



SASO OPERATING AND LEASE AGREEMENT

BETWEEN

CITY OF ST. GEORGE

AND

SASO OPERATING AND LEASE AGREEMENT

THIS SASO OPERATING AND LEASE AGREEMENT (which, as amended from time to time, is defined herein as the "Agreement") is entered into as of the ____ day of _____, 2011, by and between the City of St. George, Utah, a Utah municipal corporation, (the "City") and _____, a _____, ("Tenant").

RECITALS

WHEREAS, City operated a municipal airport located at 317 S. Donlee Drive, St. George, Utah 84770 (the "Former Airport") until on or about January 13, 2011; and

WHEREAS, City constructed a new airport located at 4550 S. Airport Parkway, St. George, Utah 84790 (the "Airport") and commenced operations at the Airport on or about January 13, 2011; and

WHEREAS, Tenant is qualified to provide services as a single aeronautical service operator ("SASO") as set forth herein and desires to lease certain real property at the Airport for the purpose of operating a SASO concession on the terms provided in this Agreement;

NOW, THEREFORE, in consideration of the payment of TEN AND NO/100 DOLLARS (\$10.00), the foregoing recitals and the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property described in Exhibit A together with the improvements constructed thereon by City (the "Premises"). Tenant agrees to accept the Premises "as is," and City makes no warranty as to the condition of the Premises or their suitability for any particular purpose.

B. Construction of Tenant Improvements. Tenant shall construct on the Premises the improvements that are authorized by City from time to time as provided in Exhibit B (the "Tenant Improvements"). Tenant agrees that Tenant's construction of the Tenant Improvements as provided in this Agreement is a part of the consideration to City under this Agreement.

C. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes (and no other purposes): the non-exclusive operation of a SASO concession providing, at a minimum, the following services (as they may be more specifically required under the Airport's Minimum Standards for Commercial Aeronautical Activities): _____. Tenant shall provide to City the make, model, and identification number of any aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises (the "Aircraft"). All services provided by Tenant in connection with this concession and the Premises are subject to City's prior written authorization in City's sole discretion. If City determines (in accordance with applicable Laws and Regulations, as such term is defined in

Section 4.B) to provide any service on an exclusive basis, or City exercises any right to implement Airport programs as provided in Section 5.D, City may require that Tenant cease engaging in substantially similar activities after ninety (90) days prior written notice.

D. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant's employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Tenant's Associates") may ingress and egress across the Airport (in the areas designated by City and as permitted by applicable Laws and Regulations) on a non-exclusive basis and to the extent reasonably necessary for Tenant's use, occupancy, and operations at the Premises.

E. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises (and grant of concession) on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interests of any kind. Among the rights reserved to City, City reserves in the Premises a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, and rights in water, minerals, oil, and gas.

F. Enjoyment of Rights. Subject to Tenant's complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term. This Agreement shall be effective during the period when Tenant constructs the initial Tenant Improvements as stated in Exhibit B. The term of this Agreement shall commence on _____, 2011 (the "Commencement Date") and shall continue thereafter for a term of ____ (__) years until _____, 20____, (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall remain in effect for ____ (__) additional periods of ____ (__) years each (each being an "Extension Term") unless either party delivers a written notice of termination to the other party at least ninety (90) days before the expiration of the Initial Term or any Extension Term then in effect. The date on which this Agreement expires as provided in this Section 2.A is the "Expiration Date."

3. Rent

A. Rent. For Tenant's lease of the Premises, Tenant covenants to pay to City without set-off or deduction the annual ground rent provided in Exhibit C commencing on the Commencement Date. The rent for any fraction of a year shall be prorated. All rent shall be payable annually in advance without notice or demand by the first business day of the month of January and shall be subject to the terms stated in Exhibit C.

B. Additional Rent. Any sum (other than the rent required in Section 3.A) that Tenant is obligated to pay to City arising from or relating to this Agreement or Tenant's use, occupancy, or operations at the Airport constitutes additional rent, which may include, but is not limited to, fees, fuel flowage fees for activities subject to those fees (at the rate and on the terms imposed by City), fines, civil penalties, damages, claims, interest, charges, expenses, and utility charges. Additional rent shall be subject to the terms stated in Exhibit C. City reserves the right to require additional nondiscriminatory rates and charges in connection with this Agreement

(including, but not limited to, implementing a percentage rent for similarly situated concessionaires), but the rates and charges that are expressly set forth in Exhibit C, Section C.1 shall be as provided herein for the duration of the Agreement except as provided in Section 8.C.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that City believes (in City's sole discretion) interferes with any operation at the Airport or decreases the Airport's effectiveness. Tenant shall promptly notify City of any use that creates such interference or decrease in effectiveness and remedy the same to City's sole satisfaction.

B. Comply with All Laws. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law including, but not limited to, the Airport Rules and Regulations, the Minimum Standards for Commercial Aeronautical Activities, and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements (including, but not limited to, the Airport Security Plan); and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements. Upon request by City, Tenant will verify, within a reasonable time frame, compliance with any Laws and Regulations.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the Premises or any other area that City has not authorized; commercial activities, aircraft parking, or storage in areas not leased by Tenant; any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

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

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises

or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days, Tenant shall remove any such lien that may be created or commence a protest of such lien by depositing with City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. In addition to Tenant's indemnification obligations set forth in Article 6, Tenant, at Tenant's sole cost, shall repair or replace (to City's sole satisfaction) any damaged property that belongs to City or City's other tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alteration or improvement to the Premises or to other areas of the Airport without City's prior written consent, which may be given or withheld in City's sole discretion.

H. Signage and Advertising. Tenant shall not install or operate any signage on the Premises or at the Airport except with the prior written approval of City (which may be given or withheld in City's sole discretion). Any approved signage shall be at Tenant's expense and shall comply with Laws and Regulations (including, but not limited to, City's Airport signage policies and standards and City's ordinance and permit requirements). Tenant shall not advertise or permit others to advertise at the Airport by any means, whether or not such advertising is for profit.

I. Security. Tenant is responsible to comply (at Tenant's sole cost) with all security measures that City, the United States Transportation Security Administration, or any other governmental authority having jurisdiction may require in connection with the Airport, including, but not limited to, any access credential requirements, any decision to remove Tenant's access credentials, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by Tenant or Tenant's Associates. Tenant agrees that City has the right (in City's sole discretion) to impose any Airport security requirements that City may determine. Tenant further agrees that Airport access credentials are the property of City and may be suspended or revoked by City in its sole discretion at any time. Tenant shall pay all fees associated with such credentials, and Tenant shall immediately report to the Airport Manager any lost credentials or credentials that Tenant removes from any employee or any of Tenant's Associates. Tenant shall protect and preserve security at the Airport, including, but not limited to, by protecting security information and protecting any access points that are maintained by Tenant to any security area.

J. Removal of Disabled Aircraft. When consistent with Laws and Regulations, Tenant shall promptly remove or cause to be removed from any portion of the Airport not

leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled. Tenant may store such aircraft within the Tenant Improvements or, with City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines, in its sole discretion, to be in City's best interests.

K. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a condition that is equal to the level of maintenance by the City in comparable areas and that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. Among other things, Tenant shall not store on the Premises any inoperable equipment, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of the Tenant Improvements for storage (except for the storage of aircraft as expressly permitted by this Agreement); and shall store trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 7.

L. Operations. Tenant's operations shall comply with the following:

i. Airport Operations. Tenant shall occupy the Premises at all times, shall operate during scheduled business hours as approved by City, and shall operate in a manner that promotes effective airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; Tenant shall not divert business to off-Airport locations or engage in discriminatory business practices; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport.

ii. Concession Service Standard. Tenant's concession shall provide high quality services and facilities (that are required by or authorized by City) in a good and proper manner to effectively meet the needs of the public and City. The privilege to operate this concession shall exist only so long as the character of Tenant's facilities and services are consistent with such standard.

iii. Complaints. Tenant shall respond in a prompt manner to questions and complaints regarding Tenant's operations when raised by Airport users or by City, and Tenant shall provide a timely resolution of such questions and complaints.

iv. Emergencies. If City determines for any reason that emergency conditions exist

at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

v. Safety. Tenant shall maintain a safety program at the Premises that includes, at a minimum, the following: periodic training for Tenant's employees and, as appropriate, Tenant's Associates regarding safety in connection with Tenant's operations; making available Material Safety Data Sheets to City and, as appropriate, others for any chemicals used on the Premises at least ten (10) days prior to their use; participating in City's safety-related programs (such as risk management, security, and environmental management); and maintaining at all times functional fire fighting equipment suitable to Tenant's operations (including, but not limited to, an equipment testing program). City may, but is not obligated to, stop Tenant's operations if safety Laws and Regulations or other safe work practices are not being observed.

vi. Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so that they do not annoy, disturb, or impair Airport customers, tenants, or employees. Tenant's employees shall possess adequate training and qualifications to carry out their assigned duties. Tenant shall employ a full-time, experienced manager who has authority to act for Tenant and is available at the Airport during regular business hours and a duly authorized subordinate employee who shall be available in the manager's absence.

vii. Deficiencies. Without limiting or waiving any other remedies available to City, City's remedies shall include the following in connection with deficiencies in Tenant's operations:

a. Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

b. Remove Employees and Associates. City shall have the right to require that Tenant remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation of Section 4.L.vi or otherwise detrimental to City's interests at the Airport.

c. Liquidated Damages. City shall have the right to require Tenant to pay liquidated damages in connection with addressing any deficiency as further set forth in Exhibit C.

5. City's Rights and Obligations

A. Airport Maintenance. City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, contractors, subcontractors, suppliers, invitees, volunteers and other representatives (“City’s Associates”) reserves the right to enter the Premises at any time without notice for any purpose relating to the Airport (including, but not limited to, in order to conduct inspections, determine compliance with the Agreement, investigate or remediate any potential threats or hazards, conduct Airport work, and for emergency purposes), provided that they shall not unreasonably interfere with Tenant's use of the Premises. City shall provide Tenant with a courtesy notice of such entry at a reasonable time after City has entered the Premises. Tenant agrees to allow City to interview any of Tenant’s employees to discuss any matters pertinent to Tenant’s use, occupancy, or operations at the Premises and the Airport. Tenant shall provide City with keys to all improvements. City and City’s Associates shall not be deemed guilty of trespass upon the Premises or to have violated any of Tenant's rights hereunder by reason of any entrance into the Premises.

C. City’s Right to Work Within, Alter, or Recover Premises. City has the right at the Airport to perform or cause to be performed any work (including, but not limited to, constructing improvements, surveying, performing environmental testing, removing any hazard or obstruction, and implementing any plan, program, or action), that City (in its sole discretion) determines to be in City's best interests, including, but not limited to, within the Premises. City may elect to pursue any such work without recovering the Premises from Tenant, in which case City shall exercise reasonable care to minimize disruptions to the Premises. City also has the right to recover all or any portion of the Premises from Tenant in connection with any such work (with or without relocating Tenant) as City may determine in its sole discretion, and the following shall apply:

i. Recovery. If City determines to recover all or any portion of the Premises, City shall provide Tenant with ninety (90) days prior written notice specifying what areas will be recovered. If such recovery does not include the Tenant Improvements and the Premises remain tenantable in light of the purposes of this Agreement (as determined by City in its sole discretion), City shall reduce Tenant's rent hereunder by the percentage of the Premises that City recovers. If City recovers all of the Premises, the Premises are rendered untenable pursuant to City’s determination, or City recovers any portion of the Tenant Improvements, City shall either relocate the Premises or terminate this Agreement. City may terminate this Agreement by including in the notice provided for in this Section 5.C.i a notice of termination, and this Agreement shall terminate at the end of such ninety (90) day period. In connection with any such termination, City shall pay the unamortized value of the Tenant Improvements (so long as such improvements are not in breach of this Agreement), amortized on a straight-line method over the full term of this Agreement.

ii. Relocation. If City elects to relocate Tenant, City shall pay the reasonable costs that Tenant actually incurs to relocate to a new location (chosen by City) the Tenant Improvements (so long as such improvements are not in breach of this Agreement) and any movable property associated with Tenant's permitted uses under this Agreement. Tenant's rent at such new location shall be no greater than the rent required under this Agreement.

iii. No Waiver. Nothing under this Section 5.C shall be construed to waive City's right to pursue any remedy for a breach of this Agreement arising from or relating to Tenant's use, occupancy, or operations at any portion of the Premises or at the Airport.

D. City's Right to Implement Airport Programs. City has the right to implement any lawful, reasonable, and nondiscriminatory program at the Airport as City may determine in its sole and absolute discretion, and to require Tenant to participate in or comply with any such program. Such programs may include, but are not limited to, providing common arrangements for trash disposal, utilities, or other Airport functions; providing revenue-generating activities at the Airport by City or its designee (including, but not limited to, vending machines, advertising, wireless communications, and utility services whether on or off of the Premises); designating approved vendors and service providers at the Airport; establishing central locations and security procedures for delivering goods or materials to the Airport; and establishing programs to benefit the environment and conserve energy.

E. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

F. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

G. Governmental Acts. City is a government entity, and City has all rights, powers, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

6. Indemnity, Insurance, and Letter of Credit

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including, but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court or dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are found to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport,

and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft) against City and its officers, employees, and volunteers arising from or relating to Tenant's use, occupancy, or operations at the Premises or the Airport.

C. Insurance. At Tenant's cost, Tenant shall procure the following insurance coverage prior to entering the Premises, and Tenant shall maintain its insurance coverage in force at all times when this Agreement is in effect in compliance with and subject to City's insurance requirements as they exist from time to time (including, but not limited to, the terms provided in Exhibit D):

i. Aircraft Liability. If Tenant is authorized to engage in aircraft flight operations, aircraft liability insurance with a combined single limit for bodily injury and property damage of not less than five million dollars (\$5,000,000) per occurrence, including, but not limited to, contractual liability coverage for Tenant's performance of the indemnity agreement set forth in Section 6.A.

ii. Commercial General Liability. Commercial general liability coverage that includes premises liability, mobile equipment, products, and completed operations coverage with a combined single limit for bodily injury and property damage of not less than five million dollars (\$5,000,000) per occurrence including, but not limited to, contractual liability coverage for Tenant's performance of the indemnity agreement set forth in Section 6.A.

iii. Property. All risk property insurance coverage, including earthquake sprinkler leakage coverage, in an amount equal to the replacement cost (without deduction for depreciation) of the Tenant Improvements and of all personal property situated on the Premises (to the extent not insured under another policy).

iv. Automobile. Comprehensive automobile liability coverage for claims and damage due to bodily injury or death of any person or property damage arising out of Tenant's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than five hundred thousand dollars (\$500,000) single combined limit "per accident" for bodily injury and property damage.

v. Pollution. Pollution legal liability insurance of no less than one million dollars (\$1,000,000) aggregate liability and five hundred thousand dollars (\$500,000) per occurrence for environmental clean-up costs, transportation of wastes or products, and claims for bodily injury and property damage arising from losses due to pollution conditions covering all aspects of the Premises, the Tenant Improvements, and Tenant's use, occupancy, and operations at the Airport.

vi. Hangarkeepers Liability. If Tenant is authorized to hangar aircraft, hangarkeepers liability insurance coverage for property damage to aircraft in the care, custody, or control of the insured of not less than one million dollars (\$1,000,000) general aggregate limit of liability.

vii. Workers Compensation. Workers compensation coverage in the amounts and

form required by the state of Utah.

viii. Flight Rental. If Tenant rents aircraft to students or others, Tenant shall first post at a conspicuous location on the Premises information regarding where renters may purchase aircraft rental insurance.

ix. Business Interruption. Tenant is solely responsible for all costs of business interruption, however incurred, and Tenant may purchase business interruption insurance as Tenant may determine.

D. Performance Security. Prior to entering the Premises, Tenant shall provide to City a performance security equal to three (3) months rent in the form of an irrevocable letter of credit (in a form that complies with City's requirements) as security for Tenant's faithful performance under this Agreement. City may (but is not required to) apply all or any part of such performance security to the payment of any monetary obligation due under this Agreement (including, but not limited to, City's expenses to recover and relet the Premises). Tenant shall restore any portion so applied, and shall fully maintain in effect such performance security throughout the term of this Agreement. Upon any expiration or termination of this Agreement, if Tenant has fully complied with Tenant's obligations under this Agreement City shall return to Tenant any remaining portion of such performance security.

7. Hazardous Materials

A. No Violation of Environmental Laws. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A of this Agreement.

B. Response to Violations. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that Tenant conduct reasonable testing and analysis (using qualified independent experts acceptable to City) to show that Tenant is complying with applicable Environmental Laws. City may conduct the same at Tenant's expense if Tenant fails to respond in a reasonable manner. Tenant shall cease any or all of Tenant's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Tenant or Tenant's Associates violate any Environmental Laws at the Airport (whether due to the release of a Hazardous Material or otherwise), Tenant, at Tenant's expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv)

promptly provide to City copies of all documents pertaining to any environmental concern that are not subject to Tenant's attorney-client privilege.

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

D. Obligations upon Termination and Authorized Transfers. Upon any expiration or termination of this Agreement (and this obligation shall survive any such expiration or termination), and upon any change in possession of the Premises authorized by City, Tenant shall demonstrate to City's reasonable satisfaction that Tenant has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing. The obligations of this Section 7 shall survive any termination of this Agreement.

8. Assignment and Subleasing

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interested relating thereto), and shall not delegate any performance under this Agreement, except with the prior written consent of City to any of the same. City may withhold consent to such assignment, encumbrance, or delegation for any or no reason in its sole and absolute discretion. Regardless of City's consent, Tenant shall not be released from any obligations for matters arising during the time when this Agreement was in effect. Any purported assignment or encumbrance of rights or delegation of performance in violation of this Section 8.A is void. This Agreement is binding on Tenant's successors or assigns that have been authorized pursuant to this Section 8.A.

B. Permitted Encumbrances.

i. Acceptable Request. Any request for City's consent to an encumbrance under this Section 8 shall at a minimum meet the following requirements: (a) the purpose of such encumbrance shall be to secure financing for the Tenant Improvements; (b) such encumbrance shall only encumber Tenant's leasehold interest and shall not encumber any other interest whatsoever; (c) the lienholder must agree to maintain current contact information with City at all times; (d) the lienholder and Tenant must agree to provide to City concurrent copies of any notices of default sent to Tenant and all letters or other information exchanged between Tenant and the lienholder thereafter until such matter has concluded; (e) the lienholder must agree to promptly remove such encumbrance when the obligation that it secures has been satisfied; (f) such encumbrance shall be subordinate to the City's interests except as provided in Section 8.B.ii; (g) such encumbrance shall terminate prior to the Expiration Date of this Agreement; (h)

by obtaining City's consent Tenant agrees that it shall not default on its commitment in connection with the permitted encumbrance (and any such default shall be a breach of this Agreement); and (i) the lienholder must certify to City that it has reviewed this Agreement, that it has accepted provisions that may affect the lienholder, and that no loan requirements conflict with or materially erode any provisions of this Agreement.

ii. **Defaults.** If Tenant defaults under either this Agreement or an encumbrance that City permits pursuant to Section 8.B.i, the City will consent to a transfer of Tenant's interests in this Agreement and the Tenant Improvements (to an acceptable party as set forth below) if Tenant and the lienholder comply with the following: (a) at the time of the default such lienholder must have an enforceable lien and be in compliance with Section 8.B.i; (b) such lienholder must cure all defaults under this Agreement within twenty (20) days after the first such default; (c) as a part of such cure, such lienholder (or another operator provided by such lienholder) must enter interim terms with City to perform this Agreement, and the operator and terms must be acceptable to City in its sole discretion (City shall also have the right, but not the obligation, to install an interim operator); (d) as a part of such cure, such lienholder must execute a guaranty on terms acceptable to City under which, at a minimum, such lienholder agrees to guarantee full performance of obligations designated as Tenant obligations under this Agreement; (e) as a part of such cure, Tenant and such lienholder must agree that City shall have a lien with first priority on the Tenant Improvements and all of Tenant's personal property at the Premises to secure full performance of the Tenant obligations under this Agreement; (f) upon completing such cure, this Agreement must be fully performed without subsequent defaults; (g) any transferee of Tenant's interests, and the terms of any transfer, must be acceptable to City in City's sole discretion; and (h) the City may require reasonable terms in addition to those set forth in this Agreement. If Tenant or such lienholder fails to comply with any of the foregoing obligations, such failure shall be a default under this Agreement. Upon such a default, City at any time may, but is not required to, terminate this Agreement and exercise any rights set forth in Section 11.A.i, and such lienholder shall promptly remove all encumbrances. City shall have no obligation to provide any notices to any lienholder, and City shall have no liability of any kind to any lienholder.

C. Subleasing. If this concession permits Tenant to hangar aircraft on a commercial basis, subject to City's right to approve any sublease, which City may provide or withhold in City's sole and absolute discretion, Tenant shall have the right to sublease portions of the Premises for the storage of Aircraft in the areas approved by and subject to the terms required by City. For all other concessions, Tenant may propose a subtenant to sublease the Premises solely for the purposes specified in this Agreement, and upon obtaining City's prior written consent, which City may provide or withhold in City's sole and absolute discretion, Tenant shall have the right to enter such a sublease subject to the terms required by City (which may include, but not be limited to, changes in the rent hereunder). Tenant shall impose on any approved subtenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City hereunder. Tenant shall reserve the right to amend any sublease to conform to the requirements of this Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublessee will attorn to and pay rent to City if Tenant ceases to be a party to this Agreement. City shall have the right to approve any sublease in City's sole and absolute discretion, and Tenant shall

provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligation under this Agreement.

9. Damage, Destruction, and Condemnation

A. Damage or Destruction of Premises. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent with or better than the original improvements. Tenant shall apply all proceeds that are made available from Tenant's insurance policies (or those of any subtenant or assignee) to performing such work. If City performs such work pursuant to Section 10.B, such insurance proceeds shall be paid to City. If the Premises or Tenant Improvements are tenable despite such damage, Tenant shall not receive any abatement of Tenant's rent obligations. To the extent that any portion is rendered untenable by such damage in light of the purposes of this Agreement (as determined by City in its sole discretion), rent shall continue if Tenant has business interruption insurance, or if Tenant does not have such insurance, City shall abate Tenant's rent proportionately until repairs have been substantially completed (as determined by City in its sole discretion).

B. Condemnation. In the event of any condemnation proceeding in which all or any part of the Premises is taken (by a condemnor other than City), all compensation from such proceeding shall be paid to City, except that Tenant may pursue a claim against the condemnor for the value of the Tenant Improvements and Tenant's leasehold interest and any subtenants may pursue a claim against the condemnor for the value of their subtenancy interests. In the event of a partial taking, City shall reduce the ground rent payable by Tenant on a pro rata basis for portions of the Premises so taken. If City determines in its sole discretion that all or a material portion of the Premises will be (or has been) rendered untenable as a result of such taking, City may terminate this Agreement by giving Tenant a written notice of termination and this Agreement shall terminate at the time specified in the notice (which shall not be less than thirty (30) days after the date of such notice).

10. Default

A. Tenant's Default. The occurrence of any of the following events shall constitute a default by Tenant under this Agreement: (i) Tenant fails to timely pay any installment of rent or any additional rent; (ii) Tenant ceases to provide any service that Tenant is required to provide under this Agreement for a period of seven (7) consecutive days; (iii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within twenty (20) days following written notice of such violation from City (except that in the case of insurance coverage required to be maintained, such period shall be five (5) days); (iv) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (v) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (vi) Tenant petitions for or enters into an

arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vii) Tenant defaults in constructing a Tenant Improvement as provided in Exhibit B, Section B.7.

B. Remedies. Upon any default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance, together with interest and service fees for any past due amounts (as provided in Section 10.C) and an administrative charge equal to twenty percent (20%) of the cost incurred by City (which the parties agree is a reasonable estimate of and liquidated damages for City's overhead expenses associated with such performance); (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and reletting the Premises (including, but not limited to, any real estate broker fees or marketing costs), and attorneys' fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent and additional rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Past Due Amounts. If Tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may also charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable estimate of and liquidated damages for City's additional costs for billing and collection arising from Tenant's failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent or additional rent, and shall be paid without abatement, deduction, offset, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

D. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within twenty (20) days after written notice by Tenant to City. If the nature of City's obligation is such that more than twenty (20) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such twenty (20) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

E. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Disposition of Tenant Improvements.

i. Disposition If Agreement Terminates Before Expiration Date. If this Agreement terminates for any reason before the Expiration Date, within sixty (60) days after such termination City, in its sole discretion, may determine to accept title to all or any portion of the Tenant Improvements. Upon City accepting any such title, all of Tenant's rights, title, and interests in the same shall be forfeited by Tenant to City and title thereto shall vest in City automatically. Tenant shall surrender the Premises upon termination (and shall surrender any Tenant Improvements as accepted by City) in accordance with Section 11.B and Exhibit E, Section E.13. If City rejects any such title, or if such sixty-day period expires, Tenant shall (within thirty (30) days thereof) remove all Tenant Improvements that were not accepted by City at Tenant's sole expense in a manner acceptable to City (and the obligations of Section 6.A shall apply to such removal). If Tenant fails to remove any such improvements, City may do so in any manner acceptable to City pursuant to Section 10.B.

ii. Disposition Upon Expiration. Upon the expiration of this Agreement, Tenant may either: (a) transfer its interests in the Tenant Improvements to a party who, prior to such expiration, has been accepted by City, in its sole discretion, and has entered an agreement for the Premises that is acceptable to City and that complies with the purpose of this Agreement; or (b) Tenant shall surrender the Premises (in accordance with Section 11.B) and, within thirty (30) days after such expiration, shall remove the Tenant Improvements (and the obligations of Section 6.A shall apply to such removal). If Tenant fails to perform either such alternative, City shall have the rights set forth in Section 11.A.i and may exercise them at any time.

B. Surrender of Premises. Upon any expiration or termination of this Agreement, Tenant, at Tenant's sole cost, shall (i) promptly and peaceably surrender to City the Premises (and any Tenant Improvements accepted by the City pursuant to Section 11.A) "broom clean" and in good order and condition; (ii) repair in a good and workmanlike manner any damage to the Premises or the Airport that arises from or relates to Tenant's use, occupancy, or operations under this Agreement (including, but not limited to, while removing any property upon expiration or termination); (iii) deliver to City all keys and access credentials relating to the Airport; (iv) perform Tenant's environmental obligations as provided in Section 7; and (v) remove all movable personal property and trade fixtures (including signage) that are not owned by City, (except that Tenant must obtain City's prior written consent to remove any such property if Tenant is in default under this Agreement or if such removal may impair the structure of any building). Upon any expiration or termination of this Agreement (which includes, but is not limited to, termination for abandonment of the Premises), all property that Tenant leaves on the Premises shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by City without notice to, and without any obligation to account to, Tenant or any other person (except that Tenant Improvements shall be

as provided in Section 11.A). Tenant shall pay to City all expenses incurred in connection with the disposition of such property in excess of any amount received by City from such disposition. Tenant shall not be released from Tenant's obligations under this Agreement in connection with surrender of the Premises until City has inspected the Premises and delivered to Tenant a written acceptance of such surrender.

C. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with state law. During such occupancy, Tenant shall comply with all provisions of this Agreement that are applicable to an at-will tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports (which City shall determine in its sole discretion).

D. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. General Provisions. This Agreement is subject to the General Provisions set forth at Exhibit E.

B. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows:

If to City:

Airport Manager
St. George Municipal Airport
175 E. 200 N.
St. George, Utah 84770

If to Tenant:

with a required, simultaneous copy to:

City Attorney
City of St. George
175 E. 200 N.
St. George, Utah 84770

with a required, simultaneous copy to:

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section

12.B and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

C. Incorporation. All exhibits referred to in this Agreement, as they may be amended from time to time, are incorporated in and are a part of this Agreement. Any proposal materials submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement. Tenant hereby acknowledges receiving Exhibits A – E to this Agreement.

D. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF ST. GEORGE

[TENANT]

Daniel D. McArthur, Mayor

By:
Its:

Attest:

Gay Cragun, City Recorder

Approved as to form:

Shawn M. Guzman, City Attorney

EXHIBIT A

PREMISES

[Attach real property description, description of improvements
constructed by City, and map if available.]

EXHIBIT B

TENANT CONSTRUCTION REQUIREMENTS

B.1 Authorization. Tenant shall not commence any construction on the Premises without the City's prior written consent for all work to be conducted. Tenant shall submit plans, a schedule, and a budget to City when making any request to construct improvements. City may request any information, request modifications, consent to, or deny Tenant's request in City's sole and absolute discretion. For any authorized project, Tenant shall provide City with copies of all plans, specifications, and construction documents during the progress of the work, and the matters contained therein shall be subject to City's consent. Tenant shall make no changes to the work without City's prior written consent.

B.2 Standard. All work shall be performed in a good and workmanlike manner, and shall be equal to or greater than the quality of the original materials, workmanship, and appearance of similar work performed by Tenant or by City elsewhere at the Airport. Work shall be performed by qualified and properly licensed personnel. All work shall conform to Laws and Regulations. Work shall be performed in a safe manner, and City shall have the right, but not the duty, to stop any work until safe conditions can be investigated and implemented. The work site shall be secured consistent with industry standards at Airports during the performance of the work.

B.3 Coordination. Tenant shall coordinate all work with Airport activities, and shall minimize any disruption to Airport activities, tenants, and users. City shall have the right, but not the duty, to direct that Tenant and Tenant's Associates cease activities or revise work plans to avoid disruption. Tenant and Tenant's Associates shall meet with City as requested by City as the work progresses and provide the City with information as City may require. City may require Tenant to comply with other measures that are in the City's interests in connection with any construction activities.

B.4 Indemnification, Insurance, and Bonds. Tenant shall cause Tenant's Associates who are performing any work relating to constructing improvements to provide the following:

a. Indemnity. Tenant shall require such associates to indemnify City in connection with City's interests consistent with the indemnity obligation of Section 6.A.

b. Insurance. Tenant shall provide or shall require such associates to provide builder's risk coverage to insure the improvements constructed on the Premises to the extent of not less than one hundred percent (100%) of such improvements' full insurable value using the all risk form of protection, as well as general liability, auto, and workers compensation insurance coverage as set forth in Section 6 to cover such work. Tenant shall also require design professionals to provide errors and omissions coverage in an amount not less than one million dollars (\$1,000,000). All such insurance shall comply with and be subject to City's insurance requirements including, but not limited to, those set forth at Exhibit D.

c. Bonds. Tenant shall provide or shall require such associates to provide construction payment and performance bonds in amounts covering not less than one hundred

percent (100%) of the contract price of such improvements and in a form acceptable to City. All such bonds shall name the City as a co-obligee.

B.5 Agreement Applicable to Work. The provisions of this Agreement shall apply to all work pursued by Tenant to construct improvements, regardless of whether such work commences or concludes before the Commencement Date or after any expiration or termination of this Agreement (including, but not limited to, Tenant's indemnity, waiver, and insurance obligations under Section 6 and repair obligations under Section 4.F, provisions prohibiting liens, and provisions requiring compliance with all Laws and Regulations). Tenant shall provide for compliance with this Agreement's requirements by Tenant's Associates who are performing any work relating to constructing improvements.

B.6 Permits, Plan Checks Required. Tenant and Tenant's Associates who are performing any work relating to constructing improvements must comply with all City requirements applicable to construction, including, but not limited to, permit requirements, plan check requirements, and other requirements imposed by City.

B.7 Default. Tenant shall comply with the construction schedule approved by City. If such construction is not completed materially within any times required by Tenant's approved schedule, or if for any reason Tenant fails to complete construction within ninety (90) days of Tenant's approved date for substantial completion, Tenant shall be in default under this Agreement and City shall have all of the rights set forth in Section 11.A regarding a disposition of Tenant Improvements in addition to all other remedies. Upon any default, Tenant shall turn over to City copies of all records associated with the work and shall work cooperatively with City.

B.8 Final Submittals. Tenant shall submit the following to City within ninety (90) days of beneficial occupancy:

a. Certified Financials. Tenant shall submit a statement of construction costs certifying the total construction cost of any improvement in a form reasonably required by City.

b. Free of Liens. Tenant shall submit a statement that the Premises and Tenant Improvements are free and clear of all liens, claims, or encumbrances (except when specifically authorized in the manner permitted under this Agreement).

c. As-Built Drawings. Tenant shall submit at its expense a complete set of accurate "as-built" plans and specifications, including bond paper "record" drawings, and one set of electronic drawings in AUTOCAD and tiff or PDF format, or other format specified by City, meeting the City's graphic standards for such records.

B.9 Initial Tenant Improvements. City has authorized and Tenant shall construct the initial Tenant Improvements that are summarized at Exhibit B, Attachment 1, and such obligation includes, but is not limited to, the plans, schedule, and date for access to the Premises in connection with such improvements.

B.10 Release by Former Airport Tenants. If Tenant was a tenant at the Former Airport, Tenant agrees that as of the Commencement Date, all agreements and other interests between Tenant and City regarding the Former Airport shall terminate (if not terminated sooner); provided that Tenant shall remain liable to City for any matter arising from or relating to Tenant's use, occupancy, or operations at the Former Airport during or prior to the time of Tenant's last entry upon the Former Airport. Tenant hereby releases, acquits, and forever discharges City and its officers, employees, and agents from and against any and all losses, liabilities, claims, and causes of action, of every kind and character, that Tenant may have against City arising from or relating to the Former Airport, whether the same are presently known or unknown and whether or not the same have been or could have been discovered as of the date of this Agreement.

**EXHIBIT B
ATTACHMENT 1**

INITIAL TENANT IMPROVEMENTS

Date for Tenant's Access to the Premises: _____

The Commencement Date for this Agreement is stated in Section 2.

Schedule for Construction:

Commencement of the Work: _____

Substantial Completion: _____

Other schedule requirements shall be as set forth in the schedule submitted to City by Tenant.

Tenant shall cause the construction of the plans and specifications for Tenant Improvements as submitted to City, which may be summarized as follows:

EXHIBIT C

RENT AND PAYMENT

C.1 Rent. Tenant shall pay ground rent pursuant to this Agreement as follows:

Period	Rate Per Square Foot	Tenant's Square Footage	Annual Rent
01/2011 – 12/2015	\$0.180		
01/2016 – 12/2020	\$0.214		
1/2021 – 12/2025	\$0.255		
1/2026 – 12/2030	\$0.303		
1/2031 – 12/2035	\$0.361		
1/2036 – 12/2040	\$0.430		
1/2041 – 12/2045	\$0.511		

The rental rates and calculations set forth in this Agreement shall not be construed to alter any other provision of this Agreement, including, but not limited to, the duration of this Agreement and any right to terminate this Agreement. City reserves the right to survey and measure the Premises as City may determine, and to correct any error in square footage. Tenant agrees that it shall execute any amendment necessary to correct an error in square footage and shall pay any adjusted rent based thereon.

C.2 Payment of Any Amount Due. Any amount due in connection with this Agreement or the use of the Airport shall be subject to the following terms; provided, however, that if any obligation is subject to payment terms pursuant to City ordinance or other City requirements that directly conflict with the following terms, such ordinance or other City requirements shall govern.

a. Past Due Amounts. Past due amounts are subject to Section 10.C of this Agreement.

b. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount that the City may implement from time to time) in addition to other sums due under this Agreement.

c. No Demand and Effect of Payment. All sums relating to this Agreement shall be due without prior notice or demand except when notice is necessary to make Tenant aware of the amount due if such amount is not otherwise set forth in this Agreement. Tenant shall make all payments without set-off or deduction. All sums paid by Tenant shall first be applied to any past due rent beginning with the most recent amount due. No statement on any check or elsewhere shall be deemed to create an accord and satisfaction. City may accept any payment without prejudice to City's rights to recover any sum or pursue other remedies provided by this Agreement or by law.

d. City Advances. If City pays any amount on behalf of Tenant (including, but not limited to, civil penalties assessed to City in connection with Tenant's use of the Airport) such amount shall constitute an advance by City to Tenant. Tenant shall promptly pay the same to the City upon receipt of an invoice for the same.

e. City Right to Apply. City shall have the right to apply any sums paid or provided by Tenant in connection with this Agreement to any obligation that Tenant owes to City in connection with the Airport, whether or not such obligation arises in connection with this Agreement.

f. Payment Address. Tenant shall make payments to City at the following address (or at such other address that City may designate in writing):

City of St. George
Finance Department
175 E. 200 N.
St. George, UT 84770

g. Reestablishment of Rates and Charges. City in its sole discretion may from time to time reestablish (or newly initiate) any type of rates and charges at the Airport (in a manner consistent with Laws and Regulations) to provide for the Airport's operations; provided, however, that the rent stated in Exhibit C, Section C.1 shall remain in effect for the duration of this Agreement unless altered pursuant to Section 8.C.

h. No Interest. City shall pay no interest on any sum that City pays to Tenant pursuant to this Agreement.

i. Audit. If any sum relating to this Agreement is due based on records or calculations maintained by Tenant, Tenant agrees that City shall have the right without prior notice (during business hours) to inspect and copy all such records and calculations at Tenant's place of business in St. George, Utah. Tenant shall maintain such records and calculations for three (3) years (during which this Agreement is in effect). City and its designated representatives may audit any such records and calculations. If as a result of any such audit it is established that Tenant has overpaid any sum due, City shall promptly refund such overpayment. If such audit establishes that additional sums are due to the City, Tenant shall promptly pay such sums in accordance with the requirements of Section 10.C, and shall pay the reasonable cost of the audit

if the audit establishes a collective discrepancy of more than five percent (5%) for all matters examined.

C.3 Liquidated Damages. Tenant agrees that City will be damaged if Tenant fails to comply with this Agreement. Therefore, in addition to any other remedies that City may have or damages that it may pursue, City may take the following actions and charge Tenant damages as stated below not as a penalty, but as liquidated compensatory damages to pay City's administrative costs associated with undertaking the specified act.

a. Requesting Compliance. If Tenant fails to comply with any obligation under this Agreement, City may charge Tenant one hundred dollars (\$100) for every written notice that City sends to Tenant requesting compliance.

b. Reestablishment of Damages. City reserves the right to reassess its costs from time to time in connection with taking the foregoing actions (or in connection with other actions that City takes to enforce this Agreement) and to reestablish the amount of the foregoing liquidated damages, or implement additional liquidated damages, based on City's cost increases.

EXHIBIT D

INSURANCE REQUIREMENTS

D.1. General Requirements. At all times when this Agreement is in effect Tenant shall maintain in force all required insurance coverage and shall have on file with the City Certificates of Insurance evidencing the same. Such certificates shall provide that coverage will not be canceled, suspended, voided, or reduced without at least thirty (30) days prior written notice to the City. Ratings for the financial strength of the companies providing Tenant's insurance policies shall be disclosed in such certificates and shall be "A- VII" or stronger as published in the latest Best's Key Rating Guide (or a comparable rating from a comparable rating service). If a lower rating is proposed, City may examine the financial strength of the insurance company proposed to provide coverage and may consent to a lower rating in the City's sole and absolute discretion, and City may also require additional assurances from Tenant. All certificates shall be signed by a person authorized by the insurer and licensed by the State of Utah. All policies (except any policies required for workers' compensation or errors and omissions) and the certificates evidencing coverage shall name City and its officers, employees, and volunteers as additional insureds (or in the case of property coverage, City shall be named as a loss payee). Tenant shall provide for a renewal of all insurance coverage on a timely basis to prevent any lapse in coverage. City retains the right to approve any deductibles, and Tenant shall notify City of any material erosion of the aggregate limits of any policy. Tenant's policies shall be primary. Such policies shall extend insurance to cover Tenant's contractual obligations under this Agreement.

D.2 Minimum Requirements. City's insurance requirements are minimum requirements, and Tenant is responsible to obtain adequate insurance coverage as Tenant may determine. Except as otherwise expressly set forth in this Agreement, Tenant assumes all risk under this Agreement (including, but not limited to, business interruption claims) whether or not insured.

D.3. Waiver of Subrogation. Notwithstanding any other provision contained in this Agreement, each of the parties hereby waives any rights of subrogation it may have against the other party for loss or damage from any risk that is covered by insurance (including, but not limited to, claims for business interruption). Each of the parties shall obtain a clause or endorsement providing for such waiver of subrogation in any policies of insurance required under this Agreement.

D.4. Terms Subject to Change. City, in its sole and absolute discretion, reserves the right to review and adjust at any time Tenant's required insurance limits, types of coverage, and any other terms applicable to insurance to insure against any risk associated with this Agreement or at the Airport. Among other things, City may review any or all insurance coverage on a periodic basis and in connection with any specific activity or event associated with the Airport or proposed by Tenant.

D.5 Stopping Operations. Among City's remedies, if at any time Tenant's insurance coverage is not in effect as required herein, City may (but is not required to) stop all or any portion of Tenant's operations without liability to City until Tenant fully restores such coverage.

EXHIBIT E

GENERAL PROVISIONS

E.1 Governmental Provisions.

a. Nondiscrimination Regarding USDOT Programs. Tenant for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), 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 property described in this Agreement for a purpose for which a U.S. Department of Transportation 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. Nondiscrimination Regarding Facilities, Improvements, and Federally-Funded Activities. Tenant for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), 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, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities or any activity conducted with or benefiting from Federal assistance, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant shall use the 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, as said regulations may be amended, and other applicable Laws and Regulations, and shall obtain such compliance from any sublessees or other parties holding lower tier agreements (to the extent the same are permitted by this Agreement).

c. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

d. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

e. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport improvements. In the event that the Federal Aviation Administration or other governmental authority requires any

modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport (including, but not limited to, those providing funding), Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments (including, but not limited to, any assurances or covenants required of City or obligations imposed by law), Tenant shall immediately take all actions that may be necessary to preserve City's compliance with the same. Without liability to City, City shall have the right to terminate this Agreement and reenter and repossess any portion of the Premises if the U.S. Department of Transportation or other governmental authority having jurisdiction expressly requires any such action, subject to any review that may be afforded to Tenant by such authority.

E.2. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E.3. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and that such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

E.4. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

E.5. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for recovery of possession of the Premises, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including, but not limited to, attorneys fees, incurred by City in any case or proceeding involving Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section E.5 shall survive any expiration or termination of this Agreement.

E.6. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section E.6 shall survive any expiration or termination of this Agreement.

E.7. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

E.8. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any party. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

E.9. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, nor agreement of the other party except for those expressly contained in this Agreement.

E.10. Art. Tenant shall not install any object in the Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 unless Tenant has obtained City's prior written approval and provided City with a written waiver that complies with the requirements of such Act or its successor.

E.11. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

E.12. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

E.13. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

E.14. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

E.15. Time of Essence. Time is of the essence of this Agreement.