal Period.

## **7. Non-Discrimination.**

**7.1 State and Local Compliance.** Lessee agrees that no person, on the grounds of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, spousal

affiliation, age, or physical or mental handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport or any improvements thereon or the furnishing of services thereon, and shall use the premises in compliance with all other requirements which are or may be imposed in the future by or pursuant to provisions of New Mexico statutes and City ordinances relating to the enforcement of civil rights and affirmative action programs, including but not limited to the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance, and City's affirmative action policies and practices.

## **7.2 Federal Compliance.**

**7.2.1 General Civil Rights Provision.** Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates Lessee for the period during which the property is used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**7.2.2 Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (herein this subsection referred to as the "Contractor") agrees as follows:

**(1) Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**(2) Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**(3) Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**(4) Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made

to obtain the information.

**(5) Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

**(a)** Withholding payments to the Contractor under the contract until the Contractor complies; and/or

**(b)** Cancelling, terminating, or suspending a contract, in whole or in part.

**(6) Incorporation of Provisions:** The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**7.2.3 Title VI Clauses for Lease of Real Property.** Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities listed below.

In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Agreement had never been made or issued.

**7.2.4 Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Lessee, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**8. Disability Laws and Accessibility Requirements.** Lessee shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Lessee constructs on the Premises, Lessee agrees to meet all the requirements of the ADA which are imposed directly on the Lessee or which would be imposed on the City as a public entity. Lessee agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any acts or omissions of Lessee or its contractors or agents in violation of the ADA.

**9. Lessee's Compliance with Environmental Laws.** In connection with its operations or any other activity at the Airport, Lessee shall at all times and in all respects comply with all



environmental laws including federal, state and local laws, ordinances and regulations pertaining to hazardous substances. Environmental laws shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, or rules now or hereafter in effect, as the same may be amended from time to time, which govern hazardous substances or relate to the protection of human health, safety or the environment. Hazardous substances shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the environmental laws. Upon expiration or earlier termination of this Agreement, Lessee shall cause all hazardous substances introduced at the Airport by Lessee, its personnel, or its agents to be removed from the Airport and transported for use, storage, or disposal in accordance and compliance with all applicable environmental laws. Lessee shall further comply with any environmental provisions provided as an exhibit to this Agreement.

**10. City's Right of Inspection/City's Right to Enter.** City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, at such times as may be reasonable under the circumstances and with as little interruption of Lessee's operations as possible, to enter upon the Premises, accompanied by an authorized Lessee representative, if practicable, to inspect such space to determine whether Lessee is in compliance with the terms and conditions of this Agreement, including inspection for safety, fire protection, or security purposes. Lessee further agrees to make any and all corrections of violations observed by City as a result of this inspection; however, in no event shall Lessee be required to correct any violations that precede the Effective Date.

The failure of City to inspect or monitor or give Lessee notice of a default or a notice of a hazardous or unsafe condition with respect to Lessee's operations under this Agreement shall not release Lessee from its liability to perform its obligations under this Agreement or impose any liability on City.

**11. Signs.** Any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content, shall not be erected, maintained, or displayed on the Premises, or elsewhere at the Airport, without the prior written consent of the Director, which consent shall not be unreasonably withheld. Lessee shall submit to the Director for approval, detailed drawings indicating dimensions, location, materials, and colors for all proposed signs at the Premises.

**12. Damage or Destruction of Premises.** If, for any reason the Premises are damaged to such an extent that it is untenable in whole or in substantial part, then:

**12.1 Minor Damage.** If the repairs, rebuilding, or construction necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the judgment of City, be completed within ninety (90) days, City shall so notify Lessee, in writing, consult with Lessee, and shall proceed promptly with such repairs, rebuilding, or construction at City's sole cost and expense, provided that Lessee shall be responsible for, and bear the cost of, replacing its trade fixtures and equipment. In such event, Lessee shall receive a pro rata abatement of the rents and fees due based only on the reduction of usable square feet in the Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed. Thereafter, the rents and fees due shall be calculated without regard to the period of time that the fee was reduced.

Notwithstanding the above provisions, if the damage is caused by the intentional or grossly negligent act or omission of Lessee, its officers, agents, employees, contractors, subcontractors, licensees or invitees, Lessee shall be responsible for reimbursing City for the cost and expense incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Lessee shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Lessee shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction.

In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Lessee shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such minor damage, there shall be no abatement of the rents and fees payable by Lessee to City under this Agreement.

**12.2 Extensive Damage.** If repairs, rebuilding, or construction would, in the judgment of City, exceed one hundred fifty (150) days to complete, City, at its option, to be evidenced by notice in writing to Lessee, may:

**12.2.1** Seek Lessee's consent and cooperation, and proceed promptly with repairs, rebuilding, or construction at City's sole cost and expense, in which event abatement of rents and fees shall be allowed, or

**12.2.2** Terminate the letting of the Premises, in which event the rents and fees due shall be eliminated beginning from the date of the occurrence of the damage. City shall not be deemed in default under this Agreement in the event it elects to terminate the letting of the damaged or destroyed Premises.

**12.2.3** In the event the Premises are destroyed or so damaged and rendered untenable as a result of the intentional or grossly negligent act or omission of Lessee, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees, City may repair, rebuild, or construct, and Lessee shall be responsible for reimbursing City for the costs and expenses incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Lessee shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Lessee shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Lessee shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such extensive damage, there shall be no abatement of the rents and fees payable by Lessee to City under this Agreement.

**12.3 Alternative Space.** In the event repairs, rebuilding, or construction is required, City shall use reasonable efforts to provide Lessee with alternative space, if necessary, during any repairs, rebuilding, or construction of the Premises. City shall advise Lessee as soon as may be practicable regarding City's intention with respect to any necessary repairs, rebuilding, or construction.

In the event City provides alternative space to Lessee, City shall be responsible for those

costs directly associated with moving Lessee to the temporary space and back to restored space, except in the event that such repair, rebuilding, or construction is required as a result of the intentional or grossly negligent act or omission of Lessee, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, in which case Lessee shall bear the entire cost of moving. Should smaller square footage space be provided by City to Lessee, then the rent due shall be reduced pro rata to the reduction of square footage of the alternative space. All reductions of rent shall be allowed only for the period from the date of the occurrence of such damage to the date repairs and rebuilding are completed. Thereafter, the rent due shall be calculated without regard to the period of time that the rent was reduced.

**12.4 Limits of City's Obligations Defined.** City shall not be obligated to repair, rebuild, or construct the Premises to an extent greater than its original obligation to provide facilities and service to the Premises as set forth in this Agreement.

**13. Agreement Subject to Aviation Priority.** Lessee's right to use the Premises for the purposes as set forth in this Agreement shall be secondary to and subordinate to the operation of the Airport. Lessee acknowledges that due to the location of the Premises at the Airport, there may be an impact to the use of the Premises as a result of the noise, vibrations, odors, vapors, fumes, smoke, dust, particulates, and other interference caused by Airport operations. Lessee hereby waives any and all rights or remedies against City arising out of any noise, vibrations, odors, vapors, fumes, smoke, dust, particulates, and other interference that is caused by the operation of the Airport. City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in and through the airspace above the surface of the Premises together with the right to cause in said airspace such noise, vibrations, odors, vapors, fumes, smoke, dust, particulates and other interference as may be inherent in the present and future operation of aircraft.

Lessee further acknowledges that its use of the Premises, in relation to the aviation priority as referenced in this subsection, is reserved upon and subject to certain conditions and restrictions including Lessee's limitations: a) to cause electrical, electronic or other interference with radio, radar, microwave or other similar means of communications between the Airport and any aircraft; b) to adversely affect or impair the ability of operators of aircraft to distinguish between regularly installed air navigation lights and visual aids and other lights serving the Airport; or c) to cause glare in the eyes of operators of aircraft approaching or departing the Airport, or to impair visibility in the vicinity of the Airport, or to otherwise endanger the approaching, landing upon, taking off from, maneuvering about or operating of aircraft on, above and about the Airport; provided, however, that, notwithstanding any contrary provision contained above, Lessee shall be permitted to construct and maintain such improvements and to utilize all lighting, finishes and building materials as shall have been submitted to and approved by City.

**14. Subordination to Agreements with the U.S Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts.

The Agreement shall be subordinated to deeds, leases, and other contracts with the federal

government, which, if any, City will make available to Lessee for review, but otherwise shall be unsubordinated. City agrees to work with Lessee's lender to enter into a reasonable form of estoppel or attornment agreement.

**15. Other Subordination.** This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

**16. No Exclusive Rights.** Nothing herein contained shall be deemed to grant to Lessee any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) and FAA Advisory Circular 150/5190-6 or the most recent versions thereof for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to exclusive possession of the Premises leased to Lessee under the provisions of this Agreement.

**17. Economic Non-Discrimination.** In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport, Lessee agrees: (1) to furnish said services on a fair, equal and not unjustly discriminatory basis to all users, and (2) to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

**18. Amendment and Waiver.** This Agreement may be amended in writing as allowed by City Ordinance, except that Director shall have the authority to waive requirements and prohibitions or otherwise modify this Agreement by written supplement signed by the parties, to address changes in circumstances which will benefit the parties and the traveling public, provided that such modifications are nondiscriminatory, and do not extend the term of the Agreement or modify rent and fee provisions. No custom or practice, or waiver of default, which may evolve between the parties in the administration of the terms of this Agreement, may be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

**19. Relation to Other Lessees and Lessees.** This Agreement is separate and distinct from, and shall be construed separately from, any other agreement between City and any other Lessee or Lessee at the Airport. The fact that such other agreement contains provisions which differ from those contained in this Agreement shall have no bearing on the construction of this Agreement.

**20. Financial Responsibility.**

**20.1 Taxes, Licenses, Debts.** Lessee shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to Lessee's operations on the Premises, and acquire and keep current all licenses, municipal, state or federal, required as the result of Lessee's operations on the Premises pursuant to this Agreement, and shall not allow any of said taxes, excises or fees to become delinquent. Lessee shall pay promptly when due all bills, debts and obligations incurred in connection with its operations or activities on the Premises and shall not permit them to become delinquent; provided however, Lessee may contest the amount or validity of, and may compromise, any such bills, debts and obligations in good faith.

**20.2 Liens.** Lessee shall not permit any judgment, execution or mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Premises by

reasons of work, labor performed, or materials or equipment furnished to Lessee.

**21. Construction Inconvenience.** Lessee agrees that from time to time during the term of this Agreement, the Aviation Department and City shall have the right to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair of the various buildings, infrastructure and facilities on the Airport ("Airport Construction"), including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Lessee agrees that it shall not hold the Aviation Department or City, including its officers, agents, employees and representatives, liable for damages of any nature whatsoever, including all damages arising out of or caused by inconveniences and/or interruptions of its business activities at the Airport, loss of business, and personal injury, including death, and property damage due to the Airport Construction, unless such damages are caused in whole or in part by the negligence or other fault of the Aviation Department or City or its officers, agents, employees and representatives. Lessee acknowledges receipt of adequate consideration by City in support of this waiver. Notwithstanding the above, if construction inconvenience interferes with Lessee's business to the extent that remaining at the Premises is not possible and the City cannot provide alternative premises, Lessee may terminate this Agreement upon payment of all outstanding rents and fees.

**22. Non-Liability of Agents and Employees.** City shall not in any event be liable for any acts or omissions of Lessee, its agents, or personnel, or independent contractors, or for any condition resulting from the operations or activities of Lessee, Lessee's agents, personnel, or independent contractors either to Lessee or to any other person.

**23. No Partnership or Agency.** Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and Lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Lessee the general representative or agent of City for any purpose whatsoever.

**24. Force Majeure.** Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, pandemics, epidemics, quarantine restrictions, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

**25. Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New Mexico, in each case located in the City of Albuquerque and County of

Bernalillo, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

## **26. Ethics.**

**26.1 Conflict of Interest.** Upon execution of this Agreement, or within five (5) days following the acquisition of any interest in this Agreement during the term of this Agreement, Lessee shall disclose in writing to City whether any City Councilor, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Lessee or in any contract, Agreement, or agreement between City and Lessee, or in any franchise, concession, right, or privilege of any nature granted by City to Lessee in this Agreement or otherwise.

**26.2 Fair Dealing.** Lessee covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Lessee without collusion on the part of Lessee with any person or firm, without fraud and in good faith. Lessee also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be, offered or given by Lessee or any agent or representative of Lessee to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

**26.3 Board of Ethics and Campaign Practices.** Lessee agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement whenever such records or information are within Lessee's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Lessee further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. If applicable, Lessee agrees to require that all subcontractors employed by Lessee for services performed for this Agreement shall agree to comply with the provisions of this subsection. Lessee and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this subsection.

**27. Audits and Inspections.** Lessee understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and the Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 9 of the Albuquerque City Charter.

**28. Public Records.** The Parties acknowledge that City is a government entity and subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding anything contained herein to the contrary, City shall not be responsible to Lessee for any disclosure of records pursuant to the Act or pursuant to City of Albuquerque public records ordinance, rules, regulations, instructions, or other legal requirement.

## **29. Contract Interpretation.**

**29.1 Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

**29.2 Non-waiver of Rights.** No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.

**29.3 Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**29.4 Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

**29.5 Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

**29.6 Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

**29.7 Exhibits, Certificates, Documents Incorporated and Attachments.** Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

**29.8 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction), and the laws, rules and regulations of the City of Albuquerque.

**29.9 Successors.** All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties

hereto.

**29.10 Governmental Rights and Powers.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provided in this Agreement, or impairing, exercising, waiving, or defining governmental rights and the police powers of City.

**29.11 Cross References.** References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

**30. Quiet Enjoyment.** Upon payment of rents and fees, and performance of the covenants and agreements by Lessee, and subject to the terms and conditions of this Agreement, Lessee shall peaceably have and enjoy the Premises and all of the rights, privileges and appurtenances granted herein.

**31. Signature Process.** This Agreement may be electronically signed and electronic signatures appearing hereon are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**32. Administration of Agreement.** The Director of Aviation of the City of Albuquerque or the Director's authorized representative shall administer this Agreement for the City of Albuquerque.

**33. Condemnation.**

**33.1 Partial Taking.** In the event less than all of the Premises is taken or condemned by any competent authority such that Lessee may reasonably continue its operations thereafter, this Agreement shall remain in full force and effect with a reduction of rents and fees, if appropriate, commensurate with the reduced useable area of the Premises, upon the date of such partial taking.

**33.2 Total Taking.** In the event the entire Premises is taken or condemned by any competent authority such that the Premises are unusable for the continuation of Lessee's operations thereafter, then this Agreement shall terminate as of the date of the total taking.

**33.3 Termination of Agreement.** Termination of this Agreement because of condemnation shall be without prejudice to the rights of either City or Lessee to recover from the condemning authority, compensation and damages for the injury and loss sustained by either party as a result of such total taking. Lessee shall have the right to make a separate claim against the condemning authority for the fair market value of the leasehold estate. In the event the law at the time of the condemnation does not provide or allow for separate condemnation awards for landlords and Lessees, then Lessee shall be entitled to receive the portion of the condemnation award allocable to the leasehold estate and the remainder of the award shall be paid to City.



**Exhibit H**  
**Form Sublease**

**Exhibit 1**  
**Land Lease and Agreement**

**Exhibit 2**  
**Survey**

### **Exhibit 3**

### **Hangar Unit Sublease**

THIS HANGAR UNIT SUBLEASE is made as of the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ (this "**Sublease**"), by and between HFH Management, LLC, a New Mexico Limited Liability Company ("**HFH Management**") with its mailing address at P.O. Box 25782, Albuquerque, NM 87125, and [PURCHASER NAME] ("**Subtenant**").

WHEREAS, by that certain Land Lease and Agreement by and between High Flying Hangars, LLC ("**HFH**") and the City of Albuquerque ("**City**"), dated [EFFECTIVE DATE] (the "**Land Lease and Agreement**"), the City leased to HFH the Premises situate in Bernalillo County, New Mexico within the boundaries of the Double Eagle II Airport as more particularly described therein. A true copy of the draft Land Lease and Agreement is appended to the Hangar Unit Purchase Agreement as Exhibit 1, and shall be replaced with the executed Land Lease and Agreement once approved and executed by City.

WHEREAS, pursuant to the Land Lease and Agreement, HFH is developing improvements on the Premises consisting generally of forty-eight individual aircraft Hangar Units and associated common elements for sale to the public in four phases: Row A, Row B, Row C, and Row D.

WHEREAS, pursuant to the Land Lease and Agreement, HFH has assigned its interest in the Land Lease and Agreement relating to the foundation footprint of Hangar Unit \_\_\_\_ located in Row \_\_\_\_ to HFH Management to execute and administer this Sublease, including the collection of certain charges due and owing under this Sublease for payment of common expenses, expenses owed by HFH to City under the Land Lease and Agreement, and as otherwise set forth herein.

HFH Management and Subtenant desire to consummate a sublease of all of the foundation footprint of Hangar Unit No. \_\_\_\_, Row \_\_\_\_ (the "**Subleased Property**"), shown on Exhibit 2 of the Purchase Agreement, on the terms and conditions contained herein.

WHEREAS, capitalized terms used herein without definition which are defined in the Land Lease and Agreement or Purchase Agreement shall have the same meaning herein as given to such terms in the Land Lease and Agreement or Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is hereby agreed as follows:

#### **ARTICLE I. General Provisions Sublease Term, Fixed Rent.**

**1.1. Sublease Term.** HFH Management hereby leases to Subtenant and Subtenant hereby leases from HFH Management the Subleased Property, as the same is defined in the Purchase Agreement and as more particularly described and depicted in Exhibit 2 to the Purchase Agreement, for a term (the "**Sublease Term**") to commence upon the later of (i) the date of Closing as that term is defined in the Purchase Agreement (the "**Sublease Commencement Date**"), and to end at the expiration of the term of the Land Lease and Agreement as that term is defined therein, or on such earlier date on which this Sublease may be cancelled or terminated pursuant to any of the provisions of this Sublease or the Land Lease and Agreement or pursuant to law (the "**Sublease Expiration Date**").

**1.2. Sublease Rent.**

(a) Subtenant shall pay its proportionate share of Building Rent (the "**Fixed Rent**") as set forth in the Land Lease and Agreement, Section 7.1 (as the same may be escalated or adjusted pursuant to the Land Lease and Agreement) to HFH Management at P.O. Box 25782, Albuquerque, NM 87125 by certified funds, electronic payment, or check drawn on a nationally chartered bank in advance, without prior demand, offset, abatement or deduction, on or before the first day of each month during the Sublease Term, commencing on the Sublease Commencement Date (the "**Rent Commencement Date**"). Notwithstanding the

foregoing, one (1) calendar month's Fixed Rent shall be paid by Subtenant to HFH Management upon Subtenant's execution hereof and applied to the first Fixed Rent payable hereunder for the first full calendar month after the month in which the Rent Commencement Date occurs. The Fixed Rent shall be adjusted during the Sublease Term in accordance with Section 7 of the Land Lease and Agreement.

- (b) If the Rent Commencement Date occurs on a day other than the first day of a month, Fixed Rent from such day through the last day of the then calendar month shall be prorated on a per diem basis and shall be payable, in advance, on or before the Rent Commencement Date.
- (c) Subtenant shall also pay to HFH Management, as Additional Rent (as hereinafter defined) under this Sublease, effective as of the Sublease Commencement Date, Subtenant's Proportionate Share of all other additional rent and other charges payable by HFH Management to City pursuant to the Land Lease and Agreement, including:
  - (1) Any insurance policy HFH or HFH Management is required to obtain pursuant to the Land Lease And Agreement;
  - (2) HFH Management's Administration Fee, beginning at twenty-five dollars (\$25) per month, per unit, as adjusted by HFH Management on an annual basis in its sole discretion;
  - (3) HFH Management's annual accounting and bookkeeping expenses;
  - (4) All fees assessed by any utility provider for the provision of water, sewer, and trash;
  - (5) All property taxes assessed on the Hangar Row in which the Hanger Unit is located;
  - (6) All maintenance, repair, or replacement of any exterior common element the City requires under the Land Lease and Agreement; and
  - (7) and other fees expressly provided for in this Sublease.
- (d) The cost of electric energy is not included in the Fixed Rent payable hereunder. Commencing on the Sublease Commencement Date, Subtenant shall obtain and pay for electricity, by payment directly to the local utility service providing such energy as provided in the Land Lease and Agreement.
- (e) All rent (other than Fixed Rent) and other sums payable by Subtenant pursuant to this Sublease, including, without limitation, Sublease Escalation Rent (as hereinafter defined) (collectively, "**Additional Rent**") shall be paid within thirty (30) days after Subtenant's receipt of the bill therefor, without offset, abatement or deduction evidencing the amount due by Subtenant.
- (f) For the purposes of this Sublease, "Subtenant's Proportionate Share" means a fraction (expressed as a percentage), the numerator of which is the aggregate square feet of the Subleased Property (as defined in Exhibit 2 of the Purchase Agreement) and the denominator of which is the aggregate rentable square feet contained in the Gross Leasable Area (as defined in the Land Lease and Agreement).

- 1.3. **Sublease Rent Default.** If Subtenant shall default in the payment of any sums due under Section 1.2 hereof or of any Sublease Escalation Rent (as defined in Article IV. hereof) or any other Additional Rent, HFH Management, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Subtenant in the payment of Fixed Rent.
- 1.4. **Subsequent Sublease.** *Subtenant may not sublet the Subleased Property to any person for any reason during the Sublease Term.*

- 1.5. **Relationship Between City and Subtenant.** Nothing contained in this Sublease is intended, or shall be construed in any respect, to create or establish any relationship or privity between City and Subtenant concerning the Land Lease and Agreement or the realty subject thereto.

## **ARTICLE II. Provisions of Land Lease and Agreement, Etc.**

- 2.1. **Incorporation of Land Lease and Agreement.** All of the terms, covenants, conditions and provisions in the Land Lease and Agreement, including but not limited to the provisions regarding Lessee's default and City's remedies with respect thereto, are hereby incorporated in, and made a part of this Sublease, except (i) as herein otherwise expressly provided; (ii) which by their nature or purport are inapplicable to the subleasing of the Subleased Property pursuant to this Sublease; (iii) are modified by any of the terms, covenants or conditions of this Sublease; or (iv) the obligation to pay rent and additional charges under the Land Lease and Agreement; provided, however, with reference to this Sublease:
- (a) Subtenant's covenant to pay Fixed Rent and Additional Rent (collectively, the "**Sublease Rent**") shall be independent of every other covenant in this Sublease. HFH Management's failure to prepare and deliver any statements or notice set forth in this Sublease, or HFH Management's failure to make a demand, shall not in any way cause HFH Management to forfeit or surrender its rights to collect any items of Sublease Rent which may have become due during the Sublease Term. Subtenant's liability for such amounts shall survive the expiration of the Sublease Term.
  - (b) References in the Land Lease and Agreement to work, repairs or restorations to be performed or services to be supplied by "City" (if any) in respect of the Subleased Property shall continue to mean and provide that such work, repairs or restorations shall be performed and services provided by City (and not by HFH Management) pursuant to the applicable terms of the Land Lease and Agreement.
- 2.2. **Sublease Subordinate to Land Lease and Agreement.** This Sublease and all rights of Subtenant hereunder are and shall be subject and subordinate in all respects to (i) the Land Lease and Agreement and all of the terms, covenants, agreements, provisions and conditions of the Land Lease and Agreement; (ii) to all modifications, amendments and extensions of the Land Lease and Agreement and to all of HFH Management's obligations under the Land Lease and Agreement; (iii) all other interests set forth in the Purchase Agreement or the Land Lease and Agreement; and (iv) any existing or future agreement between City and the United States of America, as any such agreement might be amended from time to time.
- 2.3. **Compliance with Land Lease and Agreement.** Subtenant shall duly and fully keep, observe and perform each and every term, covenant, provision and condition on HFH's part to be kept, observed and performed pursuant to the Land Lease and Agreement, including, without limitation and without limiting the generality of the foregoing, (a) the rules and regulations adopted by City pursuant thereto except as may otherwise be specifically provided in this Sublease, and (b) the nondiscrimination provisions as set forth in Exhibit 5 and incorporated herein by reference. Subtenant shall not (i) take or permit any action inconsistent with the terms of the Land Lease and Agreement, (ii) do or permit to be done anything which HFH is prohibited from doing or permitting under the Land Lease and Agreement, (iii) do or suffer to permit anything to be done or omit to do anything required under the Land Lease and Agreement, which is required to be performed by Subtenant under this Sublease and which would result in HFH's default under the Land Lease and Agreement or cause the Land Lease and Agreement to be terminated or forfeited, or (iv) take any action or do or permit anything to be done which could result in any additional cost or other liability to HFH under the Land Lease and Agreement.

Subtenant shall erect no building, fence, wall, hedge, or other improvement within the Hangar Unit, nor alter or construct any exterior addition thereto without the written consent of HFH Management. All such alterations or improvements of any nature are subject to City's approval thereof, as well as compliance with building code, local ordinances, FAA regulations, and applicable permitting.

- 2.4. **Termination of Land Lease and Agreement.** This Sublease shall terminate in the event the Land Lease and Agreement is terminated by either party thereto for any reason, including in the event of any damage, destruction or condemnation with respect to all or part of the Subleased Property. HFH Management shall not be liable to Subtenant by reason thereof for any loss, cost or expense incurred by Subtenant in connection with such termination unless caused by the breach or default of HFH under the Land Lease and Agreement (and further provided that Subtenant is not in default under this Sublease).
- 2.5. **HFH Management and HFH not Responsible for Land Lease and Agreement Services.** Subtenant shall not under any circumstances seek or require HFH Management to perform or provide or to cause to be performed or provided any work, services, or repairs, or make any claim against HFH Management for any damage which may arise by reason of City's failure to perform or provide the same pursuant to the Land Lease and Agreement.
- 2.6. **HFH Management and HFH not Liable to Subtenant.** HFH Management shall in no event be liable to Subtenant except to the extent caused by its (or its parent, HFH's) willful breach of this Sublease or the Land Lease and Agreement (excluding defaults under this Sublease arising out of Subtenant's acts or omissions or those claiming by, through or under Subtenant or its agents, contractors, employees, invitees or licensees), nor shall the obligations of Subtenant hereunder be impaired nor the performance hereof by Subtenant be excused because of (i) any failure or delay on City's part in doing such repairs or work, including those which may be contemplated by this Sublease, (ii) any other failure of City to observe and perform its covenants and agreements pursuant to the Land Lease and Agreement, or (iii) the acts or omissions of City, its agents, contractors, servants, employees, invitees, or licensees. If City shall default in any of its obligations to HFH with respect to the Subleased Property, HFH Management will use reasonable efforts to cause City to perform and observe such obligations. However, HFH Management shall not be obligated to commence any legal action, arbitration, audit or other proceeding against City or to make any payment of money or other consideration, or to utilize any self-help rights in furtherance thereof. Moreover, HFH Management shall have no liability for City's nonperformance of any obligation under the Land Lease and Agreement, of any failure of City to grant any consent or approval under the Land Lease and Agreement, or for any misfeasance or nonfeasance of City, nor shall the obligations of Subtenant hereunder be excused or abated in any manner by reason thereof, except as provided in this Sublease. If HFH (or HFH Management) elects to commence legal action, arbitration, audit or other proceeding against City to enforce HFH's rights under the Land Lease and Agreement, Subtenant shall be responsible for reimbursing HFH (or HFH Management) for Subtenant's Proportionate Share thereof. If such action pertains to the Subleased Property only, then Subtenant shall be responsible for reimbursing all of the reasonable costs of such proceedings, including, without limitation, reasonable attorneys' fees incurred by HFH (or HFH Management), such reimbursement to be made by Subtenant within twenty (20) days after demand therefor.
- 2.7. **Sublease Subordinate; Attornment to City.**
- (a) The rights of Subtenant hereunder are subject and subordinate to all agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the

provisions of the Federal Aviation Act of 1958, as amended, in accordance with successive airport development acts, any and all Bond Ordinances pertaining to Airport Bonds, deeds, leases, and other contracts between City and the federal government to which the Land Lease and Agreement may be subject and subordinate to, or to which the Land Lease and Agreement may now or hereafter be subjected or subordinated (collectively, the Subordinated Interests”), whether now or hereafter affecting the Airport property of which the Subleased Property is a part. This clause shall be self operative and no further instrument shall be required by any such superior interest. However, in confirmation of such subordination, Subtenant, within ten (10) days after Subtenant's receipt of a written request to execute and deliver such a confirmation, shall execute any commercially reasonable certificate or other instrument that either, all or any of City, HFH, and HFH Management may request, provided the same does not increase the monetary or non-monetary obligations, or diminish the rights, of Subtenant hereunder other than to a de minimis extent. HFH Management is hereby vested with full power and authority to subordinate Subtenant's interest hereunder to any Subordinated Interest hereafter placed on the Subleased Property, and Subtenant agrees, upon demand, to execute such further instruments subordinating this Sublease, as HFH Management may request.

- (b) Subtenant expressly agrees that if, for any reason, the Land Lease and Agreement should be terminated prior to the expiration date of this Sublease or if City shall succeed to HFH Management's estate in the Subleased Property, then at City's election Subtenant shall attorn to and recognize City as Subtenant's landlord under this Sublease, subject to the provisions of the Land Lease and Agreement, any provision of law to the contrary notwithstanding. Subtenant shall promptly execute and deliver to City any commercially reasonable certificate or other instrument City may request to evidence such attornment. If the City has accepted such attornment and entered into a direct lease with Subtenant, HFH Management and Subtenant shall have no further liability to the other under this Sublease, except for any claims or liability which may have arisen or accrued prior to such attornment, and the parties shall enter into an agreement releasing each other pursuant to the terms of this Section, but the failure to do so shall in no way affect the release set forth in this sentence.

**2.8. Notices from City, etc.** HFH Management agrees to forward to Subtenant, upon receipt thereof by HFH Management, a copy of each notice of default received by HFH (or HFH Management) from City in HFH (or HFH Management's) capacity as Lessee under the Land Lease and Agreement. Subtenant agrees to forward to HFH Management, upon receipt thereof, copies of any notices received by Subtenant from City, any entity holding a security interest in the Hangar Unit, any party claiming an interest in this Sublease by, through, or under Subtenant, or from any governmental authorities with respect to the Subleased Property.

**2.9. HFH Management Cure of Subtenant Default under Land Lease and Agreement.** If Subtenant shall default under any term of this Sublease, and Subtenant shall not have commenced diligently to cure such default within five (5) days after notice thereof (except in the case of what HFH Management reasonably believes to be an emergency situation in which case no such notice need be given), HFH Management may, in addition to any other remedy provided in this Sublease, by law or otherwise, cure such default. The cost thereof, together with interest thereon from the date incurred until paid at the rate provided in Article IX hereof, shall be payable by Subtenant within ten (10) days following written demand therefor, and in the event Subtenant fails to pay the same, HFH Management may recover such costs, including interest, as Additional Rent, in an action brought against Subtenant.

**2.10. HFH Management Representation.** HFH Management represents that it is the holder of the interest of the tenant under the Land Lease and Agreement, and that the Land Lease and Agreement is in full force and effect as of the date of execution hereof.



- 2.11. Subtenant Indemnity.** Subtenant agrees to indemnify HFH Management and hold HFH Management harmless from all losses, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) that HFH Management may incur, or for which HFH Management may be liable to City, arising from the acts or omissions of Subtenant, Subtenant's agents, contractors, employees, invitees, or licensees. All amounts payable by Subtenant to HFH Management for such indemnity shall be deemed to be Additional Rent hereunder.

### **ARTICLE III. Sublease Escalations.**

#### **3.1. Escalation Rent.**

- (a) In the event any additional rent or other amounts are payable with respect to any time period falling within the term of this Sublease which are attributable to the provisions of Section 7 of the Land Lease and Agreement ("Escalation Rent") then Subtenant shall pay Subtenant's Proportionate Share of such amount as Additional Rent hereunder, (such additional rent payable by Subtenant hereinafter called "Sublease Escalation Rent"). At any time after receipt by HFH Management of any statement for any Escalation Rent, or if HFH Management is at any time obligated to pay any Escalation Rent, HFH Management may deliver to Subtenant a statement prepared, at the option of HFH Management, by HFH Management and/or City ("Escalation Statement") with respect to the payment of the Sublease Escalation Rent, and Subtenant shall pay to HFH Management the Sublease Escalation Rent.
- (b) If an annual City's Statement is furnished by City to HFH Management which shows that there has been an overpayment by Subtenant of Sublease Escalation Rent or if City shall notify HFH Management that HFH Management is entitled to a credit against subsequent rent due to a refund of amounts due under the Land Lease and Agreement as to which Subtenant paid Sublease Escalation Rent, and if City shall actually give HFH Management credit therefor under the Land Lease and Agreement, HFH Management shall permit Subtenant to credit the amount of such overpayment or Subtenant's portion of such refund, as the case may be, against the next subsequent Sublease Escalation Rent payments under this Sublease.
- (c) Subtenant shall not have the right to question the propriety of or the basis for any such Escalation Statement rendered by City, and HFH Management shall be under no obligation to challenge, object to or contest any such statement, any allocations or determinations made by City pursuant to such Escalation Rent although HFH Management may do so in its sole and absolute discretion. In the event that overpayment of Escalation Rent is determined after contest of any statement, as to which relates to Subtenant and Sublease Escalation Rent, HFH Management shall promptly notify Subtenant thereof, and if City has actually credited HFH Management therefor under the Land Lease and Agreement for the period occurring during the Sublease Term, HFH Management shall permit Subtenant to credit Subtenant's overpayment, but less all costs and expenses incurred by HFH Management in connection with such dispute to the extent not reimbursed by City to HFH Management, against the next subsequent Sublease Escalation Rent payments under this Sublease. After the termination of this Sublease and the payment to HFH Management of the balance, if any, of all Fixed Rent, Sublease Escalation Rent and other Additional Rent due hereunder, HFH Management shall promptly pay to Subtenant the amount described in the previous sentence to the extent not previously applied by Subtenant.

### **ARTICLE IV. Broker.**

HFH Management and Subtenant each covenants, represents and warrants to the other that it has had no dealings or communications with any broker or agent in connection with the consummation of this Sublease. Each of HFH Management and Subtenant covenants and agrees to pay, hold harmless and indemnify the other from and against any and all cost, expense (including reasonable attorneys' fees) or liability for any compensation, commissions or charges claimed by any broker or agent other than Brokers with respect to this Sublease or the negotiation thereof. This indemnity shall survive the Sublease Expiration Date.

#### **ARTICLE V. Notices.**

Any notice, demand or communication which, under the terms of this Sublease or under any statute or municipal regulation must or may be given or made by the parties hereto, shall be in writing and given or made by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier for next business day delivery, addressed to the party for whom intended at its address as stated in the Recitals; provided, however, from and after the Sublease Commencement Date, Subtenant's address shall be the Subleased Property, and with a copy of such communications addressed to Subtenant sent to [Subtenant's mail address]. Either party, however, may designate such new or other address to which such notices, demands or communications thereafter shall be given, made or mailed by notice given in the manner prescribed herein. Any such notice, demand or communication shall be deemed given or served, as the case may be, on the date of receipt or if receipt is refused, on the date so refused if given by registered or certified mail, postage prepaid, return receipt requested and the first business day immediately after the day given to a nationally recognized overnight delivery service for next business day delivery.

#### **ARTICLE VI. End of Sublease Term; Holdover.**

- 6.1. Surrender of Subleased Property.** At the expiration of the Sublease Term or earlier termination of this Sublease for any reason, Subtenant shall thereupon restore the Subleased Property to the condition as required by the Land Lease and Agreement upon the expiration of the term thereof, as defined in the Land Lease and Agreement, and shall surrender and deliver up the Subleased Property in good condition and repair. If the Subleased Property is not timely vacated and surrendered in such condition at the Sublease Expiration Date, Subtenant shall and hereby agrees to indemnify and hold HFH Management harmless from and against any and all claims, losses, expenses or damages, including, without limitation, attorneys' fees and disbursements, arising out of or resulting from any delay by Subtenant in so surrendering the Subleased Property, or any portion thereof, including, without limitation, any claims made by any succeeding tenant, prospective tenant, or City including, without limitation, any amounts payable by HFH Management to City pursuant to the Land Lease and Agreement in respect of the Subleased Property.
- 6.2. Holdover.** In the event Subtenant remains in possession of the Subleased Property, or any portion thereof, after the Sublease Expiration Date, the parties recognize and agree that the damage to HFH Management resulting therefrom will be substantial and will exceed the amount of the monthly installments of the Sublease Rent payable hereunder. Subtenant therefore agrees that in addition to any other right or remedy HFH Management may have hereunder or at law or in equity, Subtenant, at the option of HFH Management, shall be deemed to be occupying the Subleased Property as a subtenant from month to month, at a monthly rental equal to two times (i) the monthly Fixed Rent and Additional Rent and other charges payable during the last month of the scheduled term hereof or (ii) the fair market value for the Subleased Property, whichever is greater, subject to all of the other terms of this Sublease and the Land Lease and Agreement insofar as the same are applicable to a month to month tenancy. The provisions of the preceding sentence shall not be construed to limit any other rights or remedies which might be available to HFH Management as a result of

Subtenant's failure to surrender possession of the Subleased Property or any portion thereof on the Sublease Expiration Date, including, without limitation, prosecuting a holdover or forcible entry and unlawful detainer proceeding.

#### ARTICLE VII. Alterations.

- 7.1. **No Alterations.** Subtenant may make no changes, alterations, additions, or improvements in, to or about the Subleased Property without HFH Management's prior written consent.
- 7.2. **Surrender of Hangar Unit Improvements and Subsequent Alterations.** All Hangar Unit Improvements conveyed by virtue of the Purchase Agreement, and any subsequent Subtenant alterations made and installed by Subtenant, shall be the property of City at the end of the Sublease Term in accordance with the Land Lease and Agreement.

#### ARTICLE VIII. Security.

- 8.1. **Security Deposit; Application.** Subtenant shall prior to, or simultaneously upon execution and delivery of this Sublease to HFH Management, deposit with HFH Management five hundred dollars (\$500.00) (the "**Security Deposit Amount**") as security for the faithful performance and observance by Subtenant of all of the terms, provisions and conditions of this Sublease (including the payment of any Fixed Rent and Additional Rent (collectively referred to as "**Sublease Rents**"). HFH Management shall deposit the proceeds thereof into a bank or savings and loan association to be selected, from time to time, by HFH Management in its sole discretion, which account need not be separate from HFH Management's funds. HFH Management shall not be required to credit any Security Deposit Amount with interest or pay any interest thereon to Subtenant. Subtenant agrees that HFH Management shall be entitled to receive and retain any interest earned on such Security Deposit Amount. Subtenant agrees that, in the event that Subtenant defaults in respect of any of the terms, provisions and conditions of this Sublease, including the payment of any Sublease Rents, HFH Management may apply, or retain the whole or any part of the proceeds thereof to the extent required for the payment of any Sublease Rents, or any other sum as to which Subtenant is in default, or for any sum that HFH Management may expend or may be required to expend by reason of Subtenant's default, in respect of any of the terms, provisions and conditions of this Sublease (including any damages or deficiency accrued before or after proceedings in forcible entry and unlawful detainer or other re-entry by HFH Management). In the event that HFH Management applies or retains any portion of the Security Deposit Amount, Subtenant shall within ten (10) business days restore the amount so applied or retained by remitting to HFH Management such funds as may be necessary to replenish the Security Deposit Amount in full. Nothing herein shall be construed as a limitation on HFH Management's rights and remedies under this Sublease or at law or in equity. Failure of Subtenant to satisfy the obligations of this section shall be, for notice purposes, construed as a monetary default. In the event that Subtenant shall fully and faithfully comply with all of the terms, provisions and conditions of this Sublease, the Security Deposit Amount shall be returned to Subtenant within ninety (90) days after the later of the Sublease Expiration Date or delivery of possession of the entire Subleased Property to HFH Management in accordance with the terms of this Sublease.

#### ARTICLE IX. Assignment and Sublet.

- 9.1. **Consent Required to Assign or Sublet.** Subtenant shall not, whether voluntarily, involuntarily or by operation of law, in any manner or by reason of any act or omission on the part of Subtenant or any party acting by or through Subtenant (i) assign or otherwise transfer this Sublease or the term or estate hereby granted, nor (ii) sublet, license or sub-sublet all or any part of the Subleased Property, nor (iii) permit the Subleased Property to be occupied by any person(s),

nor mortgage, pledge or encumber this Sublease or all or part of the Subleased Property without first obtaining:

- (a) City's written consent and all other required consents to such assignment as set forth in and pursuant to the terms of the Land Lease and Agreement, and
- (b) HFH Management's written consent.

**9.2. Acceptance of Rent not a Waiver, etc.** If the Subleased Property is sub-sublet in violation of this Sublease, HFH Management, after default by Subtenant in its obligations hereunder, may, without notice to Subtenant, collect rent from the sub-subtenant and Subtenant hereby authorizes Subtenant's sub-subtenant to make such payments of rent directly to HFH Management and HFH Management shall apply the net amount collected to the Sublease Rents herein reserved, but no such sub-subletting or collection of rent shall be deemed a waiver of the covenant set forth in this Article IX, or the acceptance of the sub-subtenant as a Subtenant. No such sub-subletting of this Sublease shall release Subtenant from its performance under this Sublease. If the Subleased Property is assigned without City and/or HFH Management's written consent, Subtenant and the assignee shall be jointly and severally liable for all obligations to be performed thereafter under this Sublease.

**9.3. Late Charge.** To cover the additional expense incurred by HFH Management in the handling of delinquent payment of Fixed Rent, Sublease Escalation Rent, other Additional Rent and other charges payable to HFH Management by Subtenant pursuant hereto, Subtenant will pay on demand to the extent permitted by applicable law, (i) a "late charge" in an amount equal to the greater of any corresponding late charge under the Land Lease and Agreement or ten (10%) percent of such delinquent payment, to cover the administrative expenses of handling such late payment, and (ii) for each dollar of such Fixed Rent, Sublease Escalation Rent, other Additional Rent and other charges if any such amount is received after its due date, interest at the lesser of (A) an annual rate equal to eighteen percent (18%) percent or (B) the maximum rate permitted by law, accruing from the date such amounts of Fixed Rent, Sublease Escalation Rent, other Additional Rent and other charges first became due hereunder.

## **ARTICLE X. Quiet Enjoyment; HFH Management's Right to Enter.**

So long as Subtenant pays all of the Sublease Rents due under this Sublease and performs all of Subtenant's other obligations hereunder, Subtenant shall peacefully and quietly have, hold and enjoy the Subleased Property during the term of this Sublease, without hindrance by HFH Management or by anyone claiming by or through HFH Management, subject, however, to the terms of this Sublease and the Land Lease and Agreement. During the Sublease Term, HFH Management (and City pursuant to the Land Lease and Agreement) shall have the right, but not the obligation, at such times as may be reasonable under the circumstances, to enter upon the Subleased Property, accompanied by an authorized Subtenant's representative if practicable, to inspect for compliance with the terms of this Sublease, the Land Lease and Agreement, and all agreements incorporated therein, including for safety, fire protection, use, and security. Subtenant further agrees to correct any violations observed by HFH Management or City as a result of such inspections provided that Subtenant shall have no obligation to correct any violations that precede the Sublease Commencement Date.

## **ARTICLE XI. Indemnity and Insurance.**

**11.1. Cross-Default; Subtenant Indemnification.** Subtenant's default under any of the terms contained in or incorporated into 1) this Sublease (or any consents or amendments hereto), 2) the Purchase Agreement, or 3) any agreement between Subtenant and a third party pursuant to which

Subtenant grants a security interest in the improvements constructed at any time on the Sublease Property (whether existing as of the date of this Sublease or subsequently made) shall each constitute a default under all such agreements. A default under any of the above-described agreements shall constitute a default under this Sublease. A default under this sublease shall constitute a default under the above-described other agreements. Subtenant hereby indemnifies and agrees to hold HFH Management harmless from and against any and all claims (including, without limitation, claims of City against HFH Management), losses or damages, including, without limitation, attorneys' fees and costs, resulting from or arising out of Subtenant's default under this Sublease or any of the above-described agreements.

- 11.2. HFH Management Indemnification.** HFH Management agrees to indemnify Subtenant and to hold Subtenant harmless from and against any and all claims, losses or damages, including, without limitation, attorneys' fees and costs, resulting from or arising out of 1) HFH Management's default under any of the terms contained in or incorporated into 1) this Sublease, or 2) the Land Lease and Agreement which, by the terms of this Sublease, HFH Management is obligated to perform, except for defaults arising out of the acts or omissions of Subtenant, its agents, contractors, employees, invitees, or licensees.
- 11.3. Insurance.** In addition to Subtenant's obligation to pay Subtenant's Proportionate Share of common insurance policy premiums as set forth in Section 2 hereof, Subtenant shall, as to the Subleased Property, procure and maintain for the duration of the Sublease Term, at its sole expense, (i) "all-risk" property insurance for damage or other loss caused by fire or other casualty or cause, including but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting of pipes, explosion, in an amount not less than one hundred (100%) percent of the replacement cost covering the Hangar Unit, all alterations, improvements, fixtures, and personal property therein, (ii) liability insurance that includes coverage for bodily injury and property damage, with limits not less than \$1 million per occurrence, \$2 million aggregate, and (iii) such other insurance as may be required by a mortgagee or otherwise desired by HFH Management. The proceeds of such insurance shall be used for the repair or replacement of the property so insured, except that if not so applied or if this Sublease is terminated following a casualty, the proceeds applicable hereto shall be paid to HFH Management except with respect to Subtenant's personal property. With respect to all policies of insurance required to be procured by Subtenant, Subtenant shall name HFH Management, its parent company HFH, and the City as additional insureds. Prior to or simultaneously with the Sublease Commencement Date, Subtenant shall deliver an insurance certificate evidencing the foregoing, along with evidence that the insurance policy is endorsed indicating that the rights of the additional insured are conferred, and rights of subrogation are waived. Subtenant shall furnish HFH Management with all certificates required to be delivered to City pursuant to the Land Lease and Agreement.
- 11.4. Waiver of Subrogation - Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant, on behalf of itself and on behalf of anyone claiming under or through it by way of subrogation or otherwise, waives all rights and causes of action against HFH Management and City, and the respective directors, shareholders, officers, employees, members, agents and invitees of HFH Management and City, for any liability arising out of any bodily injury or third-party property damage, loss or damage in or to the Subleased Premises, its contents and other property located thereon and caused by any peril normally covered under all-risk policies issued in the geographic area in which the Subleased Property is located (whether or not such party actually carries such insurance policies). This waiver shall be total even if such loss or damage may have been caused by the negligence of HFH Management or City or their respective officers, directors, shareholders, employees, members, agents or invitees, and shall not be affected or limited by the amount of insurance proceeds available to Subtenant, regardless of the reason for such deficiency in proceeds. Subtenant covenants that from and after the date possession of the Subleased Property is delivered to Subtenant, its casualty insurance policies will contain waiver of

subrogation endorsements, and that if such endorsements, for any reason whatsoever, are, become, or may become unavailable, it will give HFH Management not less than thirty (30) days prior written notice of such unavailability.

## **ARTICLE XII. Miscellaneous.**

- 12.1. Amendments.** This Sublease may be amended only by an agreement, in writing, signed by all parties hereto with the express written consent of the City.
- 12.2. Entire Agreement.** This Sublease, together with the Purchase Agreement, the Land Lease and Agreement, and all exhibits thereto constitutes the entire agreement between the parties and all representations and understandings have been merged herein.
- 12.3. Successors and Assigns.** This Sublease may not be assigned without City's consent as set forth in the Land Lease and Agreement. HFH Management will cooperate with Subtenant in requesting any such consent or approval. Subtenant shall reimburse HFH Management for any costs or expenses payable under the Land Lease and Agreement or otherwise reasonably incurred by HFH Management (including, without limitation, legal fees and disbursements) in connection with requesting City's consent or approval on behalf of Subtenant with respect to any matter as to which City's consent or approval is required under the Land Lease and Agreement or hereunder. If City refuses such consent or approval, HFH and HFH Management shall be released of any obligation to grant its consent or approval with respect to such matter whether or not City's refusal, in Subtenant's opinion, is arbitrary or unreasonable.
- 12.4. Memorandum of Lease.** HFH Management may record this Sublease or a memorandum thereof as HFH Management determines in its sole discretion is necessary or desirable to perfect its rights hereunder.
- 12.5. Waiver of Certain Damages.** Notwithstanding anything to the contrary provided in this Sublease, neither HFH Management nor Subtenant shall be liable to the other for any special, consequential or punitive damage arising under or pursuant to this Sublease, except as provided in Section 2.11 of this Sublease.
- 12.6. Governing Law.** This Sublease shall be governed by and construed in accordance with the laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule (whether of the State of New Mexico or any other jurisdiction), and enforced in accordance with the jurisdictional and venue provisions set forth in Section 25 of the Land Lease and Agreement.
- 12.7. Subtenant Authority.** Subtenant hereby represents and warrants to HFH Management that it has the full right, power and authority to enter into the transactions provided for herein.
- 12.8. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Signatures provided by facsimile or electronic transmission shall have the same force and effect as original signatures and shall be binding upon the parties.
- 12.9. Severability of Provisions.** In the event any provision of this Sublease shall be held to be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall be unaffected.
- 12.10. Section Headings.** Section headings are for purposes of convenience only and shall not be deemed a part of the Sublease.

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[SIGNATURE PAGE FOLLOWS]

HFH MANAGEMENT:

HIGH FLYING HANGARS, LLC

By: \_\_\_\_\_

Name: Kenneth Hinkes

Title: Manager, High Flying Hangars, LLC

SUBTENANT:

[Purchaser name]

By: \_\_\_\_\_

Name: [name of signatory]

Title: [title of signatory]

**Exhibit 4**  
**Seller's Limited Warranty**



## **Exhibit 5**

### **Nondiscrimination Provisions**

**General Civil Rights Provision.** Subtenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Subtenant transfers its obligation to another, the transferee is obligated in the same manner as the Subtenant. This provision obligates Subtenant for the period during which the property is used or possessed by Subtenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

**Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this contract, Subtenant, for itself, its assignees, and successors in interest (herein this subsection referred to as the “Contractor”) agrees as follows:

(1) *Compliance with Regulations:* The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) *Nondiscrimination:* The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

(3) *Solicitations for Subcontracts, including Procurements of Materials and Equipment:* In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

(4) *Information and Reports:* The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) *Sanctions for Noncompliance:* In the event of a Contractor’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to the Contractor under the contract until the Contractor complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.

(6) *Incorporation of Provisions:* The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt

by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Title VI Clauses for Lease of Real Property.** Subtenant, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Subtenant will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities listed below.

In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Sublease had never been made or issued.

**Title VI List of Pertinent Nondiscrimination Acts and Authorities.** During the performance of this Agreement, Subtenant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations

and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).