

CITY OF CHARLOTTE
CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT
AGREEMENT TO LEASE GROUND

[Insert Company Name]

Date: **[Insert Date]**

CITY OF CHARLOTTE
CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT
AGREEMENT TO LEASE GROUND TO BUILD A CORPORATE HANGAR

THIS AGREEMENT AND LEASE ("Agreement"), made and entered into by and between the CITY OF CHARLOTTE, a municipal corporation of the State of North Carolina ("City"), and **[Insert Company Name]** ("Lessee"),

WITNESSETH:

THAT, WHEREAS, the City owns and operates Charlotte Douglas International Airport ("Airport");

WHEREAS, Lessee desires to lease ground for a quick service of a certain size and description; and

WHEREAS, the City is willing to lease to Lessee a suitable area for the same.

NOW, THEREFORE, for and in consideration of the premises set forth above, and the terms and conditions set forth below, City and Lessee agree as follows.

ARTICLE I
LEASED PREMISES

1.1 Leased Premises. City hereby leases for use by Lessee the land described and depicted on **Exhibit A** (the "Leased Premises") and located at **[Insert Address]**. The Leased Premises comprises **[Insert # of acres]** acres of land. The Leased Premises shall also include the additional improvements provided by the Lessee ("Lessee Work") and the City ("City Work") as further described in **Exhibit B** (collectively, the "Leasehold Improvements").

1.2 Encumbrances on Leased Premises. The Leased Premises shall be accepted by Lessee subject to any and all then existing easements or other encumbrances, and City shall have the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes,

connections, water, oil or gas pipelines, and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient over, in, upon, through, across and along the Leased Premises, or any part thereof, and to enter the Leased Premises at reasonable times for any and all such purposes; provided, however, that no right of City provided for in this section shall be so exercised as to interfere unreasonably with the Lessee's operations.

1.3 Condition of Leased Premises. Subject to the terms of this Agreement and City's obligations set forth in **Exhibit B**, Lessee accepts the Leased Premises in "as is" condition, except any agreed upon improvements, as defined below. Lessee shall be obligated to promptly exercise any and all warranty and contractual rights it may have with respect to the improvements, if any.

1.4 Title to Leased Premises in City. At all times, City shall have title to the Leased Premises and any City Work. Lessee agrees that its sole interest in the Leased Premises shall be that of a tenant. Lessee shall have title to the Lessee Work until the expiration or earlier termination of the Agreement at which time title reverts to the City. The Leasehold Improvements provided by each party is set forth in **Exhibit B**, attached hereto. Should this Agreement terminate by the action of City, for reasons other than an event of default by Lessee, the City shall reimburse the Lessee for a portion of the Lessee's Investment (as defined below) in the Lessee Work. The amount paid shall be the product of the Lessee's Investment and a fraction, the numerator of which will be the number of complete months remaining in the Term (as defined in Section 2.2) on the date of termination and the denominator of which shall be _____updated based on term). For the purposes of this Section Lessee's Investment shall mean Lessee's actual costs, both direct and indirect, in providing the Lessee Work including only items and amounts that would qualify as a part of Lessee's cost basis in the Lessee Work for federal income taxes. It shall also include the cost of any alterations approved by the City under Section 4.3. In the event Lessee should utilize any components or materials already owned by it in constructing the Leasehold Improvements, its "cost" for purpose of defining Lessee's Investment" shall mean the lesser of (i) Lessee's cost basis in such components or materials for federal income tax purposes at the time said construction is completed, or (ii) the fair market value of such components or materials.

1.5 Date of Beneficial Occupancy. Upon substantial completion of the Leasehold Improvements, Lessee shall certify the date on which the Leased Premises are ready for occupancy. The Date of Beneficial Occupancy ("DBO") shall be the date of such certification. DBO must occur within two years of the Possession Date.

1.6 Utilities. Lessee agrees to pay for all utilities used by it, including, but not limited to, deposits, meter deposits and all service charges. No such payment shall be considered a payment of rent entitling the Lessee to a credit under any other provision of this Agreement. In all instances of any damages to any utility service line caused by Lessee, its employees, contractors, suppliers, agents or invitees, Lessee shall be responsible for the cost of repair.

1.7 City's Right to Enter and Inspect. Upon reasonable notice to Lessee (except for emergency or safety matters, in which event, no notice shall be required) the City shall have the right to enter any part of the Leased Premises at reasonable or necessary times for the purposes of inspection, protection or exercising any rights under this Agreement. It shall also have the right, upon reasonable notice to Lessee, to show the Leased Premises at any time within six (6) months of the expiration or earlier termination of this Agreement.

1.8 City's Right to Enter to Install Utilities. The City shall have the right to enter any part of the Leased Premises at reasonable or necessary times for the purposes of installing any utility lines or related equipment necessary for the Lessee or other users of Airport property.

ARTICLE II

LEASE TERM AND RESTRICTIONS ON USE

2.1 Key Dates Defined.

(a) Effective Date. The date that the Agreement has been fully executed by or on behalf of both Lessee and the City is the Effective Date.

(b) Possession Date. The date that the City delivers the Leased Premises to the Lessee free of occupants so that Lessee can commence the Leasehold Improvements is the Possession Date.

(c) Date of Beneficial Occupancy. The DBO is defined in Section 1.5.

(d) Lease Year. Each twelve-month period beginning on DBO during the Term, as defined in Section 2.2, is a Lease Year.

2.2 Term. The Agreement shall commence on the Effective Date and, unless terminated earlier, shall extend until a date **[Insert # of Years]** years after the DBO (the "Initial Term"). Provided Lessee is not in default under any of the terms, conditions and covenants of this Agreement, Lessee shall have the right to request the City to extend the Term for **[Insert # of Options]** additional **[Insert # of Years]** year terms (each being an "Extension Term") upon the same terms and conditions except for the rents as provided in Article III. The City shall have sole discretion on the final decision to extend the Lease. Lessee shall make the request to extend by giving the City written notice at least ninety (90) days prior to the expiration of the then current term. "Term" refers to the Initial and Extension Terms collectively.

2.3 Holding Over. Should Lessee hold over on any part of the Leased Premises with respect to which this Agreement has terminated, such holding over shall be deemed merely a month-to-month tenancy at an escalated rate of 140% of applicable rent, but otherwise on all the same terms and conditions.

2.4 Surrender of Leased Premises at Termination. Upon termination or other expiration of this Agreement, Lessee shall immediately surrender the Leased Premises, including any Leasehold Improvements, to City in substantially the same condition in which the Lease Premises were delivered to Lessee, reasonable wear and tear excepted.

2.5 Right of City to Terminate by Cancellation. If, at any time during the term of this Agreement, City requires the use of the Leased Premises for airfield related purposes, including, but not limited to, expansion of runways and taxiways and compliance with any safety, clearance, or setback requirements that may be

promulgated by FAA or any successor agency, this Agreement may be terminated by the City's advising Lessee as soon as possible when the issue arises and giving Lessee one hundred eighty (180) days written notice of cancellation which shall include the purpose of the reclamation. In addition, the City shall use its best efforts to locate a replacement site which it shall offer to lease to Lessee on terms that shall be substantially similar to this Agreement, but with due allowance for changed conditions and circumstances. Lessee shall have the right to terminate the Agreement if no replacement site is available or if Lessee does not wish to accept the replacement site. If the Lease is terminated or the Lessee is moved to a replacement site, the City shall buy back the unamortized portion of the Leasehold Improvements in compliance with Section 1.9 above.

2.6 Restrictions on Use. To be determined

2.7 Garbage and Refuse Storage and Removal. Lessee shall be responsible for garbage and refuse storage and removal in compliance with all Airport and other applicable rules and regulations regarding the disposal of trash and garbage.

2.8 Noise, Odor, Vibrations and Annoyances. Lessee shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste at the Leased Premises, and shall take all reasonable measures, using the latest known and most practicable devices and means, to eliminate any unusual, nauseous or objectionable smoke, gases, vapors, odors, or any vibrations tending to damage any Leasehold Improvements or interfere with activities at the Airport, and to maintain a sound level in its operations that is in compliance with any applicable governmental rules and regulations.

2.9 Prohibited Acts. Lessee shall not:

(a) Conduct its operations in a manner that deprives the public of its rightful, equal and uniform use of Airport property.

(b) Conduct its operations in such a way as to hinder police, firefighting or other emergency personnel in the discharge of their duties or as to constitute

a hazardous condition that would increase the risks normally attendant upon the operations contemplated under this Agreement.

2.10 Environmental Representation and Covenants.

(a) Lessee shall not cause, permit or suffer any Hazardous Material(s) (as defined below) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Leased Premises or any portion thereof by Lessee, its agents, employees, contractors, invitees or permitted subtenants or assigns or any other person, except in strict compliance with Environmental Laws, as defined below.

For purposes of this Agreement and this paragraph, "Hazardous Material(s)" means any substance(s): (i) the presence of which requires investigation or remediation under any applicable federal, state, or local law, statute, regulation, rule, ordinance, order, action, policy or common law; or (ii) which is or becomes defined as a hazardous substance, hazardous material, toxic substance, toxic material, pollutant or contaminant under any applicable law or federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," 42 U.S.C. §§ 9601 et seq.), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("RCRA," 42 U.S.C. §§ 6901 et seq.), the Clean Air Act ("CAA," 42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act ("CWA," 33 U.S.C. §§ 1251 et seq.), the Toxic Substances Control Act ("TSCA," 15 U.S.C. §§ 2601 et seq.), the Safe Drinking Water Act ("SWDA," 42 U.S.C. 300f et seq.), the Oil Pollution Act ("OPA," 33 U.S.C. §§ 2701 et seq.) and North Carolina equivalent laws; or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; or (iv) the presence of which on the Leased Premises causes or threatens to cause a nuisance upon the Leased Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Leased Premises; or (v) without limitation which contains gasoline, diesel fuel, petroleum hydrocarbons, petroleum distillates or other petroleum

constituents; or (vi) without limitation which contains polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde insulation.

For purposes of this Agreement and this paragraph, the term "Environmental Laws" shall mean and include, without limitation, all federal, state and local statutes, regulations, rules, codes, or permits, applicable to the Leased Premises, imposing liability or standards of conduct or responsibility or design, construction or operating technical standards concerning or otherwise relating to environmental or public health and safety matters at the Leased Premises, whether now in force or as amended or enacted in the future, including, but not limited to: CERCLA, RCRA; CAA; CWA; SDWA; TSCA; OPA; and the Emergency Planning and Community Right-To-Know Act (42 U.S.C. §§ 11001, et seq.).

For purposes of this Agreement and this paragraph, the term "Release" shall mean and include, without limitation, any and all spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, seeping or disposing in the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material(s) or pollutant(s) or contaminant(s)).

(b) Lessee shall not cause, permit or suffer the existence or the commission by Lessee, its agents, employees, contractors or invitees, or by any other person, of a violation of any Environmental Laws upon, about or beneath the Leased Premises or any portion thereof.

(c) Lessee shall not create or suffer to exist with respect to the Leased Premises, or permit any of its agents, employees, contractors, invitees or any other person to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind against the Leased Premises arising out of any Environmental Laws, including, without limitation, any lien imposed pursuant to CERCLA §107 (42 U.S.C. §9607) or any other statute or regulation. Should any such lien, security interest or other charge or encumbrance be filed against the Leased Premises, Lessee shall cause said lien, security interest or other charge or encumbrance to be removed from the Leased Premises or shall provide a bond satisfactory to City for the payment or satisfaction thereof. Said actions shall be taken by Lessee as soon as practicable from the filing, posting or notice of such lien, security interest or other charge or encumbrance; provided that said actions

shall be taken in no event later than thirty (30) days from the filing, posting or notice of such lien, security interest or other charge or encumbrance.

(d) Lessee covenants and agrees, at its sole cost and expense, to defend, indemnify and hold harmless City from and against any and all damages (including without limitation all foreseeable and unforeseeable consequential damages), losses, liabilities, obligations, penalties, costs (including without limitation, the cost of any required or necessary inspection, audit, cleanup, removal, remediation or detoxification and the preparation of any closure or other required plans, consent orders, permits, license applications, or the like), personal injury or death, damage to property, claims, litigation costs, disbursements or expenses including, without limitation, attorneys' and experts' fees and disbursements which may at any time be imposed upon, incurred by or asserted or awarded against City, and arising from or out of and to the extent caused by: (i) the use, generation, storage, disposal of or the release of any Hazardous Materials by Lessee, its employees, agents, contractors or any other person upon, about, beneath or affecting all or any portion of the Leased Premises or any surrounding areas, where such surrounding areas have been contaminated as a result of the use or Release of Hazardous Materials by Lessee, its employees, agents, contractors or any other person on the Leased Premises; or (ii) the enforcement of this Agreement as to matters concerning this Paragraph 2.8 arising after taking of title or tenancy to all or any portion of the Leased Premises by Lessee and whether or not any claims prove to be true or false.

(e) Lessee shall, upon demand of City, and at Lessee's sole cost and expense, promptly take all action to remove and/or remediate Hazardous Materials upon, about or beneath the Leased Premises which action is: (i) required by any federal, state or local governmental agency or political subdivision; or (ii) which is reasonably necessary to remove and/or remediate any Hazardous Materials from the Leased Premises and restore the Leased Premises to compliance with Environmental Laws. Any such removal and/or remediation shall be performed in a good, safe and workmanlike manner and shall minimize any impact on the business(es) conducted at the Leased Premises. Lessee shall, at its own cost and expense, comply with all applicable laws while performing said removal and/or remediation. Lessee shall take all actions necessary to

restore the Leased Premises to the condition existing as of the date hereof, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies.

(f) Should Lessee its employees, agents, contractors or any other person cause, directly or indirectly, or permit any intentional or unintentional Release of Hazardous Materials upon, about or beneath the Leased Premises, whether or not such Release results in damage to soil, surface water, ground water, flora, fauna or humans on the Leased Premises, or within waters of the state or the United States, or on other properties, Lessee shall promptly notify all federal, state and local regulatory agencies of the Release as required by law and shall notify City of the Release, in writing, within seven (7) days of determining that a Release has occurred. Lessee shall further notify City within seven (7) days after the receipt by Lessee of notice of any demand or claim or the commencement of any action, suit or proceeding in respect of any of the matters referenced in this paragraph. It is expressly understood and agreed that failure by City to object to any actions taken by Lessee hereunder shall not be construed to be an approval by City of Lessee's actions, nor shall it be construed as a waiver by City of any right related thereto.

(g) City, its agents, consultants or contractors shall, at all times, be free to inspect the Leased Premises. City may independently establish to its satisfaction and in its absolute discretion the existence or non-existence of any fact or facts, the existence or non-existence of which is relevant to any claim or defense of any matter related herein, and Lessee shall allow City, its agents, consultants or contractors access to the Leased Premises as is necessary to establish such facts.

(h) Pollution Legal Liability- Insurance of not less than \$5,000,000 per occurrence or claim, including third party bodily injury, third party property damage-including loss of use, natural resources damages, cleanup coverage for pollution migration, and legal defense costs.

2.11 Additional Compliance Requirements. It is intended that the standards, obligations and duties imposed by this Article II shall be maintained and complied with

by Lessee in addition to its compliance with all applicable governmental laws, ordinances and regulations, and in the event that any of said laws, ordinances and regulations shall be more stringent than the standards, duties and obligations imposed on Lessee hereunder, then Lessee shall comply with such laws, ordinances and regulations in its operations under this Agreement. Noncompliance with any governmental law, ordinance or regulation, the validity of which shall be contested in good faith and with reasonable promptness, shall not be interpreted as a violation of this covenant until such contest shall have been abandoned or the time for objection or appeal has expired.

ARTICLE III RENTS, FEES AND CHARGES

3.1 Ground Rent. The annual ground rental for the first five Lease Years shall be **[Insert Annual Ground Rent]**. The annual ground rent shall be payable in twelve equal monthly installments, in advance and without demand, on the first day of each month, beginning on Possession Date. Therefore, the monthly installments for the first five Lease Years shall be \$**[Insert Monthly Ground Rent]**.

3.2 Ground Rent Adjustments. The Ground Rent shall be adjusted on each fifth (5th) year anniversary of the Date of Beneficial Occupancy during the term of this Agreement, including any renewal terms (said date being referred to herein as the "Adjustment Date"). Any rent adjustment shall reflect the then-prevailing fair market value rate being charged by the City for comparable property. The City shall determine the fair market value rate by undertaking an appraisal of its property every five years conducted by a City- selected appraiser with an MAI designation, which may or may not coincide with the Adjustment Date. City shall communicate the new Ground Rent rate no later than 180 days of the Adjustment Date. However, at no time shall the City be obligated to decreased the Ground Rent.

3.5 Delinquent Payment. Without waiving any other right of action available to the City, in the event that Lessee is delinquent for a period of ten (10) days or more in paying the City any amount due pursuant to this Agreement, Lessee shall pay the City interest thereon at the rate of eighteen percent (18%) per year from the date such amount was due and payable until paid.

3.6 Fees and Taxes. The Lessee agrees to pay, when due, all fees, taxes and assessments charged, assessed or levied by any governmental authority on the Leased Premises or in order to carry on Lessee's business at the Leased Premises. No such payment shall be considered a payment of rent, fees or use charges entitling the Lessee to a credit under any other provision of this Lessee. The failure to pay any tax, license, fee, or assessment, the validity of which shall be contested in good faith and with reasonable promptness, shall not be interpreted as a violation of this covenant until such contest shall have been resolved in the taxing authority's favor or abandoned or the time for objection or appeal has expired.

ARTICLE IV MAINTENANCE, ALTERATIONS, REPAIRS AND UPKEEP

4.1 Maintenance of the Leased Premises.

(a) Lessee shall be obligated, without cost to the City, to maintain the Leased Premises and every part thereof in good appearance, repair and safe condition. Lessee shall maintain the Leasehold improvements, and all furnishings, unattached fixtures and equipment located on the Leased Premises.

(b) The City shall be the sole judge of the quality of maintenance. The City or its authorized agents may at any time, without notice, enter upon the Leased Premises to determine if maintenance satisfactory to the City is being accomplished.

4.2 Repairs. The Lessee agrees to make all reasonably necessary repairs and replacements of the Leasehold Improvements. All such repairs and replacements shall be of quality equal to the original in materials and workmanship.

4.3 Alterations to Leased Premises. Before making alterations to the Leasehold Improvements Lessee shall first obtain the written consent of the City, such consent to be not unreasonably withheld or delayed. All alterations to the Leased Premises made by the Lessee shall be made at the Lessee's expense, and shall be made

in a workmanlike manner without damage to the Leased Premises, except such that is repaired or corrected by the Lessee. The City shall have the right to review and approve in writing the plans and specifications for such alterations and to impose requirements for insurance and bonding. The City shall dictate the manner and method for which proposed alterations shall be submitted and reviewed for approval. For purposes of this section, any proposed rezoning of the property would qualify as an alternation.

4.4 Waiver of Visual Artists Rights. Licensee shall not install or incorporate any work of art in the Premises in such a way that removing the work from the Premises would cause the destruction, distortion, mutilation, or other modification of the work and shall not commence construction of any Leasehold Improvements where such work or improvement constitutes a work of visual art under the Visual Artists Rights Act of 1990 ("VARA"), unless and until Licensee has provided to the Licensors either: (i) written confirmation that VARA does not apply, or (ii) a written waiver from the author of a work of visual art, in form and substance reasonably satisfactory to the Licensors, which identifies specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. §106A(e)(1).

ARTICLE V

INDEMNIFICATION AND INSURANCE

5.1 Indemnification. Lessee shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, resulting from, or alleged to arise out of or result from, any event or occurrence in or upon the Leased Premises, or otherwise arising or alleged to arise from Lessee's operations in or use of the Leased Premises under the terms of this Agreement, except to the extent that such claims are caused by the negligence of the City or its officers, agents and employees. Lessee shall purchase insurance, as described in Section 5.2, which insurance shall provide coverage for this contractual liability. In any case in which Lessee provides a defense to the City pursuant to this indemnity, the defense will be provided by attorneys reasonably acceptable to the City. The provisions of this section shall survive the expiration or early termination of this Agreement.

5.2 Insurance. The Lessee shall provide and maintain at its expense during the term of this Lease the following program(s) of insurance covering its operations. Such insurance shall be provided by insurer(s) satisfactory to the City as approved by the City's Risk Management Division and evidence of such programs satisfactory to the City shall be delivered to the City on or before the Commencement Date of this Lease. Such evidence shall specifically identify this Lease and shall contain the express condition that the City is to be given written notice of at least ten (10) days in advance of any modification or termination of any program of insurance.

(a) Automobile Liability. Insurance with a limit of not less than \$5,000,000 per accident combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles. If the Lessee is trucking fuel, the Automobile Liability coverage shall be broadened to include pollution coverage on covered autos, and a copy of endorsement CA 99 48 shall be provided to the City. Lessee must also supply the City with evidence of motor carrier endorsement MCS-90 as required by the Federal Motor Carrier Safety Administration's Motor Carrier Act.

(b) Commercial General Liability. Insurance with a limit not less than \$5,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.

(c) Workers' Compensation. Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit. If the Lessee does not employ more than 2 full time employees, Lessee must attest this fact on company letterhead and include such letter in this Lease.

(d) Fire and Extended Coverage. Lessee, at its own cost and expense, shall insure for fire and extended coverage risks all Leasehold Improvements on the Leased Premises. Such insurance shall be in an amount equal to the full insurable value of such improvements. All fire insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests

may appear hereunder. Lessee agrees that any payments received from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of the Leasehold Improvements or paid to the City in accordance with Article VI.

5.3 Additional Insurance Requirements. The Lessee shall be responsible for notifying the City of any material changes to, or cancellation of, the insurance coverages required above. Notice to the City must be completed in writing within 48 hours of the changes.

(a) "City of Charlotte, 600 East Fourth St. Charlotte, NC 28202" shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this Lease.

(b) The Lessee shall not commence any work in connection with this Lease until it has obtained all of the types of insurance set forth in this section and furnished the City with proof of insurance coverage by certificates of insurance accompanying the Lease.

(c) The Lessee shall not allow any subcontractor to commence work until all such subcontractors have obtained the same insurance coverages as described above.

(d) All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the Lessee must submit evidence of the right to self-insure as provided by the State of North Carolina.

(e) The Lessee insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Lessee's operations under this Lease. The Lessee and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees.

(f) The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of the deductible/retention shall be the sole responsibility of the Lessee and/or subcontractor.

ARTICLE VI

DAMAGE OR DESTRUCTION TO LEASED PREMISES

In the event of damage or casualty to any part of the Leased Premises including the Leasehold Improvements, Lessee shall repair such damage or replace damaged property to the extent the insurance proceeds are sufficient to pay for such repair and replacement. Any replacement shall be subject to the review and approval of the City.

ARTICLE VII

EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION, PUBLIC USE AND FEDERAL GRANTS

7.1 Equal Employment Opportunity. Lessee assures that it will undertake an affirmative action program, if and to the extent applicable, under 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said Subpart E. Lessee assures that it will require that its covered suborganizations, if any, provide assurances to Lessee that they will similarly undertake affirmative action programs and that they will require assurances from their suborganizations, if any, as required by 14 CFR Part 152, Subpart E, to the same effect.

7.2 Federal Grants and Public Use. The parties acknowledge that the Airport will be operated as a public airport, subject to the provisions of the Federal Aviation Act of 1958 and grant agreements between the City and the Federal government containing assurances guaranteeing the public use of the Airport, so that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. 40103 (e) (formerly section 308 of the Federal Aviation

of 1958, as amended). The City reserves the right to further develop or improve, as it sees fit, the Airport, its landing area and taxiways, and to construct other airports, regardless of the desires or views of Lessee and without interference or hindrance therefrom. This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America, including instrumentalities thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds in developing the Airport.

7.3 General Civil Rights Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

(a) Civil Rights – Title VI Assurances

The Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities listed below.

With respect to this License, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the License and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said License had never been made or issued.

(b) Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this License, the Lessee, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq)

7.4 Modifications to Comply with Federal Laws, Regulations or Agreements.

Should the United States or any instrumentality thereof having authority to do so require that any provision of this Agreement that is in violation of any federal law or regulation or any-provision of an existing grant agreement between the City and the United States or any instrumentality thereof be changed or deleted or should any such change or deletion be required in order for the Airport either to continue as a part of the National Airport System Plan or to retain its eligibility to participate in ADAP and similar successor federal programs or to avoid forfeiture of previous financial assistance, the City may give the Lessee notice that it elects that any such change or deletion be made. Lessee shall then elect either to consent to any such change or deletion or to terminate this Agreement. Such election shall be made in writing and delivered to the city within thirty (30) days of the date the City gave notice to the Lessee of its election that any such change or deletion be made.

7.5 Compliance with Americans with Disability Act of 1990. Lessee shall fully comply with all applicable provisions of the Americans With Disabilities Act of 1990, P.L. 101-336, 104 Stat. 327 (ADA), expressly including, but not limited to, all requirements otherwise imposed on the City regarding the Leased Premises and invitees of Lessee, insofar as the Leased Premises is considered a place of public accommodation and invitees or employees are covered by the services, programs and activity previsions of Title II of ADA.

7.6 Recapture by United States Government. It is understood and agreed between the parties hereto that this Agreement shall be terminated if the United States of America, in exercising its right to recapture under the terms of the instrument conveying the premises to the City, requires such termination, and further that this Agreement shall be subject and subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required by the

provisions of the Federal Airport Act of 1946, as amended, or any future act affecting the operation or maintenance of the Airport.

ARTICLE VIII
ASSIGNMENT AND SUBLETTING

Lessee shall neither assign nor transfer this Agreement or any right or leasehold interest granted to it by this Agreement without the consent of the City. In any event, no such assignment or sublease shall serve to release the Lessee from any of its obligations, duties or responsibilities under this Agreement unless the City agrees thereto in writing. Any such sublease shall be in writing and promptly upon the execution thereof, Lessee shall furnish a copy to the City.

ARTICLE IX
DEFAULT BY LESSEE

9.1 Default. The happening of any one or more of the following listed events and the expiration of any notice and cure periods herein provided (which events, upon such expiration, are hereinafter referred to singularly as "event of default" and plurally as "events of default") shall constitute a breach of this Agreement on the part of Lessee, namely:

- (a) The filing by, on behalf of, or against Lessee of any petition or pleading to declare Lessee a bankrupt, voluntary or involuntary, under any Bankruptcy Act or law, which is not dismissed within sixty (60) days after the date of filing.
- (b) The commencement in any court or tribunal of any proceeding, voluntary or involuntary, to declare Lessee insolvent or unable to pay its debts, which is not dismissed within sixty (60) days after the date of filing.
- (c) The failure of Lessee to pay any rent or any other amount payable under this Agreement within ten (10) days after written notice by the City that the same is due and payable.

(d) The failure in any material respect of Lessee to perform, fully and promptly, any act required of it under the terms of this Agreement, or otherwise to comply with any term or provision within the shorter of -- (i) the time specifically required, or (ii) thirty (30) days after written notice by the City to the Lessee to do so, unless such default cannot be cured within such period and Lessee has in good faith commenced and is prosecuting the cure thereof, in which case the Lessee shall have a reasonable extension of such period in order to cure such default. The failure of Lessee to so utilize the Leased Premises over a continuous period in excess of ninety (90) days for reasons that are not otherwise excused under this Agreement shall be deemed an abandonment of the Leased Premises by Lessee and therefore a failure to perform under this Agreement.

(e) The appointment by any court or under any law of a receiver, trustee or other custodian of the property, assets or business of Lessee, who is not dismissed within sixty (60) days after the date of appointment.

(f) The assignment by Lessee of all or any part of its property or assets for the benefit of creditors.

(g) The Lessee fails to obtain DBO within the timeframes set forth in Section 1.5.

9.2 Waiver. No Waiver by the City of default by the Lessee of any terms, covenants, or conditions hereof kept and to be performed, preserved by the Lessee shall be a waiver of any construed to be a waiver of any subsequent default. The acceptance of rental or the performance of all or any part of this Agreement by the City for or during any period or periods after default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Lessee, shall not be deemed a waiver of any right on the part of the City to declare a default or cancel this Agreement for a subsequent breach thereof.

ARTICLE X

EFFECT OF DEFAULT

Upon the happening of any event of default as defined in Article IX above and the failure of the Lessee to cure such default in the time period set forth in said Article IX, the City shall have the right to terminate the term of this Agreement by written notice from the City to the Lessee, which termination shall be effective as of the date of said written notice. Upon any termination of the term hereof, whether by lapse of time or otherwise, Lessee shall promptly surrender possession and vacate the Leased Premises and deliver possession thereof to the City, and Lessee hereby grants to the City full and free license to enter into and upon the Leased premises in such event and with or without process to expel or remove Lessee and any others who may be occupying the Leased Premises and to remove therefrom any and all property, using for such purpose such force as may be necessary without being guilty or liable for trespass, eviction, or forcible entry of detainer and without relinquishing the City's right to rent or any other right given to the City hereunder or by operation by law. Except as otherwise expressly provided in this Agreement, Lessee hereby expressly waives service of City's demand for the payment of rent, possession of the Leased Premises, or re-entry upon the Leased Premises, including any and every form of demand and notice prescribed by any statute or other law.

ARTICLE XI
TERMINATION BY
CANCELLATION AND DEFAULT BY CITY

11.1 Right of Lessee to Terminate by Cancellation. Lessee may terminate this Agreement and cancel all of its obligations hereunder at any time that Lessee is not in default in the payment of any rentals, fees or charges to the City hereunder by giving written notice to be served as hereinafter provided upon or after the happening of any one of the following events:

- (a) The inability of the Lessee to use the Leased Premises for a period in excess of sixty (60) days, because of the issuance of any order, rule or regulation by the United States or an instrumentality thereof preventing the Lessee from operating at the Leased Premises for cause or causes not constituting a default under this Agreement;

(b) The default by the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of sixty (60) days after receipt from the Lessee of written notice to remedy the same, unless such default cannot be cured within such sixty (60) day period and the City has in good faith commenced and is prosecuting the cure thereof, in which case the City shall have a reasonable extension of such period in order to cure such default; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if the City shall have remedied the default prior to receipt of the Lessee's notice of cancellation;

(c) The assumption by the United States or an instrumentality thereof of the operation, control or use of the Airport or any substantial part thereof in such a manner as to substantially restrict the Lessee for a period of at least ninety (90) days from operating its business at the Airport; or

(e) (d) The issuance by any court of competent jurisdiction of an injunction restraining the use of the Airport or the Leased Premises if said injunction shall remain in force for more than ninety (90) days and is not caused in whole or in part by the acts or failures to act of Lessee.

11.2 Waiver. The Lessee's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants or conditions hereof to be performed, kept or observed by the City, or the occurrence of such other event as may excuse performance shall not be deemed a waiver of any right on the part of Lessee (i) to cancel this Agreement for failure by the City so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed, or by reason of such occurrence, or (ii) to enforce any other right that the Lessee may have by reason of such failure or occurrence. No waiver by the Lessee of any of the terms, covenants or conditions hereof shall be construed to be or act as a waiver by Lessee of any subsequent default or occurrence.

ARTICLE XII

GENERAL PROVISIONS

12.1 Compliance with Laws, Rules and Regulations. License agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to this Agreement and the activities taking place upon the Leased Premises. The Lessee further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws, rules and regulations. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA) and all OSHA regulations as applicable. City shall not be liable to Lessee for any diminution or deprivation of Lessee's right hereunder on account of the exercise of any such authority, nor, except as elsewhere expressly provided in this Agreement, shall Lessee be entitled to terminate the whole or any portion of the Agreement by reason thereof unless the exercise of such authority shall so interfere with Lessee's use and enjoyment of the Leased Premises as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of North Carolina.

12.2 Waiver of Claims. Lessee hereby waives any claim against the City and its elected officials, officers, agents or employees for loss of anticipated profits caused by any suit or proceeding attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part hereof.

12.3 Waivers. Every provision herein imposing an obligation upon City or Lessee is a material inducement and consideration for the execution of this Agreement. No waiver by City or Lessee of any of the terms, covenants or conditions of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, covenant or condition herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the City to re-enter the Leased Premises or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of fees then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or acquiescence therein. No notice by City shall be required to restore or revive time as being of the essence hereof after waiver by City of default in one or more instances.

12.4 Attorney's Fees. The Lessee shall pay reasonable attorney's fees incurred by the City by reason of Lessee's default under this Agreement.

12.5 Situs and Service of Process. Lessee agrees all actions or proceedings arising directly or indirectly from this Agreement shall be litigated only in courts having situs within the State of North Carolina and Lessee hereby consents to the jurisdiction of any local, state or federal court located within the State of North Carolina, and waives personal service of any and all process upon the Lessee herein, and consents that all such service of process shall be made by certified mail, return receipt requested, directed to the Lessee at the address hereinafter stated, and service so made shall be complete two (2) days after the same shall have been posted as aforesaid.

12.6 Agreement Binding Upon Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

12.7 Applicable Law. This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of North Carolina.

12.8 Quiet Enjoyment. The City agrees that Lessee, upon payment of all fees, charges and other payments required under the terms of this Agreement and observing and keeping the conditions and covenants of this Agreement on its part to be observed and kept, shall lawfully acquire and hold, use and enjoy the Leased Premises during the term of this Agreement.

12.9 Lessee's Dealings with City. Whenever in this Agreement, the Lessee is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the City, the Lessee shall deal with the City's authorized representative; and unless or until the City shall give Lessee written notice to the contrary, the City's authorized representative shall be the Aviation Director.

12.10 Notice. Whenever any notice of payment is required by this Lease to be made, given or transmitted to the parties hereto, such notice or payment shall be deemed to have been given if enclosed in an envelope with sufficient postage attached, and sent by certified mail, to insure delivery, and deposited in the United States mail addressed to:

CITY:

Aviation Director
Charlotte Douglas International Airport
Post Office Box 19066
Charlotte, NC 28219

LESSEE:

or in such other place as either party shall in writing designate in the manner provided herein.

12.11 Independent Contractor. The parties agree that the Lessee is an independent contractor and not subject to direction or control of the City, except as specified in this Agreement, and except by general rules and regulations adopted for the control and regulation of the Airport and its facilities.

12.12 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Lessee. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of provisions of this Agreement. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

12.13 Memorandum of Lease in Lieu of Recording. The parties agree that should either desire that adequate legal notice of this Agreement be given on the public records of Mecklenburg County, North Carolina, the other will agree to the execution of a memorandum of this Agreement containing a sufficient description of the parties, the Leased Premises and term of this Agreement to comply with the minimum requirements for the giving of such notice.

12.14 Warranty of Title. The City represents and warrants that it has good and merchantable fee simple title to the Leased Premises and has full right to lease the Leased Premises to Lessee.

12.15 Force Majeure. It is expressly understood and agreed that if the curing of any default (other than failure to pay rent, taxes, utilities, insurance premiums or other sums of money) or the performance of any other covenant, agreement, obligation or undertaking herein contained (other than payment of rent, taxes, insurance premiums or other sums of money) is delayed by reason of war, riots or civil commotion, acts of God, governmental restrictions, regulations, or interferences, fire or other casualty, strikes, shortages of labor or material, or any circumstances reasonably beyond the control of the party obligated or permitted under the terms hereof to do or perform the same and without such party's fault, regardless of whether any such circumstance is similar to any of those enumerated or not, each such party shall be excused from doing or performing the same during such period of delay.

12.16 NC Prohibitions on Contracts with Companies that Invest in Iran or Boycott Israel. Lessee certifies that (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Lease. In signing this Lease, Lessee further agrees, as an independent obligation, separate and apart from this Lease, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Agreement or any part thereof is void due to Lessee appearing on The Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Agreement.

12.17 Entire Agreement. The provisions of this Agreement contain the entire understanding between the parties hereto and said Agreement may not be changed, altered or modified.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed, in duplicate, with all the formalities required by law.

LESSEE:

By: _____

Title: _____

Date: _____

CITY OF CHARLOTTE

By: _____

Aviation Director

Date: _____

Exhibit A
Leased Premises

Exhibit B

Leasehold Improvements

1. General. The purpose of this Exhibit is to set forth how the Leasehold Improvements are to be designed, engineered and constructed, who will do the construction of the Leasehold Improvements, who will pay for the construction of the Leasehold Improvements, and certain other matters relating to the construction of the Leasehold Improvements as provided herein. The Leasehold Improvements will be completed by both parties as set forth below:

a. "City's Work" shall be (i) **[Insert Description of City's Responsibilities]**

b. "Lessee's Work" shall be (i) **[Insert Description of Lessee's Responsibilities]**

2. All of "City's Work" and "Lessee's Work" (as defined above) shall be in compliance with all laws, ordinances, regulations (including, but not limited to the Americans with Disabilities Act) and all environmental laws and regulations of all duly constituted governmental authorities and in accordance with the orders, rules, codes and regulations of the National Building Fire Underwriters or any other body now or hereafter constituted performing similar functions. In the event of any conflict between the Lease and this Exhibit, the provisions of this Exhibit shall control to the extent of the conflict.

3. 30/60/90 Design Submission

(a) Not later than one hundred and twenty (120) days from the execution of the Lease, City shall cause to be prepared and delivered to Lessee full working drawings and specifications (hereinafter called the "City's Final Plans") for the construction of the "City's Work" to be located on the Leased Premises, which Final Plans, to the extent applicable, shall be prepared by an architect licensed in the state where the Leased Premises are located. The Final Plans shall be subject to the approval of Lessee, which approval shall not be unreasonably withheld or delayed. If Lessee shall object to the City's Final Plans, Lessee shall notify City of Lessee's objections thereto within fifteen (15) business days after receipt by Lessee of the City's Final Plans. If Lessee shall object to any aspect of the City's Final Plans, City shall, within ten (10) days after notification by Lessee of its objections (or longer if reasonably necessary to revise the City's Final Plans), which notification shall specify said objections with particularity, cause the City's Final Plans to be revised and resubmitted to Lessee for its approval, which approval shall not be unreasonably withheld or delayed, or City shall provide written explanation on why the City will not modify the City's Final Plans per Lessee's noted objections.

(b) Not later than thirty (30) days from the receipt of the City's Final Plans, Lessee shall cause to be prepared and delivered to City the thirty percent (30%) complete design drawings and specifications of Lessee's Work which shall be subject to the City's approval as stated below. Lessee shall also submit to the City for review and approval the design drawings and specifications at sixty percent (60%) and ninety percent (90%) completion. Such design drawings and

specifications shall be prepared by an architect licensed in the state where the Leased Premises are located and include the detail reasonably required by the City. Submission of the design shall be in a manner and format determined by the City. Each stage of the design review shall be subject to the approval of City, which approval shall not be unreasonably withheld or delayed. If City shall object to the Lessee's plans, City shall notify Lessee of City's objections thereto within fifteen (15) business days after receipt by City of Lessee's plans. If City shall object to any aspect of the Lessee's plans, Lessee shall, within ten (10) days after notification by City of its objections (or longer if reasonably necessary to revise the Lessee's plans), which notification shall specify said objections with particularity, cause the Lessee's to be revised and resubmitted to Lessee for its approval, which approval shall not be unreasonably withheld or delayed. Design shall not proceed without approval from the City at each stage referenced above.

(c) Final approval, shall not be deemed to be an approval of the legality of the other party's work or the City's Final Plans or Lessee's plans. The City's Final Plans or Lessee's plans shall not be materially changed or modified by either party after such final approval without the further approval in writing by the other party.

4. Performance of City's and Lessee's Work.

(a) Promptly upon approval of the City's Final Plans and Lessee's plans, each party shall do all things necessary to secure such permits, licenses and approvals as may be necessary to construct the Leasehold Improvements, all as provided for in the approved plans and shall cause all such construction and installation to be performed in a diligent manner in strict conformity with the approved plans, and in compliance with all applicable laws, rules, regulations and orders, all to the end that, subject to extensions of time required by failure of the parties to agree upon the approved plans. Such construction shall begin within thirty (30) days after the later of (i) the date of City's written approval of Lessee's plans or (ii) the granting of all necessary permits and approvals by all governmental bodies in charge of the approval processes, and shall be continuous and expedited so that the Leasehold Improvements shall be completed as soon as practicable. Lessee shall award no contract for the construction of Leasehold Improvements or the installation of equipment without the approval of the City, which approval shall not be unreasonably withheld or delayed, and the City shall be entitled to indemnification satisfactory to it against any liability arising out of performance of any such contracts. All of Lessee's contractors shall maintain automobile, general liability and worker's compensation/employee's liability insurance coverage satisfactory to the City. Lessee shall provide builder's risk insurance naming the City as loss payee with respect to 100% of the value of the improvements to be provided under such contracts. No Leasehold Improvements, unattached fixtures or equipment shall be subject to any liens whether created by operation of law or by agreement. Lessee, at its sole cost and expense, shall also procure all building, safety, fire and other permits as may be necessary for any construction.

(b) City shall give Lessee notice of City's expected completion date not less than thirty (30) days prior thereto. On or after the Commencement Date, Lessee's employees and contractors may enter portions of the Leased Premises for the purpose of construction of Leasehold

Improvements to the Leased Premises as approved by City and installation of Lessee's machinery, equipment, fixtures and other personal property, provided its early access does not cause a delay in the completion of Lessee's Work.

5. Warranties and Representations. Each Party warrants that it will reasonably enforce any and all of its Contractor warranties provided for the Leasehold Improvements for the benefit of the other Party.

6. Change Orders. Where change to the final approved plans becomes necessary, such change shall be submitted to the non-changing party ("Change Order") for approval. Within ten (10) days of receipt of a request to approve the change to the final approved plans, the non-changing party shall either approve the plans or provide a written explanation of any modifications required prior to the non-changing party granting approval. Approvals for Change Orders shall not be unreasonable withheld or delayed. Additional cost associated with Change Orders to the City's Work will be incorporated into the final cost reimbursed by the Lessee.

7. Inspections. Each party may review during design phase the testing and inspection requirements set forth by the other party's bid or contract specifications to ensure all desired testing and inspections are included in the final bid or contract documents. Either party may review field reports, testing and inspection reports, and coordinate onsite inspections as appropriate with the City inspector or Lessee's Project Manager as appropriate.

8. Miscellaneous Provisions

(a) Both parties shall provide the other with a written construction schedule for its work within twenty (20) days after entering into a contract for completion of the work.

(b) To the extent applicable, each party shall secure from city or local governing body a substantial completion document, temporary or permanent certificate of occupancy or the local equivalent for its portion of the work. The substantial completion document shall be provided to the other parties representative.

(c) Each party shall bear the initial cost and expense associated with their work completed under this Exhibit and Agreement. However, Lessee shall reimburse City for its actual cost and expense plus interest as set forth in the Agreement.

(d) City will assign a Chief Construction Inspector upon contracting with a general contractor to act as the construction representative of City who is authorized to make decisions relating to the construction of City's Work which shall be binding on City, so long as such decisions do not conflict with the provisions of this Lease. Lessee shall designate a Project Manager and Contract Manager for Lessee who is authorized to make decisions relating to the construction of Lessee's Work which shall be binding on Lessee, so long as such decisions do not conflict with the provisions of the Agreement. No amendment of this Agreement or separate contract will arise from the decisions, conversations, negotiations, or correspondence between the construction

representatives of City and Lessee unless a definitive written agreement has been signed by a duly authorized officer of City and Lessee.