

RESOLUTION NO. 2019-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS & PRELIMINARY AGREEMENT CONCERNING LEASE AND DEVELOPMENT OF LAND BETWEEN THE CITY OF MARINA AND JOBY AERO, INC.

WHEREAS, Joby Aero, Inc. wishes to establish facilities at the Marina Municipal Airport that would support its production operations; and

WHEREAS, an Exclusive Negotiating Rights & Preliminary Agreement concerning Lease and Development of Land, is necessary in order for the City and Joby to have sufficient certainty to process some of the required entitlements for its proposed development of the Site; and

WHEREAS, Said Agreement helps Joby to finance the Project, and the City to prepare the necessary environmental and technical reports needed to comply with the requirements of the California Environmental Quality Act ("CEQA"), which must be completed prior to issuance of a ground lease by City; and

WHEREAS, the establishment of said Agreement will allow Joby to pursue funding from the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) Sales and Use Tax Exclusion program, which they report will save them millions in capital costs if approved; and

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

1. Adopt a resolution authorizing the Mayor to sign an Exclusive Negotiating Rights & Preliminary Agreement Concerning Lease and Development of Land with Joby Aero, Inc., substantially in the form provided for review, and to authorize the City Manager to execute such other documents and take such other actions as may be required in furtherance of that Agreement, subject to review and approval of the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a Special meeting duly held on the 13th day of June 2019, by the following vote:

AYES: COUNCIL MEMBERS: Urrutia, O'Connell, Morton, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Berkley

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

EXCLUSIVE NEGOTIATING RIGHTS & PRELIMINARY AGREEMENT
CONCERNING LEASE AND DEVELOPMENT OF LAND

This Exclusive Negotiating Rights & Preliminary Agreement Concerning Development and Disposition of Land (“Agreement”) is dated Effective as of _____, 2019 (the “Effective Date”), by and between the City of Marina, a political subdivision of the State of California (“City”), as owner of the real property described below, and JOBY AERO, INC., a corporation of the State of Delaware registered to do business in California (“Joby”), which are hereinafter sometimes individually referred to as a “Party” and collectively referred to as the “Parties.”

In consideration of the mutual promises contained herein and the Reimbursement and Fee Agreement (the “Reimbursement and Fee Agreement”) entered into by the Parties on _____, 2019, as amended on _____ and _____, the City and Joby agree as follows:

ARTICLE 1. PURPOSE OF AGREEMENT.

1.1 Purpose. The purpose of this Agreement is to establish procedures, standards, and a term for the negotiations between the City and Joby and provide for exclusive negotiating rights and the preliminary terms and conditions for the lease of the Site (as more particularly described below) by Joby. This Agreement is necessary in order for the City and Joby to have sufficient certainty to process some of the required entitlements for its proposed development of the Site (the “Project.”)

1.2 Good Faith Negotiations. The City and Joby shall negotiate diligently and in good faith during the Negotiating Period described in Section 1.3, the terms of a lease from the City for the development of the Project on the Site. During the Negotiating period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article ____ to facilitate the negotiation of a mutually satisfactory lease as well as the receipt of necessary approvals. By execution of this Agreement, neither party is committing itself or agreeing to undertake (a) any disposition or acquisition of land, or (b) any other acts or activities requiring subsequent independent exercise of discretion by the parties.

1.3 Negotiating Period. The term of this Agreement shall be the Negotiating Period (the “Negotiating period”) which shall commence upon the Effective Date of this Agreement and shall terminate on _____ 20____. The Negotiating period may be extended on the City’s behalf for up to an additional _____ days by the City Manager if, in the City Manager’s judgment, sufficient progress toward a mutually acceptable business terms and preliminary site plan has been made during the Negotiating Period to merit such extension.

Notwithstanding any provision herein to the contrary, in the event a lease acceptable to both parties has not been executed by the City and Joby by the expiration of the Negotiating Period, then this Agreement shall terminate. Upon such termination, the City shall return any of the unexpended portion of the Deposit (as defined in the Reimbursement and Fee Agreement) to Joby; provided

that Joby is not in default as set forth in Section 3.2, and thereafter, neither Party shall have any further rights or obligations under this Agreement.

If a satisfactory lease is executed by the Parties, this Agreement shall terminate upon approval and execution of that Lease by the City, following execution by Joby, and completion of all legal procedures required thereof. If the parties execute a lease, the lease will address the disposition of any expended portion of the Deposit.

1.4 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2) the City shall not negotiate with any entity, other than Joby, regarding acquisition or development of the Property, or solicit or entertain bids or proposals to do so.

1.5 Environmental and Technical Review. This Agreement is intended to assist Joby to finance the Project and for the City to prepare the necessary environmental and technical reports needed to comply with the requirements of the California Environmental Quality Act ("CEQA"), which must be completed prior to issuance of a lease by City. The approval and execution of this Agreement does not in any way commit the City to any definite course of action regarding the proposed Project including any future decision by the City on whether to approve a lease agreement or other real property transaction for the proposed project to proceed. One of the prerequisites that would need to be fulfilled before the proposed Project could be approved and constructed is the completion of environmental review under CEQA. The City is the Lead Agency under CEQA for the proposed Project and reserves all of its rights, responsibilities, obligations, powers, and discretion under the provisions of CEQA to: (i) evaluate the environmental impacts of the proposed Project; (ii) deny and disapprove the proposed Project if the environmental review reveals significant environmental impacts that cannot be feasibly mitigated; (iii) adopt feasible mitigation measures and/or an alternative to the proposed Project to avoid or lessen significant environmental impacts; or (iv) determine that any significant environmental impacts that cannot feasibly be mitigated are outweighed by the economic, social or other benefits of the proposed Project. Nothing in this Agreement is intended to, or shall be construed to, constitute an action that would foreclose City, as Lead Agency for the Project within the meaning of CEQA, from considering any alternatives or mitigation measures that may be identified through the preparation and consideration of any documents required by CEQA or from making any findings required by CEQA, all as more fully described in Article 7 below. Similarly, nothing in this Agreement is intended to limit or prohibit the City as the lead agency from taking any action necessary for it to comply fully with its legal obligations as the Lead Agency under CEQA for the Project. The lease of the Site and development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

ARTICLE 2. LEASE OF SITE; DEVELOPMENT OF THE PROJECT.

2.1 Site. The "Site" is that certain real property consisting of a total of approximately 14 gross acres of land, generally located on the southeast side of the Marina Municipal Airport, Marina, County of Monterey, California, as illustrated and designated on the site plan which is attached hereto as Exhibit "A" ("Site Plan"). The parties acknowledge that the Site Plan is

tentative and will likely continue to evolve as a result of Joby's processing of the necessary Approvals (as defined below).

2.2. Project. The "Project" is in the process of being defined through discussions with the City acting as the Lead Agency for the Project within the meaning of CEQA. At present, Joby anticipates that the Project will include _____ structure(s) comprising approximately _____ sq. ft. total, subject to certain uses to be set forth in the Ground Lease (as defined below). A final definition of the Project will be made as Joby completes its discussions with the City and other agencies with regulatory responsibilities and the City undertakes and complies with the CEQA process, including the requirements to identify alternatives to the Project. Once the Project is fully defined and a Ground Lease issued, Joby shall be responsible for its design, development and construction including on and off site improvements, at Joby's sole cost and expense, consistent with the Approvals described below and the Site Plan, as such Site Plan may be modified during the public review process of the Project. Prior to construction of the Project, Joby must obtain project entitlements and the City shall obtain the FAA's approval upon completion of all necessary environmental and technical reports, if any, needed to comply with the requirements of the National Environmental Policy Act ("NEPA").

2.3 Approvals. The Parties acknowledge that various governmental entitlement approvals and permits (the "Approvals") must be obtained before a Ground Lease is entered into and/or construction of the Project can proceed. Such entitlements may include, but we are not limited to, CEQA compliance, which must be successfully completed before entering into a Ground Lease. City shall use its commercially reasonable efforts and diligently pursue the Approvals and, in connection therewith, City shall execute all truthful applications and related documents required by the City and other governmental agencies to be executed by the owner of the Site for the Approvals; provided, however, that City shall not be required to incur any liability or encumbrance on its Site in connection therewith, and further provided that, in accordance with the Reimbursement and Fee Agreement, all costs incurred in pursuing such Approvals (including the costs of consultants, architects engineers, professionals and attorneys) shall be the responsibility of Joby rather than City. The foregoing actions of City shall be referred to hereafter as "City's Application Activities". The Joby shall defend and indemnify City from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising directly or indirectly from City's Application Activities. The City Manager or his designee is authorized to execute any Approvals, truthful applications, or related documents required to be signed by City pursuant to this Section 2.3. Joby shall be responsible for the installation of all on and off site improvements required for the Project.

2.4 Ground Lease. Attached hereto as Exhibit "B" is the form, subject to any modification required by Article 7 below and other items to be agreed upon prior to signing of Ground Lease ("Ground Lease") to be entered into by City and Joby, upon approval of the City Council and following successful completion of the CEQA process, which Ground Lease form sets forth all the terms of Ground Lease, including, but not limited to, the initial and maximum term and base rent payable.

2.5 Development and Use of the Site under Ground Lease. Subsequent to issuance of the Ground Lease per Section 3 hereunder, and subject to all Approvals required prior to the

construction, the Project shall be developed in accordance with the Ground Lease and the uses permitted on the Site shall be only those uses permitted by the Ground Lease.

2.6 Physical Condition. Except as otherwise expressly provided herein or in the Ground Lease, the Site and all improvements thereon shall be conveyed in an “as is” condition, with no warranty, express or implied by City as to the condition of the soil (or water), its geology, or the presence of known or unknown faults or as to the condition of any improvements including paved areas. It shall be the sole responsibility of Joby, at Joby’s expense, to investigate and determine the pavement, soil (and water) condition of the Site and the suitability of the Site for the development to be constructed by Joby. If the pavement, soil (or water) condition of the Site is not in all respects entirely suitable for the use or uses to which the Site will be put, then except as otherwise expressly provided herein or in the Ground Lease, it is the sole responsibility and obligation of Joby to take such action as may be necessary to place the Site and the pavement, soil (and water) condition thereof in all respects in a condition entirely suitable for the development of the Site. City agrees to provide all prior studies and reports in City Department of Public Works, Airports’ possession that may address condition of Site.

ARTICLE 3. TERM OF THE AGREEMENT; ISSUANCE OF GROUND LEASE.

3.1 Date of Termination of this Agreement; Issuance of Ground Lease. The Parties acknowledge the difficulty of presently selecting a specific date for termination of this Agreement and/or issuance of a Ground Lease because of the uncertainty of if or when the required compliance with CEQA will be satisfied. The preceding sentence notwithstanding, and subject to completion of CEQA, termination of this Agreement and issuance of the Ground Lease shall occur no earlier than thirty days’ after the City files a Notice of Determination under CEQA, subject to extension on a day-for-day basis (i) pursuant to Section 8.14 below or (ii) in the event the CEQA findings are legally challenged so long as the City is diligently seeking resolution to such challenge(s). Upon the satisfactory completion of the CEQA process by Joby, City and Developer shall enter into the Ground Lease, subject to approval by the City Council, and this Agreement shall terminate. If the timeframes set forth in this Section 3.1 are not met for issuance of the Ground Lease, this Agreement shall terminate, unless the parties mutually agree to an extension in writing hereof.

3.2 Default by Joby. If City claims that Joby is in default with regard to any of the provisions of this Agreement, City shall serve written notice of such default upon Joby. The default notice shall state with specificity the nature of the alleged default. If the claimed default is not cured within thirty (30) days after the service of the notice of default (or, in the case of a default reasonably requiring more than thirty (30) days to cure, if Joby has not undertaken such cure within thirty (30) and does not diligently proceed to completion of the cure), Joby shall, if the claim of default is correct, be deemed to be in default. In the event of such default, City’s sole and exclusive remedy for such default shall be to terminate this Agreement and retain any deposits or fees previously delivered by Joby under the Reimbursement and Fee Agreement as reasonable liquidated damages, and not as a penalty, in light of the difficulty of precisely measuring damages.

3.3 Commencement Date of Lease; Conditional Subleases. The “Commencement Date” of the Ground Lease shall be determined by the City and Joby prior to the time the Ground Lease is presented to the City Council; provided, however, that Joby shall be entitled to enter into

subleases and related documentation with subtenants so long as such subleases and related documentation are expressly contingent upon (i) the execution and delivery of the Ground Lease, and (ii) consent by City pursuant to the terms of the Ground Lease and any required City consent to the subleases.

ARTICLE 4. OBLIGATIONS OF CITY.

4.1 Agreements of City. During the Negotiating Period or until proper termination of this Agreement, City agrees:

- (a) Not to negotiate with any other person or party regarding the development or lease of the Site by such person or party.
- (b) City shall promptly notify Joby of any material change in the condition of the Site or of any event or circumstance of which City receives notice or knowledge which makes, or will make, any representation or warranty of City under this Agreement untrue or misleading.
- (c) City shall engage in City's Application Activities in connection with any Approvals sought by Joby, subject to the provisions stated in Section 2.3 (Approvals).

4.2 Default by City. If Joby claims that City is in default with regard to any of the provisions of this Agreement (including, but not limited to, the agreements in this Article 4), Joby shall serve written notice of such default upon City. The default notice shall state with specificity the nature of the alleged default. If the claimed default is not cured within thirty (30) days after service of the notice of default (or, in the case of a default reasonably requiring more than thirty (30) days to cure, if City has not undertaken such cure within thirty (30) days and does not diligently proceed to completion of the cure) City shall, if the claim of default is correct, be deemed to be in default. In the event of any such default by City, Joby's sole remedy shall be to terminate this Agreement.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES.

5.1 City Representations and Warranties. City represents and warrants to Joby as follows, which representations and warranties shall be deemed made by City as of the date hereof:

- (a) This Agreement, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed and delivered by City shall be duly authorized, executed and delivered by City, and upon delivery thereof to Joby shall be binding upon and enforceable against City in accordance with their respective terms.
- (b) City has the legal right, power and authority to enter into this Agreement and all agreements, instruments and documents herein provided to be executed and to perform all of its obligations hereunder and thereunder, and the execution

and delivery of this Agreement and the performance by City of its obligations hereunder shall not conflict with or result in a breach of any law, regulation or order, judgment, writ, injunction or decree of any court or governmental instrumentality or any agreement or instrument to which City is a party or by which City is bound or to which City or any portion of the premises described in the Ground Lease is subject. The persons executing this Agreement on behalf of City are duly authorized to do so.

- (c) City has not granted any option or other right to lease or otherwise acquire any interest in any portion of the Site.

5.2 Joby Representation and Warranties. Joby represents and warrants to City as follows, which representations and warranties shall be deemed made by Joby as of the date hereof:

- (a) This Agreement, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed and delivered by Joby shall be duly authorized, executed and delivered by Joby, and upon delivery thereof to City, shall be binding upon and enforceable against Joby in accordance with their respective terms.
- (b) Joby has the legal right, power and authority to enter into this Agreement and all agreements, instruments and documents herein provided to be executed and to perform all of its obligations hereunder and thereunder, and the execution and delivery of this Agreement and the performance by Joby of its obligations hereunder shall not conflict with or result in a breach of any law, regulation or order, judgment, writ, injunction or decree of any court or governmental instrumentality or any agreement or instrument to which Joby is a party or by which Joby is bound or to which Joby or any portion of the premises described in the Ground Lease is subject. The persons executing this Agreement on behalf of Joby are fully authorized to do so.

ARTICLE 6. HAZARDOUS MATERIALS.

6.1 Hazardous Materials Activities under This Agreement; Joby Indemnity. During the term of this Agreement, Joby shall not violate any federal, state or local law, ordinance or regulation relating to Hazardous Materials. Joby shall defend, indemnify and hold harmless City and its officers, employees, and agents from any claims, liability, injury, damage, costs or expenses (indulging without limitation, attorneys' fees and the cost of any cleanup, testing, remediation, removal or disposal of Hazardous Materials) relating to or arising out of any Hazardous Materials released, deposited, discharged or disposed onto, under or around the City by Joby, its contractors, employees or agents or arising as a result of Joby's violation of the provisions of this Section. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

6.2 Ground Lease. The Ground Lease contains provisions regarding the use, storage and disposal of Hazardous Materials at the Project. In general, the Project shall not involve any

use, generation, manufacture, production, storage or disposal on, under or about the Project of any Hazardous Materials except to the extent consistent with similar commercial/industrial projects. To that extent, Joby or its tenants shall be liable for any such use, generation, manufacture, production, storage, or disposal of such Hazardous Materials. The specific agreements of Joby and City as tenant and landlord under the Ground Lease regarding Hazardous Materials shall be as set forth in the Ground Lease, and shall be controlling on this subject from and after the execution and delivery of the Ground Lease.

6.3 Hazardous Materials. The term “Hazardous Materials”, when used in this Agreement, shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Site, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Title 42 United States Code 9601-9662), the Resource Conservation and Recovery Act (Title 42 United States Code 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code 25300-25395), and the Hazardous Waste Control Law (Health and Safety Code 25100-25250.25). “Hazardous Materials” shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule or regulation.

6.4 Exceptions to Joby Liability for Hazardous Materials. Notwithstanding anything to the contrary in this Agreement, prior to the execution and delivery of the Ground Lease, should it be executed, or termination of this Agreement pursuant to Section 3.1, Joby shall not be liable or responsible for: (i) Hazardous Materials that are present solely as a result of the gross negligence or willful misconduct of City, its officers, employees or agents; (ii) Hazardous Materials for which Joby is not otherwise responsible that migrate onto the Site from other property; in ground water or otherwise; or (iii) Hazardous Materials present on the Site prior to the Effective Date.

ARTICLE 7. CEQA COMPLIANCE.

7.1 City as Lead Agency. City is the Lead Agency under CEQA for the Project. Nothing in this Agreement shall be interpreted as limiting or prohibiting City’s obligations or discretion as a responsible or lead agency under CEQA to (a) comment on or consider any environmental documentation prepared for the Project or (b) make any findings required by CEQA, including, if necessary, adopting or refusing to adopt a statement of overriding considerations. In the event that the environmental documentation prepared by the City as Lead Agency, or another governmental entity, identifies any alternatives to the Project or mitigation measures that are within the jurisdiction of City as the Lead Agency to implement, City may consider such alternatives and mitigation measures and adopt all or some of the alternatives or mitigation measures prior to executing the Ground Lease. Any alternatives or mitigation measures adopted by City shall be incorporated into the Ground Lease. If Joby rejects the inclusion of such adopted alternatives or mitigation measures in the Ground Lease, City or Joby shall be entitled to terminate this Agreement. Prior to execution of the Ground Lease by the City and the making of any findings required by CEQA, the determination of whether a statement of overriding considerations should or should not be adopted, whether alternatives or mitigation measures identified in the environmental documentation prepared by the lead agency should be incorporated

into the Ground Lease, or whether a notice or determination pursuant to Public Resources Code Section 21152 should be filed shall be made by the Director of the City's Community Development Department, with appeal rights to the City Council.

7.2 Indemnification. Joby shall defend and indemnify the City, its Council, boards and commissions, officers, agents and employees (collectively "City Parties") from any claim, action, liability or proceeding against the City Parties to attack, set aside, void or annul the Joby's Project or any of the proceedings, acts or determinations taken, done or made as a result of City's processing and for approval of the Project. Joby's obligation to defend and indemnify under this Agreement shall apply to any lawsuit or challenge against the City Parties alleging failure to comply with the California Environmental Quality Act ("CEQA") or compliance with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Joby's obligations under this Agreement to defend and indemnify the City Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, costs of any judgments or awards against the City, and for any settlement costs, which arise out of City's processing and for approval of the Project.

ARTICLE 8. GENERAL PROVISIONS.

8.1 Entire Agreement. This Agreement and the exhibits attached hereto constitute the complete agreement of the parties with respect to the subject matters referred to herein, and this Agreement supersedes all prior or contemporaneous oral or written negotiations, promises, covenants, agreements or representations with respect thereto.

8.2 Further Assurances. The parties shall execute such further documents and take such other actions as are reasonable to carry out the intent of this Agreement.

8.3 Assignment.

8.3.1 Restriction on Assignment. This Agreement may not be transferred or assigned by Joby voluntarily, by operation of law or otherwise, unless City has otherwise agreed in writing or as expressly authorized herein, which agreement City shall not unreasonably withhold. Any attempted assignment in violation of this section shall be null and void.

8.3.2 Permitted Transfers. Notwithstanding the foregoing on Section 8.3.1, Joby may assign (a) this Agreement to an Affiliate of Joby (as defined in Section 8.3.4 below), (b) this Agreement to a partnership, limited liability company or other joint entity comprised solely of Joby or its Affiliates, or (c) up to forty-nine percent (49%) of Joby's interest.

8.3.3 Mechanism for Assignment. In the event of a proposed assignment pursuant to Section 8.3, Joby shall give City thirty (30) days' written notice of the assignment and, in the case of a proposed assignment pursuant to Section 8.3.1 above, Joby shall supply City with sufficient information with respect to the proposed assignee so as to enable City to adequately evaluate such assignment.

8.3.4 Definition of Affiliate. As used in this Agreement, the term “Affiliate” shall mean any person or entity controlling, controlled by, or under common control, directly or indirectly, through one or more intermediaries of Joby. The term “control,” as used in the immediately preceding sentence, means the power to direct or cause the direction of the management or policies of the controlled person or entity.

8.3.5. Assumption of Liability. An assignment made pursuant to this Agreement shall be conditioned upon (and shall not be effective until) the assumption by the assignee in writing of all of the obligations of Joby under this Agreement from and after the date of such assignment. In the event of (i) a valid assignment pursuant to this Article 8, and (ii) the assumption of liability by such assignee, Joby shall be deemed released from all liability and obligations under this Agreement provided that the assignee has the capacity to perform the obligations of Joby hereunder.

8.4 Brokers; Finders. City shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. City and Joby to each other represent that neither had engaged any broker, agent or finder in connection with this transaction. City and Joby each agrees to hold the other harmless from any claim by any broker, agent or finder retained by such Party or claiming through such Party.

8.5 Certificates. At any time and from time to time, each party (“Responding Party”) agrees to sign and deliver to the other (“Requesting Party”) within fifteen (15) days after receipt of written request therefor, a statement certifying that (a) this Agreement is unmodified and in full force and effect (or, if such is not the case, so stating and setting forth any modifications), (b) that, to the Responding Party’s knowledge, the Requesting Party is not in breach hereunder (or, if such is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. Such certification may be conclusively relied on by the Requesting Party, any equity investor of Joby, or any Title Insurer or proposed lender of Joby, and any proposed subleasees of any or all portions of the Site. Such certificates issued by City may be signed by the City Manager or his designee.

8.6 No Waiver. The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be construed as a waiver of any other covenant, condition or promise. The waiver by either party of the time for performing any act shall not constitute a waiver of the time for performing such act or of any performance of any other act. The delay or forbearance by either party in exercising any remedy or right, the time for the exercise of which is not specifically and expressly limited or specified in this Agreement, shall not be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

8.7 Notices.

8.7.1 How Made. Unless otherwise specifically provided herein, all formal notices, requests, demands and other communications hereunder shall be in writing and shall be given (i) by established express delivery service which maintains delivery records, (ii) by hand delivery, (iii) telecopy or (iv) by certified or registered mail, postage prepaid, return receipt

requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner. Addresses for notices may be changed by written notice sent in the manner provided above.

To City: CITY OF MARINA, a political subdivision of the
State of California

Address for notice:

City Manager
City of Marina
211 Hillcrest Avenue
Marina, California 93933
Telecopier (Fax): (831) 384-9148

To Joby: JOBY AERO, INC.
340 Woodpecker Ridge
Santa Cruz, California 95060
Telecopier (Fax): (____) ____ - ____

8.7.2 Receipt. Notices shall be deemed effective upon receipt or refusal thereof.

8.8 Recitals, Exhibits. Any recitals set forth above and all exhibits and attachments attached hereto are incorporated into this Agreement and are made a part hereof. If there is any inconsistency between this Agreement and any exhibits hereto, this Agreement shall govern; provided, however, that, upon issuance of the Ground Lease, the Ground Lease shall govern the rights of the Parties in the event of any inconsistency.

8.9 Paragraph Headings. The headings preceding each of the above paragraphs are for convenience only and shall not be considered in the construction or interpretation of this Agreement.

8.10 Governing Law; Venue. This Agreement and the instruments referenced herein shall be construed in accordance with and governed by the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purposes of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in the County of Monterey, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

8.11 Obligation to Refrain from Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry and such other protected categories that may from time to time be added to Civil Code section 51 or other laws prohibiting discrimination in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Project, nor shall Joby itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection,

location, number, use or occupancy of tenants, contractors, subcontractors, or vendees of the Project or any portion thereof.

8.12 Conflict of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employees participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he is, or she is, directly or indirectly interested.

8.13 Warranty Against Payment of Consideration to Third Party for Agreement. Joby warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than the normal cost of conducting business and the costs of professional services such as architects, engineers, attorneys, and brokers' commissions payable in connection with the leasing and subleasing of the potential future Project.

8.14 Enforced Delay. In the event that any of the parties to this Agreement are prevented from proceeding with any of their obligations under this Agreement by reason of events that are beyond that Party's control, including strikes, lockouts, earthquake, war, insurrection, riots, floods, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental delays, inclement weather, delays or inaction of independent contractors, litigation brought against the Project or a Party without the Party's consent, or similar events which are beyond that Party's control, then that Party shall be entitled to an additional grace period of extension of time in which to perform the obligations whose performance is precluded by such event, equal to the period of delay caused by such event beyond that Party's control, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause.

8.15 Severability. Should any part, term, portion or provision of this Agreement, or the application thereof to any person or circumstance be held to be illegal, invalid or in conflict with any applicable governmental regulations, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

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

8.17 Non-liability of City Officials and Employees. No member, official, or employee of City shall be personally liable to Joby or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Joby or to its successor, or on any obligations under the terms of this Agreement.

8.18 Approvals. Unless otherwise expressly provided herein, approvals required of City or Joby shall not be unreasonably withheld and approval or disapproval shall be given within a reasonable time. Unless otherwise expressly provided herein or by law, the City Manager or

his/her designee shall have the authority to sign all necessary documents and issue all approvals, including those approvals contemplated pursuant to Section 2.3 hereof, and disapprovals on behalf of City required or allowed hereunder.

8.19 Business Days. If the last day for performance of an act falls upon a day that is not a regular business day, such last day shall be the next following regular business day.

8.20 Modifications. No modification, waiver or discharge of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver or discharge is or may be sought. Any amendments to this Agreement must be approved by Joby and the City Council of the City of Marina.

8.21 Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a party or its attorney prepared or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.

8.22 Attorney's Fees and Costs. Should it should become necessary for either party to enforce or interpret any of the terms and conditions of this Agreement 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 Agreement 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 reasonable consulted by the attorneys for the prevailing party.

8.23 Joint and Several Liability. If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

8.24 No Third Party Beneficiaries. This Agreement has been made and is made solely for the benefit of City and Joby and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the day and year written below.

[Signature page follows.]

THE CITY OF MARINA,
a political subdivision of the State of California

By: _____

Its: _____

Date: _____ 2019

JOBY AERO, INC.

By: _____

Its: _____

Date: _____ 2019

By: _____

Its: _____

Date: _____ 2019

ATTEST: Resolution 2019 - _____

DEPUTY CITY CLERK

By: _____

APPROVED AS TO FORM
CITY ATTORNEY

By: _____

Ground Lease



Option Area



EXHIBIT B

MARINA MUNICIPAL AIRPORT

GROUND LEASE BETWEEN

THE CITY OF MARINA

AND

JOBY AERO, INC.

Recording Requested by and)
When recorded mail to:)
City Clerk)
City of Marina)
811 Hillcrest Avenue .)
Marina, California 93933)
)
APN: _____)
_____)

THIS GROUND LEASE ("Lease") is made and entered into effective as of the day of _____, 201_ ("Effective Date"), by and between the CITY OF MARINA, A California charter city ("City"), and JOBY AERO, INC. a corporation of the State of Delaware authorized and registered to do business in California ("Lessee"). City and Lessee are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

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. The real property which is the subject of this Lease was conveyed to the City by that certain Quitclaim Deed for Surplus Airport Property recorded on September 6, 1995 on reel 3272 at page 696 and following at the Office of the Recorder, County of Monterey, in Salinas, CA.
- B. On _____ 2019, City and Lessee entered into a Reimbursement and Fee Agreement, as amended on _____ and _____; and on _____, 2019, the Parties entered into an Exclusive Negotiating Rights & Preliminary Agreement Concerning Lease and Development of Land. Both Agreements terminate upon execution of this Lease.
- C. Lessee desires to lease a portion of the Airport real property, zoned by the City as A-1 which is unimproved, for Tenant's use as _____.
- D. The Lease is _____ the California Environmental Quality Act (CEQA) in accordance with _____.
- E.. It is mutually agreed that this Lease is upon and subject to the following terms, covenants, conditions and provisions and Lessee 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.

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, City hereby leases to Lessee, and Lessee hereby leases from City, the Premises described below upon the following terms and conditions:

Conditions Precedent

1. Approval of the terms and conditions of this aeronautical Lease by the Federal Aviation Administration (FAA).
2. Approval of this Lease by the City Council of the City of Marina.
3. Approval by the City Manager/Airport Manager ("City Manager") and the Airport Commission, with the City Council sitting as the Airport Commission, and by the City's Community Development and Public Works Departments of Lessee's plans and specifications for construction of any improvements to be made to the leased premises.

ARTICLE 1 SUMMARY OF BASIC LEASE PROVISIONS, TERMS & DEFINITIONS

1.1 Lessor: CITY OF MARINA, a political subdivision of the State of California Address for notice: City Manager, 211 Hillcrest Avenue, Marina, California 93933 with a copy to: Public Works Director, 209 Cypress Avenue, Marina, California 93933

1.2 Lessee: JOBY AERO, INC. Address for notice: _____

1.3 Premises. The Premises means that approximately 609,840 square feet ($\pm$ 14 gross acres) more or less, being a portion of that certain real property designated as Monterey County Assessor's Parcel Number _____, as delineated on Exhibit "A" (DESCRIPTION AND PLAT OF THE PREMISES) attached hereto and by this reference incorporated herein, and located at Marina Municipal Airport, in Marina, California 93933.

1.4 City's and Lessee's Lease Administrators. This Lease shall be administered on behalf of City by the City Manager, City of Marina, who also serves as the Airport Manager, or by such person's duly-authorized designee (referred to collectively hereinafter as "City's Lease Administrator"), and on behalf of Lessee by _____, or by such other person as may be designated in writing by Lessee (referred to hereinafter as "Lessee's Lease Administrator").

1.5 Effective Date. The date this Lease is approved by the City's Council. See Section 3.1

1.6 Commencement Date. The Commencement Date of this Lease shall be the first day of the first calendar month following the date of approval of this Lease by City's Council on the Effective Date.

1.7 Term. The term ("Term") of this Lease shall be fifty (50) years, commencing on the Commencement Date and expiring at 11:59 p.m. on the day which is the day before the anniversary of the Commencement Date which is fifty (50) years following the Commencement Date, unless sooner terminated as provided in this Lease.

1.8 Rent. See Section 4.1 (BASE MONTHLY RENT).

1.9 Rent Commencement Date. See Section 4.1 (BASE MONTHLY RENT).

1.10 Additional Rent. Any and all sums of money or charges required to be paid by Lessee to City pursuant to the provisions of this Lease shall be paid as "Additional Rent" (for example: late charges, interest, processing fees, etc.)

1.11 Security Deposit. Upon execution of this Lease, Lessee will pay to the City the sum of One Hundred Twenty Thousand Dollars (\$120,000.00), 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 thereon, after deduction of any amounts therefrom for payment of any obligation of Lessee due and owing to the City under any of the provisions of this Lease.

1.12. Lessee shall use the Premises solely for the uses permitted by and in Section 6.1 hereof.

1.13 Definitions. As used in this Lease, the following terms shall have the meanings attached to them in this Section unless otherwise apparent from their context:

a. "Airport" means Marina Municipal Airport, Marina, California.

b. "Airport Operating Ordinance" means Chapter 13.22 of entitled "Marina Municipal Airport" of Title 13 "Public Services" as set forth in the Marina Municipal Code and as that Chapter may be amended in the future.

c. "FAA" means the Federal Aviation Administration.

d. "ALP" means the FAA approved Airport Layout Plan for Marina Municipal Airport.

e. "Council" means the City Council of the City of Marina which body also serves as the Airport Commission for the City of Marina.

f. "City Manager" means the City Manager of the City of Marina, who also serves as the Airport Manager.

g. "Airport Services Managers" means the Airport Services Manager, of the Department of Public Works, City of Marina, or upon written notice to Lessee, such other person as shall be designated from time-to-time by the Lease Administrator.

1.14 Exhibits to Lease. The following drawings and special provisions are attached hereto as exhibits and made a part of this Lease:

EXHIBIT "A" - DESCRIPTION AND PLAT OF THE PREMISES

EXHIBIT "B" - FAA REQUIREMENTS

EXHIBIT "C" – INSURANCE REQUIREMENTS

EXHIBIT "D" - CTY OF MARINA REQUIRED SUBLEASE PROVISIONS

EXHIBIT "E" –WORK LETTER AGREEMENT – AIRPORT

EXHBIT “F” – MEMORANDUM OF LEASE

1.15 Construction of Lease Provisions. The foregoing provisions of this Article summarize for convenience only certain key terms of the Lease delineated more fully in the Articles and Sections referenced therein. In the event of a conflict between the provisions of this Article and the balance of the Lease, the latter shall control.

ARTICLE 2 LEASE OF PREMISES

2.1 Description. City hereby leases to Lessee and Lessee hereby leases from City, for the rent and upon the covenants and conditions hereinafter set forth, the Premises described in Section 1.3 (i) (PREMISES) above.

2.2 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 Lessee 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 Lessee’s rights hereunder. Lessee acknowledges it has been given an opportunity to review the Quitclaim Deed for Surplus Airport Property (“Quitclaim Deed”) from the U.S. Army to the City, recorded on September 6, 1995 on Reel 3272 Page 696 et seq. at the Office of the Recorder of the County of Monterey in Salinas, CA, and agrees to comply with all requirements pertinent to Tenant's activities contained in that document.

2.3 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.

2.4 Mineral Rights. Notwithstanding any provision of this Lease to the contrary, City hereby expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located beneath the surface of the Premises; provided, however, City shall not be entitled to access such subsurface materials from the surface of the Premises or from a level higher than 500 feet below the surface of the Premises during the Term. City's exercise of its right for the activities described in this Section 2.4 shall not result in any material adverse impact on Lessee’s development or use of, or operation on, the Premises for the purposes permitted hereunder (including, but not limited to, ingress and egress, access, signage and parking).

2.5 Reservations to City/Easement Reservations. Lessee accepts the Premises subject to any and all existing easements and encumbrances including, but not limited to, easements and encumbrances reserved in the Quitclaim Deed. City reserves the right to establish, to grant or to use easements or rights-of-way over, under, along and across the Premises for access, underground sewers, utilities, thoroughfares or such other facilities as it deems necessary for public health, convenience and welfare, whether or not such facilities directly or indirectly benefit the Premises, and to enter the Premises for any such purpose; provided, however, that any such grant of rights by City shall require that the Premises be restored to their preexisting condition. No right reserved by City in this Section 25 shall be so exercised as to interfere

unreasonably with Lessee's operations hereunder. City agrees that should the exercise of any of the rights reserved by City in this Section 2.5 temporarily interfere with the use of any or all of the Premises by Lessee, the Rent shall be reduced in proportion to the interference with Lessee's use of the Premises.

2.5.1 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, Lessee 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. Lessee 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 Lessee's sole cost and expense.

2.5.2 FORTAG Easement Reservation. To the extent permitted by the FAA, Lessee interest shall be subject to an access easement for the Fort Ord Recreation Trail and Greenway (FORTAG) project, a paved and unpaved bikeway/trail system designed to connect a 30-mile regional network of recreational trails and greenways connecting communities to open space.

2.6 Lease Subordinate to Conditions and Restrictions Imposed by Public Agencies on Airport Operations. This Lease shall be subordinate and subject to the terms, conditions, restrictions and other provisions of any existing or future permit, lease and agreement between City and any federal, State or local agency governing City's control, operation or maintenance of the Airport, or affecting the expenditure of federal funds for the Airport. Lessee agrees that Lessee's use of the leased Premises, including all future construction, modification or alteration thereon, shall comply with all applicable FAA regulations now in force or that may hereafter be adopted by federal authority. Lessee shall be bound by all such terms and conditions, and shall, whenever City may so demand, execute, acknowledge or consent to any instrument evidencing such terms, conditions, restrictions or provisions. Without limiting the generality of the foregoing, this Lease and Lessee's occupancy of the Premises are expressly made subordinate and subject to the terms, conditions, restrictions and other provisions of those requirements of the Federal Aviation Administration specifically set forth in Exhibit "B" (FAA REQUIREMENTS) and Lessee shall be bound by all such requirements.

2.6.1 Airport Governing Documents - City Licenses and Permits. Lessee acknowledges that it has received a copy of the Quitclaim Deed; and a copy of the City's Airport Operating Ordinance (Marina Municipal Code Chapter 13.22) and shall comply with the requirements and standards set forth therein in the development and use of the Premises. Lessee shall maintain in effect and post in a prominent location 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.

2.7 Grant of Option to Lease Additional Land to Construct Improvements. In consideration of the rents, covenants and conditions of this Lease to be paid, performed, and observed by the Lessee, and provided a certificate of occupancy has been received for the improvements to be constructed by the Lessee on the Leased Premises, the City agrees to grant and to extend to the Lessee an option (the "Option") to lease all of approximately 4,268,880 additional square feet (± 98 acres) of land located contiguous to the Leased Premises, as shown on Exhibit A-1 (the "Option Area"), to facilitate and provide a site for the construction of additional Lessee facilities, provided that this Lease is still in full force and effect and Lessee is not in default under any of the terms of this Lease, and that consent to amend or modify this Lease is received from the FAA.

2.7.1 Exercise of Option. The Option must be exercised by the Lessee in the following manner: at any time during the first three years of the Term of this Lease, Lessee shall have an election to exercise the Option and to lease an additional 4,268,880 square feet, more or less, under the same terms and conditions as provided herein and at the same price per square foot as Lessee is then paying per square foot for the 609,840 square feet of land, more or less, which is conveyed under this Lease. Lessee must give its written notice of its election to exercise the Option to the City and City and Lessee shall then enter into negotiations for a lease amendment to provide for the construction of the improvements to be completed on the Option Area. In the event Lessee fails to give notice of its election to exercise the Option or in the event the City and Lessee cannot agree on a lease amendment within six months following receipt of Lessee's written notice of its exercise of the Option and the City and Lessee cannot agree on an acceptable extension of time for Lessee to either exercise the Option or enter into a Lease Amendment, then the Option shall terminate and the Option Area shall revert to the City's exclusive possession and control free and clear of any claim by the Lessee to an option and Lessee must execute and deliver a quitclaim to the City for the Option.

2.7.2 Lessee's Failure to Exercise the Option. The option provided for herein shall be exercised as determined by the Lessee and the City to be in the best interests of Lessee's business and the orderly development of aviation facilities at the Airport.

2.7.3 Option Personal to Lessee. The Option and rights are personal to the Lessee and may not be exercised or assigned, voluntarily or involuntarily, by or to anyone other than the Lessee except that it may be exercised by or assigned to any of the entities described in Article 15 hereof (ASSIGNMENT, ENCUMBRANCING AND SUBLEASING) for whom Lessee does not need the consent of the City to assign this Lease.

ARTICLE 3 TERM OF LEASE

3.1 Term; Definitions. This Lease shall not take effect until the "Commencement Date," which is defined as the first day of the calendar month following approval of this Lease by City's Council. Subject to approval of this Lease by the City Council, the term ("Term") of this Lease shall be fifty (50) years, commencing on the Commencement Date and expiring at 11:59 p.m. on the day which is the day before the anniversary of the Commencement Date which is fifty (50) years following the Commencement Date, unless sooner terminated or extended as provided in this Lease. Except as otherwise specifically stated in this Lease or in any subsequent amendments hereto, the terms and conditions of this Lease shall remain in effect following any extension, renewal or holdover of the original Term.

3.2 Lessee's Right of Early Termination. In the event that the Lessee fails to complete the qualifying capital improvements ("Required Improvements") on the Premises within 36 months after the Commencement Date, and Lessee, in Lessee's sole discretion, determines the leasehold development is no longer feasible, Lessee shall have the right to terminate this Lease by providing ninety days' prior written notice to City of Lessee's election to terminate the Lease pursuant to this Section, in which event, neither party shall have any further rights or obligations hereunder.

3.4 Change in Law Allowing Early Termination by Lessee. In the event that any statute or ordinance should become effective during the Term, which so restricts Lessee's use of the Premises that Lessee is unable to continue its use and occupancy of the Premises in substantially the manner initially contemplated by this Lease, Lessee may apply in writing to City for a mutual termination of this Lease. City's consent to such mutual termination shall not be unreasonably withheld. Upon such mutual termination, Lessee shall be entitled to no payment for any improvements installed by Lessee, or for any remaining value of its leasehold interest.

3.5 Surrender of the Premises; Quitclaim of Lessee's Interest upon Termination.

(a) Lessee shall surrender possession of the Premises to City upon expiration of the Term or earlier termination of this Lease. Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to City, within thirty (30) days following receipt of written demand therefor, a good and sufficient deed whereby Lessee quitclaims all right, title and interest in the Premises to City. Should Lessee fail or refuse to deliver such quitclaim deed to City, City may prepare and record a notice reciting the failure of Lessee to do so, and such notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee or those claiming under Lessee to the Premises.

(b) Should the manner or method employed by City to re-enter or take possession of the Premises pursuant to the provisions of this Lease give Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee shall be entitled in any such action shall be one dollar (\$1.00). This provision may be filed in any action brought by Lessee against City, and when so filed shall constitute a stipulation by Lessee fixing the total damages to which Lessee is entitled in such an action.

ARTICLE 4 RENT

4.1 Base Monthly Rent. Subject to adjustment as provided in Sections 4.1 (b) and (c), Lessee shall pay as rent ("Rent") for the use and occupancy of the Premises the monthly amount ("Base Monthly Rent") as specified below:

(a) Base Monthly Rent shall accrue and be payable starting on the Commencement Date of this Lease. Base Monthly Rent shall be payable by Lessee to City in accordance with the terms and provisions of this Lease. For that period of this Lease commencing with the Commencement Date and ending on the day which is the day before the anniversary of the Commencement Date which is five (5) years following the Commencement Date, subject to rental adjustment(s) as provided Lessee shall pay to City the sum of Eighteen Thousand Two Hundred and Ninety-Five Dollars (\$18,295.00) as initial Base Monthly Rent. At the Commencement Date, this sum is calculated as follows:

609,840 sq. ft. @ \$0.03 per sq. ft. = \$18,295.00

(b) Except as provided in Section 4.1(c) of this Lease, for each five (5) year period of this Lease or any portion thereof, commencing on the anniversary of the Commencement Date which is five (5) years following the Commencement Date, and each subsequent five (5) year period thereafter ("Adjustment Period"), the then current Base Monthly Rent shall be adjusted (and rounded to the nearest even dollar) to reflect any increase or decrease in the purchasing power of the U.S. Dollar occurring during the Measuring Period (as defined below) by use of the following formula:

$$R = A \times (B/C)$$

WHEREIN,

"R" equals the adjusted Base Monthly Rent for the applicable Adjustment Period for which the Base Monthly Rent is being adjusted; provided, however, that in no event shall any such adjustment in the Base Monthly Rent for any single Adjustment Period exceed twenty percent (20%) or be less than ten percent (10%) of the Base Monthly Rent in effect immediately prior to the applicable Adjustment Period for which the adjusted Base Monthly Rent is being computed, and (ii) the adjusted Base Monthly Rent be adjusted to an amount less than the Base Monthly Rent payable on the Commencement Date of this Lease.

"A" equals (i) for the first fifteen (15) year period beginning on the Commencement Date, the Base Monthly Rent payable on the Commencement Date; (ii) for the next fifteen (15) year period thereafter, the Base Monthly Rent payable during year sixteen (16) of the Term; (iii) for the next fifteen (15) year period thereafter, the Base Monthly Rent payable during year thirty-one (31) of the Term; and (iv) for the balance of the initial Term, the Base Monthly Rent payable during year forty-six (46) of the Term.

"B" equals the monthly Consumer Price Index, as defined below, for the month of _____ immediately preceding the first day of the applicable Adjustment Period for which the adjusted Base Monthly Rent is being computed; and

"C" equals the monthly Consumer Price Index, as defined below, for the month of _____ immediately preceding the Commencement Date; provided, however that beginning on the

anniversary of the Commencement Date which is fifteen (15) years following the Commencement Date, for each subsequent calculation of adjusted Base Monthly Rent for any and all Adjustment Period(s) thereafter, "C" shall equal the monthly Consumer Price Index, as defined below, for the month of _____ immediately preceding the first year of the most recent period described in Section 4.1(c) below in which the Monthly Fair Market Rental Value is determined.

The "Consumer Price Index" which shall be used in the foregoing formula shall be that published by the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the San Francisco-Oakland, CA Area, All Items, for all Urban Consumers (1982 84=100). In the event that such index is not published for the San Francisco-Oakland, CA Area, then another comparable index generally recognized as authoritative shall be substituted by written agreement of City and Lessee. If City and Lessee fail to agree on a substitute index, the substitute index shall be determined by arbitration in accordance with the provisions of Section 1280 of the California Code of Civil Procedure, as same may be amended from time to time.

(c) In addition to the adjustments to the Base Monthly Rent provided above, commencing on the anniversary of the Commencement Date which is fifteen (15) years following the Commencement Date, and at the end of each fifteen (15) year period thereafter during the Term (each an "Appraisal Date"), the Base Monthly Rent shall be adjusted to the higher of the amount calculated by use of the formula in Section 4.1(b), above by the following procedure in this Section 4.1(c) below ("Market Adjustment"):

(i) Commencing approximately two hundred (200) days prior to the applicable Rent Adjustment Date, City and Lessee ("the parties") shall attempt to agree upon the Fair Market Rent. If the parties are unable to agree upon the Fair Market Rent within thirty (30) days thereafter, then each party shall retain and designate, by written notice to the other party within fifteen (15) business days after expiration of said thirty (30) day period, a real estate appraiser who shall be a California State Certified General appraiser, in active and good standing with the California Office of Real Estate Appraisers, and who also has at least five (5) years' full time commercial appraisal experience in the area in which the Premises is located, to appraise and determine the Fair Market Rent for the Premises for the first twelve months of the next five-year period, and prepare a written narrative appraisal presented in a summary format as set forth in the Uniform Standards of Professional Appraisal Standards. The parties shall exchange the written appraisals within sixty (60) business days after designation of the second appraiser. If either party fails to designate and retain an appraiser, the appraiser that was designated and retained pursuant to this section shall determine the Fair Market Value. If either appraiser fails to appraise and determine the Fair Market Rent for the Premises, or if either party fails to exchange appraisals as required by this section, the Fair Market Value shall be based on the appraisal that was prepared and exchanged pursuant to this section.

(ii) If two appraisers are retained and designated, the two shall promptly meet in an attempt to set the Fair Market Rent. If the two appraisers are unable to agree upon the Fair Market Rent for the Premises based on their respective appraisals within sixty (60) business days after designation of the second appraiser, they shall appoint a third appraiser meeting the qualifications stated above within twenty (20) business days after expiration of the sixty (60) day period provided to the two appraisers to set the Fair Market Rent. If the two appraisers are unable to agree on a third appraiser, either of the parties to this Lease, by giving ten (10) days' written

notice to the other party, can apply to the then General Counsel of the Monterey County Association of Realtors for the selection of a third appraiser, who will also appraise and determine the Fair Market Rent for the Premises. Each party shall pay the fees of the appraiser it designates and one half (1/2) the cost of the third appraiser. Within sixty (60) business days after the selection of the third appraiser, a majority of the appraisers shall set the Fair Market Rent. If a majority of the appraisers are unable to agree, then the average of the three appraisals shall be the Fair Market Rent; provided, however, if the low appraisal is more than ten percent (10%) lower and/or if the high appraisal is more than ten percent (10%) higher than the middle appraisal, then the low appraisal and/or high appraisal shall be disregarded in averaging the appraisals. If any of the designated appraisers shall fail to appraise and determine the Fair Market Rent for the Premises within the timeframes set forth herein, then the Fair Market Rent shall be set based on the average of the appraisal(s) that were completed pursuant to this section.

(iii) In determining the Fair Market Rent, the appraisals shall evaluate the monthly rental amount that the Premises could be expected to return to the City if offered for lease on the open market under normal circumstances, giving due consideration to other properties located in the geographic vicinity of the Premises, desirability and utility of the Premises and similar relevant matters. Improvements placed upon the Premises by the Lessee since the Commencement Date of this Lease shall not be considered in arriving at the Fair Market Rent. After the Fair Market Rent has been set, the appraisers shall immediately notify the parties in writing, and the Fair Market Rent determination shall be binding on the parties.

(iv) If the parties cannot arrive at the Fair Market Rent through use of the foregoing procedure, the question may thereafter be submitted to arbitration by notice to the other party. The judgment in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted in accordance with California Code of Civil Procedure §1280, et seq. The arbitrator's fee shall be split by the parties. If the process for determining Fair Market Rent under this Section extends beyond the effective date for the Rent Rate Renegotiation, then Fair Market Rent shall be retroactively applied to that effective date once determined; provided, however, Lessee shall not be relieved of its obligation to pay Base Monthly Rent when due.

Lessee shall pay said rent in advance, on the first day of each calendar month ("Due Date"), without setoff, deduction, prior notice or demand, commencing on the Commencement Date. Should the rent period commence on a day other than the first day of a calendar month, then the rent for such first fractional month shall be computed on a daily basis for the period from the Commencement Date to the end of such calendar month and at an amount equal to one thirtieth (1/30th) of the said monthly rent for each such day, and thereafter shall be computed and paid as aforesaid.

4.2 Additional Rent. Lessee shall pay, as Additional Rent, all sums of money required to be paid pursuant to the terms of this Lease which are not payable as Base Monthly Rent, collectively referred to in this Lease as "Additional Rent." If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Base Monthly Rent thereafter falling due, but nothing in this Section shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable under this Lease or to limit any other remedy of City. All amounts of

Base Monthly Rent and Additional Rent payable in a given month shall be deemed to comprise a single rent obligation of Lessee to City.

4.3 Delivery of Rent Payments. All rent due under this Lease shall be made payable to the City of Marina, and shall be considered paid when delivered to:

City of Marina
Finance Department
211 Hillcrest Avenue
Marina, CA 93933

City may, at any time by written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. City may, but is not obligated to, send monthly rent invoices to Lessee.

4.4 Failure to Pay Base Monthly Rent or Additional Rent; Late Charge.

(a) If Lessee fails to pay rent due hereunder within fifteen (15) days of the time it is due and payable, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 360 day year. In addition to such interest, Lessee acknowledges that the late payment by Lessee of any monthly rental due hereunder will cause City to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs being extremely difficult or impracticable to fix. Such costs and expenses will include, without limitation, administrative and collections costs, and processing and accounting expenses. Therefore, if any such monthly rental is not received by City from Lessee within fifteen (15) days of the time it is due and payable, Lessee shall immediately pay to City a late charge equal to five percent (5%) of such overdue amount. City and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, City's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent City from exercising all other rights and remedies available to City under this Lease or under applicable law.

(b) In the event of a dispute between the parties as to the correct amount of Base Monthly Rent or Additional Rent owed by Lessee, City may accept any sum tendered by Lessee in payment thereof, without prejudice to City's claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Clause to the contrary, however, City's Lease Administrator may waive any delinquency payment or late charge upon written recommendation of the City Manager.

ARTICLE 5 SECURITY DEPOSIT

Lessee has paid or will pay to City the amount set forth as a security deposit in Article 1, "Summary of Basic Lease Provisions," as security for Lessee's performance of this Lease. City shall not be required to keep this Security Deposit separate from its general funds, and Lessee

shall not be entitled to interest thereon. City may apply all or a part of the Security Deposit to any unpaid rent or other charges due from Lessee, or to cure any other defaults of Lessee under this Lease, including repair and cleaning of the Premises at the expiration of the Term. If any portion of the Security Deposit is so applied, Lessee shall, within ten (10) days after City's demand, deposit cash sufficient to restore the Security Deposit to its original amount. Any time the Base Monthly Rent is increased, Lessee shall deposit additional cash funds sufficient to increase the Security Deposit by the same percentage amount. In the event of bankruptcy or other debtor-creditor proceedings against Lessee, the Security Deposit shall be deemed to be applied first to the payment of rent and other charges due City for the periods prior to the filing of such proceedings. The security deposit will not be a limitation on City's damages or other rights under this Lease, or a payment of liquidated damages, or an advance payment of the rent. If Lessee pays the rent and performs all of its other obligations under this Lease, City will return the unused portion of the security deposit to Lessee within sixty (60) days after the end of the Term.

ARTICLE 6 POSSESSION AND USE

6.1 Permitted Uses. Lessee shall use and make available the Premises for use solely for aeronautical purposes in accordance with FAA Rules and Regulations, unless otherwise approved by the city and the FAA Office of Airports. Such uses, which are consistent with the Marina Municipal Airport Land Use Compatibility Plan and City of Marina zoning and land use restrictions adopted by the City with respect to development of the Premises, include: (i) storage of active aircraft; (ii) final assembly of aircraft under construction; (iii) non-commercial construction of amateur build or fit-built aircraft; (iv) maintenance, repair, or refurbishment of aircraft (but not the indefinite storage of non-operational aircraft); (v) storage of aircraft handling equipment, e.g., towbars, glider tow equipment, workbenches, and tools and materials used in the serving maintenance and repair or outfitting of aircraft.. No one other than Lessee, its agents and employees, or any sublessee of Lessee approved by City as provided in Article 15 (ASSIGNMENT, ENCUMBRANCING AND SUBLEASING) is permitted to use the Premises for the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, employees and sublessees, if any, on the Premises. Lessee acknowledges that City reserves the right to permit other businesses at the Airport to offer similar and/or competitive products and services to those of Lessee. The Lessee 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 Lessee.

6.2 Duties and Prohibited Conduct. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of City's Lease Administrator that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses specified above, and shall comply with all local, State and Federal ordinances and regulations in all respects. Lessee shall deposit all trash and rubbish of Lessee only within receptacles provided by Lessee and located in the areas designated by City. Lessee shall not allow or permit installation of any billboards or advertising signs, or aerials or antennas, including commercial

telecommunications antennas, upon the Premises without first obtaining, in each instance, the written consent of the City Manager, which consent the City Manager may give or withhold in the City Manager's sole discretion. Any such signs or antenna installed without such written consent shall be subject to removal without notice at any time, at Lessee's expense. Nothing in this Section shall be deemed to preclude Lessee from erecting and maintaining safety, warning or directional signs, of reasonable dimensions, which are not used for advertisement of goods or services; provided, however, that all such signs must conform to applicable statutes, ordinances, and the Standards.

6.3 Compliance with Laws.

(a) Lessee, at Lessee's sole expense, shall procure, maintain and hold available for City's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the County of Monterey, the City, or of other lawful authorities. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by Lessee of the Premises. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee, in any action or proceeding against them or any of them, whether or not the City is a party to such action or proceeding, that Lessee, or any such sublessee or permittee, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the use of the Premises, shall be conclusive as to that fact as between City and Lessee.

(b) Notwithstanding any other provision of this Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS §§ 12101-12213), Title 24 of the California Code of Regulations ("Title 24") and California Civil Code § 54.1 as they may apply to the Premises. Lessee's obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA ("Title III") (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Lessee's intended use of the Premises, or (ii) may also be required of City under Title II of the ADA ("Title II") (42 USCS §§ 12131 - 12165).

(c) Lessee's duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use thereof ("Land Use Regulations"). City's execution of this Lease shall in no way be deemed to constitute a determination by City that Lessee's intended uses of the Premises comply with applicable Land Use Regulations, nor shall it infer any such conclusion by City, even if City is the agency which enacts or implements the Land Use Regulations applicable to the Premises.

6.4 FAA Safety and Security Rules & Regulations. Lessee 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 and pedestrian deviations; Lessee's employees 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 City Manager for violation of the Airport safety and security requirements.

6.5 Stormwater and Non-Stormwater Discharges. The Airport is subject to federal, state and local laws regarding the discharge of pollutants into the stormwater conveyance system in stormwater and non-stormwater. The programs established by these laws regulate existing activities, the construction process, and impose design requirements on new development and redevelopment. The development related parts of the local stormwater program implement a region-wide model plan, the Standard Urban Stormwater Management Plan or "SUSMP". In addition to the SUSMP, City has developed a Stormwater Pollution Prevention Plan (SWPPP) for the Airport that provides for the elimination of prohibited non-stormwater discharges and the prevention of stormwater pollution through the development, installation, implementation and maintenance of pollution prevention measures, source control measures, and Best Management Practices (BMPs). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground.

Lessee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises in accordance with all applicable federal, state and local laws restricting the discharge of non-stormwater at or from the Airport; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee further agrees to develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance. Lessee further agrees to conform to the specifications in the specifications in the SWPPP for the Airport as the same may be amended from time to time.

Lessee understands and acknowledges that the stormwater and non-stormwater requirements applicable to the Airport and to Lessee may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or City. City may amend the SWPPP for the Airport in response to such changes, or to implement any City program for stormwater and non-stormwater management at the Airport. Lessee agrees to develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Lessee's sole cost and expense. To the extent there is a conflict between any federal, state or local law, City ordinances, any applicable SUSMP, or the SWPPP for the Airport, Lessee shall be obligated to comply with the more restrictive provision. Lessee shall provide City with unrestricted access to the Premises and/or all pertinent records (excluding confidential information) upon seven (7) days written notice for the purpose of monitoring the implementation and maintenance of required BMPs and/or other pollution control devices at the Premises. As used in the immediately preceding sentence, "confidential information" shall include proprietary and confidential materials and information including, but not limited to, marketing studies, demographic studies, market surveys, sales projections or results, or other information respecting the operation of Lessee's (or its subtenants') business operations. Failure to provide City with access or to implement, develop, install, and maintain any pollution control practices or BMPs required by this Section shall constitute a default under this Lease.

6.6 Substance Abuse. Lessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any "controlled substance," precursor or analog specified in Division 10 of the California Health and Safety Code, and violation of this prohibition shall constitute a default under this Lease.

6.7 Control of Premises. Failure of Lessee to take reasonable measures to exercise control of the use of Premises to conform to the provisions of this Article, or to initiate and diligently pursue measures to initiate control where such measures cannot be fully implemented within 30 days of receipt from City of written notice, shall constitute a default under this Lease.

6.8 Use Not Exclusive. Lessee understands and agrees that its right to use the leased Premises for the purposes provided for by the 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 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 Lessee by this Lease, excepting any rights with respect to the use or possession of the leased premises.

ARTICLE 7 UTILITIES

Lessee acknowledges that upon the Commencement Date there are no utilities serving the premises. Lessee shall provide and pay for all initial utility deposits and fees, and for all utilities and services necessary for its use and occupancy of the Premises during the Term, including but not limited to gas, water, electricity, trash, sewer/septic tank charges, internet and telephone; City shall have no responsibility to either provide or pay for such services. If any such services are not separately metered or billed to Lessee but rather are billed to and paid by City, Lessee will pay to City its pro rata share of the cost of such services, as reasonably determined by City, together with its pro rata share of the reasonable cost of making such determination. City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services. Subject to the limitations and agreements contained in this Lease (including, but not limited to, Section 2.3 above), City shall have the right, at no charge from Lessee, to connect to any water, sewer, electrical, gas and communications lines as are now or may hereafter be installed on the Premises, and shall have all necessary rights of access to construct and service such connections; provided, however, that Lessee shall have no obligation to pay any additional service fees or charges assessed by any governmental agency, or public or private utility company, for City's use of such connections.

ARTICLE 8 MECHANICS' LIENS

8.1 Mechanics' Liens. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within thirty (30) days after it is filed. Lessee shall indemnify, defend and hold City harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material men or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

8.2 Contest of Lien. If Lessee shall desire to contest any lien filed against the Premises, it shall, at the option of the Lease Administrator, furnish City, within the thirty (30) day period following filing of the lien, security reasonably satisfactory to City of at least one hundred fifty percent (150%) of the amount of the lien, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the same.

8.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given City security to protect the Premises and City from liability for such claim of lien, City may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to City as additional rent, and Lessee shall pay the same to City with interest at the rate specified in Section 16.8 (INTEREST).

8.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

8.5 Notice of Non-responsibility. City or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility or such other notices which City may deem to be proper for the protection of City's interest in the Premises. Lessee shall, before the commencement of any work which might result in any such lien, give to City written notice of its intention to do so in sufficient time to enable posting of such notices.

ARTICLE 9 SECURITY

Lessee shall be responsible for and shall provide for the security of the Premises and City shall have no responsibility therefor. Lessee's security obligations shall include, but not be limited to, the provision of security services and/or the installation of lighting, fencing, secure locks and doors and other security improvements as may be reasonably necessary to ensure the safe and secure use of the Premises and to prevent the damage or destruction of the Premises and any improvements or property placed thereon. Security improvements shall be constructed on the Premises in accordance with those requirements relating to "Improvements" as identified in Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of this Lease. City and Lessee agree, acknowledge and hereby specifically express their mutual intention that the terms and provisions of this Article 9 are intended to allocate the responsibility for providing security for the Premises as between City and Lessee only and are not intended for the use or benefit of, nor reliance upon by any other party other than City and Lessee, including without limitation, any sublessees of Lessee and/or other parties claiming to have a possessory interest in the Premises, or any portion thereof, whether as a purported third party beneficiary, or otherwise. Nothing set forth in this Article 9 shall be construed or interpreted as modifying, changing or otherwise altering any indemnification responsibilities of either party as set forth elsewhere in this Lease.

**ARTICLE 10 LESSEE'S RIGHT TO MAKE IMPROVEMENTS;
PERSONAL PROPERTY; FIXTURES**

10.1 Improvements. As partial consideration and security for the granting of this Lease by City, Lessee shall, within 36 months after the Commencement Date of this Lease, complete the qualifying capital improvements ("Required Improvements") on the Premises. The Required Improvements shall consist of capital improvements constructed in accordance with the requirements of this Lease (including the requirement that City Public Works Department approve Plans for any such Improvements, which Required Improvements shall have an actual aggregate cost of no less than _____ Dollars (\$_____)). See Section 10.1.1. (QUALIFYING CAPITAL IMPROVEMENT COST REQUIREMENTS) below. Lessee shall install, erect, construct and maintain for the entire term of this Lease, improvements consisting of industrial and/or office building(s) ("Building(s)") together with other site improvements, including but not limited to, landscaping and parking facilities, collectively, the "Improvements"; Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City, the public and other persons and organizations entitled to use of the same.

Lessee may, at Lessee's own expense and in compliance with all laws and with the other requirements of this Lease, from time to time make such permanent and nonstructural alterations, replacements, additions, changes, and/or improvements (collectively referred to in this Lease as "Optional Improvements," and, together with Required Improvements, collectively referred to in this Lease as "Improvements") to the Premises as Lessee may find necessary or convenient for its purposes; provided, however, that the value of the Premises is not thereby diminished. In no event shall Lessee make or cause to be made any penetration into or through the roof or floor of any structure on the Premises that is not in compliance with any laws or regulations including, but not limited to, 14 CFR Part 77, as such statutes and regulations may be amended from time to time, or that is not in compliance with any FAA Form 7460-1 (Notice of Proposed Construction or Alteration) approved by the FAA for the improvements located on the Premises. Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City, the public and other persons and organizations entitled to use of the same.

10.1.1 Qualifying Capital Improvement Cost Requirements. Lessee is required to expend, account for, and certify the expenditure of no less than - _____ Dollars (\$_____) ("Qualifying Capital Improvement Costs Requirements") for the construction of the Required Improvements. City and Lessee further agree that in the event Lessee fails to meet or exceed said \$_____ in expenditures within three (3) years from the Commencement Date of this Lease, Lessee shall be deemed in default, and this Lease may be terminated by City in accordance with Article 16 (DEFAULTS BY LESSEE; CITY'S REMEDIES) below. Notwithstanding the foregoing, that if Lessee provides reasonable evidence to City that Lessee is actively pursuing the construction of the Required Improvements, then City shall extend such three (3) year period for such period as may be reasonably necessary for Lessee to complete the construction of the Required Improvements, provided such extended period shall not exceed two (2) years.

In addition, Lessee, at its sole expense, shall perform and complete all off-site work and improvements which may consist of, but not limited to, streets, street name signs, traffic signs, sewers, water systems, fire hydrants, curbs, gutters, sidewalks, street lighting, driveways, drainage facilities, accesses, survey monuments, etc., hereinafter referred to as off-site improvements, and said off-site improvements shall be constructed in accordance with applicable ordinances, regulations, standards and specifications, and other requirements of the City. No off-site improvements shall be constructed until off-site improvement plans have been approved by the Director of Public Works/City Engineer or his or her authorized designee, one-hundred percent of the plan-check and inspection fees have been paid, and performance security (performance bond and labor and materials bond) has been executed as required by City ordinances and an off-site permit or temporary construction easement has been issued by the Director of Public Works/City Engineer. The City shall have the right to require corrections to the construction plans by the Lessee at any time prior to the release of the bonds even though the plans for the item in question may have been approved by the Director of Public Works/City Engineer. In the event the Lessee fails to complete said off-site improvements within said period or in the event the Lessee, in the City's opinion, has created a safety hazard, the City, at its option, may proceed to complete said improvements at the expense of the Lessee. The City may use the required performance bond as provided for herein for completion of the off-site improvement.

10.2 Construction Requirements. All initial building Improvements to be made to the Premises and any material structural or material architectural design alterations to existing Improvements shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with any present or future ALP for the Airport and then existing and applicable laws, regulations, building standards, requirements and/or ordinances of the City, with the structural, mechanical, electrical, design and quality standards, requirements and criteria specified in Exhibit "E"(WORK LETTER AGREEMENT-AIRPORT), and with plans and specifications approved in writing by the Public Works Director/City Engineer, which approval shall not be unreasonably withheld, before commencement of any work; provided, however, that such approval shall be granted by the Public Works Director/City Engineer if said Improvements are determined to be in compliance with this Lease and any applicable laws or regulations including, but not limited to, 14 CFR Part 77, as such statutes and regulations may be amended from time to time, and if any necessary FAA Form 7460-1 (Notice of Proposed Construction or Alteration) has been approved by the FAA for said Improvements. In connection therewith, Lessee shall provide a minimum of three (3) sets of working drawings or plans showing the planned Improvements, for City's approval, prior to commencing work. All work with respect to any Improvements must be done in a good and workmanlike manner, commenced within three hundred sixty (360) days following receipt of approval therefor from the Public Works Director/City Engineer and all other necessary governmental approvals, and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. Upon completion of such work, Lessee shall have recorded in the office of the Monterey County Recorder a Notice of Completion, as required or permitted by law, and Lessee shall obtain from the City, within thirty (30) days after completion of said work, a Certificate of Occupancy with respect thereto. Within sixty (60) days following completion of an Improvement, Lessee shall provide the City with two (2) complete sets of "as-built" plans of such Improvement. Any such Improvements shall be performed and done strictly in accordance with the laws and ordinances relating thereto.

10.3 Prevailing Wage. Lessee shall abide by the regulations promulgated by the Fort Ord Reuse Authority in the FORA Master Resolution regarding the payment of prevailing wages for “First Generation” construction and/or improvement projects, as that term is defined in the FOR A Master Resolution, on former Fort Ord properties subject to the FOR A Base Reuse Plan including the requirement that Lessee, any contractor, and any subcontractor performing work on the Premises be registered with the DIR in accordance with California Labor Code 1725.5.

(a) Prevailing Wage Standards.

(1) Basic Requirements. Lessee agrees that, with respect to any construction at or on the Premises, Lessee (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”).

(2) Prevailing Wage Provisions. The following provisions of this Section apply:

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

(b) Lessee shall cause the provisions of this Section to be incorporated into each contract and subcontract for each Lessee contractor and subcontractor which would be subject to this Section. In the event the provisions are not so incorporated, Lessee 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 Lessee 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. Lessee and Lessee’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) Lessee 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. Lessee 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 10.3.

(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 Lessee, or any contractor or subcontractor of the Lessee, as a result of the failure of Lessee or any of its contractors or subcontractors to comply with this Section 10.3, Lessee shall withhold from amounts due to the contractor or subcontractor sufficient funds to satisfy the assessment and, if the assessment becomes final, Lessee 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 Lessee or by Lessee's contractor or subcontractor. Lessee, 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 within sixty days after service of the assessment, and Lessee 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 10.3 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) Lessee 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 monthly in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 and Section 1771.4 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 Lessee 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, Lessee 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 Lessee 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), Lessee 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 Lessee 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 and the California Labor Code

(j) In the event of repetitive breach of the requirements of this Section by Lessee, the City shall be entitled, in addition to all other remedies hereunder for breach of this Lease, to appoint at Lessee's expense a special monitor to oversee Lessee's compliance. Fees for said special monitor shall be billed to Lessee, which fees Lessee agrees to pay as Additional Rent within ten days after Lessee's receipt of such bill.

(k) Lessee 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, their employees 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 Lessee 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 Lessee that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or deposit by Lessee 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 Lessee as set forth in this section shall not apply to claims arising from the sole negligence or willful misconduct of the City, its officials, officers, employees or agents.

(l) Contractors or subcontractors shall not be qualified to perform work on Lessee Allowance-Eligible Improvements eligible for a Lessee Allowance, 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.

10.4 City's Costs; Indemnity. Lessee shall reimburse City for all reasonable and actual out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by City in approving or disapproving Lessee's plans for Improvements. Lessee shall be

liable for and shall indemnify and defend City from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from Lessee's construction or installation of any Improvements permitted under this Article.

10.5 Personal Property. Subject to the provisions of the following Section, entitled "Fixtures", all of Lessee's trade fixtures, furniture, furnishings, signs, merchandise and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property" in this Lease) shall remain the property of Lessee. Lessee shall, at its expense, immediately repair any damage occasioned to the Premises by reason of the removal of any such Personal Property.

10.6 Improvements and Fixtures. All Improvements constructed by Lessee, or existing on the Premises on the Commencement Date, together with all other fixtures, excepting Lessee's trade fixtures, permanently attached to the Premises (collectively referred to in this Lease as "Fixtures") shall become the property of City upon expiration or earlier termination of this Lease without any payment therefor by the City. Notwithstanding the foregoing, City may require Lessee to remove any or all Fixtures at Lessee's own expense upon termination of this Lease. Any damage to the Premises occasioned thereby shall be repaired by Lessee in a good and workmanlike manner and the Premises shall be left in as good order and condition as when Lessee took possession thereof, reasonable wear and tear and damage by the elements excepted. In the event Lessee does not remove any Fixtures following direction by the City, City may remove, sell or destroy the same, and Lessee shall pay to City the reasonable cost of such removal, sale or destruction, together with the reasonable cost of repair of damages to City's property or improvements or to the Premises resulting therefrom.

10.7 Signs and Lighting. Lessee shall not construct nor permit the erection of any signs on the Premises which do not conform to the City's standards for signage at the Airport and to any laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must conform to the City's standards for lighting at the Airport and to any laws or ordinances of governmental agencies having jurisdiction over the Premises.

10.8 Environmental and ALP & FAR Notification Requirement Compliance. City shall be responsible for completing the environmental reviews necessary under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq., and/or the National Environmental Policy Act ("NEPA"), 42 United States Code Section 4321, et seq., for the City and/or FAA to approve this Lease and any revisions to the ALP to reflect the Master Development Plan. Lessee shall pay all costs incurred by City to make the CEQA and/or NEPA findings necessary for the City to approve the Lease and any revisions to the ALP to reflect the Master Development Plan. City shall have the option to hire a qualified contractor to perform required environmental analysis for review by City. In all instances where any proposed alteration, improvement, use or occupancy of the Premises by Lessee or any sublessee of Lessee will require environmental review under state or federal law, including, but not limited, to the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq., or the National Environmental Policy Act ("NEPA"), 42 United States Code Section 4321, et seq., the costs of completing such review shall be paid by Lessee (or Lessee's sublessee).

Lessee further acknowledges that the City is obligated by state and federal law to maintain a current ALP for the Airport which details proposed and actual uses of the Premises. Lessee shall be responsible for ensuring any such proposed alteration, improvement, use or occupancy of the

Premises is in accordance with the current ALP or shall take such steps as may be necessary, at Lessee's sole cost, to amend the ALP to reflect the proposal prior to implementation. To the extent City has expended any sums to complete the aforementioned environmental reviews or ALP revisions to reflect Lessee's or any sublessee of Lessee's alteration, improvement, use or occupancy of the Premises, Lessee shall promptly reimburse City for these costs.

Lessee agrees to comply with Federal Aviation Regulations (FAR) notification and review requirements in the event construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any 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 Lessee 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 the Lessee.

10.9 Approvals. The Parties acknowledge that various governmental entitlement approvals and permits (the "Approvals") must be obtained before the construction of the Project can proceed. City and Lessee shall use commercially reasonable efforts and diligently pursue the Approvals and in connection therewith, City shall execute all truthful applications and related documents required by governmental agencies to be executed by the fee owner of the site for the Approvals, provided, however, that City shall not be required to incur any liability or encumbrance on its Site in connection therewith, and further provided that all costs incurred in pursuing such Approvals (including the costs of consultants, architects and engineers) shall be the responsibility of Lessee rather than City. The foregoing actions of City shall be referred to hereafter as "City's Application Activities". The City Public Works Director/City Engineer is hereby authorized to execute any Approvals, truthful applications, or related documents required to be signed by City pursuant to this Section 2.3. Developer shall be responsible for the installation of all on and off site improvements required for the Project.

ARTICLE 11 TAXES, ASSESSMENTS AND FEES

11.1 Responsibility for Payment of Taxes and Assessments. City shall not be obligated to pay any taxes or assessments on the Premises or any interest of Lessee therein accruing before, during or after the Term, or any extension thereof as a result of Lessee's use, occupancy or improvement of the Premises; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

11.2 Definition of "Taxes". As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's

leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

11.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments, or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment, or fee in a manner authorized by law.

ARTICLE 12 REPAIRS; MAINTENANCE

12.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and that it accepts the Premises as of the Commencement Date in their condition at that time, subject to the provisions of this Lease. Lessee further acknowledges that, except as otherwise provided herein, City has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

12.2 Lessee's Repair and Maintenance Obligations. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and lesseeable condition and replace, or cause to be repaired, maintained, or replaced at no cost to City, as necessary, the Premises and every part thereof, including, without limitation, the following as applicable: the roof; the heating, ventilation and air conditioning system; mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all Fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, locking and closing devices; all interior window sashes, casements and frames; doors and door frames (except for the painting of the exterior surfaces thereof); floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Lessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of similar size, kind and quality to the items replaced, shall be subject to prior written approval by the Lease Administrator, shall be performed in a good and workmanlike manner and, in any event, shall not diminish the value of the improvements. Said replacements shall be in compliance with any applicable laws or regulations including, but not limited to, 14 CFR Part 77, as such statutes and regulations may be amended from time to time. Upon surrender of the Premises, Lessee shall deliver the Premises to City without the payment of compensation and in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and

tear. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

12.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to City, City shall have the right, upon giving Lessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Lessee. If City makes or causes any such repairs to be made or performed, Lessee shall pay the cost thereof to City, as Additional Rent, promptly upon receipt of an invoice therefor.

12.4 Right to Enter. Lessee shall permit City, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work thereon (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) that City may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from City, and (c) that City may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any City constructed or owned facilities on or off of the Premises, or at the Airport. Nothing contained in this Section shall imply any duty on the part of City to do any such work which, under any provision of this Lease, Lessee shall be required to do, nor shall City's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. City's entry shall not unreasonably interfere with the operation of the Premises and shall be conducted in such manner as to cause minimal disruption to Lessee and Lessee's sublessees. No exercise by City of any rights reserved to it by this Section shall entitle Lessee to any compensation, damages or abatement of rent from City for any injury or inconvenience occasioned thereby.

12.5 Leasehold Compliance Surveys. In addition to City's right to enter pursuant to Section 12.4, above, Lessee acknowledges and accepts City's right and intent to conduct periodic, but not more frequently than annually, Leasehold Compliance Surveys ("Surveys"). Said Surveys shall be scheduled at a mutually convenient time for City, Lessee, and any affected sublessee following written notice by City of its intent to conduct a Survey. Said Survey will focus on, but not be limited to, the condition of all leasehold improvements for proper maintenance and building code compliance, compliance with laws, and a verification of all commercial subleases on the Premises. Lessee agrees to cooperate with City, or its authorized representative, during the Survey process and provide access to all areas of the Premises, both interior and exterior. In the event City, or its authorized agent, is not able to access all areas of the Premises during the time of the scheduled Survey, Lessee will reschedule a mutually convenient time for a follow up survey to allow access to areas inaccessible during the initial Survey appointment, and Lessee agrees to compensate City for the personnel cost of the follow up Survey at the then applicable City overhead rate for the class of City employee(s) performing said Survey for each hour of such follow up Survey. Refusal by Lessee to provide City with access to all areas of the Premises shall constitute a default under this Lease.

12.6 City Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of California Civil Code Section 1942, or any successor statute thereto ("CCC §1942"), the provisions of this Lease shall control. Lessee specifically waives any right it may

have pursuant to CCC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the City under this Lease.

12.7 Maintenance of Airport Facilities & Aerial Approaches. The City reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport together with the right to direct and control all activities of the Lessee in this regard. The City reserves the right to take any action it considers in its sole discretion to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee 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.

ARTICLE 13 INDEMNIFICATION AND INSURANCE

13.1. Definition of "Lessee Parties" and "City Parties." For purposes of this ARTICLE 13, the term "Lessee Parties" refers singularly and collectively to Lessee and Lessee's officers, members, partners, agents, employees, sublessees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities. The term "City Parties" refers singularly and collectively to City and its officers, councilmembers, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractors of these persons or entities.

13.2 Indemnification.

13.2.1. Lessee's Indemnification of City Parties. To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to City, indemnify, protect, defend, and hold harmless City Parties from and against all Claims, as defined in SECTION 13.2.2, from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, including, without limitation.

(a) The use or occupancy, or manner of use or occupancy, of the Premises by Lessee Parties;

(b) Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, or licensee of Lessee Parties, including, without limitation, trespassers, in, on, or about the Premises;

(c) Lessee's conducting of its business;

(d) Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises, including construction of Improvements, and also including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Commencement Date or enacted, promulgated, or issued after the Commencement Date; and

(e) Any breach or default in performance of any obligation, on Lessee's part, to be performed under this Lease, whether before or during the Term or after its expiration or earlier termination.

Lessee shall defend and indemnify the City, its agents, officers and employees (collectively "City Parties") from any claim, action, liability or proceeding against the City Parties to attack, set

aside, void or annul the Lessee's development ("Project") or any of the proceedings, acts or determinations taken, done or made as a result of City's processing and for approval of the Project. Lessee's obligation to defend and indemnify under this Lease shall apply to any lawsuit or challenge against the City Parties alleging failure to comply with the California Environmental Quality Act ("CEQA") or compliance with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Lessee's obligations under this Lease to defend and indemnify the City Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, costs of any judgments or awards against the City, and for any settlement costs, which arise out of City's processing and for approval of the Project.

13.2.2. Definition of Claims. For purposes of this Lease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys' fees actually incurred).

13.2.3. Type of Injury or Loss. This indemnification extends to and includes Claims for:

- (a) Injury to any persons (including death at any time resulting from that injury);
- (b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and
- (c) All economic losses and consequential or resulting damage of any kind.

13.2.4. Active or Passive Negligence; Strict Liability. Except as provided in this SECTION 13.2.4, the indemnification in SECTION 13.2.1 shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of City Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City Parties. The indemnification in SECTION 13.2.1 shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one City Party was caused solely by the negligence or willful misconduct of that City Party. In that event, however, this indemnification shall remain valid for all other City Parties.

13.2.5. Indemnification Independent of Insurance Obligations. The indemnification provided in this ARTICLE 13 may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations under this Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations under this Lease shall not in any way restrict, limit, or modify Lessee's indemnification obligations under this Lease.

13.2.6 Survival of Indemnification. The clauses of this SECTION 13.2 shall survive the expiration or earlier termination of this Lease until all claims against City Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

13.2.7 Duty to Defend. Lessee's duty to defend City Parties is separate and independent of Lessee's duty to indemnify City Parties. The duty to defend includes claims for which City Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee

Parties have been determined. The duty to defend applies immediately, regardless of whether City Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that City Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend City Parties at any stage of any claim or suit within the scope of this SECTION 13.2.

13.3 Insurance. At no expense to City, Lessee shall provide and maintain, during the Term and for such other period as may be required herein, insurance in the amounts and form specified in this Section and in Exhibit "C" (INSURANCE REQUIREMENTS), attached hereto.

13.3.1 Conduct Increasing City Insurance Costs. If Lessee's business operations, conduct, or use of the Premises in violation of this Lease cause any increase in the premium for any insurance policies or the cancellation of an existing policy carried by City, Lessee shall, within ten (10) business days after receipt of written notice from City, reimburse City for the increase in the premium or the cost to obtain a replacement. In the event Lessee's business operations, conduct, or use of the Premises are not permitted hereunder and makes the City uninsurable, in that the City cannot obtain or afford insurance coverage in an amount determined to be necessary by the City's Risk Manager, Lessee may be required by the Lease Administrator to modify or cease such activities. Lessee shall not be entitled to any compensation for any lost profits, revenues or other sums resulting from the modification or termination of its activities.

13.3.2. Survival of Insurance Requirements. Lessee shall, at Lessee's sole expense, maintain in full force and effect the liability insurance coverages required under this Lease and shall maintain City Parties, and any lender specified by City, as additional insureds, for a period of no less than two (2) years after expiration or earlier termination of this Lease.

13.3.3 Insurance Independent of Indemnification. The insurance requirements set forth in this Section are independent of Lessee's indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's indemnification, and other obligations or to limit Lessee's liability under this Lease.

ARTICLE 14 HAZARDOUS MATERIALS

14.1 Hazardous Materials Laws - Definition. As used in this Section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801, et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901, et seq.), and the California Environmental Quality Act of 1970 (Public Resources Code § 21000, et seq.), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and groundwater conditions or other similar substances or conditions.

14.2 Hazardous Materials - Definition. As used in this Section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

(a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

(b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

(c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

(d) is any other material or substance giving rise to any liability, responsibility or duty upon the City or Lessee with respect to any third person under any Hazardous Materials Law.

14.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions of this Section unless otherwise specifically approved in writing by City's Lease Administrator.

(a) Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, contractors and/or invitees, except as may be permitted by Lessee's use of the Premises in accordance with Section 6.1 (PERMITTED USES) of this Lease.

(b) Any handling, transportation, storage, treatment or usage by Lessee and/or its agents, employees, sublessees, contractors and/or invitees, respectively and as applicable, of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

(c) Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to City, and to any other appropriate governmental regulatory authorities;

(d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises;

(e) No underground improvements, including, but not limited to, treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without City's prior written consent;

(f) Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the reasonable satisfaction of City. Notwithstanding anything to the contrary contained herein, in the event that prior to, or during the, initial two (2) years of construction of the Improvements on the Leased Premises, Hazardous Materials are discovered ("Discovered Hazardous Materials") and the cost to remediate such Discovered Hazardous Materials is estimated to be less than \$50,000.00 then, in such event, Lessee shall be obligated to remove and remediate such Discovered Hazardous Materials at Lessee's cost. If, however, the estimated cost of remediating such Discovered Hazardous Materials is estimated to exceed \$50,000.00 then, in such event, Lessee may elect to terminate this Lease by delivery of written notice of such termination to City within ninety (90) days after the discovery of such Discovered Hazardous Materials ("Lessee Haz Mat Termination Notice") in which event, neither party shall

have any further rights or obligations hereunder; provided, however, that Lessee shall cause any work previously performed to the Leased Premises by or on behalf of Lessee, to be paid in full and shall return the Leased Premises to City free and clear of any mechanic's liens relating to such work and provided Lessee shall not have such termination right in the event Lessee elects, following discovery of such Discovered Hazardous Materials, to continue to excavate such Discovered Hazardous Materials or Lessee or any of Lessee's sublessees, contractors, agents or employees otherwise disturb such Discovered Hazardous Materials such that the same are required to be removed from the Premises. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease prior to, or during the initial two (2) years of construction of Improvements on the Leased Premises, even if the cost of remediation is less than \$50,000 in the event a manifest for the removal and/or disposal of such Discovered Hazardous Materials is required to be signed; provided, however, Lessee shall not have such termination right in the event Lessee, following the discovery of such Discovered Hazardous Materials, elects to excavate such Discovered Hazardous Materials or Lessee or any of Lessee's sublessees, contractors, agents or employees otherwise disturb such Discovered Hazardous Materials such that the same are required to be removed from the Premises. Further notwithstanding the foregoing, City shall have the right, but not the obligation, to elect by written notice delivered to Lessee within thirty (30) days after City's receipt of Lessee's Haz Mat Termination Notice, to remediate such Discovered Hazardous Materials in which event this Lease shall not terminate so long as City (i) undertakes and diligently pursues to completion the remediation of such Discovered Hazardous Materials at City's sole cost and expense and (ii) agrees, in City's sole discretion, to sign any manifest required with respect to the removal of any such Discovered Hazardous Materials. In the event of any Discovered Hazardous Materials not resulting in the termination of this Lease, the time periods for Lessee's performance hereunder and the Rent Commencement Date shall be extended by the period of delay relating to such remediation.

(g) Lessee shall promptly supply City with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.

(h) Lessee shall promptly notify City of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Lessee shall either: (i) pay the claim and remove the lien from the Premises, or (ii) furnish either (1) a bond or cash deposit reasonably satisfactory to City in an amount not less than the claim from which the lien arises, or (2) other security reasonably satisfactory to City in an amount not less than that which is sufficient to discharge the claim from which the lien arises at the end of this Lease.

(i) At the end of this Lease, Lessee shall surrender the Premises to City free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

(j) Notwithstanding anything to the contrary contained in this Lease, Lessee shall not be responsible for the cleanup of contamination on, under or about the Premises resulting solely

from the migration on, under or about the Premises of Hazardous Materials from other properties not owned or controlled by Lessee, whether it be a plume or other form of migration ("Migrating Hazardous Materials") nor shall Lessee be subject to the indemnification provision of Section 14.4(a) of this Lease with respect to any such Migrating Hazardous Materials. Lessee shall bear responsibility to prove to the City conclusively that any such contamination is attributable solely to such migration. City shall not be liable for any damage, destruction, injury or business interruption arising from such migration.

14.4 As Is

(a) Except as expressly set forth in this Lease, it is understood and agreed that City is not making and has not at any time made any warranties or representations of any kind or character, express or implied with respect to the Premises, including but not limited to, any warranties or representations as to habitability, merchantability or fitness for a particular purpose.

Lessee acknowledges and agrees that City shall lease to Lessee and shall accept the Premises "as is, where is, with all faults", except to the extent expressly provided otherwise in this Lease. Lessee understands that the leased premises were formerly used by the federal government as part of an Army air base, and 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. Lessee has not relied and will not rely on, and City is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Premises or relating thereto made or furnished by City or any employees or agents representing or purporting to represent City, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Lease.

Lessee represents to City that Lessee has conducted such investigations of the Premises, including but not limited to, the physical and environmental conditions thereof, as Lessee deems necessary or desirable to satisfy itself as to the condition of the Premises and the existence or nonexistence of curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Premises, and will rely solely upon same and not upon any information provided by or on behalf of City or its agents or employees with respect thereto, other than such representations, warranties and covenants of City as are expressly set forth in this Lease. Upon execution of this Lease, Lessee shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Lessee's investigations, and Lessee, upon the effective date (except with respect to the express representations and warranties of City set forth in this Lease), shall, except as provided in Sections 14.3(j) and 14.4(b), be deemed to have waived, relinquished and released City (and City's officers, directors, shareholders, members, employees, and agents) from and against any and all claims, demands, causes of action (including causes of action in tort, excluding fraud), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Lessee might have asserted or alleged against City (and City's officers, directors, shareholders, members, employees, and agents) at any time by reason of or arising out of any latent or patent construction defects or physical conditions (including environmental conditions), violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the Premises. Without limiting the foregoing release and waiver, Lessee acknowledges and agrees that the

foregoing waiver includes waiver of and that Lessee knowingly and intentionally waives any disclosures, obligations, or requirements of City with respect to the following California code sections and any like federal, state, or local law or regulation: Government Code sections 8589.3 and 8589.4 (potential flood areas); 51183.5 (high fire hazard severity zone); Public Resource Code sections 2621.9 (earthquake fault zone), 2694 (seismic hazard zone), and 4136 (wildland area) and acknowledges and agrees that Lessee has had an opportunity to independently evaluate and investigate the matters as described in such code sections with respect to the Premises. In connection with the above waivers, Lessee, except as provided in Sections 14.3(j) and 14.4(b), hereby releases and waives the provisions of California Civil Code section 1542 which provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Lessee's Initials

Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by City) reimburse and hold City and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by City) which arise during or after the Term from or in connection with deposit, storage, leakage, spillage, release, discharge, emission or disposal of Hazardous Materials anywhere in the Premises, including the soil, ground water or soil vapor on or under the Premises during the Term of this Lease. Notwithstanding anything to the contrary contained herein, to the extent that Lessee conclusively proves to City that a release of Hazardous Materials occurred in connection with the City's exercise of its rights under Section 2.3 above for purposes other than those benefiting the Project or Lessee's use of the Premises (e.g. granting of utility easements serving the Improvements) or if a release of Hazardous Materials was caused by the sole negligent, willful or criminal act or omission, whether active or passive of the City, or the City's agents, employees, or contractors, Lessee shall not be responsible for the cleanup of such Hazardous Materials nor shall Lessee be subject to the indemnification provisions of Section 14.4 of this Lease with respect to any such Hazardous Materials. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

(b) Notwithstanding anything to the contrary contained in this Lease, if Lessee conclusively proves to City that any Hazardous Materials were present on, under or about the Premises prior to the Commencement Date of this Lease ("Preexisting Hazardous Materials"), Lessee shall not be responsible for the cleanup of such Preexisting Hazardous Materials, nor shall Lessee be subject to the indemnification provision of Section 14.4(a) of the Lease with

respect to any such Preexisting Hazardous Materials. City shall not be liable for any damage, destruction, injury, or business interruption arising from such Preexisting Hazardous Materials.

14.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all obligations and liabilities Lessee may have to City at common law, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

14.6 Inspection. City and City's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by City, may (but without the obligation or duty so to do), on reasonable notice to Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency in which case access may be had at any time) or during such other hours as City and Lessee may agree. If Lessee is not in compliance and Lessee does not promptly commence and diligently pursue any remediation required in connection with such non-compliance, City shall have the right, in addition to City's other remedies available at law and in equity, to enter upon the Premises immediately and take such action as City in its reasonable judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. City will use reasonable efforts to minimize interference with Lessee's and Lessee's sublessees' use of Premises but will not be liable for any interference caused by City's entry and remediation efforts. Upon completion of any sampling or testing City will (at Lessee's expense if City's actions are a result of Lessee's default under this Section) restore the affected area of the Premises from any damage caused by City's sampling and testing.

ARTICLE 15 ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

15.1 City's Consent to Transfer Required. Except as provided for in Section 15.1.1 below, Lessee shall not voluntarily or involuntarily assign, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without City's prior written consent. City may withhold its consent until Lessee has complied with the provisions of the following Sections of this Article. Any attempted Transfer without City's consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include (i) an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee, and (ii) the transfer of any stock or interest in Lessee as a corporation, partnership or other business entity which, in the aggregate, exceeds twenty-five percent (25%) of the total ownership interest in Lessee.

15.1.1 Subleasing. Lessee is permitted to sublease the Premises subject to the following conditions:

(a) Lessee shall use the sublease provisions attached hereto as Exhibit "D" in all subleases.

(b) Prior to any occupancy of Premises by a sublessee, Lessee shall require the sublessee to provide evidence of insurance in accordance with provisions of Article 13, above, and Exhibit "D" attached hereto.

(c). Lessee shall provide a copy of the sublease and certificate of sublease insurance to City within thirty (30) days following occupancy of Premises by the sublessee.

(d) Upon review of subleases submitted as provided herein, City reserves the right to reject and terminate any sublease at its sole discretion if Lessee is in default as to any term, covenant, or condition of this Lease, whether notice of default has or has not been given by City.

15.2 City's Election to Consent to a Transfer. Lessee's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer, including (i) the name, address, business, business history and financial condition of the proposed Transferee sufficient to enable City to determine the financial responsibility and character of the Transferee, (ii) a copy of the proposed Transfer instrument and the financial details of the proposed Transfer (including the duration, the rent and any security deposit payable under an assignment), (iii) the Transferee's proposed use of the Premises, and (iv) any other related information which City may reasonably require. City shall have the right (a) to withhold consent to the Transfer, if reasonable; (b) to grant consent; or (c) to consent provided that City is paid, as additional rent hereunder, all sums or other consideration to be paid to Lessee under the terms of the Transfer in excess of the total rent due hereunder.

15.2.1 Consent to Transfer. City's consent to a Transfer will not be effective until (i) a fully executed copy of the instrument accomplishing a Transfer ("Transfer Instrument") has been delivered to City, including, without limitation, a copy of any trust deed encumbering Lessee's leasehold and the note secured thereby, and (ii) in the case of an assignment, City has received a written instrument in which the assignee has assumed and agreed to perform all of Lessee's obligations under this Lease. Any rights acquired by a Transferee pursuant to any Transfer Instrument shall be subject to each and every covenant, condition and restriction set forth in this Lease and to all of the rights and interest of City hereunder except as may be otherwise herein specifically provided. In the event of any conflict between the provisions of this Lease and the provisions of any Transfer Instrument, the provisions of this Lease shall control.

15.2.2 Denial of Consent to Transfer. If City denies its consent to the proposed Transfer, and if Lessee shall so request in writing, City shall provide to Lessee a statement of the basis on which City denied its consent within a reasonable time after the receipt of Lessee's notice. Lessee shall have the burden of proving that City's consent to the proposed Transfer was withheld unreasonably; such burden may be satisfied if City fails to provide a statement of a reasonable basis for withholding its consent within a reasonable time after Lessee's request therefor. Notwithstanding any of the foregoing provisions of this Section to the contrary, the following shall be deemed to be reasonable grounds for City to withhold consent to a Transfer for purposes of compliance with California Civil Code Section 1951.4.

(a) Lessee or any of its successors, assigns or sublessees are in default as to any term, covenant or condition of this Lease, whether or not notice of default has been given by City.

(b) The prospective assignee or sublessee has not agreed in writing to keep, perform and be bound by all of the terms, covenants and conditions of this Lease.

(c) City reasonably objects to the business or financial condition of the prospective assignee or sublessee and/or to the financial details of the proposed Transfer.

(d) All of the terms, covenants and conditions of the assignment or sublease, including any consideration therefor, have not been disclosed in writing to City.

(e) Any construction of improvements required of Lessee as a condition of this Lease has not been completed to the satisfaction of City.

(f) Nonpayment of all applicable transfer charges, including, but not limited to Transfer Fee and Transfer Premium specified in this Article 15. If Lessee believes that City has unreasonably withheld its consent to a Transfer, Lessee's sole remedy will be to seek a declaratory judgment that City has unreasonably withheld its consent or an order of specific performance or mandatory injunction requiring City's consent. Lessee will not have any right to recover damages or to terminate this Lease.

15.3 Encumbering the Leasehold Estate with a Mortgage. Any Transfer which consists of the grant of a deed of trust or similar encumbrance (such encumbrances are collectively referred to herein as a "Mortgage") by Lessee to secure the beneficial interest of a lender ("Beneficiary") in the Premises or Lessee's interests under this Lease, shall be subject to all of the provisions of this Article pertaining to the conclusion and approval of other Transfers, and shall also be subject to the additional terms and conditions set forth below.

(a) No Mortgage granted by Lessee shall encumber the fee title to the Premises at any time;

(b) Immediately following the recordation of any Mortgage affecting the Premises or Lessee's interest in this Lease, Lessee, at Lessee's expense, shall cause to be recorded in the Office of the Recorder, Monterey County, California, a written request for delivery to City of a copy of any notice of default and of any notice of sale under such Mortgage, as provided by the statutes of the State of California pertaining thereto. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision. City shall have thirty (30) days in which to cure any default after the time for Lessee to cure it has expired. Neither City's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the Mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the Mortgage if City, or lessee-in-possession of the Premises, promptly performs all other provisions of the Mortgage.

(c) The Mortgage documents shall provide that any proceeds from fire or extended coverage insurance shall first be used for repair or rebuilding of the leasehold Improvements.

(d) No permitted Mortgage shall cover any interest in any real property other than interests specifically subjected to mortgage by this Lease.

15.3.1 Curable and Noncurable Defaults Under the Lease; City's Covenant of Forbearance. Where City has consented to a Mortgage encumbering Lessee's leasehold as required pursuant to this Article, then City, notwithstanding anything to the contrary in this Lease, shall not exercise its remedies under this Lease for Lessee's default during the periods specified in this Section so long as the Beneficiary of such Mortgage takes the following actions.

15.3.1.1 If a curable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:

(a) Cures Lessee's default within the same time period allotted to Lessee for cure of such default, plus an additional thirty (30) days (except that only ten (10) additional days shall be permitted in the case of a default in the payment of money from Lessee to City).

(b) Notifies City, within ten (10) days following receipt of City's notice of Lessee's default, of its intention to effect this remedy;

(c) Institutes immediate steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(d) Keeps and performs, during the period until the leasehold shall be either (i) sold upon foreclosure pursuant to the Mortgage, or (ii) released or reconveyed pursuant to the Mortgage (such period being referred to hereinafter as the "Foreclosure Period"), all of the covenants and conditions of this Lease, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

15.3.1.2 If a noncurable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:

(a) Notifies City, within ten (10) days after receipt of City's notice of Lessee's default, of its intention to effect this remedy;

(b) Institutes immediate steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(c) Keeps and performs, during the Foreclosure Period, all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

15.3.1.3 If Lessee fails to cure any curable default within the time period allowed for such cure in this Lease, no cure by a Beneficiary of any such default in the manner allowed under this Section shall reinstate Lessee in good standing under this Lease. If, following expiration of the cure period applicable to Lessee, the Beneficiary shall fail or refuse to comply with any or all of the conditions of this Section applicable to Lessee's default, including failing to expeditiously obtain title to Lessee's leasehold, then City shall be released from its covenant of forbearance hereunder, and may immediately terminate this Lease.

15.3.2 Transfer of Leasehold Estate; City's Option to Purchase. Any Beneficiary who acquires title to the leasehold estate shall immediately provide City with written notice of such transfer. Notwithstanding any provision of this Section to the contrary, upon transfer of the leasehold estate to a Beneficiary in any manner, City shall have the option to purchase all right, title and interest in and to the leasehold and the Premises directly from the Beneficiary.

15.3.2.1 Should City elect to not exercise its option to purchase the leasehold then, subject to the provisions of SECTIONS 15.4 (TRANSFER FEE), 15.6 (NO RELEASE OF LESSEE) and 15.7 (NO MERGER) below, and so long as the Beneficiary shall have observed all of the conditions of SECTION 15.3.1, above, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Premises or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. Any further transfer of the leasehold estate, however (whether by a Beneficiary or by a third-party bidder acquiring the estate at a foreclosure sale), shall be subject to the following conditions:

(a) The provisions of SECTIONS 15.1, "CITY'S CONSENT TO TRANSFER REQUIRED," and 15.2, "CITY'S ELECTION TO CONSENT TO A TRANSFER," above, shall apply to such further Transfer, and City's consent shall be required to such further Transfer; and

(b) By its acceptance of the leasehold estate, the Transferee of such further Transfer assumes this Lease as to the entire leasehold estate and covenants with City to be bound hereby.

15.3.3 Article Controlling. In the event of any conflict between the provisions of this Article and any other provision of this Lease, this Article shall control.

15.3.4 Failure to Give Notice. Except as expressly set forth in this Article, City shall have no obligation to any Beneficiary or to give any notice to any Beneficiary, and City's failure to provide any Beneficiary with any notice of any default hereunder shall not create any right or claim against City on behalf of Lessee or any Beneficiary.

15.4 Transfer Charge. If City is requested to consent to a Transfer hereunder or issue an estoppel certificate, Lessee shall pay all City's attorneys' fees, plus a non-refundable charge ("Transfer Charge") to reimburse City or City's agent for costs and expenses incurred in connection with such request. The Transfer Charge in effect as of January 2019 is Seven Hundred Fifty Dollars (\$750.00). City reserves the right to adjust the Transfer Charge at any time during the Term of the Lease to accommodate for staff costs increases. The adjusted amount shall be determined by use of the following formula:

$$A = \$750.00 \times (B/C)$$

Wherein:

"A" equals the adjusted Transfer Charge; "\$750.00" equals the Base Transfer Fee that has been in effect as of January 2019;

"B" equals the monthly Consumer Price Index, as defined in Section 4.2.1, published for the month of January most closely preceding the date of request for consent to transfer; and

"C" equals the monthly Consumer Price Index, as defined in Section 4.2.1, published for the month of January 2019.

The Transfer Charge shall be delivered to City concurrently with Lessee's request for consent.

15.5 Transfer Premium Upon Assignment. In the event of an assignment, City shall also be entitled to collect a Transfer Premium Payment, which shall be in addition to any Transfer Fees which are applicable to the transaction.

15.5.1 Transfer Premium Payment. As a reasonable condition to City's consent to any assignment, Lessee shall pay to City 1.67% of any consideration received by Lessee as a consequence of the assignment ("Transfer Premium"), as defined in SECTION 15.5.2, below. Lessee shall pay to the City the Transfer Premium Payment concurrently with assignment of the Lease.

15.5.2 Definition of "Transfer Premium". "Transfer Premium" means all consideration paid by transferee to transferor for leasehold interest in the Premises, including leasehold interest in any Improvements constructed by Lessee, or in the event of a subsequent assignment, all consideration paid by new transferee, including the consideration paid by transferor to acquire its interest in the leasehold. If part of the Transfer Premium is payable by transferee other than in cash, City's share of that non-cash consideration shall be in a form reasonably satisfactory to City.

15.5.3 Exemption from Recapture. This SECTION 15.5 does not apply to any "Exempt Transfer." An Exempt Transfer consists of any of the following:

- (a) Any Transfer for which City's consent is not required; or
- (b) Any Transfer to an Affiliate of Lessee, as defined below.

As used herein, the term "Affiliate" means any entity that controls, is controlled by, or is under common control with Lessee. "Control" means the direct or indirect ownership of fifty-one percent (51%) of the voting securities of an entity or possession of the right to vote fifty-one percent (51%) of the voting interest in the ordinary direction of the entity's affairs.

15.6 No Release of Lessee. No authorized Transfer shall release or change Lessee's primary liability to pay the rent and to perform all other obligations of Lessee under this Lease, except to the extent the Lease is terminated as described above. Lessee may not amend the assignment or sublease in such a way as to reduce or delay payment of amounts that are provided in the assignment or sublease approved by City. City's acceptance of rent from any other person is not a waiver of any provision of this Article or a consent to Transfer. City's consent to one Transfer shall not be deemed to imply City's consent to any subsequent Transfer. If Lessee's Transferee defaults under this Lease, City may proceed directly against Lessee without pursuing remedies against the Transferee. City may consent to subsequent assignments or modifications of this Lease by Lessee's Transferee, without notifying Lessee or obtaining its consent, and such action shall not relieve Lessee's liability under this Lease.

15.7 No Merger. No merger shall result from a Transfer pursuant to this Article, Lessee's surrender of this Lease, or a mutual cancellation of this Lease in any other manner except at the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing under provisions of this Lease relating to the purchase or construction of Improvements. In the event of any such merger, City may either terminate any or all subleases or succeed to the interest of Lessee thereunder.

15.8 Approval of Temporary or Limited Activities. Notwithstanding any provision of this Article to the contrary, the City's Lease Administrator may, at his or her sole discretion, and without charging a Transfer Fee, give written authorization for the following activities on the Premises:

- (i) activities of a temporary nature, not to exceed one hundred twenty (120) calendar days, and
- (ii) activities of a limited nature which do not exceed ten (10) hours per week. Lessee shall

maintain, on an approved City form, a listing of all such activities approved by the City, stating the nature, duration and other relevant matters regarding such activities, and shall make such form available to City for inspection upon request. Nothing herein shall relieve Lessee from its responsibilities under this Lease, and Lessee shall be responsible for insuring that any such activity approved by the City complies with all of the provisions of this Lease. Any such temporary or limited activity shall be subject to immediate termination upon delivery of written notification thereof from the City.

ARTICLE 16 DEFAULTS BY LESSEE; CITY'S REMEDIES

16.1 Events of Default. The occurrence of any of the following shall constitute a default by Lessee and a breach of this Lease:

(a) Failing or refusing to pay any amount of Base Monthly Rent or Additional Rent when due in accordance with the provisions of this Lease, and the default continues for ten (10) days after notice from City;

(b) Failing or refusing to occupy and operate the Premises in accordance with the provisions of this Lease;

(c) Failing or refusing to perform fully and promptly any covenant or condition of this Lease, other than those specified in subsections (a) and (b) above, the breach of which Lessee is capable of curing after reasonable notice from City;

(d) Maintaining, committing or permitting on the Premises waste, a nuisance, or use of the Premises for an unlawful purpose;

(e) Assigning or subletting this Lease in a manner contrary to the provisions of this Lease;

(f) Failing to meet the Qualifying Capital Improvement Cost Requirements as set forth in Section 10.1.1 (QUALIFYING CAPITAL IMPROVEMENT COST REQUIREMENTS) above;

(g) Failing or refusing to permit City access to all areas of the Premises as set forth in Section 12.5 (ANNUAL LEASEHOLD COMPLIANCE SURVEYS) above;

(h) The occurrence of any of the events set forth in Section 19.1 (RIGHT OF TERMINATION) below.

16.2 Notices. Following the occurrence of any of the defaults specified in the preceding Section, City shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and demanding that Lessee either fully cure each such default within the time period specified in the subparagraphs below or quit the Premises and surrender the same to City:

(a) For nonpayment of Base Monthly Rent or Additional Rent, ten (10) business days; and

(b) For any default in the performance of any covenant not requiring payment of Base Monthly Rent or Additional Rent, thirty (30) business days, provided, however, that if such default cannot be cured within said time period, Lessee shall be deemed to have cured such default if Lessee so notifies City in writing, commences cure of the default within said time

period, and thereafter diligently and in good faith continues with and actually completes said cure.

To the extent permitted by applicable State law, the time periods provided in this Section for cure of Lessee's defaults under this Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by California law as a condition precedent to the commencement of legal action against Lessee for possession of the Premises.

16.3 City's Rights and Remedies. Should Lessee fail to cure any such defaults within the time periods specified in the immediately preceding Section, or fail to quit the Premises as required thereby, City may exercise any of the following rights without further notice or demand of any kind to Lessee or any other person, except as may otherwise be required by applicable California law:

(a) The right of City to terminate this Lease and Lessee's right to possession of the Premises and to reenter the Premises, take possession thereof and remove all persons therefrom, following which Lessee shall have no further claim on the Premises or under this Lease;

(b) The right of City without terminating this Lease and Lessee's right to possession of the Premises, to reenter the Premises and occupy the whole or any part thereof for and on account of Lessee and to collect any unpaid rents and other charges, which have become payable, or which may thereafter become payable pursuant to Civil Code Section 1951.4; or

(c) The right of City, even though it may have reentered the Premises in accordance with the immediately preceding subparagraph (b) of this Section, to elect thereafter to terminate this Lease and Lessee's right to possession of the Premises.

Should City have reentered the Premises under the provisions of subparagraph (b) of this Section, City shall not be deemed to have terminated this Lease, the liability of Lessee to pay rent or other charges thereafter accruing, or Lessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless City shall have notified Lessee in writing that it has so elected to terminate this Lease and Lessee's right to possession. Lessee further covenants that the service by City of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless City elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Lessee) be deemed to be a termination of this Lease. In the event of any reentry or taking possession of the Premises as aforesaid, City shall have the right, but not the obligation, at Lessee's expense, to remove therefrom (i) all or any part of any buildings or structures placed on the Premises by Lessee or its agents, and (ii) any or all merchandise, Fixtures or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of Lessee. The rights and remedies given to City in this Section shall be additional and supplemental to all other rights or remedies which City may have under laws in force when the default occurs.

16.4 City's Damages. Should City terminate this Lease and Lessee's right to possession of the Premises, City may recover from Lessee as damages any or all of the following:

(a) Any unpaid rent owed to City at the time of such termination;

(b) Any unpaid rent that would have been owed to City after termination of the Lease to the time of any award that exceeds any rent loss that Lessee proves could have been reasonably avoided;

(c) Any unpaid rent not recovered pursuant to Sections 16.4 (a) and (b) above that could have been collected for the balance of the Term that exceeds the amount of such rent loss that Lessee proves could be reasonably avoided;

(d) Any other amount necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, any costs or expense incurred by City in (i) retaking possession of the Premises, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new Lessee, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; and

(e) At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

16.5 Fixtures and Personal Property. In the event of Lessee's default, all of Lessee's Fixtures and Personal Property shall remain on the Premises and, continuing during the length of said default, City shall have the right to take the exclusive possession of same and to use the same free of rent or charge until all defaults have been cured or, at its option, to require Lessee to remove same forthwith. This Section 16.5 is not applicable with respect to the Fixtures and Personal Property of Lessee's sublessees.

16.6 City's Security Interest. To secure Lessee's performance of any and all of Lessee's obligations under this Lease, Lessee hereby grants City an express first and prior contractual lien and security interest in all proceeds of any insurance that may accrue to Lessee by reason of the destruction or damage to such property. Lessee waives the benefit of all exemption laws in favor of this lien and security interest. This lien and security interest is given in addition to City's statutory lien and is cumulative with it. Upon the occurrence of an event of default, these liens may be foreclosed with or without court proceedings by public or private sale, so long as City gives Lessee at least fifteen (15) days' notice of the time and place of the sale. City shall have the right to become the purchaser if it is the highest bidder at the sale. To perfect said security interest, Lessee shall execute and deliver to City such financing statements required by the applicable Uniform Commercial Code as City may request. Notwithstanding anything to the contrary contained herein, City agrees to execute such documents, agreements and/or instruments as any Beneficiary may require to evidence that any lien or security interest granted to City pursuant to this Section 16.6 is subordinate to any lien or security interest that Lessee may now or hereafter grant to any Beneficiary (a) with respect to Lessee's or any sublessee's merchandise and Personal Property located on the Premises or (b) upon any or all proceeds of any insurance that may accrue to Lessee or Beneficiary in accordance with this Lease by reason of the destruction or damage of such property.

16.7 Lessee's Waiver. Notwithstanding anything to the contrary contained in this Article, Lessee waives (to the fullest extent permitted under law) any written notice (other than such notice as this Article specifically requires) which any statute or law now or hereafter in force prescribes be

given Lessee. Lessee further waives any and all rights of redemption under any existing or future law in the event its eviction from, or dispossession of, the Premises for any reason, or in the event City reenters and takes possession of the Premises in a lawful manner.

16.8 Interest. Any amounts due to City from Lessee pursuant to this Article 16 shall accrue interest at the rate and in the manner specified in Section 4.4 (FAILURE TO PAY BASE MONTHLY RENT OR ADDITIONAL RENT; LATE CHARGE) for unpaid rent.

ARTICLE 17 DEFAULTS BY CITY; REMEDIES

If City shall neglect or fail to perform or observe any of the terms, covenants, or conditions contained in this Lease within thirty (30) days after written notice of default or, when more than thirty (30) days shall be required because of the nature of the default, if City shall fail to proceed diligently to cure such default after written notice thereof, then City shall be liable to Lessee for any and all damages sustained by Lessee as a result of City's breach; provided, however, that (a) any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of the current rents, issues, profits and other income City receives from its operation of the Premises, net of all current operating expenses, liabilities, reserves and debt service associated with said operation ("Net Income" for purposes of this Article only), (b) no other real, personal or mixed property of City, wherever located, shall be subject to levy on any such judgment obtained against City, (c) if such Net Income is insufficient to satisfy such judgment, Lessee will not institute any further action, suit, claim or demand, in law or in equity, against City for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by City for Lessee to perform or observe such terms, covenants or conditions at City's expense. Lessee hereby waives, to the extent permitted under law, any right to satisfy said money judgment against City except from Net Income.

ARTICLE 18 ABANDONMENT

Lessee shall not abandon the Premises without the payment of Rent and continued performance of Lessee's maintenance and repair obligation hereunder at any time during the Term of this Lease. If Lessee shall so abandon the Premises, or be dispossessed by process of law, or otherwise, any Personal Property or Fixtures belonging to Lessee and left on the Premises shall, at the option of City, be deemed abandoned. In such case, City may dispose of said Personal Property and Fixtures in any manner provided by California law and is hereby relieved of all liability for doing so.

ARTICLE 19 BANKRUPTCY

19.1 Right of Termination. Should any of the following events occur, City may terminate this Lease and any interest of Lessee therein, effective with the commencement of the event:

(a) Proceedings are instituted whereby all, or substantially all, of Lessee's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Lessee's creditors, and such proceedings continue for at least ninety (90) days;

(b) Any creditor of Lessee institutes judicial or administrative process to execute on, attach or otherwise seize substantially all of Lessee's Fixtures or Personal Property, located on the Premises and Lessee fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of such property within sixty (60) days;

(c) A petition is filed for an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and is not dismissed within ninety (90) days;

(d) Lessee makes a bulk sale of all, or substantially all, of Lessee's Fixtures or Personal Property located on the Premises, except in accordance with the provisions of Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of this Lease or except in connection with a permitted assignment or subletting under this Lease, and fails to replace the same with similar items of equal or greater value and utility within ninety (90) days. If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession), and such trustee or Lessee transfers Lessee's interest hereunder, then City shall receive, as Additional Rent, the difference, if any, between the rent (or other consideration) paid in connection with such transfer, minus the rent payable by Lessee hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Lessee hereunder arising on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption.

19.2 Request for Information. Within ten (10) business days after City's request therefor, Lessee shall provide City and any mortgagee or proposed mortgagee of City, as City shall specify, such financial, legal and business information concerning any of the events described in this Article as City shall request.

ARTICLE 20 DAMAGE OR DESTRUCTION

20.1 Insured Casualty. Except as otherwise provided herein, should the Lessee's Fixtures, Required Improvements or Personal Property be damaged by fire, or other perils covered by the insurance Lessee is required to carry under the terms of this Lease, Lessee shall undertake to restore such Fixtures, Required Improvements or Personal Property to substantially the same condition as they were in immediately preceding such damage or destruction. In the event of a total destruction of the Premises so that the Premises are rendered unusable, Lessee shall have the right to terminate this Lease. If the parties to this Lease cannot agree upon the extent and amount of such damage or destruction for purposes of determining Lessee's right to terminate the Lease pursuant to this Section, City shall promptly designate a certified and qualified third party architect, registered engineer, or licensed building contractor, at the sole expense of Lessee, who shall determine such matters and the determination of such architect, engineer, or contractor shall be final and binding upon the parties to this Lease.

20.2 Construction Provisions. In the event of any reconstruction of the Premises required of Lessee pursuant to this Article, Lessee shall, to the extent of available insurance proceeds, repair or rebuild such Required Improvements to substantially the same condition they were in immediately preceding such damage or destruction, subject to Lessee's rights under this Lease to construct different Improvements meeting the requirements of this Lease. Lessee shall, to the extent of available insurance proceeds, also repair or replace its Fixtures and Personal Property situated upon the Premises which may have been damaged or destroyed by such cause as may, in the opinion of City, be reasonably necessary for the resumption by Lessee of its business upon the Premises with respect to the Improvement reconstruction.

20.3 No Abatement of Rent. In the event of reconstruction by Lessee pursuant to this Article, Lessee shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Lessee to pay Base Monthly Rent and other Additional Rent shall remain in full force and effect. Lessee shall not be entitled to any compensation or damages from City for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, any Improvements or Required Improvements, Lessee's Fixtures or Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement. Lessee hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

20.4 Release of Liability. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Premises to City, except for items which have theretofore accrued and are then unpaid. Monthly rent shall be apportioned and paid to the time of termination.

20.5 Uninsured Casualty. In the event the Premises are damaged by any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty not covered by Lessee's insurance, and (i) the Improvements then located on the Premises are damaged or destroyed to the extent of more than twenty percent (20%) of their replacement cost, or (ii) the damage is such that such Improvements cannot be repaired and restored within ninety (90) days after the casualty, Lessee shall have the election, and shall within sixty (60) days following the date of such damage give City written notice of Lessee's election, either to commence reconstruction of such Improvements and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or not to perform such reconstruction of such Improvements, in which event this Lease shall cease and terminate upon Lessee's notice of its election to terminate.

20.6 Major Destruction. Notwithstanding any other provision of this Lease to the contrary, Lessee may, at its option, elect to terminate this Lease if the Improvements then located on the Premises are damaged or destroyed during the final five (5) years of the Term hereof and the cost of the work so required exceeds five percent (5%) of the then replacement value of damaged or destroyed Improvements. If Lessee desires to terminate this Lease under such circumstances, Lessee shall (i) notify City in writing of such election within sixty (60) days after the occurrence of the damage or destruction and provide evidence that the five percent (5%) threshold has been satisfied, (ii) raze or demolish the Improvements so damaged or destroyed and remove all debris from the Premises, (iii) deliver or cause to be delivered to City City's share of the proceeds of all casualty insurance required to be carried by this Lease, (iv) deliver possession of the Premises to City and quitclaim all right, title, and interest in and to the terminated portion of the Premise and improvements thereon promptly after ceasing to do business on the Premises, and (v) cause to be discharged all liens and encumbrances on the Premises resulting from any act or omission of Lessee. Lessee shall not be entitled to recover any sums from City, including but not limited to any lost 45 profit, business opportunity or administrative or legal expenses, as a result of such termination pursuant to this Article 20.

20.7 Insurance Proceeds. Any insurance proceeds shall first be paid to, if necessary, raze or demolish the Improvements so damaged or destroyed and remove any debris from the Leased

Premises, second to any Beneficiary in the amount of any outstanding amounts secured for the Beneficiary by any Mortgage, and third to City for any unpaid amounts owed under the Lease.

ARTICLE 21 EMINENT DOMAIN

21.1 Condemnation. In the event the whole or any part of the Premises is condemned by a public entity other than City in the lawful exercise of the power of eminent domain, this Lease shall terminate as to the part condemned on the date possession of that part is taken by said public entity. If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes allowed by this Lease in the opinion of the Lease Administrator, Lessee shall (i) continue to be bound by the terms, covenants and conditions of this Lease, except, the Base Monthly Rent shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity, and (ii) at its cost, Lessee shall restore so much of the remaining portion of the Premises as is required to create a reasonably sound architectural unit less the portion so taken. If only a part is condemned and the taking of the part does substantially impair the capacity of the remainder to be used for the purposes allowed by this Lease, in the opinion of the Lease Administrator, Lessee shall have the option to:

21.1.1 Terminate this Lease and be absolved of all obligations hereunder which have not accrued at the date possession is taken by public entity; or

21.1.2 Continue to occupy the remainder of the Premises and remain bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue to occupy the remainder, the Base Monthly Rent shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises (as determined in the proceeding to determine compensation for the portion of the Premises taken) as of the date possession of the part is taken by the public entity. Lessee shall give notice in writing of its choice of remedies hereunder within thirty (30) days of the date possession of the part is taken by the public entity. Should a portion of the Premises be condemned and the Base Monthly Rent be reduced as provided above, the Base Monthly Rent shall continue to be subject to periodic revision in accordance with Section 4.1 above.

21.1.3 In the event Lessee does not concur with the opinion of the Lease Administrator regarding capacity of the remainder to be used for purposes allowed by this Lease, Lessee may request a final determination by the Board.

21.2 Application of Proceeds. Subject to payments made to any Mortgagee pursuant to Section 15.3, the entire amount of any award received pursuant to an exercise of eminent domain (whether of the entire Premises or any portion of the Premises) shall be deposited promptly with an escrow agent mutually agreed upon by City and Lessee, or, in the event no such agreement can be reached, with Chicago Title Company of Monterey, California, as escrow agent, and shall be distributed and disbursed in the following priority:

21.2.1 First, if any Mortgagee has not demanded and/or received payments in accordance with Section 15.3, funds shall be distributed to such Mortgagee to the extent proceeds have been demanded and have not been received;

21.2.2 Second, City shall be entitled to receive present worth of the land immediately prior to the condemnation proceeding (without regard to the value of Lessee constructed improvements) at the time of award computed without regard to any leasehold interest;

21.2.3 Third, Lessee shall be entitled to receive the portion of the award, if any, designated for compensation for taking of improvements made by Lessee to the Premises and that part, if any, of the award designated for Lessee's (and sublessees, if their leases explicitly provide), relocation costs, lost benefit profits and damage to Lessee or sublessee's personal property. Any portion of the award designated for any sublessee shall be paid by Lessee, immediately after receipt thereof, to said sublessees; and

21.2.4 Fourth, the remainder of any award shall be shared by City and Lessee as follows: City shall be entitled to the portion of the award determined by multiplying the award by a percentage determined by dividing the number of months which Lessee has occupied the Premises over the total number of months in the Term (without regard to any extensions of the Term), and Lessee shall be entitled to the remainder of the award.

ARTICLE 22 SALE OR MORTGAGE BY CITY

22.1 Sale or Mortgage. City may at any time, without the consent of Lessee, sell, purchase, exchange, transfer, assign, lease, encumber or convey City's interest in whole or in part, in the Lease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises (collectively referred to in this Article as a "Sale"), provided that any holder of a deed of trust, mortgage or other encumbrance of City's interest in the Lease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises shall provide a non-disturbance agreement to Lessee in a form reasonably acceptable to Lessee.

22.2 Release on Sale. From and after a Sale, City shall be released from all liability toward Lessee and Lessee's successors and assigns arising from this Lease because of any act, 47 occurrence or omission of City occurring after such Sale and such successors' written assumption of the City's obligation as landlord hereunder.

ARTICLE 23 SUBORDINATION; ATTORNMENT

23.1 Subordination. Without the necessity of any other document being executed and delivered by Lessee, this Lease is and shall be junior, subject and subordinate to any existing or future permits, agreements, contracts or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises; Lessee shall be bound by the terms and provisions of such permits, agreements, contracts or approvals.

23.2 Attornment. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by City covering the Premises, Lessee shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as landlord under this Lease.

ARTICLE 24 CITY'S RIGHT OF ACCESS

24.1 City's Right to Enter the Premises. City, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, or in cases of non-emergency during the normal business hours, upon 48 hours' notice, and accompanied by an authorized representative

of Lessee and the applicable sublessee, to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or lessees, (c) determine whether Lessee is complying with its obligations in this Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) post notices of non-responsibility or similar notices, or (e) exercise its rights pursuant to Section 2.3 (RESERVATIONS TO CITY/EASEMENT RESERVATIONS) or Section 12.3 (LESSEE'S FAILURE TO MAINTAIN) above; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible and shall be subject to the requirements elsewhere in this Lease regarding City access.

24.2 Lessee's Waiver of Damages Claims. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Lessee shall provide City with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). City will have the right to use any means that City may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by City by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor will the entry entitle Lessee to damages or an abatement of rent or other charges that this Lease requires Lessee to pay. Notwithstanding any provision of this Lease to the contrary, however, should City's entry on the Premises temporarily interfere with the use of any or all of the Premises by Lessee, City's Lease Administrator, in his or her sole discretion, may temporarily reduce the rental in proportion to the interference, as determined by City's Lease Administrator, with Lessee's use of the Premises. Nothing in this Section shall apply to any actions in eminent domain, which shall be governed solely by Article 21, "Eminent Domain," above.

ARTICLE 25 QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, City covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of City or any party claiming through or under the City. City will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons claiming through or under the City.

ARTICLE 26 HOLDING OVER

If Lessee remains in possession of the Premises, for any reason, after the expiration of the term of this Lease without executing a new Lease, or after City has declared a forfeiture by reason of a default by Lessee, then such holding over shall be construed as a tenancy from month to month, subject to all the conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy. The Base Monthly Rent payable during any period of holding over shall be equal to one hundred fifty percent (150%) of the Base Monthly Rent payable during the period immediately preceding Lessee's holding over.

ARTICLE 27 NOTICES

27.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the addresses specified in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS). Mailed notices shall be sent by United States

Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

27.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices City is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by City attempting to deliver at the Premises during normal business hours a copy of such notice to Lessee or its managing employee and by City mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 28 NONDISCRIMINATION

28.1 Nondiscrimination. Lessee hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry and such other protected categories that may from time to time be added to Civil Code section 51 or other laws prohibiting discrimination in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Lessees, lessees, sublessees, or vendees in the Premises.

28.2 Department of Transportation Programs.

(a). Lessee, 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) Lessee, 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: (i) 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, (ii) 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, (iii) 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) Lessee 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.

28.3 Compliance with Non Discrimination Covenants. Without limiting the generality of any other terms or provisions of this Lease, noncompliance with Section 28.2 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 28.2 a thru d of this Article 28.

28.4 Covenants in Other Ancillary Agreements. Lessee agrees that it shall insert the provisions of Sections 28.2 and 28.3 in any agreement, sublease, assignment or other agreement by which Lessee 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 29 AFFIRMATIVE ACTION PROGRAM

The Lessee 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.

ARTICLE 30 WAIVER OF RELOCATION ASSISTANCE BENEFITS

30.1 Relocation Assistance Benefits. Lessee is hereby informed and acknowledges the following:

(a) By entering into this Lease and becoming a Lessee of City, Lessee 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" Lessee from the Premises. Pursuant to the Relocation Statutes, City may then become obligated to make such payments to Lessee even where such displacement of Lessee does not otherwise constitute a breach or default by City of its obligations pursuant to this Lease.

(b) 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).

30.2 Lessee's Waiver and Release of Relocation Benefits. In consideration of City's agreement to enter into this Lease, Lessee 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 Lessee or any other entity, and releases City from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee'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. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as City may reasonably require.

ARTICLE 31 RECORDS, ACCOUNTS AND AUDITS

31.1 Lessee's Duty to Keep Records. Lessee shall, at all times during the Term of this Lease, and for a period of at least five (5) years following termination or expiration of this Lease, keep or cause to be kept, true and complete books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Such records shall also include the source and disposition of all trash collected and disposed of by Lessee in the operation of its business. Said records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

31.2 City's Right to Audit. All Lessee's books or accounts and records shall be kept and made available at one location within the limits of the City of Marina. City shall have the right at any reasonable time during normal business hours and upon reasonable written notice to examine and perform audits of Lessee's records pertaining to its operations on the Premises. The cost of said audits shall be borne by City; however, Lessee shall provide to City at Lessee's expense,

necessary data to enable City to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Lease and to Lessee's use of the Premises.

ARTICLE 32 GENERAL PROVISIONS

32.1 Authority. Lessee represents and warrants that it has full power and authority to 51 execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

32.2 Brokers. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker other than the brokers acknowledged in writing by City make claim for monies owed, Lessee shall indemnify, defend and hold City harmless therefrom.

32.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

32.4 City's Approval. Except where stated herein to the contrary, the phrases "City's approval," and "City's written approval" or such similar phrases shall mean approval of City's Lease Administrator or said Administrator's representative as authorized by said Administrator in writing.

32.5 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease; any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

32.6 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

32.7 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from City, execute and deliver to City a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by City, such as the date to which rent and other charges are paid, Lessee's knowledge concerning any outstanding defaults with respect to City's obligations under this Lease and the nature of such defaults. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusive upon Lessee that this Lease is in full force and effect, except to the extent any modification has been represented by City, that there are no uncured defaults in the City's performance, and that not more than one month's rent has been paid in advance.

32.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

32.9 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any

and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the City's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

32.10 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

32.11 Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Lease, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the parties who cause an uncertainty to exist or against the draftsman.

32.12 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

32.13 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide City with a written schedule of its normal hours of business operation on the Premises, and post notice of such schedule in the office area of the Premises. Lessee's Lease Administrator or a representative designated thereby shall be (i) available to City on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

32.14 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

32.15 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

32.16 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee.

32.17 Successors & Assigns. This Lease shall be binding on, and inure to the benefit of, the parties and their successors and assigns, all of whom shall be jointly and severally liable hereunder, except as may otherwise be provided herein.

32.18 Time of Essence. Time is of the essence of each and every provision of this Lease.

32.19 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by City of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other

term, covenant or condition contained in this Lease. City's subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of City to a forfeiture of the Lease by reason of such breach, regardless of City's knowledge of such preceding breach at the time of City's acceptance. The failure on the part of City to require exact or full and complete compliance with any of the covenants, conditions or agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping City from enforcing in full the provisions hereof. No custom or practice which may arise or grow up between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen the right of City to insist upon the full performance of, or compliance with, any term, covenant or condition hereof by Lessee, or construed to inhibit or prevent the rights of City to exercise its rights with respect to any default, dereliction or breach of this Lease by Lessee.

32.20 Memorandum of Lease. Upon the execution of this Lease, City and Lessee shall execute and record a Memorandum of Lease (the "Memorandum of Lease"), at City's sole cost and expense, in the form attached hereto as Exhibit F.

IN WITNESS WHEREOF, City and Lessee have duly executed this Lease as of the day and year first above written.

Lessee: _____

By:

Print Name: Print Title:

By:

Print Name: Print Title:

Lessor: CITY OF MARINA, a California charter city

By: Bruce Carlos Delgado

Mayor

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

BY _____

ATTEST

DEPUTY CITY CLERK

BY _____

DRAFT

EXHIBIT A
DESCRIPTION AND PLAT OF THE PREMISES

To be provided]

DRAFT

EXHIBIT B

FAA REQUIREMENTS FEDERAL AVIATION ADMINISTRATION REQUIREMENTS.

In the event there is any conflict between the provisions in this Clause and the other provisions in this Lease, the provisions in this Clause shall take precedence.

a. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, 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.

b. Lessee for itself, 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 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 Lessee 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, 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.

c. That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this 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.

d. To the extent Lessee conducts or engages in any aeronautical activity for furnishing services to the public, Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

e. Non-compliance with Provision d above shall constitute a material breach thereof and in the event of such non-compliance City shall have the right to terminate this Lease and the estate hereby created without liability therefor, subject to the notice and cure requirements contained in the Lease, or at the election of City or the United States either or both said Governments shall have the right to judicially enforce said Provisions.

f. Lessee agrees that it shall insert the above five (5) Provisions in any sublease, contract or agreement by which said Lessee 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.

g. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 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. Lessee 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. Lessee assures that it will require that its covered sub-organizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

h. City 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 Lessee and without interference or hindrance.

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

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

k. There is hereby reserved to City, 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 or impact inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

l. Lessee 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 or future building or structure situated on the leased Premises.

m. Lessee, 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 object, nor permit the growth of any tree on the land leased hereunder, that conflicts with Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, City reserves the right to enter upon the land leased hereunder and to remove or place aeronautical markings on the offending structure or object and cut or place aeronautical markings on the offending tree, all of which shall be at the expense of Lessee, subject to the notice and cure requirements contained in the Lease.

n. Lessee, 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 said Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of Lessee, subject to the notice and cure requirements contained in the Lease. \

o. 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 Title 49 U.S.C. 40101, et seq.

p. 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.

DRAFT

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Lessee's indemnification obligations to City under this Lease, Lessee shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

A. Airport Liability or Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.

B. Automobile Liability covering all owned, non owned and hired auto, Insurance Services Office Form CA0001.

C. Workers Compensation, as required by State of California and Employer's Liability Insurance.

D. Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for any buildings owned by Lessee, Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.

E. Rental Income Insurance assuring City of receiving the minimum monthly rent from the time the Premises are damaged or destroyed with a minimum period of coverage for one (1) year.

2. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.

B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.

C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of City

D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retention's

Any liability deductible or self-insured retention must be declared to and approved by the City's Risk Manager. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by Lessee.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement Any general liability policy provided by Lessee shall contain an additional insured endorsement applying coverage to the City of Marina, the members of the City Council and the officers, agents, employees and volunteers of the City, individually and collectively.

B. Primary Insurance Endorsement For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, the members of the City Council of the City and the officers, agents, employees and volunteers of the City, individually and collectively. Any insurance or self-insurance maintained by the City, the members of the Board of Supervisors of the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

C. Notice of Cancellation Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City at the address shown in section of Lease entitled "Notices".

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by City's Risk Manager.

6. Evidence of Insurance

Prior to commencement of this Lease, but in no event later than effective date of the Lease, Lessee shall furnish the City with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Lessee shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of Lease. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to City within thirty days of the expiration of the term of any required policy. Lessee shall permit City at all reasonable times to inspect any policies of insurance of Lessee which Lessee has not delivered to City. Policies, renewal certificates and amendatory endorsements shall be delivered to City at: City of Marina, 211 Hillcrest Avenue, Marina, CA 93933.

7. Failure to Obtain or Maintain Insurance;

City's Remedies Lessee's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Lease, and City may, at its option, terminate the Lease for any such default by Lessee.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the City are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

City retains the right at any time to review the coverage, form and amount of insurance required herein and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Lessee may, with the prior written consent of City's Risk Manager, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize such self-insurance if in the opinion of City's Risk Manager, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

11. Sublessees' Insurance

Lessee shall require any sublessee, and any sub-sublessee, of all or any portion of the Premises to provide the insurance coverage described herein prior to occupancy of the Premises.

12. Waiver of Subrogation

Lessee and City waive all rights to recover against each other or against any other Lessee or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or Lessee of the building, from any Claims (as defined in the Article entitled "Indemnity") against either of them and from any damages to the fixtures, personal property, Lessee's improvements, and alterations of either City or Lessee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either City or Lessee, other than proceeds from any program of self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Lessee shall be a standard waiver of rights of subrogation against City by the insurance company issuing said policy or policies.

EXHIBIT D

CITY OF MARINA REQUIRED SUBLEASE PROVISIONS

The Sublessor may draft its own Sublease form. The material provisions of the following paragraphs must appear in the Sublease. Paragraphs marked with an asterisk (*) must be used verbatim. The Sublease and sublease processing fee (checks made out to City of Marina) must be submitted to the Lease Administrator with the Sublease Processing Fee prior to occupancy by Sublessee.

1. Parties. This Sublease is entered into by and between _____
_____, ("Sublessor") and _____
_____, ("Sublessee") as a Sublease under the
master lease ("Master Lease") dated _____, 20____, also known as City of Marina
Contract No. _____. Sublessor, under this Sublease, is Lessee, and City of Marina is
Lessor, under the Master Lease.

2. Premises. Sublessor leases to Sublessee and Sublessee hires the following described Premises
together with the appurtenances, situated in the City of Marina, State of California:

Said Premises are shown on Exhibit "A", attached hereto.

3. Term. The term of this Sublease Agreement shall be for _____,
commencing _____, 20____, and terminating _____,
20____, unless sooner terminated as provided herein. (Note: Termination date of Sublease
cannot exceed expiration date of Master Lease.)

4. Rental. Sublessee shall pay to Sublessor as rent for the Premises in advance on the first day of
each calendar month of the term of this Sublease, without deduction or offset (except as
otherwise set forth in the sublease), prior notice or demand, in lawful money of the United
States, the sum of _____ Dollars and
_____ Cents (\$_____). If the commencement date is not the
first day of the month, or if the Sublease termination date is not the last day of the month, a
prorated month installment shall be paid at the then current rate for the fractional month during
which the Sublease commences and/or terminates. Receipt of \$ _____ is hereby
acknowledged for rental for the first month, and the additional amount of \$ _____ as non-
interest bearing security for performance under this Sublease. In the event Sublessee has
performed all the terms and conditions of this Sublease throughout the term, upon Sublessee
vacating the Premises, the amount paid as a security deposit shall be returned to Sublessee after
first deducting any sums owing to Sublessor.

5. Use. Sublessee shall use the Premises for a use or uses permitted under the Master Lease.

*6. Indemnity. City shall not be liable for, and Sublessee shall defend and indemnify City and
the employees and agents of City (collectively "City Parties"), against any and all claims,
demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes,
losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees
and court costs (hereinafter collectively referred to as "Claims"), related to this Sublease or

Sublessee's use or occupancy of the Subleased Premises and arising either directly or indirectly from any act, error, omission or negligence of Sublessee or its Sublessees, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of City Parties. Sublessee shall have no obligation, however, to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties.

7. Insurance. Sublessee agrees to provide Sublessor with a Certificate of Public Liability and Property Damage Insurance meeting the insurance requirements of the Master Lease.

*8. Provisions Constituting Sublease. This Sublease is subject to all of the terms and conditions of the Master Lease. Sublessee shall not commit or permit to be committed on the Premises any act or omission which shall violate any term or condition of the Master Lease subject to the provisions of any Non Disturbance and Attornment Agreement. In the event of the termination of Sublessor's interest as Lessee under the Master Lease for any reason, then this Sublease shall either (i) terminate coincidentally therewith without any liability of Sublessor or City to Sublessee (if in the event such Sublessee has not previously obtained from the City a Non-Disturbance and Attornment Agreement in accordance with the applicable provisions of the Master Lease) or (ii) continue subject to the provisions of any Non-Disturbance and Attornment Agreement between Sublessee and City executed prior to termination of Sublessor's interest.

*9. Sublessee's Waiver and Release of Relocation Benefits. In consideration of City's consent to this Sublease, Sublessee hereby waives any and all rights it may now have, or may hereafter obtain, to relocation benefits ("Relocation Benefits") under 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.), arising out of the City's assertion or exercise of its contractual rights to terminate the Lease or this Sublease pursuant to its terms, whether or not such rights are contested by Sublessee or any other entity, and releases City from any liability for payment of such Relocation Benefits. Sublessee shall in the future execute any further documentation of the release and waiver provided hereby as City may reasonably require.

*10. Federal Aviation Administration Requirements. In the event there is any conflict between the provisions in this Clause and the other provisions in this Sublease, the provisions in this Clause shall take precedence but subject to the provisions of any Non-Disturbance and Attornment Agreement between Sublessee and the City.

a. Sublessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Sublease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Sublessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, 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.

b. Sublessee, for itself, 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 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 Sublessee 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, 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.

c. That in the event of breach of any of the above nondiscrimination covenants, Sublessor shall have the right to terminate this Sublease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Sublease 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.

d. To the extent Sublessee conducts or engages in any aeronautical activity for furnishing services to the public, Sublessee 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 Sublessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

e. Non-compliance with Provision d above shall constitute a material breach thereof and in the event of such non-compliance Sublessor shall have the right to terminate this Sublease and the estate hereby created without liability therefor, subject to the notice and cure requirements contained in the Lease, or at the election of Sublessor, City or the United States, any or all said entities shall have the right to judicially enforce said Provisions.

f. Sublessee agrees that it shall insert the above five Provisions in any sub-sublease by which said Sublessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises herein subleased.

g. Sublessee assures that it will undertake an affirmative action program as required by 14 CFR Part 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. 68 Sublessee 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. Sublessee assures that it will require that its covered sub-organizations provide assurances to Sublessee that they similarly will undertake affirmative action programs and that they will require assurance from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effort.

h. City 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 Sublessee, and without interference or hindrance.

i. City reserves the right, but shall not be obligated to Sublessee, 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 Sublessee in this regard.

j. This Sublease shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.

k. There is hereby reserved to City, 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 subleased. This public right of flight shall include the right to cause in said airspace any noise or impact inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

l. Sublessee 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 subleased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the subleased Premises.

m. Sublessee by accepting this Sublease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land subleased hereunder that conflicts with Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, City and/or Sublessor reserve the right to enter upon the land subleased hereunder and to remove or place aeronautical markings on the offending structure or object and cut or place aeronautical markings on the offending tree, all of which shall be at the expense of Sublessee, subject to the notice and cure requirements contained in the Lease.

n. Sublessee by accepting this Sublease agrees for itself, its successors and assigns that it will not make use of the subleased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City and/or Sublessor reserve the right to enter upon the Premises hereby subleased and cause the abatement of such interference at the expense of Sublessee, subject to the notice and cure requirements contained in the Lease.

o. 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).

p. This Sublease 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.

*11. Signs. Sublessee shall not erect, nor cause to be erected, any sign on the Subleased Premises not in compliance with the approved Sign Program. A written request for sign approval to the extent required must include the size, type, color and location of the proposed sign and Sublessor must concur with said application before submittal to City's Lease Administrator.

*12. Substance Abuse. Sublessee and its employees and agents shall not use or knowingly allow the use of the subleased Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug or for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any controlled substance, precursor, or analog specified in Division 10 of the California Health and Safety Code, and violation of this prohibition shall constitute a default under this Sublease, subject to the notice and cure requirements contained in this Sublease.

*13. City's Right of Access.

a. City's Right to Enter the Premises. City, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, or in cases of non-emergency during the normal business hours, upon 48 hours' notice, and accompanied by an authorized representative of Lessee and the applicable **sublessee, to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or lessees, (c) determine whether Lessee is complying with its obligations in the Master Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) post notices of non-responsibility or similar notices, or (e) exercise its rights pursuant to Section 12.3 (LESSEE'S FAILURE TO MAINTAIN) or Section 2.3 (RESERVATIONS TO CITY/EASEMENT RESERVATIONS) of the Master Lease; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Sublessee as reasonably possible and shall be subject to the requirements elsewhere in the Master Lease regarding City access (including notice requirements).**

b. Sublessee's Waiver of Damages Claims. In connection with City's access, and except as provided below, Sublessee waives any claim of injury or inconvenience to Sublessee's business, interference with Sublessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. City will have the right to use any means that City may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by City by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Sublessee from the Premises, or any part of the Premises, nor will the entry entitle Sublessee to damages or an abatement of rent or other charges that this Sublease requires Sublessee to pay. Notwithstanding any provision of this Sublease to the contrary, however, should City's entry on the Premises temporarily interfere with the use of any or all of the Premises by Sublessee, there shall be a temporary reduction in rent in proportion to the interference with Sublessee's use of the Premises until such interference no longer exists; provided, however, that no such rent abatement shall be required until such interference has continued for a period of at least 24 hours following notice from sublessee that such interference exists. Nothing in this Section shall apply to any actions in eminent domain, which shall be governed solely by Article 21, "Eminent Domain," of the Master Lease.

This Sublease entered into this ____ day of _____, 20__.

SUBLESSEE: _____ SUBLESSOR: _____

By _____ By _____ (Title)
(Title)

By _____ By _____ (Title)
(Title) Address _____ Address _____
_____ 71

DRAFT

EXHIBIT EF

WORK LETTER AGREEMENT - AIRPORT

This Work Letter Agreement (“Agreement”) states the agreement of the parties regarding the construction of Improvements by Lessee.

1. IMPROVEMENTS. Lessee shall complete, at Lessee’s expense, the Required Improvements to the Premises identified in the Lease, and, at Lessee’s option and expense, may construct the Optional Improvements to the Premises identified in the Lease. The Required and Optional Improvements (referred to collectively herein as the “Improvements”) shall be completed or constructed in a manner consistent with any present or future ALP which is or may be adopted by the Board and the FAA, and shall be at least comparable in quality to other similar facilities completed or constructed in the area of the Premises within the past five years.

2. PLANS AND SPECIFICATIONS.

(a) Final Plans. Lessee shall deliver to the City’s Lease Administrator plans and specifications (“Plans”) prepared by Lessee’s architect in conformity with the Standards (i) for those Required Improvements consisting of construction of

_____, within thirty (30) days following the Commencement Date of the Lease, and, (ii) for any Optional Improvements, within one hundred twenty (120) days prior to scheduled commencement of construction. The Plans shall include, as applicable, site layout, building design and architectural treatment, exterior elevations, signage and landscaping. Lease Administrator shall have the right to approve the Plans and all material changes thereto, but approval shall not be unreasonably withheld. The Lease Administrator shall approve or disapprove the Plans and any modifications thereto within fifteen (15) days after receipt. If Lease Administrator disapproves, City and Lessee shall promptly meet and attempt to resolve any dispute. If the parties are unable to mutually approve the Plans on or before the date which is seven (7) days following Lease Administrator’s notification to Lessee of its disapproval of the Plans, either party may terminate this Lease upon ten (10) days prior written notice to the other party. “Final Plans” means the Plans as approved by Lease Administrator and Lessee. (b) Working Drawings. Lessee shall prepare working drawings for any Improvements, at Lessee’s expense, in conformance with the Final Plans (“Working Drawings”). Lessee shall submit the Working Drawings to Director of Airports within sixty (60) days after Lease Administrator’s approval of the Final Plans. The Lease Administrator shall have the right to approve the Working Drawings and all material changes thereto, but Lease Administrator shall not unreasonably disapprove if the Working Drawings are consistent with the Final Plans. The Lease Administrator shall approve or disapprove the Working Drawings within thirty (30) days after receipt.

3. PRE-CONSTRUCTION REQUIREMENTS.

(a) Building Permit. Within ten (10) days following the Lease Administrator’s approval of the Working Drawings for an Improvement pursuant to Section 2(b), above, Lessee shall submit and diligently process an application for building permits with the City of Marina. Lessee shall obtain, at Lessee’s expense, all other governmental permits required to complete the

Improvements and shall comply with all conditions thereto and with all other applicable governmental laws, regulations and requirements.

(b) Bonds. Prior to the commencement of construction of any of the Improvements, at the option of the Lease Administrator, Lessee shall obtain or cause its contractor ("Contractor") to obtain payment and performance bonds ("Bonds") covering the faithful performance of the contract for the construction of the Improvements and the payment of all obligations arising thereunder. The Bonds shall be on forms approved by City and shall be issued by a surety satisfactory to City; provided, however, that said surety shall have a current A.M. Best rating of A-5, or better, and shall be currently licensed to transact its insurance business in the State of California. The Bonds shall (i) name City as a primary co-obligee, (ii) name Contractor as principal, and (iii) assure full and satisfactory completion of the Improvements by the deadlines set forth in ARTICLE 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of this Lease. Bonds shall also guarantee that (i) all materials and workmanship supplied and/or installed as part of the Improvements shall be free from original or developed defects, and (ii) any original or developed defects or failures which appear in the Improvements within one (1) year after installation shall be repaired and/or replaced with all due diligence, at no cost to Lessee or City. The Bonds shall be maintained in full force and effect by Lessee during the construction and installation of the Improvements and for a period of one year after completion thereof. Lessee shall ensure that the surety company familiarizes itself with all of the terms and conditions of the Lease and shall require the surety company to waive (i) notification of any modifications or alterations of the Final Plans or Working Drawings, (ii) notification of any City-requested Changes (including any extension of the construction performance deadlines set forth in Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of the Lease), and (iii) its rights under the provisions of Section 2819 of the Civil Code of the State of California. The cost of the Bonds shall be paid by Lessee.

(c) Insurance. From commencement of construction of the Improvements, Lessee shall maintain, or cause its Contractor to maintain, Commercial General Liability, Comprehensive Automobile, and Statutory Workers' Compensation and Employer's Liability Insurance naming the City as Additional Insured, in the form and amounts specified in the Lease, and shall also maintain, during the course of construction of the Improvements and until completion thereof, Builder's Risk Insurance in an amount equal to the expected value of the Improvements when construction is completed. Prior to commencement of construction, Lessee shall provide written evidence to City of such insurance coverage.

(d) Contract for Construction. City reserves the right to approve Contractor, but approval shall not be unreasonably withheld. City's right to approve Contractor shall not give rise to an obligation on City's part to assume Lessee's obligations and rights under the contract in the event Lessee should default thereunder. The contractor shall be bondable and shall meet all licensing and insurance requirements of the State of California. It is further understood and agreed that the items set forth below shall be incorporated as "Special Conditions" into the contract between Lessee and its contractor (with a copy of the contract to be furnished City for City's reasonable approval prior to the commencement by Lessee of the Improvements):

(1) Prior to start of the Improvements, Contractor shall provide City with a construction schedule in "bar graph" form indicating the completion dates of all phases of the Improvements.

(2) Contractor shall be responsible for the repair, replacement or cleanup of any damage done by Contractor to others' property.

(3) Contractor shall contain his storage of materials and his operations within the Premises and such other space as Contractor may be assigned by Lessee or City. Should Contractor be assigned space outside of the Premises, Contractor shall move to such other space as City shall direct from time to time to avoid interference or delays with Airport operations.

(4) All trash and surplus construction materials shall be stored within the Premises and shall be promptly removed from the Premises at the sole cost of the Contractor.

(5) Contractor shall provide temporary utilities, portable toilet facilities and potable drinking water as required for his work within the Premises.

(6) Contractor shall notify the Director of Airports of any planned work to be done on weekends or other than normal job hours.

(7) Contractor shall be responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned for all work performed by Contractor, and all applicable safety regulations, and Contractor shall save and hold City harmless for said work as provided herein and in Article 13 (INDEMNITY AND INSURANCE) of the Lease.

(8) Contractor or subcontractors shall not post signs on any part of the Premises or the Airport.

(9) Contractor shall perform said work in a manner and at times that does not impede or delay City's operations at the Airport.

(10) Contractor shall notify the Director of Airports at least two (2) business days in advance of the proposed use by contractor of any cranes, boom or other construction equipment that will intrude into the "7:1 slope" or reach a height of 30 feet or more.

4. COMMENCEMENT OF IMPROVEMENTS. As used herein and in the Lease, the "commencement" of work on any Improvement shall be deemed to have occurred upon fulfillment by Lessee, and acceptance thereof by City, of all of the requirements set forth in Sections 2 and 3 of this Work Letter Agreement, above.

5. PROSECUTION OF WORK.

(a) Diligent Construction. Lessee shall cause Contractor to diligently commence and complete the actual construction of the Improvements (i) in a good and workmanlike manner by well-trained, adequately supervised workers; (ii) in strict compliance with the Final Plans and approved working drawings (except for insubstantial deviations which do not interfere with the utility or use of the Improvements); (iii) in strict compliance with all governmental and quasi-governmental rules, regulations, laws and building codes (including safety requirements), and all requirements of the parties' insurers and lenders; and (iv) in a manner free from all design, material and workmanship defects.

(b) Change Orders. Director of Airports shall have the right to approve all material change orders made by Lessee to the Final Plans or Working Drawings, but approval shall not be unreasonably withheld or delayed. "Material changes" shall include, but shall not be limited to

any change in the site layout; building configuration, size, or square footage; the drive-through or parking configuration; and the exterior appearance of any building.

(c) City's Rules, Requirements. Lessee shall comply with such reasonable rules and regulations as City may establish regarding Lessee's construction work in order to avoid interference or delays with other work, to protect the property of City and other Lessees, and to enhance the safety of the site.

(d) City's Right to Enter. City shall have the right during construction of the Improvements to enter the Premises for the purpose of inspecting construction progress, and making punchlist inspections. City will use its best efforts to minimize interference with Lessee's construction of the Improvements and will give prior reasonable notice to Lessee and Contractor of City's desire to enter the Premises.

(e) Indemnity. Lessee shall protect, indemnify, hold harmless and defend City from and against any loss or damage to property and any liability for death or personal injury arising out of the construction of the Improvements, unless caused solely by the negligence or intentional misconduct of City or its agents or employees.

(f) Mechanic's Liens. Lessee shall cause the Improvements to be constructed free of any vendor's, mechanics' or workers' or other liens whatsoever, as further provided in the Lease.

(g) As-Built Drawings. Within thirty (30) days of completion of the Improvements, Lessee shall deliver to City's Lease Administrator two (2) sets of "as-built" drawings, showing the construction of the Improvements in place.

6. COMPLETION OF IMPROVEMENT. As used herein and in the Lease, the phrase "completion of an Improvement" shall mean Lessee's submission to Lease Administrator of Airports of all of the following documents:

(1) The original Certificate of Occupancy for the Improvement, as issued by the City of Marina;

(2) A certified copy of a Notice of Completion, recorded by Lessee;

(3) A complete list of the names, addresses, telephone numbers and contract amount for all contractors, subcontractors, vendors and/or suppliers providing materials and/or labor for the Improvement;

(4) Copies of all invoices from Contractor, subcontractors, vendors and/or suppliers of labor and/or materials for the Improvement, which Lessee has paid;

(5) Copies of all mechanics' lien releases or other lien releases on account of the Improvement, which are notarized, unconditional and in such form as City shall have approved;

(6) Copies of all building permits, indicating inspection and approval by the issuer of said permits; and

(7) An architect's or engineer's certification that the Improvements have been constructed in accordance with the Final Plans and are one hundred percent (100%) complete in accordance with this Exhibit.

7. CALCULATION OF LESSEE'S COSTS OF CONSTRUCTION.

(a) Lessee's Costs - Definition. As used herein, the term "Lessee's Costs" means the costs actually expended by Lessee, as certified by the project architect, to install any Improvement in accordance with the Final Plans and Working Drawings, including, as applicable, the following: Costs of preparing space plans, construction plans, Final Plans and Working Drawings; costs of labor; costs of equipment and material; Contractor's field overhead and engineering fees; costs of governmental permits and plan-check fees; testing and inspection Costs; Lessee's direct field supervision fees (not to exceed five percent (5%) of the total costs); sales and use taxes (but not real property taxes); bonds; and other costs directly related to the construction of the Improvements. Other than as set forth above, Lessee's Costs shall not include any profit, fee or compensation to Lessee, or interest on Lessee's construction financing or construction loan fees, if any.

(b) Approval of Costs. Lessee, as soon as reasonably possible following completion of an Improvement, shall prepare and submit to City copies of invoices in a form approved by City representing the total Costs incurred by Lessee in completing such Improvement. City shall deliver its written approval or disapproval of such Costs to Lessee within thirty (30) days after receipt. Notwithstanding any provision of the Lease or this Work Letter Agreement to the contrary, Lessee shall be fully responsible for paying the total Costs incurred to complete any Improvements; City shall have no responsibility to pay such costs.

EXHIBIT F

MEMORANDUM OF LEASE

**WHEN RECORDED RETURN
TO:**

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: Deputy City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into as of _____, 2019, by and between CITY OF MARINA, a California municipal corporation (the "City"), and JOBY AERO, INC., a corporation of the State of Delaware registered to do business in California ("Joby").

WHEREAS, the City and Joby have entered into a certain Lease dated _____, 2019 (the "Lease"), relating to that certain real property consisting of a portion of APN _____, in Monterey County, California, and as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), and

WHEREAS, the City and Joby wish to memorialize of record the existence of the Lease, and certain specific terms thereof.

NOW THEREFORE, in consideration of the Lease and other good and valuable consideration, the parties agree as follows:

1. The City and Joby are parties to the Lease pursuant to which the City has demised and leased the Premises to Joby, for an initial term of fifty (50) years, which shall commence upon the first day of the first calendar month following the date of approval of the Lease by the City's Council.

2. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.

3. Nothing in this Memorandum shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

4. This Memorandum and the Lease shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first written.

THE CITY:

CITY OF MARINA,
a California municipal corporation

By: _____
Bruce C. Delgado, Mayor

JOBY AERO, INC:
a Delaware corporation

By: _____
, President

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA §
 §
COUNTY OF MONTEREY §

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA §
 §
COUNTY OF MONTEREY §

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

June 12, 2019

Item No. **5a**

Honorable Mayor and Members
of the Marina City Council

June

13,

City Council Meeting
2019

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2019-,
APPROVING AN EXCLUSIVE NEGOTIATING RIGHTS & PRELIMINARY
AGREEMENT CONCERNING LEASE AND DEVELOPMENT OF LAND
BETWEEN THE CITY OF MARINA AND JOBY AERO, INC.**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2019-, approving an Exclusive Negotiating Rights & Preliminary Agreement concerning Lease and Development of Land between the City of Marina and Joby Aero, Inc.; and
2. Authorizing City Manager to execute an Exclusive Negotiating Rights & Preliminary Agreement concerning Lease and Development of Land between the City of Marina and Joby Aero, Inc, subject to final review and approval by City Attorney.

BACKGROUND:

Joby Aero, Inc. wishes to establish facilities at the Marina Municipal Airport that would support its production operations. Toward that end Joby is currently processing a project on a portion of the tarmac at the airport.

The proposed Exclusive Negotiating Rights & Preliminary Agreement concerning Lease and Development of Land, included as Attachment No. 1, is necessary in order for the City and Joby to have sufficient certainty to process some of the required entitlements for its proposed development of the Site. Additionally, the establishment of this Agreement will allow Joby to pursue funding from the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) Sales and Use Tax Exclusion program, which they report will save them millions in capital costs if approved.

ANALYSIS:

The area in question consists of a total of approximately 14 gross acres of land, generally located on the southeast side of Airport, as illustrated and designated on the site plan which is included as **EXHIBIT "A"** to the Agreement. A final definition of the Project will be made as Joby completes its discussions with the City and other agencies with regulatory responsibilities and the City undertakes and complies with the CEQA process, including the requirements to identify alternatives to the Project.

The City and Joby acknowledge that various governmental entitlement approvals and permits must be obtained before a Ground Lease is entered into and/or construction of the Project can proceed. Included as **EXHIBIT "B"** to the Agreement is a preliminary Ground Lease, to be entered into by City and Joby, upon approval of the City Council and following successful completion of the CEQA process.

The Agreement establishes procedures, standards, and a term for the negotiations between the City and Joby and provide for exclusive negotiating rights and the preliminary terms and conditions for

the lease of the Site. The initial Negotiating Period shall be six (6) months starting the date of execution by the City Manager. During the Negotiating Period the City shall not negotiate with any entity, other than Joby, regarding acquisition or development of the Property, or solicit or entertain bids or proposals to do so.

The Agreement also helps Joby to finance the Project. Joby Aero, Inc. has applied to the CAEATFA Sales and Use Tax Exclusion program, which will exclude the company from paying sales and use taxes on capital purchases for the production operations they seek to establish at the City of Marina Municipal Airport. The approval of the Exclusive Negotiating Rights & Preliminary Agreement concerning Lease and Development of Land will provide support to Joby in their application as it will demonstrate evidence that they have a commitment to stay in Marina and California.

FISCAL IMPACT:

There is no fiscal impact as a result of this Council discussion.

CONCLUSION:

The proposed Agreement provides the City and Joby sufficient certainty to process some of the required entitlements for its proposed development of the Site. Additionally, this Agreement helps Joby to finance the Project, and for the City to prepare the necessary environmental and technical reports needed to comply with the requirements of the California Environmental Quality Act (“CEQA”), which must be completed prior to issuance of a ground lease by City.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina