

**~~NORTHERN COLORADO REGIONAL AIRPORT~~ AMENDED AND RESTATED GROUND  
LEASE AGREEMENT**

**CITIES OF LOVELAND AND FORT COLLINS, COLORADO,**

**AND**

**DISCOVERY AIR, LLC, A COLORADO LIMITED LIABILITY COMPANY**

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**AMENDED AND RESTATED LEASE AGREEMENT**

THIS **AMENDED AND RESTATED** GROUND LEASE AGREEMENT, made and entered into this \_\_\_\_\_ day of January, 2019, 2024 (the “**Effective Date**”), is by and between the Cities of Fort Collins and Loveland, Colorado (the “**Cities**”) and Discovery Air, LLC, a Colorado limited liability company, hereinafter called “**Lessee**.”

**WITNESSETH:**

**WHEREAS**, the Cities own and operate an airport known as the Northern Colorado Regional Airport located in Larimer County, Colorado, including the real property upon which the same is located, (hereinafter, the “**Airport**”) pursuant to an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport on January 22, 2015 (the “**IGA**”), whereby the Cities formed a commission known as the Northern Colorado Regional Airport Commission and delegated certain duties and responsibilities to such commission (the “**Commission**”). The IGA was amended on June 7, 2016 and on June 10, 2019; and

**WHEREAS**, the Cities and Lessee entered into a Lease Agreement dated January 16, 2019 (the “**Original Lease**”) for certain land at the Airport for the construction of Lessee’s master-planned development to include a fixed-based operation (“**FBO**”) facility, hangar and office buildings, expanded ramp, parking facilities and various infrastructure; and

**WHEREAS**, the Cities and Lessee entered into a First Amendment to the Original Lease dated January 12, 2021 (the “**First Amendment**”) whereby the Original Lease was amended to permit Lessee to phase the construction of its facilities along with the rent due for the different phases of development; and

**WHEREAS**, the Cities and Lessee have agreed to further amend the Original Lease, as amended by the First Amendment, to permit additional phasing, to clarify the construction of ramp space, to clarify the payment of rent for the various areas within the Leased Premises (as defined below), and to accommodate certain impacts to Lessee from the COVID pandemic; and

**WHEREAS**, the Cities and Lessee are mutually desirous of entering into this Amended and Restated Lease Agreement (“**Agreement**”) for the use and occupancy of certain areas at the Airport for aeronautical activities; and

**WHEREAS**, the Cities desire to accommodate, promote and enhance general aviation at the Airport and Lessee desires to be assured of the Airport’s continued availability as a base for aircraft; and

**WHEREAS**, the Cities and Lessee have reached an understanding in principle, which envisions Lessee’s construction of a fixed-based operation (“**FBO**”) facility, hangar and office buildings, ~~a restaurant, an overhead transportation system (commonly referred to as a gondola),~~ an expanded tarmac, parking facilities, and various infrastructure related thereto, including such pavement and ramp areas as required by the Airport Minimum Standards for the Provision of Commercial Aeronautical Activities at the Airport, dated September 26, 2008, (the “**Minimum Standards**”), as they may be amended from time to time by the Cities (collectively, “**Improvements**”), the general

layout of which is intended to be located within the preliminary site plan which is attached hereto as **Exhibit "B-2"**, which by this reference is made a part hereof. The Improvements referenced in this Agreement do not include any infrastructure required for Lessee's proposed development that is dedicated to the City of Loveland or another entity; and

**WHEREAS**, the Lessee understands and acknowledges that Lessee's planned Improvements are subject to approval by the City of Loveland through its development review process and to applicable provisions of the Loveland Municipal Code.

**NOW, THEREFORE**, in consideration of the premises and of the rents, covenants and conditions herein contained, the Cities do hereby lease to Lessee the area(s) of the Airport described in Article 2 hereof (the "**Leased Premises**") on the terms and conditions hereinafter set forth.

### **ARTICLE 1: TERM; NEW LEASE; CONTINGENCIES**

**1.1** The term of this Agreement shall commence at 12:01 a.m. on ~~the Effective Date~~ **January 16, 2019** and expire at 11:59 p.m. on the last day of the calendar month in which occurs the day immediately preceding the fiftieth (50th) anniversary of the Effective Date (hereinafter the "**Term**"), unless sooner terminated in accordance with the provisions hereof.

**1.2** If Lessee desires to continue occupying the Leased Premises after the expiration of the Term, Lessee may request that the Cities grant a new lease agreement of no more than fifty (50) years. Such a request shall be made by Lessee in writing and delivered to the Cities not more than eighteen (18) months nor less than six (6) months prior to the expiration of the Term. In consideration of Lessee's substantial capital investment in the Improvements and value created in the form of long-term lease arrangements for same, the Cities agree to negotiate in good faith with Lessee a new lease for the Leased Premises on the terms set forth in this Section 1.2 upon the expiration of the Term. If: (i) Lessee is not then in default under any provision of this Agreement beyond any and all applicable notice and cure periods; (ii) the Cities determine that the Improvements still have sufficient value to the Cities; and (iii) such a new lease would be consistent with the Airport's master plan then in effect and any and all federal rules, regulations, directives, guidelines or other obligations with respect to the Airport, including but not limited to the "grant assurances" to the FAA, then the Cities may, in their sole discretion, offer Lessee a new lease of no more than fifty (50) years of the Leased Premises under such terms and conditions, including rental rates and on the then-current lease form being offered by the Cities.

~~**1.3** This Agreement is specifically conditioned upon Lessee having obtained from the applicable government authorities any and all building permits, special use or conditional use permits, licenses and approvals (collectively, the "**Permits**") required for the construction of the Improvements as contemplated herein, as well as any required off site improvements related thereto. Lessee covenants that it shall use commercially reasonable efforts and due diligence to obtain the Permits and deliver copies of the same to the Cities on or before the date which shall be twenty four (24) months after the Effective Date (the "**Permit Review Date**"). Any and all fees, charges or expenses incurred by the Cities in so cooperating shall be borne by Lessee and shall be reimbursed to the Cities within thirty (30) days of receipt of an invoice for the same. This Agreement is also specifically conditioned upon Lessee having obtained the Cities' as applicable, approval (not to be unreasonably withheld, conditioned or delayed) of site plans, conceptual drawings, and preliminary and final plans and specifications for the Improvements (collectively, "**Plans and Specifications**"). In preparing the Plans and Specifications, Lessee shall ensure that all proposed Improvements to be constructed in City of Loveland will be in full compliance with the then current Development Policy and Application Procedures for Development at Northern Colorado Regional Airport, if any ("**Development Procedures**"). In~~

addition, Lessee shall also ensure that all Plans and Specifications submitted for approval comply with the Airport's design standards, if any, as well as all applicable building, use and zoning regulations. If Lessee is unable, in its business judgment, to assure itself of the availability of the Permits or the Cities' approval of the Plans and Specifications on or before the Permit Review Date, then Lessee shall have the option to terminate this Agreement by written notice delivered to the Cities within thirty (30) days following the Permit Review Date, and if within such time period Lessee shall not have obtained the Permits or the Cities' approval of the Plans and Specifications, then this Agreement shall terminate as of the end of such thirty (30) day period and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. The failure to deliver the termination notice in a timely manner shall render this termination clause inoperative and void. If Lessee has not delivered copies of the Permits to the Cities by the Permit Review Date, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to deliver the Permits to the Cities by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31<sup>st</sup>) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.

**1.4** — In addition, Lessee shall have twenty four (24) months after the Effective Date (the "**Inspection and Entitlement Period**") (i) to obtain, at its sole cost and expense, any and all platting, master planned, subdivision, PUD, land use or other approvals, including approval of a site development plan ("**Entitlements**") which are required to enable Lessee to operate and develop the Leased Premises in accordance with the site plan depicted in Exhibit "B;" (ii) omitted; (iii) to inspect, test, examine, survey or conduct any studies of the Leased Premises as Lessee may deem necessary; (iv) to ascertain the availability of utilities and other services and to finalize any development agreements related thereto; and (v) to otherwise investigate the desirability and feasibility of the Leased Premises for Lessee's use. Lessee further agrees to provide the Commission with Lessee's final site development plan for review prior to Lessee's submittal of such final site development plan to Loveland in order for the Commission to provide input to Loveland regarding the plan. Lessee shall be entitled to terminate this Agreement upon notice in writing to the Cities at any time prior to the end of the Inspection and Entitlement Period if (i) Lessee is unable, in its business judgment, to assure itself that it will be able to obtain the necessary Entitlements, or finalize any development agreements related to utilities and other necessary infrastructure or (ii) Lessee otherwise determines, in its business judgment, that the condition of the Leased Premises is unsatisfactory for Lessee's intended use, or that any necessary utilities, services, or approvals are unavailable. If Lessee so terminates this Agreement, all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. If Lessee does not notify the Cities prior to the end of the Inspection and Entitlement Period of Lessee's election to terminate this Agreement for any of the foregoing reasons, then this termination clause shall be inoperative and void, and this Agreement shall remain in full force and effect. If Lessee has not obtained approval of a site development plan for Lessee's development of the Leased Premises in substantially similar form to the plan depicted on **Exhibit B**, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to obtain approval of such site development plan by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31<sup>st</sup>) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.

**1.5** — In the event Lessee has not commenced construction of any horizontal improvements to the Leased Premises for example, grading work or installation of utilities, within three (3) years after the Effective Date of this Agreement, subject to extension mutually agreed upon in writing by the parties, this Lease shall automatically and immediately terminate. In addition, in the event Lessee has not commenced construction of any of the vertical improvements comprising Phase I (as hereinafter defined), subject to extension mutually agreed upon by the parties, this Agreement shall automatically and immediately terminate. Nothing contained herein shall prohibit or operate to prohibit Lessee from applying for or seeking reimbursement for any of the Improvements from any local government, state or federal entity.

## **ARTICLE 2: LEASED PREMISES**

**2.1** The Leased Premises consist of the parcel of land described in **Exhibit “A-2”**, which is attached hereto and by this reference made a part hereof.

**2.2** The Parties further acknowledge that a public use taxiway exists on the west portion of the Leased Premises that connects current extended taxiway Delta with current taxiway Alpha (hereinafter the “Existing Tarmac”). The Existing Tarmac is ~~identified~~depicted on Exhibit B-2, attached hereto. Use, access, maintenance and repair of such Existing Tarmac shall be subject to the terms and conditions set forth in this Agreement. Without limiting the foregoing, the Cities acknowledge that the Improvements, except for the Existing Tarmac ~~and Additional Taxiway as described in Section 5.9.2 below, to be constructed upon the Leased Premises,~~ shall, during the term of this Agreement, be and remain the property of Lessee or any successor in interest.

**2.3** Lessee acknowledges that a portion of the Leased Premises may be subject to an existing intergovernmental lease agreement between the Cities and the State of Colorado, Department of Public Safety, Division of Fire Prevention and Control (the “Division”) for its SEAT base. To the extent that the leased premises for the SEAT base overlaps with the Leased Premises of this Lease, it shall be Lessee’s obligation to obtain the agreement of the Division to relocate its SEAT base to another location on the Airport property, which relocation shall be accomplished at Lessee’s sole cost and expense. The Cities agree to cooperate in executing a lease amendment or new lease with the Division as necessary to accomplish the relocation.

**2.4** The Cities hereby represent and warrant that they have full right and authority to enter into this Lease and that no other interest exists in the Lease Premises that would materially adversely affect Lessee’s use and enjoyment of the Leased Premises as contemplated herein ~~and that if during the Inspection and Entitlement Period any condition is found to exist that in Lessee’s sole reasonable discretion materially adversely may affect Lessee’s use and enjoyment of the Leased Premises, Lessor shall remove, remediate or otherwise mitigate such condition to Lessee’s reasonable satisfaction at Lessor’s sole cost and expense.~~

## **ARTICLE 3: USE OF LEASED PREMISES**

**3.1** Lessee agrees for itself and its sublessees that it is permitted only to use the Leased Premises for aeronautical activities. The term “Aeronautical Activities” shall mean any activity or service that involves, makes possible, facilitates, is related to, assists in, or is required for the operation of aircraft, or which contributes to or is required for the safety of aircraft operations. Lessee and its sublessees may use, occupy and sublease the Leased Premises for the following aeronautical purposes and for no other purpose whatsoever unless approved in writing by the Cities:

**3.1.1** For the construction, installation, maintenance, and operation of the Improvements including an FBO facility, a restaurant, an overhead transportation system, expanded tarmac area, parking facilities, office and retail space, and hangar space be used for the parking, storage, servicing, repair, maintenance, modification, and construction of aircraft. Lessee further agrees that the parking facilities shall not exceed the number of parking spaces ultimately approved in the site plan to be dedicated to customers of the FBO facility, restaurant, office and retail space. Operation of the FBO facility and the provision of FBO Services (as hereinafter defined) are referred to herein as the “**FBO Operation**”. Lessee shall conduct the FBO Operation (or cause same to be conducted) in compliance with the Minimum Standards.

In addition to compliance with the Minimum Standards, all uses on the Leased Premises shall also comply with the City of Loveland, Colorado, building, use and zoning codes, regulations and requirements applicable to the Leased Premises. The Leased Premises shall not be used for residential purposes.

**3.1.2 “FBO Services”** as used herein shall mean all essential and specialized aircraft services necessary to ensure that the basic needs of aircraft owners, pilots, and passengers are provided for at the Airport at a minimum level or above, as more fully set forth in the Minimum Standards. ~~Should Lessee desire the FBO to provide aircraft fueling services, the parties shall execute an amendment to this Lease to include the appropriate terms and conditions for such fueling operations in compliance with the Minimum Standards. Such amendment shall require approval by the City Managers for the Cities to the extent permitted by the Cities’ charters and Municipal Codes or by the City Managers’ duly authorized designees~~ FBO Services shall include aircraft fueling services, provided that all such fueling services must be conducted in accordance with the Minimum Standards and Rules and Regulations. The Cities intend to build a consolidated fuel farm at the Airport. Until such time as a consolidated fuel farm is constructed and operational, Lessee may construct and use a temporary fuel storage facility on the Leased Premises, subject to review and approval by the Cities and Fire Marshal. The Cities hereby commit to grant a temporary variance from the Minimum Standards to permit Lessee, or the FBO intending to provide FBO services on the Leased Premises, less than two grades of aviation fuel and less than the required fuel storage capacity, provided that all other requirements of the Minimum Standards shall apply and the temporary variance shall terminate upon completion of the consolidated fuel farm or construction of permanent fuel storage facilities on the Leased Premises.

**3.1.3** Nothing contained in this Agreement shall be construed as granting an exclusive license, permit, franchise or other right to provide FBO Services or any other services. Lessee understands and agrees that the Cities may lease other property at the Airport to other tenants who provide or will cause to be provided the same or similar services.

**3.1.4** The Cities make no representations, guarantees, or warranties that the Leased Premises may be lawfully used for the purposes set forth in this Section 3.1. Lessee shall have the sole responsibility of obtaining all applicable permits or other governmental approvals necessary to construct and use the Leased Premises as intended herein, including all permits and/or approvals required by the City of Loveland.

#### **ARTICLE 4: RENT**

**4.1** Commencing on the Effective Date and continuing until the Rent Commencement Date (hereinafter defined), Lessee shall pay to the Cities an annual rent of \$0.05 per square foot for the Rental Area (as hereinafter defined), for a total of \$28,204.80 per year, subject to adjustment as set forth herein.

**4.2** Rent shall be subject to the phasing set forth below:

(a) **Phase I.** Commencing on the earlier of (i) January 1, 2021 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase I Rental Area (as hereinafter defined) (the

**“Phase I Rent Commencement Date”**), Lessee agrees to pay to the Cities for the first (1<sup>st</sup>) year following the Phase I Rent Commencement Date an annual rent of \$0.15 per square foot for the Phase I Rental Area, for a total of ~~\$18,044.10 per year, subject to adjustment pursuant to Section 4.2(f).~~ 15,569.70 per year. Commencing on the 8th anniversary of the Phase I Rent Commencement Date (the **“Phase I Rent Escalation Date”**), Lessee shall pay to the Cities an annual rent of 167% of the previous year’s annual rent for the Phase I Rental Area, ~~subject to adjustment pursuant to Section 4.2(f).~~ **“Phase I Rental Area”** as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on **Exhibit “C-1” (including Phase I Hangar/Apron and Parking Areas)** which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase I Rental Area contains ~~120,294~~ 103,799 square feet. The Phase I Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area shall ~~remain as set forth in Paragraph 4.1 of the Lease~~ \$0.05 per square foot for the remaining Rental Area until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred. The term **“Additional Phase Rent Commencement Date”** shall mean any of the following: the Phase II Rent Commencement Date (as hereinafter defined), Phase III Rent Commencement Date (as hereinafter defined), ~~or Phase IV Rent~~ Phase IV Rent Commencement Date (as hereinafter defined), Phase V Rent Commencement Date (as hereinafter defined), and Phase VI Commencement Date (as hereinafter defined), as the case may be.

~~The parties acknowledge and agree that Lessee intends to develop and construct the remaining Leased Premises in phases comprising currently undetermined portions of the Leased Premises at times reasonably determined by Lessee.~~

(b) **Phase II.** Commencing on the earlier of (i) January 1, ~~2026~~ 2028 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase II Rental Area (as hereinafter defined) (the **“Phase II Rent Commencement Date”**), Lessee agrees to pay to the Cities for the first (1<sup>st</sup>) year following the Phase II Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase II Rental Area, ~~subject to adjustment pursuant to Section 4.2(f).~~ Commencing on the 8th anniversary of the Phase II Rent Commencement Date (the **“Phase II Rent Escalation Date”**), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase II Rental Area, ~~subject to adjustment pursuant to Section 4.2(f).~~ **“Phase II Rental Area”** as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on **Exhibit “C-1” (including Phase II Hangar/Apron and Parking Areas)** which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase II Rental Area contains ~~242,626~~ 124,935 square feet. The Phase II Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards. The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area and Phase II Rental Area shall ~~remain as set forth in Paragraph 4.1 of the Lease~~ \$0.05 per square foot until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.



(c) **Phase III.** Commencing on the earlier of (i) January 1, ~~2029~~2031 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase III Rental Area (as hereinafter defined) (the “**Phase III Rent Commencement Date**”), Lessee agrees to pay to the Cities for the first (1<sup>st</sup>) year following the Phase III Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase III Rental Area ~~subject to adjustment pursuant to Section 4.2(f).~~ Commencing on the 8th anniversary of the Phase III Rent Commencement Date (the “**Phase III Rent Escalation Date**”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase III Rental Area, ~~subject to adjustment pursuant to Section 4.2(f).~~ “**Phase III Rental Area**” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C”-1” (including Phase III Hangar/Apron and Parking Areas) which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase III Rental Area contains 150,62268,356 square feet. The Phase III Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards. The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area, Phase II Rental Area, and Phase III Rental Area shall ~~remain as set forth in Paragraph 4.1 of the Lease~~ be \$0.05 per square foot until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.

(d) **Phase IV.** Commencing on the earlier of (i) January 1, ~~2030~~2032 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase IV Rental Area (as hereinafter defined) (the “**Phase IV Rent Commencement Date**”), Lessee agrees to pay to the Cities for the first (1<sup>st</sup>) year following the Phase IV Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase IV Rental Area, ~~subject to adjustment pursuant to Section 4.2(f).~~ Commencing on the eighth anniversary of the Phase IV Rent Commencement Date (the “**Phase IV Rent Escalation Date**”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase IV Rental Area, ~~subject to adjustment pursuant to Section 4.2(f).~~ “**Phase IV Rental Area**” as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit “C”-1” (including Phase IV Hangar/Apron and Parking Areas) which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase IV Rental Area contains 162,00679,945 square feet. The Phase IV Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards. The parties acknowledge and agree that the annual rent for the remaining Rental Area (as hereinafter defined) other than the Phase I Rental Area, Phase II Rental Area, Phase III Rental Area and Phase IV Rental Area shall be \$0.05 per square foot until a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.

(e) **Phase V.** Commencing on the earlier of (i) January 1, 2033 and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located

within the Phase V Rental area (as hereinafter defined) (the “Phase V Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1<sup>st</sup>) year following the Phase V Rent Commencement Date an annual rent of 300% of the prior year’s annual rent for the Phase V Rental Area. Commencing on the eighth anniversary of the Phase V Rent Commencement Date (the “Phase V Rent Escalation Date”), Lessee shall pay to the Cities an annual rent of 167% of the prior year’s annual rent for the Phase V Rental Area. “Phase V Rental Area” as used herein shall mean the area comprising a portion but not all of the Leased Premises upon which the parties hereto have agreed to calculate annual rental for the Leased Premises, the total Rental Area contains 675,548 square feet as generally depicted and identified on Exhibit “C”-1 (including Phase V Hangar/Apron and Parking Areas) which is attached hereto and by this reference made a part hereof. The, the parties hereto have agreed that the Phase V Rental Area contains 100,357 square feet. The Phase V Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards. The escalation of Rent described herein above is generally described in Exhibit “D” attached hereto, such Exhibit is for demonstration purposes and is not intended to control the Rent Commencement Date or Rent Escalation Date for any Phase (as defined for each Phase above), such Dates to be established as set forth herein above.

~~(e) **Contingent Phase V.** The Lessee shall not owe to the Cities any parties acknowledge and agree that the annual rent for the remaining portion of the Leased Premises not included as a Phase Rental Area (“Remainder Area”) Rental Area (as hereinafter defined) other than the Phase I Rental Area, Phase II Rental Area, Phase III Rental Area, Phase IV Rental Area and Phase V Rental Area shall be \$0.05 per square foot until such time as the Lessee commences any development of the Remainder Area. For purposes of this Lease, “development” shall mean any of the following: (i) use of land; (ii) construction; and/or (iii) clearing, grading, re grading, or cutting in anticipation of the construction of infrastructure, structures, or buildings, except that “development” shall not include solely landscaping or other activities or use of the Remainder Area that are not intended for the production of revenue for the Lessee. Commencing on the first day of the month following the date that the Lessee begins development of the Remainder Area, Lessee shall pay rent to the Cities as follows: (i) If the Lessee develops the Remainder a subsequent Additional Phase Rent Commencement Date (as hereinafter defined) has occurred.~~

(f) **Phase VI.** Commencing on the earlier of (i) January 1, 2034, and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements located within the Phase VI Rental Area (as hereinafter defined) (the “Phase VI Rent Commencement Date”), Lessee agrees to pay to the Cities for the first (1<sup>st</sup>) year following the Phase VI Rent Commencement Date as follows: (i) If the Lessee develops the Phase VI Rental Area for aeronautical uses, the Lessee shall pay rent at the same rate as Lessee has paid for each Phase listed above starting at the commencement rate (\$0.15 per square foot adjusted for CPI for the term the Lease has been in effect since the Phase I Commencement Date) for a period of eight (8) years and increasing to the escalation rate of 167% of the previous year’s annual rent; or (ii) If the Lessee develops the ~~Remainder~~Phase VI Rental Area for non-aeronautical uses, Lessee shall pay rent to the Cities at the Airport’s improved property rental rate in effect at the time or fair market value, whichever is required by the FAA. Lessee acknowledges and agrees that if the Remainder Area is developed for non aeronautical uses, such use may require release of the Remainder Area by the FAA, which release shall be in the sole discretion of the FAA. If the Lessee fails to develop the Phase VI Rental Area by January 1, 2034, Lessee shall pay rent at the same rate as lessee has paid for each Phase

listed above starting at the commencement rate (\$0.15 per square foot adjusted for CPI for the term the Lease has been in effect since the Phase I Commencement Date) for a period of eight (8) years and increasing to the escalation rate of 167% of the previous year's annual rent. The Phase VI Rental Area as used herein shall mean the area comprising a portion but not all of the Leased Premises generally depicted and identified on Exhibit "C-1" which is attached hereto and by this reference made a part hereof; the parties hereto have agreed that the Phase VI Rental Area contains 175,199 square feet. The parties agree and acknowledge that development and sublease of the Phase VI Rental Area for non-aeronautical use may require prior approval of the FAA. At any time prior to January 1, 2034, Lessee may, by providing written notice to Cities as provided herein, remove the Phase VI Rental Area from the Leased Premises.

(f) \_\_\_\_\_ (g) **Ramp Area.** - The Parties hereto agree that Ramp Area as depicted in Exhibit C-1 contains 496,356 square feet. For the first two years from the Effective Date, Lessee shall pay \$0.05 per square for the Ramp Area as shown on Exhibit C-1. The Leased Rate will remain \$0.05 per square foot subject to adjustment per Section 4.3 for the duration of the Agreement. Lessee's development of the Ramp Area shall be consistent with the provisions of Section 5.9.

(h) \_\_\_\_\_ **"Rental Area"** as used herein shall mean area comprising a portion but not all of the Leased Premises upon which the parties hereto have agreed to calculate annual rental for the Leased Premises, the total Rental Area contains 1,148,946 area square feet as depicted in Exhibit "C-1" which is attached hereto and by this reference made a part hereof. The Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

(i) \_\_\_\_\_ The escalation of Rent described herein above is generally described in Exhibit "D-1" attached hereto, such Exhibit is for demonstration purposes and is not intended to control the Rent Commencement Date or Rent Escalation Date for any Phase (as defined for each Phase above), such Dates to be established as set forth herein above.

**4.3** Commencing on May 1<sup>st</sup>, 2022, and on May 1<sup>st</sup> in each year thereafter during the remainder of the Term, the ~~annual rent~~rental rate for each phase and the "Ramp Area" as described above shall be adjusted by multiplying the annual ~~rent~~rental rate payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year. If this Agreement is executed after January 1<sup>st</sup>, such C.P.I. increase for the calendar year in which this Agreement is executed shall be prorated. The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for the Denver/Boulder Area as published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to use the C.P.I., or this index, an equivalent or comparable economic index will be used.

**4.34** The annual rent payable hereunder may be paid in advance in annual installments, or shall be paid in equal monthly installments on the first day of each month in advance at the office of the Airport Manager or at such other office as may be directed in writing by the Cities. Payments due to the Cities under this Agreement shall be made in legal tender of the United States and paid without offset. In addition to any other remedies provided in this Agreement, in the event that any rental, fee or charge set forth in this Agreement is not paid to the Cities within ten (10) days of the date due, Lessee agrees to pay a late charge of \$50.00 for each such late payment, and default interest shall accrue on such payment from the date the payment was due, at a rate of twelve percent (12%) per annum.

With respect to the hangars Lessee proposes to construct as part of the Improvements depicted on Exhibit B-2, Lessee agrees that the ~~the~~ hangars shall, collectively, be at least a total square footage reasonably consistent with Exhibit B-2 to be finally ~~determined during the Inspection and Entitlement Period~~ as part of site plan development approval process and shall have a concrete or asphalt floor, with each Hangar to have at least one aircraft access door sized to accommodate an average private aircraft. Lessee shall use commercially reasonable and diligent efforts to complete construction of the Hangars within ~~3 years~~ 3 years from the completion of horizontal infrastructure needed to serve the same.

**4.45** Lessee, as additional rent, shall construct and maintain a paved aircraft ramp area on the Leased Premises (the "Ramp") pursuant to Section 5.9. The Ramp must be designed and built to size and specifications in compliance with the Minimum Standards, and for a minimum weight bearing capacity, established by the Cities, built to the full width of the Leased Premises, and to connect with adjacent taxiway, ramp and/or auto parking areas, in order that a continuous and safe pavement section results as shown in Exhibit C-1. In calculating the square foot apron required for FBO operations under the Minimum Standards, this calculation includes all ramp and aircraft circulation spaces, including the fifty (50) feet adjacent to hangars. If access to the Leased Premises is not available on existing taxiways and/or roadways, then Lessee may also be requested to construct the same ~~during the Inspection and Entitlement Period~~ as part of site plan development approval process. It is the responsibility of Lessee to maintain the entire Ramp area, and all other pavement areas on the Leased Premises, in a manner, which is safe and clean of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. Notwithstanding the foregoing, the Cities shall be responsible for snow removal on the aircraft Ramp area excluding any parking and side lots and excluding any area within three feet (3') of any Hangar; provided, however, that priority of snow removal shall be in accordance with the Cities' Snow Removal Plan as it now exists or as it may be amended in the Cities' sole discretion. Lessee grants to users of the Airport the right to use aircraft Ramp areas on the Leased Premises for passage of aircraft at all times on and near the adjacent taxiway. The construction time and default provisions of subsection 4.4 shall be applicable to the Ramp described in this subsection.

**4.56** The Cities understand that Lessee intends to sublease portions of the Leased Premises and/or the Improvements located thereon and, in such instances, the Cities may agree to accept payments of any rents or fees required hereunder directly from such sublessees; provided, however, that the obligations of such a sublessee to make any payment required hereunder directly to the Cities shall not relieve Lessee of its liability or obligations for such payment.

**4.67** Fees due under the Minimum Standards or to obtain any permit or license required by the Minimum Standards for commercial activities conducted in whole or part on the Leased Premises shall be paid by Lessee to the Cities as additional rent under this Agreement.

**4.78** In order to provide flexibility with the phasing of the development, if a later Phase were to be initiated before any other undeveloped Phase, that would replace the next Phase in the rent schedule. For example, purposes, if Phase V were to be the next phase of the development and Phase II development has not been initiated, Phase V would take the place of the Phase II rent schedule. In addition to any requirements to obtain prior approval of revised site plans from the City of Loveland, if applicable, the Lessee agrees to provide no less than sixty (60) days' advance notice to the Cities along with a revised site plan regarding any such changes in phasing.

## **ARTICLE 5: ACCEPTANCE, CONSTRUCTION, CARE, MAINTENANCE, AND REPAIR**

**5.1** Subject to the provisions of Sections 1.3 and 1.4 hereof, Lessee accepts possession of the Leased Premises "as is" in its present condition, and, subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration ("FAA"), the Airport Rules and Regulations (as hereinafter defined), and by ordinances of the Cities. The Cities represent to Lessee that, to their knowledge, the Leased Premises are free of any adverse environmental conditions and no part of the Leased Premises lies in a flood hazard area or constitutes a fresh water wetland, nor is any part of the Leased Premises within one hundred feet (100') feet of a fresh water wetland. Except as may otherwise be provided for herein, the Cities shall not be required to maintain nor to make any improvements, repairs or restoration upon or to the Leased Premises or to any of the improvements presently located thereon or placed thereon by Lessee.

**5.2** Lessee may construct the Improvements on the Leased Premises for the uses specified in Article 3 hereof and shall not be required to obtain any approvals from the Cities in connection therewith so long as the construction of the Improvements ~~is substantially~~ is substantially consistent with the previously approved Plans and Specifications. Prior to the commencement of any construction of the Improvements, Lessee shall have the Leased Premises staked by a certified surveying company to ensure all Improvements are place accurately on the Leased Premises. Within ninety (90) days of any certificate of occupancy being received, Lessee shall submit to the Airport Manager a full set of as-built record drawings of the completed Improvements, which among other things, depicts exact locations of the completed Improvements, including utilities, made on and/or off of the Leased Premises.

**5.3** All improvements, alterations, additions, removal and relocation of structures and construction projects constructed on the Leased Premises shall in all respects be accomplished in a good and workmanlike manner; in accordance with previously approved Plans and Specifications and the applicable building code; pursuant to a valid building permit, when applicable, issued by the applicable authority; according to the terms and conditions of such building permit; and in a manner consistent with state and federal requirements.

**5.4** Lessee shall include in all construction contracts entered into by it in connection with any construction of the Improvements, a provision requiring the contractor to indemnify, release, and save harmless the Cities, their commissioners, officers, representatives, agents and employees from

any and all loss of or damage to property, or injuries to, or death of, any person or persons and from any and all damages, suits, causes of action, and judgments, including workman's compensation claims, in any way resulting from, or arising out of, directly or indirectly, such contractor's operations in connection herewith, and the contractor's use or occupancy of the Leased Premises, and of any portion of the Airport, and including acts and omissions of officers, employees, representatives, agents, servants, subcontractors, assigns, and suppliers of the contractor as well as all other persons doing business with contractor; provided, however, that the Cities shall give the contractor prompt and timely notice of any claim made against the Cities which may result in a judgment against the Cities because of such injuries or damages, and shall deliver to the contractor all papers, notices, documents, summons and other legal process served upon the Cities or its agents; provided further, that the contractor and its insurer, or either of them, shall have the right to compromise and defend all claims, actions, suits and proceedings to the extent of the contractor's interests therein; and, provided further, contractor need not indemnify, release and save harmless the Cities against loss of property, or injury to or death of persons, caused by the negligence or willful misconduct of the Cities, their commissioners, agents or employees. Lessee shall require the contractor to furnish liability insurance in such amounts as may be reasonably required by the Cities. Lessee shall also include in any construction contract such provisions as may be reasonably required by the Cities relating to the operations of the contractor on the Airport. Lessee shall provide to the Cities a copy of all construction contracts entered into in connection with the Leased Premises.

**5.5** When construction work involving structural components or structural modification has been completed, Lessee shall deliver to the Cities a certificate of an architect or structural engineer licensed to practice in the State of Colorado, not in regular employ of either party hereto and familiar with the construction of said improvements, certifying that the improvements have been constructed substantially in accordance with the approved Plans and Specifications and in compliance with all laws, ordinances, and governmental rules and regulations and orders and certifying that in the engineer's or architect's opinion such improvements have an expected useful life of a duration which is customary for such improvements under similar conditions and circumstances.

**5.6** Except as otherwise expressly provided herein, Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense for all repair and maintenance whatsoever on the Leased Premises and all Improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, Lessee, without limiting the generality hereof, shall, except as otherwise expressly provided herein:

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**5.6.1** Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all Improvements thereon and all of Lessee's fixtures, equipment and personal property which are located on any part of the Leased Premises. Lessee shall not park or leave, or allow to be parked, aircraft on the taxiways, ramps or pavement adjacent to any building in a manner which unduly interferes with or obstructs access to other buildings or movement on adjacent taxiways.

**5.6.2** Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

**5.6.3** Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, if any, and in particular shall plant, maintain and replant any landscaped areas.

**5.6.4** Be responsible for the maintenance and repair of all utility services lines placed on the Leased Premises and used by Lessee exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers.

**5.6.5** Maintain (or cause to be maintained) all paved areas of the Leased Premises, excluding the Additional Taxiway (hereinafter defined), in a manner that is safe and clear of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users.

**5.7** Lessee shall conduct an initial Phase I environmental study ("Phase I") for the Leased Premises within six (6) months of the Effective Date. Such Phase I shall serve as a baseline for the provisions of this Paragraph 5.7 and 5.8 below. If such Phase I identifies conditions that need to be remediated, Lessor shall forthwith do so at its sole cost and expense, if Lessee so elects. Lessee shall notify the Cities of its decision to remediate within thirty (30) days of completion of the Phase I. If Lessee does not elect to remediate, the Lease shall terminate on the thirty-first (31<sup>st</sup>) day after completion of the Phase I. Thereafter, Lessee shall not cause or permit any Hazardous Material as said term is hereinafter defined, to be brought upon, kept or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or sublessees without the prior written consent of the Cities, which consent the Cities shall not unreasonably withhold, condition or delay as long as Lessee demonstrates to the Cities' reasonable satisfaction that such Hazardous Material is necessary, desirable or useful to Lessee's business or operations on the Leased Premises and will be used, kept and stored in compliance with all laws regulating such Hazardous Material ("**Hazardous Material Regulations**"). Notwithstanding the foregoing, aircraft fuel, lubricating oil, antifreeze and biodegradable cleaning solvents used in the course of aircraft maintenance may be brought upon and used on the Leased Premises in the ordinary course of Lessee's or its sublessees' operations as long as any such materials are used, kept, stored, transported and disposed of in compliance with all applicable Hazardous Material Regulations, including, without limitation, the Storm Water Management Plan adopted by the Cities. If (i) Lessee breaches the obligations stated in the preceding sentence, or (ii) if the presence of Hazardous Material on the Leased Premises if caused by or voluntarily permitted by Lessee results in contamination of the Leased Premises, then Lessee shall indemnify, defend and hold the Cities harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the lease term as the result of such contamination. This indemnification of the Cities by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Leased Premises that occurred during the term of this Agreement as a result of Lessee's or its sublessees' acts. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by Lessee results in any contamination of the Leased Premises, Lessee shall promptly take all actions, at its sole expense, as are necessary to return the Leased Premises to the condition existing prior to the introduction of any such Hazardous Material to the Leased Premises.

**5.8** "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the

United States Government and includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Act (33 U.S.C. §1321); (v) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Compensation and Liability Act (42 U.S.C. §9601); or (vii) defined as a "regulated substance" pursuant to Subchapter IX Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991).

**5.9** As shown on the Discovery Air Lease Areas site plan attached hereto as **Exhibit "BC-1"**, Lessee may, as part of the Improvements, construct ~~an expanded tarmac area and other~~ paved areas ~~outside the Rental to~~ be used for aircraft taxiing, towing and parking ("Ramp Area ~~but within the boundaries of the Leased Premises (such expanded tarmac)~~"), consistent with the Minimum Standards and other paved areas being hereinafter referred to upon such schedule and in phases as "**Additional Paved Areas**". ~~determined by Lessee in its sole discretion.~~ Lessee shall construct the ~~Additional Paved Areas~~Ramp Area in compliance with FAA standards for airport design in effect at the time of construction. The ~~Additional Paved Areas are~~Ramp Area is depicted on **Exhibit "AC-1"** comprising a portion but not all of the Leased Premises. ~~It is agreed that future parking areas to serve a restaurant and related facilities will NOT be subject to FAA standards and will not be eligible for FAA reimbursement contemplated below for expanded tarmac areas.~~

**5.9.1** ~~The parties hereto acknowledge and agree that portions of the Additional Paved Areas that may be designated as expanded tarmac and other paved areas subject to airport ground control may be eligible for reimbursement from the FAA discretionary grant resources. Accordingly, though Lessee shall be responsible for the initial construction of such Additional Paved Areas, the Cities agree to timely apply for FAA discretionary grant resources for purposes of reimbursing Lessee for the cost of constructing same only to the extent that such grant request does not disproportionately impact Airport projects; provided, however, Lessee acknowledges that the granting of such funding shall be in the FAA's sole discretion. If the FAA approves grant funding for the construction of any portion of the Additional Paved Areas, the Cities shall so notify Lessee (which notification shall include details on any and all FAA requirements for such funding) and shall reimburse Lessee for the cost of constructing same (such reimbursement not to exceed the amount granted by the FAA) within ninety (90) days after the Cities have received both such FAA funding and Lessee's written request for reimbursement, which written request shall include a final lien waiver from Lessee's general contractor and invoices and other reasonable documentation showing the cost of constructing such portions of the Additional Paved Areas together with any other documentation that may be required by the FAA. If Lessee so elects to construct such portions of the Additional Paved Areas, same~~Ramp Area shall be built in accordance with all state and federal regulations, including those of the FAA Advisory Circular 150/5370-10H, Standard Specifications for Construction of Airports and the Transportation Security Administration ("TSA"), and Lessee shall warrant that the same shall be free of defects in materials and workmanship for a period of two (2) years after substantial completion and acceptance by the Cities of same.

**5.9.2** ~~Upon completion of any of the Additional Paved Areas, Lessee shall be deemed to have granted to the Cities and Airport users the right to use same from time to time for passage of aircraft and other vehicles. If Lessee is reimbursed for its costs in constructing portions of the Additional Paved Areas, Lessee shall pay the Cities as additional rent the Airport's current improved land lease rate for the square footage of the Additional Paved Areas except for those areas defined as transitional surface for passage of aircraft that will not be solely utilized by the Improvements on the Leased Premises (the "Additional Taxiway"). The Additional Taxiway, once determined, will be~~



~~marked and striped as a taxiway, and will be designed to replace the Existing Taxiway Delta and Alpha One and will conform to FAA design standards for a Group I aircraft as defined in FAA Advisory Circular 150/5300-13A. At all times, the Existing Taxiway shall remain open and accessible for the passage of aircraft until such time as the Additional Taxiway is complete and acceptable for the passage of aircraft in the sole discretion of the Airport Manager. The Additional Taxiway will connect current taxiway Delta with current taxiway Alpha Throughout the term of this Agreement, the Cities shall be responsible for the maintenance and repair of the Existing Taxiway and Additional Taxiway (the "Airport Maintained Paved Areas"). Lessee shall have the right to charge reasonable and customary tie down fees for temporary occupancy by aircraft of the Additional Paved Areas (other than transit or de minimus occupancy). Notwithstanding anything contained in this Agreement to the contrary, it is expressly agreed and understood that Lessee has no obligation to monitor or police vehicles (except those allowed on the Airport by Lessee or its sublessees) on the Airport Maintained Paved Areas to determine if they are legally upon the Airport or to determine if they are operating in a safe condition or in a safe manner. Lessee shall be responsible (at its cost and expense) for maintaining the Additional Paved Areas outside of the Additional Taxiway in a manner that is safe and clear of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. The Cities shall be solely responsible (at their cost and expense) for maintaining only the Additional Taxiway.~~

**5.10** Subject to the provisions of Article 10, Lessee shall keep the Leased Premises, and the Improvements constructed by Lessee or its sublessees on the Leased Premises free and clear of any liens and encumbrances, except as contemplated by Article 10, or unless expressly approved in writing by the Cities, and shall indemnify, hold harmless and defend the Cities from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee or its sublessees. In the event any lien is filed, Lessee shall do all acts necessary to discharge any lien within ten (10) days of filing, or if Lessee desires to contest any lien, then Lessee shall deposit with the Cities such security as the Cities shall reasonably demand to insure the payment of the lien claim. In the event Lessee fails to pay any lien claim when due or fails to deposit the security with the Cities, then the Cities shall have the right to expend all sums necessary to discharge the lien claim, and Lessee shall pay the Cities, as additional rental when the next rental payment is due, all sums expended by the Cities in discharging any lien, including reasonable attorneys' fees and costs.

## **ARTICLE 6: ADDITIONAL OBLIGATIONS OF LESSEE**

**6.1** Lessee shall conduct its operations and cause each of its sublessees to conduct their operations hereunder in an orderly and proper manner, considering the nature of such operations, so as not to unreasonably annoy, disturb, endanger or be offensive to others.

**6.2** Further, Lessee shall take all reasonable measures:

**6.2.1** To reduce to a practicable minimum vibrations tending to damage any equipment, structure, buildings or portions of buildings.

**6.2.2** Not to produce or allow to be produced on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbances that interfere with the operation by the Cities or the FAA of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.

**6.3** Lessee shall comply and shall require all of its sublessees to comply with all federal, state and municipal laws, ordinances, rules, regulations and requirements, the Minimum Standards, Airport security rules and regulations, and other Airport rules and regulations, as they now exist or

may hereafter be amended or promulgated, and the terms of this Agreement, applicable to the Leased Premises and the Improvements thereon and its operations and activities at the Airport hereunder.

**6.4** Lessee and its sublessees shall commit no nuisance, waste or injury on the Leased Premises, and shall not do, or permit to be done, anything that may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.

**6.5** Lessee shall take measures and shall require its sublessees to take measures to ensure security in compliance with FAA and TSA regulations and the Airport Security Plan, as they now exist or may hereafter be amended or promulgated.

**6.6** Lessee and its sublessees shall not do, nor permit to be done, any act or thing which will invalidate or conflict with any fire insurance policies or regulations applicable to the Leased Premises or any part thereof; or other contiguous premises at the Airport.

**6.7** Lessee and its sublessees shall be responsible for complying with all laws and regulations related to ~~the~~ the installation, maintenance or operation of any restaurant, kitchen, stand or other establishment of any type for the sale of food or of any vending machines or device designed to dispense or sell merchandise or services of any kind to the general public.

**6.8** Except for uses permitted under Article 3 hereof, Lessee shall not provide or allow to be provided, any services of any sort on the Leased Premises for commercial purposes without all required development approvals, and a license from the Cities if and as required by the Minimum Standards then in effect.

**6.9** Lessee will conduct its operations and require its sublessees to conduct their operations in such a manner as to keep the noise produced by aircraft engines and component parts thereof, and any other noise, to a minimum, by such methods as are practicable, considering the extent and type of the operations of Lessee and/or its sublessees and the limitations of federal law. Lessee and its sublessees agree that all aircraft based on the Leased Premises shall comply with the noise standards established under Part 36 of Title 14 of the Code of Federal Regulations ("FAR 36") as amended from time to time. In addition, Lessee and its sublessees will employ the maximum amount of noise arresting and noise reducing devices that are available and economically practicable, considering the extent of their operations, but in no event less than those devices required by federal, state or local law. In its use of the Leased Premises, Lessee and its sublessees shall take all possible care, exercise caution and use commercially reasonable efforts to minimize prop or jet blast interference and prevent jet blast damage to aircraft operating on taxiways and to buildings, structures and roadways, now located on or which in the future may be located on areas adjacent to the Leased Premises. In the event the Cities determine that Lessee and/or its sublessees has not curbed the prop or jet blast interference and/or damage, Lessee hereby covenants and agrees to erect and maintain at its own expense such structure or structures as may be necessary to prevent prop or jet blast interference, subject, however, to the prior written approval of the Cities as to type, manner and method of construction.

**6.9** Lessee shall not store nor permit the storage of disabled aircraft or any equipment or materials outside of the Improvements on the Leased Premises for any period in excess of thirty (30) consecutive days without the prior written approval of the Cities.

**6.10** On forms and at the frequency prescribed by the Airport Manager at least annually, and with respect to each aircraft regularly stored on the Leased Premises, Lessee shall provide the Cities with the (a) make and model (b) N-number and (c) identity and address of the registered owner. This requirement shall apply to aircraft whether owned by Lessee or another party, and regardless of whether its storage is subject to the Minimum Standards.

## **ARTICLE 7: INGRESS AND EGRESS**

**7.1** Lessee and its sublessees shall have the right of ingress and egress between the Leased Premises and the public landing areas at the Airport by means of connecting taxiways; and between the Leased Premises and the entrance(s) to the Airport by means of connecting paved roads. In addition, Lessee and its sublessees shall have the right to use the public runways and public aviation aids at all times during which they are open to the public. Such rights of ingress, egress and use shall be in common with others having rights of use and passage thereon.

**7.1.1** Lessee shall be responsible for the construction of any taxiways and/or roadways needed for access to the Leased Premises at its sole cost and expense. Upon completion of construction, those portions of any such taxiways or roadways located off the Leased Premises shall be conveyed and dedicated to the Cities or City of Loveland, as determined in a development agreement to be considering during the **Inspection and Entitlement Period** as part of site plan development approval process that shall address maintenance, conveyance and dedication, warranty, and warranty surety.

**7.2** The use of any roadways or taxiways on the Airport shall be subject to the Rules and Regulations of the Airport, which are now in effect or which may hereafter be promulgated, and subject to temporary closure, provided, however, that any closure shall be only for reasonably necessary or unique circumstances, and provided that fourteen (14) days' prior written notice will be given to Lessee relevant to any closure, unless such closure is necessary due to emergency. Lessee, for itself and its authorized sublessees, hereby releases and discharges the Cities, the Commission, their officers, employees and agents, and all their respective successors and assigns, of and from any and all claims, demands, or causes of action which Lessee or its authorized sublessees may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, provided that other reasonable means of access to the Leased Premises remain available to Lessee without cost to Lessee, unless otherwise mandated by emergency safety considerations or lawful exercise of the police power. Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways on the Airport.

**7.3** Lessee understands and agrees that the public taxilanes on the Leased Premises may be used by all airplanes legally upon the Airport. Lessee shall assure that the public taxilanes are left open and unobstructed. Notwithstanding anything contained in this Agreement to the contrary, it is expressly agreed and understood that Lessee has no obligation to monitor or police vehicles (except those allowed on the Airport by Lessee) on the public taxilanes to determine if they are legally upon the Airport or to determine if they are operating in a safe condition or in a safe manner.

## **ARTICLE 8: INSURANCE, DAMAGE OR DESTRUCTION**

**8.1** Lessee, at its sole cost and expense, shall procure and maintain throughout the term of this Agreement insurance protection for all risk coverage on the Improvements which are part of the

Leased Premises to the extent of one hundred percent (100%) of the actual replacement cost thereof. All policies of insurance required herein shall be taken out with insurance companies qualified to do insurance business in the State of Colorado and having a Bests' Insurance Guide rating of at least A-, and all such policies shall be renewed at least ten (10) days before their expiration date.

**8.1.1** The above stated property insurance shall be for the benefit and to safeguard the interests of the Cities and Lessee.

**8.1.2** Lessee shall settle all losses with the insurance carrier. Lessee shall consult with the Cities and use its best efforts to obtain a settlement that covers the cost of repairing or rebuilding the Improvements.

**8.1.3** Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained prior to occupancy of the Improvements. Upon the failure of Lessee to maintain such insurance as above provided, the Cities, at their option, may take out such insurance and charge the cost thereof to Lessee, which shall be payable on demand, or may give notice of default pursuant to Article 18.

**8.2** In the event the Improvements and any subsequent improvements, insurable or uninsurable, on the Leased Premises are damaged or destroyed to the extent that they are unusable by Lessee for the purposes for which they were used prior to such damage, or same are destroyed, Lessee shall promptly repair and reconstruct the Improvements substantially as they were immediately prior to such casualty or in a new or modified design, subject to the provisions of Article 5 hereof and applicable building codes and Airport design standards, if any, existing at the time of repairing or rebuilding. If the aforesaid damage or destruction occurs in the last five (5) years of the Term, Lessee may elect not to repair and reconstruct the Improvements, subject to the following terms and conditions:

**8.2.1** Lessee shall give the Cities written notice of its election not to repair and reconstruct the Improvements within ninety (90) days of the date upon which the Improvements were damaged or destroyed. In such case, the Cities shall have the option of either:

**8.2.1.1** Requiring Lessee to clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; in which case Lessee shall retain all insurance proceeds above those necessary to fund such site restoration; or

**8.2.1.2** Taking title to the damaged Improvements, as is, in which case Lessee shall assign to and the Cities shall retain all insurance coverage and proceeds.

**8.2.2** Upon Lessee's notice under Section 8.2.1 hereof and Lessee's compliance with the provisions of Sections 8.2.1.1 or 8.2.1.2 hereof, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.

**8.3** All policies of insurance required herein shall name the Cities as additional insureds.

**8.4** Whenever in this Agreement, provision is made for the carrying of any insurance, it shall be deemed that such provision is complied with if such insurance otherwise complying with such provision is carried under a blanket policy or policies covering the Leased Premises as well as other properties.

**8.5** Lessee shall not violate, nor permit to be violated, any of the conditions of any of the said policies; and shall perform and satisfy, or cause to be satisfied, the requirements of the companies writing such policies.

## **ARTICLE 9: LIABILITIES AND INDEMNITIES**

**9.1** The Cities shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, by Lessee, its agents, servants, employees or authorized sublessees, or their guests or invitees. Lessee, and each of its sublessees, shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, solely by the Cities or the Commission, their agents, servants, employees or authorized tenants, or their guests or invitees.

**9.2** Lessee agrees (and shall cause its sublessees to agree) to indemnify, save and hold harmless, the Cities and the Commission, their officers, agents, servants and employees (collectively, "**Indemnified Parties**"), of and from any and all costs, liability, damage and expense, including costs of suit and reasonable expenses of legal services, claimed or recovered, justly or unjustly, falsely, fraudulently or frivolously, by any person, firm or corporation by reason of injury to, or death of, any person or persons, including Cities' personnel, and damage to, destruction or loss of use of any property, including Cities' property, to the extent arising from, or resulting from, any operations, works, acts or omissions of Lessee, its agents, servants, employees, contractors, or authorized sublessees; provided, however, the foregoing indemnity shall not apply to the extent any such cost, liability, damage or expense arises from the negligence or willful misconduct of any Indemnified Parties. Upon the filing with the Cities by anyone of a claim for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the Indemnified Parties harmless, the Cities shall notify Lessee of such claim and in the event that Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim on behalf of Lessee and the Indemnified Parties. It is specifically agreed, however, that the Cities at their own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the Indemnified Parties for any cause for which Lessee is liable shall be conclusive against Lessee as to liability and amount upon the expiration of the time for appeal.

**9.3** Lessee shall procure and keep in force during the term of this Agreement a policy of commercial general liability insurance insuring Lessee and the Cities against any liability for personal injury, bodily injury, death, or property damage arising out of the subject of this Agreement with a combined single limit of at least Five Million dollars (\$5,000,000.00). Lessee shall also procure and keep in force during the term of this Agreement policies or endorsements providing coverage for aircraft liability, hangar keepers' liability, products liability, motor vehicle liability and insured contracts coverage with the same combined single limit. Finally, Lessee shall maintain workers' compensation insurance in accordance with Colorado law. The policies shall be for the mutual and

joint benefit and protection of Lessee and the Cities and such policies shall contain a provision that the Cities, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of Lessee's negligence. Lessee shall provide certificates of insurance, in a form reasonably acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained by Lessee prior to the Commencement Date. In addition to the insurance requirements of this Section 9.3, Lessee shall procure (or cause the operator of the FBO facility to procure), prior to the opening and operation of the FBO facility, all insurance for an FBO and for any additional specialized services offered by Lessee (or the FBO operator) as required by the Minimum Standards; provided that in the event of any conflict between the insurance provisions of this Agreement and the terms of the Minimum Standards, the most stringent insurance requirements shall apply.

**9.4** Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. Lessee agrees to save and hold the Cities, their officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Lessee under or in any way connected with this Agreement.

#### **ARTICLE 10: LEASEHOLD MORTGAGES**

**10.1** Subject to the Cities' prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Lessee may, at any time, or from time to time, hypothecate, pledge, encumber or mortgage its interest in this Agreement, the leasehold estate in the Leased Premises created hereby, or any part or parts thereof or interest therein. No mortgage or other encumbrance of the leasehold that is granted by Lessee may encumber the fee or reversionary interest of the Cities in the Leased Premises. So long as Lessee is in compliance with all terms, conditions, and provisions of the Lease, the right of Lessee to mortgage its leasehold estate shall be a continuing right and shall not be deemed to be exhausted by its exercise on one or more occasions. However, it shall be a further condition of Lessee's right to mortgage its leasehold estate that the mortgagee agree notwithstanding the terms of any mortgage that all insurance proceeds available to Lessee will be applied to repair and restore any damaged building(s) or other improvements located on the Leased Premises. If Lessee shall execute a Leasehold Mortgage of its leasehold estate, and if the holder of such Leasehold Mortgage shall provide the Cities through the Commission or Airport Manager with notice in the manner described in Article 23 with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee (as hereinafter defined), then following receipt of such notice by the Cities, the provisions of this Article 10 shall apply in respect to such Leasehold Mortgage.

**10.2** 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 contemplated by Article 5, above. The term "**Leasehold Mortgage**" as used in this Agreement shall refer to the holder of any Leasehold Mortgage upon the leasehold estate created by this Agreement and/or in Lessee's interest and estate in any Improvements.

**10.3** The Cities, 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 10.1, above. Such Leasehold Mortgagee shall have the additional periods of time specified in Sections 10.4 hereof to remedy, commence remedying, or cause to be remedied the default or acts or omissions which are specified in any such notice. The Cities shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

**10.4** Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles the Cities to terminate this Agreement, the Cities shall have no right to terminate this Agreement unless, following the expiration of the period of time given Lessee to cure such default or the act or omission which gave rise to such default, the Leasehold Mortgagee is given an additional period of sixty (60) days to:

**10.4.1** Notify the Cities of such Leasehold Mortgagee's desire to defeat such termination notice; and

**10.4.2** Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the termination notice to such Leasehold Mortgagee and which may become due during such sixty (60) day period; and

**10.4.3** Comply with due diligence and continuity, or in good faith commence to and with diligence continue to pursue compliance with all non-monetary requirements of this Agreement then in default.

**10.5** 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 acquires Lessee's interest in this Agreement by foreclosure, assignment in lieu of foreclosure or otherwise 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 or 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 Leased Premises shall have been or become materially damaged on, before or after the date of such purchase or assignment, the Leasehold Mortgagee or its designee shall, subject to Section 8.2 hereof, be obligated to repair, replace or reconstruct the damaged Improvements.

## **ARTICLE 11: RULES AND REGULATIONS**

Lessee acknowledges that the Cities have proposed or adopted rules and regulations with respect to the occupancy and use of the Airport ("**Rules and Regulations**"), and such Rules and Regulations may be amended, supplemented or re-enacted from time to time by the Cities, provided that such Rules and Regulations apply generally to all similar occupants and users on the Airport and

same do not unreasonably impede, impair or restrain general aviation usage at the Airport. Lessee and its sublessees agree to observe and obey any and all such Rules and Regulations and all other federal, state and municipal rules, regulations and laws and to require its officers, agents, employees, sublessees, contractors, and suppliers to observe and obey the same. In the event of a conflict between the provisions of the Rules and Regulations and this Agreement, the more stringent provisions shall control. This provision will include compliance with the Airport's Noise Abatement Plan as it now exists and as it may hereafter be amended or supplemented. The Cities reserve the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with the Rules and Regulations or any other applicable rules, regulations or laws. Nothing in this Article 11 shall be construed to limit the rights of Lessee to file any action challenging the lawfulness of any such amendment, supplement or reenactment of any such Rules and Regulations, or to challenge the application of the same to Lessee.

## **ARTICLE 12: SIGNS**

Lessee shall have the right to install and maintain one or more signs on the Leased Premises identifying Lessee, its sublessees and their operations and identifying permitted business tenants in the FBO facility; provided, however, the subject matter, type, design, number, location and elevation of such signs, and whether lighted or unlighted, shall be subject to and in accordance with the City of Loveland Sign Code and Airport design standards, if any. No sign will be allowed that may be confusing to aircraft pilots or automobile drivers or other traffic.

## **ARTICLE 13: ASSIGNMENT AND SUBLEASE**

**13.1** The prior written consent of the Cities shall be required for any sale, transfer, assignment or sublease of this Agreement and of the leasehold estate hereby created. Consent may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement beyond any applicable notice and cure period; (b) the transferee, assignee or sublessee does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form reasonably satisfactory to the Cities; (c) the transferee, assignee or sublessee does not submit proof of insurance as required at Sections 8 and 9, herein; or (d) the transferee, assignee or sublessee has not met the licensing requirements set forth in the Minimum Standards. In reviewing a request for consent to assignment or sublease of this Agreement, the Cities may inquire into the legal, technical and financial qualifications of the proposed transferee, assignee or sublessee, and Lessee shall provide such information and assistance as may be reasonably requested in doing so. The Cities may condition their consent to or deny consent for any transfer, assignment or sublease upon terms and conditions reasonably related to the legal, technical, and financial qualifications of the proposed transferee, assignee or sublessee. Consent shall not otherwise be unreasonably withheld, conditioned or delayed. Upon the granting of written consent by the Cities and actual transfer or assignment, Lessee shall be released by the Cities from its obligations under this Agreement. Other than in the manner set forth in Article 29 below, Lessee shall not subdivide or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

**13.2** Notwithstanding the provisions of Section 13.1, Lessee shall have the right to engage in the following activities through sublease, license or concession agreements, which shall be subject and subordinate to this Agreement and include the same insurance and indemnity provisions in favor of the Cities, without the prior written consent of the Cities:



**13.2.1** “Aeronautical activities” as defined in Section 3.1 above; and

**13.2.2** Subletting of hangar space, retail and restaurant space, office space and the FBO facility, renting of tie-down space, and other activities included in services provided by an FBO under the Minimum Standards, as amended from time to time.

**13.3** Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to assign this Agreement (without the need for Cities’ approval) to any corporation with which Lessee may merge or consolidate, or to which Lessee may sell or assign all or substantially all of its corporate assets, or to a wholly owned subsidiary or affiliate, so long as such corporation or entity taking assignment is controlled by Martin Lind.

**13.4** Any attempt to transfer any interest in violation of the provisions of this Article 13 shall be void unless otherwise provided by Colorado law.

#### **ARTICLE 14: CONDEMNATION**

In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of appropriation, condemnation or eminent domain (or pursuant to a sale to such power or authority under the threat of condemnation or eminent domain), all rents payable with respect to that portion of the Leased Premises taken shall no longer be payable, and the proceeds, if any, from such taking or sale shall be allocated between the Cities and Lessee in accordance with the applicable condemnation law, with Lessee being entitled to compensation for the fair market value of the leasehold interest, Improvements and personal property taken. If a portion of the Leased Premises is so taken or sold, and as a result thereof, the remaining part cannot reasonably be used to continue the authorized uses set forth in Article 3, as determined by Lessee in its sole discretion, then this Agreement shall terminate at Lessee’s election, and Lessee’s obligation to pay rent and perform the other conditions of this Agreement shall be deemed to have ceased as of the date of such taking or sale. In the event Lessee elects not to terminate this Agreement, effective as of the date of such taking, the rental payable hereunder shall be wholly abated during any time Lessee or its sublessees are unable to carry on their operations, and upon restoration and resumption of Lessee’s and its sublessees’ operations, the rental payable hereunder shall be reduced by the same proportion which that portion of the Leased Premises so taken bears to the entire area of the Leased Premises prior to such taking. Nothing in this subparagraph shall be construed to limit the Cities’ rights to condemn Lessee’s leasehold rights and interests in the Leased Premises pursuant to state law.

#### **ARTICLE 15: CIVIL RIGHTS NON-DISCRIMINATION**

**15.1** ~~Lessee, for itself, its heirs,~~**15.1** In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in

any activity conducted with or benefiting from Federal assistance. Lessee transfers its obligation to another, the transferee is obligated in the same manner Lessee. This provision obligates Lessee for the period during which the property is used or possessed by Lessee and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

15.2 During the performance of this Agreement, Lessee for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- b. 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);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.) as amended (prohibiting discrimination on the basis of disability), and 49 CFR Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadening 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 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);
- h. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibits 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) as implementing by U.S. Department of Transportation Regulations at 49 CFR Parts 37 and 38;
- i. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination 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;
- k. 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 proficient (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 (2005)]; and

1. 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.)

**15.3** Lessee, including personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States government program or activity is extended, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

**15.2**—Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

**15.2.(1)**no person on the ~~grounds~~ground of race, color, or national origin, ~~creed, religion, sex, disability, or age~~ and without regard to the exercise of rights guaranteed by state or federal law ~~shall~~will be excluded from ~~participating~~participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of ~~the Leased Premises~~;

**15.2.2**—said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ~~grounds of~~ground of race, color, or national origin, ~~creed, religion, sex, disability or age~~ shall will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; **(3)** that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the list of non-discrimination acts and authorities, as enumerated in the preceding subsection. In the event of breach of any of the above nondiscrimination covenants, the Cities will have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the Agreement had never been made or issued.

**15.2.3**—That Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

**15.3**—In this connection, the Cities reserve the right to take whatever action they might be entitled by law to take in order to enforce this provision following sixty (60) days' prior written notice to Lessee of any alleged violation. This Article 15 is to be considered as a covenant on the part of Lessee, a breach of which, continuing after notice by the Cities to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the Cities, at their option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.

**15.4**—To the extent legally required and applicable, Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability or sex, be excluded from participation in any employment activities covered in 14 CFR Part 152 Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub-organizations provide assurances to

~~Lessee that they similarly will undertake an affirmative action program and that they will require assurances from their sub-organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.~~

~~15.5~~ Lessee shall include the foregoing

15.4 During the performance of this Agreement, Lessee, for itself, its assignees, and successors in interest, agrees as follows:

- a. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: Lessee], with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Lessee of contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities.
- d. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Cities or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to the Cities or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of Lessee noncompliance with the non-discrimination provisions (Sections 15.1 through 15.4) of this Agreement, the Cities will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending this Agreement, in whole or in part.
- a-f. Incorporation of Provisions: Lessee will include the provisions of this subsection in every agreement or concession contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant to which any person or persons, other than Lessee, operates any facility at the Leased

~~Premises providing service to the public and shall include a provision granting hereto. Lessee will take action with respect to any subcontract or procurement as the Cities a right to take such action as or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Lessee may request the Cities to enter into any litigation to protect the interests of the Cities. In addition, Lessee may request the United States may direct to enforce such covenant to enter into the litigation to protect the interests of the United States.~~

## **ARTICLE 16: GOVERNMENTAL REQUIREMENTS**

**16.1** Lessee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over Lessee's operations at the Leased Premises which may be necessary for Lessee's operations on the Airport.

**16.2** Lessee shall pay all taxes, license, certification, permits and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or gross income to Lessee therefrom, and shall make all applications, reports and returns required in connection therewith.

**16.3** Lessee shall pay all water, sewer, utility and other applicable use taxes and fees, arising from its occupancy and use of the Leased Premises and/or the Improvements.

**16.4** Lessee agrees that the Cities are governmental entities; therefore, all direct and indirect financial obligations of each City under this Agreement shall be subject to annual appropriations pursuant to Article X, Section 20 of the Colorado Constitution, the Cities' respective charters and ordinances, and applicable law. This Agreement and the obligations of the Cities hereunder do not constitute a multi-year fiscal obligation and are expressly contingent upon the Cities' respective governing bodies budgeting and appropriating the funds necessary to fulfill the Cities' respective obligations.

## **ARTICLE 17: RIGHTS OF ENTRY RESERVED**

**17.1** The Cities, by their officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Leased Premises and enter the Improvements for any and all purposes not inconsistent with this Agreement, including, without limitation, inspection, environmental testing, and repair and maintenance of the Additional Taxiway, if it exists, provided such action by the Cities, their officers, employees, agents, representatives and contractors does not unreasonably interfere with Lessee's (or its sublessees') use, occupancy or security requirements of the Leased Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property, as reasonably determined by the Cities, the Cities shall provide seventy-two (72) hours' written notice of its intent to inspect.

**17.2** Without limiting the generality of the foregoing, the Cities, by their officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at their own cost and expense, whether for their own benefit, or for the benefit of others than Lessee at the Airport, to maintain existing and future Airport mechanical, electrical and other utility systems and to enter upon the easements in the Leased Premises to make such repairs, replacements

or alterations thereto, as may, in the opinion of the Cities, be deemed necessary or advisable, and from time to time to construct or install over, in or under existing easements within the Leased Premises such systems or parts thereof and in connection with such maintenance use the Leased Premises' existing easements for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, the Cities shall not install a utility under or through any building on the Leased Premises or unreasonably interfere with the actual use and occupancy of the Leased Premises by Lessee (or its sublessees). It is specifically understood and agreed that the reservation of the aforesaid right by the Cities shall not impose or be construed to impose upon the Cities any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises; provided, however, that if the Cities repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services to others, the Cities will restore the Leased Premises to their preexisting condition in a timely manner. Lessee will provide for the installation, maintenance and repair, at its own expense, of all service lines of utilities providing services only to the Leased Premises. Cities will repair, replace and maintain all other utility lines, at the Cities' expense.

**17.3** In the event that any personal property of Lessee or any sublessee shall obstruct the access of the Cities, their officers, employees, agents or contractors, or the utility company furnishing utility service over, along and across the existing easements to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system pursuant to Section 17.2, Lessee shall move such property, as directed by the Cities or said utility company, upon reasonable notice by the Cities, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Lessee or any sublessee shall fail to so move such property after direction from the Cities or said utility company to do so, the Cities or the utility company may move it, and Lessee on behalf of itself and its sublessees hereby waives any claim against the Cities for damages as a result there from, except for claims for damages arising from the Cities' negligence or willful misconduct.

**17.4** The Cities reserve the right to access the Leased Premises at all times and without notice to Lessee for the operation of emergency vehicles and fire trucks as necessary or appropriate to the safe operation of the Airport.

## **ARTICLE 18: TERMINATION**

**18.1** In the event of a default on the part of Lessee in the payment of rents, the Cities shall give written notice to Lessee and each holder of a Leasehold Mortgage, if any, of which they have been give notice under Section 10.1, of such default, and demand the cancellation of this Agreement, or the correction thereof. If, within sixty (60) days after the date the Cities give such notice, Lessee has not corrected said default and paid the delinquent amount in full, then subject to Article 10 above, the Cities may, by written notice to Lessee and the holder of a Leasehold Mortgage, terminate this Agreement.

**18.2** Subject to the provisions of Section 18.1 and Article 10 above, this Agreement, together with all rights and privileges granted in and to the Leased Premises, shall terminate at the option of the Cities with prompt written notice to Lessee and the holder of a Leasehold Mortgage upon the happening of any one or more of the following events:

**18.2.1** The filing by Lessee of a voluntary petition in bankruptcy, or any assignment for benefit of creditors of all or any part of Lessee's assets; or

**18.2.2** Any institution of proceedings in bankruptcy against Lessee; provided, however, that Lessee may defeat such termination if the petition is dismissed within one hundred twenty (120) days after the institution thereof; or

**18.2.3** The filing of a petition requesting a court to take jurisdiction of Lessee or its assets under the provision of any Federal reorganization act which, if it is an involuntary petition is not dismissed within one hundred twenty (120) days after its being filed; or

**18.2.4** The filing of a request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a court of competent jurisdiction, which if the request if not made by Lessee is not rejected within one hundred twenty (120) days after being made, or the request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a voluntary agreement with Lessee's creditors.

**18.3** Subject to Article 10, upon the default by Lessee in the performance of any covenant or condition required to be performed by Lessee other than the payment of rent, and the failure of Lessee to remedy such default for a period of sixty (60) days after mailing by the Cities of written notice to remedy the same, unless more extensive notice is otherwise provided for in this Agreement, the Cities may, by written notice of cancellation to Lessee, and each holder of a Leasehold Mortgage, terminate this Agreement and all rights and privileges granted hereby in and to the Leased Premises.

**18.4** Upon the default by Lessee, and the giving of notice of the default and cancellation by the Cities as provided for elsewhere herein, the notice of cancellation shall become final.

**18.5** Subject to the provisions of Section 18.1 and Article 10, upon the cancellation or termination of this Agreement for any reason, all rights of Lessee, authorized tenants and any other person in possession of the Leased Premises shall terminate, including all rights or alleged rights of Leasehold Mortgagees, sublessees, creditors, trustees, assigns, and all others similarly so situated as to the Leased Premises. Except as may be expressly provided to the contrary elsewhere herein, upon said cancellation or termination of this Agreement for any reason, the Leased Premises and all Improvements located thereon, except for Lessee's (and its sublessees') equipment, fixtures and other personal property which may be removed from said Leased Premises without damage thereto as provided elsewhere herein, shall be and become the property of the Cities, free and clear of all encumbrances and all claims of Lessee, its sublessees (if any), Leasehold Mortgagees, creditors, trustees, assigns and all others, and the Cities shall have immediate right of possession of the Leased Premises and such Improvements. Lessee agrees to execute any documents, if any, necessary to transfer title of such Improvements to the Cities.

**18.6** Failure by the Cities or Lessee to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by Lessee. Acceptance of rentals by the Cities from Lessee, or performance by the Cities under the terms hereof, for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or estoppel of

any right on the part of the Cities to cancel this Agreement for any subsequent failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

**18.7** This Lease will terminate at the option of Lessee:

**18.7.1** Upon the permanent closure of the Airport, the term “permanent closure” to mean for the purposes of this Agreement, the closure of the Airport for ninety (90) or more consecutive days;

**18.7.2** The loss of the ability of Lessee, its sublessees or their customers due to no significant fault of Lessee to fly in or out of the Airport for reasons other than inclement weather, casualty or disaster, for a period of ninety (90) consecutive days; and

**18.7.3** The default by Cities in the performance of any covenant or condition required to be performed by the Cities, and the failure of the Cities to remedy such default for a period of sixty (60) days after receipt from Lessee of written notice to remedy the same, or default in the timely payment of any money due Lessee and failure to cure such default within sixty (60) days after notice to the Cities. Notice of exercise of the option to terminate by Lessee shall be given in the manner specified in Article 23 (Notices).

**18.8** If, after the FBO facility is operational, Lessee ceases to conduct or cause to be conducted its authorized Aeronautical Activities on the Leased Premises for a period of twelve (12) consecutive months, the Cities may terminate this Agreement by written notice to Lessee given at any time while such cessation continues, unless Lessee resumes or causes to be resumed such activities within sixty (60) days following receipt of written notice from the Cities of such intent to terminate this Agreement.

**18.9** Upon termination of this Agreement prior to the expiration of the Term, the Cities may, but are not required to, relet the Leased Premises, or any part thereof, for the whole or any part of the remainder of the Term, or for a longer period of time. Subject to Section 21.3, any rents received by the Cities as a result of such reletting shall remain the property of the Cities and shall not be credited to or otherwise become the property of Lessee.

## **ARTICLE 19: OWNERSHIP OF IMPROVEMENTS, SURRENDER**

**19.1** Title to the Improvements during the Term shall be in Lessee, but notwithstanding such title, the terms and conditions of this Agreement shall govern the construction, use, maintenance and operation of the Improvements and the exercise of Lessee’s rights with respect thereto; and Lessee’s right, title, interest, and estate in and to the Improvements shall not be separable from the leasehold estate granted Lessee hereunder. Lessee shall be entitled to claim all depreciation and other tax attributes applicable to the use and ownership of the Improvements during the Term. Upon the expiration or earlier termination of this Agreement, title to the Improvements shall vest in and become the full and absolute property of the Cities without need of any further action being taken by Lessee or the Cities, and Lessee shall immediately surrender possession of the Improvements upon such termination or expiration as provided in Section 19.2 below. Lessee shall execute any and all documents, if any, necessary to transfer title to the Cities. Except as otherwise expressly set forth herein, the value or cost of the Improvements constructed by Lessee shall not in any way constitute a substitute for or a credit against any obligation of Lessee under this Agreement to pay rent as required pursuant to Article 4.



**19.2** Subject to Section 8.2 above, upon the expiration, cancellation or earlier termination of this Agreement pursuant to any terms hereof, Lessee shall peaceably quit and surrender the Leased Premises and Improvements, and any and all machinery and equipment constructed, installed or placed by Lessee thereon which is necessary to the operation of the Improvements to the Cities in good order and condition, ordinary wear and tear and obsolescence in spite of repair excepted. Lessee shall have the right, but not the obligation, within sixty (60) days after expiration or earlier termination of this Agreement to remove from the Leased Premises all personal property, fixtures and trade equipment other than fixtures, machinery and equipment necessary to the operation of the Improvements. Lessee shall repair, at its sole cost and expense, any damage to the Leased Premises or to the Improvements caused by such removal.

**19.3** Upon such expiration, cancellation or termination, the Cities may re-enter and repossess the Leased Premises together with all Improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at the Cities' election. In the event that Lessee remains in possession of the Leased Premises after the expiration, cancellation or termination of this Agreement without written agreement with respect thereto, then Lessee shall be deemed to be occupying the Leased Premises as a tenant at-will, subject to all of the conditions, provisions and obligations of this Agreement, but without any rights to extend the term of this Agreement. The Cities' acceptance of rent from Lessee in such event shall not alter the status of Lessee as a tenant at-will whose occupancy of the Leased Premises may be terminated by the Cities at any time upon thirty (30) days' prior written notice.

## **ARTICLE 20: SERVICES TO LESSEE**

**20.1** The Cities covenant and agree that during the term of this Agreement, and subject to Airport priorities then in effect, they will use reasonable efforts to (a) operate the Airport as such for the use and benefit of the public; provided, however, that the Cities may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe and/or efficient operation of the Airport or necessary to serve the civil aviation needs of the public, (b) maintain the runways, taxiways and Additional Taxiway, if it exists, in good repair, including the removal of snow, and (c) keep in good repair hard-surfaced public roads on the Airport for access to the Leased Premises and remove snow.

**20.1.1** Except as otherwise expressly set forth herein, said obligations of the Cities relevant to the maintenance of public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, or the Ramp area constructed by Lessee under Article 4.5.

**20.1.2** Except as otherwise expressly set forth herein, said obligations of the Cities relevant to the snow removal from public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, and shall additionally include the Ramp area constructed by Lessee under Article 4.5 subject to the snow removal limitations set forth under Article 4.5, above.

**20.2** Except in cases of emergency, in which case no notice shall be required, the Cities will give not less than fourteen (14) days' prior written notice to Lessee of any anticipated temporary Airport closure, for maintenance, expansion or otherwise. Rent due for the Leased Premises under

Article 4 shall abate on the twenty first (21st) consecutive day of any voluntary temporary Airport closure by the Cities and such abatement shall continue until the Airport reopens, provided that no abatement shall exceed a total of sixty (60) consecutive days' rent. Notwithstanding the above, the Cities shall not be deemed to be in breach of any provision of this Article 20 in the event of a permanent closure of the Airport; provided, however, that if such permanent closure is in connection with the construction of a new airport by the Cities, Lessee shall have the option to enter into a substitute ground lease agreement with the Cities for the use of a portion of such new airport not smaller than the Leased Premises under financial terms which are no less favorable than those set forth herein.

## **ARTICLE 21: SURVIVAL OF THE OBLIGATIONS OF LESSEE**

**21.1** In the event that this Agreement shall have been terminated due to default by Lessee in accordance with notice of termination as provided in Article 18, all of the obligations of Lessee under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Cities to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The Cities may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency for the entire unexpired term of this Agreement discounted to present value.

**21.2** The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of Lessee's rental obligations shall be the sum of the following:

**21.2.1** The amount of the total of all installments of rents, less the installments thereof payable prior to the effective date of termination; and

**21.2.2** An amount equal to all expenses incurred by the Cities and not reimbursed in connection with regaining possession, restoring the Leased Premises required by Article 19, above, acquiring a new lease for the Leased Premises, legal expenses (including, but not limited to, reasonable attorneys' fees) and putting the Leased Premises in order.

**21.3** There shall be credited to the account of Lessee against its survived obligations hereunder, the amount actually received from any lessee, licensee, permittee, or other occupier in connection with the use of the Leased Premises or Improvements or portions thereof during the balance of the term of this Agreement, and the market value of the occupancy of such portions of the Leased Premises (including the Improvements) as the Cities may themselves during such period actually use and occupy. No such use and occupancy shall be, or be construed to be, an acceptance of a surrender of the Leased Premises, nor shall such use and occupancy constitute a waiver of any rights of the Cities. The Cities will use their best efforts to minimize damages to Lessee under this Article.

**21.4** The provisions of this Article 21 shall not be applicable to termination of this Agreement if expressly provided to the contrary elsewhere in this Agreement.

## **ARTICLE 22: USE SUBSEQUENT TO CANCELLATION OR TERMINATION**

The Cities shall, upon termination or cancellation, or upon re-entry, regaining or resumption of possession, have the right to repair and to make structural or other changes to the Leased Premises and Improvements, including changes which alter their character and the suitability thereof for the purposes of Lessee under this Agreement, without affecting, altering or diminishing the obligations of Lessee hereunder, provided that any structural changes shall not be at Lessee's expense.

**ARTICLE 23: NOTICES**

**23.1** Any notice, consent, approval or other communication given by either party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by certified U.S. mail postage prepaid, sent by reputable overnight courier, or sent by electronic means (with evidence of such transmission received) to such other party at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by US mail postage prepaid, such notice shall be deemed given on the third (3rd) business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, notice shall be deemed effective on the first (1st) business day following deposit with such courier; and if delivered by electronic means, notice shall be deemed effective when received.

**23.2** The notice addresses of the parties are as follows:

To the Cities: Northern Colorado Regional Airport Commission  
Attn: Airport Manager  
4900 Earhart Drive  
Loveland, CO 80538  
Facsimile: (970) 962-2855  
Email address: airport@cityofloveland.org

With a copy to: Loveland City Attorney's Office  
500 E. Third Street  
Loveland, CO 80537  
  
Fort Collins City Attorney's Office  
City Hall West  
300 LaPorte Ave.  
Fort Collins, CO 80521

\_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_\_  
To Lessee: Attn: Martin Lind  
~~Attn: Gary White, Esq.~~  
Company Name: Discovery Air, LLC  
c/o Water Valley Land Company  
Address: 1625 Pelican Lakes Pointe, Suite 201

**ARTICLE 24: INVALID PROVISIONS**

The invalidity of any provisions, articles, paragraphs, portions or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement. Furthermore, in lieu of such invalid provisions, articles, paragraphs, portions or clauses, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable.

**ARTICLE 25: MISCELLANEOUS PROVISIONS**

**25.1 Remedies to be Non-exclusive.** All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the Cities, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy, provided that the Cities' remedies in the event of default shall not exceed those set forth in this Agreement.

**25.2 Non-liability of Individuals.** No director, officer, agent or employee of the Cities shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same. Except to the extent otherwise expressly provided for herein, no officer, manager, member, agent or employee of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same.

**25.3 Estoppel Certificate.** At the request of Lessee in connection with (i) its obtaining a Leasehold Mortgage or (ii) an assignment of its interest in this Agreement, the Cities shall execute and deliver a written statement, within thirty (30) days after Lessee's request, identifying them as the lessors under this Agreement and certifying the following:

**25.3.1** The documents that then comprise this Agreement,

**25.3.2** That this Agreement is in full force and effect,

**25.3.3** The then current annual amount of rent and the date through which it has been paid,

**25.3.4** The expiration date of this Agreement,

**25.3.5** That no amounts are then owed by Lessee to the Cities (or, if amounts are owed, specifying the same)

**25.3.6** To the knowledge of the Cities, there are not defaults by Lessee under this Agreement or any facts which but for the passage of time, the giving of notice or both would constitute such a default, and

**25.3.7** Remaining rights to renew the term of this Agreement to the extent not theretofore exercised.

The Leasehold Mortgagee or party acquiring Lessee's interest in this Agreement shall be entitled to rely conclusively upon such written statement.

**25.4** Recording of Memorandum of Agreement. A memorandum of this Agreement shall be recorded by the Cities, and the costs of such recordation, and any closing costs associated with this Agreement, its execution and recordation, shall be billed to and paid by Lessee as additional rent.

**25.5** General Provisions.

**25.5.1** This Agreement shall be construed in accordance with the laws of the State of Colorado and venue shall be in Larimer County, Colorado.

**25.5.2** This Agreement is made for the sole and exclusive benefit of the Cities and Lessee, their successors and assigns, and is not made for the benefit of any third party.

**25.5.3** In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

**25.5.4** All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

**25.5.5** The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

**25.5.6** Nothing herein contained shall create, or be construed to create, a partnership, joint venture, agency or any other relationship between the Cities and Lessee, other than that of landlord and tenant. The Cities and Lessee each expressly disclaim the existence of any such other relationship between them.

**25.5.7** Cities have and may allow certain portions of the Airport to be used by other tenants at any time and Lessee shall not interfere in any manner with said other tenants or with the facilities granted to such tenants. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Cities reserved the right to grant to others the privilege and right of conducting any one or all of the activities specified herein, or any other activities of an aeronautical nature.

**25.5.8** In the event any action or proceeding is brought to recover payments due under this Agreement or take possession of the Leased Premises and/or the improvements thereon,

or to enforce compliance with this Agreement for failure to observe any of its covenants, the prevailing party shall be awarded reasonable attorneys' fees and costs as set by the court.

**25.5.9** The time within which either party hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of or similar regulation or order of any governmental or regulatory body, war, enemy action, acts of terrorism, civil disturbance, fire, unavoidable casualties, or any similar occurrence.

**25.5.10** The Cities designate the Airport Manager as their representatives who shall make, within the scope of their authority, all necessary and proper decisions with reference to this Agreement.

**25.5.11** Lessee agrees that that the Cities are governmental entities subject to the Colorado Open Records Act ("CORA"), C.R.S. § 24-72-201 to 205.5, which provides that all public records shall be open for inspection by any person at reasonable times, except as provided in CORA or as otherwise specifically provided by law. Lessee may mark any documents provided to the Cities as "trade secrets", "privileged information", or "confidential commercial, financial, or other data." Unless such documents are marked appropriately and in accordance with CORA, the Cities may be required to release relevant information related to this Agreement and the Leased Premises.

**25.6** Availability of Government Facilities. In the event the existence, maintenance or operation of air navigation aids or other facilities supplied or operated by the United States or the State of Colorado at or in conjunction with the Airport are discontinued, the Cities shall have no obligation to furnish such facilities.

**25.7** Avigation Easement. There is hereby reserved to the Cities, their successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on the Airport. Lessee agrees to execute any and all documents, if any, necessary to establish such avigation easement.

**25.8** Part 77. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations or any amendments thereto in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

## **ARTICLE 26: SUBORDINATION CLAUSES**

**26.1** This Agreement is subject and subordinate to the following:

**26.1.1** The Cities reserve the right to develop and improve the Airport in any manner approved by the City Councils, provided Lessee is not deprived of (i) the use of or access to

the Leased Premises by motor vehicles and/or aircraft owned or operated by Lessee or Lessee's assigns, sublessees, renters, agents, employees or invitees or (ii) any of Lessee's rights under this Agreement.

**26.1.2** The Cities reserve the right to take any action they consider necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.

**26.1.3** This Agreement is and shall be subordinate to the provisions of existing and future agreements between the Cities and the United States 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 obtaining or expenditure of federal funds for the benefit of the Airport. This Agreement shall also be subordinate to any FAA and TSA regulations as they exist or as they may be amended from time to time in the future.

**26.1.4** During time of war or national emergency, the Cities shall have the right to lease all or any part of the landing area of the Airport to the United States for military use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the government, shall be suspended, but such suspension shall not extend the term of this Agreement. Abatement of rentals shall be reasonably determined by the Cities and Lessee in proportion to the degree of interference with Lessee's use of the Leased Premises.

**26.1.5** Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to Lessee any rights whatsoever in the airspace above the Leased Premises other than those reasonably necessary to Lessee's enjoyment of the Leased Premises and Cities' Airport facilities and which are consistent with FAA rules, regulations and orders currently or subsequently effective. Further, Lessee's rights in airspace above the Leased Premises and the Airport and the Airport facilities shall be not less than the rights therein by other users of the Airport and Airport facilities.

## **ARTICLE 27: QUIET ENJOYMENT**

Cities hereby covenant and warrant that they are the owners of the Leased Premises and that Lessee upon payment of rentals herein provided for and performance of provisions on its part to be performed shall and may peacefully possess and enjoy the Leased Premises during the term hereof and any extensions hereof without any interruption or disturbance.

## **ARTICLE 28: ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties hereto and ~~may~~replaces all prior Leases and Lease Amendments entered into between the parties, including the Northern Colorado Ground Lease Agreement dated January 16, 2019 and First Amendment to Northern Colorado Regional Airport Ground Lease Agreement dated January 29, 2021. This Agreement may only be changed, modified, discharged or extended by written instrument duly executed by the Cities and Lessee. The parties agree that no representations or warranties shall be binding upon the Cities or

Lessee unless expressed in writing— and properly authorized according to the party's established requirements, as amended.

**ARTICLE 29: REQUIREMENTS FOR CONDOMINIUMIZATION**

This Agreement does not authorize Lessee to create either a common interest community or hangar condominiums on the Leased Premises. If Lessee desires to create a common interest community or hangar condominiums on the Leased Premises, a written amendment to this Agreement shall be required, containing such additional terms as the Cities may reasonably require, including but not necessarily limited to terms necessary for compliance with the Colorado state law.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

**[Signatures on the following page]**



CITY OF LOVELAND, COLORADO

Stephen C. Adams, Rod Wensing, Acting City Manager

ATTEST:

\_\_\_\_\_  
Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
~~Assistant~~ Acting Deputy City Attorney

CITY OF FORT COLLINS, COLORADO

Darin A. Atteberry, Kelly DiMartino, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
~~Assistant~~ Deputy City Attorney

Discovery Air, LLC, a Colorado limited liability company,

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit “A-2”**

**Description of Leased Premises**

**[ATTACHED]**

**Exhibit “B-2”**

**Preliminary Site Plan**

**[ATTACHED]**

