

NON-REVERSIONARY GROUND LEASE AGREEMENT

HEBER CITY AIRPORT

BETWEEN

HEBER CITY CORPORATION

AND

[_____]

[_____, 20__]

TABLE OF CONTENTS

I.	PREMISES	4
II.	TERM	4
III.	HOLDING OVER	4
IV.	RENT, ADJUSTMENTS, AND OTHER CHARGES.....	5
V.	USE OF PREMISES	6
VI.	PRIVILEGES GRANTED TO LESSEE.....	7
VII.	CONSTRUCTION OF IMPROVEMENTS.....	8
VIII.	TITLE; REMOVAL OF IMPROVEMENTS; RETURN OF PREMISES	9
IX.	ENVIRONMENTAL COMPLIANCE.....	10
X.	TAXES	13
XI.	INDEMNITY.....	13
XII.	INSURNACE	14
XIII.	MAINTENANCE AND REPAIR.....	15
XIV.	UTILITIES AND SERVICES.....	16
XV.	COMPLIANCE WITH LAWS	17
XVI.	PERMITS, LICENSES, AND CERTIFICATES	17
XVII.	QUIET ENJOYMENT	17
XVIII.	DISPUTE RESOLUTION.....	18
XIX.	SUBLEASES, ASSIGNMENTS, AND TRANSFERS	18
XX.	LEASEHOLD MORTGAGES.....	19
XXI.	DEFAULT AND REMEDIES	21
XXII.	RIGHTS OF CANCELLATION AND RELOCATION.....	23
XXIII.	RIGHT OF ENTRY AND INSPECTION.....	24
XXIV.	FORCE MAJURE; DESTRUCTION OF PREMISES	24
XXV.	EMINENT DOMAIN.....	25
XXVI.	NOTICES	25
XXVII.	SUBORDINATION	26
XXVIII.	FEDERAL CLAUSES	26
XXIX.	NO EXCLUSIVE RIGHTS.....	26
XXX.	NO WAIVER OF RIGHTS	26
XXXI.	AVIGATION EASEMENT	27

XXXII.	NON-INTERFERENCE WITH AIRPORT OPERATIONS	27
XXXIII.	EMERGENCY CLOSURES	27
XXXIV.	LIMITATION OF LIABILITY	28
XXXV.	GOVERNING LAW; VENUE	28
XXXVI.	TIME OF THE ESSENCE	28
XXXVII.	AMENDMENTS	28
XXXVIII.	SEVERABILITY	28
XXXIX.	MERGER	28
XL.	HEADINGS	29
XLI.	RELATIONSHIP OF PARTIES	29
XLII.	ENTIRE AGREEMENT	29

NON-REVERSIONARY GROUND LEASE AGREEMENT

This Non-Reversionary Ground Lease Agreement ("Agreement") is made and entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the Heber City Corporation (the "City") and _____, a _____ ("Lessee") (collectively, "Parties" and each individually, "Party").

RECTIALS

WHEREAS, the City owns and operates the Heber Valley Airport located in Heber City, Wasatch County, Utah (the "Airport"), and is the sponsor of the Airport under federal law; and

WHEREAS, Lessee desires to lease a parcel of land on the Airport for the purpose of erecting and/or maintaining an aircraft hangar owned by Lessee for the personal storage of Lessee's aircraft; and

WHEREAS, Lessee shall use the Premises as herein defined only for such uses and purposes that are expressly set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

I. PREMISES

A. The City leases to Lessee, and Lessee leases from City, that certain real property consisting of _____ [acres/square feet] of land at the Airport that is located at [INSERT ADDRESS HERE], Heber City, Utah, which is more fully described on **Exhibit 1** attached and made part hereof (the "Premises").

Commented [MB1]: Language should probably also reference existing hangar option...

B. Lessee accepts the Premises "AS IS" in the condition existing upon the Effective Date. Lessee's acceptance of the Premises shall be conclusive evidence that its condition is satisfactory to Lessee for Lessee's intended purposes. The City makes no representation or warranty respecting the condition of the Premises as it exists now or in the future.

Commented [SO2R1]: Removed "vacant" but this is ground lease only. We would require a different form of lease for a City-owned hangar (and we do not lease a tenant-owned improvement).

II. TERM

A. Term. The term of this Agreement shall commence on the Effective Date and shall continue for fifteen (15) years, expiring on the fifteenth (15th) anniversary of the Effective Date at 11:59 p.m. local time, unless sooner terminated as set forth herein (the "Term").

III. HOLDING OVER

A. If Lessee should hold over and continue in possession of the Premises or any portion thereof after expiration or early termination of the Term or any renewal or extension thereof, Lessee's continued occupancy of the Premises shall be deemed a tenancy at sufferance with respect to such retained portion at a rental rate of one hundred fifty percent (150%) the Rent due under this Agreement for the month prior to the holdover, subject to all the terms and conditions of this Agreement. The City may terminate the holdover tenancy at any time by providing thirty (30) days' prior written notice to Lessee.

B. If Lessee shall holdover and fail to surrender the Premises upon termination of this Agreement without the City's consent then, in addition to any other liabilities to the City arising therefrom, Lessee shall and does hereby agree to indemnify, defend, and hold the City harmless from any loss or liability resulting from Lessee's failure to surrender the Premises, including but not limited to claims made by any succeeding tenant.

IV. RENT, ADJUSTMENTS, AND OTHER CHARGES

A. Rent. In consideration for the use of the Premises, facilities, rights, services, and privileges granted herein, beginning upon the commencement of the Term, Lessee shall pay to the City rental at the initial rate of **\$X.XX** per square foot per year on **XXXXX** square feet comprising the Premises, for the total sum of **[AMOUNT IN WORDS] DOLLARS (\$[AMOUNT])**, as may be adjusted as provided herein, payable in full on the Effective Date and within thirty (30) days of the City's annual invoice (typically in mid-January) for each year of the Term thereafter (the "Rent").

B. Annual Adjustment. Beginning in the second (2nd) year of the Term, the Rent shall be automatically adjusted effective January 1st of each year during the Term based on the percentage increase in the Consumer Price Index, Mountain Plains over the prior year, provided, however, that the Rent shall not decrease.

C. Proration of Rental Payments. In the event that the commencement or termination of the Term fall on any other date than the first (1st) or last day of a calendar year, the applicable rentals, fees, and charges for such year shall be paid pro rata according to the number of days in the year during which said privileges were enjoyed.

D. Manner of Payment. Lessee shall deliver Rent and all payments due to the City under this Agreement in a form acceptable to the City to the Heber City Airport Manager c/o the Heber City Treasurer, 75 North Main Street, Heber City, Utah 84032, or as otherwise directed in writing by the City.

E. Other Fees and Charges. Lessee shall pay to the City within ten (10) days of notice by the City, any sum or sums paid by the City, or obligation or expense incurred by the City, for which Lessee has agreed to pay or reimburse the City, or which the City has paid or incurred because of the failure, neglect, or refusal of Lessee to perform or fulfill any of the promises, terms, conditions, or covenants required of it under this Agreement.

F. Late Payments. If Lessee fails to pay any amounts due under this Agreement, including Rent, within ten (10) days of the due date thereof, Lessee shall pay an interest charge of one and one-half percent (1.5%) of the amount owing for each calendar month or part thereof from the due date to the date payment is made. The payment of interest does not excuse or cure any otherwise uncured Lessee default under this Agreement. Payments received from Lessee will be applied by the City first to accrued interest, second to due Rent, and third to other amounts due hereunder.

V. USE OF PREMISES

A. **Permitted Use.** Subject to the terms and conditions of this Agreement, Lessee shall only use the Premises for the construction and/or maintenance of a private aircraft hangar and related facilities to be used solely for Lessee's and authorized sublessee's personal, non-commercial purposes ("Permitted Use"), which Permitted Use is limited to:

1. The non-commercial storage of active and operational aircraft owned or leased by Lessee and authorized sublessees, provided that within ten (10) days of the Effective Date, Lessee shall provide written notice to the Airport Manager of the registration number of the aircraft and the person(s) responsible for it, including off-hours emergency phone numbers;

2. The non-commercial storage of aviation-related equipment;

3. Non-commercial, non-aviation storage as an incidental use, provided that the Premises is primarily used for aviation purposes and such non-aviation storage does not materially displace or limit the aeronautical contents of the hangar;

4. The non-commercial, self-servicing and preventive maintenance and servicing of Lessee's aircraft, Lessee's vehicles, and equipment, provided that motor vehicle or equipment maintenance shall occur only indoors; and

5. Short-term and temporary parking of motor vehicles owned or leased by Lessee or their invitees only in connection with the Permitted Use.

B. **Prohibited Use.** Lessee shall use, and cause its invitees to use, the Premises and the Airport only for the Permitted Use and those other uses authorized under this Agreement, and shall not engage in any unauthorized or prohibited use of the same. Prohibited uses include, but are not limited to, the following:

1. Lessee shall not erect, place upon, operate, or maintain any improvement on the Premises, nor conduct business therein, in violation of the terms of this Agreement or any applicable law, statute, ordinance, regulation, rule, or order of any federal, state, or local governmental agency having jurisdiction over the Premises.

2. Lessee shall not erect any structure or allow the growth of any plant or natural object that would constitute an obstruction to air navigation as defined in 14 CFR Part 77; nor shall Lessee conduct any activity on the Premises that would interfere with or be a hazard to the flight of aircraft over the land or to and from the Airport or interfere with air navigation and communication facilities serving the Airport. The City shall have the continuing right to take any action it deems necessary to prevent the erection or growth of any structure, tree, or other object into the air space, or development of any hazard to air navigation or communication, and to remove or abate from such air space, or mark and light as obstructions, any such structure, tree, object, or hazard, and shall have the right of ingress and egress over the Premises for such purposes.

3. Lessee shall not use the Premises as living or overnight sleeping quarters.

Commented [SO3]: Confirm that City will continue allowing subleasing of aircraft hangars.

4. Lessee shall not use the Premises for non-aeronautical purposes without the prior written consent of the City, provided that Lessee shall at all times comply, and cause invitees to materially comply with the FAA's *Policy on the Non-Aeronautical Use of Airport Hangars*, 81 Fed. Reg. 38906 (June 15, 2016), as it may be amended.

5. Lessee shall not place waste materials on the Airport or dispose of such materials in violation of any federal, state, or local laws, rules, regulations, or orders.

6. Lessee shall not conduct any commercial activity or business at, on, or from the Premises without the prior written consent of the City, provided that, as a condition of such consent, Lessee shall comply with the Airport's Minimum Standards (as defined herein) and any other conditions, limitations, or terms the City may reasonably require.

7. Lessee shall not sell or store aviation fuel, parts, oils, or any other products or services from or on the Premises without the prior written consent of the City.

8. Lessee shall not store any motor vehicles on the Premises without the prior written consent of the City.

9. Lessee shall not wash any aircraft, motor vehicles, or equipment on the Premises without the City's prior written consent, which the City may grant, condition, or withhold in its sole discretion.

10. Lessee shall not store on the Premises equipment, materials, or containers, unless used in conjunction with the Permitted Uses, nor shall Lessee store any equipment or materials of any kind on the Premises which is unsightly or inconsistent with Lessee's maintenance obligations hereunder.

11. Lessee shall not store or let stand any equipment or property belonging to Lessee or under Lessee's custody (including but not limited to vehicles and aircraft) outside the boundaries of the Premises without prior written consent of the City, except when such equipment or property is in the process of being loaded or unloaded.

VI. PRIVILEGES GRANTED TO LESSEE

City grants to Lessee the following rights and privileges, subject to Lessee's compliance with, as applicable, the Airport's minimum standards promulgated and adopted by the City ("Minimum Standards"), the Airport's rules and regulations promulgated and adopted by the City ("Rules and Regulations"), and all orders, rules, and/or regulations of the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA"), Department of Homeland Security ("DHS"), and Environmental Protection Agency ("EPA"), as each may be amended from time to time:

A. The exclusive right to use the Premises in connection with the Permitted Use and for no other purpose, unless expressly authorized by the City in writing; provided that City reserves the right to grant users of the Airport the right to use the Pavement Area (as defined

in Section VII.A.1 herein) on the Premises from time to time for passage of aircraft on and near the adjacent taxiway when required for ingress and egress to other areas of the Airport;

B. The right to use, in common with others, the facilities and improvements owned or constructed by the City which are of a public nature and available for public use;

C. The right of ingress and egress from the Premises for Lessee and Lessee's contractors and invitees to the extent reasonably necessary in connection with the Permitted Use;

D. The right to install, operate, maintain, repair, and store all fixtures and equipment necessary for the Permitted Use, at Lessee's sole cost and expense; and

E. Lessee shall not erect any signs on the Premises or the Improvements thereon without the prior written consent of the City, which may be withheld or conditioned in its sole and absolute discretion.

VII. CONSTRUCTION OF IMPROVEMENTS

A. Generally. Lessee, at its sole expense and subject to the City's approval as set forth below, may construct or install on the Premises, in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations, including FAA requirements, such buildings, structures, or improvements, or modifications, revisions, or alterations thereto, that are reasonably related to the Permitted Use, including a hangar facility and aircraft pavement area (collectively, the "Improvements"). Lessee may not cause or permit any Improvements on the Premises to conflict with the City's Master Plan or Airport Layout Plan existing at such time and as on file with the FAA.

1. As part of the Improvements, Lessee, at its sole cost and expense, shall construct and maintain an aircraft pavement area on the Premises (the "Pavement Area") to accommodate the movement of aircraft in and out of the hangar improvements constructed thereon, which must be designed and built to specifications, and for a minimum weight bearing capacity, established by the City, built to the full width of the Premises, and to connect with adjacent taxiway, ramp, and/or auto parking areas so that a continuous and safe pavement section for aircraft use results.

2. The City shall have no responsibility or obligation to make or maintain any Improvements to the Premises or to the public roadway and utility access to the Premises.

B. Plans and Specifications. Lessee shall, at its sole cost and expense, select qualified architects and engineers to prepare, as applicable, the architectural, site, structural, mechanical, and/or electrical drawings and specifications for the Improvements (the "Plans and Specifications") as required by the appropriate governmental authorities and in accordance with Applicable Laws. Prior to the commencement of the construction or installation of any Improvements or any modifications thereto, Lessee shall obtain the City's prior written approval of the relevant Plans and Specifications. The City may refuse to approve such Plans and Specifications at the City's reasonable discretion and shall provide the reasoning for such disapproval to Lessee, provided, however, that the City's

approval shall not be unreasonably conditioned, withheld, or delayed. The City's reasoning for disapproval may include, but shall not be limited to, the following: if the Improvements are inconsistent with the requirements of this Agreement, applicable law, rules or regulations, or the lawful direction of a government authority; if the external appearance of the planned Improvements is materially inconsistent with the uniform appearance of existing buildings or structures at the Airport or otherwise does not meet the City's regulations or policies, if any, relating to substantial uniformity of appearance of all buildings and structures on the Airport or relating to Airport safety; or if the nature of the Improvements is inconsistent with the safe, secure, or orderly use of the Airport by others.

C. Unauthorized Construction. If any construction, improvement, alteration, modification, addition, repair, or replacement that requires City's approval, under applicable laws and ordinances, local rules and regulations, or FAA requirements, is made without the City's prior written approval, or that otherwise does not conform with applicable laws, rules, or regulations or the approved Plans or Specifications, the City may, in its sole and unfettered discretion, elect to require Lessee to restore the Premises to its prior condition and/or modify the Premises to the satisfaction of the City. Lessee's failure to commence and diligently prosecute such removal or modification within thirty (30) days following receipt of notice by the City shall constitute an Event of Default (as defined herein).

D. Qualified Contractors; No Liens. Lessee shall cause all Improvements authorized to be constructed hereunder only by a contractor or contractor(s) properly licensed by the State of Utah. Lessee shall be solely responsible for payment to such contractor(s) for all elements of the construction and installation of Improvements. Lessee shall keep the Premises free and clear of all construction or mechanics liens resulting from any construction or work by or on behalf of Lessee. Lessee may contest the correctness or validity of any such lien, but shall indemnify, defend, and hold harmless the City, its elected representatives, offices, agents, and employees, and the Premises from any and all claims and liability for payment of any such lien. The City may file a notice of no responsibility for its lien protection.

E. Certified Statement of Costs. Within sixty (60) days of the completion of the Improvements, Lessee shall provide the City with a certified statement of all costs actually incurred by Lessee in constructing the Improvements, together with any supplemental or supporting documentation requested by the City to verify such construction costs.

VIII. TITLE; REMOVAL OF IMPROVEMENTS; RETURN OF PREMISES

A. Title. The City shall at all times hold and retain title to and fee simple interest in the Premises. Lessee's leasehold interest in the Premises shall completely extinguish upon the expiration or early termination of this Agreement. All existing improvements and personal property on the Premises as of the Effective Date are and shall remain the property of the City. All Improvements or personal property constructed, installed, or placed on the Premises by Lessee during the Term shall remain the property of Lessee, unless such Improvements are deemed abandoned pursuant to Section VIII.B herein.

B. Removal of Improvements. Prior to the expiration or early termination of this Agreement, Lessee, at its sole cost and expense, shall have the right to remove any Improvements placed or erected on the Premises by Lessee. Any Improvements and/or personal property remaining on the Premises after the expiration or early termination of the Agreement shall, at the option of the City, be deemed abandoned and title thereto shall automatically transfer to the City without any claim or right whatsoever by Lessee.

C. Return of Premises. On or before the expiration or early termination of the Agreement, Lessee shall, at Lessee's sole cost and expense: (i) remove all of Lessee's personal property from the Premises, unless otherwise mutually agreed to in writing by the Parties; and (ii) either (a) if Lessee exercises its right to remove its Improvements pursuant to Section VIII.B, return the Premises to the City in as good a condition as it was prior to the erection of the Improvements thereon, or (b) if Lessee does not exercise its right to remove its Improvements, Lessee shall return the Premises and the Improvements to the City in their original condition existing as of the Effective Date or the date upon which the Improvements were completed, respectively. If Lessee fails to return the Premises in accordance with the requirements herein, the City reserves the right to charge Lessee for the cost of the restoration of the Premises and the Improvements (if applicable) and/or removal of any remaining personal property plus reasonable administrative costs.

IX. ENVIRONMENTAL COMPLIANCE

A. Generally. Lessee agrees that in conducting any activities on the Premises or on Airport property pursuant to this Agreement, Lessee shall comply, and require its employees, agents, contractors, and invitees ("Lessee Parties") to comply, with any and all applicable federal, state, and local environmental laws, rules, and regulations and all orders and directives from any government agency having jurisdiction over Lessee, the Airport, and/or the Premises (collectively, "Environmental Laws").

B. Hazardous Materials. Lessee and Lessee Parties shall not use, store, generate, manufacture, produce, handle, treat, dispose, transport, or conduct operations involving Hazardous Materials (defined herein) whether intentionally or unintentionally, at or from the Premises in violation of any Environmental Laws. Without limiting the foregoing, Lessee and Lessee Parties shall not discharge Hazardous Materials into the sewer and/or storm water drainage systems, or cause any Hazardous Materials to be placed, held, stored, processed, treated, released, or disposed of on or about the Premises or Airport in violation of Environmental Laws. Lessee shall, at no cost or expense to the City, promptly remove and remedy, in accordance with the requirements of Environmental Laws, all Hazardous Materials present in, on, under, or migrating from the Premises in violation of Environmental Laws, as a result of the acts or omissions of Lessee or any Lessee Party or its or their use or occupancy of the Premises; provided, however, that Lessee has no obligation to remove any Hazardous Materials in, on, under, or migrating from the Premises as a result of (i) the acts or omissions of third parties other than Lessee Parties or Lessee's predecessors in interest, or (ii) the acts or omissions of the City, unless Lessee's acts or omissions exacerbated such Hazardous Materials. However, Lessee shall bear the burden of providing evidence to the City that any Hazardous Materials in, on, under, or migrating from the Premises were not exacerbated by the acts or omissions of Lessee and

are a result of (x) the acts or omissions of third parties other than Lessee Parties or Lessee's predecessors in interest; or (y) the acts or omissions of the City. As used in this Agreement, "Hazardous Materials" means any elements, compounds, chemicals, substances, flammable materials, explosives, radioactive materials, oil, petroleum, petroleum products, asbestos, lead paint, perfluorooctane sulfonic acids or perfluorooctanoic acids, polychlorinated biphenyls, military or civilian munitions, explosives, materials, or wastes that, because of their quantity, concentration or physical or chemical characteristics pose a present or potential hazard to human health or safety or to the environment including, by way of illustration and not limitation, those which are or become regulated, identified, defined, listed, or otherwise classified as a contaminant, pollutant, toxic pollutant, or toxic or hazardous substance, or a regulated substance under Environmental Laws.

C. Recordkeeping. Lessee shall maintain, in an orderly and easily accessible manner, all correspondence and communications with any governmental authority, records, or other information evidencing its compliance with all Environmental Laws for all Hazardous Materials brought upon, kept, used, stored, generated, or disposed of in, on, or about the Premises, or transported to or from the Premises by Lessee or Lessee Parties. Lessee must maintain these records for the period of time as is required by Environmental Laws or ten (10) years following termination of this Agreement, whichever is longer.

D. Environmental Permits. Lessee, at its expense, shall obtain, maintain, and comply with any and all permits required by any Environmental Laws to conduct its permitted activities on the Premises.

E. Review of Environmental Documents. At the City's written request, Lessee shall make available for inspection and copying, upon reasonable notice and at reasonable times, any and all non-privileged correspondence and communications with relevant governmental authorities and records or other information evidencing its compliance with all Environmental Laws for all Hazardous Materials brought upon, kept, used, stored, generated, managed, or disposed of in, on, or about the Premises, or transported to or from the Premises by Lessee or Lessee Parties.

F. Cooperation with Investigations. Lessee shall cooperate with any investigation, audit, or inquiry by the City or any governmental authority regarding possible violation of any Environmental Laws upon the Premises.

G. Access for Environmental Inspection. The City shall have access to the Premises upon reasonable prior notice to inspect the same in order to confirm that Lessee is in compliance with the requirements of this Section IX; provided, however, that the City may enter the Premises for such purposes without prior written notice in the event of an emergency pertaining to Environmental Laws, as determined by the City. Lessee agrees to fully cooperate with any such inspections; provided that such inspections shall not unreasonably interfere with Lessee's operations. If the City reasonably believes or has received information leading it to reasonably believe that Lessee's operations are not in compliance with the requirements of this Section IX, then, upon request by the City, Lessee shall conduct such inspection, testing, and analysis as the City reasonably deems necessary to ascertain whether Lessee is in compliance with this Section IX. Lessee shall pay all

actual costs associated with any such environmental inspection, testing, and analysis. Any such tests shall be conducted by qualified independent environmental consultants chosen by Lessee, but such environmental consultants, and the scope and the methods of such investigation, shall be subject to the City's approval, which shall not be unreasonably withheld. Lessee shall provide copies of any and all relevant reports prepared by such experts to the City within a reasonable time after Lessee receives such reports.

H. Duty to Notify City. In the event of any release or threatened release of Hazardous Materials caused by or discovered by Lessee or any Lessee Party at, on, under, or about the Premises or the Airport, or in the event any claim, demand, complaint, or action arising under Environmental Laws is made or taken against Lessee with respect to activities on the Premises or the Airport, or if Lessee receives any notice pertaining to Lessee's failure or alleged failure to comply with any Environmental Laws at the Premises, Lessee shall notify City of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice and shall provide the City with copies of any and all claims, demands, complaints, notices, or actions so made no later than twenty-four (24) hours following receipt of the same. If Lessee is required by any Environmental Laws or applicable governmental authority to file any notice or report of a release or threatened release at, on, under, or about the Premises or the Airport, Lessee shall simultaneously provide a copy of such notice or report to the City.

I. Environmental Remediation. Lessee, at its sole cost and expense, shall undertake all necessary steps to remedy and remediate a release of Hazardous Materials or other condition to the extent caused by or resulting from the activities, conduct ,or omissions of Lessee or its Lessee Parties, on the Premises or at the Airport, as necessary to reasonably protect the public health and safety to the extent required by Environmental Laws and/or to bring the Premises or the Airport into compliance with all Environmental Laws applicable to the Premises or Lessee's activities thereon. Specific cleanup levels for any environmental remediation work Lessee performs shall be designed to meet and satisfy the requirements of all Environmental Laws applicable to the Premises or Lessee's authorized use thereof. Except in the event of an emergency, such work shall be performed only after Lessee submits to the City a written plan for completing such work and receives the prior approval of the City, which shall not be unreasonably withheld. The City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. The actual cost of such review and inspection shall be paid by Lessee. Lessee expressly warrants that all work performed pursuant to this Agreement shall be performed in accordance with all Environmental Laws. Lessee shall not enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any release of Hazardous Materials or other condition in violation of Environmental Laws on, at, or from the Premises or the Airport without first notifying the City of Lessee's intention to do so and affording the City a reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect the City's interest with respect thereto, which appearance or intervention by the City will be at City's sole cost and expense.

J. Obligations Upon Termination. At the expiration or termination of this Agreement, Lessee shall dispose of all Hazardous Materials and containers in compliance with all applicable Environmental Laws and shall complete all actions necessary to bring the

Premises into full compliance with this Section IX and all Environmental Laws. Lessee shall provide the City with copies of all waste manifests for Hazardous Materials removed from the Premises at least thirty (30) days prior to the termination or expiration date of this Agreement.

K. Step-In Rights. Notwithstanding Lessee's obligations under this Section IX, the City and any other relevant governmental authorities shall at all times have the right, should Lessee fail to comply with its obligations in subsections I or J of this Section IX, after reasonable advance written notice, which shall include a reasonable opportunity to cure (except where a governmental authority other than the City is empowered by applicable law to act without notice), or immediately, if necessary to prevent additional harm to the environment, to take any and all actions as they individually or collectively may reasonably deem necessary to cease, contain, investigate, remediate, or otherwise respond to a condition which results from, causes, or threatens to cause a release of Hazardous Materials or other condition in violation of Environmental Laws at, under, or about the Premises or at the Airport. Lessee agrees to cooperate with any and all such actions.

L. No City Liability. The City shall not be responsible to Lessee or any Lessee Party for any Hazardous Materials in existence in, on, under, or migrating from the Premises or at the Airport, which condition may interfere with Lessee's operations or activities, or which might otherwise cause damages to Lessee through loss of business, destruction of property, or injury to Lessee, its Lessee Parties, customers, or clients, except to the extent such conditions are caused by the actions or omissions of the City.

M. Remedies Cumulative. Lessee agrees that all remedies of the City as provided in this Section IX with regard to Hazardous Materials, or violations of any Environmental Laws shall be deemed cumulative in nature and the City's right to indemnification as provided under this Section IX shall survive the termination of this Agreement.

N. Survival. The rights and obligations of this Section IX shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assigns and inure to the benefit of the City's successors and assigns, except those rights and/or obligations which by their nature or context are not intended to survive the expiration or termination of this Agreement.

X. TAXES

Lessee covenants and agrees that it will pay, when due, all taxes which may be assessed pursuant to law against the Premises, the Improvements, or any other buildings, improvements, and personal property located on the Premises, or against activities conducted by Lessee. Lessee shall provide the Airport Manager with satisfactory evidence of such payments within fifteen (15) days from the Airport Manager's written request.

XI. INDEMNITY

A. Indemnification. Lessee shall, at its sole cost and expense, defend, indemnify, save, protect, and hold harmless the City, the Airport, the Heber City Council, and the Airport

Advisory Board (the “AAB”), individually and collectively, and their representatives, officers, officials, employees, agents, and volunteers (the “Indemnified Parties”) from any and all claims, demands, damages, fines, obligations, suits, judgments, penalties, causes of action, losses, liabilities, administrative proceedings, arbitration, or costs at any time received, incurred, or accrued by the Indemnified Parties, individually and collectively, arising out of or in connection with the activities of Lessee or Lessee’s officers, employees, agents, contractors, or invitees at the Airport; provided, however, that Lessee shall have no obligation to indemnify under this Section XI.A to the extent such claim arises from the gross negligence or willful misconduct of the Indemnified Parties.

B. Environmental Indemnification. Additionally, Lessee shall defend, indemnify, save, protect, and hold harmless the Indemnified Parties in the event of an environmental contaminating accident or incident, release of any Hazardous Materials, or any violation of Section IX, to the extent such accident, incident, release, or violation is caused by Lessee, Lessee Parties, or any other personnel used by Lessee to maintain Lessee’s facilities, vehicles, equipment, or aircraft.

XII. INSURNACE

A. Insurance. Prior to the commencement of the Term and at all times throughout the Term of this Agreement, Lessee shall obtain and maintain from a reliable insurance company or companies rated AM Best A or better authorized to do business in the State of Utah insurance in the types and amounts required by the City pursuant this Section XII and, if applicable, the Minimum Standards, or as the City may otherwise reasonably request during the Term on not less than thirty (30) days written notice to Lessee.

B. Insurance Types and Coverages. Types and limits of insurance required as of the Effective Date are as follows:

1. *General and Aircraft Liability Insurance.* Lessee shall obtain and maintain comprehensive general and aircraft liability insurance for personal and bodily injury (including passengers), death, property damage, and passenger liability with a combined single limit for each occurrence in at least the following amounts: (a) \$1,000,000 for each aircraft; (b) \$100,000 for each passenger; (c) \$1,000,000 for premises liability.

2. *Hangar Keeper’s Liability Insurance.* If Lessee intends to store any aircraft not owned or leased by Lessee but otherwise approved under this Agreement on the Premises, Lessee shall obtain and maintain hangar keeper’s liability insurance for at least the full value of the non-owned aircraft in Lessee’s care, custody, or control.

3. *Automobile Liability Insurance.* Lessee shall obtain and maintain comprehensive automobile liability insurance at a combined single limit coverage of at least \$1,000,000 (bodily injury and property damage).

4. *Builder’s Risk Insurance.* During any period of construction, reconstruction, or renovation of the Improvements, Lessee shall provide, or cause to be provided, builder’s risk insurance as to all items of construction with coverage at least equal to the total amount of the construction contract(s) for all such construction activities.

5. Property. Lessee shall obtain and maintain “All Risk” property insurance in an amount at least equal to the full replacement value of all Improvements, facilities, and personal property located on the Premises. The City will not carry insurance or be liable for damage or loss to Lessee’s Improvements, facilities, or personal property.

Commented [SP4]: Although not included in Bryan Breshars’ email to City, we recommend the City considering requiring personal property liability insurance to cover damage to the facilities and other personal property located on the premises.

C. Proof of Insurance. Lessee shall submit certificates of insurance to the City prior to the commencement of the Term and annually thereafter, and at any time upon the request of the City. The insurance policy or policies required hereunder shall contain an endorsement which provides that Lessee is named insured as it pertains to this Agreement. Prior to the commencement of the Term and each time the policy renews, concurrently with the annual payment of Rent, or upon the City’s request, Lessee shall provide the Airport Manager a copy of the policy endorsement naming Heber City Corporation as an additional insured under the policy.

D. Policy Requirements. All insurance coverages required under this Agreement shall (i) include the City and its officers, agents, and employees as additional named insured, (ii) provide thirty (30) days’ prior written notice of cancellation, modification, or intent not to renew the policy, with such notice being effective upon the City’s receipt of said notice, (iii) stipulate that the policy provided coverage is not subordinate to nor contributing with any other insurance coverage held or maintained by the City; (iv) include a waiver of subrogation, except for automobile and aircraft liability insurance, and (v) list any and all exclusions. Notice by the insurer shall be effective upon the receipt of said notice by the City. Lessee shall notify the City of any modification which affects the leasehold premises, termination or cancellation of any policy of insurance secured by Lessee pursuant to this paragraph as soon as Lessee learns of any such modification, termination, or cancellation.

E. Application to Others. Lessee shall require all contractors, subcontractors, agents, or workers performing work or occupying the Premises to be properly licensed and to obtain an insurance coverage meeting the requirements of this Section XII, as evidenced by a certificate of insurance. Lessee shall require that all such parties submit certificates of such insurance to the City prior to performing work or occupying the Premises. The insurance provisions herein shall likewise apply to any permitted assignee, sublessee, or transferee of Lessee.

F. No Limitation of Liability or Waiver. The procuring of such policy or policies of insurance shall not be construed to be a limitation upon Lessee’s liability or satisfaction or a waiver of Lessee’s indemnification obligations under this Agreement.

XIII. MAINTENANCE AND REPAIR

A. City Maintenance Obligations. The City shall be responsible for the maintenance of the shared public spaces and common use areas of the Airport. The City shall provide for the removal of snow and ice from the airfield and the Pavement Area, excluding any parking and side lots and any area within six (6) feet of any hangar on the Premises; provided, however, that priority of snow removal shall be in accordance with the City’s snow removal plan, attached as **Exhibit 2** (“Snow Removal Plan”), as it now exists or as it may be amended in the City’s sole discretion.

B. Lessee Maintenance Obligations. Lessee, at its sole cost and expense, shall be responsible for all other maintenance and repairs to the Premises, the Improvements, and the utilities thereon, including but not limited to the obligations set forth in this Section XIII.B.

Commented [SP5]: Added this but City to confirm.

1. Lessee shall keep and maintain the Premises, the Improvements, and any other improvements and personal property thereon in good and repair and in sanitary and sightly condition, reasonable wear and use excepted. Lessee agrees to provide at its own expense such janitorial and cleaning services and supplies, trash removal services, and any related services as may be necessary or required in the operation and maintenance of the Premises.

2. Lessee shall maintain the Premises, including all pavement areas on the Premises, in a manner which is safe and clean of debris so as not to cause danger or unsafe conditions for taxiing aircraft or other Airport users. Seal coat, crack seal, and paint are required to maintain all pavements in good condition. Lessee shall repair any cracked or damaged pavements as needed or upon the request of the City.

3. Except as provided above in Section XIII.A, Lessee shall provide for the removal of snow and ice from its Premises, including but not limited to stairs, walkways, ledges, roads, paved areas, parking areas, and the perimeter of any hangar buildings. Lessee shall not place snow from its Premises on any other area of the Airport without prior written authorization from the Airport Manager.

4. Lessee shall be responsible for all landscaping and weed removal on the Premises.

5. Lessee shall exercise due and reasonable caution to prevent fire, accidents, hazards, and nuisances on the Premises.

C. Failure to Maintain. In the event that Lessee fails to keep and maintain the Premises or Improvements in good condition and repair, reasonable wear and use excepted, for a period of thirty (30) days after written notice from the City to do so, the City, upon the expiration of such thirty (30) day period, may, but shall not be obligated to, enter upon the Premises and perform the obligation of Lessee, and charge Lessee the cost and expense thereof, including any reasonable administrative costs. Lessee shall pay the City such charge in addition to any other amounts payable by Lessee. Notwithstanding the foregoing, if Lessee's failure to perform any such obligation adversely affects or endangers the health or safety of the public, other Airport users or tenants, or of employees of the City in the reasonable judgment of the City, and if the City so states in its notice to Lessee, the City may, but shall not be obligated to, perform such obligation of Lessee at any time after providing such notice, at Lessee's sole cost and expense. The City shall not be liable to Lessee for any loss whatsoever resulting from the City's performance hereunder.

XIV. UTILITIES AND SERVICES

A. Lessee's Obligations. Lessee agrees to provide for its own connections with utilities and to make separate agreements with the agencies responsible for these utilities. Lessee shall pay for all utility service supplied to the said Premises, and if required by the

utility agencies as a condition of continued said services, Lessee shall install and pay for standard metering devices for the measurement of such services. Lessee shall be solely responsible for all utility charges, including without limitation natural gas, electricity, sewer, and water used on the Premises during the Term.

B. City's Reservation of Rights. Lessee agrees that the City shall have the right, without cost or compensation to Lessee, to install and maintain in, on, under, or across the Premises utilities (including sewer, water, gas, electric and telephone lines, electric substations) or other installations necessary to the operation of the Airport, or to service other tenants of the City; provided the City shall carry out such work and locate above-ground structures in a manner so as not to unreasonably interfere with Lessee's use of the Premises. The rights of Lessee under this Agreement shall not be construed to confer any right upon Lessee concerning the use or operation of any such utilities, installations, or any other facilities at the Airport, except the Premises and other rights specifically described herein.

XV. COMPLIANCE WITH LAWS

Lessee shall comply, and cause Lessee Parties (as defined in Section IX) to comply, with any and all current and future laws, ordinances, rules, regulations, and orders issued or promulgated by any governmental authority governing or otherwise applicable to Lessee, the Airport, this Agreement, the Premises, or Lessee's use of the Premises, including but not limited to the Rules and Regulations, as amended from time to time, and all permits and licenses which may be necessary or required for the Permitted Use, including but not limited to the construction of the Improvements. Upon the City's written request, Lessee shall verify, within a reasonable time, compliance with any such applicable laws and regulations.

XVI. PERMITS, LICENSES, AND CERTIFICATES

During the Term, Lessee shall obtain and maintain any and all permits, licenses, and certificates which may be required in connection with the improvement and use of the Premises and its operations thereon, including but not limited to the construction of the Improvements.

XVII. QUIET ENJOYMENT

The City agrees that, on payment of the rentals, fees, and charges as herein provided and performance of the covenants and agreements on the part of Lessee to be performed hereunder, Lessee shall peaceably have and enjoy the Premises and all the rights and privileges of the Airport, its appurtenances, and facilities granted herein. Lessee agrees that temporary inconveniences, including but not limited to noise, disturbances, traffic detours, and the like resulting from, caused by, arising out of, or associated with the City's operation, construction, maintenance, or repair of the Airport, including but not limited to improvements thereon, or associated with special events that the City or others may from time to time host on the Airport, shall not constitute a breach of this Section. The City shall provide Lessee with reasonable prior notice of any planned temporary inconveniences or special events and shall take reasonable steps to mitigate the impact of such inconveniences so that they do not unreasonably interfere with Lessee's use of the Premises.

XVIII. DISPUTE RESOLUTION

Any dispute arising out of, relating to, or in connection with this Agreement, including any question regarding an alleged Event of Default (as defined below) or the Agreement's existence, validity, or termination, shall be resolved as set forth in the dispute resolution procedures attached in **Exhibit 3** ("Dispute Resolution Protocol"). In the event of litigation commenced in accordance with the Dispute Resolution Protocol, the prevailing Party (as determined by a final judgment) shall be entitled to recover its reasonable attorney's fees, expert-witness costs, and court costs from the other Party.

Commented [SLO6]: To discuss whether this is appropriate for routine hangar agreements.

XIX. SUBLEASES, ASSIGNMENTS, AND TRANSFERS

A. City Consent Required. Lessee shall not assign or sublet this Agreement or the Premises, nor may it transfer the management and operation of the Premises, without the prior written consent of the City, such consent not to be unreasonably withheld, conditioned, or delayed. The City may withhold consent to an assignment, sublease, or transfer under any of the following circumstances, without limitation: (i) Lessee is in default of its obligations under this Agreement; (ii) the proposed assignee lacks the financial capability to comply with the terms and conditions of this Agreement or the ability to operate the facilities according to the terms and conditions of this Agreement and, if applicable, the Minimum Standards; (iii) the proposed assignee would not assume all of Lessee's obligations under this Agreement, without condition or qualification; or (iv) the proposed assignment would violate any obligation of the City, including without limitation the Grant Assurances. Any purported assignment or sublease in violation of this Section XIX shall be null and void.

B. First Right of Refusal for Sale of Hangar. Notwithstanding the foregoing, if Lessee desires to sell or otherwise transfer its interest in this Agreement, including its leasehold interest in the Premises and ownership interest in the Improvements thereon, and has obtained a bona fide offer for such sale, Lessee must first offer to sell or otherwise transfer such interest to the City, at the price and on the same terms as such bona fide offer, and the City shall have the right to purchase Lessee's interest under such terms. Such offer must be in writing and provide a copy of the sales agreement showing all terms and conditions of the proposed sale. The City shall have the right for a period of twenty-one (21) days after receipt of the offer from Lessee to elect to purchase Lessee's interest (the "Election Period"). If the City does not desire to purchase Lessee's interest, Lessee may then sell or otherwise transfer its interest in this Agreement to the person making the said offer, at the price and terms set forth in the offer, subject to the requirements of this Section XIX, including but not limited to the City's prior written consent under subsection A above. If Lessee fails to close such sale within one hundred twenty (120) days after the expiration of the Election Period, any proposed sale or other transfer thereafter shall again be subject to this Section. This right of the City shall be continuing and shall survive any sale or other transfer of Lessee's interest under this Agreement. The intent of this Section is to require all of Lessee's interests in this Agreement be sold or otherwise transferred intact, without fractionalization.

Commented [SP7]: Because this section was duplicative of Section XXIII, I struck that section and left these provisions in place. This was the only language in that section that was missing here.

C. Sale to Third-Party Buyer. In the event Lessee's interest in the Agreement (including the Improvements) are sold to a third-party buyer prior to the end of the Term:

1. This Agreement shall automatically terminate upon the closing of such sale and the City will enter into a new lease between the City and the buyer that is based upon such terms and conditions, including rental rates, of the then-current Airport standard lease form being offered by the City, provided: (i) Lessee is not in default in the payment of any Rent or in any other provisions of this Agreement, is in good standing at the Airport, and submits a current certificate from the City Building Inspector to the Airport Manager that the Improvements are structurally sound and is projected to be sound for the duration of the new lease; and (ii) the new lease is consistent with the Airport's Master Plan then in effect and all federal rules, regulations, directives, and guidelines or other obligations with respect to the Airport, including but not limited to the Grant Assurances; and

2. Lessee shall pay a transaction fee shall to the City based upon the sales price or the current assessor's valuation, whichever is higher, at the time of the sale prior to a new lease being issued according to the then-approved Heber City Consolidate Fee Schedule.

D. Sale to City. In the event the Improvements are sold to the City prior to the end of the Term, the City may deduct from the purchase price any unpaid Rents or amounts due under this Agreement and, upon the closing of such sale, this Agreement shall automatically terminate.

E. Surviving Obligations. Notwithstanding the foregoing, the sale of Lessee's interests in this Agreement pursuant to this Section shall not relieve Lessee of its obligations that expressly or by their nature survive termination of this Agreement, including but not limited to Lessee's environmental obligations and obligation to pay the City Rents and other amounts due under this Agreement that accrued prior to the closing of the sale.

F. Administrative Costs. The City has the option, in its sole discretion, to charge to Lessee for reasonable administrative costs actually incurred when reviewing and processing any requests for assignment, sublease, or transfer pursuant to this Section XIX.

XX. LEASEHOLD MORTGAGES

A. Generally. Upon prior written notice to the City, Lessee shall have the right to mortgage or collaterally assign its interest in this Agreement to a bank or other similar intuitional lender (the "Mortgagee"), provided that any such leasehold mortgage or collateral assignment shall be in compliance with this Section XX and shall be subject, subordinate, and inferior at all times to the rights of the City under this Agreement (a "Leasehold Mortgage") and further provided that Lessee's notice to the City of the same shall include the name and address of the Mortgagee and a true copy of the Leasehold Mortgage. The term "Leasehold Mortgage" as used in this Agreement shall include, but not be limited to, a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or

otherwise transferred to secure a debt or other obligation, in connection with the construction of the Improvements.

B. Requirements. In connection with a Leasehold Mortgage, at a minimum the following shall apply: (i) such encumbrance shall only encumber Lessee's leasehold interest for the purpose of securing financing for Lessee's authorized Improvements and no other encumbrance shall be permitted; (ii) such encumbrance shall be subordinate to the City's interests; (iii) the Mortgagee or other lienholder must agree to maintain current contact information with the City and provide the City with concurrent copies of any notices or communications regarding a default; (iv) the Mortgagee or other lienholder must certify to the City that it has reviewed this Agreement and has accepted provisions that may affect the Mortgagee or other lienholder, and that no loan requirements conflict with or erode any provisions of this Agreement; (v) any Lessee default relating to such encumbrance shall be a default of this Agreement; (vi) the Mortgagee or other lienholder must agree that upon any default, the City shall have a lien with first priority on all Lessee-owned property at the Premises, including the Improvements; (vii) the Mortgagee or other lienholder must agree that the City has complete and sole discretion as to whether to approve the substitution of a tenant by the Mortgagee or other lienholder and whether the City terminates this Agreement (which would result in a termination of the Mortgagee's or other lienholder's interests in this Agreement); and (viii) such encumbrance shall terminate prior to the expiration or termination of this Agreement and the Mortgagee or other lienholder must agree to promptly remove such encumbrance when the obligation that it secures has been satisfied.

C. Notice of Default or Termination. The City, upon providing Lessee any notice of default under this Agreement or termination of this Agreement, shall at the same time provide a copy of such notice to the Leasehold Mortgagee by first class U.S. mail at the address specified in the notice given pursuant to Section XX.A above.

D. Opportunity to Cure. The Mortgagee shall have the right to remedy any default under this Agreement or cause the same to be remedied and the City shall accept such performance by or at the insistence of such Mortgagee as if the same had been made by Lessee. From the date Mortgagee receives notice of an occurrence of default as provided this Section, there shall be added to any grace period allowed by the terms of this Agreement, an additional ten (10) days in the case of default in payment of Rent and an additional thirty (30) days in the case of all other defaults, for such Mortgagee to cure the same beyond the time allowed to Lessee. In case of a default, other than failure to pay Rent, the City shall not be empowered to terminate this Agreement by reason of the occurrence of such default if Mortgagee, within thirty (30) days after the giving of notice of such default, commences foreclosure or similar proceedings under the Leasehold Mortgage for the purpose of acquiring Lessee's interest in this Agreement and thereafter diligently prosecutes the same, and shall bring current all payments of Rent and all other sums payable by Lessee hereunder. The Mortgagee may become the legal holder of the leasehold estate under this Agreement by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Agreement in lieu of foreclosure. While such Leasehold Mortgage is in effect, the City shall not accept any surrender of cancellation of this Agreement by Lessee or amend or modify any material provision of this Agreement

without the Mortgagee's prior written consent, which such consent shall not be unreasonably withheld or delayed.

E. Assignment. The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Agreement or of the leasehold estate hereby created, nor shall the Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants, or conditions of this Agreement. Any Leasehold Mortgagee who takes an instrument of assignment or transfer in lieu of the foreclosure of the Leasehold Mortgagee shall be deemed to be a permitted assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the Improvements on the Premises shall have been or become materially damaged on, before, or after the date of such purchase and assignment, the Leasehold Mortgagee or its designee shall be obligated to repair, replace, or reconstruct the damaged Improvements.

XXI. DEFAULT AND REMEDIES

A. Default. The occurrence of any of the following, in addition to those specified elsewhere in this Agreement, shall constitute a material breach of this Agreement by Lessee (each, an "Event of Default"):

1. Lessee's failure to pay Rent or any other amounts due hereunder within ten (10) business days of the due date thereof.

2. Lessee's failure to perform or observe any of Lessee's obligations under this Agreement (including those obligations set forth in this Section XXI) that are left uncured for a period of thirty (30) business days after Lessee receives written notice from the City setting forth the failure in question and an opportunity to cure (or, if cure of such failure cannot reasonably be accomplished in the thirty (30) day period, Lessee's failure to commence cure in such period and diligently prosecute the same to completion); provided, however, that the City may in its discretion shorten the applicable cure period in the event of a lapse in required insurance or any condition which creates an imminent safety risk to users of the Airport.

3. Lessee's material default on the covenants and obligations set forth in any other written agreement between the City and Lessee concerning the use or lease of Airport property, as determined by a court of competent jurisdiction's final, non-appealable judgment, after first being provided all applicable notice and cure periods and participating in the agreed upon dispute resolution procedures, if any, thereunder.

4. Lessee's abandonment of the Premises.

5. Lessee's becoming insolvent, taking advantage of any insolvency law or bankruptcy protection, making of a general assignment for the benefit of creditors, or consent to liquidation of all or substantially all of its assets.

6. The assessment of a tax lien or mechanic's lien upon the Premises for unpaid taxes or work that is not resolved within sixty (60) days of Lessee receiving notice of such lien.

7. The filing by Lessee of a voluntary petition in bankruptcy.

8. The institution of proceedings in bankruptcy against Lessee and the adjudication of Lessee as bankrupt pursuant to such proceedings if such adjudication is not vacated or stayed during the sixty (60)-day period following such adjudication.

9. The taking by a court of Lessee and its assets pursuant to proceedings brought under the provisions of any state or federal reorganization act if the judgment of the court is not vacated or stayed during the sixty (60)-day period following such judgment.

10. The appointment of a receiver of Lessee's assets if such appointment by a court is not vacated or stayed during the sixty (60)-day period following such appointment.

11. Lessee's assignment, sublease, transfer, or other conveyance of an interest in this Agreement in violation of Section XIX.

12. Lessee's breach or default of any Leasehold Mortgage (as defined in Section XX herein).

B. Remedies. If an Event of Default occurs, the City, in addition to any remedies available under applicable law, subject to the dispute resolution procedures specified in Section XVIII, may do any one or more of the following:

1. The City may elect to terminate this Agreement upon sixty (60) days' written notice to Lessee.

2. Whether or not this Agreement has been terminated, the City may re-enter and repossess the Premises and may either in its own name, as agent for Lessee if this Agreement has not been terminated, or for its own behalf if this Agreement has been terminated, relet all or any part of the Premises; provided that City shall not be required to accept any tenant proposed by Lessee, or observe any instruction given by Lessee about such reletting. No such re-entry or taking possession of the Premises shall be construed as an election on the City's part to terminate this Agreement unless written notice of such election by the City is given to Lessee. Notwithstanding any such reletting without termination, the City may at any time thereafter elect to terminate this Agreement for any previous breach or default.

3. City may from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement.

C. Mitigation of Damages

Following any Event of Default by Lessee, the City shall use commercially reasonable efforts to mitigate its damages. The City's obligation to mitigate damages after an Event of Default by Lessee under this Agreement that results in the City regaining possession of all or part of the

Commented [SP8]: Strike if dispute resolution procedures stricken.

Commented [SP9]: This is generous, but attempt to give Lessee enough time to remove the Improvements if it so wishes. City to review.

Premises shall be satisfied in full if the City undertakes to re-let the Premises to another grantee (a "Substitute Grantee") in accordance with the following criteria:

1. The City shall have no obligation to solicit or entertain negotiations with any prospective Substitute Grantee until the City obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to re-let the Premises free of any claim of Lessee;

2. The City shall not be obligated to lease the Premises to a Substitute Grantee for a rental less than fair market rent then prevailing for similar space on the Airport;

3. The City shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to the City under the City's then-current leasing policies for comparable space on the Airport, or incompatible with the Master Plan, Minimum Standards, Rules and Regulations, or Grant Assurances; and

4. The City shall not be obligated to enter into a lease with any proposed Substitute Grantee that does not have sufficient financial resources to maintain the Premises and operations in a first-class manner and pay all rents payable pursuant to this Agreement.

XXII. RIGHTS OF CANCELLATION AND RELOCATION

A. City's Right of Cancellation or Relocation. In addition to the City's rights under Section XXI, in the event the City determines that it requires use of the Premises for a public purpose or if proper, planned, and orderly development of the Airport shall require that the City devote any part of the Premises to a different use than that contemplated by this Agreement, or in the case of an emergency, the City may take either of the following actions:

1. The City may terminate this agreement upon no less than one hundred twenty (120) days' prior written notice to Lessee, except in the case of an emergency, which shall only require sixty (60) days' prior written notice, and, upon such termination, shall pay Lessee an amount equal to the unamortized value of the Improvements, calculated on a straight-line basis from the date such Improvements were substantially completed through the then-remaining Term of this Agreement.

2. The City may elect to relocate Lessee's leased premises to another area on the Airport upon no less than one hundred and twenty (120) days' prior written notice to Lessee, except in the case of an emergency, which shall only require sixty (60) days' prior written notice; provided the City (a) provide Lessee with a replacement premises of no less area and that is substantially similar to the vacated premises, (b) pay the associated costs of relocating the Improvements thereto, (c) recalculate the Rent (if necessary) pursuant to Section IV to reflect the square footage and fair market value of the replacement premises, and (d) amend this Agreement to reflect such relocation. Except as expressly provided herein, all terms and conditions of this Agreement shall apply to the relocated premises and shall continue in full force and effect for the remainder of the Term.

B. Lessee's Right of Cancellation. Lessee may terminate this Agreement without cause with ninety (90) days' prior written notice to the Airport Manager. In the event of such cancellation, Lessee may remove its Improvements and shall restore and return the Premises in accordance with the requirements of this Agreement. If Lessee fails to remove its Improvements and restore the Premises, then the City may do so at Lessee's sole cost and expense.

Commented [SP10]: Added this to provide flexibility to City to require Lessee to remove its improvements upon Lessee exercising its cancellation right. City to review.

XXIII. RIGHT OF ENTRY AND INSPECTION

The City may enter upon the Premises at any reasonable time for any purpose necessary, incidental to, or connected with the performance of its obligations under this Agreement, in the exercise of its governmental functions, or in the event of any emergency. Except in the case of the City's governmental functions or an emergency, the City shall give Lessee reasonable advance notice prior to City's entry into Lessee's buildings and improvements.

XXIV. FORCE MAJURE; DESTRUCTION OF PREMISES

A. Neither Party shall be in violation of this Agreement by reason of failure to perform any of its obligations by reason of strikes, boycotts, labor disputes, embargoes, unforeseen shortages of materials, acts of God, acts of public enemy, substantial non-temporary flight restrictions, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible and which are not within its control (each, a "Force Majeure Event"). Upon the cessation or removal of the act or condition giving rise to the excuse of any obligation under this Agreement, the Party so excused from its obligation shall perform as required under this Agreement. Notwithstanding the foregoing, Lessee shall not be relieved of paying any Rent, fees, or other charges due to or during a Force Majeure Event. The Party claiming force majeure shall notify the other Party in writing within five (5) business days following any event or occurrence causing the delay and extent of the delay which may be incurred. Failure to timely so notify shall bar such Party from asserting any claim for that delay.

B. If the Improvements become damaged or destroyed in whole or in part, by a Force Majeure Event or any other casualty at any time during the Term so that the same cannot be repaired within ninety (90) days, Lessee will notify the City in writing within ninety (90) days of the casualty indication whether Lessee will either (i) restore and reconstruct the improvements within one (1) year from the date of the casualty to substantially the same condition the Improvements were in immediately prior to the happening of such casualty, or (ii) terminate the Agreement after restoring the Premises to substantially the same condition it was in prior to constructing the Improvements, to be completed within ninety (90) days of such notice.

C. In no event shall the City be liable to Lessee for any damages resulting to Lessee from the occurrence of a Force Majeure Event or other casualty, from the repair or construction of the Premises, or from the termination of this Agreement under Section XXIV.B.

XXV. EMINENT DOMAIN

A. Allocation of Proceeds. In the event of a condemnation or a taking by the use of eminent domain of all or any part of the Premises, all proceeds of such condemnation or taking shall be apportioned to the City and Lessee as follows:

1. The amount awarded for the taking of the Premises shall belong to the City; and

2. Lessee shall have the right to recover such compensation as may be awarded on account of the value of the Improvements owned and/or made by Lessee, for moving and relocating expenses, for the value of its leasehold interest in the Premises, including but not limited to the loss, if any, sustained by Lessee as a result of the termination of this Agreement for loss of fixtures, moving expenses, and attorneys' fees and costs, and for any other damages sustained by Lessee as a result of such condemnation, provided that Lessee may not pursue the City for any such costs unless the City is the entity condemning or taking the Improvements.

B. Termination of Agreement. If the condemnation or taking by eminent domain is such that Lessee cannot reasonably or safely use the Premises, then at Lessee's option, the Agreement may be terminated upon sixty (60) days' prior written notice to the City.

C. Continuation of Agreement. In the event of a partial condemnation of the Premises where Lessee still has reasonable use of the Premises, this Agreement shall not be terminated, provided there is an equitable reduction in the amount of Rent payable under this Agreement based on the reduction in square footage. If required by the Mortgagee (if any), all proceeds for a condemnation shall be held by such Mortgagee and distributed by such Mortgagee for the payment of repairs or restoration to the Premises in accordance with the procedures set forth in the Leasehold Mortgage (or such other documents executed in connection therewith).

XXVI. NOTICES

All fees payable and notice given under this Agreement to the City shall be delivered to the Heber City Airport Manager, c/o the Heber City Treasurer, 75 North Main Street, Heber City, Utah 84032, or such other place as City shall specify in writing.

All notices given under this Agreement to Lessee shall be sent to:

Name: _____

Address: _____

City/State/Zip: _____

All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid or by nationally recognized overnight courier addressed to the proper Party at their respective addresses above. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery

or rejection on the return receipt. Either Party may change the address to which notices shall thereafter be given upon five (5) days' prior written notice to the other Party.

Commented [SP11]: Added this language to provide clarity around when notice is deemed given. City to confirm if this language is consistent with its policies or if they'd prefer different methods of notice. (FYI, the original form agreement does not specify these terms)

XXVII. SUBORDINATION

A. Grant Assurances. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States of America, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to the City of federal funds for the development of the Airport (the "Grant Assurances"). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates the terms of any the Grant Assurances, the City may unilaterally amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation without compromising or destroying any remaining portions of this Agreement, and such remaining provisions shall remain binding and in full effect upon the parties as if no such amendment or alteration had occurred, or, if such conflict or violation cannot be so resolved, City may at its election terminate this Agreement on not less than sixty (60) days' notice thereof, without any liability to Lessee.

B. City's Interests. Lessee hereby subordinates and makes this Agreement inferior to all existing and future mortgages, trust indentures, or other security interest of the City or the City's successor in interest. Lessee shall execute and deliver any documents required to evidence and perfect such subordination.

XXVIII. FEDERAL CLAUSES

Lessee acknowledges that the City is required by the FAA under the terms of its Grant Assurances to include in this Agreement certain required contract provisions, included as **Exhibit 4** hereto ("Federal Clauses"). Lessee agrees to comply with the Federal Clauses and, where applicable, include the Federal Clauses in each of its subcontracts without limitation or alteration. In the event such Federal Clauses are modified by the FAA or other federal agency with jurisdiction, and the City provides Lessee with not less than thirty (30) days' written notice of such modification, Lessee agrees to comply with the modified Federal Clauses without written amendment of this Agreement. Unless prohibited by federal law, the City shall provide Lessee with notice and a reasonable opportunity to cure before exercising any right of termination provided by the Federal Clauses. Lessee acknowledges that a failure to comply with the Federal Clauses pursuant to this Section XXVIII constitutes an Event Of Default.

XXIX. NO EXCLUSIVE RIGHTS

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e).

XXX. NO WAIVER OF RIGHTS

No delay or omission in the exercise of any right or remedy of either Party on any default by either Party of its respective obligations under this Agreement shall impair such a right or

remedy or be construed as a waiver. Any waiver by either Party of any default on the part of the other must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

XXXI. AVIGATION EASEMENT

The City reserves for the use and benefit of the public, the right of aircraft to fly in the airspace over the Premises, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of the Airport, and the right to pursue all operations of the Airport.

XXXII. NON-INTERFERENCE WITH AIRPORT OPERATIONS

Lessee expressly agrees for itself, its successors and assigns, and all other Lessee Parties that Lessee shall not conduct operations in or on the Premises in a manner that (i) interferes or might interfere with Airport operations or the reasonable use by others of other leased spaces or common facilities at the Airport, (ii) hinders or might hinder police, fire fighting, or other emergency personnel in the discharge of their duties, (iii) would or would be likely to constitute a hazardous condition at the Airport, (iv) would or would be likely to increase the premiums for insurance policies maintained by the City unless such operations are not otherwise prohibited hereunder and Lessee pays the increase in insurance premiums occasioned by such operations, (v) is contrary to any applicable Grant Assurance; (vi) would contradict or violate any applicable laws or regulations, directive, or similar restriction issued by any governmental authority having jurisdiction over the Airport, including the City, FAA, DHS, TSA, and Customs and Border Patrol, (vii) would involve any illegal purposes, or (viii) directly or indirectly interferes with the operation by the City or the FAA of air navigational, communication, or flight equipment on the Airport. In the event this covenant is breached, the City reserves the right, after prior written notice to Lessee, to enter upon the Premises and cause the abatement of such interference at the expense of Lessee. The City shall have the right to take any action it considers necessary to protect aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting or causing to be erected any building or other structure which, in the sole opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft. In the event of a breach in Airport security caused by Lessee, resulting in fine or penalty to the City of which Lessee has received prior written notice, such fine or penalty will be charged to Lessee.

XXXIII. EMERGENCY CLOSURES

During time of war or national emergency, the City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities, and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with provisions of the agreement with the United States Government, will be suspended. Lessee must comply with all local, state, and federal orders, directives, regulations, guidance, and advisories during public emergencies. Public emergencies include, but are not limited to, national, state, and local security emergencies; public health emergencies and pandemics; evacuations;

chemical spills; shelter-in-place alerts; severe weather advisories; boil water advisories; and roadway interruptions. Lessee's failure to comply with any local, state, or federal orders, directives, regulations, guidance, or advisories during a public emergency shall constitute a breach of this Agreement. The City shall have sole discretion in determining if Lessee is compliant with the above. If a public emergency is declared, the City will not be responsible for any expenses or losses incurred as a result of any public emergency.

XXXIV. LIMITATION OF LIABILITY

The City shall not be liable to Lessee or Lessee Parties for any damages or loss caused to them or their property by any of the following: Force Majeure Events, water, rain, wind, snow ice, sleet, hail, fire, storms, earthquake, volcanic eruption, or any other weather event or condition outside of the City's control; any Airport tenant, user, operator, or any other third party; or by breakage, stoppage, or leakage of utilities on or adjacent to the Premises. In the event of damage or destruction to the Premises, the City is under no obligation to provide substitute space to Lessee.

XXXV. GOVERNING LAW; VENUE

This Agreement shall be construed in accordance with and governed by the laws of the State of Utah, notwithstanding any conflict-of-law principles. Venue for any action brought pursuant to this Agreement shall be the Fourth Judicial District, Wasatch County, District Court.

XXXVI. TIME OF THE ESSENCE

Time is of the essence in the performance of all of each Party's respective obligations under this Agreement.

XXXVII. AMENDMENTS

No amendment to this Agreement shall be binding on the City or Lessee 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.

XXXVIII. SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid, and enforceable, and the other provisions of this Agreement shall not be affected thereby.

XXXIX. 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 the City

nor Lessee has relied on any statement, representation, warranty, nor agreement of the other except for those expressly contained in this Agreement.

XL. HEADINGS

The headings used in this Agreement, including but not limited to those headings used at the beginning of each numbered section herein, are solely for the convenience of the reader and shall not be construed as part of the agreement between the Parties.

XLI. 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.

XLII. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties regarding the matters described herein, and any representations or understandings not included herein shall have no effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed, with all the formalities required by law on the respective dates set forth opposite their signatures to be effective the day and year first above written.

HEBER CITY, a Municipal Corporation

APPROVED:

Mayor

LESSEE:

By: _____
Title: _____

Date

Date

ATTEST:

City Recorder

Date

APPROVED AS TO FORM:

City Attorney

Date

Exhibit 1

Premises

[TBD]

Exhibit 2

Snow Removal Plan

[TBD]

Exhibit 3
Dispute Resolution Protocol

- A. **Notice and Opportunity to Cure.** Unless a shorter cure period or right to immediate termination is expressly provided in this Agreement, no Party shall be considered in default of any provision of this Agreement, or any covenant or obligation pertaining to the use or occupancy of Airport property, and no right of termination shall arise, unless and until the counter-Party has provided such Party with written notice of default and not less than thirty (30) days to cure such default or, if the default is not capable of cure within thirty (30) days, such Party has within thirty (30) days commenced, and thereafter diligently proceeds to complete, those actions reasonably necessary to cure such Party's default.
- B. **Informal Dispute Resolution.** The Parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Agreement. Upon receipt of written notice of a dispute from a Party, the Parties agree to refer the dispute to the City Manager, for the City, and the Chief Executive Officer, for Lessee (collectively, "Designated Persons"). The Designated Persons shall within fifteen (15) days of such written notice meet and negotiate in good faith to resolve the dispute, conferring thereafter as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other any information pertinent to the dispute. All communications between the Designated Persons during the dispute resolution procedures set forth in this Paragraph shall be deemed confidential and treated as compromise and settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.
- C. **Mediation.** Mediation of a dispute arising under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Persons, after following the procedures set forth in Paragraph A and B hereof, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely or (ii) fifteen (15) days after the date of the notice referring the dispute to the Designated Persons. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures. The place of mediation shall be in Heber City, Utah, unless the parties agree otherwise. Mediation under this paragraph shall be a necessary prerequisite to any judicial action to enforce the terms and conditions of this Agreement, unless waived in writing with the mutual consent of both Parties.
- D. **Jurisdiction, Venue and Applicable Law.** With respect to an action to enforce the terms and conditions of this Agreement only, the Parties consent to the exercise of jurisdiction of Fourth Judicial District, Wasatch County, District Court and hereby agree that the venue of any action with respect to the enforcement of the terms and conditions of this Agreement shall be properly placed before this same court. This Agreement shall be interpreted under the laws of the State of Utah.

- E. Emergency Relief. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and is not otherwise available under this Agreement.
- F. Tolling. If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this **Exhibit 3**, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award.
- G. FAA Disputes. The Parties understand and acknowledge the FAA's exclusive jurisdiction to determine the City's compliance with its federal Grant Assurance obligations (a "Compliance Dispute"), and that any remedies which may be imposed by the FAA for noncompliance therewith are exclusive. Accordingly, in the event of a Compliance Dispute, and after exhausting the procedures described in Paragraphs A and B hereof, either Party may initiate an informal or formal complaint proceeding with the FAA in accordance with 14 C.F.R. Parts 13 and 16 or similar succeeding provisions, without regard to the other provisions hereof.

Exhibit 4

FAA Required Contract Clauses

Commented [SP12]: To be attached.