



Reversion Deferral Fee (“RDF”) Program

General Terms & Conditions

Pursuant to the Bend Municipal Airport Rules & Regulations, Minimum Standards, and Leasing & Development Policy pertaining to Airport Ground Leases, the City of Bend has implemented the following policies and Terms & Conditions related to the Reversion Deferral Fee program as provided below:

1. Reversion Deferral Fee Program (“RDF Program”)

An eligible Tenant may defer reversion of their improvements by entering into the Reversion Deferral Fee Program as outlined below.

- **RDF Opt-In Fee:** Tenant shall pay a one-time, non-refundable \$500 Opt-In fee to apply for the RDF Program.
- **RDF Rates:** RDF rates shall be determined by the date of application submittal with closing dates provided on the Deferral Fee Rate Table (below). Applications submitted prior to or by the Application Date need to be deemed complete prior to New Lease Effective Date to qualify for the RDF rate at application submittal.
- **RDF Program Term Extension Years:** Up to 20 additional years are available, so long as Amended and Restated Ground Lease Term does not exceed 49 years.
- **Eligibility Requirements:** Tenant must be in compliance with all terms and conditions of the existing, Original Ground Lease, and the Original Ground Lease Term does not exceed 49 years.
- **Application Completeness:** The Real Estate Department will aim to review all applications within thirty (30) days of application submittal. Applications will be deemed incomplete if a Tenant provides insufficient or incorrect information. Tenant will have ten (10) business days to complete or correct the application information. Incomplete applications will not be accepted into the RDF program.
- **Amended and Restated Lease Agreement:** Tenant shall enter into, and agree to abide by all terms and conditions of the Amended and Restated Ground Lease, in substantially the form presented in Exhibit “A”.
- **Amended and Restated Ground Lease Term:** The Amended and Restated Ground Lease term will be established by adding up to 20 years to the remaining Original Ground Lease Term, so long as the total Amended and Restated Ground Lease Term does not exceed 49 years.
- **Lease Area Description:** Original Ground Lease exhibits, provided they are accurate, may be utilized to determine the Lease Area. If the Original Ground Lease exhibits are unclear or require revising to reflect updated use areas and policy, Staff will notify Tenant and Tenant will be required to provide an accurate legal description and map by a certified surveyor prior to deeming the application complete
- **Ground Lease Rent:** Tenant will continue to pay annual ground lease rent (“Rent”) for the ground lease area based on the number of square feet of land occupied. The rent rate is set forth in the City of Bend Fee Schedule.
- **Reversion Deferral Fee (“RDF”):** In addition to annual Rent payments, Tenant will pay a RDF fee based on the rate outlined in the Deferral Fee Rate Table below, multiplied by the total ground



lease area. The RDF fee will then be amortized over the life of the Amended and Restated Ground Lease Term into equal annual installments, commencing upon the Effective Date of the Amended and Restated Ground Lease and continuing through the entire term of the Amended and Restated Lease.

Deferral Fee Rate Table

| Application Date | New Lease Effective Date | Deferral Fee Rate |
|------------------|--------------------------|---------------------------|
| prior to 5/30/25 | 7/1/25 | \$0.50 (\$0.35 incentive) |
| prior to 5/30/26 | 7/1/26 | \$0.52 |
| prior to 5/30/27 | 7/1/27 | \$0.53 |
| prior to 5/30/28 | 7/1/28 | \$0.55 |
| prior to 5/30/29 | 7/1/29 | \$0.56 |
| prior to 5/30/30 | 7/1/30 | \$0.58 |
| prior to 5/30/31 | 7/1/31 | \$0.60 |

- **RDF Incentive:** Eligible Tenant RDF Program applications received prior to May 30, 2025 and deemed complete by the New Lease Effective Date will be offered a reduced RDF of \$0.35/s.f. of ground leased area/year.
 - Applications received after May 30, 2025 will be subject to the deferral fee rates provided in the Deferral Fee Rate Table.

2. Original Ground Lease Extension:

For any Original Ground Lease with an Original Ground Lease Term of less than 40 years (including any unilateral renewal options), a Tenant is eligible for an up to 5 year increase to the Original Ground Lease Term, so long as the total revised Original Ground Lease Term does not exceed 40 years. In order to qualify, the applicant must be in compliance with all existing Original Ground Lease terms and must complete a Reversion Deferral Program application.

Additional Information: Please visit the Tenant Information page of the Bend Municipal Airport Website at www.bendoregon.gov/airport for more information on the Rules & Regulations, Minimum Standards, and Leasing & Development Policy, as well as the RDF Program.

Exhibit A
Amended and Restated Ground Lease

AMENDED AND RESTATED GROUND LEASE AGREEMENT NO. _____

This Amended and Restated Ground Lease Agreement ("Agreement") is effective as of Click or tap here to enter text. between the City of Bend, an Oregon municipal corporation ("Lessor") and _____, an Oregon corporation ("Lessee").

Recitals

- A. Lessor owns and operates the Bend Municipal Airport (the "Airport").
- B. Lessee has an existing Ground Lease Agreement ("Existing Agreement") dated _____ with the Lessor for _____ Powell Butte Highway, Bend, Oregon 97701.
- C. Lessee has opted into the Reversion Deferral Fee Program ("Program").
- D. Pursuant to the terms and conditions of the Program, Lessor and Lessee are amending and restating the Existing Agreement to defer reversion of the improvements for [X] years in exchange for payment of a reversion deferral fee of [X].
- E. This term of the Agreement is [X] and based on (a) the remaining term of the Existing Agreement, plus any unilateral extension of options; plus (b) the additional term granted by the Reversion Deferral Fee Program.

Article 1. Description and Use of Premises

- 1.1 **Description.** Lessor leases to Lessee approximately _____ square feet of ground, as described on Exhibit A and shown on Exhibit B (the "Premises").
- 1.2 **Use of Premises.** Lessee's primary use of the Premises will be for aeronautical purposes consistent with Federal Aviation Administration ("FAA") rules and regulations, and Lessor's Rules and Regulations, Minimum Standards, and Leasing and Development Policy ("Airport Policy"), which is by this reference incorporated and made part of this Agreement, and as may be amended from time to time at the sole discretion of Lessor.
 - 1.2.1 Non-aeronautical Use of the Premises. Consistent with FAA Policy on the Non-aeronautical Use of Airport Hangars as amended, aircraft hangar(s) constructed on the Premises may be used for storage of non-aeronautical items, unless the items: (i) impede the movement of the aircraft in and out of the hangar(s); (ii)

displace the aeronautical contents of the hangar(s); (iii) impede access to aircraft or other aeronautical contents of the hangar(s); (iv) are used for the conduct of non-aeronautical business (including storage of inventory); or (v) are stored in violation of airport rules and regulations, building codes, local ordinances, or the provisions of this Agreement. The hangar(s) may not be used as a residence.

- 1.2.2 **No Unauthorized Use of the Premises.** Lessee may use the Premises, Airport and Common Areas only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized and illegal use of the same. Unauthorized uses include, but are not limited to, damaging, interfering with, or altering any improvements, restricting access to any of the Common Areas, placing or storing waste materials on the Premises or Airport or disposing of such materials in violation of any laws and regulations, any commercial activity unrelated to the permitted uses set forth in Article 1.2 and 1.2.1, driving a motor vehicle in areas prohibited within the Airport, the use of parking areas in a manner not authorized by the Lessor, storing of fuel in excess of Fire Code regulation, and any use that would interfere with any Airport operation or safety at the Airport.
- 1.2.3 **Restrictions on Use.** Except as necessary and incidental to the permitted use of the Premises, the use, storage, disposal, transportation, or discharge of Hazardous Substances may not be used, handled, generated, stored, transported or discharged on, from or to the Premises. The Premises, Common Areas and/or Airport may not be used as a hazardous waste treatment, storage, or disposal facility.
- 1.2.4 **Signage and Advertising.** Lessor is not authorized to install or operate any signage outside of enclosed structures on the Premises or at the Airport, other than a hangar number, except with the prior written approval of Lessor which may be withheld at Lessor's sole discretion. Any approved signage shall be at Lessee's sole expense and shall comply with Laws and Regulations including, but not limited to, Deschutes County's ordinance and permit requirements.

1.3 Appurtenant Rights. Lessee shall, during the term of this Agreement and any renewal, have the appurtenant rights specified in Article 1.3.1 of this Agreement and no other appurtenant rights. This Agreement does not limit the power and right of Lessor to exercise its governmental powers, including such as may affect the Airport, the Premises, the Common Areas or any other area under the ownership of jurisdiction of Lessor.

- 1.3.1 Lessee and its invitees shall have the right to use, in common with others: (i) all public Airport facilities and improvements ("Airport Public Facilities") and (ii) public roads, ways and areas necessary for access to and from the Premises (collectively the "Common Areas"). Nothing shall be left or stored in the Common Areas by Lessee or its invitees, without the prior written consent from Lessor.

1.3.2 In addition to any other right granted by law, Lessor and/or Lessor's designee reserve the following specific exclusive rights, but not limited to, with respect to the Common Areas (the "Common Areas"):

- 1.3.2.1 To establish and amend rules and regulations for the use of the Common Areas;
- 1.3.2.2 To use or permit the use of the Common Areas by others;
- 1.3.2.3 To close all or any portion of the Common Areas;
- 1.3.2.4 To erect, improve and/or remove any improvements in the Common Areas and/or to change the layout of such Common Areas including the right to add to or subtract from their shape and size or to change their location.
- 1.3.2.5 The right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any building or other structures on the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 1.3.2.6 The right to develop or improve the landing areas and other portions of the Airport as it sees fit, without interference or hindrance on the part of Lessee.
- 1.3.2.7 The sole right to determine the level, methods and schedules of any maintenance or improvements at the Airport; and shall have the right to close the Airport whenever Lessor deems it necessary for reasons of public safety, construction or convenience.

1.4 No Limitation of Lessor's Authority. Nothing stated herein shall be construed as to limit in any way the general power and right of Lessor to exercise its governmental or proprietary powers in any way, including such as may affect the Airport, the Premises, the Common Areas, or any other area under the jurisdiction of Lessor.

1.5 Lessor's Authority: Lessor may exercise its powers as a government or as operator of the Airport to take action as needed to protect the public's safety and public interest at the airport. Those powers include the right to close the Airport or any portion of it, or close access to the leased area, as necessary to protect against or mitigate natural or human-caused disasters or to develop the Airport.

1.6 Access to Premises. To the extent necessary to protect the rights and interest of the Lessor, the Lessor or its designees shall at any and all times have the rights to inspect the Premises for, but not limited to, all improvements erected thereon, existing use, and compliance with the terms of this Agreement.

Article 2. Terms and Renewal

2.1 Term. The term of this Agreement is for a period of _____ years effective _____, 20____, and shall terminate on _____, 20____, unless terminated sooner as permitted by this Agreement ("Term").

Article 3. Rent and Rental Adjustments

3.1 Rent and Reversion Deferral Fee. Lessee shall pay to Lessor an Annual Lease Amount ("Rent") of \$_____, as set forth below, subject to annual adjustments as provided in Section 3.2.

Annual Lease Amount is calculated based on appraised rental rate of \$_____
x the total gross square footage of the leased space as described under Section 1.1
of this Agreement.

Lessee shall also pay to Lessor an annual Reversion Deferral Fee of \$_____
per square foot of ground leased area per year, as set forth below.

| Hangar | Sq. Ft. | Rate | Annual Amount |
|--------------|---------|------|---------------|
| Ground | | | |
| Deferral Fee | | | |
| | | | |

3.2 Annual Rent Adjustment.

3.2.1 The Rent in Section 3.1 shall be subject to an annual rent adjustment of 3% on the anniversary date of this Agreement, except for calendar years ending in a zero (0) or in a five (5). In addition, the Rent shall be subject to a rent adjustment based on the Uniform Rental Structure in accordance with Section 3.2.2.

3.2.2 The Rent shall be reestablished on July 1 of every calendar year ending in a zero (0) or in a five (5) in accordance with the Lessor's Uniform Rental Structure. The new rate structure shall be determined based on an appraisal value in accordance with USPAP and the Code of Ethics and Certification Standards of the Appraisal Institute at the sole expense of the Lessor.

3.3 Time and Place of Payments/Other Annual Obligations.

3.3.1. Upon execution of this Agreement and annually by the anniversary date, the Lessee shall provide Lessor with a copy of the certificate of insurance and endorsement in accordance with Article 6.

3.3.2. Upon execution of this Agreement and annually by the anniversary date, Lessee shall pay to Lessor the Rent. Rent shall be delinquent if not paid within ten (10) days of the anniversary date. Payment of rent, and any Additional Rent, shall be made without offset, abatement or deduction to Lessor to the following address or such other place as Lessor may designate:

City of Bend
Attn: Accounts Receivable
PO Box 1458
Bend OR 97709

3.3.3 All amounts not paid by Lessee when due shall bear a late fee at the rate of \$_____ for any rent paid more than ten (10) days past the due date.

3.4 Definition of Additional Rent. All sums, other than Rent, including the Reversion Deferral Fee, which become payable by Lessee to Lessor pursuant to the terms of this Agreement shall be considered "Additional Rent" due under this Agreement.

3.5 Acceptance of Late Rent. Lessor shall be entitled, at its sole and complete discretion, to either accept or reject a tender of payment of Rent which is not paid when due. In the event Lessor elects to accept a tender of payment of Rent after its due date, acceptance of late rent by Lessor is not a waiver of any other right including the right to timely future payments from Lessee.

3.6 Airport User Charges. Lessee shall be responsible for all user charges imposed by the Lessor applicable to Lessee.

Article 4. Lessee's Obligations

4.1 Tenant Improvements.

4.1.1 Lessee shall construct, at Lessee's sole expense, the following improvements ("Improvements"):

4.1.1.1 A hangar building with exterior dimensions of approximately ____' by ____', with appropriate setbacks, as depicted on the site plans attached as **Exhibit B** (the "Hangar"); and

4.1.1.2 Landscaping to include grass, shrubs and trees, and necessary irrigation improvements; and

4.1.1.3 Fire hydrants or other fire suppression improvements if required; and

4.1.1.4 On-site parking improvements as required and depicted on Exhibit B; and

4.1.1.5 All improvements shall be built in compliance with the Airport Policy, and City, County, and/or FAA standards and specifications. Construction and installation of these improvements shall be completed no later than one (1) year after the Effective Date of this Lease.

4.1.2 Approvals. Lessee shall give Lessor written notice, and obtain Lessor's written consent, prior to the commencement of construction of any improvements to the leased space. All Improvements shall be done at the Lessee's sole expense, unless otherwise agreed upon by both parties. Improvements must comply with the City of Bend Airport Development Standards and other applicable rules, unless otherwise agreed to by Lessor. Lessor agrees to cooperate and assist Lessee as reasonably necessary to obtain land use and governmental approvals necessary to complete the Improvements. Lessor's approval shall not be unreasonably withheld.

4.1.3 Permitting. Lessee shall obtain all necessary federal, state, and local permits and approvals, including from the FAA, before commencing construction of any improvements on the Premises. Lessor agrees to reasonably cooperate with Lessee in obtaining such permits and approvals.

4.1.4 Compliance. All improvements shall be built in compliance with FAA specifications, adopted Airport Layout Plan, County, State building and zoning requirements and Lessor's standards that may be adopted by the City in the future, including specifications for utility infrastructure. Lessee shall not commence construction of a hangar or other authorized tenant improvements without an FAA determination pursuant to FAA Form 7460-1 that is acceptable to FAA and Lessor.

4.1.5 Maintenance. During the term of this Agreement, as extended, all maintenance, repair, or replacement of any and all improvements constructed by Lessee shall be the sole responsibility of the Lessee.

4.1.6 Authorization. Lessee shall submit plans, a schedule, and a budget to Lessor when making any request to build any tenant improvements. Lessor may request any information, request modifications, consent to, or deny Lessee's request at Lessor's sole discretion. For any authorized project, Lessee shall provide Lessor with copies of project documents, matters contained therein shall be subject to Lessor's consent. Lessee shall make no changes to the work without Lessor's prior written consent.

4.1.7 Required Construction Standards and Permits. All work shall be performed in a good and workmanlike manner, and shall be equal to or greater than the quality of the original materials, workmanship, and appearance of similar work performed by Lessee, or by Lessor elsewhere at the Airport. Work shall be performed by qualified and properly licensed personnel. Work shall be performed in a safe manner, and Lessor shall have the right, but not the duty, to stop any work until safety conditions can be investigated and implemented. The work site shall be

secured consistent with industry standards at airports during the performance of the work.

- 4.1.8 **Coordination.** Lessee shall coordinate all work with Airport activities, and shall minimize any disruption to Airport activities, other lessees, and Airport users. Lessor shall have the right, but not the duty, to direct that Lessee and Lessee's associates cease activities or revise work plan to avoid disruption. Lessee and Lessee's associates shall meet with Lessor as requested by Lessor as the work progresses and provide Lessor with information as Lessor may require Lessee to comply with other measures that are in Lessor's interest in connection with any construction activities.
- 4.1.9 **Bonds.** Lessee shall provide or shall require such associates to provide construction payment and performance bonds in amounts covering not less than one hundred percent (100%) of the contract price of such tenant improvements and in a form acceptable to Lessor prior to commencing construction on the Improvements. All such bonds shall name the Lessor as a co-obligee.
- 4.1.10 **Free of Liens.** Lessee shall submit a statement that the Premises and Lessee's tenant improvements are free and clear of all liens, claims or encumbrances.

- 4.2 **Registration of Airplanes and Commercial Pilots.** Any aircraft owned or operated by Lessee shall be registered with the State of Oregon in compliance with ORS 493.030. Lessee shall provide Lessor with a copy of the registration of the aircraft(s) upon execution of this Agreement and shall notify Lessor of any changes to the listing of tail numbers of airplanes stored on the Premises, whether or not operated by Lessee within sixty (60) days of a change.

4.3 Condition and Maintenance of Premises.

- 4.3.1 Lessee accepts the Premises in its present condition and future maintenance thereon, without expense to the Lessor.
- 4.3.2 Lessee shall, at its sole expense, maintain the Premises and all equipment in good and operable condition acceptable to Lessor, and promptly make all repairs and replacements, whether structural or non-structural, necessary to keep the Premises safe and in good condition consistent with good business practices, and in a manner to preserve and protect the general appearance and value of other premises in the immediate area. This shall include, but not be limited to the roof, exterior paint, all doors, paved areas, lighting, grass, and landscaped areas within the leased lines.
- 4.3.3 Lessee shall provide proper containers for trash and garbage and shall keep them stowed away within the Premises. Lessee shall keep the Premises free and clear of rubbish, debris, and litter, and at all times will keep the hangar, apron and

setback areas in good condition consistent with good business practices and in a manner to preserve and protect the general appearance and value of the other premises in the area.

4.4 Compliance with Laws. Lessee's use of the Premises and Airport shall comply with all applicable laws, rules and regulations.

4.5 Utilities. Lessee shall pay all charges for water, sewer, natural gas, electricity, telephone, and all other charges for utilities furnished to the Premises.

4.5.1 Lessee shall, at its own expense, provide its own connections and usage for telephone, data and all other charges for connection and usage of utilities.

4.6 Taxes and Liens.

4.6.1 Lessee understands that Lessor is exempt from paying property taxes. However, Lessee shall pay before their respective due dates all taxes, fees, assessments, and levies that relate to Lessee's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto including, but not limited to, utility charges and work for any improvements.

4.6.2 Within thirty (30) days, Lessee shall remove any such lien that may be created or commence a protest of such lien by depositing with Lessor cash or other security acceptable to Lessor in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Lessee shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against the Lessor's real property or any interest therein. Lessee shall not permit any liens to be placed against the Premises on account of labor performed or material furnished, and in the event such a lien is placed against the Premises, Lessee agrees to hold the Lessor harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

4.7 Licenses and Permits. Lessee shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Lessee's use, occupancy, or operations at the Premises or the Airport. In the event that Lessee receives notice from any governmental entity that Lessee lacks, or is in violation of, any such permit or license, Lessee shall provide Lessor with timely written notice of the same.

4.8 Safety and Security

4.8.1 Safety

- 4.8.1.1 Lessee shall conduct its activities and duties under this Agreement in a safe manner. Lessee, its contractors, agents and invitees shall comply with all safety standards imposed by applicable federal, state and local laws and regulations.
- 4.8.1.2 Lessee shall exercise reasonable care and caution to prevent and control fire on the Premises. Lessee shall provide and maintain all applicable fire protection equipment inspected as required by applicable governmental laws, rules and regulation.
- 4.8.1.3 Lessee shall conduct business within FAA and Airport Policy operating standards and in a manner courteous to neighboring lessees, taxilanes and Common Areas.

4.8.2 Security

- 4.8.2.1 Lessee shall be responsible for complying with, at Lessee's sole cost and expense, all security measures that Lessor, the FAA or any other governmental entity having jurisdiction may require in connection with the security at the Airport.

4.9 Hazardous Substances.

- 4.9.1 "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, or contaminants that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged or disposed of. "Hazardous Substances" shall include, but not be limited to, any and all substances, materials, wastes, pollutants, or contaminants, defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum or petroleum products, including crude oil or any fraction thereof, and urea formaldehyde. As used herein, "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as may be amended from time-to-time, governing Hazardous Substances or relating to the protection of human health or the environment including, but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901, *et seq.*); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, *et seq.*); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257, *et seq.*); the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*); Superfund Amendment and Reauthorization Act of 1986 (SAREA) (P.L. 99-499, October 17, 1986); the Safe Drinking Water Act (42 U.S.C. §300, *et seq.*); the Solid Waste Disposal Act (42 U.S.C. §3251, *et seq.*); the Clean Water Act (33 U.S.C. §1251, *et*

seq.); the Clean Air Act (42 U.S.C. §7401, *et seq.*); the Formal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §12, *et seq.*); the Oregon Revised Statutes relating to community information on: hazardous waste reduction (ORS 465.003, *et seq.*); toxic use reduction and hazardous waste reduction (ORS 465.003, *et seq.*); treatment, storage and disposal of hazardous waste and PCBs (ORS 466.005, *et seq.*); underground storage tanks (ORS 466.706, *et seq.*); penalties for noncompliance (ORS 468B.300, *et seq.*); ground water (ORS 466.706, *et seq.*); oil or hazardous material spillage (ORS 468.875, *et seq.*); asbestos abatement projects (ORS 468A.700, *et seq.*); water pollution control (ORS 468.691, *et seq.*); oil spills (ORS 468.780, *et seq.*); asbestos abatement (ORS 468.875, *et seq.*); any similar or equivalent laws; and any implementing laws, regulations, rules and ordinances.

4.9.2 Lessee shall keep the Premises free from any Hazardous Substances, except that aircraft may be fueled and aircraft serviced with fuel, lubricants, and hydraulic fluids in minor quantities in accordance with all applicable laws. The Premises shall not be used in a manner that would cause any portion of the Premises to be deemed a hazardous waste treatment, storage, or disposal facility.

4.9.3 Lessee agrees that the storage of gasoline or other flammable fluids in bulk quantities shall be properly stored and labeled "Flammable", approved by or in a manner acceptable to the Fire Marshall. The Fire Marshall may, at his/her discretion, prohibit or impose restrictions on the storage of said materials if hazardous chemicals or fluids on the Premises are prohibited. The Lessee further agrees not to transport, or cause to be transported, onto Premises, gasoline or other flammable fluids for the purpose of self-fueling aircraft without paying to Lessor a fuel flowage fee. The Lessee further agrees that fueling of aircraft on Premises shall be done only at airport approved fueling locations.

4.9.4 No Violation of Environmental Laws. Lessee shall not cause or permit any Hazardous Substances to be used, produced, stored, transported, brought upon, or released on, under, or about the Premises or the Airport by Lessee or Lessee's associates in violation of applicable Environmental Laws. Lessee is responsible for any such violation.

4.9.5 Response to Violations. Lessee agrees that in the event of a leak, spill, release or threat of release of any Hazardous Substance by Lessee or Lessee's associates at the Airport, Lessee shall provide Lessor with prompt notice of the same. Lessee shall respond to any such release or threat of release in accordance with applicable laws and regulations. If Lessor has reasonable cause to believe that any such release or threat of release has occurred, Lessor may request, in writing, that Lessee conduct reasonable testing and analysis using qualified independent experts acceptable to Lessor to show that Lessee is complying with applicable Environmental Laws. Lessor may conduct the same at Lessee's expense if Lessee fails to respond in a reasonable manner.

Lessee shall cease any or all of Lessee's activities as Lessor determines necessary at its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Lessee or Lessee's associates violate any Environmental Laws at the Airport whether due to the release of a Hazardous Substance or otherwise, Lessee, at Lessee's expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to Lessor a written remediation plan, and Lessor reserves the right to approve such plan, which approval shall not be unreasonably withheld, and to review and inspect all work; (iii) work with Lessor and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide to Lessor copies of all documents pertaining to any environmental concern that are not subject to Lessee's attorney client privilege.

4.9.6 **Obligations Affecting Permits.** To the extent the Lessee is a co-permittee with Lessor in connection with any permit relating to the environment at the Airport, or to the extent that any of the Lessee's operations in connection with this Agreement or otherwise may impact Lessor's compliance with any such permit, Lessee shall work cooperatively with Lessor and other lessees and take all actions necessary to ensure permit compliance, and minimize the cost of such compliance, for the benefit of Airport operations.

4.9.7 **Obligation upon Termination and Authorized Transfers.** Upon any expiration or termination of this Agreement, this obligation shall survive any such expiration or termination, and upon any change in possession of the Premises authorized by Lessor, Lessee shall demonstrate to Lessor reasonable satisfaction that Lessee shall remove any Hazardous Substances and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing to the extent that facts and circumstances warrant analysis and testing, such as evidence of part violations or specific uses of the premises. The obligations of this section shall survive any termination of this Agreement.

4.9.8 Promptly upon written notice from Lessor or from any governmental entity with jurisdiction, Lessee shall remove from the Premises at its own cost and expense, all Hazardous Substances for which Lessee is liable under the terms of this Lease and shall restore the Premises to clean, safe, good and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against Lessor shall be paid by Lessee promptly after Lessor incurs the obligation to pay such amounts or determines that an assessment is owed and so notifies Lessee. As used in this paragraph, "Premises" shall be deemed to include the soil and water table below the Premises.

4.10 Environmental Inspection.

4.10.1 Lessee understands and accepts the environmental conditions of the Premises prior to entering into this Agreement.

4.10.2 Lessor reserves the right and Lessee agrees to have the Premises inspected by Lessor at any time with or without notice to Lessee for, but not limited to, hazardous and illegal substances. If Lessor has reason to believe that Lessee is managing hazardous and/or illegal substances on the Premises or any other property within the Airport, Lessor may require Lessee to furnish to Lessor, at Lessee's sole expense, an environmental audit or an environmental assessment with respect to the matters of concern to Lessor. Lessor shall have the right to approve the company or individual conducting the audit and shall be given an original copy of the results. If the audit or assessment results demonstrate that Lessee was in compliance with regulatory standards for the management of hazardous substances and that there is not any contamination, Lessor shall reimburse Lessee for one-half of the amount Lessee paid for the audit or assessment. Lessor shall have the right to request and receive information with respect to use of the Hazardous Substances on the Premises in writing from any sublessees and other occupants of the Premises. Lessee shall cooperate with those requests.

4.11 **Removal of Disabled or Abandoned Aircraft.** When consistent with Airport Policy, Lessee shall promptly remove or cause to be removed from any portion of the Airport not leased by Lessee the aircraft or any other aircraft that Lessee owns or controls if it becomes disabled. Lessee may store such aircraft within Lessee's hangar, or elsewhere within the Airport with Lessor's prior written approval and on terms and conditions established by Lessor. If Lessee fails to comply with this requirement after a written request by Lessor to comply, Lessor may cause the removal of any aircraft at Lessee's sole expense by any means that Lessor determines at its sole discretion to be in Lessor's best interest. Lessee may not store any aircraft off the Premises on any other location on the Airport for more than twenty-four (24) hours without prior written approval from the Airport Manager. Unauthorized storage of aircraft onto unleased Airport property may result in fees and charges as set by the Airport Manager. Airport Manager is authorized to move or cause to be moved, at Lessee's sole expense, any aircraft abandoned on unleased Airport property.

Article 5. Lessor Obligations and Warranties

5.1 **Lessor's Warranties.** Lessor warrants that it is the owner of the Premises and has the right to lease the Premises. Subject to Lessee complying with the terms and conditions hereof, the Lessor will defend Lessee's right to quiet enjoyment of the Premises. To Lessor's knowledge, there are no liens, encumbrances, or adverse claims against the Premises, and has made available any information that Lessor is aware of regarding Hazardous Substances or environmental conditions, or material non-compliance with any laws or regulations, on the Premises. Lessor

will keep the Airport Public Facilities and Common Areas in good repair and order, ordinary wear and tear excepted, and in material compliance with all state, local, and federal laws and regulations, including the standards or Grant Assurances of the FAA or any successor agency.

- 5.1.1 Lessor agrees that upon paying the rent and performing the covenants and condition herein contained, Lessee shall peacefully and quietly have, hold, and enjoy the leased Premises for the term of this Agreement. Lessee agrees that temporary inconveniences, such as noise, disturbances, traffic, detours and temporary inaccessibility caused by or associated with the construction, maintenance and/or improvements of Airport or Airport events shall not constitute a breach of quiet enjoyment of the leased Premises.
- 5.1.2 Lessor represents and warrants that: (a) Lessor has full power and authority to sign and deliver this Lease and to perform all Lessor's obligations under this Lease; (b) this Lease is the legal, valid, and binding obligation of Lessor, enforceable against Lessor in accordance with its terms; and (c) the person executing this Lease on behalf of Lessor has the legal power, right, and actual authority to bind Lessor to the terms and conditions of this Lease.

5.2 Lessor's Maintenance Responsibility. Lessee understands and agrees that Lessor is not responsible for the maintenance, repairs and alterations of the Premises. Lessee further understands and agrees to be fully responsible for all maintenance, repairs and alterations associated with the Premises.

5.3 Condition of Premises. Lessor makes no warranties or representations regarding the Premises, including, without limitation, the suitability of the Premises for Lessee's intended purpose, whether or not known to Lessee, or the condition or zoning of the Premises. Lessee has inspected and accepts the Premises in their current condition "as is" and Lessor shall have no liability to Lessee for any damage or injury caused by the condition of the Premises.

Article 6. Liability, Indemnity, Insurance, and Damage and Destruction

6.1 Indemnification. Lessee shall indemnify, hold harmless and defend Lessor from any claim, loss or liability and against all costs arising out of or related to any activity of Lessee on the Premises, except to the extent that the claim, loss, liability or cost is the result of Lessor's negligence or other wrongful act or omission.

- 6.1.1 As used in Section 6.1 of this Agreement, "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to Lessor of any injunctive relief, including preliminary or temporary injunctive relief, applicable to Lessor or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances (refer to definition in Article 4.10), including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of

reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws (refer to definition in Article 4.10); (v) any and all expenses or obligations incurred at, before, and after any trial or appeal or any administrative proceeding or appeal whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating or administering agency.

6.1.2 "Lessee" and "Lessor" shall be interpreted to mean such party and such party's employees, agents, representatives, invitees, or anyone authorized to act on such party's behalf.

6.2 Lessee to Defend Lessor. Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Article 6.1 of this Agreement, which may be brought against Lessor or in which Lessor may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against Lessor in any such action or proceeding, to the extent Lessee is found or determined to be liable under the terms of this Agreement.

6.3 Non-liability of Lessor. Lessor shall not be liable for any injury or damage to any property or to any person happening on, in, or about the Premises, or structures or improvements on the Premises except to the extent that the claim, loss, liability or cost is the result of Lessor's negligence or other wrongful act or omission. This non-liability of Lessor shall include, but not be limited to, injury or damage to any property or persons which may be caused by the acts or omissions of other Airport lessees of Lessor, or other members of the public in use of the Airport.

6.4 Insurance.

6.4.1 Lessee shall procure and maintain in force and effect during the term of this Agreement the following insurance coverage and provide the Lessor a copy of the policy upon execution of the Agreement. Insurance policy is subject to review and acceptance by Lessor. All insurance shall apply on a primary, non-contributory basis and remain in effect for the duration of the contract terms. Any policy written on a claims made basis may only be done so with the written approval and authorization by Lessor. Lessee shall keep all of Lessee's property, including but not limited to structures and improvements installed by Lessee on the Premises continuously insured with an insurer with a Best's rating of "A" or better authorized to do business in the State of Oregon. The policy(ies) shall be written on a special form and shall be on a replacement cost basis to the full insurable value of the Lessee's property on the Premises. Lessee shall name the Lessor as an additional insured.

6.4.1.1 Commercial General Liability Airport Premises and Aircraft Insurance with equal or greater to the Lessor's potential liability of \$2,000,000 under the Oregon Tort Claims Act. This amount is subject to change every year in accordance with the Oregon Tort Claims Act. The policy(ies) shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, and contractual damages. Lessee shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct of Lessee, their contractor, subcontractors, and their officials, agents and employees in performance of this contract, even if not covered by, or in excess of insurance limits.

6.4.1.2 Commercial Automobile (Fleet) Liability Insurance with minimum combined single limit of \$2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability.

6.4.1.3 All Liability coverage shall name, by certificate and endorsement, the Lessor, its officers, agents, employees and volunteers as additional insured with respect of Lessee's occupancy provided under this Agreement.

6.4.1.4 Property. All risk property insurance coverage in an amount equal to the replacement cost without deduction for depreciation of the improvements constructed on the Premises. Lessee may purchase insurance for Lessee's personal property as Lessee may determine.

6.4.1.5 Aircraft. Lessee is responsible for any damage or loss to the Aircraft. Lessee shall obtain insurance coverage for the Aircraft as Lessee may determine.

6.4.1.6 Workers' Compensation Insurance as required by ORS chapter 656 and meeting the minimum requirements therein. Lessee shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the state of Oregon Workers' Compensation Division before performing work.

6.4.1.7 Lessee shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum thirty (30) day written notice to the Lessor. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

6.4.2 Subrogation. Lessee grants Waiver of Subrogation to Lessor, its officers, agents, employees and volunteers for any claims arising out of Lessee's occupancy or operation. Further, Lessee agrees that in the event of loss due to any of the risks

for which it has agreed to provide insurance, recovery by the Lessee shall be solely with Lessee's insurance carrier. Lessee also grants to Lessor on behalf of any insurer providing coverage to either Lessee or Lessor with respect to the occupancy of Lessee a waiver of any right to subrogation which any insurer or Lessee may acquire against Lessor by virtue of the payment of any loss under such insurance coverage.

6.5 Damage and Destruction.

- 6.5.1 In the event of a casualty or uninsured casualty this Agreement shall continue in full force and effect and Lessee shall forthwith undertake to make such repairs to reconstitute the Premises to as near the condition as existed prior to the casualty as practicable. Partial destruction shall in no way annul or void this Agreement and Lessor shall continue to receive full rent and complete restoration of the Premises.
- 6.5.2 In addition to Lessee's indemnification obligation set forth in this Agreement, Lessee, at Lessee's sole cost and expense, shall repair or replace to Lessor's reasonable satisfaction any damaged property that belongs to Lessor or Lessor's other lessees to the extent other damage arises from or relates to an act or omission of Lessee or Lessee's associates, guests, etc. Lessee shall promptly notify Lessor of any such property damage. If Lessee discovers any other potential claims or losses that may affect Lessor, Lessee shall promptly notify Lessor of the same.

6.6 Fire and Other Casualty Protection. Protection against loss by fire or other casualty to the contents of the Premises shall not at any time be an obligation of Lessor.

Article 7. Default.

7.1 Default.

- 7.1.1 Lessee's Default. The occurrence of any of the following events shall constitute a default by Lessee under this Agreement unless cured within thirty (30) days following written notice of such violation from Lessor: (i) Lessee fails to timely pay any installments of rent or any additional rent; (ii) Lessee violates any requirement under this Agreement including, but not limited to, abandonment of the Premises for a period of more than 30 days; (iii) Lessee assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises except as expressly permitted in this Agreement; (iv) Lessee files a petition in bankruptcy or has a petition filed against Lessee in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Lessee petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Lessee defaults on construction of any improvements that are required to be constructed under this Agreement.

7.1.2 **Remedies.** Upon any default by Lessee under this Agreement, Lessor may, at any time, pursue any or all remedies available to Lessor including, but not limited to, the following: (i) perform in Lessee's stead any obligation that Lessee has failed to perform, and Lessee shall promptly pay to Lessor all costs incurred by Lessor for such performance, together with interest and service fees for any past due amount and an administrative charge equal to ten percent (10%) of the cost incurred by Lessor which the parties agree is a reasonable estimate of any liquidated damages for Lessor's overhead expenses associated with such performance; (ii) terminate Lessee's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means with or without terminating this Agreement. Lessee shall pay all costs and damages arising out of Lessee's default including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises. Notwithstanding any termination or re-entry, Lessee shall remain liable to pay the rent and additional rent required under this Agreement for the remaining term of this Agreement, and Lessee shall pay Lessor on demand for any deficiency in the same. No action by Lessor shall be construed as an election by Lessor to terminate this Agreement or accept any surrender of the Premises unless Lessor provides Lessee with a written notice expressly stating that Lessor has terminated this Agreement or accepted a surrender of the Premises. All Lessor's rights and remedies are nonexclusive.

7.2 Grant Assurance. Notwithstanding Section 7.1, violation by Lessee of the FAA Grant Assurances will be grounds for termination of this Agreement. In the event of an alleged violation of FAA Grant Assurances by Lessee:

- 7.2.1 Lessee will have thirty (30) days to respond to any such allegations; and
- 7.2.2 If a violation is determined to have occurred, Lessee will have an additional thirty (30) days to remedy a violation to the satisfaction of the Lessor and the FAA, which shall not be unreasonably conditioned, withheld or delayed by Lessor.
- 7.2.3 Failure to remedy the violation to the satisfaction of Lessor or the FAA within such 30 day period as described in Section 7.2.2, or within another period agreed to in writing between Lessor and Lessee, shall result in immediate termination of the Agreement without compensation to Lessee.

Article 8. Expiration or Termination

8.1 Ownership of Structures and Improvements. The structures and improvements on the Premises shall remain the property of Lessee until the expiration or termination of this Agreement. Upon expiration or termination of this Agreement, Lessor may require Lessee to either: (i) remove all Lessee improvements and fixtures within ninety (90) days after termination at Lessee's sole expense; or (ii) leave the Lessee improvements on the Premises at no cost to Lessor, subject to Lessor's prior consent. If Lessor directs Lessee to remove the structures, then Lessee shall, in addition to removing the structures, perform

whatever repairs or restoration that are necessary to leave the Premises in good condition satisfactory to Lessor. If Lessor requires Lessee to leave the structures, then the structures and improvements shall become the property of Lessor.

8.1.1 For structures or improvements leased for commercial or Specialized Aviation Service Operations (“SASO”) purposes, the Lessee will be given two options: (i) terminate the Agreement and transfer ownership to the Lessor of any and all improvements and enter into a new lease agreement (if desired) based upon the value of the Premises with improvements; or (ii) enter into a new lease agreement with the Lessor based upon the unimproved value of the Premises at the time of expiration or termination, plus additional rent based upon a to-be negotiated gross revenue share that is designed to fairly compensate the Lessor for the value of improvements over the new lease agreement term.

8.2 Surrender of Premises. If Lessee chooses to not remove all Lessee improvements as described in Section 8.1(i), then upon any expiration or termination of this Agreement, Lessee, at Lessee's sole cost, shall: (i) promptly and peaceably surrender to Lessor the Premises “broom clean,” free of debris, and in good order and condition; (ii) repair in a good and workmanlike manner any damage to the premises or the Airport other than normal wear and tear during the term of the lease that may arise from or relates to Lessee's use, occupancy, or operations under this Agreement; (iii) deliver to Lessor all keys and access credentials relating to the Airport; (iv) perform Lessee's environmental obligations as provided in Article 4.10 of this Agreement; and (v) remove all movable personal property and trade fixtures including signage that are not owned by Lessor, except that Lessee must obtain Lessor's prior written consent to remove any such property if Lessee is in default under this Agreement or if such removal may impair the structure of any building.

8.2.1 Upon any expiration or termination of this Agreement which includes, but is not limited to, termination for abandonment of the Premises, all personal property that Lessee leaves on the Premises shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Lessor without notice to, and without any obligation to account to, Lessee or any other person. Lessee shall pay to Lessor all expenses incurred in connection with the disposition of such property in excess of any amount received by Lessor from such disposition. Lessee shall not be released from Lessee's obligation under this Agreement in connection with surrender of the Premises until Lessor has inspected the Premises and delivered to Lessee a written acceptance of such surrender.

8.3 Holding Over. If Lessee shall hold over after the expiration or termination of this Agreement, and shall not have agreed in writing with Lessor upon the terms and provisions of a new Agreement prior to the expiration, at Lessor's discretion, Lessee shall be deemed a month-to-month holdover Lessee or a Lessee at sufferance. In the event Lessor deems Lessee as a month-to-month holdover Lessee, Lessee shall remain bound by all terms, covenants, and agreements

hereof, except that: (i) the tenancy shall be one from month-to-month subject to all payment of all rent in advance, the monthly rent being one two hundred percent (200%) of the rent paid in the last month of the term; (ii) Lessor shall have the right to adjust the rental payments, charges or use fees upon thirty (30) days' written notice to Lessee; and (iii) such month-to-month tenancy may be terminated at any time by written notice from Lessor to Lessee. In the event Lessor deems Lessee as a Lessee at sufferance, Lessor shall be entitled to exercise any rights pursuant thereto. In the event of holdover beyond June 30 of any year, Lessee shall be responsible for payment of property taxes respecting the Premises for the entire subsequent tax year without prorating.

8.4 Termination. Upon termination of the Agreement, the Lessee's Agreements with sublessees shall immediately terminate. In such event, the Lessee consents to and permits the Lessor to contact the Lessee's sublessees for the purpose of the Lessor entering into agreements with sublessees and collect rental payments from the sublessees prior to the execution of Agreement and thereafter.

Article 9. General Provisions

9.1 Assignment, Encumbrance and Subletting. Lessee shall not assign, transfer, sublet, pledge, surrender or otherwise encumber, convey or dispose of this Agreement or any interest in any portion of the same by operation of law or otherwise (collectively "Transfer"), or permit any other person or persons, entity, company or corporation to occupy all or any portion of the Premises, without the prior written consent of the Lessor in each instance. Any such attempt at Transfer shall be void and shall be a default by Lessee under this Agreement. Any Transfer or cumulative transfer over the term of this Agreement of majority of the voting stock of Lessee, including any change in the shares of voting stock outstanding and issued, except in proportion to current ownership percentages, shall be deemed a transfer requiring the Lessor's prior consent.

9.1.1 Assignment by Lessee. Lessee shall not assign any of its rights under this Agreement including, but not limited to, rights in any improvements whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner, and shall not delegate any performance under this Agreement, except with the prior written consent of Lessor to any of the same. Lessor shall not unreasonably withhold such consent, and as a condition of obtaining such consent, the transferee receiving any such right may be required to execute a new lease agreement provided by Lessor. Regardless of Lessor's consent, Lessee shall not be released from any obligations for matters arising during the time when this Agreement is in effect. Any purported assignment or delegation of rights or delegation of performance in violation of this section is void.

9.1.2 Subleasing. Lessee shall not sublease the Premises or any portions of the Premises without obtaining Lessor's prior written consent. Lessor shall not unreasonably withhold such consent, and as a condition of obtaining such consent. Lessee shall impose on all approved sublessees the same terms set forth in this

Agreement to provide for the rights and protections afforded to Lessor hereunder, including that all subtenants shall be required to include Lessor as an additional insured on any required insurance and indemnify Lessor to the same extent as is set forth in this Agreement. Lessee, and any subsequent sublessee, shall reserve the right to amend the applicable subleases to conform to the requirements of this Agreement, and all such subleases shall be consistent with and subordinate to this Agreement as it is amended from time to time. Such subleases shall include an agreement that the sublessees will agree to pay rent to Lessor if Lessee ceases to be a party to this Agreement. no sublease shall relieve Lessee of any obligation under this Agreement.

- 9.1.3 Assignment by Lessor. Lessor, at its sole discretion, shall have the right to assign any of its rights under this Agreement and in connection therewith shall be deemed to have delegated its duties and upon any such assignment, Lessee agrees that assignee shall perform its obligations under its Agreement.
- 9.1.4 No consent. No consent in one instance shall prevent this provision from applying to a subsequent instance. Lessor may consent to a transaction conveyed by this provision when withholding such consent would be unreasonable.
- 9.1.5 Material breach. The failure by Lessee to obtain the written consent of the Lessor before entering into a transaction covered by Article 9.1 shall constitute a material breach of this Agreement and shall be an "Event of Default."
- 9.1.6 Encumbrances. Lessee shall not encumber or permit the encumbrance of any real property at the Airport. Lessee shall not encumber or permit the encumbrance of any Lessee's rights under this Agreement without Lessor's prior written consent at Lessor's sole discretion. Any purported encumbrance of rights in violation of this section is void. In connection with Lessor's consent to any encumbrance, at a minimum the following shall apply: (i) such encumbrance shall only encumber Lessee's leasehold interest for the purpose of securing financing for Lessee's authorized improvements and no other encumbrance shall be permitted; (ii) the lienholder must agree to maintain current contact information with Lessor and provide Lessor with concurrent copies of any notices or communications regarding a default; (iii) the lienholder must certify to Lessor that it has reviewed this Agreement and accepted provisions that may affect the lienholder, and that no loan requirements conflict with or materially erode any provisions of this Agreement; and (iv) such encumbrance shall terminate prior to the Expiration Date or the lienholder must agree to promptly remove such encumbrance when the obligation that it secures has been satisfied. If while such encumbrance is in effect, Lessee defaults under such encumbrance or this Agreement, and if such lienholder is in compliance with the provisions set forth in this section and cures Lessee's default of this Agreement within thirty (30) days after the first such default, Lessor will permit such lienholder to provide a substitute Lessee which must be acceptable to Lessor at its sole discretion for a period of up to twelve (12) months after the date when such lienholder cured all defaults so long as such lienholder fully performs this Agreement during such period. If such lienholder fails to comply with

any of the foregoing requirements, such failure shall be a default of this Agreement and Lessor may at any time terminate the agreement. Lessor shall have no obligation to provide any notices to any lienholders, and Lessor shall have no liability of any kind to any lienholder.

- 9.2 Condemnation.** Either party receiving any notice of intended taking, any service or legal process relating to condemnation or any other notification in connection with any taking, condemnation or purchase, sale or transfer in lieu of condemnation shall promptly give the other party notice of such receipt. Lessor, Lessee and any leased mortgagee shall have the right to represent its respective interest in each proceeding or negotiation to make full proof of its claims. No sale, transfer, agreement or settlement with the condemning authority shall be made without the consent from Lessor. For purposes of this Agreement, taking or condemnation includes a sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power. If a condemning authority takes all of the Premises, or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Lessee was then making of the Premises, this Agreement shall terminate as of the date that title vests in the condemning authority.
- 9.3 Nonwaiver.** Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 9.4 Law of Oregon.** The laws of the state of Oregon shall govern this agreement.
- 9.5 Adherence to Law.** Lessee shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including laws governing its relationship with its employees, including but not limited to laws, rules, regulations and policies concerning workers' compensation, and minimum and prevailing wage requirements.
- 9.6 Time of Essence.** It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.
- 9.7 Warranties/Guarantees.** Lessor makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such physical condition.
- 9.8 Consent of Lessor.** Whenever consent, approval or direction by Lessor is required under the terms contained herein, all such consent, approval or direction shall be received in writing from Lessor.
- 9.9 Notices.** All notices required under this Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the

parties hereto. Until thereafter changed by the parties by notice in writing, notice shall be sent to:

Lessor: City of Bend
Attn: Real Estate Department
PO Box 431
Bend, Oregon 97709-0431
541-388-5505

Lessee: _____

Bend, Oregon 97701

Email: _____
Phone: _____

The date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

9.10 Modification. Any modification of this Agreement shall be in writing and signed by both parties.

9.11 Aviation Easement.

9.11.1 Lessee's right to use property for the purposes as set forth in this Agreement shall be secondary to and subordinate to the operation of the Airport. Lessor specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above and on the surface adjacent to described property together with the right to cause such noise, dust or wind movement as may be inherent in the present or future operation of aircraft.

9.11.2 By executing this Agreement, Lessee agrees that it will not construct any building or facility at a height in feet above the ground or take any other action that, in the opinion of Lessor, will interfere with the navigational aids or flight operations of the Airport.

9.12 Security. Lessee recognizes its obligations to comply with Federal Airport Security Regulations. Lessee will reimburse Lessor in full for any fines or penalties levied against Lessor for security violations as a result of any actions on the part of Lessee, its agents, suppliers, guests, customers or employees or any violation occurring at any field access point under the control of Lessee.

9.13 Noise Abatement. Lessor and Lessee recognize the importance and joint responsibility of compatibility between the Airport and the surrounding community. Therefore, Lessee agrees to actively participate with Lessor in developing and implementing mutually acceptable noise abatement procedures, policies and

programs. Please refer to Fly Friendly brochure on the City's website at bendoregon.gov/fly-friendly.

9.14 Sponsor's Assurance Subordination. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

9.15 Nondiscrimination. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and 49 CFR Part 21, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from: (i) participating in any employment activities covered in 14 CFR Part 152, Subpart E; or (ii) the use of the Premises or delivery of services. Lessee assures that no person shall be excluded on these grounds from activity covered by this Subpart and 49 CFR Part 21. Lessee assures that it will require that its covered sub organizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E and 49 CFR Part 21, to the same effect.

9.16 Rules and Regulations. Without limiting the generality of Article 9.5 of this Agreement, Lessee and Lessee's officers, employees, invitees, agents and contractors shall comply with the rules and regulations adopted by Lessor, or its Manager, or the Manager's designee, with respect to the use of, entry on, access to, or possession of Lessor's property at the Airport or contiguous property owned by Lessor, as the same may change from time-to-time provided the same are generally applicable to all Lessees at the Airport. Copies of current rules and regulations may be obtained at bendoregon.gov/airport.

9.17 No Benefit to Third Parties. Lessor and Lessee are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

9.18 Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties hereto with respect to the Agreement of the Premises. It is further understood and agreed by Lessee that Lessor and Lessor's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against Lessor for, and Lessor shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with Lessor being expressly waived by Lessee. It is further agreed that this Agreement replaces any previous Agreements agreed to by the parties whether partially or fully executed.

9.19 Authority. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

The parties hereto further acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments, and have sought and received whatever competent advice and counsel as necessary for them to form a full and complete understanding of all rights and obligations.

Lessor:

City of Bend, an Oregon
Municipal Corporation

Lessee:

By: _____
Eric King, City Manager

By: _____

Date: _____

Date: _____

Schedule of Referenced Documents

| | |
|-----------|-------------------|
| Exhibit A | Legal description |
| Exhibit B | Site Plan |

EXHIBIT A

EXHIBIT B