

SASO OPERATING AND LEASE AGREEMENT
BETWEEN
OGDEN CITY CORPORATION
AND

SASO OPERATING AND LEASE AGREEMENT **(Tenant Improvements)**

THIS SASO OPERATING AND LEASE AGREEMENT (which, as amended from time to time, is defined herein as the "Agreement"), effective as of the _____ day of _____, 20_____, is entered into by and between the Ogden City Corporation, a Utah municipal corporation, (the "City") and _____, a _____, ("Tenant").

RECITALS

WHEREAS, City owns and operates Ogden Airport, an airport located at 3909 Airport Rd., Ogden, Utah 84405; and

WHEREAS, Tenant is qualified to provide services as a single aeronautical service operator (SASO) as set forth herein and accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant 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 (the "Premises"). City has authority to lease such 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 (or has already constructed) 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 and maintenance of the Tenant Improvements as provided in this Agreement is a part of the consideration to City under this Agreement.

C. Grant of Concession, CAAP and Purpose of Agreement. Tenant is granted a Commercial Aeronautical Activities Permit (CAAP) to operate a concession only to the extent specified in Exhibit H and Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the purposes set forth in Exhibit H (and no other purposes).

All services provided by Tenant in connection with the CAAP and the Premises are subject to City's prior written authorization in City's sole and absolute discretion. If City determines (in accordance with applicable Laws and Regulations) 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.

C. Purpose of Agreement. Tenant agrees that it shall use the Premises for the following purposes only: the parking, storage, service, repair, light maintenance, operation, and modification or construction (on a noncommercial basis only) of Aircraft, plus incidental activities related to such purposes (including, but not limited to, parking an automobile or motorcycle inside the hangar while the Aircraft is in flight, but only if such vehicle was driven by a person on board such Aircraft), as more specifically set forth in Exhibit G attached hereto. An "Aircraft" shall be any aircraft that Tenant owns or controls by a long-term lease of one year or longer, or that is subject to an authorized sublease, when approved in writing in advance by City. Storage within the Premises of any aircraft not owned or controlled by Tenant, or not approved by City, as set forth herein, shall constitute a material breach of this Agreement. Tenant shall provide proof of the ownership or control of any Aircraft upon City's request. The following are the make, model, and identification number of all Aircraft approved by City upon entering this Agreement, and Tenant shall provide the same information to City in writing when requesting approval for any subsequent Aircraft:

- i. Make:
- ii. Model:
- iii. Identification Number:

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, as such term is defined in Section 4.B) 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, title, 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 all other rights, including, but not limited to, 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 peaceably have and enjoy the rights, uses, and privileges stated in this Agreement, until this Agreement is terminated.

G. Waiver and Release; Prior Leases. This Agreement shall replace, supplant, and terminate any prior lease agreement related to the Premises as of the Commencement Date herein. In consideration of this Agreement, Tenant hereby releases and waives any and all claims, causes of action, or suits against the City related to the Premises or Tenant's activity at or usage of the Ogden Airport, including all claims in contract, tort or equity, arising prior to Tenant's execution of this Agreement. This waiver and release shall not relieve Tenant of its contractual obligations arising under a prior lease agreement for the Premises before the Commencement Date of 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 _____, 20 _____ (the “Commencement Date”) and shall continue thereafter for a term of _____ (____) years until _____, 20 _____, (the “Expiration Date”). The date on which this Agreement expires (whether at the end of the initial term or any option terms exercised by City) is the “Expiration Date.”

- a. **Lease Construction Date.** Nothing in this Agreement shall grant to Tenant a contractual right to renew this Agreement; however, Tenant may qualify for one or more additional ground leases or facility leases to the extent provided for in city ordinances, policies, and other Laws and Regulations defined in Section 4.b which are then in force and effect upon the expiration of this Agreement. The current Ogden City Code, Subsection 8-3-3(C), generally prohibits renewal of a ground lease agreement beyond forty years from the Lease Construction Date (as that term is defined in ordinance) but may allow Tenant to enter into a facility lease for a forty-year-old facility. For purposes of calculating the forty-year limitation, the parties hereby agree that the Lease Construction Date for the Premises occurred on or before January 1, _____.

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. Notwithstanding the above, Tenant can expect to receive notice of adjustments to annual rent based on the Consumer Price Index, which notice will be delivered before January 1st of each year.

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 self-fueling activities (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 SASO concessionaires.

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 determines (in City's sole and absolute discretion) interferes with any operation at the Airport or decreases the Airport's effectiveness. Tenant shall immediately 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 Airport Minimum Standards, 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 a written 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; self-fueling activities on the Premises or any other area that City has not authorized; any use conflicting with Exhibits F and H; 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. After construction of initial Tenant Improvements upon the Premises, Lessee shall make no modifications, improvements, or additions which materially alter the exterior or interior walls and roof, windows, electrical system, structural elements, architectural design elements or the foundation of Tenant Improvements constructed upon the Premises, without the City's prior written consent, which consent may be given or withheld in the City's sole and absolute discretion. Failure to obtain City's written consent for modifications, improvements, or addition, as required herein, shall constitute a material breach of this Agreement, and Tenant shall pay, or reimburse to City, all costs to remove such unapproved modifications, improvements or additions, and restore the Premises to its prior configuration.

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 and absolute 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 physical means, whether or not such advertising is for profit, except advertisement is permitted within the interior of the Tenant Improvements provided they are not visible from the exterior of Tenant Improvements when hangar doors and other doors and windows are open.

I. Security. Nothing in this Agreement grants to Tenant a contractual right to unescorted access within the Airport Operations Area, or other secured areas within the airport. 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 and absolute 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 and absolute 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 secure or sterile areas.

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 as permitted by Laws and Regulations 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 and absolute 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 clean, safe, and sanitary condition and in good repair, and as further set forth in Section K.i below. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner, and in accordance with the standard of work performed by the City elsewhere at the Airport. City has sole and absolute discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. Without limiting the foregoing obligations, 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 upon the Premises in receptacles securely covered to prevent foreign objects debris ("FOD") on the airport. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 7. Tenant shall comply with the following:

i. **Maintenance.** Tenant agrees to maintain the Premises, and any area beyond the Premises that is within 5 feet of any structure on the Premises, in a neat, orderly and safe condition, and free from waste, rubbish, weeds, snow or other debris or hazards, and to perform the necessary mowing and snow removal on the Premises. The City may assist in snow removal of ramp/apron areas when capability and priority permit. Tenant shall not store or let stand any equipment or property belonging to the Tenant or under the Tenant's custody, outside the boundaries of the leased Premises without prior consent of the City's Airport Manager, except when such equipment or property is in the process of being loaded or unloaded. The exterior of all structures upon Premises shall be maintained free of rust, peeling paint, broken windows, or damaged roofing materials, panels, trim, doors, and other exterior components. All dilapidated exterior components shall be repaired or replaced. The interior of all structures on Premises shall be kept neat, clean, and safe.

In addition to the above, Tenant shall maintain the Premises consistent with the International Property Maintenance Code, as amended.

ii. **Vehicles.** Boats, trucks (except pickups), recreational vehicles, off-highway vehicles, inoperable vehicles or unregistered vehicles may not be parked or stored upon the Premises in areas outside of the Tenant Improvements or upon any parking space or other area within the airport. Storage of such vehicles within Tenant Improvements shall be subject to applicable Laws and Regulations. Recreational vehicles and boats hitched to vehicles parked temporarily and occasionally in Tenant's leased parking area outside the airport Air Operations Area (AOA) for less than twelve consecutive hours, shall not violate this subsection unless otherwise prohibited by Laws and Regulations.

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 complaints, requests for information, and requests for 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 SASO 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; participation in City's safety-related programs (such as risk management, security, and environmental management); and maintaining at all times functional fire fighting equipment (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 upon such manager's 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.
- d. **Termination.** City shall have the right to terminate this Agreement in connection with any deficiency in Tenant's operations and in connection with repeated deficiencies where City notifies Tenant of three or more deficiencies in a twelve (12) month period (whether or not cured).

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 as provided in this Section 5.B. 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 such an entrance into any portion of the Premises.

i. Without Notice. City and City's Associates shall have the right to enter the Premises (not including the Tenant Improvements) at any time and without prior notice, provided that they shall not unreasonably interfere with Tenant's use of the Premises. City and City's Associates shall have the right to enter the Tenant Improvements at any time and without prior notice for any purpose relating to any emergency, security or safety concern, or to investigate or remediate potential threats or hazards.

ii. Notice. In addition to the rights set forth in Section 5.B.i, City and City's Associates shall have the right to enter the Tenant Improvements for any other purpose relating to the Airport (including, but not limited to, in order to conduct inspections, determine compliance with the Agreement, and conduct Airport work) provided that they shall not unreasonably interfere with Tenant's use of the Premises. In connection with such entry, City shall provide twenty four (24) hours' advance notice to Tenant by sending a message to Tenant if: (a) Tenant maintains on file with City a working email address (or an address in another format designated by City) that is capable of accepting messages for Tenant, and (b) Tenant provides to City a key or other access to the Premises by no later than the time of the entry. If Tenant does not comply with all of the foregoing conditions for such notice, City and City's Associates shall have the right to enter the Tenant Improvements as determined by City in City's sole and absolute discretion.

iii. Interviews. 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.

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 and absolute 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 Tenant and 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 and absolute 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 any portion remaining after such recovery is tenantable in light of the purposes of this Agreement (as determined by City in its sole and absolute discretion), City shall reduce Tenant's rent hereunder by the percentage of the Premises that City recovers, and City shall pay the cost of any alterations to the Tenant Improvements that are required by City in connection therewith (so long as such improvements are not in breach of this Agreement). If City recovers all of the Premises, or if any remaining portion of the Premises is not tenantable pursuant to City's determination, 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 where Tenant is not in default, City shall pay to Tenant the fair market value of the Tenant Improvements and Tenant's leasehold interest as determined by a professional real estate appraisal obtained and paid for City. The appraiser's determination of fair market value shall take into consideration only the remaining term of this Agreement, offset by rent and fees due during the remaining term.

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 determined based on the actual square footage contained in Tenant's Premises at such new location.

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 operators and service providers at the Airport; establishing central locations and security procedures for delivering goods or materials to the Airport; and establishing green building and other 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. Assumption of Risk; Waiver of Liability. 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, except for those losses, liabilities, claims, and causes of action solely arising from the willful misconduct, gross negligence or intentional torts of the City or its officers, employees, and volunteers, that are not limited by governmental immunity.

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 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 that includes premises liability, products, and completed operations coverage and, if applicable, mobile equipment coverage with a combined single limit for bodily injury and property damage of not less than two million dollars (\$2,000,000) per occurrence (or three million dollars (\$3,000,000) per occurrence if Tenant is authorized to engage in aircraft sales) and two hundred thousand dollars (\$200,000) per passenger seat for applicable claims), including, but not limited to, contractual liability coverage for Tenant's performance of the indemnity agreement set forth in Section 6.A. If any such coverage is not available to Tenant in the form of an aircraft liability policy, Tenant shall obtain substantially similar coverage through a commercial general liability policy.

ii. **Commercial General Liability.** If Tenant is not authorized to engage in aircraft flight operations, 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 one million dollars (\$1,000,000) per occurrence, and four million dollars (\$4,000,000) for aggregate claims 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). Tenant is solely responsible for Tenant's personal property, and Tenant may purchase insurance for Tenant's personal property as Tenant may determine.

iv. **Automobile.** Business automobile liability insurance 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 four million dollars (\$4,000,000) 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 four million dollars (\$4,000,000) general aggregate limit of liability.

vii. **Workers Compensation.** Workers compensation coverage in the amounts and form required by the state of Utah and employer's liability insurance with limits of not less than one hundred thousand/ five hundred thousand/ one hundred thousand dollars (\$100,000.00 / \$500,000.00 / \$100,000.00).

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.

x. If Tenant engages in self-fueling, Tenant shall comply with City's self-fueling requirements, including, but not limited to, pollution legal liability insurance requirements.

D. Performance Security. City reserves the right to require a performance security in a form and amount acceptable to City upon any material default by Tenant under this Agreement.

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.

- i. **Assignment Upon Foreclosure or Forfeiture.** Upon compliance with Subsection 8.B below, this Agreement may be encumbered by means of an assignment of this Agreement to secure financing for the construction or purchase of Tenant Improvements, provided that such assignment permits Tenant to remain in possession except in the event of foreclosure. In the event of foreclosure or forfeiture by the holder of such security, the City consents to further assignment to any person, firm or corporation which is fully competent and has the necessary facilities, experience and financial resources to perform the obligations contained in this agreement on the part of the Tenant to be performed, provided such proposed assignee shall expressly assume said obligations in writing.
- ii. **Change of Majority Interest.** A change in ownership of the majority interest in Tenant's business entity shall be considered a prohibited assignment of this Agreement and shall constitute a default and breach of this Agreement, unless such change of majority ownership is pre-approved by City. City approval of a change in majority interest in Tenant's business entity may require Tenant's requalification, negotiation, and entering into a new lease agreement.

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 construction or purchase of 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 earliest scheduled 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. The City may deny any encumbrance not in compliance with this section.

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 and absolute discretion; (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 and absolute 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, 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. Tenant shall not sublease any part of the Premises unless subleasing aeronautical space is an integral part of a Tenant's permitted commercial aeronautical activity (i.e., an Aircraft Storage SASO; an FBO subleasing space for the operation of a permitted SASO, etc.). 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 sublease portions of the Premises for the storage of Aircraft or operation of a permitted commercial aeronautical activity in the areas approved by and subject to the terms required by City. Tenant shall impose on all approved subtenants 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 Tenant's subleases to conform to the requirements of this Agreement, and all such subleases shall be consistent with and subordinate to this Agreement as it is amended from time to time. Such subleases shall include an agreement that the sublessees will 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 every sublease executed by Tenant (which shall include the make, model, and identification number of all Aircraft making use of such space). No sublease shall relieve Tenant of any obligation under this Agreement. Tenant shall be responsible and liable for the actions of its subtenant on the airport, whether or not its sublease has been approved by the city. Any action or omission that would constitute a breach of this Agreement if committed by Tenant, will also constitute a breach of this Agreement if committed by Tenant's subtenant. The city shall be entitled to receive any revenue that the tenant/assignor of a city-owned building receives from a subtenant/assignee that exceeds the amount the tenant/assignee is required to pay the city pursuant to the tenant's/assignee's 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 Tenant insurance proceeds shall be paid to City. If the Premises or Tenant Improvements are tenantable despite such damage, Tenant shall not receive any abatement of Tenant's rent obligations. To the extent that any portion is rendered untenantable by such damage in light of the purposes of this Agreement (as determined by City in its sole and absolute 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 and absolute 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 and absolute discretion that all or a material portion of the Premises will be (or has been) rendered untenantable 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 and Tenant fails to cure the delinquency within thirty (30) days following written notice of such delinquency from City; (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 thirty (30) 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; or (viii) Tenant is in breach of this Agreement (including, but not limited to, operational deficiencies pursuant to Section 4.L.) three (3) or more times during a twelve (12) month period (whether or not cured).

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 be subject to late fees and interest as set forth in any applicable ordinance or administrative policy adopted by the city. In the absence of an applicable ordinance or policy, such unpaid amount shall bear interest at the rate of eighteen percent (18%) per annum 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 thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) 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. Waiver and Abandonment of Right to Remove Improvements. In consideration of this Agreement, Tenant hereby waives and abandons any right to remove improvements from the Premises upon expiration or termination of lease as may have been available to Tenant under any prior ground lease agreement. Upon expiration or termination of this Agreement, the City shall be the sole owner of all Improvements upon or within the Premises ("Improvements"), including all structures, facilities, fixtures (excluding trade fixtures) and utility lines above and below the surface of the Premises, with the exception of utility lines owned by a third party utility services provider.

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 "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.D; 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 release.

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 and absolute discretion). The City's acceptance of prepaid rent during or prior to a Tenant's holdover shall not be construed to waive, alter or change the status of Tenant's holdover tenancy.

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 DHL), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows:

TO: CITY

**Airport Manager
3909 Airport Rd.
Ogden, Utah 84405**

TO: TENANT

**name
address**

With a required, simultaneous copy to:

**Ogden City Attorney
2549 Washington Blvd., Suite 840
Ogden, UT 84401**

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 – F 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:

OGDEN CITY CORPORATION

TENANT:

Airport Manager

By:
Its:

Attest:

Ogden City Recorder

Approved as to form:

Ogden City Attorney

EXHIBIT A

PREMISES

Property description of the Premises:

Hangar or Lot number(s) _____ () on the Ogden Airport Hangar Parcel Plat, which contains [six] _____ ([6]) square feet, to be used to provide a SASO business for the Ogden Hinckley Airport. .

For informational purposes, such lot(s) is/are depicted on the following page.

The remainder of this page has been intentionally left blank.

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 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 safety conditions can be investigated and implemented. The work site shall be secured consistent with industry standards at Airports during the performance of the work.

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. Tenant also shall ensure that Tenant's insurance policies required in Section 6 extend coverage for such work.

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 the Expiration Date (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 substantially 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 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 for Tenant Improvements constructed at the Airport (or in the case of Tenant Improvements relocated from the Former Airport, the plans and specifications relating to such relocation). Such plans and specifications shall include one set of bond paper "record" drawings and one set of electronic drawings in AUTOCAD and tiff or PDF format 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. Preexisting Tenant Improvements. If Tenant or its predecessor has previously constructed a hangar or other structures upon the Premises, then the existing hangar and appurtenant structures shall be considered the Tenant Improvements for purposes of this Agreement. If Tenant chooses to build additional Tenant Improvements or redevelop existing Tenant Improvements on the Premises, it shall do so in compliance with this Agreement and this Exhibit B. By entering into this Agreement, City does not waive any remedies it may have with respect to preexisting Tenant Improvements that at the time of entering into this Agreement, are unsafe, in poor repair, used for prohibited uses, or built contrary to Laws and Regulations at the time of their construction.

EXHIBIT B
ATTACHMENT 1
INITIAL TENANT IMPROVEMENTS

Date for Tenant's Access to the Premises: N/A

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:

Hangar and appurtenances as detailed in plans approved by Ogden City

EXHIBIT C
RENT AND PAYMENT

Tenant shall pay ground rent pursuant to this Agreement as follows:

C.1. Rent, Fees and Charges. Subject to re-negotiation and change of rental rates as hereinafter provided, the Tenant agrees to pay the City for the use of the premises, facilities, rights, services, and privileges granted herein, the following rents, payable to Ogden City Corporation.

a. Improved and Unimproved Rates. Rent for the above-described parcel shall be at the current rate of \$0._____ per square foot of improved land and \$0._____ per square foot of unimproved land. The Premises consist of the following square footage of improved and unimproved land:

<u>Parcel</u>	<u>Area</u>	<u>Rate</u>	<u>Subtotal</u>
A. (x)	_____ sq. feet	Improved Land-	\$0._____
B. (x)	_____ sq. feet	Unimproved Land-	\$0._____
Total =			

b. Annual Rent. The annual rent of the above described land for 20____ and each following year of the agreement shall be \$_____ , as adjusted by the Consumer Price Index (CPI) and is due and payable to Ogden City Corporation, in advance, on the first business day of each calendar year of the Agreement.

c. Prorated Rent. Pro-rated rent for the partial year in which this Agreement was commenced (if applicable), shall be \$_____ , and shall be paid upon execution of this Agreement by Tenant

d. Amendment of Premises. 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.

e. Rent After 40 Years from Lease Construction Date. Pursuant to Ogden City Code, Subsection 8-3-3(C)(1)(b)(i)(as amended), any portion of the lease term or holdover period that extends beyond the Construction Lease Date, as that term is defined in ordinance, shall be subject to fair market rent for the land and improvements to the Premises, in an amount to be determined by the City.

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. City's billing or acceptance of prepaid rent for time periods beyond the Expiration Date or Termination Date of this Agreement shall not serve to extend this Agreement nor Tenant's right to occupy the leasehold, notwithstanding any claim Tenant may have for refund of prepaid rent.

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, 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):

Ogden City Corporation - Cashier
2549 Washington Boulevard, Suite 240
Ogden, UT 84401

g. Reestablishment of Rates and Charges. The City in its sole and absolute 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 (including, but not limited to, reestablishing the rental rate charged to Tenant and all similarly situated tenants). Rental rates described herein may be increased by ordinance adopted by the Ogden City Council.

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 to inspect, copy, and audit all such records and calculations. Tenant shall make such records and calculations available to City at City's offices within twenty-four (24) hours after City delivers to Tenant a written request for the same. Tenant shall maintain such records and calculations for three (3) years (during which this Agreement is in effect). City agrees that an audit of such records and calculations shall occur no more frequently than once each year. 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. Delay. If Tenant fails to provide any record to City that Tenant is required to provide under this Agreement, City may charge Tenant one hundred dollars (\$100) for every seven (7) calendar days that Tenant requires City to delay its receipt of such record after City's written request.

c. 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).

Policies shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers. Tenant's policies shall be primary. Such policies shall extend insurance to cover Tenant's contractual obligations under this Agreement. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be in excess of Tenant's insurance and shall not contribute with it. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (or ten (10) days in the case of termination for lack of payment) has been given to the city by certified mail, return receipt requested. 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.

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, claims for business interruption) 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 Tenant's use, occupancy, or operations 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.

D.6. City Use of Loss Payee Proceeds. The City shall be named as a loss payee of the property insurance coverage policy required in this Agreement, to facilitate the provisions of Subsection 9.A. of this Agreement. In the event of an insured loss, the City may in its sole and absolute discretion, use or direct Tenant to use the resulting insurance proceeds to remove, repair or rebuild any structures or other improvements on the Premises and pay all city expenses and costs related thereto, including all fees and costs of the City related to the insured property (including attorney fees, collection costs and other fees) and all outstanding obligations of Tenant to City under this Agreement. The City may use insurance proceeds to enhance and modernize the repaired or rebuilt leasehold improvements and bring them into compliance with then-current codes and regulations. Any remaining unused insurance proceeds in City's possession after all costs and fees described above have been paid shall be refunded to Tenant.

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). In the event of a breach of any of the nondiscrimination covenants pursuant to part 21 of the regulations of the office of the Secretary of Transportation, the 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.

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.

f. Government Use. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States government for military or naval use and if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended.

g. Obstructions. Tenant 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 exceeding the obstacle identification surfaces as specified by FAR part 77. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Tenant.

h. Closures. City reserves the right to temporarily close the airport or any of the facilities thereon for maintenance, improvement or for the safety of the public.

i. Aircraft Maintenance. No right or privilege has been granted in this Agreement which would operate to prevent any person, firm or corporation operating aircraft on the airport from performing services on its own Aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

j. Airport Development. City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of the Tenant and without interference or hindrance from Tenant.

k. Pattern of Violations; Default. Tenant agrees to comply with all Laws and Regulations, as they may hereafter be adopted or amended. More than three (3) violations of the Laws and Regulations affecting the Airport, during any three (3) month period by Tenant, its agents or employees, even if the violations are cured by Tenant; or any other pattern of violations that manifests reckless disregard for the health, safety and general welfare of the public and/or airport users, shall be a material breach which may justify termination of this Agreement at the discretion of the City. The City shall not exercise its right to terminate this Agreement based on a pattern of violations until it has notified the Tenant and given the Tenant a reasonable opportunity to retrain employees or otherwise demonstrate that Tenant, its employees, and agents can and will conform to Laws and Regulations.

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. Attorney 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 attorney 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 and 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 Weber 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 of visual art in the Premises in violation of the Visual Artists Rights Act of 1990 (VARA). Upon request of the City, Tenant shall provide written waivers for VARA restricted visual art displayed within the Premises.

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 in this Agreement.

EXHIBIT F

HANGAR RULES

The rules set forth in this Exhibit F may be modified by City from time to time upon written notice to Tenant.

F.1. Authorized Use Only. Tenant shall use the Premises only for the purposes permitted by this Agreement. No items unrelated to that purpose are to be stored on the Premises. Tenant may not store any property outside of the Tenant Improvements.

F.2. Storage of Certain Materials. Tenant shall store no explosives, solvents, or flammables with a flash point below 100 degrees Fahrenheit (100° F) on the Premises. Lubricating oil stored on the Premises must be in closed containers.

F.3. Close Doors. Tenant shall assure that all hangar doors for the Tenant Improvements are kept closed when the hangar is unattended.

F.4. Aircraft Maintenance and Repairs. Tenant shall not use the Premises for spray painting or doping (except for de minimus painting on a portion of the Aircraft on a non-commercial basis). Tenant may make or cause to be made on the Premises necessary repairs, light maintenance, and inspections to the Aircraft as required by Laws and Regulations to allow the Aircraft to be maintained in an airworthy condition. On a non-commercial basis, Tenant may also construct an Aircraft within the Tenant Improvements. Mechanics hired by Tenant to repair, maintain, or inspect said Aircraft must be properly licensed according to Laws and Regulations.

F.5. Fire Extinguisher. Tenant shall furnish a portable fire extinguisher (which meets the applicable fire code) and shall keep the same in the Tenant Improvements at all times, provide for the yearly inspection thereof by a certified fire extinguisher inspector, and report the use of any fire extinguisher equipment on the Premises to the Airport Manager.

F.6. Clean Premises. Tenant shall keep the Premises clean and free of debris and shall store garbage in a covered metal container.

F.7. Hoisting Devices. Tenant shall not use any hoisting device which in any way attaches to the structure of the Tenant Improvements. This does not preclude the use of a horizontal winch or similar device used to move the Aircraft into a hangar.

F.8. Self-Fueling. Tenant shall not conduct any self-fueling operations on the Premises. Tenant agrees that all self-fueling operations shall be subject to the Airport's self-fueling policies and fuel flowage fees.

EXHIBIT G

ALLOWED USES OF LEASED PREMISES

G.1. Aeronautical Uses. The leased premises and any and all improvements located thereupon shall be used solely for conducting the following aeronautical activities:

- a. Storage of Tenant's active Aircraft.
- b. Final assembly of Aircraft under construction.
- c. Non-commercial construction of amateur-built or kit-built Aircraft.
- d. Maintenance, repair, or refurbishment of Aircraft, but not the indefinite storage of inoperable Aircraft.
- e. Storage of Aircraft handling equipment, e.g., towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of Tenant's hangered Aircraft.
- f. All commercial uses specifically permitted by Exhibit H or a separately issued CAAP permit.

G.2. Aircraft Construction. Any tenant engaging in final assembly of Aircraft under construction or non-commercial construction of amateur-built or kit-built Aircraft shall first submit to the airport manager for approval a construction schedule setting forth expected stages of completion at 90-day intervals. Construction progress according to the construction schedule is subject to inspection of the airport manager, who may stop and order removal of an aircraft construction project that is not making reasonable progress. All construction must be completed, and the Aircraft made operable or removed from the Premises no later than 2 years after any components for the Aircraft construction are brought onto the airport.

G.3. Inoperable Aircraft. Any Aircraft that becomes inoperable shall be repaired and made flight worthy within a reasonable time. No Aircraft may be stored upon the Premises that has been inoperable for more than one year. This provision may not be contravened by successive movements of an inoperable Aircraft from one airport hangar to another. An inoperable Aircraft for purposes of this agreement is an aircraft that is mechanically unable to operate or lacks proper legal certifications and inspections required for operation. Upon City's request, Tenant shall produce for inspection and copying by City all certifications and inspection records necessary to demonstrate Aircraft operability.

G.4. Incidental Nonaeronautical Use. Nonaeronautical storage as an incidental use may be permitted on the condition that the hangar is primarily used for aeronautical uses described in this Exhibit G, and nonaeronautical storage does not interfere with the aeronautical use of the hangar.

Nonaeronautical storage or use shall not:

- a. Impede the movement of the Aircraft in and out of the hangar or impede access to Aircraft or other aeronautical contents of the hangar.
- b. Displace the aeronautical contents of the hangar. A vehicle parked in the hangar while the vehicle owner is using the Aircraft will not be considered to displace the Aircraft.
- c. Be used for the conduct of a nonaeronautical business from the hangar (including storage of inventory).
- d. Be stored in violation of airport rules and regulations, lease agreement provisions, building codes or local ordinances.
- e. Exceed thirty (30) percent of hangar space.
- f. Be hauled into or removed from the hangar in any manner that unreasonably burdens or interferes with aircraft movement and other aeronautical activities on the airport.

G.5. Unauthorized Uses. Tenant shall limit its uses of the Premises to the Aeronautical Uses and Incidental Nonaeronautical Uses described in this Exhibit G. Use of the leased premises for nonaeronautical uses beyond Incidental Nonaeronautical Uses described in this Exhibit G, shall immediately alter this Lease Agreement as follows:

- a. The term of this Lease Agreement shall revert to a month-to-month lease, terminable by the City upon 30 days notice to Tenant.
- b. Tenant shall be required to pay fair market value rent, as determined by the airport manager, effective from the date the unauthorized use commenced.

G.6. Residence Prohibited. A hangar may not be used as a permanent or temporary residence. Unauthorized development of residential living quarters within the Tenant Improvements may be declared by City to be an event of default under this Agreement and the City may declare any noncomplying subleases null and void. Upon written approval of the airport manager, Tenant may construct or maintain a flight crew resting facility for temporary or intermittent overnight use, but such facility may not be used as a permanent or temporary residence. The definition of flight crew is limited to those individuals necessary for the operation of Tenant's or Subtenant's hangered Aircraft, such as pilot-in-command (PIC), second in command, flight engineer, flight attendants, loadmasters, and flight mechanics. It does not include the families, relatives, or guests of flight crewmembers not meeting the preceding definition.

G.7. Commercial Aeronautical Uses. The leased premises may not be used for any commercial aeronautical purposes except as permitted by Exhibit H, unless Tenant complies with all applicable minimum standards and obtains a commercial lease or a commercial aeronautical activities permit (CAAP).

EXHIBIT H

COMMERCIAL AERONAUTICAL ACTIVITIES PERMIT

H.1. **CAAP Permit Granted.** During the term of this Lease Agreement, Tenant (hereinafter "Permittee") is hereby granted a Commercial Aeronautical Activities Permit (CAAP) to conduct the following permitted commercial aeronautical activities or operations upon the Airport or Airpark (hereinafter, "Permitted Commercial Uses"), as those activities or operations are defined in Title 8 and summarized below:

(Check below for each Permitted Commercial Uses authorized by this Permit)

- FIXED BASE OPERATOR (ALSO KNOWN AS FBO):** Any person who performs the basic essential aeronautical services including aviation fuel and oil sales, ramp parking, tie-down and storage, minor aircraft repair, passenger loading and towing.
- AIRCRAFT SERVICES OPERATOR:** A person providing repairs or sale of aircraft radios, propellers, instruments, accessories, painting or upholstery.
- COMMERCIAL FLYING SERVICES OPERATOR:** A person providing any of the following activities: sightseeing flights; crop dusting; seeding and spraying; banner towing and aerial advertising; aerial photography or survey; firefighting; power line or pipeline patrol and wildlife spotting; or any other operations specifically excluded from FAR Part 135.
- FLIGHT TRAINING OPERATOR:** A person engaged in training pilots in any aircraft and providing related ground school instruction if necessary.
- AIRCRAFT SALES OPERATOR:** A person engaged in the sale of new and/or used aircraft or who acts as an aircraft broker.
- AIRCRAFT AIRFRAME AND ENGINE REPAIR OPERATOR:** A person providing airframe and/or power plant maintenance and/or overhaul services. This category also includes the sale of aircraft parts and accessories.
- AIRCRAFT RENTAL OPERATOR:** A person engaged in the rental of aircraft to the public. It shall not include an aircraft owner who loans his or her aircraft for reimbursement on a nonprofit basis.
- AIRCRAFT CHARTER OPERATOR:** A person providing air transportation to the public for hire, either on a charter basis or as an air taxi operator, as defined in the Federal Aviation Act of 1958.
- AIRCRAFT MANUFACTURING OPERATOR:** A person engaged in the manufacture, fabrication, or assembly of aircraft or aircraft/aerospace parts, systems and components.

AIRCRAFT STORAGE AND HANGAR RENTAL OPERATOR: A person engaged in the rental and leasing of hangar storage space or tie-down space to Aircraft Owners or operators for Aircraft storage purposes.

OTHER SERVICES: _____

H.2. Permittee may also use the Premises and all improvements located thereon for permitted noncommercial activities, including:

- i. Repair and maintenance of Permittee's aircraft within hangers.
- ii. Storage of Permittee's aircraft and aviation related equipment within hangers.

H.3. Permittee's right to engage in the permitted uses described in this Permit is specifically conditioned upon the following:

i. **Airport Access Agreement:** Permittee's right, if granted herein, to engage in commercial aeronautical activities upon the Airpark, including through the fence Airport/Airpark Access, is specifically conditioned upon: (1) the existence of a current and valid Airport Access Agreement between the City and the Airpark property owner of the Premises, as required by Title 8; (2) to the extent that Permittee uses premises within the Airpark, that such Premises be designated as "Aeronautical Use" within the relevant Airport Access Agreement, as amended; (3) the continued timely payment by the Airport property owner of Access Fees due and owing pursuant to the Airport Access Agreement. Termination of the Airport Access Agreement with the Airport property owner of the Premises, for any reason, or failure of a valid Airport Access Agreement to designate the Premises within the Airpark as "Aeronautical Use", shall extinguish the rights set forth in this Permit related to activities carried on upon the Airpark.

ii. Permittee shall comply with all Ogden City ordinances, regulations, and policies, as hereafter amended, and all State and Federal aviation statutes and regulations applicable to the permitted uses.

iii. Permittee shall comply with all terms of this Agreement.

iv. Permittee shall comply with the minimum standards set forth in Title 8 of the Ogden City Code, as hereafter amended, for each of the commercial aeronautical activities or operations described as a permitted use herein.

v. Permittee shall pay all rates, fees and charges associated with any permitted use as set forth in Title 8 of the Ogden City Code, as hereafter amended.

vi. Permittee shall indemnify the City as set forth in this Agreement, and as required by Title 8 of the Ogden City Code, as hereafter amended.

vii. Permittee shall obtain and maintain a business license from Ogden City.

viii. Permittee shall meet all the requirements for carrying on business related to each and every one of the commercial permitted uses designated herein within one (1) year of grant of this Permit.

ix. The right to use non-exclusive airport facilities and improvements may be changed, altered, or modified from time to time at the discretion of the City.

x. Permittee shall comply with the additional provisions set forth in Subsection H.4.

H.4. ADDITIONAL CAAP PROVISIONS: