

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City Clerk  
City of Livermore  
1052 S. Livermore Avenue  
Livermore, CA 94550



DRAFT

# Fixed Base Operator Ground Lease Agreement

City of Livermore  
and

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# FIXED BASE OPERATOR GROUND LEASE AGREEMENT

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Exhibit A	Legal Description of Leased Parcel
Exhibit B	Plat Map of Leased Parcel
Exhibit C	Required Development Plans, Standards, Bonds and Construction Timeline
Exhibit D	Airport Sponsor Assurances
Exhibit E	Minimum Standards for Commercial Aeronautical Activities and Airport Rules and Regulations



## City of Livermore

### FIXED BASE OPERATOR GROUND LEASE AGREEMENT

This Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, and is by and between Lessor, the CITY OF LIVERMORE, California, a municipal corporation (hereinafter called "City"), \_\_\_\_\_ (hereinafter called "Lessee"). The parties agree as follows:

#### RECITALS:

1. The City owns all that certain real property located at the Livermore Municipal Airport ("Airport") in the County of Alameda, State of California.
2. City and Lessee desire to enter onto a lease relating to the occupancy of certain premises (Leased Premises) at the Livermore Municipal Airport for the purposes of constructing and operating of a full-service Fixed Base Operator (FBO) facility on the north side of the airfield, more particularly identified and described as Lease Parcel NW-C1 on Exhibits A and B, which are incorporated herein by this reference. Lessee's rights under this Lease are strictly limited to the defined premises.
3. Lessee has carefully and completely examined the Lease Premises, is fully informed of the condition of the premises, and is satisfied as to the suitability of the premises for the proposed purposes. Lessee expressly waives any and all claims against City relative to the nature, condition, or suitability of the premises.

#### ARTICLE 1

##### LEASE, LEASED PREMISES, TERM, TITLE AND USE OF PREMISES

Section 1.01 Lease. City hereby leases to Lessee, and Lessee leases from City, the Leased Premises as described herein upon the covenants, terms, and conditions hereinafter set forth.

Section 1.02 Leased Premises. The Leased Premises consists of the real property situated in the City of Livermore, County of Alameda, State of California, more particularly described more particularly identified and described as Lease Parcel NW-C1 on Exhibits A and B, which are attached hereto and incorporated herein by reference.

Section 1.03 Term with Option to Extend. The term of the Lease shall be for a fixed period of thirty-five (35) years, commencing on the day of execution of this Lease.

The Lessee shall have the option to extend the term of the Lease for \_\_\_ additional 5-year period(s) under the same conditions so long as Lessee provides City with written notice of its interest to extend the term not less than one year in advance of the expiration of the initial term. The Lease is expressly contingent upon the affirmative decision of the City Council to proceed with the Lease (as proposed or an alternative thereto) following certification; and the imposition of any feasible mitigation measures that have been identified during the environmental review process. Upon 30 days' written notice from City to Lessee, City may elect to declare this Lease in default if Lessee fails to conform to any rule, regulation, ordinance, statute or other law which directly affects operations at the Livermore Municipal Airport.

Section 1.04 Title. During the term of this Lease, except as otherwise provided for herein, title to any and all improvements placed on the Leased Premises by Lessee shall be vested in Lessee, unless Lessee elects to transfer title to City and City agrees in writing to accept such title.

Section 1.05 Compliance with Laws. In its use and operation of the Leased Premises, Lessee shall comply with all applicable statutes, ordinances, or regulations now or hereafter adopted by any federal, state, or county governmental entity, and with all ordinances, regulations, policies, and guidelines now or hereafter adopted by the City of Livermore or any of its boards or commissions, including, but not limited to:

- a. The "Airport Rules and Regulations" adopted and as may be amended by the Livermore City Council.
- b. The "Minimum Standards for Commercial Aeronautical Activities" for the Airport, adopted by the Livermore City Council; and
- c. Sections 3.03.180 and 4.06.270 of the Livermore Development Code pertaining to Airport land use, zoning and signs.
- d. Upon 30 days' written notice from City to Lessee, City may elect to declare this Lease in default if Lessee fails to conform to any rule, regulation, ordinance, statute or other law which directly affects operations at the Livermore Municipal Airport.

Section 1.06 Use of Leased Premises. Lessee agrees that the use the Leased Premises, the development thereof, and any construction or improvements thereon, shall be in accordance with the applicable provisions of the 2003 Livermore General Plan, the Livermore Municipal Code and the Planning and the Development Code of the City of Livermore.

Lessee shall use the Leased Premises for the operation of a full-service Fixed Based Operator as defined in Part 3-A and 3-B of the Minimum Standards for Commercial Aeronautical Activities. Lessee is further permitted to use the Leased Premises for associated uses as defined in Parts 3-C through 3-H of the Minimum Standards for Commercial Aeronautical Activities. The Lease Premises shall not be used for any other business or purpose without the prior written consent of the City.

Lessee's use of the premises shall be in accordance with all laws concerning Lessee's use of the premises, including, without limitation, the obligation at Lessee's cost to alter, maintain, or restore the premises, or construct improvements in or to the premises, in compliance and conformity with all laws and government requirements relating to the condition, use, or occupancy of the premises during the term, whether foreseen or unforeseen, regardless of the cost, and regardless of when during the term the work is required.

## ARTICLE 2

### DEVELOPMENT

Section 2.01 Required Development Plans and Standards. Buildings and other improvements which are part of the Leased Premises shall be constructed in accordance with the requirements set forth in Exhibit C, which is attached hereto and incorporated herein by this reference.

The Fixed Based Operator facility improvements are generally anticipated to be comprised of a main building with lobby and office space, vehicle parking, hangar space for maintenance and aircraft storage, an above-ground fuel storage facility, a self-serve Avgas facility, and various apron and transient aircraft parking areas.

## ARTICLE 3

### CHARACTER AND STANDARDS OF OPERATION

Section 3.01 Required and Permitted Activities. Pursuant to Part 3-A of the Minimum Standards for Commercial Aeronautical Activities and all applicable Airport Rules and Regulations, during the term of this Lease, Lessee is required to undertake and pursue, on a regular basis and consistent with industry practices, the following commercial aeronautical activities:

- a. Airframe and Power Plant Repair;
- b. Hangar Keeping;
- c. Fueling; and
- d. Line Services

Other commercial aeronautical activities are permitted as defined and regulated by the City's Minimum Standards for Commercial Aeronautical Activities.

Section 3.02 Operation of Facilities. Lessee shall continuously use the premises for the uses specified in this Lease and shall continuously operate the premises in accordance with the conditions of the Minimum Standards for Commercial Aeronautical Activities. If the premises are destroyed or partially condemned and this lease remains in full force and effect, Lessee shall continue operation of its business at the premises to the extent reasonably practical and under the terms and conditions as mutually agreed to by the parties during any period of reconstruction.

The maintenance and operation of facilities on the Leased Premises shall at all times

during the term of this Lease be under the direct supervision of Lessee or a competent representative of Lessee, who shall be subject at all times to the direction and control of Lessee.

Section 3.03 Identification and Periodic Reporting of Stored Aircraft. Lessee shall, at all times, maintain a current list of all aircraft based, hangared or stored upon the Leased Premises, containing for each aircraft the name and address of the aircraft owner, the aircraft type (make, model, year, number of engines and seats), and the aircraft registration number. Lessee shall provide the City with a copy of such a list at any time the Airport Manager requests same.

Lessee shall report to the Airport Manager by no later than the 5<sup>th</sup> day of each month the total number of single engine, twin-engine, turbo-prop, jets, and helicopters stored on the premises during the prior month. This information will be used for monthly statistics kept by the Airport.

Section 3.04 Noise Abatement Provisions. Lessee shall make an effort to aid in the mitigation of noise complaints, especially those resulting from night operations, and help foster public relations by requesting aircraft operators to adhere to the "Livermore Airport Voluntary Restraint from Night Flying Time Period" and refrain from flying between 2200 hours and 0600 hours local time. Lessee shall also adhere to the Recommended Noise Abatement Procedures and all other noise abatement procedures now in existence or which may be subsequently adopted by the City Council and/or promulgated by the Airport Manager.

Section 3.05 Airport Airshows and Static Display Events. Lessee is hereby notified that an airshow, an airport open house, or a similar static display event may be conducted from time to time at the Airport which may cause an inconvenience to Lessee. City agrees to provide a minimum of 72-hours' advance notice of such planned events to Lessee. During the day or days of these events, Lessee or their customers may have limited aircraft access to the Airport. If so, arrangements must be made to relocate aircraft if Lessee wishes to operate aircraft during those times.

## ARTICLE 4

### SPECIAL STANDARDS OF OPERATION OF FUELING ACTIVITIES

Section 4.01 Exclusive and Non-exclusive Privileges. The following shall apply to the operation and maintenance by Lessee of fueling facilities on and from the Leased Premises. Lessee shall have:

- a. The exclusive privilege of storing, offering for sale, selling and delivering aviation fuels, propellants and lubricants on the Leased Premises; and
- b. The non-exclusive privilege of offering for sale, selling and delivering aviation fuels, propellants and lubricants to customers for use in aircraft stored or parked on the public use apron and on other parts of the Livermore Municipal Airport. Lessee shall not enter into agreements with others

whereby others share in the fueling privileges or the services herein authorized without the prior written consent of City.

The City agrees that third parties, who may propose to conduct commercial aviation activities on areas of the Airport not defined as the Leased Premises, will be subject to the Minimum Standards for Commercial Aeronautical Activities and all applicable Airport Rules and Regulations.

Lessee agrees to not offer for sale, on any self-serve facility, Jet fuel (Jet-A) at any time on the Leased Premises.

Section 4.02 Performance of Fueling Services. Lessee shall adhere to all requirements of the Industrial Relations Department of the State of California covering requirements for the storage and dispensing of volatile fuels and accessories, as well as all applicable local, state and federal regulations. Lessee shall perform its fueling services in a manner consistent with industry practices and in accordance with the Minimum Standards for Commercial Aeronautical Activities and all applicable Airport Rules and Regulations. All the services hereunder shall be thorough, prompt and efficient as judged by the Airport Manager, and shall be adequate to meet the demands of the public on the Airport.

Section 4.03 Performance of Service on a Non-Discriminatory Basis. The fueling services performed under this Lease shall be provided on a fair, equal and non-discriminatory basis to all users of the Airport and at fair, reasonable and non-discriminatory prices. It is understood and agreed that reasonable and non-discriminatory discounts, rebates and other similar types of price reductions may be made to like types of purchasers and users, if otherwise lawful.

Section 4.04 Fuel Prices. Prices for Aviation gasoline (Avgas) shall, at any given time, not be more than ten percent (10%) greater than the average fuel prices charged at four other, similarly sized Bay Area General Aviation airports, specifically Hayward Executive (HWD), Concord (CCR), Oakland North Field (OAK) and Napa County (APC). Further, Lessee shall make an effort to provide Aviation gasoline at a self-service facility for a price which shall, at any given time, not be more than ten percent (10%) greater than the average fuel prices charged at similar self-serve facilities at the four airports identified above.

Section 4.05 Aviation Fuels and Lubricants. Lessee shall provide for sale the following products:

- a. Aviation gasoline (Avgas);
- b. Jet fuel (Jet-A);
- c. Fuel additives, and
- d. A full line of lubricants

All aviation fuels and lubricants shall be branded and supplied by one or more nationally recognized companies. Lessee is responsible to assure the quality of all aviation fuels dispensed.

Section 4.06 Fuel Handling and Equipment. As a condition of this Lease, Lessee shall provide fuel delivery in accordance with Part 3-A of the Minimum Standards for Commercial Aeronautical Activities and all applicable Airport Rules and Regulations. Lessee shall provide aircraft refueling services from a fixed fueling facility and/or self-service fueling facility (for into-aircraft deliveries) and from aircraft refueling vehicles. Each refueling vehicle shall have an operating two-way VHF radio permitting control by the Federal Aviation Administration (FAA) Control Tower, and such vehicles shall be operated on the Airport only under the procedures and controls established by the FAA Control Tower and the City. All fuel facilities, appurtenances and delivery vehicles shall be maintained in clean, orderly and fully functional condition consistent with competent and proficient industry practice.

Section 4.07 Hazardous Materials Permit and Spill Plan. Lessee shall comply with the requirements of the Livermore-Pleasanton Fire Department Hazardous Materials Permit. Lessee shall prepare and maintain a written Spill Prevention Contingency and Control Plan which meets Regulatory Measures for fuel storage facilities. The Plan shall be subject to approval by the Livermore-Pleasanton Fire Department. The approved Plan shall be kept current and a copy of the most current version shall be submitted to the Airport Manager to be kept on file in the Airport Administrative Offices.

Section 4.08 Safety Training for Personnel Performing Fueling Operations. Lessee is required to provide training for all employees performing fueling operations in the proper handling of fuel products, including but not limited to, proper testing of fuel products for contamination, proper grounding procedures, proper handling of different types of nozzles in use, safety and emergency shut-down procedures, and fire response. Lessee shall further develop and maintain Standard Operating Procedures (SOP) for fueling and ground handling services to include a training plan, fuel quality assurance procedures and record keeping, and emergency response procedures to fuel fires and spills.

Section 4.09 Ground Handling and Line Service Equipment. Lessee shall provide and properly operate and maintain a sufficient amount of fueling and line service equipment as required in the Minimum Standards for Commercial Aeronautical Activities. Lessee shall provide and have available the necessary equipment for towing general aviation aircraft of all sizes up to 65,000 pounds, and provide standby arrangements for the removal of damaged general aviation aircraft of like size, to the extent possible, from the public use runway and taxiway system of the Airport.

Section 4.10 Fuel Flowage Fee. For the privilege of selling aviation gasoline (Avgas) and Jet fuel (Jet-A) fuel, Lessee shall pay a fuel flowage fee that has been established in the Airport Rates and Charges fee schedule, as revised from time to time and approved by City Council resolution. The current fee is \$0.15 cents for each gallon of aviation fuel delivered. The Airport Manager will provide the Lessee with advance notification of all fuel flowage fee increases. During the first five-year period of this Lease, any flowage fee increase shall not exceed the highest flowage fee charged at any of the four other, similarly sized Bay Area General Aviation airports, specifically Hayward Executive (HWD), Concord (CCR), Oakland North Field (OAK) and Napa County (APC).

Lessee shall pay the flowage fee on all Avgas and Jet-A fuel delivered to the premises. Such payments shall be rendered to the City by the fifth business day of each calendar

month during the term of this Lease. Lessee shall include with the monthly payment a copy of each delivery receipt or bill of lading, showing the gravity-corrected and recalibrated net quantity delivered, and a fueling activity report, indicating the total quantity of aviation fuel sold by Lessee during the preceding calendar month. The City reserves the right to audit the Lessee's records maintained in connection with fuel delivery, supply and sale but not more frequently than on a bi-annual basis.

Any disputes or controversies between the parties with respect to this Section 4.10 shall be resolved in accordance with the provisions of Article 12 of this Lease.

## ARTICLE 5

### RENT

Section 5.01 Fixed Rent. Lessee shall pay to City, without deduction or offset, at the Airport administrative office, or at such place or places or to such person or persons as may be designated from time to time by City, the following rentals for the Leased Premises:

I. Construction Period Rent / Fixed Based Operator (FBO) Facility:

Commencing on the day following issuance of the first Building Permit for the FBO improvements, a monthly construction period rental of \$ \_\_\_\_\_ shall be paid on the first business day of each succeeding calendar month and ends on the earlier to occur of (i) June 30, 2015, or (ii) the last day of the month during which the City issues the final occupancy permit. The above FBO construction rent is calculated based on a flat rate of \$0.02 cents per square foot per year for the entire \_\_\_\_\_ square feet of the FBO parcel. All other provisions of the Lease apply during the construction period.

The improvements shall be constructed within the timeline outlined in Section C.06 of Exhibit C. The fixed annual rent shall commence effective July 1, 2015 at the latest regardless of whether or not the temporary or final occupancy permit has been issued.

II. Fixed Annual Rent. Commencing with the termination of the construction period rent, as provided in the foregoing subparagraph, and subject to adjustment as hereinafter provided, a fixed annual rental of \$ \_\_\_\_\_, payable in advance on the first day of the calendar month, in equal monthly installments of \$ \_\_\_\_\_ shall be paid for the FBO facility.

The Fixed Annual Rent for the Lease Parcel NW-C1 is calculated based on the fair rental values appraised in December 2009. A rate of \$0.38 per square foot per year applies for the \_\_\_\_\_ square foot parcel of land located outside of the Building Restriction Line (as viewed from the runway), and a rate of \$0.30 per square foot per year for a \_\_\_\_\_ square foot area of aircraft parking apron located inside of the Building Restriction Line (as viewed from the runway).

The Fixed Annual Rent is subject to adjustment as hereinafter provided.

Section 5.02 Periodic Appraisal Adjustment - Fixed Rent. Commencing on the 7-year anniversary of the issuance of the first final occupancy permit, and thereafter at the beginning of each 7-year anniversary of such date during the term of this Lease (the "Appraisal Adjustment Date(s)"), the fixed annual rental for the Leased Premises shall be subject to an adjustment based upon an appraisal of the Leased Premises as follows:

a. City shall engage an independent qualified real estate appraiser who shall be a member of a nationally or state recognized appraisal organization, who shall be certified to conduct appraisals pursuant to any applicable laws, and who shall have had significant experience conducting appraisals at airports comparable to Livermore Municipal Airport. The appraiser shall conduct an appraisal of the Leased Premises to establish the current fair rental value of the Leased Premises, as of January One (1) of each anniversary year, exclusive of improvements. The fixed annual rental to be paid by Lessee for the Leased Premises each year during the 7-year periods shall be adjusted upward or downward to a sum equal to the fair rental value as provided herein. The cost of the first appraisal shall be borne by City. Thereafter, City and Lessee shall share equally the cost of each subsequent appraisal.

b. City shall submit to Lessee in writing the current fair rental value of the Leased Premises as established by the appraisal. If Lessee does not object in writing to the appraisal within 30 days of receipt of said notice, the current fair rental value of the Leased Premises shall be deemed to be established by the appraisal. The fixed annual rental as described in Section 5.01 above shall then be the fixed annual payment to be effective as of the then applicable Appraisal Adjustment Date and until such time as a subsequent appraisal adjustment or CPI adjustment is made, pursuant to the provisions of this Article 5.

Section 5.03 Fixed Rental Value Dispute. If Lessee disputes the fixed rental value of said real property as of January 1, for any of the 7-year periods, as determined by such appraiser, the parties hereto agree to resolve the dispute relative to the fair rental value of said real property in accordance with the provisions of Article 12 of this Lease.

Each party agrees to execute any and all documents as may be necessary to carry out the purposes of this Section 5.03. The cost of any mediation or other alternative dispute resolution process hereunder shall be paid equally by the parties to this Lease. Attorney's, witness, and other fees and expenses shall be governed by Section 14.08. Pending the conclusion of any such litigation or dispute resolution process, Lessee shall continue to pay City the amount of fixed annual rental previously payable under the provisions hereof. If the adjusted fixed annual rental payable as a consequence of the outcome of any such dispute resolution process exceeds the amount of the previously payable fixed annual rental, the rental payment shall be retroactive to the beginning of the adjustment period, without regard for the date of the final settlement. Any retroactive rent shall be paid by Lessee to City within 30 days after final conclusion of the dispute resolution process.

Section 5.04 Annual CPI Adjustment of Fixed Rent. In addition to Periodic Appraisal Adjustments, the Fixed Annual Rent shall also be adjusted upward annually with respect to the Consumer Price Index, except in those years in which a Periodic Appraisal Adjustment is made. Commencing on July 1<sup>st</sup> following the first anniversary date of this

Lease, and on each subsequent July 1<sup>st</sup> thereafter throughout the term of this Lease, (except in those years in which a periodic appraisal adjustment is made) the Fixed Annual Rent shall be adjusted upward by the cumulative increase in the Consumer Price Index ("CPI"). The CPI index used is the bi-monthly All Urban Consumers (CPI-U), San Francisco-Oakland-San Jose, California for the month of February immediately preceding the July adjustment date. In no event shall the rent be less than the immediately preceding Fixed Annual Rent, except in those years in which a periodic appraisal adjustment is made.

Section 5.05 Late Charges. Lessee acknowledges that late payment of rent by Lessee to City will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitations, processing and accounting charges, and late charges that may be imposed on City by the terms of any encumbrance and note secured by any encumbrance covering the premises. Therefore, if any installment of rent due from Lessee is not received by 5:00 PM on the first day of each month, Lessee shall pay to City an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City. If Lessee fails to pay its monthly rent within ten (10) days after the first day of the month, Lessee shall be in default of this Lease.

Section 5.06 Landing Fees for Commercial Aircraft Operations and Other Charges. The Airport Rates and Charges fee schedule, as revised from time to time and approved by City Council resolution, assesses a landing fee for commercial aircraft operations conducted under FAR Part 121 or Part 135 by non-based general aviation aircraft based on maximum certificated gross landing weight. Lessee shall collect the fees from all of its affected customers. Lessee shall retain fifteen percent (15%) of all landing fees collected for each month throughout the term of this Lease as payment in full for Lessee's collection services, and submit the remaining balance to the City on or before the 10<sup>th</sup> day of the following month. The payment shall be accompanied by the reports described in Section 5.08 below.

Exemptions: Only revenue-producing operations are subject to the landing fee. Landings of aircraft that are based at Livermore through a written tie-down or hangar lease agreement with the City or the Lessee are exempt from the fee. Further exempt from the fees are landings conducted by military and federal government aircraft as well as landings performed due to in-flight emergencies, maintenance and training.

Lessee further agrees to pay any other charges incurred by it in the use of the Airport or its facilities, and at the rates prescribed by the City. Lessee is obligated to pay by the respective due dates all its obligations for business any other services obtained from the City. If Lessee is in arrears in any such payment after ten days written notice, it shall be in default of this Lease.

Section 5.07 Records of Collection. Lessee shall maintain records of the aircraft registration number, gross weight and the landing fee collected from each aircraft subject

to the landing fee. Such records shall be in the form of a daily and a monthly report. The daily report shall list the aircraft registration numbers, aircraft gross weight, applicable landing fee, and the 15/85 percent distribution for Lessee and City, respectively. The monthly report shall list the month reported, the dates, the fees collected per day, and the monthly total 15/85 percent distribution for Lessee and City, respectively. Lessee shall prepare the forms in formats that are acceptable to the City. Lessee shall maintain the landing fee records for a period of at least three (3) years, and make those records available to City's authorized representatives for examination at all reasonable times. At the City's option, and upon 72 hours prior written notice to Lessee, Lessee agrees to provide all records related to landing fees to the City for a complete audit, although no records beyond the three (3) years from the date of the audit shall be required. The audit shall be at City's cost. Should any deficiencies in payment of landing fees be determined as a result of the audit, any outstanding fees shall become immediately due and payable. If the deficiency is greater than three percent (3%) of the landing fees computed and paid by Lessee for the period covered by the audit, Lessee will be assessed an interest rate of five percent (5%) per month of the amount owed until paid.

Section 5.08 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render the City in any way or for any purpose a partner, joint venturer, or associate in any relationship with Lessee other than that of lessor and lessee, nor shall this Lease be construed to authorize either to act as agent for the other.

## ARTICLE 6

### LESSEE'S ENCUMBRANCES

Section 6.01 Lessee's Right to Encumber. Lessee may encumber Lessee's interest in the Leased Premises and in any improvements Lessee places thereon by mortgage, deed of trust, or other instrument. In such event, for the trustee, mortgagee or beneficiary in said instrument, or payee in the note or other obligation secured by any such instrument, Lessee shall deliver to City written notice showing:

- a. the amount of the obligation secured by such instrument and the date of maturity or maturities thereof; and
- b. the name and post office address of such mortgagee, beneficiary, payee or trustee.

Upon delivery of such notice, City shall thereafter serve on such mortgagee, beneficiary, payee or trustee, by registered or certified mail at the address given, or at any subsequent address thereafter given, a copy of every notice thereafter served by City upon Lessee under the terms of this Lease, during the existence of such mortgage, deed of trust or instrument.

Section 6.02 Notice of Loan Default. In the event that Lessee defaults in the performance of any covenant or provision hereof to be performed by Lessee during the existence of any such mortgage, deed of trust or instrument as provided in Section 6.01, the beneficiary, mortgagee, payee or trustee named in any such notice, or their nominee,

shall have the right, within the time provided in this Lease, plus an additional 30 days, to perform and comply with all the covenants and provisions of this Lease to be performed by Lessee and to make all payments required of Lessee by this Lease and, by so doing, to thus cure and remove any such default.

Section 6.03 Rights of Lender to Cure Defaults. If the nature of any default by Lessee is such that it cannot be cured within such additional 30 days as provided in Section 6.02, the beneficiary, mortgagee, payee, or trustee shall be deemed to have cured such default if it, or its nominee, shall, within the 30 day period, commence performance and thereafter diligently prosecute the same to completion.

Section 6.04 Purchaser in Foreclosure to be Deemed Lessee. If there is a foreclosure of any lien secured by any mortgage, deed of trust or other similar instrument on the Leased Premises, the purchaser in foreclosure shall be deemed to be the Lessee hereunder for all purposes, the same as though such purchaser were the original lessee hereunder and in no event shall such purchase work a merger.

## ARTICLE 7

### MAINTENANCE, REPAIRS AND HAZARDOUS MATERIALS

Section 7.01 Maintenance and Repair by Lessee. At all times during the term of this Lease, Lessee shall, at Lessee's own cost and expense, keep and maintain the Leased Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist on the Leased Premises, in good order and repair and in a safe and clean condition consistent with the highest of business practices. Lessee hereby waives the benefits of sections 1932, 1941, and 1942 of the California Civil Code and all rights to make repairs at the expense of City, as provided therein. If after 30 days' notice from City, Lessee fails to maintain, repair, or keep clean any part of the Leased Premises or any improvements, landscaping, fixtures, or equipment thereon, City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance, repair, or clean-up and Lessee agrees to pay the costs thereof to City upon demand. Any unpaid sums under this Section 7.01 will bear interest at the prevailing statutory interest rate until paid in full. Failure to adhere to the requirements of this section, may, at the option of City, result in a default of this Lease.

Section 7.02 Hazardous Materials Provisions. As used in this Lease, the term "Hazardous Materials" shall mean any substance or material which has been determined by any state, federal or local governmental agency to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products, and including but not limited to all those materials and substances designated as hazardous or toxic presently or in the future by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health, Education and Welfare, the U.S. Food and Drug Administration or any other governmental agency now or

hereafter authorized to regulate materials and substances defined as "Toxic Materials" in section 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time.

- a. Lessee's Operations. In conducting its operations on the Airport, Lessee shall abide and be bound by all of the following requirements:
1. Lessee shall comply with all federal, state, and local laws, requirements, and policies now or hereinafter in effect relating to Hazardous Materials and environmental conditions on, under or about the Airport including, but not limited to, soil and groundwater conditions, and shall not contaminate the Airport or the subsurface with any Hazardous Material.
  2. Lessee shall restrict the use of Hazardous Materials on the Leased Premises to those kinds of materials that would be normally expected in conducting the activities permitted under this Lease in a safe and prudent manner. Storage or disposal of any Hazardous Materials on the Leased Premises is strictly prohibited.
  3. Lessee shall be solely and fully responsible for the reporting of Hazardous Material releases to the appropriate public agencies, when such releases are caused by or result from Lessee's activities on the Airport. Lessee shall immediately notify City of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.
  4. Lessee shall be solely and fully responsible and liable in the event Lessee causes or permits Hazardous Materials to be released at the Airport, or to enter the City's sewerage or storm drainage system, soil, air, groundwater or any improvements. Lessee shall take all necessary precautions to prevent any Hazardous Materials from entering into the City's sewerage or storm drainage system, soil, air, groundwater or any improvements, or from otherwise being released on the Airport. If at any time a release of Hazardous Materials is discovered on the Leased Premises, the Airport, City's sewerage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted in whole or in part by Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees or there is the danger of such release of Hazardous Materials, Lessee, at Lessee's sole cost and expense, shall remove such Hazardous Materials from the Airport or the groundwater underlying the Airport, or the City's soil, air, storm drainage and sewerage system, in accordance with requirements of all appropriate governmental authorities. In addition to all other rights and remedies of City hereunder, if such release of Hazardous Materials is not removed from the Airport or the subsurface or groundwater underlying the Airport by Lessee within 90 days of being put on notice thereof after Lessee, City, or other third party discovers such Hazardous Materials, City, in its discretion, may pay to have same removed and Lessee shall reimburse City within five days of City's demand for payment. The receipt for payment by City shall be prima facie evidence that the expense incurred was necessary

and reasonable and that such expense was incurred by City on behalf of Lessee.

5. Lessee shall indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expenses (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of the presence or cleanup of Hazardous Materials on the Airport or the subsurface. After notice from City, and at the discretion of City, Lessee shall cease its activities on the Airport until such release or danger of release of Hazardous Materials is cured, without abatement of any fees or charges due under this Lease, until such release or the danger of release of Hazardous Materials is cured and any remediation of such release is completed in a manner satisfactory to the Airport Manager.
  6. Lessee's obligations under this Section 7.02 shall survive the expiration or earlier termination of this Lease.
- b. Records and Inspections. Lessee shall maintain for a period of not less than four years after the expiration or termination of this Lease, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling, and disposal of all Hazardous Materials at the Airport.

After the expiration of said four-year period, Lessee shall notify City no later than 60 days prior to any proposed destruction of any of said documents; upon request by City, copies of all said records, documents, and information shall be delivered to City. In addition, Lessee shall furnish City with such records and such other documentation or reports as the Airport Manager, from time to time, and at any time during or after the term of this Lease, may reasonably require.

Section 7.03 Stormwater Provisions. Lessee shall prevent petroleum products and other deleterious waste from entering into the sewage and storm water drainage systems serving the Airport. Lessee shall comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) of the Federal Clean Water Control Act regarding permits for stormwater discharges associated with industrial activity. Lessee is responsible for ensuring full compliance with the California and federal stormwater laws and regulations.

## ARTICLE 8

### TAXES AND UTILITIES

Section 8.01 Taxes to be Paid by Lessee. During the term of this Lease, Lessee shall pay or cause to be paid, prior to delinquency, any and all taxes, including possessory interest taxes and any assessments, licenses, and fees levied or assessed as follows:

- a. On the Leased Premises;

- b. On all possessory interests hereunder or in the Leased Premises; and
- c. On any improvements, fixtures, and equipment now or hereafter existing on the Leased Premises and on any personal property situated in, on, or about the Leased Premises, or in, on, or about any buildings or improvements on the Leased Premises.

It is understood, however, that Lessee may pay any such taxes and assessments under protest without liability, cost, or expense to City, and in good faith contest the validity or amount thereof.

Section 8.02 Connections to Utility Services. Subject to applicable ordinances, regulations, and connection fees, Lessee may, at Lessee's expense, connect to the utilities at the points identified by the responsible City Departments and service providers, and Lessee shall thereafter maintain, repair, and replace all such utilities to and including the points of connection.

Section 8.03 Utilities, Trash and Refuse. Lessee shall pay or cause to be paid, and hold City free and harmless from, all charges for the installation, connection, maintenance and furnishing of all necessary utilities, utility facilities and services, including but not limited to, gas, water, electricity, telephone service, cable television, sewage, and other public utilities to the Leased Premises during the term of this Lease and for the removal of garbage and rubbish from the Leased Premises during the term of this Lease.

Lessee shall arrange for the quick and efficient collection and disposal of trash, clippings and refuse from the Leased Premises at Lessee's expense in accordance with all applicable laws and ordinances. Lessee shall not allow clippings, trimmings, cans, cartons, barrels, used equipment, scrap or other debris to collect in any way on or about the Leased Premises; provided, however, that same may be stored in a suitable screened and protected enclosure acceptable to City pending collection and removal as long as the storage does not generate odors, attract rodents or insects, or become offensive in any manner. Upon failure of Lessee to comply with the provisions of this section, the City may enter upon the premises, and undertake any necessary cleanup and maintenance activities. If Lessee fails to pay reasonable charges incurred in connection therewith, City may elect to declare the Lease in default.

## ARTICLE 9

### INDEMNIFICATION, INSURANCE AND BONDS

#### Section 9.01 Hold Harmless

Lessee agrees to, and shall defend, indemnify and hold the City, its officials, directors, employees, volunteers, and agents harmless from and against any or all loss, liability, expense, claim, cost, suits, and damages of every kind, nature and description, including reasonable attorney's fees, for or on account of damage to property or injury to persons arising from anything done or performed, or omitted to be done or performed, on the Premises by Lessee, or any activity carried on by Lessee, Lessee's officers, directors, employees, agents, sublessees, volunteers, or for anyone for whom Lessee has custody

and control in connection with the Premises. Approval of the insurance required by this Lease does not relieve the Lessee from liability under this hold harmless clause.

#### Section 9.02 Insurance

Lessee shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damage to property which may arise from, or in connection with the Lessee's operation, use of the Premises or this Lease, which shall be acceptable to the City's Risk Manager. The cost of such insurance shall be borne by the Lessee.

##### a. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance.
- (4) Property Insurance against all risks of loss to any tenant improvements or betterments, including flood and earthquake, if such are available at a reasonable cost, as determined by the Risk Manager.

##### b. Minimum Limits of Insurance

Operator shall maintain limits no less than:

- (1) General Liability: \$5,000,000 (\$25,000,000 if Full-Service FBO or self-fueling permit holder) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Coverage shall include but not be limited to: blanket contractual; products/completed operations; hangar-keepers' liability, and broad form property damage.
- (2) Automobile Liability: \$1,000,000 per occurrence for bodily injury and property damage.
- (3) Employer's Liability: \$1,000,000 per occurrence for bodily injury or disease.
- (4) Property Insurance: Full replacement cost with no coinsurance penalty provision.

##### c. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions or sub limits must be declared to and approved by the City's Risk Manager.

##### d. Other Insurance Provision

The general liability policy is to contain, or be endorsed to contain, the following provisions:

- (1) The City of Livermore, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects:

liability arising out of Premises owned, occupied or used by the Operator. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, agents or volunteers.

- (2) The Operator's insurance coverage shall be primary insurance as respects the City of Livermore, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Livermore, its officers, officials, employees, agents or volunteers shall be excess of the Operator's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Livermore, its officers, officials, employees, agents or volunteers.
- (4) Coverage shall state that the Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Livermore by the carrier.

e. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California.

f. Verification of Coverage

Operator shall furnish a copy of these requirements to Operator's insurance agent. The agent shall furnish the City's Risk Manager with Certificate(s) of Insurance and original endorsements evidencing coverage required by this clause. By sending the requisite documents, the agent is certifying the Operator maintains the appropriate coverage. The documents are to be signed by a person authorized by that insurer to bind coverage and endorse policies on its behalf. All documents are to be received and approved by the City of Livermore before Operator takes possession, or begins work on the Premises. The City of Livermore may for any reason require the Operator to provide complete, certified copies of all required insurance policies affecting the coverage required by these specifications. The Operator, or its insurance agent, shall furnish the City with evidence of insurance 30 days prior to expiration of the current certificate(s), and direct those to:

City of Livermore  
Risk Manager  
1052 S. Livermore Avenue  
Livermore, CA 94550

Section 9.03 Performance Bond on Lease. Lessee, at City's demand and at Lessee's sole cost and expense, shall provide to City on or before the commencement of

the term of this Lease, and thereafter on or before the annual anniversary date of this Lease, a surety bond guaranteeing Lessee's performance of all terms, conditions, and covenants of this Lease, including, but not limited to, payment of all ground rentals which Lessee is required to pay City herein, in a sum equal to one years' annual ground rental, as said sum may be adjusted from time to time in accordance with Section 5.01. Said bond shall be issued by a surety company authorized to transact business in the State of California and shall be satisfactory to City and approved by the City Attorney. In lieu of said bond, and at City's option, Lessee may deposit with City, without interest, an amount in cash equal to one year's ground rental to City, or in the alternative, an irrevocable letter of credit satisfactory to the City Attorney. In the event that the amount of said bond or said deposit or said letter of credit cannot be determined due to delays in determining the amount of ground rentals payable pursuant to Section 5.01, Lessee shall provide said bond or said deposit within 30 days of the date that said ground rentals are determined pursuant to Section 5.01, and shall provide alternate security, satisfactory to the City Attorney, until the amount of said ground rental is determined.

## ARTICLE 10

### DEFAULT AND REMEDIES

Section 10.01 Events of Default by Lessee. This Lease shall be subject to termination by City in the event of any one or more of the following events of default by Lessee:

- a. Lessee's failure to complete the improvements pursuant to the timelines and conditions specified in Section C.06 of Exhibit C.
- b. Lessee's failure to pay the rent herein provided at the time fixed for payment pursuant to Sections 5.01 and 5.05 of this Lease;
- b. Lessee's failure to pay any taxes, including possessory interest taxes or assessments agreed to be paid by Lessee in accordance with the terms of Section 8.01 of this Lease.
- c. Lessee's failure after 30 days' written notice from City to keep, perform or observe any term, covenant or condition of this Lease to be kept, performed or observed by Lessee unless otherwise agreed to in writing by the City.
- d. Lessee's failure to replace any improvements on the Leased Premises which have been destroyed by fire, explosion, flood, windstorm or other calamity within six months after the date of such destruction; provided, however, that 12 months will be allowed to restore destruction caused by earthquake or enemy attack.
- e. Lessee's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors or the institution of proceedings in bankruptcy against Lessee or the appointment of a receiver of the assets of Lessee; provided, however, that if any such proceedings or appointments are involuntary, then they shall not be considered an event of default by Lessee unless Lessee fails to procure a dismissal thereof within 60 days after the institution of involuntary bankruptcy proceedings or the appointment of a receiver.
- f. Lessee's failure to permit inspection of the premises, after five calendar days' advance written notice thereof, or immediately in the event of an emergency or other urgent condition.

Section 10.02 Immediate Right of Re-entry Upon Default. Upon the occurrence of an "event of default by Lessee," as identified in Section 10.01, City, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove or cause to be removed all persons and property from the Leased Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should City elect to re-enter as provided herein, or should it take possession pursuant to legal proceedings or any notice provided for by law, it may either terminate this Lease, or relet the Leased Premises and improvements thereon or any part thereof for such term or terms (which may extend beyond the term of this Lease) and such rental or re-rental and upon such other terms and conditions as City in its sole discretion may deem advisable, with the right to make alterations and repairs to Leased Premises and improvements.

Section 10.03 Liens. Lessee shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished, or obligation incurred (except as provided in Section 6.01 hereof) and to pay to City, upon demand, the cost of discharging such liens (other than those which may have been created pursuant to Section 6.01 hereof) with interest at the prevailing statutory rate from the date of such discharge, together with reasonable attorneys' fees in connection with the settlement, trial, or appeal of any such lien matter.

Section 10.04 Waiver of Defaults. No provision of this Lease may be waived except by the written consent of City. Any waiver (whether express or inadvertent) by City of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee of either the same or a different provision of this Lease. Forbearance or indulgence by City, in any regard, shall not constitute a waiver of any requirement under this Lease, and City shall be entitled to invoke any remedy available to it in equity or by law, despite such forbearance or indulgence.

Section 10.05 Removal and Ownership of Improvements at Termination. Upon the termination of this Lease for any reason, City shall be entitled upon its specific written request, to have the Leased Premises returned to City clear of all building improvements above ground level. City may, at its option and at no cost to City, take title to all improvements in lieu of removal by or for Lessee. If City requests the removal of all building improvements as described above, Lessee shall complete the removal within 90 days after the date of City's request. If Lessee fails to remove said improvements within the 90 day time period, the improvements may be removed thereafter by City, and Lessee agrees to pay City the cost of removal upon demand with interest at the prevailing statutory rate until paid in full.

If termination is not by reason of default of Lessee, Lessee shall have the right to remove any and all trade fixtures which Lessee may have placed or installed upon the Leased Premises; provided, however, that upon removal, Lessee, at Lessee's own expense, shall repair any damage resulting therefrom and leave the Leased Premises in a clean and neat condition.

Section 10.06 Abandonment. Lessee shall not vacate or abandon the Leased Premises at any time during the term of this Lease, and if Lessee shall abandon, vacate or surrender the Leased Premises or be dispossessed by process of law or otherwise, any personal property belonging to Lessee and left upon the Leased Premises and any or all of Lessee's improvements and facilities thereon, shall, at the option of City, be deemed to be abandoned by Lessee and shall, at the option of City, become the property of City. If Lessee fails to claim the personal property within 45 days following receipt of written notice by City of personal property, the personal property shall be disposed of by any lawful means available to City.

## ARTICLE 11

### ASSIGNMENT AND SUBLEASING

Section 11.01 Assignment. This Lease, or any part thereof, except as security as provided in Section 6.01 of this Lease shall not be assigned or transferred by Lessee, by process or operation of law or in any other manner, without the prior written consent of City, which consent shall not be unreasonably withheld. Lessee agrees to provide at least 90 days' written notice of each such request to assign or transfer the Lease to the City. No assignee for the benefit of Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Lease by virtue of this section. Lessee agrees that City may hypothecate, pledge, assign or transfer this Lease for any lawful purpose. Any assignment, encumbrance, or sublease without City's consent shall be voidable and, at City's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

If Lessee requests City consent to a proposed assignment or subletting, the proposed assignee must demonstrate at least comparable professional and financial competence and qualifications as Lessee, and Lessee shall pay to City, whether or not consent is ultimately given, City's reasonable attorneys' and financial review fees incurred in connection with each such request. In response to the 90-days' written notice from Lessee, the City shall request in writing that financial statements be provided by the proposed assignee within 30-days from receipt of the request. Further, documentation confirming the sale of the above-ground improvements to assignee, satisfactory evidence of insurance, and payment of any administrative review fees shall be provided prior to the City considering consenting to the assignment.

One percent (1%) of any sums to be paid by an assignee to Lessee in consideration of the assignment of this Lease shall be paid to City.

Section 11.02 Lessee's Right to Sublease. Lessee shall have the right to sublease a portion of the Leased Premises, with City's written consent; provided however, that the term of any sublease shall not extend beyond the term of this Lease; any and all subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Lease, and any sublessee shall be required to hold a valid Commercial Aviation Permit issued by City in accordance with the Minimum Standards for Commercial Aeronautical Activities and the Airport Rules and Regulations, or any subsequent resolutions passed by the City Council. Lessee may sublease space only for the purposes

to which City agrees in writing.

Lessee immediately and irrevocably assigns to City, as security for Lessee's obligations under this Lease, all rent from any subletting of all or a part of the premises as permitted by this Lease, and City, as assignee and as attorney-in-fact for Lessee, or a receiver for Lessee appointed on City's application, may collect such rent and apply it toward Lessee's obligations under this Lease; except that, until the occurrence of an act of default by Lessee or sublessee, Lessee shall have the right to collect such rent.

## ARTICLE 12

### LEGAL ACTION AND MEDIATION

Section 12.01 Legal Action and Alternative Dispute Resolution. If any dispute arises between the parties related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement, the parties will first attempt to resolve the dispute through informal discussions. In the event a dispute cannot be resolved in this manner within fifteen (15) days, either party may give written notice to the other party, setting forth the nature of and basis for the dispute and the parties shall thereafter endeavor for a period of 30 days to settle the dispute by mediation which, except as otherwise agreed to by the Parties, shall be conducted under the then current Center for Public Resources ("CPR") Model Procedures for Mediation of Business Disputes by a neutral third party selected from CPR's Panels of Neutrals. Only if an aggrieved party has availed itself of the process established under this section may such party bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Lease.

No action arising out of or relating to this Lease shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Lease.

Each party agrees to execute any and all documents as may be necessary to carry out the purposes of this Section 12.01. The cost of any mediation hereunder shall be initially paid equally by the parties to this Lease, but in the event of litigation, the prevailing party shall recover costs of such proceedings from the non-prevailing party. Attorney fees, witnesses', and other fees and expenses, shall be governed by Section 14.08 of this Lease.

## ARTICLE 13

### GRANT AGREEMENT COVENANTS

Section 13.01 Grant Agreement Covenants. Lessee, its heirs, personal representatives, successors-in-interest, and assigns, as a part of the consideration hereof, shall operate under the following conditions:

- a. This lease shall be subordinate and subject to the Grant Lease, dated June 14, 1965, and the Amendment thereto, dated July 26, 1965, by and between the United States of America, Federal Aviation Administration, and City, and subsequent grants and leases.
- b. Lessee acknowledges that the City is subject to Federal Grant Agreement

- obligations ("Airport Sponsor Assurances") as a condition precedent to granting of funds for improvement of the Livermore Municipal Airport, and accordingly agrees to, and agrees to be bound by, the Airport Assurances provided by the Federal Aviation Administration. Lessee shall comply with the most recent Airport Sponsor Assurances attached as "Exhibit D" to this Lease and which may be amended from time to time, and incorporated by reference.
- c. Lessee shall not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 152 of the Federal Aviation Regulations.
  - d. Lessee shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that the City may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
  - d. Lessee shall comply with the requirements of the Americans with Disabilities Act, including Title III, Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities, codified at 28 Code of Federal Regulations, Part 36.
  - e. Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, or veteran's status. Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability, or veteran's status.
  - f. Lessee will send each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Lessee's commitments under this paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - g. Lessee agrees that if facilities are constructed, maintained, or otherwise operated on the Premises, Lessee shall comply with all other requirements imposed pursuant to 49 Code of Federal Regulations Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and any amendments to the Regulations.
  - h. Lessee's non-compliance with any Airport Assurance provisions shall constitute a material breach. In the event of a breach of any of the nondiscrimination covenants, (49 CFR Part 21) the City or the United States shall have the right to:
    - (1) terminate this Lease, or
    - (2) seek judicial enforcement of said covenants.

## ARTICLE 14

### MISCELLANEOUS PROVISIONS

Section 14.01 Compliance with Laws and Regulations. Lessee, at Lessee's own cost and expense, shall comply with all present and future statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state, and county or municipal, including those requiring capital improvements to the Leased

Premises, relating to Lessee's use and occupancy of the Leased Premises whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of Leased Premises or any portion of the Leased Premises, Lessee shall procure and maintain such license, permit, or other authorization throughout the term of this Lease. The judgment of any court of competent jurisdiction, or the admission by Lessee in a proceeding brought against Lessee by any government entity, that Lessee has violated any such statute, ordinance, regulation, or requirement shall be conclusive of that fact as between City and Lessee and shall constitute grounds for termination of this Lease by City.

Notwithstanding the foregoing provisions of this Section 14.01, except as hereafter provided, Lessee shall have the right to contest by appropriate legal proceedings, but without cost or expense to City, the validity of any governmental charge, law, ordinance, rule, regulation or requirement of the nature set forth in this Section 14.01, provided Lessee furnishes City with such assurances or security (having in mind the risk involved) against loss or injury to City in connection therewith as they may require to City's sole discretion and provided Lessee prosecutes such contest with due diligence and dispatch.

Section 14.02 Right to Enter (Inspection of Leased Premises and Improvements).

The parties agree that it is a material term of the Lease that City shall have the right by its officers, employees, agents and contractors, to enter into and upon the Leased Premises with forty-eight (48) hours' notice (except in emergency/exigent circumstances):

- a. To make any inspection the Airport Manager in his or her sole discretion may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Lease, or any other matter relevant to this Lease;
- b. To maintain the Leased Premises, or to do repair, maintenance, alteration, clean-up, or removal under the conditions set forth herein;
- c. To post notices of non-responsibility for improvements, alterations or repairs, if and when City shall desire to do so; provided that City acts reasonably to minimize any interference to Lessee's use or occupancy of the Leased Premises, all without abatement of rent to Lessee for any loss of occupancy or quiet enjoyment of the Leased Premises or said buildings, works and improvements, and without liability on the part of City, its officers, agents, employees or contractors for loss or damage that may be sustained by Lessee thereby, provided that City acts reasonably to minimize any interference to Lessee's use or occupancy of the Leased Premises. No advance notice is required under exigent or emergency circumstances. Upon the time set for inspection, or an emergency inspection, the parties agree that the City may use all reasonable means to effect entry into any structure, or onto any portion of the leased premises, and that furthermore, any damage or cost to repair arising by virtue of such entry shall be borne by Lessee, and not City, should Lessee fail to appear and cooperate in arranging entry and inspection as provided for. If any repair, maintenance, alteration, clean-up, or removal required under the terms of this Lease to be

done by Lessee is deemed by the Airport Manager to be necessary, the Airport Manager may demand by written notice that Lessee do the same forthwith; and if Lessee fails, refuses or neglects to commence and complete the same with reasonable diligence, then City may (but shall have no obligation to) reenter the Leased Premises and cause such repair, maintenance, alteration or removal to be done; and Lessee agrees to pay to City on demand the cost thereof. The notice provisions relating to inspections, above, shall apply to this section.

Section 14.03 Prevention of Trespass. Lessee agrees to use Lessee's best efforts to prevent unauthorized persons from gaining access to the Public Airport Areas through the Leased Premises by installing adequate fencing, lighting, gates, doors and locks, and maintain those in good condition. Lessee shall develop positive key control and apron access procedures and comply with the pertinent reporting requirements to the FAA, the Department of Homeland Security and law enforcement agencies. If requested by the Airport Manager, Lessee shall develop and maintain a Security Plan.

Section 14.04 Right to Amend. In the event that the Federal Aviation Administration requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport or lands and improvements, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Lease as may be reasonably required to obtain such funds; provided, however, that in no event will Lessee be required, pursuant to this Section 14.04, to agree to an increase in the rentals provided for this Lease or to a change in the use to which Lessee has put the Leased Premises or to a change which would substantially affect the rights of any mortgagee, beneficiary, payee or trustee registered with City as provided in Section 6.01.

Section 14.05 Consent Not to be Unreasonably Withheld. Whenever consent is required under the terms of this Lease by either Lessee or City, such consent is not to be unreasonably withheld.

Section 14.06 Governing Law. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California, or other applicable and superseding federal law, in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

Section 14.07 Headings. The headings used in this Lease are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Lease.

Section 14.08 Attorneys' Fees and Costs. In the event that either party shall commence any legal action or proceedings (including arbitration) against the other party concerning the Leased Premises, this Lease, or the rights and duties of either in relation to the Lease, the party prevailing in that action or proceeding shall be entitled to recover, in addition to any other relief that may be granted in the litigation, all fees, expenses, costs, court costs and a reasonable sum as and for that party's attorneys' fees that shall be determined by the court in that litigation or in a separate action brought for that purpose. Such recovery shall include court costs and attorneys' fees on appeal, if any. The court

will determine who the "prevailing party" is, and whether or not the suit proceeds to final judgment. However, if an action is voluntarily dismissed, or dismissed pursuant to a settlement of the case, neither party shall be entitled to recover its attorneys' fees. Lessee hereby waives the benefit of the provisions of section 1161 of the California Code of Civil Procedure.

Section 14.09 Notices Notice shall be effective from the date of mailing. Any and all notices to be given under this Lease, or otherwise, shall be sent via certified mail with postage prepaid to:

Lessor  
City Clerk  
City of Livermore  
1052 South Livermore Avenue  
Livermore, California 94550  
With a copy to: Airport Manager

Lessee  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties to this Lease have caused it to be executed by their officers thereunto duly authorized so to do this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

CITY OF LIVERMORE,  
a municipal corporation of the State of California,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marc Roberts, City Manager

COMPANY, INC.

Dated: \_\_\_\_\_

\_\_\_\_\_  
President/CEO

ATTEST:

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

APPROVED AS TO FORM:

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

Attachments:

- Exhibit A Legal Description of Leased Parcel
- Exhibit B Plat Map of Leased Parcel
- Exhibit C Required Development Plans, Standards, Bonds and Construction Timeline
- Exhibit D Airport Sponsor Assurances
- Exhibit E Minimum Standards for Commercial Aeronautical Activities and Airport Rules & Regulations

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## EXHIBIT C – REQUIRED DEVELOPMENT PLANS, STANDARDS, BONDS AND CONSTRUCTION TIMELINE

Section C.01 Development Plans and Permits. Lessee shall submit to the City for plan check approval the finalized development plans and maps to construct the following phased improvements on the Leased Premises, referred to as Parcel “NW-C1”, situated on the northwest side of the Airport:

- A full-service Fixed Base Operator facility, containing a main building with lobby and office space, vehicle parking, hangar space for maintenance and aircraft storage, an above-ground fuel storage facility, a self-serve Avgas facility, and various apron and transient aircraft parking areas.

The above construction shall occur within the timelines provided in Section C.06 below.

All planning and design work for the above improvements shall be subject to the City’s project review and entitlement process, and shall meet City zoning regulations and design standards. City approved projects shall be developed in accordance with the City’s development plan check procedures, including, but not limited to, Standard Details and Specifications, various Sewer, Storm Drain and Water Master Plans and Guidelines, and the Livermore Municipal Code. Lessee shall be responsible for the payment of all applicable building and engineering permit fees.

Section C.02 Environmental Documentation and Permits. Lessee shall procure all environmental documentation and clearances required for the construction of the improvements. Lessee shall further apply for the necessary land use entitlements and building and engineering permits in order to construct or operate the facilities as described in this Lease. City agrees to execute any documents, petitions, applications, and authorizations that may be necessary or appropriate as owner of the premises; provided, however, that any such entitlements and permits shall be obtained at the sole cost and expense of Lessee. Unless otherwise provided herein, granting of said approvals or consents shall be within the sole discretion of City and only for matters otherwise consistent with existing law.

Section C.03 Construction Standards. Generally, all work on the Leased Premises shall be performed, and all buildings or other improvements on the Leased Premises shall be erected in accordance with all valid laws, ordinances, codes, regulations, and orders of all federal, state, county, city, or local governmental agencies or entities having jurisdiction over the Leased Premises. All work performed on the Leased Premises pursuant to this Lease, or authorized by this Lease, shall be done in a good workmanlike manner and only with new materials of good quality and high standard.

Section C.04 All Work to be Performed by Licensed Contractors. All work required in the construction of the improvements referred to in Section C.01 above, or any subsequent improvements, shall be performed only by competent contractors duly and currently licensed under the laws of the State of California and shall be performed pursuant to written contracts between Lessee and with those contractors.

Section C.05 Bonds - Faithful Performance and Labor and Materials. Prior to the commencement of any construction or alteration upon the Leased Premises, Lessee shall, at no expense to City, cause to be made, executed and delivered to City, bonds as follows:

- a. A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to 125 percent of the estimated cost of construction, guaranteeing the faithful performance and completion of such construction by the contractor, all in accordance with the plans and detailed specifications accepted and approved in advance by City. Said bond shall guarantee City against any losses and liability, damages and expenses (including attorneys' fees), claims and judgments caused by or resulting from any failure of Lessee or Lessee's contractors fully and faithfully to perform completely the work in question within the time period herein provided for completion.
- b. A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to 125 percent of the contract price payable under the contract guaranteeing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract. Said bond shall protect City from any liability (including attorneys' fees), loss or damage arising therefrom.
- c. A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to 15 percent of the other bonds payable under the contract guaranteeing the repairs, corrective work, deficiencies, and perform any omissions which become apparent during the period of one (1) year from and after the date of acceptance of the construction or alteration upon the Leased Premises.
- d. Whenever a corporate surety bond is required by City pursuant to this Section C.05, it shall be in a form and written by companies satisfactory to City.

Section C.06 Construction Timeline. Lessee shall submit the development application for the improvements and facilities set forth and referred to in Section C.01 of this Exhibit within six (6) months from the date of this Lease, and initiate and complete construction within two (2) years from the date of City's written approval of the land use entitlements.

Failure to meet any of these conditions shall be a material default of the terms and conditions of this Lease, except that failure to complete construction within 2 years of City's written approval of the land use entitlements shall not be a default if Lessee continues to pay the Fixed Annual Rent for the Premises specified for the applicable period, and if such construction is underway on such date and is diligently pursued to completion. In no event shall Lessee be required to pay the fixed Annual Rent amount for failure to complete construction within two (2) years where delays are caused by the City or a third party. The City may require Lessee to submit a work plan for approval to demonstrate such pursuit to completion. No provision of this section shall have the effect of extending the dates at which Fixed Annual Rent shall apply or be increased to the amount specified in Section 5.01 of this Lease.