

RESOLUTION NO. 2022-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MARINA AND
JOBY AERO, INC. FOR 771 NEESON ROAD (BUILDING 529) AT THE MARINA
MUNICIPAL AIRPORT, AND AUTHORIZING CITY MANAGER TO EXECUTE THE
LEASE AGREEMENT ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW
AND APPROVAL BY CITY ATTORNEY

WHEREAS, Building 529 located at 771 Neeson Road consists of three single story former military buildings joined together consisting of approximately 4,100 sq. ft – 2,700 square feet of interior space and 1,400 square feet of enclosed deck space; and,

WHEREAS, The building was vacant of a full-time tenant between 2008 and 2017. The Airport improved the building to prepare it for a previous potential tenant. The space is currently vacant and available for lease; and,

WHEREAS, Joby Aero, Inc. wishes to use the space for food preparation and service activities; and,

WHEREAS, the lease area includes interior space consisting of approximately 4,100 square feet including 2,700 square feet of interior space and 1,400 square feet of enclosed deck and exterior area which includes an approximate 19,434 square feet parking lot located immediately to the west of and adjacent to Building Number 529, as shown on **Exhibit A**.

WHEREAS, the lease area also includes a non-exclusive license to use and maintain the unpaved area located on the north side/rear of Building 529 as a dining area, outside the Tenant's leasehold, also shown on **Exhibit A**; and,

WHEREAS, the monthly rent payable for the first year of the Term of this Lease shall be \$5,740 (at the rate of \$1.40 per square foot for the interior space including the enclosed deck). Thereafter for the Term the monthly rent shall increase annually upon the anniversary of the Effective Date by two and one-half percent (2.5%) above the monthly rent payable in the prior year; and,

WHEREAS, the Tenant shall pay all utilities (water, sewer, and gas), trash collection and related assessments. All of its own operating expenses including liability insurance premiums, permits and license fees and personal property taxes on fixtures and property shall be paid by the Tenant as well; and,

WHEREAS, anticipated annual rent revenue to the airport will be approximately \$68,880. Building lease rent revenue is recorded to FY 2018-19 Budget, Airport Operations Fund 555, Facilities Rents Building Rents, Account No. 555.000.000.00-5460.220.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Adopt Resolution No. 2022- , approving a Lease Agreement between the City of Marina and Joby Aero, Inc. for 771 Neeson Road (Building 529) at the Marina Municipal Airport; and

2. Authorize City Manager to execute the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st day of March 2022, by the following vote:

AYES, COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Biala

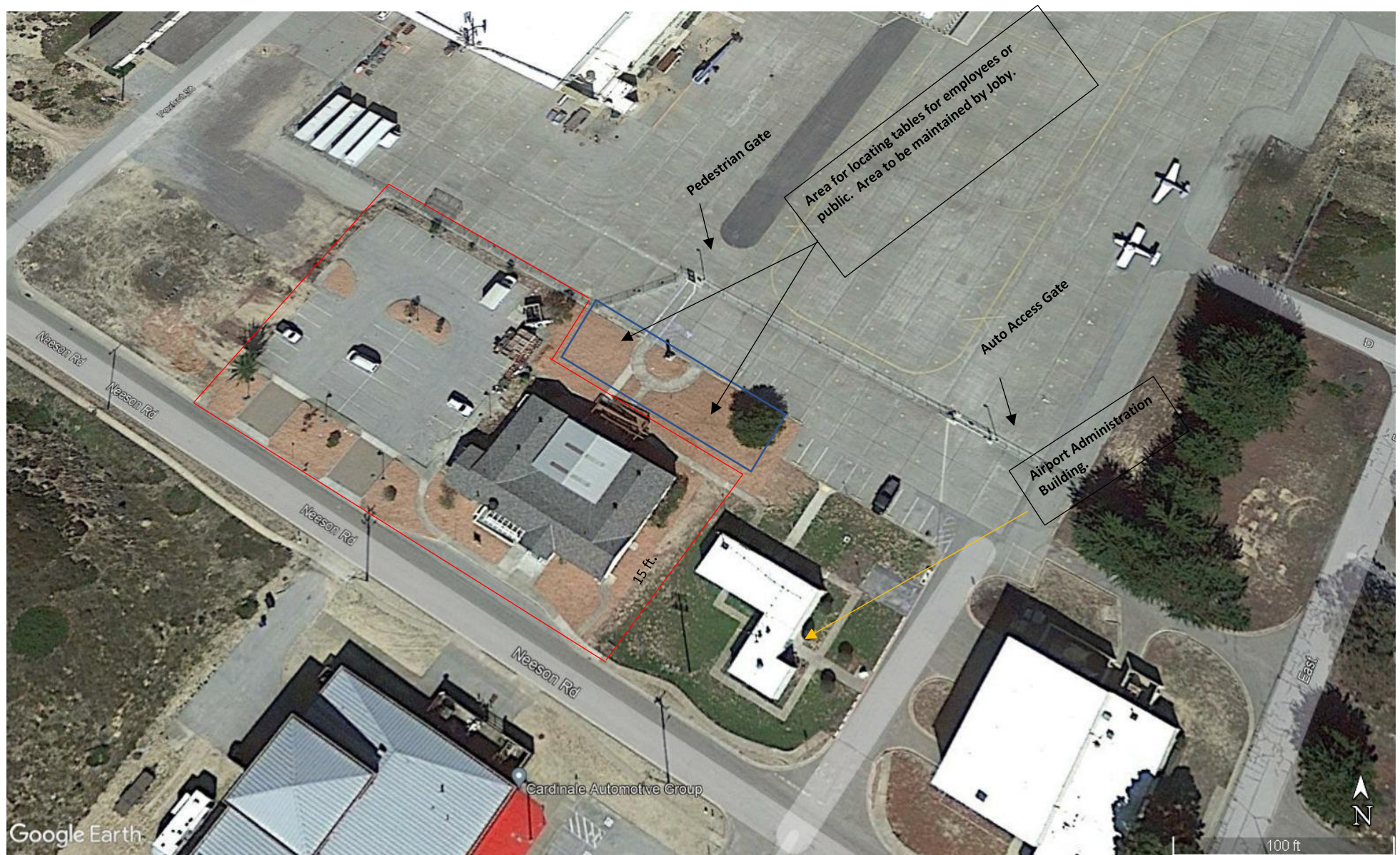
ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

Exhibit A



MARINA MUNICIPAL AIRPORT

LEASE BETWEEN

THE CITY OF MARINA

AND

JOBY AERO, INC.

for

BUILDING 529

THE MARINA AIRPORT RESTAURANT

Recording Requested by and)
When recorded mail to:)
City Clerk)
City of Marina)
857 Cass Street, Suite D.)
Monterey, California 93940)
)
APN 031-112-039 (a portion))
_____)

LEASE

THIS LEASE (the "Lease"), made and entered into this ____ day of _____ 2022, by and between the **CITY OF MARINA**, a California municipal corporation ("City"), and **JOBY AERO, INC.**, a Delaware corporation ("Tenant"), as follows:

Recitals:

This Lease is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

- A. City owns and operates the Marina Municipal Airport (the "Airport") located in the City of Marina. The Airport was formerly known and operated by the U.S. Army as Fritzsche Airfield and was part of the Fort Ord Military Reservation.
- B. Tenant desires to lease a portion of the Airport real property, which includes a wooden-frame structure, formerly utilized by the U.S. Army for administrative and storage purposes and by a previous tenant of the City as a restaurant and bar, for use in the Tenant's non-aviation-related food preparation and service activity.
- C. It is mutually agreed that this Lease is upon and subject to the following terms, covenants, conditions and provisions and Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

Terms and Conditions

Conditions Precedent

- 1. Review of the terms and conditions of this non-aeronautical Lease by the Federal Aviation Administration (FAA).

2. Approval of this Lease by the City Council/Airport Commission of the City of Marina.
3. Tenant's receipt of a conditional use permit for issued by the City for the non-aviation-related food preparation and service activity on the Premises.
4. The occurrence of the Effective Date.

ARTICLE 1. LEASE OF PREMISES, EASEMENT AND RESERVATION, TERM

1.01 **Leased Premises.** City hereby leases to Tenant, and Tenant hereby leases from City, the following real property (APN 031-112-039, a portion) and premises (the "Premises"), being a portion of the Marina Municipal Airport, located within and around Building Number 529 located at 771 Neeson Road, Marina, County of Monterey, California, as shown on **Exhibit A**, attached hereto and made a part hereof. The interior space leased consists of approximately 4,100 square feet including 2,700 square feet of interior space and 1,400 square feet of enclosed deck, both on a single floor of Building 529. The Premises includes restroom facilities accessible to persons with disabilities ("ADA compliant restroom"). No use is permitted without compliance with requirements of the Americans with Disabilities Act (ADA) and in accordance with Section 8.03 herein. The exterior area includes the parking lot ("Tenant Parking Area") located immediately to the west of and adjacent and appurtenant to Building Number 529, consisting of approximately 19,434 square feet, including parking spaces for disabled persons, as shown on **Exhibit A**. Tenant shall have the right to use and allow others to use the Tenant Parking Lot. Tenant may, in a manner approved in advance and in writing by the City, mark or designate parking spaces for its use. An easement is granted for ingress to and egress from the leased Premises for vehicles and the following rights, appurtenances, and easements and no others:

(a) The exclusive use of the surrounding outdoor paved and unpaved areas as shown within the red line indicating the area of the leasehold on **Exhibit A**.

(b) Tenant shall have a non-exclusive license to use and maintain the unpaved area located on the north side/rear of Building 529, outside the Tenant's leasehold, as shown on **Exhibit A** ("Shared Space"). Tenant shall use the Shared Space only as a dining area for the convenience of Tenant's officers, employees, contractors and invitees. Tenant's use shall be in common with other tenants of the City and with members of the public and there shall be no charge for this use. Tenant shall have the right to install and secure equipment convenient or necessary to its use including, but not necessarily limited to, tables, seating, and portable heaters and to make or install non-structural improvements for Tenant's convenience or to provide cover and/or protection from the wind. Tenant shall be responsible to maintain the unpaved area in a safe and sanitary condition and all such equipment in a clean and safe condition and City shall have no responsibility for loss or damage to same. City shall have the right to reconfigure or modify or to require Tenant to reconfigure or modify the Shared Space in a reasonable manner that will not interfere with the Tenant's use. City assumes no responsibility for: (1) enforcing Tenant's rights from interference or use by any person; or (2) any equipment or improvements installed by Tenant on the Shared Space. The license granted herein is appurtenant to Tenant's

leasehold interest in the Premises and may not be assigned or otherwise pledged or transferred, directly or indirectly, except in connection with any assignment of this Lease or a sublease of the Premises to which the City consents or is otherwise permitted under the Lease. In the event of a permitted assignment of the Lease, the license shall automatically be assigned thereby, and thereupon the assigning licensee shall have no further rights to use or access the Shared Space. Tenant acknowledges that its use of the Shared Space is non-exclusive and the Shared Space will be subject to the use of other tenants of the City and the public. Tenant acknowledges that it will be important for all such users to cooperate with each other.

(c) The furniture, furnishings, fixtures, and equipment, if any, to be set forth and shown in the Schedule of Property attached hereto as **Exhibit B** and made a part hereof.

The foregoing rights shall terminate simultaneously on expiration or sooner termination of this Lease.

1.02 **Easement and Reservation**. The following described easement and reservation is hereby reserved by the City:

(a) **Avigation Easement**. The leased Premises shall be subject to an easement and right of way for the unobstructed passage of aircraft in the airspace above the leased Premises, which is reserved by City for the benefit of itself and all members of the general public operating aircraft which land at or take off from the Airport. Concomitant and coextensive with said easement and right of way, City and general public shall have the further right to cause in all airspace above the surface of the leased Premises such noise, vibrations, fumes, dust, fuel particles, and other effects that may be caused by the operation of aircraft landing at or taking off from or otherwise operating at the Airport. In connection with this easement and right of way, Tenant agrees not to cause or permit any structure, natural growth, or other object on the leased Premises which extends into the airspace over the leased Premises more than 210 feet above mean sea level, and not to use or permit the use of the leased Premises in such a manner as to create electrical interference with radio communications between aircraft and the Airport, to make it difficult for flyers to distinguish between airport lights and other lights, to impair visibility in the vicinity of the Airport, or to otherwise endanger aircraft landing at or taking off from the Airport. Tenant further agrees that in the event it causes or permits any structure, natural growth, or other object on the leased Premises which extends into the airspace over the leased Premises more than 210 feet above mean sea level, or otherwise causes or permits any condition on the leased Premises which endangers aircraft landing at or taking off from the Airport, then City shall have the right to enter upon the leased Premises and to remove such structure, natural growth, object or condition endangering aircraft landing at or taking off from the Airport, all at Tenant's sole cost and expense.

(b) **Fire Lanes and Public Utility Easements**. The leased Premises shall be subject to the fire lanes and public utility easements as set forth in the Airport Master Plan. Such fire lanes and public utility easements, together with the right to enter thereon, for any purpose in connection with the construction or maintenance of improvements and facilities located thereon are hereby reserved by the City for the benefit of itself and for the benefit of all other persons or entities owning or leasing property at the Airport. In connection with the fire lanes, Tenant agrees that it will not cause or permit and vehicle or equipment to be parked within the boundaries of such fire

lanes or use the fire lanes in a manner which would interfere with equipment and personnel traversing same in the course of fire suppression activities.

(c) Utility Reservation. City reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone, telegraph and electrical power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the leased Premises. No right reserved by the City in this clause shall be so exercised as to interfere unreasonably with Tenant's operations or to impair the security of any secured creditor of Tenant.

(d) Parking. The City reserves the right, with prior written notice to Tenant, to use the parking area in conjunction with special events held at the Airport (see 2.03 below). In making use of the parking area, City shall consider and make a good faith effort to alleviate adverse effects on Tenant's operations. City and Tenant agree to reasonably cooperate concerning the City's occasional use of the parking area.

1.04 **Term**. The term of this Lease ("Term") shall be effective on April 1, 2022, . The Term shall continue for five years following the Effective Date, to the "Expiration Date" unless terminated earlier as provided herein.

1.05 **Conditional Option to Extend**. City shall have the conditional option to renew and extend the term of this Lease ("Optional Term") by written amendment for an additional period of five years only, through the election and exercise of one five-year option following the Expiration Date in §1.04 hereof. One year prior to expiration of this Lease the City shall seek proposals from qualifying aviation-related users. If the City is unable to lease the site to such user within six months, the City shall offer to the Tenant to renew this Lease for an additional period of up to five years. The monthly rent to be paid by the Tenant for each year of the Optional Term is set forth in Section 4.03. The Optional Term is conditional upon FAA review and Tenant's acceptance of the terms of the lease amendment. This option may be exercised by the City by its giving written notice to the Tenant not less than 120 days before the expiration of the Term.

1.06 **Holding Over**. Any holding over after the expiration of the Term or the Optional Term of this Lease with the consent of the City shall be construed to be a tenancy from month-to-month at a monthly rental equal 125% of the monthly rental for final month of the previous term. Tenant's occupancy during any period of holding over shall otherwise be on the same terms and conditions herein specified so far as applicable.

1.07 **Tenant Option to Elect Early Termination**. Provided Tenant is in compliance with all terms and conditions of this Lease including, but not necessarily limited to the payment of rent and other charges, Tenant shall have the option to terminate this Lease on or after April 1, 2022 by giving written notice to the City of Tenant's election to terminate this Lease at least 180 days prior to the early termination date.

ARTICLE 2. USE OF LEASED PREMISES

2.01 **Use.** This Lease is made for the purpose of allowing the Tenant's commercial, non aeronautical, use of the leased Premises, subject to obtaining a conditional use permit from the City, and for granting Tenant certain rights and privileges to occupy Building 529 and to use the adjacent areas designated for parking for Tenant's non-aviation use as a facility to serve food and beverage to serve Tenant's officers, employees, contractors and invitees. The Premises shall not be open for food service or food and beverage sales to the general public, unless otherwise approved in writing by the City Manager. Tenant may use the Premises for such other non-aviation-related uses as may be permitted by the Conditional Use Permit issued by the City. There shall be no outdoor storage, except within fenced and screened areas approved in advance and in writing by the City, or for storage of hazardous materials approved in advance and in writing by the City's Fire Chief. Tenant shall not use the leased premises, or any part thereof, or permit them to be used for any purpose, including residential purposes, other than the purpose specified herein without the consent of the City, such consent not to be unreasonably withheld.

The Tenant by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner that might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

2.02 **Airport Rules & Regulations.** In making use of the leased Premises as specified in this Lease the Tenant shall, in common with all other users of the Airport, comply with the following rules and regulations:

(a) Tenant acknowledges that it has received and reviewed a copy of the City's Airport Operating Ordinance (Marina Municipal Code Chapter 13.22) and shall comply with the minimum operating standards or requirements as may be adopted now and in the future and promulgated by City and applicable to each of Tenant's activities on the Airport.

(b) Subject to the provisions of the California Code of Civil Procedure §731a, Tenant shall not do or permit to be done upon the Premises any act or thing which constitutes a nuisance, i.e., which may disturb the quiet enjoyment of City, any other tenant of City or private businesses on adjacent land or neighboring property. If City notifies Tenant that such a nuisance or disturbance exists, Tenant agrees, within 72 hours from receiving written notice by the City, to abate or otherwise cause said nuisance to be cured. In the event Tenant has not taken corrective action within 72 hours, the City may enter and abate said nuisance, including but not limited to entering the Premises and abating the nuisance or disturbance, at the expense of Tenant without any liability whatsoever to City for monetary loss of Tenant or others.

(c) Tenant shall have the right, at its expense, to place on the leased Premises a sign or signs identifying Tenant. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved in advance by the City and in conformance with any overall directional graphics or sign program established by the City including section 17.28.060 of the City's Zoning Ordinance. Tenant shall expeditiously submit its application to the City Planning Department to process Tenant's request for a sign to be affixed to the Premises so as to be

readily visible from Neeson Road and/or the air operations area of the Airport. City's approval shall not be delayed or withheld unreasonably. Notwithstanding any other provision of this Lease, any signs shall remain the property of Tenant. Tenant shall remove, at its own expense, all lettering, signs and placards so erected on the Premises upon termination of this Lease.

(d) Tenant shall have the right, at its expense, to place in or on the Premises trade fixtures, furnishings, personal property, equipment and materials necessary to perform any services provided for or authorized hereunder. Said trade fixtures, furnishings, personal property, equipment and materials shall remain the property of Tenant.

(e) Tenant shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business provided for and authorized hereunder, including, but not necessarily limited to, rules and regulations promulgated by the City and the County of Monterey County Health Department, and Tenant shall maintain in effect and post in a prominent place all necessary or required licenses or permits, including an Occupancy Permit obtained pursuant to Marina Municipal Code, Chapter 15.54 and a City business license pursuant to Marina Municipal Code Title 5, prior to commencing occupancy and operations. Tenant shall prepare an Emergency Action/Fire Protection Plan. Current plan shall be kept on file with the City's Fire Department.

(f) Tenant agrees at its own expense to keep and maintain on the leased Premises the ANSUL commercial fire suppression system which conforms to the City's Fire Department regulations and portable fire extinguishers of such number, size and type as may be prescribed from time to time by the regulations of the City's Fire Department.

(g) Tenant shall be responsible for the maintenance and repair of the Premises as set forth in §10.02 of this Lease and shall keep and maintain the Premises in good condition, order and repair, and shall surrender same upon the expiration of this Lease in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by Tenant's negligence excepted. Tenant, by this Lease, specifically waives the provisions of §§1941 and 1942 of the California Civil Code with respect to the landlord's obligations for the tenantability of leased Premises and the Tenant's right to make repairs and deduct the expenses of such repairs from rent.

(h) Tenant understands and agrees that its right to use the leased Premises for the purposes provided for by this Lease shall not be, and shall not be construed to be, exclusive of the right of any other person or firm to operate the same or a similar business at the Marina Municipal Airport and to lease premises at the Airport from the City for such purposes, within the meaning of §308A of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1349a). City reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Tenant by this Lease, excepting any rights with respect to the use or possession of the leased Premises.

(i) At no additional cost to Tenant, Tenant shall, in good faith use its best efforts to efficiently utilize the facilities covered by this Lease in order to promote and aid the commerce of the Marina Municipal Airport and the use of its facilities.

2.03 **Special Events.** Tenant understands and acknowledges that the City will, from time to time, conduct special events at the Airport. City understands and acknowledges that the Tenant may have prior commitments which require its use of the Adjacent Parking Lot that are not subject to change or accommodation. City and Tenant agree to cooperate concerning these events (e.g. City use the Adjacent Parking Lot during weekends). City shall provide not less than 14 days' prior written notice to Tenant of any special event which is expected to have an impact on Tenant's operations or use of the property.

ARTICLE 3. USE AND MAINTENANCE OF AIRPORT FACILITIES

3.01 **Maintenance of Airport Facilities.** The City reserves the right, but shall not be obligated to the Tenant to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport together with the right to direct and control all activities of the Tenant in this regard.

3.02 **Aerial Approaches.** City reserves 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 Tenant from erecting or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

3.03 **FAR Notification Requirements.** Tenant agrees to comply with the notification and review requirements set forth in the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises. This requires the submission of FAA Form 7460-1 *Notice of Construction or Alteration to the FAA*. The Tenant by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit objects of natural growth or other obstructions on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of Tenant.

3.04 **FAA Safety & Security Rules & Regulations.** Tenant will conform to Airport and FAA safety and security rules and regulations regarding use of the Airport operations area including runways, taxiways, and aircraft aprons by vehicles, employees, customers, visitors, etc., in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the Airport; and will be subject to penalties as prescribed by the Airport Manager for violations of the Airport safety and security requirements.

ARTICLE 4. RENTS AND FEES

4.01 **Time and Place of Payment.** Tenant shall pay all rental charges and all other obligations due to the City under this Lease every month in advance on or before the first day of the month during the term of this Lease at the office of the City Finance Director, City Hall, 211 Hillcrest Avenue, Marina, California 93933. The rent for certain months of this Lease may be pro-rated. For purposes of calculating and pro-rating rents and other charges due, each month shall be considered to have 30 days, and each year of the initial or any extended term of this Lease to have 360 days.

4.02 **Rent: Initial Rent Amount.** The monthly rent payable for the first year of the Term of this Lease shall be \$5,740 (at the rate of \$1.40 per square foot for the interior space including the enclosed deck. Thereafter for the Term the monthly rent shall increase annually upon the anniversary of the Effective Date by two and one-half percent (2.5%) above the monthly rent payable in the prior year, rounded up to the nearest even dollar, as follows:

Rent for Year Two – \$5,884
Rent for Year Three – \$6,032
Rent for Year Four – \$6,183-
Rent for Year Five – \$6,338

Tenant shall also pay every month as provided above, the amounts described in Article 12 herein for utilities (water, sewer, and gas), trash collection and related assessments. All of Tenant's operating expenses including liability insurance premiums, permits and license fees and personal property taxes on Tenant's trade fixtures and property shall be for the Tenant's account. Rent and all net charges shall commence upon the Effective Date.

4.03 **Option to Extend – Rent Payable.** The monthly rent to be paid by the Tenant for each year of the Optional Term (§1.05) will be increased by two and one-half percent (2.5%) above the monthly rent payable in the previous year, rounded up to the nearest even dollar, as follows:

Rent for Year One of Optional Term – \$6,497
Rent for Year Two of Optional Term – \$6,660
Rent for Year Three of Optional Term – \$6,827
Rent for Year Four of Optional Term – \$6,998
Rent for Year Five of Optional Term – \$7,1719

4.04 **Delinquency Charge.** Tenant hereby acknowledges that late payment by Tenant of rent and other sums due hereunder will cause the City to incur costs not contemplated by this Lease, the exact amount will be extremely difficult to ascertain. Should any payments due under this Lease remain unpaid ten days after the due date of such payment, a penalty of 10% shall be added to any payments past due. City and Tenant agree that this late charge represents a fair and reasonable estimate of costs that the City will incur by reason of the late payment of rent by the Tenant. Acceptance of any such late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent the City from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid rents, charges and any

penalty shall accrue at the rate of 1.5% per month thereafter until paid.

4.05 **Performance Deposit.** Upon execution of this Lease, Tenant will pay to the City the sum of \$5,000.00, deposited with the City's funds as partial security of future rental and other payments due. The parties agree that these funds will remain on deposit with the City and shall be considered a performance deposit under this Lease. In the event the City is required to utilize this deposit or any portion thereof during the term of this Lease for the payment of rents, charges, or fees due, Tenant within thirty (30) days from such use of the deposit funds shall deposit with the City an additional sum sufficient to restore the performance deposit to the amount herein set forth. This performance deposit, or any remaining portion thereof, shall be returned to the Tenant at the termination of this Lease, without interest, after deduction of any amounts therefrom for payment of any obligation of Tenant due and owing to the City under any of the provisions of this Lease.

4.06 **Accord and Satisfaction.** No payment by Tenant or receipt by the City of a lesser amount of any sum due hereunder shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or payment, or any letter accompanying any such check or payment, be deemed an accord and satisfaction, and the City may accept such check or payment and pursue any other remedy available in this Lease, at law or in equity. The City may accept any partial payment from Tenant without invalidation or any contractual notice require to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required to be given pursuant to California Code of Civil Procedure section 1161 *et seq.*, or any successor statute pertaining thereto.

4.07 **Commissions.** City shall not be liable for the payment of any brokerage commissions or fees associated with this Lease to engineers, contractors, or attorneys working on behalf of Tenant.

ARTICLE 5. TAXES AND ASSESSMENTS

5.01 **Payment.** Tenant shall meet all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted including a **possessory interest tax** created by this Lease, permit, and license fees, it being understood by Tenant that although the public property is held in public ownership, **Tenant's interest therein will be taxable as a possessory interest** (California Revenue & Taxation Code §107.6). Tenant shall pay any personal property taxes levied on Tenant's inventory, furnishings, personal property or trade fixtures. Tenant may, at its sole expense and cost, contest any tax or fee. All taxes, fees, assessments, charges, etc., shall be paid prior to their delinquency date and satisfactory evidence that such taxes have been paid shall be furnished to the City upon written request.

5.02 **Joint Assessment.** If the Premises are not separately assessed, Tenant's liability shall be an equitable portion of the possessory interest taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by the City from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

5.03 **Assessment by the Monterey County Water Resources Agency (MCWRA).** Tenant shall pay any assessment levied by the MCWRA. If the leased Premises are not separately assessed by MCWRA, Tenant's liability shall be an equitable portion of the MCWRA assessment for all of the land and improvements of which the Premises are a part included within the parcel(s) so assessed, such proportion to be determined by the City from the respective valuations assigned in the MCWRA's work sheets or such other information as may be reasonably available.

ARTICLE 6. SUBORDINATE TO FEDERAL A GREEMENT AND REGULATIONS

6.01 **Subordinate to Agreements with U.S.** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States government or any department thereof relative to federal aid for the development and maintenance of the Airport or the development, operation or maintenance of the Airport. Failure of the Tenant or any occupant to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Tenant's rights hereunder. Tenant acknowledges it has been given an opportunity to review the Deed of Conveyance for the leased Premises from the U.S. Army to the City and agrees to comply with all requirements pertinent to Tenant's activities contained in that document.

6.02 **War or National Emergency.** This Lease and all provisions hereof shall be subject to whatever right the United States government has affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

6.03 **Conformance with Federal Aviation Administration Regulations.** Tenant agrees that Tenant's use of the leased Premises, including all future construction, modification or alteration thereon, shall comply with all applicable Federal Aviation Administration regulations now in force or that may be hereafter adopted by Federal authority. This Lease and Tenant's occupancy of the leased Premises is governed by and subject to the provisions set forth in the Federal Aviation Administration Assurances ("Exhibit C") attached hereto and incorporated herein by this reference and as they may be amended in the future. In the event of a conflict between the Federally Aviation Administration Assurances and the terms and conditions of this Lease, the Federally Aviation Administration Assurances shall prevail and control.

6.04 **Federal or State Grants.** City and Tenant agree to mutually cooperate in any application for such economic development grants and loans as may be available to City or Tenant for relocation, job training and economic development of the Airport.

ARTICLE 7. NON-DISCRIMINATION

7.01 **Non-Discrimination.**

(a) Tenant, for its personal representatives successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the leased Premises for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Tenant, for its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the leased Premises, (2) that, in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant shall use the leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The Tenant assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Tenant or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the City as the Airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the City as the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

(d) In the event of breach of any of the nondiscrimination covenants, City (through the City Manager/Airport Manager) shall have the right to terminate this Lease, and to re-enter the Premises, and hold the same as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulations Part 21 are followed and completed including expiration of appeal rights.

7.02 **Compliance with Non Discrimination Covenants.** Without limiting the generality of any other terms or provisions of this Lease, noncompliance with Section 7.01 above shall constitute a material breach thereof and in the event of such noncompliance City (through the City Manager/Airport Manager) shall have the right to terminate this Lease and the estate hereby created without liability therefor or, at the election of the City of the United States, either or both said governments shall have the right to judicially enforce Sections 7.01 and 7.02 of this

Article 7.

7.03 **Covenants in Other Ancillary Agreements.** Tenant agrees that it shall insert the above two (2) provisions in any agreement, sublease, assignment or other agreement by which Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or non aeronautical services to the public on the Premises.

ARTICLE 8. CONDITION OF THE PREMISES

8.01 **Acceptance of Leased Premises.** Tenant understands that the leased Premises were formerly used by the federal government as part of an Army air base, that surrounding lands which were also part of such Army air base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. Pursuant to Health & Safety Code §25359.7(a) Tenant is provided this notice that the structure may contain asbestos materials and lead-based paints. Tenant acknowledges that City has granted to Tenant the right to review all maps and records of the old Army air base presently on file in the office of the City's Planning Department as well as the right to inspect the leased Premises and perform any tests of the soils and improvements thereon or the groundwater thereunder, all in order to afford Tenant a full and complete opportunity to investigate and determine whether the leased Premises can be used for the purposes for which it is being leased.

8.02 **No Warranty.** Tenant further understands and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of the City as to the condition of the leased Premises or the suitability of the Premises for its intended use, save and except for the representation and warranty that no City officer, employee, contractor, subcontractor, tenant, subtenant or agent has caused any condition of pollution or contamination which may now exist on the leased Premises. Such representation and warranty, however, shall not extend to any condition of pollution or contamination caused by the federal government. Upon entering into occupancy, Tenant also agrees to accept the leased Premises in its present condition and "as is", with respect to all conditions which may now exist on or under the leased Premises save and except for any condition of pollution or contamination caused by an officer, employee, or agent of City. Moreover, Tenant agrees to waive any claim or right of action against the City which Tenant now has or hereafter may acquire arising out of the condition of the leased Premises, its soils and/or the groundwater underlying the leased Premises, including but not limited to any claim of indemnity which Tenant may have by reason of costs incurred by Tenant arising out of the abatement or cleanup of any pollution or contamination condition discovered on the leased Premises hereinafter required under applicable state, federal or city laws or regulations save and except for a claim or right of action arising out of a condition of pollution or contamination caused by an officer, employee or agent of the City. Tenant is not responsible for the cost of environmental abatement, remediation or cleanup of pollution or contamination which is unrelated to the activities of the Tenant, or its officers, employees, agents, contractors or invitees, on the Premises.

8.03 **Americans with Disabilities Act (ADA).** The Building 529 described in this Lease, and the real property of which it is a part, have not undergone inspection by a certified access specialist (CASP). Upon the Effective Date Building 529 will meet all applicable construction-

related accessibility standards pursuant to California Civil Code Section 55.53. A CASp can inspect the premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. Tenant is solely responsible for determining whether or not Tenant's intended use of Building 529 will be or is in compliance with the ADA. By entering into this Lease, unless otherwise agreed between the parties in a writing signed by the authorized representative of each party, City agrees to be responsible for all compliance with construction-related accessibility standards in accordance with the ADA, if applicable to the Tenant or the City.

8.04 Disclosure to Sub Lessees and Assignees. Tenant agrees that in the event Tenant subleases all or any portion of the Premises or assigns its interest in this Lease, Tenant shall indemnify and defend the City for, from and against any matters which arise as a result of Tenant's failure to disclose any relevant information about the Premises or the improvements to any subtenant or assignee. It is the intention of the City and Tenant that the immediately preceding sentence shall survive any release of Tenant by the City upon any assignment of this Lease by Tenant.

ARTICLE 9. LEASEHOLD IMPROVEMENTS

9.01 Improvements to Leased Premises. Prior to the Effective Date of this Lease the Tenant shall be responsible for: installing facilities as determined by Tenant for data and telephone communications; and repairing and installing other equipment necessary for Tenant's use of the Premises. With the prior written approval of the City Tenant may construct any improvements to the leased Premises in accordance with plans, specifications to be completed by Tenant and submitted to the City. The Plans must be approved by the City acting through the City Manager/Airport Manager or his or her designee(s). The Plans shall be reviewed and approved by the issuance of a building permit by the Building Division of the City's Public Works Department. Upon approval by the City, the Plans shall include a construction schedule ("Construction Schedule"). Tenant shall not make any other additions or alterations to the leased Premises other than as approved by the City and in accordance with Plans approved by the City, such approval not to be unreasonably conditioned, delayed or withheld. Moreover, upon receiving consent to make any other addition or alterations to the leased Premises, Tenant shall not commence work on the construction or installation of such added or altered improvements until plans and specifications for same have been submitted to and approved by the City and a building permit issued.

Tenant also shall provide, at Tenant's sole cost and expense, all furniture, trade fixtures and equipment necessary to operate the Premises in accordance with the approved use (Sec. 2.01).

9.02 **Title to Improvements.** Upon termination of this Lease or any extended periods thereof, all additions or alterations to the improvements on the leased Premises made by Tenant or its contractors or subcontractors shall become the property of the City without payment of any compensation therefor; provided, however, that upon termination of this Lease, City shall have the option to require Tenant to remove any or all added improvements or restore any altered improvement to the same condition as it was at the commencement of the term of this Lease, all at Tenant's sole cost and expense.

9.03 **Improvements by the City.** The City is not obligated to construct or install any improvements on or off of the leased Premises. The City shall have no obligation on account of any construction or installation of any improvement by Tenant to pay for all or any portion of the costs or expenses arising out of any such construction or installation.

9.04 **Right of Entry for Construction and Maintenance.** The City and Tenant each agree that the other shall be permitted to enter upon its property, as may reasonably be necessary in order for Tenant to make the improvements or do other work required by this Lease or in order for the City to fulfill its responsibilities to make improvements (see Section 9.03) and for maintenance as set forth in Section 10.01, and to maintain or repair the respective party's property. The right of each party to enter the other's property or the Premises shall extend to such party's lessees, and licensees and contractors. A party's exercise of its right of entry shall not unreasonably interfere with the other party's use of its property. Any interference shall be temporary and all work on the entering party's property shall proceed expeditiously as necessary to avoid or minimize any such interference. The City will provide reasonable advance notice prior to entry to the property and make reasonable efforts to do so during normal business hours. A party intending to exercise the right of entry shall first give to the other party reasonable prior written notice before commencement of any work on the other party's property. In the event a party's entry results in any damage to the other party's property, the same shall be repaired expeditiously at the entering party's expense.

9.05 **Prevailing Wage Required.**

(a) **Prevailing Wage Standards.**

(1) **Basic Requirements.** Tenant agrees that, with respect to any construction by Tenant at or on the Premises of the improvements which are "paid for in whole or in part out of public funds" as that term is defined in California Labor Code §1720 et seq., or for which construction is within the provisions of the Master Resolution adopted by the former Fort Ord Reuse Authority ("FORA Master Resolution") on March 14, 1997 as recorded in the Official Records of the Monterey County Recorder on April 14, 2020, Tenant (and its contractors and subcontractors) shall comply with the then current Public Works Prevailing Wage Requirements, as the same may be amended from time-to-time (collectively, the "Prevailing Wage Requirements"). The City makes no representations or warranties as to whether any such improvements are considered to be public works for purposes of prevailing wages under State law of the FORA Master Resolution.

(2) Additional Prevailing Wage Provisions. The following provisions of this Section apply only if, and to the extent that, the Prevailing Wage Requirements are applicable:

(a) The Prevailing Wage Requirements shall apply to the employees of any employer including Tenant and any Tenant's contractor(s) or subcontractor(s), including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the operation or maintenance of the Premises.

(b) Tenant shall cause the provisions of this Section to be incorporated into each contract and subcontract for each Tenant contractor and subcontractor which would be subject to this Section. In the event the provisions are not so incorporated, Tenant shall be liable to the worker in any action for the difference between the prevailing wage rate required to be paid under the Prevailing Wage Requirements and the amount actually paid to the worker, including costs and attorney fees, as if Tenant were the actual employer.

(c) Nothing in this Lease shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the California Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Tenant and Tenant's contractors and subcontractors shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprentice-able occupations, with respect to all work covered by that section.

(d) Tenant agrees that to the extent that Tenant and its contractors and subcontractors are required to comply with the Prevailing Wage Requirements. Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with the California Labor Code), in effect at the time the work is performed. Copies of the applicable prevailing rate of per diem wages are on file at the City's Building Division office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the leased Premises.

(e) Except where the context otherwise requires, the definitions of terms and phrases contained in the California prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the Prevailing Wage Requirements of this Section 9.04.

(f) In the event a civil wage and penalty assessment is served by the Labor Commissioner, acting through the Division of Labor Standards Enforcement, on the City, the Tenant, or any contractor or subcontractor of the Tenant, as a result of the failure of Tenant or any of its contractors or subcontractors to comply with this Section 9.05, Tenant shall withhold from amounts due to the contractor or subcontractor sufficient funds to satisfy the assessment and, if the assessment becomes final, Tenant shall pay as a penalty to the City the amount determined by the Labor Commissioner in accordance with California Labor Code §1775, as the penalty assessment payable for each worker for each day, or portion thereof, such worker was

paid less than the applicable prevailing wage rates for such work or craft in which such worker was employed. Further, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Tenant or by Tenant's contractor or subcontractor. Tenant, and each affected contractor and subcontractor, shall have the right to request a review by the Labor Commissioner of the civil wage and penalty assessment served by the Labor Commissioner by transmitting a written request for review to the Labor Commissioner, with a copy of such request provided to the City, within sixty days after service of the assessment, and Tenant and its contractors and subcontractors shall not be obligated to pay the civil wage and penalty assessment to the City until a final written decision affirming, modifying or dismissing the assessment is issued by the Labor Commissioner.

(g) The prevailing wage requirements of this Section 9.05 will be monitored and enforced by the City's Building Division. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this Section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(h) Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the City within a reasonable time not to exceed thirty days from close of payroll by the respective employer. In the event Tenant or its contractor or subcontractor fails to make the certified payroll records available for inspection within ten days of a written request made by the Labor Commissioner, acting through the Division of Labor Standards Enforcement, and a penalty assessment is served or levied by the Labor Commissioner arising out of such failure, Tenant shall forfeit as a penalty to the City the penalty per calendar day, or portion thereof, for each worker determined in accordance with California Labor Code §1776, not otherwise paid to the City by the contractor or subcontractor who failed to comply with California Labor Code §1776. In accordance with California Labor Code §1813, in the event Tenant or its contractor or subcontractor requires or permits a worker to work in violation of California Labor Code Division, 2, Part 7, Chapter 1, Article 3 (payment for work in excess of eight hours in one calendar day and forty hours in one calendar week), Tenant shall forfeit as a penalty to the City the sum of Twenty-five Dollars (\$25.00) for each worker so employed, provided such penalty is not otherwise collected from the contractor or subcontractor who permitted its worker(s) to work in violation of such California Labor Code provisions.

(i) It is understood and agreed that all documents that Tenant is required to submit to or file with the City under this Section shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(j) Tenant shall indemnify, defend (with counsel approved by the City) and hold the City, its officers, officials, employees, and agents harmless from and against all claims which directly or indirectly in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding, the failure to comply with any state or federal labor laws, regulations or standards in connection with the Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims. It is further agreed that City does not and will not waive any rights against Tenant that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or deposit by Tenant to City of any of the insurance policies described in this Lease. The provisions of this subsection survive the expiration or earlier termination of this Lease. The indemnification obligations of Tenant as set forth in this section shall not apply to claims arising from the gross negligence or willful misconduct of the City, its officials, officers, employees or agents.

(k) Contractors or subcontractors shall not be qualified to perform work on improvements, or be listed in a bid proposal for such work, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for the work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code.

9.06 Security Concerning Improvements – Performance and Labor and Material Bonds. Before the commencement of any construction work hereunder, the City may require that Tenant, or its contractors, at no cost or expense to the City, furnish to the City the following security concerning improvements to be constructed by or on behalf of Tenant and covering any obligation of Tenant under the Prevailing Wage requirements provisions of this Lease:

(a) **Performance Bond.** A bond in cash, or securities satisfactory to the City in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the City, in a sum of not less than 100% of any construction contract (or in the event Tenant serves as its own general contractor, 100% of the anticipated construction costs of the improvements) for the proposed improvements, payable to the City and conditioned upon full, faithful and satisfactory performance by Tenant its contractor(s) of the such improvements within the period of time specified in the construction schedule. Upon Tenant's or its contractor(s) full, faithful and satisfactory performance and completion of such improvements, said bond shall be cancelled or returned to Tenant or contractor, as the case may be; otherwise, such part of the amount of the bond as shall be required to complete such improvements shall be payable to or retained by the City, as the case may be. In the event that said bond shall be in

cash, the City shall have the right to invest and reinvest the same as it shall see fit, and any interest earned thereon during the time it is so held by the City shall accrue to and belong to the City, and Tenant or contractor shall have no interest in or claim thereto.

(b) Labor and Material Bond. A bond in cash or securities satisfactory to the City in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the City with Tenant or its' contractor(s) as principal(s), in a sum not less than 100% of any construction contract (or in the event Tenant serves as its own general contractor, 100% of the anticipated construction costs of the improvements) for the proposed improvements as such costs are set forth in the estimated improvement completion costs, guaranteeing the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said work or labor done thereon of any kind whatsoever and protecting the City from any liability, losses or damages arising therefrom.

(c) General. In the event and to the extent that Tenant obtains from Tenant's contractor(s) the bonds required hereunder which are satisfactory to the City, the City, upon application by Tenant and upon naming the City as an additional obligee of Tenant's principal and surety under such bond or bonds, shall release Tenant from and consent to the cancellation of the bond or bonds originally furnished by Tenant. It is understood and agreed that any bond which, as to the City as obligee, is conditioned upon Tenant making all necessary payments to the contractor shall not be satisfactory to the City. A combination performance and labor and material bond shall satisfy the foregoing requirements of this Section.

9.07 No Right to Demolish. Notwithstanding any other provisions of this Article, Tenant has no right to demolish the improvements, once built, or to remove any improvements, equipment or items provided or financed by the City, in whole or in part, unless Tenant has received the prior written approval of the City.

9.08 Insurance. Before commencing any construction work and during the course of construction, Tenant agrees to obtain, and cause its contractor(s) to be obtain, with a responsible insurance carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Workers Compensation Insurance and Safety Act, compensation insurance covering full liability for compensation under said Act, for any person injured while performing any work or labor incidental to the work in or on the leased Premises. During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance, including installation floater coverage, in a sum equal, from time to time, to the agreed full replacement cost of Building 529 prior to completion of the improvements in the amount of Nine Hundred Thousand Dollars (\$900,000) plus the amount to be expended for construction of the improvements. All risk of loss or damage to the improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Tenant. The City and Tenant's general contractor, shall be additional named insureds on Tenant's builder's risk and liability insurance.

ARTICLE 10. MAINTENANCE AND REPAIR

10.01 **City's Obligation under this Lease.** The City warrants that on the Effective Date the roof, electrical systems, plumbing systems, parking lot lighting, and heating system for the Premises will be in good working order. During the Term and any Optional Term City shall be responsible for the following maintenance and repair of Building 529 for the initial and any extended term of this Lease:

- (a) Maintaining and repairing, with the exception of painting, all structural elements of the building's exterior walls, surfaces and foundations.
- (b) Maintaining the watertight integrity of the building's exterior walls.
- (c) Maintain, repair, or replace as required roof coverings, gutters and drains.
- (d) Maintain and repair all exterior underground plumbing, drains and utility connections.
- (e) Maintaining in compliance with applicable law, regulations and codes, the interior fire alarm system. Any damage to the interior fire alarm system resulting from tenant misuse or negligence shall be repaired or replaced by the Tenant.

10.02 **Tenant's Obligations under this Lease.** Tenant shall be responsible for the following maintenance and repair of Tenant's leased Premises within Building 529 for the initial and any extended term of this Lease.

- (a) Maintenance, repair or replacement of interior systems and components for the electrical, plumbing, heating and ventilation, and mechanical systems.
- (b) Interior and exterior glass, glazing, if any, and doors damaged by Tenant or its invitees.
- (c) Maintaining the landscaping along the southern-facing side (front) of the building within the leasehold boundary and the landscaping in and around the perimeter of the parking lot as shown on **Exhibit A**.
- (d) Maintaining the Shared Space.
- (e) Maintaining the parking lot including lighting. City shall review the need to seal-coat the parking lot upon the extension of an option, if any, to Tenant to extend the term of this Lease. Should the City determine such seal-coating to be necessary, the City will notify Tenant whereupon Tenant will have the option of reimbursing the City for the City's expense in seal-coating the parking lot or Tenant may hire its own contractor to seal-coat the parking lot at its expenses. If option to extend is not extended by the City or is not accepted by the Tenant, Tenant shall have no obligation for seal-coating the parking lot.

- (f) All interior walls, ceiling, floors, bathrooms, drains and other structures or components, if any.
- (g) All air conditioning systems and components, if any.
- (h) All communication systems and components.
- (i) The grease trap.
- (j) The fire suppression systems.
- (k) All security alarm systems and components, if any.
- (l) Maintenance, sweeping and keeping clear, clean-up and removal of refuse, regular trash, debris, and waste removal.
- (m) General maintenance and upkeep of the trash enclosure

10.03 **Surrender.** On the last day of this Lease, Tenant shall surrender the leased Premises to the City in the same condition as when received, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the leased Premises occasioned by the removal of Tenant's trade fixtures, furnishings and equipment which repair shall include the patching and filling of holes and repair of structural damage.

ARTICLE 11. DAMAGE OR DESTRUCTION OF IMPROVEMENTS

11.01 Destruction or Substantial Damage of Premises.

(a) If, during the initial or any extended term of this Lease, any of the insured improvements now or hereafter located on the leased Premises are substantially damaged or destroyed by a fire or other casualty (excluding earthquake or flood) beyond Tenant's control, City shall proceed with reasonable diligence to restore the leased Premises substantially to the condition thereof immediately prior to such damage or destruction; provided, however, that either party may elect to terminate this Lease by giving written notice of such election to the other party prior to commencement of restoration and not later than 30 days after the date of loss, if the necessary restoration work would reasonably require a period longer than 90 working days to complete, or City may elect to terminate within 30 days of the date of loss if the total of the necessary restoration work would reasonably require the expenditure of more than fifteen thousand dollars (\$15,000.00) in excess of the available insurance proceeds. In no event will City be required to repair or replace Tenant's stock in trade, fixtures, improvements, furniture, furnishings and equipment.

(b) If, during the initial or any extended term of this Lease, any substantial damage or destruction occurs to the leased Premises and the cost to repair the damage or destruction that is not covered by insurance exceeds fifteen thousand dollars (\$15,000.00), the City may terminate this Lease upon giving thirty (30) days prior written notice to the Tenant; provided,

however, that the Tenant shall have the right to elect to pay the difference between the cost of repairing or restoring the damaged or destroyed improvements and fifteen thousand dollars (\$15,000), in which case this Lease shall remain in full force and effect, and City shall proceed with reasonable diligence to restore the Premises.

(c) In no event will the City be required to make repairs for any damage caused by the willful acts or negligence of Tenant or Tenant's employees, agents, subtenants or invitees, which damage Tenant shall promptly repair, replace or restore at Tenant's sole cost and expense. Upon any termination of this Lease under this section, City and Tenant shall be released thereby without further obligation to each other, except for obligations which have theretofore accrued and are then unpaid or unperformed.

(d) In the event that restoration is made pursuant to this section, this Lease shall remain in full force and effect, and City shall be entitled to and shall have possession of the necessary parts of the leased Premises for such purposes, and if there is any substantial interference with Tenant's business on account of such repairs, Tenant shall be entitled to a proportionate reduction of rent during the time that said repairs are being made from the date on which such damage occurred until the City completes repairs computed on the basis of the relation which the gross square foot area of space rendered untenable bears to the total square footage of the Premises and the extent to which the Premises are unusable by Tenant. Should any dispute arise over the reduction of rent to which Tenant is entitled, such dispute shall be resolved according to the provisions of §17.04 of this Lease.

11.02 **Waiver.** Except as otherwise specifically provided in this section, Tenant specifically waives the provisions of §§1932 and 1933 of the California Civil Code with respect to the termination of the hiring of a thing by virtue of the perishing or destruction of the thing being hired.

ARTICLE 12. UTILITIES, GARBAGE COLLECTION & ASSESSMENT

12.01 **Provision of Utilities.** Tenant shall have the right to use the utility service facilities serving the Premises at the commencement of the Term of this Lease. The City will use its best efforts to continue all utility services, but it cannot and does not guarantee that there will be no interruptions of service and Tenant hereby waives any rights or claims it may have resulting from temporary interruptions of service. To the extent it has knowledge the City will provide notice of any work scheduled which may interrupt the utility service to the leased Premises. If City is unable to provide utility service facilities due to the imposition of any limit on consumption or on the construction of additional utility facilities, or the allocation or curtailment of utility facilities or services by law or regulation, it shall have no obligation hereunder.

12.02 **Payment of Utilities.** Tenant agrees upon entering into occupancy of the Premises to pay directly to the utility providers for all utility services provided under the terms of any contract between the Tenant and the utility provider and to the City for all utility services provided under the terms of any contract between the City and a utility provider serving the premises through existing lines and connections. Tenant shall be responsible to provide and pay for all new connection equipment and any fees required. Tenant shall pay all utility charges

within twenty (20) days of receipt of invoice and shall provide evidence of payment when requested to do so in writing by the City. In the event Tenant fails to pay any utility bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit the amounts so disbursed, plus interest at the rate of 1½% per month or fraction thereof.

12.03 **Telephone / Internet Connectivity.** Tenant shall be responsible for providing and paying directly to the provider for telephone and internet connection to the Premises.

12.04 **Garbage/Trash Collection.** Tenant agrees upon entering into occupancy of the leased Premises to pay for garbage and trash collection and removal services. Tenant shall arrange and pay for the disposal of all hazardous waste in accordance with all applicable local, state and federal laws and regulations. In the event Tenant fails to pay any bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit the amounts so disbursed, plus interest at the rate of 1½% per month or fraction thereof.

12.05 **Compliance with Regulations of Local Agencies.** It shall be the responsibility of the Tenant under this Lease to contact, consult and comply with any regulation applicable to Tenant's activities at the Airport which are now or may be promulgated by a local public or private utility provider or regulator having jurisdiction over activities or utility services at the Airport, including, but not limited to, Monterey One Water, Marina Coast Water District, Monterey Regional Waste Management District, Pacific Gas & Electric Company and the Monterey Bay Unified Air Pollution Control District and the Monterey County Water Resources Agency and Monterey County Health Department.

ARTICLE 13. INSURANCE & INDEMNIFICATION

13.01 **Liability Insurance to be provided by the Tenant.** The Tenant shall obtain insurance coverage, naming the City, its council, boards, commissions and members thereof, its officers, employees, volunteers and agents as an additional insured, and maintain same continuously in effect at all times during the term of this Lease:

(a) **Commercial General Liability Insurance** (primary) shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or a form approved by the City Attorney including contractual liability, independent contractors, broad form property damage, sudden and accidental pollution, personal injury and products and completed operations. Policy limits shall be no less than one million dollars per occurrence (i.e., non aggregate program) for all coverage and two million aggregate. City and its Council, boards, commissions, officers, employees, volunteers and agents shall be added as additional insureds using ISO form GC 20 10 11 85 or a form approved by the City Attorney. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any employee or agent of the City and must include a severability of interest (cross liability) provision, that is, it shall act as though a separate policy were written for each insured and additional insured named in the policy.

Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractor's limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution,

explosion, collapse, underground property damage or employment-related practices.

(b) **Umbrella Liability Insurance** (over primary) is required and shall apply to bodily injury/property damage, personal injury/advertising injury, contractual and products and completed operations at a minimum, and shall include a “drop down” provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor’s limitation endorsement. Policy limits shall be not less than one million dollars per occurrence and in the aggregate, above any limits required in the underlying policies. The policy shall have starting and ending dates concurrent with the underlying coverages.

(c) **Workers’ Compensation/Employer’s Liability** shall provide workers’ compensation statutory benefits as required by law. Employer’s liability limits shall be no less than one million dollars per accident or disease. Employer’s liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its Council, boards, commissions, officers, employees or agents.

(d) **Business Auto Coverage** If Tenant uses or causes to be used vehicles in connection with its use of the leased property, it shall obtain comprehensive or business automobile liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired vehicles. Coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or on a form approved by the City Attorney. Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to any umbrella policy required above for a total limit of no less than \$2,000,000.00 each accident.

13.02 **Fire insurance.** The City shall obtain and maintain continuously in effect at all times during the term of this Lease, the following insurance coverage:

(a) Fire and extended coverage insurance (excluding smoke pollution, or damage occasioned by earthquake or flood) on the structure and fixed improvements located on the Premises; with deductibles to be paid by the City for insured losses, in an amount to be determined by the City in its sole discretion during the term of this Lease. The proceeds of any such insurance may be used for rebuilding or repairing permanent improvements, subject to the provisions of Article 11 of this Lease.

(b) Tenant shall reimburse the City for the full cost, if any, of all additional insurance assessments required by City’s insurer due to any hazardous activities by Tenant on the leased property.

(c) Tenant hereby agrees to maintain, at its own cost and expense, during the entire term of this Lease or as said term may be extended, a policy or policies of insurance against loss or damage upon its furnishings, fixtures, inventory, personal property and

equipment. A certificate or certificates of Tenant's current insurance coverage must be filed with the City Manager.

13.03 Tenant and the City further agree as follows:

(a) This Article supersedes all other sections and provisions of this Lease to the extent that any other section or provision conflicts with or impairs the provisions of this section.

(b) The insurance requirements set forth in this Article are intended to be separate and distinct from any other provision in this Lease and shall be interpreted as such.

(c) All insurance coverage and limits provided pursuant to this Lease shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Lease or any other agreement relating to the City or its operations limits the application of such insurance coverage. Nothing contained in this Article is to be construed as affecting or altering the legal status of the parties to this Lease.

(d) For purpose of insurance coverage only, this Lease will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards, performance of this Lease.

(e) Requirements of specific coverage features or limits contained in this Article are not intended as a limitation on coverage limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage or a waiver of any type.

(f) All general or auto liability insurance coverage provided pursuant to this Lease or any other agreements pertaining to the performance of this Lease, shall not prohibit Tenant and Tenant's employees, or agents, from waiving the right of subrogation prior to a loss. Tenant waives its right or subrogation against the City.

(g) Unless otherwise approved by the City, Tenant's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A:VII." Self-insurance will not be considered to comply with these requirements.

(h) In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, the City has the right but not the duty to obtain insurance it deems necessary and any premium paid by City will be promptly reimbursed by Tenant.

(i) Tenant agrees to provide evidence of the insurance required herein, satisfactory to the City prior to taking any steps in furtherance of this Lease and annually upon renewal of the Tenant's business license, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Tenant's general liability,

auto and umbrella policies using ISO form CG 20 10 1 85 or a form approved by the City Attorney. Certificate(s) are to reflect that the insurer will provide 30 days notice of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word “endeavor” with regard to any notice provisions. Tenant agrees to provide complete certified copies of policies to City within 10 days of City’s request for said copies.

(j) Tenant shall provide proof that policies of insurance required herein expiring during the term of this Lease have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished within 72 hours of the expiration of the coverages.

(k) Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Lease in no way waives any right or remedy of City or any additional insured, in this or any other regard.

(l) Tenant agrees to require all contractors, subcontractors or other parties hired to perform work on the leased Premises to provide general liability insurance naming as additional insureds all parties to this Lease. Tenant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Tenant agrees to require that no contract used by any contractor or subcontractor, will reserve the right to charge back to City the cost of insurance required by this Lease. Tenant agrees that upon request, all agreements with contractors or subcontractors or others with whom contractor contracts with will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, its Council, commissions, officers, employees and agents.

(m) Tenant agrees to provide immediate notice to City of any claim or loss against Tenant or its contractors or subcontractors that includes City as a defendant or a responsible party. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

n) In the event of any loss that is not insured due to the failure of Tenant to comply with these requirements, Tenant agrees to be responsible for any and all losses, claims, suits damages, defense obligations and liability of any kind attributed to City, or City’s employees as a result of such failure.

(o) Coverage will not be limited to the specific location or individual or entity designated as the address of the leased Premises.

(p) Tenant agrees not to attempt to avoid its defense and indemnity obligations to City and its Council, commissions, boards, employees, agents, officials and servants by using as a defense Tenant’s statutory immunity under workers compensation and similar statutes.

(q) Tenant agrees to require all contractors, subcontractors or parties, including architects or others, with which it enters into contracts or hires pursuant to or related in any way with the performance of this Lease, to provide insurance covering the operations contracted for and naming as additional insureds all parties to this Lease. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required here.

(r) Tenant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between the Tenant and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with Tenant or its employees.

(s) Insurance requirements shall be applied uniformly to all Tenants engaged in similar-type operations at the Airport, and such requirements shall be consistent with industry standards.

13.04 Approval of Insurance Coverage. Upon execution of this Lease, a copy of the insurance policy or policies required herein or, in lieu thereof, the face page of such policy or policies and any endorsements which limit or otherwise affect the coverage provided therein shall be delivered by Tenant to the City Manager, or his or her designee, for approval as to form and sufficiency. When such insurance policy or policies have been so approved, Tenant may substitute for same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policies are in full force and effect and that all liabilities arising out of this lease or Tenant's possession and use of the leased property are covered by such insurance policy or policies and a current copy of such certificate shall be provided to the City annually upon renewal of Tenant's business license. Notwithstanding any provisions to the contrary contained herein, Tenant shall not have the right to take possession of the leased property until such insurance policy or policies are filed with and approved by the City Manager.

13.05 Review of Insurance Coverage. City shall have the right at any time during the term of this Lease to review the type, form and coverage limits of the insurance requirements. If in the opinion of the City, the insurance provisions of this Lease are not sufficient to provide adequate protection for the City and the members of the public using the Airport, the City may require Tenant to maintain insurance sufficient to provide such adequate protection. Insurance requirements shall be applied uniformly to all Tenants engaged in similar-type operations at the Airport, and such requirements shall be consistent with industry standards. City shall notify Tenant in writing of any changes in the insurance provisions necessary to provide adequate protection. If Tenant does not deposit acceptable certificates evidencing valid insurance policies acceptable in form and content to the City, incorporating such changes, within 60 days of receipt of such notice, this Lease shall be in default. The procuring of such policy of insurance shall not be construed to be a limitation upon Tenant's liability nor as a full performance of its part of the indemnification provisions of this Lease; Tenant's obligation being, notwithstanding said policy or policies of insurance, the full and total amount of any damage, injury or loss caused by the negligence or neglect connected with the operation under this Lease.

13.06 Indemnification. Tenant and the City agree that City, its Council, boards and commissions, officers, employees, agents, and volunteers, should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, attorney's fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the matters set forth below.

Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Tenant acknowledges that City would not enter into this Lease in the absence of the commitment from Tenant to indemnify and protect City as set forth here.

To the full extent permitted by law, Tenant shall defend, indemnify and hold harmless the City, its Council, boards and commissions, officers, employees, agents, and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by the City, court costs, interest, defense costs, including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to (i) the intentional act or negligence of Tenant or Tenant's employees, agents, contractors, subcontractors or invitees, (ii) any breach or default in performance of any obligation to be performed by Tenant under this Lease, or (iii) the occupancy of the Premises by Tenant and the operation of Tenant's business thereon. All obligations under this provision are to be paid by Tenant upon receipt of notice by Tenant from the City that the City has suffered or incurred the same.

Without affecting the rights of the City under any provision of this Lease or this section, Tenant shall not be required to indemnify, defend or hold harmless City as set forth above to the extent liability is attributable to the sole negligence, gross negligence or willful misconduct of City, or officers, employees, agents, contractors, subcontractors, tenants, subtenants or volunteers of the City, provided such is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely or grossly negligent or to have engaged in willful misconduct and not in instances where Tenant is solely at fault, or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of Tenant will be for that portion of the liability not attributable to the City's gross negligence or willful misconduct.

Notwithstanding the above, or anything in the Lease, the City shall not in any event, including, without limitation, the sole or gross negligence or willful misconduct of the City or any person for whom it is responsible in law, be in any way liable or responsible to the Tenant for any consequential, indirect, special, punitive or incidental loss, injury or damages of any nature whatsoever (including, without limitation, loss of income or revenue or business interruption) that may be suffered or sustained by the Tenant or its representatives, customers or any other person for whom the Tenant is responsible in law.

Tenant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Article from any assignee, contractor, subcontractor or any other person or entity

involved by, for, with or on behalf of Tenant in the performance of Tenant's obligations under this Lease. In the event Tenant fails to obtain such indemnity from such third parties, as required here, Tenant agrees to be fully responsible according to the terms of this section.

Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors and assigns of Tenant and shall survive the termination of this Lease or this Article.

ARTICLE 14. LIENS & CLAIMS

14.01 **Liens and Claims.** Tenant shall not suffer or permit to be enforced against City's title to the leased Premises, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of City).

14.02 **Tenant to Pay Liens & Claims.** Tenant shall pay all such liens, claims and demands before any action is brought to enforce same against said land; and Tenant agrees to hold City and said land free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith.

14.03 **Payment of Liens & Claims by City.** Should Tenant fail or refuse to pay any lien, claim, or demand arising out of the construction, repair, restoration maintenance and use of said Premises and the buildings and improvements thereon, or any other claim, charge or demand which Tenant has agreed to pay under the covenants of this lease, Tenant or its authorized encumbrancers, if any, shall, within 30 days written notice from City to Tenant of its said encumbrance, pay and discharge the same or shall furnish to City, in a form satisfactory to City, sufficient security for such lien, claim or demand and all costs and expenses in connection therewith. Should Tenant or its said encumbrancer within said 30 day period, not pay and discharge said lien, claim or demand, or not provide said security to City, then City may, at its option, either treat such failure or refusal as a breach of or default under this Lease, or may pay any such lien, claim, charge or demand, or settle or discharge any action therefore or judgment thereon, and all costs, expenses and other sums incurred or paid by City in connection therewith shall be repaid to City by Tenant upon written demand, together with interest thereon at the rate of 10%, per annum from the date of payment until repaid, and any default in such repayment shall constitute a breach of the covenants and conditions of this Lease.

ARTICLE 15. TRANSFERS & ENCUMBRANCES

15.01 **Sales, Assignments, Transfers, Subleases, and Encumbrances.** Tenant shall not sell, assign, transfer, or encumber this lease, any interest of Tenant in and to the leased Premises, nor sublease the leased Premises, in whole or in part, except with the consent of City, which consent shall not be unreasonably withheld. Tenant acknowledges and understands that the leased Premises are restricted to aviation/aeronautical-related uses unless a non-aviation/non aeronautical use is approved by both the City and the Federal Aviation Administration. Neither shall this Lease, nor any interest of Tenant in and to the leased Premises be subject to an

involuntary sale, assignment or transfer, or sale, assignment or transfer by operation of law in any manner whatsoever. Any such sale, assignment, transfer, encumbrance or sublease, whether voluntary or involuntary shall be void and of no effect and shall be a default which entitles City to terminate this Lease, Tenant's rights in and to the leased Premises, in the manner hereinafter provided by this lease.

15.02 **Tenant Affiliate.** Notwithstanding the provisions of §15.01, the Tenant may assign or sublet the Premises, or any portion thereof, with the City's consent to any corporation which controls, is controlled by or is under common control with the Tenant, or to any corporation resulting from the merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes, in full, the obligations of Tenant under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Tenant under the terms of this lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of Tenant, the consent of whom shall not be necessary.

15.03 **No Release of Tenant.** Regardless of City's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary responsibility of Tenant to pay the rent and to perform all other obligations to be performed by Tenant under this Lease. The acceptance of rent by the City shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, City may proceed directly against Tenant without the necessity of exhausting remedies against said assignee. City may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant without notifying Tenant, and without obtaining his consent thereto and such action shall not relieve Tenant of liability under this Lease.

ARTICLE 16. HAZARDOUS SUBSTANCES

16.01 **Hazardous Materials Study.** Prior to, or following its occupancy of the Premises, Tenant may, at its sole cost and expense, arrange for a hazardous materials study of the leased property. City shall provide Tenant any documents, drawings and data in its possession relating to environmental analysis of the leased property. Tenant and City agree that, upon occupancy, the City shall have no further obligation under this Lease to remove any hazardous materials in or on the leased property, including any required repairs identified in any study Tenant may chose to make, prior to, or after Tenant's occupancy of the leased Premises.

16.02 **Hazardous Substances.** Pursuant to Health and Safety Code §25359.7(b), Tenant shall notify City in writing within a reasonable time, of any material release of hazardous substances and of any hazardous substances that have come to be located beneath the Marina Municipal Airport.

16.03 **Removal.** Prior to the expiration of this Lease, Tenant shall at its sole expense, remove all items of personal property, including but not limited to all flammable substances and hazardous materials and wastes as defined by state or federal law at the time of the expiration of this lease.

16.04 **Inspection of Records**. Tenant shall make available for inspection to the City, all records relating to the maintenance, release, mitigation and cleanup for any hazardous substances on the Premises.

16.05 **Compliance**. Tenant shall comply with all federal, state and local laws and regulations relating to hazardous materials and wastes, and shall timely comply with the orders of any governmental agencies relating thereto.

16.06 **Notice**. Upon execution of this Lease, Tenant shall provide the City's Fire Department with a complete list of all hazardous substances used or to be used or stored on the Premises with total quantities of each hazardous substance. Tenant shall notify City of changes in quantity of type within five days of change.

16.07 **Right to Inspect**. The City, in its proprietary capacity, agrees to give reasonable notice in accordance with the general laws of the City, prior to entering upon and inspecting the Premises at any time.

ARTICLE 17. GENERAL PROVISIONS

17.01 **Additional Rules & Regulations**. The City Manager/Airport Manager shall have the power to establish in writing such additional rules and regulations respecting operation of the Airport as are not inconsistent with provisions of this Lease or any applicable ordinances or laws, providing such rules and regulations are found to be necessary or convenient by the City Manager/Airport Manager for the operation of the Airport or the enforcement of the provisions of this Lease, the provisions of any and all applicable laws and ordinances, and the preservation of the public peace, health, safety and welfare; and Tenant shall comply with any and all such rules and regulations adopted in writing by the City Manager/Airport Manager. Tenant may within ten days of Tenant's receipt of any additional rule or regulation established in writing by the City Manager/Airport Manager appeal such rule or regulation to the City Council/ Airport Commission, such appeal to be heard within thirty days. The decision of the City Council/ Airport Commission shall be final.

17.02 **Compliance with Laws; Permits and Licenses**. Tenant's business shall be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations, and other requirements of federal, state, county, city or other governmental agencies having jurisdiction over the operation of Airports. Similarly, Tenant will obtain and pay for any necessary permits, licenses and other consents for the operation of Tenant's business including a City of Marina Business License. Tenant represents and warrants that it has full power and authority to enter into this Lease and perform hereunder, and holds all permits and licenses which are required by law or regulation for complete performance in accordance with the terms of this Lease.

17.03 **Independent Status**. Tenant is an independent entity. Tenant is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Lease shall be construed as creating a partnership or joint venture between City and Tenant. Neither Tenant nor its officers, employees, agents or subcontractors shall

obtain any rights to retirement or other benefits which accrue to City employees.

17.04 **Dispute Resolution.** The parties agree that if any dispute arises over the interpretation or performance of this Lease, the parties will first attempt to negotiate any such dispute informally. If such informal negotiation fails, and if the parties mutually agree at the time, the parties may then submit the dispute for formal mediation to the American Arbitration Association (AAA) or the Judicial Arbitration and Mediation Services (JAMS), or such other mediation service as the parties may mutually agree upon. Expenses of such mediation shall be shared equally between the parties.

17.05 **Confidentiality.** To the extent allowed by law, the City shall not disclose Tenant's financial statement or confidential financial condition. Tenant acknowledges that the City is a municipal corporation, is subject to the California Public Records Act (CA Government Code §6250 et seq.) and accordingly has limited powers to withhold information from the public.

17.06 **Attorney's Fees and Costs.** Should the dispute of the parties not be resolved by negotiation or mediation, and in the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Lease by means of court action or administrative enforcement the laws of the State of California shall govern the interpretation of the terms and conditions of this Lease and such action shall be brought in a court of proper jurisdiction in Monterey County, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

17.07 **Litigation Involving Lease.** In the event the City is made a party to any litigation concerning this Lease or the leased Premises by reason of any act or omission by Tenant, Tenant shall hold the City harmless from all loss or liability, including reasonable attorney's fees, incurred by the City in such litigation. In case suit shall be brought for an unlawful detainer of said Premises, for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant or provision herein contained on the part of Tenant to be kept or performed, and the City prevails therein, Tenant shall pay to the City a reasonable attorney's fee, which shall be fixed by the court.

17.08 **Bankruptcy and Insolvency.** If Tenant shall, at any time during the term of this Lease, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Tenant, or if Tenant shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Tenant shall be appointed in any suit or proceeding brought by or against Tenant, or if Tenant shall make any assignment for the benefit of creditors, then in each and every case, this Lease and the rights and privileges granted hereunder shall immediately cease, terminate and be forfeited and canceled; provided, however, that if Tenant shall, within six days after the filing and service on Tenant of any involuntary petition in bankruptcy or for appointment of a receiver, commence proper proceedings to dismiss or deny the petition or vacate the receivership and shall expeditiously pursue and diligently exhaust all proper remedies toward that end, the bankruptcy or receivership shall not constitute a default until the entry of a final determination adverse to Tenant.

17.09 **Eminent Domain.** In the event of a total or partial taking of the leased Premises or any interest therein by a public authority under the power of eminent domain, including but not limited to any taking of Tenant's leasehold estate by City under City's power of eminent domain, then the rights of the Tenant with respect to the term, rent, and the just compensation awarded in such eminent domain proceeding shall be in accordance with the law in effect when such taking occurs.

17.10 **No Relocation Benefits.** Tenant is hereby informed and acknowledges the following: by entering into this Lease and becoming a Tenant of City, Tenant may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. §§ 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code, §§ 7260 et seq.) (collectively the "Relocation Statutes"), should City at some time make use of the Premises in such a way as to "displace" Tenant from the Premises. Pursuant to the Relocation Statutes, City may then become obligated to make such payments to Tenant even where such displacement of Tenant does not otherwise constitute a breach or default by City of its obligations pursuant to this Lease. Under the Relocation Statutes in effect as of the Effective Date of this Lease, Relocation Benefits may include payment to such a "displaced person" of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars (\$1,000) or more than Twenty Thousand Dollars (\$20,000).

In consideration of City's agreement to enter into this Lease, Tenant hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the City's assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Tenant or any other entity, and releases City from any liability for payment of such Relocation Benefits; provided, however, that Tenant does not waive its rights to Relocation Benefits to the extent that Tenant's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the City or any other public agency with respect to the Premises. Tenant shall in the future execute any further documentation of the release and waiver provided hereby as City may reasonably require.

17.11 **Force Majeure; Waiver.** Tenant shall not be in default under this Lease in the event that the activities of Tenant are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Marina; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Tenant. "Other catastrophic events" does not include the financial ability of Tenant to perform or failure of Tenant to obtain any necessary permits or licenses from other governmental agencies or the right to use facilities of any public entity where such failure occurs because Tenant has failed to exercise reasonable diligence.

17.12 **Abandonment.** Tenant shall not vacate or abandon the leased Premises or any part thereof at any time during the term of this Lease. If Tenant shall abandon, vacate or surrender the leased Premises or be dispossessed by process of law or otherwise, any property belonging to

Tenant and left on the leased Premises shall be deemed, at the option of City, to be abandoned. Upon relinquishing possession, Tenant shall be in default of this Lease and City shall be entitled to terminate this lease, Tenant's rights in and to the leased Premises in the manner hereinafter provided by this Lease.

17.13 **Default.** Tenant shall be deemed in default under this Lease:

(a) Upon breach of any of the covenants and conditions of this Lease with respect to discrimination on the grounds of race, creed, color, national origin, or sex; with respect to economic discrimination; with respect to the sale, assignment, transfer, encumbrance, or subletting of the leased Premises which is the subject matter of this Lease; with respect to the bankruptcy or insolvency of Tenant; or, with respect to any other covenant or condition of this Lease, which breach cannot be cured, immediately upon being given notice thereof by City.

(b) Upon failure to pay any rent or any other consideration required under this Lease to be paid by Tenant to City within 10 days following the date those obligations are due.

(c) Upon failure to provide written evidence of the insurance when due, within 14 days after being given notice thereof by City.

(d) Upon the breach of any of Tenant's other duties and obligations under this Lease, which breach can be cured, if such breach is not cured within 30 days after being given written notice thereof by City.

17.14 **Remedies on Default.**

(a) City's Right to Terminate Lease. Upon Tenant's default of this lease, City shall have the right, without further notice, to terminate this Lease as well as Tenant's rights in and to the leased Premises, to enter upon and retake possession of the leased Premises, including all improvements thereon and facilities appurtenant thereto, by legal proceedings or otherwise, and to recover from Tenant, at the time of such termination, the excess, if any, of the amount of rent to be paid by Tenant under this Lease for the balance of the lease term over the then reasonable rental value of the leased Premises for the same period. For the purposes of this section, City and Tenant agree that the "reasonable rental value" shall be the amount of rent which City can obtain as rent for the balance of the lease term.

(b) City's Right to Repossess, Operate, or Relet the Leased Premises for Tenant's Account. Upon Tenant's default under this Lease, City shall also have the right, without further notice and without terminating this Lease, to enter upon and retake possession of the leased Premises, including all improvements thereon and fixtures appurtenant thereto, by legal proceedings or otherwise, and to take, operate, or relet the same in whole or in part for the account of Tenant at such rental, on such conditions, and to such Tenant or Tenants as City, in good faith, may deem proper, for a term not exceeding the unexpired period of the full term of this Lease. City shall receive all proceeds from rent accruing from such operating or reletting of the leased Premises and shall apply the same first to the payment of all costs and expenses incurred by City in the operation or reletting of the leased Premises and any alterations or repairs reasonably necessary to enable City to operate or relet the leased Premises, and then to the

payment of all such amounts as may be due or become due under the provisions of this Lease, and the balance remaining, if any, at the expiration of the full term of this Lease or on the sooner termination thereof, by written notice of termination given by City to Tenant, shall be paid over to Tenant. In the event proceeds from rentals received by City under the provisions of this section are insufficient to pay all costs and expenses and all amounts due and becoming due hereunder, Tenant shall pay to City, on demand by City, such deficiency as may from time-to-time occur or exist. Notwithstanding any such operation or reletting without terminating this Lease, City may, at any time thereafter, elect to terminate this lease in the event that Tenant remains in default hereunder at such time.

(c) City's Right to Perform. Notwithstanding any provisions as to notice of default in this Lease to the contrary, if, in City's judgment, a continuance of any default by Tenant for the full period of the notice otherwise provided for will jeopardize the leased Premises, including any improvements thereon or facilities appurtenant thereto, or the rights of City, City may, without notice, elect to perform those acts in respect of which Tenant is in default at Tenant's expense and Tenant shall thereupon reimburse City, with interest at the rate of 10% per annum, upon 30 days' written notice by City to Tenant.

(d) Other Remedies. All rights, options, and remedies of City contained in this Lease shall be construed and held to be cumulative and not one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided for by law, whether or not stated in this lease.

17.15 **Waiver of Default.** Any waiver by City of a default of this Lease arising out of the breach of any of the covenants, conditions, or restrictions of this Lease shall not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this Lease.

17.16 **City's Right of Entry.** Tenant shall permit City and any agents and employees of City to enter in and upon the leased Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for improvements, alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the leased Premises thereby occasioned.

17.17 **Notices.** All notices required or permitted to be given under this Lease shall be in writing and shall be personally delivered or sent by facsimile or by United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City:	City of Marina
	City Hall
	Attention: City Manager & Airport Services Manager
	211 Hillcrest Avenue
	Marina, California 93933
	Fax Number: (831) 384-9148

To Tenant:

Joby Aero, Inc.
2155 Delaware Avenue, Suite #225
Santa Cruz, CA 95060
Attn: Legal Department
Fax Number (831) 417-4411

or to such other address as either party may from time-to-time designate by notice to the other given in accordance with this section. Notice shall be deemed effective on the date personally served or sent by facsimile or, if mailed, three business days from the date such notice is deposited in the United States mail.

17.18 **Corporate Authority.** If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within 30 days after execution of this Lease, deliver to the City a certified copy of a resolution of the Board of Directors or said corporation authorizing or ratifying the execution of this Lease. If Tenant is, or at any time during the initial or any extended term of this lease becomes a limited liability company, Tenant shall provide City with a certified copy of Tenant's LLC-1 articles of organization together with a certificate of the status certified by the Secretary of State. If Tenant is a general partnership, Tenant shall provide the City with a copy of the recorded statement of partnership.

17.19 **Amendment or Modification.** This Lease may be amended, altered or modified only by a writing specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Lease, Tenant agrees to consent in writing upon the request of the City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of the Lease as may be reasonable required to enable City to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Tenant hereunder. A failure by Tenant to so consent shall constitute a breach of this Lease.

17.20 **Construction of Lease.** Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If there shall be more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant shall be joint and several; and the term "Tenant" as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

17.21 **Covenant & Condition.** Each term and provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition.

17.22 **Time.** Time is and shall be of the essence of each term and provision of this Lease.

17.23 **Material Breach.** Each and every term, condition, covenant and provision of this Lease is and shall be deemed to be a material part of the consideration for the City's entry into this Lease, and any breach hereof by Tenant shall be deemed to be a material breach.

17.24 **Heirs, Successors and Assigns.** All of the covenants, agreements, conditions and undertakings herein contained shall, subject to the provisions as to assignments, apply to and bind the representatives, heirs, executor, administrators, successors or assigns of all the parties hereto; and all the parties hereto shall be jointly and severally liable hereunder.

17.25 **Further Actions.** Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Lease.

17.26 **Interpretation.** This Lease has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to affect the purpose of the parties and this Lease.

17.27 **Captions.** Titles or captions of articles and sections contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Lease or the intent of any provision of it.

17.28 **Severability.** If any of the provisions of this Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Lease and shall not cause the invalidity or unenforceability of the remainder of this Lease, unless this Lease without the severed provisions would frustrate a material purpose of either party in entering into this Lease.

17.29 **Waiver.** No waiver of any right or obligation of either party hereto shall be effective unless made in writing, specifying such waiver and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Lease on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

17.30 **Counterparts.** This Lease may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

17.31 **Exhibits Incorporated.** All exhibits reference in this Lease and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Lease and any of the terms of any exhibit to the lease, the terms of the Lease shall control the respective duties and liabilities of the parties.

17.32 **Entire Agreement.** This Lease constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to the subject matter.

IN WITNESS WHEREOF, this Lease has been executed by the duly authorized officers or representatives of each of the parties on the date first shown above.

CITY OF MARINA,
a municipal corporation

JOBY AERO, INC
a Delaware corporation

By: _____
Bruce C. Delgado, Mayor

By: _____
Name:
Its:

Dated: _____

Dated: _____

(Pursuant to Reso. 2022-____)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBITS

(To be added)

EXHIBIT A

**A PLAT OF THE AIRPORT REAL PROPERTY
INCLUDING AREAS FOR PARKING**

EXHIBIT B

SCHEDULE OF CITY-OWNED PROPERTY

EXHIBIT C

FAA ASSURANCES

EXHIBIT A

PLAT OF THE AIRPORT REAL PROPERTY
INCLUDING AREAS FOR PARKING

Exhibit A

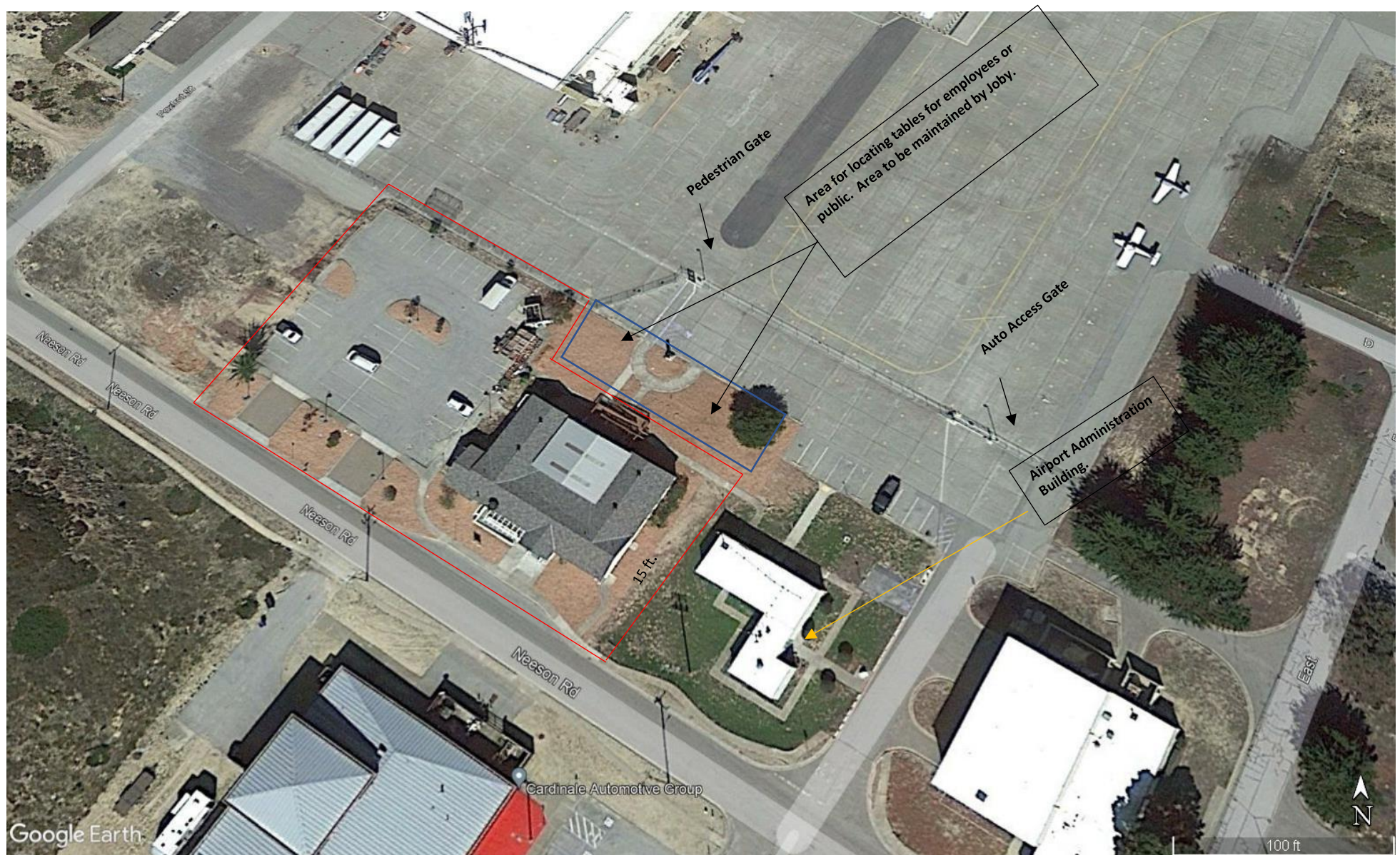


EXHIBIT B

SCHEDULE OF CITY-OWNED PROPERTY

1. Kitchen Exhaust Hood



EXHIBIT C
FEDERAL AVIATION ADMINISTRATION ASSURANCES

A. COMPLIANCE WITH SPONSOR'S FEDERAL GRANT ASSURANCES: To the extent applicable, Tenant shall comply with all Federal Aviation Administration (FAA) assurances below:

1. The Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, COT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (in the case of leases add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, the City of Marina shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the City of Marina shall have the right to terminate this Lease and

the estate hereby created without liability therefore or at the election of the City of Marina or the United States either or both said Governments shall have the right to judicially enforce Provisions.

6. Tenant agrees that it shall insert the above five provisions in any Lease by which said Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.

7. The Tenant assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Tenant assures that it will require that its covered sub organizations provide assurances to the Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR 152, Subpart E, to the same effort.

8. The City of Marina reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Tenant and without interference or hindrance.

9. The City of Marina reserves the right, but shall not be obligated to the Tenant to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport together with the right to direct and control all activities of the Tenant in this regard.

10. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City of Marina and the United States, relative to the development, operation or maintenance of the airport.

11. There is hereby reserved to the City of Marina, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Marina Municipal Airport.

12. Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Leased premises, or in the event of any planned modification or alteration of any present of future building or structure situated on the Leased premises.

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13. The Tenant by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor Lease the erection of any structure or object above the mean sea level elevation of 210 feet.

In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land Leased hereunder and to remove the offending structure or object, all of which shall be at the expense of the Tenant.

14. The Tenant by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased premises in any manner which might interfere with the landing and taking off of aircraft from the Marina Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby Leased and cause the abatement of such interference at the expense of the Tenant.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

February 23, 2022

Item No: **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 1, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF
MARINA AND JOBY AERO, INC. FOR 771 NEESON ROAD (BUILDING
529) AT THE MARINA MUNICIPAL AIRPORT, AND AUTHORIZING
CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON
BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND
APPROVAL BY CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving a Lease Agreement between the City of Marina and Joby Aero, Inc. for 771 Neeson Road (Building 529) at the Marina Municipal Airport; and
2. Authorizing City Manager to execute the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

Building 529 consists of three single story former military buildings joined together totaling approximately 4,100 sq. ft – 2,700 square feet of interior space and 1,400 square feet of enclosed deck space. The building was vacant of a full-time tenant between 2008 and 2017. The Airport improved the building to prepare it for a previous potential tenant. The space is currently vacant and available for lease.

ANALYSIS:

The proposed Lease Agreement includes interior space consisting of approximately 4,100 square feet including 2,700 square feet of interior space and 1,400 square feet of enclosed deck, both on a single floor. The proposed Tenant wishes to use the space for food preparation and service activities. The exterior area of the leasehold includes an approximate 19,434 square feet parking lot located immediately to the west of and adjacent to Building Number 529, as shown on **EXHIBIT A**. The proposed Tenant will have a non-exclusive license to use and maintain the unpaved area located on the north side/rear of Building 529 as a dining area, outside the Tenant's leasehold, also shown on **EXHIBIT A**.

The proposed Lease Agreement provides for:

- Base Term of 5 years and one conditional City optional extension period of five years.
- Market Rate Base Rent consistent with lease rates for non-aviation general retail space off Airport property (\$1.40 per square foot).
- Rent will increase annually by two and one-half percent (2.5%) annually.

The monthly rent payable for the first year of the Term of this Lease shall be \$5,740 (at the rate of \$1.40 per square foot for the interior space including the enclosed deck). Thereafter for the

Term the monthly rent shall increase annually upon the anniversary of the Effective Date by two and one-half percent (2.5%) above the monthly rent payable in the prior year, rounded up to the nearest even dollar, as follows:

Rent for Year Two – \$5,884

Rent for Year Three – \$6,032

Rent for Year Four – \$6,183

Rent for Year Five – \$6,338

Rent for Year One of Optional Term – \$6,497

Rent for Year Two of Optional Term – \$6,660

Rent for Year Three of Optional Term – \$6,827

Rent for Year Four of Optional Term – \$6,998

Rent for Year Five of Optional Term – \$7,1719

Tenant shall also pay every month as provided above, the utilities (water, sewer, and gas), trash collection and related assessments. All of Tenant's operating expenses including liability insurance premiums, permits and license fees and personal property taxes on Tenant's trade fixtures and property shall be paid by the Tenant as well.

Staff is recommending approval of the proposed Lease Agreement as it will create additional ongoing/reoccurring building lease revenue for the Airport and Joby Aero will continue to increase employment within the community.

FISCAL IMPACT:

Should the City Council approve this request, anticipated beginning annual rent revenue to the airport will be approximately \$68,880.

Building lease rent revenue is recorded to FY 2022/23 Budget, Airport Operations Fund 555, Facilities Rents Building Rents, Account No. 555.000.000.00-5460.220.

CONCLUSION:

This request is submitted for the City Council consideration and approval

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina