

3-6)



## City Council Agenda Item

Meeting of February 16, 2016

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**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James R. O'Connor, City Manager 

**DATE:** February 8, 2016

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**SUBJECT:** Continental Jet Aviation, Inc. – Addendum to Lease Agreement and Updated Attachment B for Lots 2-4 (Effective: February 16, 2016)

**REQUESTED BY:** City Manager/Airport Director

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The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached documentation.

No action required. (Information only)

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MEMORANDUM

**TO:** James R. O'Connor, City Manager  
**VIA:** Wayne R. Coment, City Attorney  
**FROM:** Ericson W. Menger, Airport Director  
**DATE:** February 4, 2016  
**SUBJECT:** CONTINENTAL JET AVIATION, INC., ADDENDUM TO LEASE AGREEMENT AND UPDATED ATTACHMENT B (EFFECTIVE: FEBRUARY 16, 2016) FOR LOTS 2-4.

Attached are 3 copies of the above-referenced lease addendum, along with a copy of a revised Attachment B (standard with all airport leases) which has been updated to agree with the language in the proposed lease addendum.

**BACKGROUND:**

City staff and tax attorney, Ben Phipps, have reviewed our current airport lease language and recommend the attached proposed changes based upon current Florida law. These changes effectuate the legislative intent that rental for the use of the real estate, which is taxable, is sufficiently distinguished from privilege, franchise, or concession fees paid to airports, which are not taxable. Further, the changes incorporate language designed to establish that construction costs for improvements to the real estate are not rental payments for the use of the real estate or for the right to occupy the premises. Appropriate language addresses the ad valorem taxability of buildings and other improvements leased to airport tenants only when such buildings (and other improvements) are owned by the tenant. These changes clarify and more accurately reflect the original intent of the parties as to the tenant's responsibility for concession, privilege, or franchise fees, and as such, the Fourth Addendum is retroactive to the initial date of the Lease Agreement, June 7, 2005.

Discussions at recent meetings of the Airport Commission led to a minor change to Attachment B, approval for which is also requested. Staff updated the last sentence of Section 1 of Attachment B to read: "LANDLORD'S retained interest does not diminish or abridge any leasehold interest conveyed to TENANT hereunder." In addition, staff updated the insurance language to agree with current practice.

These same lease modifications will be made to several other tenants' leases for City Council consideration as soon as staff can gather all signatures from the other impacted tenants.

**ANALYSIS:**

**Strengths:** These changes effectuate the legislative intent that rental for the use of the real estate, which is taxable, is sufficiently distinguished from privilege, franchise, or concession fees paid to airports, which are not taxable. These changes will result in no reduction in rental to the Airport, or increases to rental payments or concession payments from the Tenant.

**Weaknesses:** Will require similar changes to several other airport leases.

**Opportunities:** Enables Airport staff to enhance the strengths of airport businesses, while complying with changes in applicable regulations.

**Threats:** A small number of airport tenants, or sub-tenants, aware of our recommended changes, feel that these changes may reduce the airport's ability to attract new business development. The Airport Commission listened to their concerns and staff has added clarifying language to Attachment B (see above).

**RECOMMENDATION:**

Staff respectfully requests that this item be placed on the **February 16, 2016**, City Council Agenda, recommending approval of the Fourth Addendum to Lease Agreement (Continental Jet Aviation).

EWM/ir

Attachments

cc: Airport Commissioners (via email)  
City Manager's Office  
City Clerk's Office (via email)

**ADDENDUM TO LEASE AGREEMENT**  
**(CONTINENTAL JET AVIATION, INC.)**  
**Lots W 2-4**

THIS ADDENDUM to Lease Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF VERO BEACH**, a municipal corporation organized under the laws of the State of Florida, whose mailing address is P. O. Box 1389, Vero Beach, Florida 32961-1389 (“LANDLORD”), and **CONTINENTAL JET AVIATION, INC.**, whose mailing address is 3060 Airport West Drive, Vero Beach, Florida 32960 (“TENANT”).

WHEREAS, on June 7, 2005, LANDLORD and TENANT executed a Fixed Base Operator’s Lease Agreement (“Lease Agreement”) for Lots 2 through 4, consisting of 189,199 square feet of land, at the Airport West Addition to the Airport West Addition Subdivision as described within said Lease Agreement with an Initial Term of thirty (30) years commencing on July 1, 2005; and

WHEREAS, modifications to the TENANT’s Lease Agreement are necessary to incorporate certain tax law changes pursuant to Florida Statutes and the Florida Department of Revenue; and

WHEREAS, LANDLORD and TENANT have agreed to this Addendum to the Lease Agreement to clarify and more accurately reflect the intent of LANDLORD and TENANT as to TENANT’s responsibility for concession, privilege, or franchise fees when LANDLORD and TENANT entered into the Lease Agreement, and as both parties have performed since its inception. Accordingly, this Addendum is retroactive to the initial date of the Lease Agreement (“*nunc pro tunc*”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, LANDLORD and TENANT, intending to be legally bound, hereby agree as follows:

1. The foregoing "WHEREAS" clauses are hereby incorporated herein.
2. Section 3 **RENT; RENT ADJUSTMENT** of the Lease Agreement, as amended, shall be further amended to replace in full the initial paragraph in said Section to read as follows:

TENANT shall be subject to rental payments for its leasehold interest for the real property, including any improvements to the real property constructed or installed by TENANT during the term of this Lease Agreement. TENANT shall also be responsible for concession, privilege, or franchise fees, payable to LANDLORD as enumerated herein.

3. Section 3 (b) shall be amended to replace in full said section to read as follows:

**Concession Fee 1 (Gross Receipts):** For the privilege of doing business at the Airport, TENANT shall pay a concession or franchise fee which shall be calculated on the gross receipts from the aggregate amount of all sales made and services performed, for cash or credit or otherwise of every kind, name and nature, regardless of when or whether paid or not, together with the aggregate amount on all wares, merchandise, and services for like property or services as the selling price thereof, as if the same had been sold for cash or the fair and reasonable value thereof, at a rate of 2% of gross receipts, excluding only the gross receipts from the sales of aircraft, fuel and oil as well as services and goods sold directly to military agencies of the United States. The selling price of any accessory, part or supply added to service furnished to an aircraft

sold by the TENANT shall be considered as part of the gross receipts hereunder. TENANT shall also pay one-quarter of one percent (1/4%) of the gross receipts on the sale of new and/or used aircraft. The concession fee shall payable on a monthly basis no later than the tenth (10<sup>th</sup>) of the month for the preceding month. Failure to pay the concession fee by the due date shall result in the assessment of a late charge of five percent (5%) of the amount then owing or \$50.00 whichever is greater.

4. Section 3 (c) shall be amended to replace in full said section to read as follows:

**Concession Fee 2 (Fuel Flowage)**: For the privilege of operating a fueling facility at the Airport, TENANT shall pay concession fee at the initial rate of \$0.05 per gallon on fuel flowage, payable on a monthly basis no later than the tenth (10<sup>th</sup>) of the month for the preceding month, in accordance with Airport Leasing Policy, Vero Beach Resolution 2015-30, unless and until that resolution is amended or replaced, at which time TENANT shall pay an amount established by an amending resolution or surrogate document. Failure to pay the concession fee by the due date shall result in the assessment of a late charge of five percent (5%) of the amount then owing or \$50.00 whichever is greater.

5. Section 3(d) shall be amended to replace in full said section to read as follows:

**Minimum Concession Fee**: On the next business day after the 10<sup>th</sup> day of each month, LANDLORD will calculate the sum of Concession Fee 1 and Concession Fee 2 as collected in accordance with Section 3(b) and (c). The total concession fee shall be no less than an amount equal to the base rent collected in Section 4. Any shortage shall be paid by TENANT in the next monthly concession fee payment.

6. Section 3(e) dealing with ownership vesting in the LANDLORD at the end of the term shall be deleted in its entirety.

7. Section 4 **STANDARD PROVISIONS** is amended to replace in full said section to read as follows:

Attachment B to this Lease Agreement, entitled "Standard Lease Provisions For Airport Tenants" (Effective date: February 16, 2016) and City Resolution 2015-30 "Airport Leasing Policy" (Effective date: September 1, 2015) are incorporated into and made a part of this Lease Agreement, subject to Special Provision Section 4 of the Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Lease Agreement on the date and year stated above.

**SIGNATURE PAGES FOLLOW**

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**LANDLORD – CITY OF VERO BEACH**  
**(This section to be completed by Landlord only)**

ATTEST:

LANDLORD: CITY OF VERO BEACH

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

By \_\_\_\_\_  
Jay Kramer  
Mayor

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are both known to me and did not take an oath.

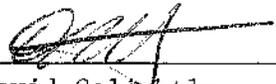
\_\_\_\_\_  
NOTARY PUBLIC  
Print Name  
My Commission No.:  
My Commission Expires:

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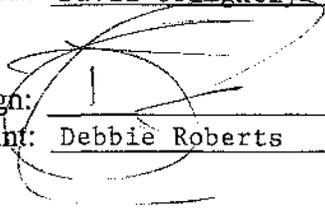
**TENANT – Continental Jet Aviation, Inc.**  
**(This section to be completed by Tenant only)**

WITNESSED BY:

TENANT: Continental Jet Aviation, Inc.

Sign:   
Print: David Golightly

Sign:   
Print: Andrew R. Machata  
Title: President

Sign:   
Print: Debbie Roberts

[AFFIX CORPORATE SEAL HERE]  
SEAL

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 5th day of February, 2016, by Andrew R. Machata, as President, on behalf of the corporation. He is personally known to me or produced personally known as identification and did/did not take an oath.

  
NOTARY PUBLIC  
Print Name Jo Ann Hopkins  
My Commission No.: EE 224788  
My Commission Expires: September 30, 2016

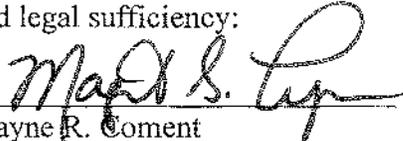


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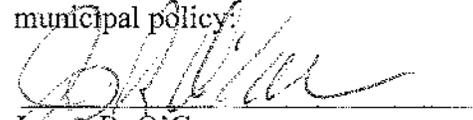
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**CITY MANAGEMENT**  
(This section to be completed by City Management Staff only)

Approved as to form  
and legal sufficiency:

  
\_\_\_\_\_  
Wayne R. Coment  
City Attorney

Approved as conforming to  
municipal policy:

  
\_\_\_\_\_  
James R. O'Connor  
City Manager

*for:*

Approved as to technical  
requirements:

  
\_\_\_\_\_  
Ericson W. Menger  
Airport Director

Approved as to technical  
requirements:

  
\_\_\_\_\_  
Cynthia D. Lawson  
Finance Director

**RESOLUTION 2015- 30**

**A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, PROVIDING FOR AN AIRPORT LEASING POLICY; REPEALING AND REPLACING RESOLUTION 2007-18; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Vero Beach ("City") owns and operates the Vero Beach Regional Airport ("Airport"), and leases Airport property to various tenants; and,

**WHEREAS**, federal law implemented by the Federal Aviation Administration ("FAA") through deed restrictions and grant assurances requires the City to operate the Airport as a public facility and to receive fair market value for the use of Airport property; and,

**WHEREAS**, pursuant to these federal requirements, the City sets general leasing policy, including rental rates and concession fees for fixed base operators, other aviation-related uses, and non-aviation commercial uses at the Airport as established by resolution; and,

**WHEREAS**, the Airport Leasing Policy ("Policy") established in this Resolution shall repeal and replace Rate Resolution 2007-18 and will ensure that the City continues to receive fair market value for leasehold interest in real property, as well as set concession fees for the privilege of doing business at the Airport; and,

**WHEREAS**, the Policy will ensure that the Airport operates under good business practices by ensuring that each tenant receives fair and equitable treatment and continues to comply with federal law; and

**WHEREAS**, the City Council of the City of Vero Beach ("City Council") finds that the adoption of the recommended Policy serves a municipal purpose and promotes the health, safety and welfare of the public and of the community.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:**

Section 1. Adoption of “Whereas” Clauses.

The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein as forming the legislative findings, purpose, and intent of this Resolution.

Section 2. General Airport Leasing Policy.

A. Lease Negotiations.

Lease negotiations by Airport staff shall consider the highest and best use of Airport property in accordance with FAA and Florida Department of Transportation (“FDOT”) regulations, the Airport Master Plan, and direction by the City Manager. Lease terms shall not deviate from those herein unless recommended by the Airport Director and approved by the City Manager. Long term leases with an initial term of one (1) year or more shall be approved by the City Council; however, pursuant to the City Code, leases for a nonrenewable term of one (1) year or less may be executed on behalf of the City by the City Manager. All leases shall be approved by the City Attorney as to form and legal sufficiency.

B. Competitive Proposals.

In situations where more than one (1) prospective tenant indicates an interest in leasing the same property within the same general period of time, and all application requirements have been satisfied, the Airport Director’s office will evaluate and select the proposal which best represents the overall public interest. The parties will then be notified of the Airport staff’s recommendation, and will have the opportunity to support their individual proposals at a scheduled meeting before the Airport Commission and City Council. Final approval authority for the lease of airport real property rests with the City Council.

C. Right of First Refusal.

Airport policy does not allow a prospective tenant to secure a “right of first refusal,” nor will the Airport remove any property from the market for any period of time for the purpose of future lease negotiations. Impartial consideration will be given to all parties who express a current interest in leasing real property, and who satisfy the following requirements:

1. Letter of Intent:

Letter of intent must be provided by the prospective tenant to the Airport Director's office. The purpose of the letter is to confirm the desire of the prospective tenant to enter into a lease agreement with the City, and to provide all required information for preparation of the lease agreement by including all of the following:

- a. Identify property to be leased.
- b. Describe the term of the lease, including any renewal options, along with the beginning and termination date.
- c. Names and addresses of authorized signatories.
- d. If a business is involved, provide business name as filed with the Division of Corporations, as well as, titles, names, and addresses of Officers, Directors, Managing Partners, and/or Authorized Person(s) who will be signing the lease.
- e. Detailed description of the intended use of the property, including any special conditions that apply.
- f. Fully completed application form.

2. Advance Rent:

Payment shall be in the amount of one (1) months' advance rent. Advance rent is not a security deposit. If the prospective tenant enters into a lease agreement with the City, these funds shall be considered to be the rent payment for the first month of the new lease agreement. If the prospective tenant is subsequently unable to reach an agreement with airport staff, or if the City Council declines to approve the proposed lease agreement for any reason, the money will be returned to the prospective tenant in full. If however, the prospective tenant decides not to enter into a lease agreement after the City has incurred expenses for the survey work, appraisal, environmental assessment, legal fees, etc., the prospective tenant shall forfeit the money to the

City as liquidated damages.

3. Rent Payment Protection (Security Deposit):

a. New commercial tenants shall be required to provide a security deposit. All tenants are required to provide a security deposit to the City in the amount of three (3) months' rent, as protection for the performance of the terms of the lease. This requirement applies to prospective new tenants, as well as existing airport tenants who enter into new lease agreements with the City. Arrangements to provide the security deposit must be completed by the prospective or existing tenant and approved by the Airport Director prior to the time the proposed lease agreement is submitted to the Airport Commission and City Council for consideration. Unless this requirement is waived under the conditions set forth in Section 2(C)3(b), the security deposit must remain in effect throughout the entire term of the lease agreement, including any option periods which are exercised by the tenant. The security deposit may be provided in any of the following forms:

(1) Cash payment in the amount of three (3) months' rent.

(2) An irrevocable Letter of Credit from a financial institution, in the form acceptable to the City, in the amount of three (3) months' rent.

(3) A Certificate of Deposit from a financial institution, assigned to the City, in the amount of three (3) months' rent.

b. For existing airport tenants only, the requirement for a security deposit may be waived (or a previously paid deposit may be refunded, if applicable) by the Airport Director. The security deposit shall be waived ONLY if the tenant has demonstrated an excellent rent payment history (no late payments) at the Vero Beach Regional Airport for a minimum of two (2) consecutive years, and either of the following

conditions is met:

- (1) Permanent improvements with an estimated value exceeding the amount of the normal security deposit (3 months' rent) have been constructed on the leased property; or
  - (2) The tenant has signed a lease agreement in an individual capacity rather than as an officer of a corporation, thereby providing a personal guarantee for the performance of the terms and conditions of the lease agreement.
- c. The requirement for a security deposit relative to leasing scenarios other than those described herein shall be subject to review by City Management, Airport Commission, and City Council.

### Section 3. Rates and Fees.

#### A. Land Rent and Concession Fees for Fixed Base Operators (FBOs):

Rental rates shall be determined as described in this Section for leasehold interest in real Airport property, subject to CPI adjustment as provided in Section 3(H) below. In addition, for the privilege of doing business at the Airport, concession fee(s) may be charged as described in this Section.

##### 1. Standard Land Rental Rate: (Aviation Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based upon current market values; plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rent rate determined in Section 3(A)1(a) above.

##### 2. Concession Fees:

- a. Concession Fee 1 (Gross Receipts): Fees will be determined based upon current market values or at minimum of two percent (2%) of gross receipts, excluding

aircraft sales, whichever is greater on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

- b. Concession Fee 2 (Fuel Flowage sales): Fees, if applicable, will be charged at a rate of \$0.05 per gallon of fuel pumped, whether for sale or not, said rate to be adjusted periodically based on current market values, with the approval of the City Manager.

B. Land Rent and Concession Fees for Specialized Aeronautical Service Operators (SASOs):

Rental rates for leasehold interest in real property (subject to adjustment as provided in Section 3(H)), and, if applicable, concession fee(s) for the privilege of doing business at the Airport, for aviation-related uses, which are not defined as "Fixed Base Operators" in the Airport's Minimum Standards shall be as follows:

1. Standard Land Rental Rate (Aviation Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based upon current market values; plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rental rate determined in Section 3(B)1(a) above.

2. Concession Fees:

- a. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.
- b. Concession Fee 2 (Fuel Flowage usage): Fees (if applicable) will be charged at a rate of \$0.05 per gallon of fuel pumped, whether for sale or not, said rate to be adjusted periodically based on current market values, with approval of the City

Manager.

C. Land Rent and Concession Fees for Commercial Users (Aviation-Use Only):

Rental rates for leasehold interest in real property (subject to CPI adjustment as provided in Section 3(H)), and, if applicable, Concession Fee(s) for the privilege of doing business at the Airport, for aviation-related uses for commercial aviation-use only shall be as follows:

1. Standard Land Rental Rate: (Aviation-Use Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based on current market values, plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rent rate determined in Section 3(C)1(a) above.

2. Concession Fee 2 (Fuel Flowage): Fees (if applicable) will be charged at a rate of \$0.05 per gallon of fuel pumped, whether for sale or not, said rate to be adjusted periodically based on current market values, with the approval of the City Manager.

D. Land Rent and Concession Fees for Commercial Users (Non-Aviation Use):

Rental rates for leasehold interest in real property (subject to adjustment as provided in Section 3(H)), and if applicable, Concession Fee(s) for the privilege of doing business at the Airport, for non-aviation commercial uses shall be as follows:

1. Standard Land Rental Rate: (Non-Aviation Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based on current market values, plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rent rate determined in Section 3(D)1(a) above.

2. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

E. Building Rent and Concession Fee for Aviation and Non-Aviation Users (Multiple Tenants):

Rental rates for buildings with multiple tenants, where ownership is held by the City, and if applicable, Concession Fee(s) for the privilege of doing business at the Airport, shall be as follows:

1. Standard Building Rental Rate (Multiple Tenants): Rental rates for buildings and improvements, where ownership is held by the City, occupied by multiple tenants, shall be established by the City Manager in the manner set forth in Section 3(G) and shall include a proportionate charge for Common Area Maintenance (CAM).
2. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

F. Building Rent and Concession Fee for Aviation and Non-Aviation Users (One (1) Tenant):

Rental rates for buildings, where the ownership is held by the City, shall be as follows:

1. Standard Building Rental Rate (One (1) Tenant): Rental rates for buildings and improvements, where ownership is held by Landlord, occupied by one (1) tenant who enjoys sole use of the leased premises shall be established by the City Manager in the manner set forth in Section 3(G). In addition to the rental charge for the buildings and improvements, the land included in the leased premises shall carry a rental rate as established in Sections 3(A), 3(B), 3(C), and/or 3(D).

2. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

G. Capitalization Rate:

Rental rates on leases for buildings and improvements, where ownership is held by the City, shall be initiated at a maximum of ten percent (10%) per year of the appraised value of such buildings and improvements, as determined by a state-certified appraiser. The rent charged for such buildings and improvements during the initial term of the lease agreement shall be subject to the annual CPI adjustments described in Section 3(H), and further adjusted prior to the beginning of any extension or renegotiation of the initial term of the lease, as described in Section 3(I).

H. Annual Consumer Price Index (CPI) Adjustment:

Beginning on October 1st of the year following the year in which the lease agreement is executed, and annually on each October 1st thereafter, including the renewal term pursuant to an option exercised under the lease agreement, if any, the rent shall be adjusted in accordance with the percentage change in the index known at the time the lease agreement is executed as the "United States Bureau of Labor Statistics Consumer Price Index (CPI) for All Urban Consumers," using the July to July report. This adjustment shall be referred to as "the CPI adjustment." If the CPI ceases to be published, the successor index shall be used. In no event shall the rental rate be less than the rental rate set for the previous year of the lease agreement.

I. Market Value Rent Adjustment:

In addition to the CPI Adjustment set out above, there shall be a review of building and

improvement market values prior to any lease extension or renegotiation to bring rental rates computed upon market values up to current market levels when applying the Capitalization Rate method above. A market value appraisal shall be completed upon leased buildings and improvements where ownership is held by the Airport prior to confirmation of a tenant's notice of intent to extend the lease of such buildings and/or improvements, to adjust the then current rental amount being charged on the lease to an amount equivalent to the capitalization rate applied to the updated market value. It is the intent of this provision to update rental amounts on buildings and improvements where ownership is held by the City prior to lease extensions or renegotiations in the same manner rental amounts are set upon buildings and improvements in Section 3(G) above. This provision shall apply to new leases entered into by the City after the adoption of this resolution, and to any extension or renegotiation of an existing lease initiated by the tenant.

Section 4. Repeal and replacement.

Resolution 2007-18 is hereby repealed and replaced by this Resolution No. 2015- 30.

Section 5. Conflict and severability.

The provisions of this Resolution shall control over those provisions of previously adopted resolutions in conflict herewith. If any provision of this Resolution is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdictions, such invalidity shall not affect the validity of the remaining portions.

Section 6. Effective date.

This Resolution shall become effective upon adoption.

\*\*\*\*\*

[Signature Pages Follow]

City of Vero Beach

This Resolution was moved for adoption by Councilmember Kramer, seconded by Councilmember Graves, and adopted on the 19 day of September 2015, by the following vote:

**Mayor Richard G. Winger**

Yes  No

**Vice Mayor Jay Kramer**

Yes  No

**Councilmember Amelia Graves**

Yes  No

**Councilmember Pilar E. Turner**

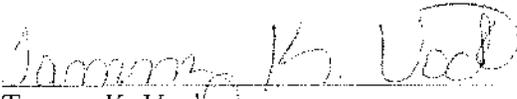
Yes  No

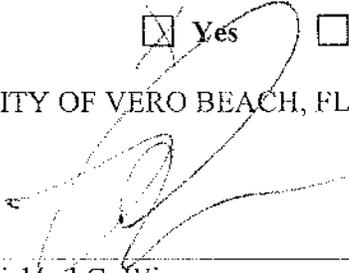
**Councilmember Randolph B. Old**

Yes  No

ATTEST:

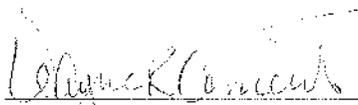
CITY OF VERO BEACH, FLORIDA

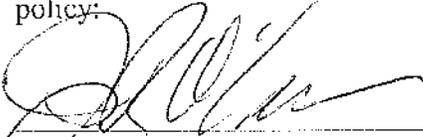
  
\_\_\_\_\_  
Tammy K. Vock  
City Clerk

  
\_\_\_\_\_  
Richard G. Winger  
Mayor

Approved as to form and legal sufficiency:

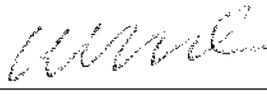
Approved as conforming to municipal policy:

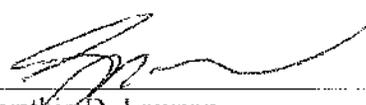
  
\_\_\_\_\_  
Wayne R. Coment  
City Attorney

  
\_\_\_\_\_  
James R. O'Connor  
City Manager

Approved as to technical requirements:

Approved as conforming to financial policy:

  
\_\_\_\_\_  
Ericson W. Menger  
Airport Director

  
\_\_\_\_\_  
Cynthia D. Lawson  
Finance Director

FIXED BASE OPERATOR'S LEASE AGREEMENT  
[Land only]

This Lease Agreement is executed on this 7<sup>th</sup> day of June, 2005, by and between the CITY OF VERO BEACH, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"); and Continental Jet Aviation, Inc., whose mailing address is 3060 Airport West Drive, Vero Beach, Florida 32960 "TENANT").

In consideration of the mutual covenants contained herein, LANDLORD and TENANT agree as follows:

1. LEASED PROPERTY.

LANDLORD hereby demises and leases to TENANT, and TENANT hereby hires, rents, and leases from LANDLORD, real property located at the Vero Beach Municipal Airport, Vero Beach, Indian River County, Florida. The leased property consists of 189,199 square feet of land and is more particularly described in Attachment A to this Lease Agreement.

2. TERM; OPTION TO RENEW.

(a) The initial term of this Lease Agreement shall be thirty (30) years, commencing on July 1, 2005, and terminating on June 30, 2035.

(b) TENANT shall have the option to renew this Lease Agreement for a term of ten (10) years at the conclusion of the initial term; provided, however, that TENANT is not in default hereunder, and provided that TENANT shall first give written notice

to LANDLORD of TENANT's intention to exercise this option no less than three (3) months, and no more than eighteen (18) months, prior to the termination of the initial term. All terms and conditions herein shall apply during the second term unless otherwise provided herein.

3. RENT; RENT ADJUSTMENT.

TENANT's rent shall consist of a base rent, a percentage of TENANT's gross receipts, and a fuel flowage fee, if applicable, as described below:

(a) Base Rent: Subject to the adjustment, escalation, and other provisions of this Lease Agreement, including Vero Beach Resolution No. 99-29, as amended, and Attachment B to this Lease Agreement, TENANT shall pay to LANDLORD, in lawful money of the United States, a total base rent during the initial term of this Lease Agreement of \$454,078.80. Pursuant to Section 8 of Attachment B of this Lease Agreement, TENANT also shall pay all legally imposed federal, state and local taxes, fees, and assessments accruing during the term of this Lease Agreement. The monthly base rent shall be \$1,261.33. Pursuant to Section 8 of Attachment B of this Lease Agreement, TENANT also shall pay all legally imposed taxes, fees, or assessments accruing for that month. The monthly rental rate is based on 189,199 square feet of land at \$0.08 per square foot per year. The monthly rent shall be due on the first day of each month. Failure to pay the monthly rent in full by the tenth day of each month shall result in the

assessment of a late charge of five percent (5%) of the amount then owing or \$50.00, whichever is greater.

(b) Gross Receipts: TENANT shall also pay two percent (2%) of each year's Applicable Gross Receipts, to be paid quarterly no later than the 15th day of January, April, July, and October for the preceding quarter. The term "Applicable Gross Receipts" as used herein shall be construed to mean, for all purposes hereof, the aggregate amount of all sales made and services performed, for cash or credit or otherwise, of every kind, name and nature, regardless of when or whether paid for or not, together with the aggregate amount of all wares, merchandise, and services for like property or services as the selling price thereof, as if the same had been sold for cash or the fair and reasonable value thereof, whichever is greater, excluding only the gross receipts from all sales of aircraft, fuel, as well as services and goods sold directly to the military agencies of the United States. The selling price of any accessory, part or supply added to or service furnished to an aircraft sold by TENANT shall be considered as part of the Applicable Gross Receipts hereunder. TENANT shall also pay one-quarter of one percent (1/4%) of the gross receipts on the sale of new and/or used aircraft.

(c) Fuel Flowage: TENANT shall also pay an initial rate of \$0.045 (increasing to \$0.05 on October 1, 2005) per gallon on fuel flowage, if applicable, in accordance with Vero Beach Resolution No. 99-29, unless and until that resolution is amended, at which

time TENANT shall pay the amount established by a resolution amending Resolution No. 99-29.

(d) Minimum Land Rent: Notwithstanding any other provision of the Lease Agreement to the contrary, if the previous calendar year's base rent, gross receipts, and fuel flowage fees do not equal or exceed a rate of \$0.16 per square foot per year, based on 189,199 square feet of land, or as that rate is adjusted yearly according to the percentage change in the Consumer Price Index, then TENANT shall be required to pay LANDLORD by March 1st an amount equal to the difference so as to equal an adjusted rate of \$0.16 per square foot per year, based on 189,199 square feet of land. For purposes of this paragraph, "base rent" shall mean the rent owed for any land, excluding the rent owed for easement land, if any, as defined herein.

(e) Ownership interest in all structures built, improvements made, and fixtures installed by TENANT, or at TENANT'S direction, upon the Leased Premises during the initial term or any renewal term of the Lease Agreement shall automatically revert to LANDLORD'S ownership and vest in LANDLORD at the expiration or termination of the initial term or the renewal term in which they are built, made or installed.

(f) If TENANT exercises the option to renew, TENANT's rent shall be adjusted as set forth in Attachment B.

4. STANDARD PROVISIONS.

The standard lease provisions for Airport Tenants, set forth in Attachment B to this Lease Agreement and entitled "Standard Lease Provisions For Airport Tenants," are incorporated into and made a part of this Lease.

5. USE OF PREMISES.

TENANT is limited to the following activities for the term of this Lease Agreement and the option to renew period:

- (a) Storage of aircraft;
- (b) Leasing of space to store aircraft;
- (c) Fixed Base Operator Category "G" (Complete Fixed Base Operator) as defined in Vero Beach Resolution No. 2677 (Minimum Standards for Fixed Base Operators), which Resolution is incorporated into and made part hereof by reference. TENANT agrees to be bound by Vero Beach Resolution No. 2677 as it now exists or as it may hereafter be amended.

6. GROSS RECEIPTS & AUDITS.

(a) TENANT shall, on or before January 15th of each year submit to LANDLORD a certified statement, as determined by generally accepted accounting practices for an FBO, showing the Applicable Gross Receipts from the operations of TENANT on, in, and from the demised premises for the preceding calendar year. This statement shall show such reasonable detail and breakdown as may be required by LANDLORD.

(b) LANDLORD or LANDLORD's agent shall have the right and privilege to examine, inspect, and audit all books of account and records of TENANT pertaining to any operations under the terms of this Lease Agreement at any time during the term hereof. TENANT shall, at all times, maintain and keep available for such inspection complete and accurate books of account covering its operations hereunder, in accordance with generally accepted accounting practices for an FBO.

7. SPECIAL PROVISIONS.

To the extent that any of the following Special Provisions are in conflict with any other provision of this Lease Agreement, the Special Provision shall govern.

(a) TENANT shall submit a complete site plan application to the City of Vero Beach Planning Department as set forth in Paragraph 12 of Attachment B.

(b) Prior to the Lease commencement date, TENANT shall provide security for the performance of this Lease Agreement, in a form acceptable to LANDLORD, in the amount of \$8,100.00, and said amount shall immediately be forfeited by TENANT to LANDLORD in the event of a default under the terms of this Lease Agreement that is not immediately cured under the terms herein, and shall be applied as a credit to any sums due to LANDLORD upon default. It is expressly understood and agreed by the parties that the security deposit shall not be considered an advance payment of rental or a measure of LANDLORD's damages in case of default by TENANT. Said

deposit shall be returned to TENANT upon the successful conclusion of the performance by TENANT of the terms of this Lease Agreement.

(c) TENANT agrees that all aircraft based at TENANT'S facilities upon the leased property on a regular (non-transient) basis shall comply with Stage 3 noise levels prescribed in the applicable sections of the Federal Aviation Regulations.

(d) Attached hereto, and incorporated herein as Attachment C, is a copy of the Phase I Environmental Property Assessment, dated July 17, 2002, by Fraser Environmental and Geotechnical Services, Inc. LANDLORD and TENANT accept this report as an accurate representation of the environmental condition of the property as of the commencement date of this Lease Agreement.

(e) Upon termination of the Lease Agreement, TENANT shall pay for a Phase I Environmental Assessment of the leased property. The results of this report shall be compared to the results of the Phase I Environmental Property Assessment described in paragraph (d) above, to determine whether or not the leased property was contaminated during the term of the Lease Agreement. If a Phase II Environmental Assessment is recommended by the environmental auditor, TENANT shall be responsible for any and all costs associated with the Assessment and environmental remediation pursuant to the terms of Section 19, Environmental Provisions, of Attachment B of this Lease Agreement.

(f) TENANT shall provide LANDLORD with certificates of insurance stating that the coverages, as provided by Section 10 of

Attachment B of this Lease Agreement, are in force prior to the commencement date of this Lease Agreement, and for each term of coverage thereafter.

8. INTEGRATION/AMENDMENTS.

(a) This written Lease Agreement and Attachments A, B, and C, contain the entire Agreement of the undertakings by and between the parties hereto relative to the leasing of the premises. No prior or present agreements, representations, statements, or promises, whether oral or written, made by any party or agent of any party hereto which is not contained herein shall be binding or valid.

(b) No provision of this written Lease Agreement or Attachments A, B, or C, may be amended, extended or modified except by written instrument executed by all parties to this Lease Agreement.

IN WITNESS WHEREOF, we the LANDLORD and TENANT, have hereunto affixed our hands and seals.

**LANDLORD - CITY OF VERO BEACH**  
**(This section to be completed by Landlord only)**

ATTEST:

LANDLORD:

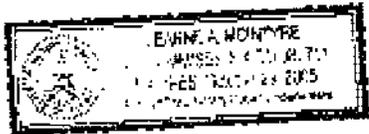
Sign: Tammy K. Vock  
Print: Tammy K. Vock  
Title: City Clerk

Sign: Mary Beth McDonald  
Print: Mary Beth McDonald  
Title: Mayor

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 8<sup>th</sup>  
day of June, 2005, by Mary Beth McDonald, as Mayor,  
and attested by Tammy K. Vock, as City Clerk of the City of Vero  
Beach, Florida. They are both known to me and did not take an  
oath.

NOTARY PUBLIC:



Sign: Anne A. Montoya  
Print: Anne A. Montoya  
State of Florida at Large [SEAL]  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

TENANT - Continental Jet Aviation, Inc.  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: [Signature]  
Print: Barbara Renaud

Sign: [Signature]  
Print: Crystal Martin

TENANT:

Sign: [Signature]  
Print: Andrew R. Machata  
Title: President

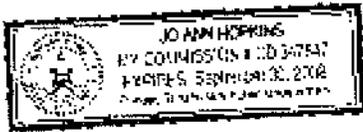
[AFFIX CORPORATE SEAL HERE]

[SEAL]

STATE OF FLORIDA  
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 18th day of April, 2005, by Andrew R. Machata, as President, on behalf of the company. He is personally known to me or produced personally known as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign: [Signature]  
Print: Jo Ann Hopkins  
State of Florida at Large [SEAL]  
Commission No. DD 347847  
My Commission Expires: 9/30/08

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**CITY MANAGEMENT**

**(This section to be completed by City Management Staff only)**

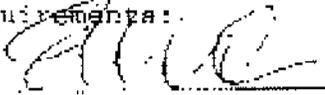
Approved as to form  
and legal sufficiency:

  
\_\_\_\_\_  
City Attorney

Approved as to technical  
requirements:

  
\_\_\_\_\_  
City Manager

Approved as to technical  
requirements:

  
\_\_\_\_\_  
Airport Director

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**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**  
**LOTS 2, 3 AND 4, AIRPORT WEST ADDITION REPLAT**  
**Parcel #34-32-39-00003-0000-00002.0**

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Airport West Addition Subdivision, as recorded in Plat Book 15, Page 40 of the Public Records of Indian River County and being more particularly bounded and described as follows:

All of Lots 2, 3 and 4 of said Airport West Addition Subdivision;

Containing 189,199 square feet more or less.

  
\_\_\_\_\_  
David R. Gay, P.S.P. #1997



200217.airportwestaddn.REPLAT.ngv02

PLAT OF  
AIRPORT WEST ADDITION  
PLAT BOOK 15, PAGE 40

SCALE 1" = 100'

DRAINAGE R/W

TRACT B

AIRPORT WEST DRIVE

60' R/W

LOT 5

POINT FALLS ON MANHOLE R/W.  
"X" SET ON S.W. CORNER OF R/W

LOT 35

P.R.M. #5973

P.R.M. #5973

TRACT A

G1

DRAINAGE R/W

N00°44'45"E  
167.95

P.R.M. #5973

LOT 1

LOTS 2-4 TOTAL  
AREA = 189,199 S.F.

SOUTHEASTERLY LINE AIRPORT WEST

LOT 3

LOT 4

LOT 2

CL TAXIWAY "B"

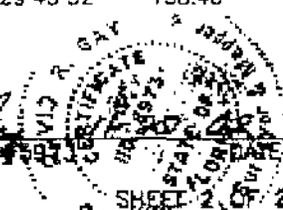
CURVE TABLE

CURVE	RADIUS	DELTA	ARC LENGTH
C1	2325.00	03°20'47"	135.79'
C2	304.98	29°45'32"	158.40'

125.68' 71.98' P.R.M. #5973 S89°15'15"E 197.66 P.R.M. #5973

VERO BEACH MUNICIPAL AIRPORT  
(UNPLATTED)

THIS SKETCH IS NOT A SURVEY

DAVID CAY, PSM  
  
 SHEET 2 OF 2

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS AND ENGINEERING ENGINEERING DIVISION	SKETCH OF PROPERTY DESCRIPTION LOTS 2-4 AIRPORT WEST ADDITION REPLAT	EXHIBIT "A"		DATE	BY
		CITY PROJECT NO.	2002-10	DATE	11/2002
		DATE	7/2002	BY	DK
		DATE		BY	MAKF

**ATTACHMENT B**

**STANDARD LEASE PROVISIONS FOR AIRPORT TENANTS**

**EFFECTIVE JULY 1, 2003**

**ATTACHMENT B**  
**STANDARD LEASE PROVISIONS FOR AIRPORT TENANTS**

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## ATTACHMENT B

### STANDARD LEASE PROVISIONS FOR AIRPORT TENANTS

1. **REVERSION OF OWNERSHIP INTEREST TO LANDLORD:** Ownership interest in all structures built, improvements made, and fixtures installed by TENANT, or at TENANT'S direction, upon the Leased Premises during the initial term or any renewal term of the Lease Agreement shall automatically revert to LANDLORD'S ownership and vest in LANDLORD at the expiration or termination of the initial term or the renewal term in which they are built, made or installed.

2. **RENTAL ADJUSTMENT:**

(a) Annual Rental Adjustment: Beginning on October 1st of the year following the year in which the Lease Agreement is executed, and annually on each October 1st thereafter, including the renewal term pursuant to an option exercised under the Lease Agreement, if any, the rent shall be adjusted in accordance with the percentage change in the index known at the time the Lease Agreement is executed as the "United States Bureau of Labor Statistics Consumer Price Index (CPI) for All Urban Consumers," using the July to July report. This adjustment shall be referred to as "the CPI adjustment." If the CPI ceases to be published, the successor index shall be used. In no event shall the rental rate be less than the rental rate set for the previous year of the Lease Agreement. When the Leased Premises includes land plus building space, the "building space" portion of the rent shall not be subject to the annual CPI adjustment.

(b) Option to Renew Rental Adjustment: If TENANT exercises an option to renew, if applicable, in addition to Paragraph (a) above, TENANT'S rent per year shall be increased by an amount equal to ten percent (10%) of the appraised value of all structures

built improvements made and fixtures installed by TENANT, or at TENANT'S direction, upon the Leased Premises during the initial term that have reverted to LANDLORD'S ownership at the expiration of the initial term, pursuant to Paragraph 1. This rental adjustment shall continue in force for the duration of the renewal term. The appraisal shall be performed by a state certified general real estate appraiser agreed to by LANDLORD and TENANT.

**3. ASSIGNMENT:** TENANT shall not, either directly or indirectly by any means, assign, sublease, hypothecate or transfer the Lease Agreement or any interest therein, or any portion of the Leased Premises, including any improvements thereon, without the express written consent of the LANDLORD. LANDLORD shall not unreasonably withhold consent. However, any proposed assignee, sublessee, or transferee shall meet all lease requirements for such assignment, subleases, or transfer. In no event shall LANDLORD'S granting of consent to one or more assignments, subleases, hypothecations or transfers constitute a waiver of LANDLORD'S right to refuse consent as to subsequent assignments, subleases, hypothecations or transfers. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law, without the express written consent of the LANDLORD. TENANT agrees that use of the Leased Premises or any portion thereof by any subtenants, suboperators, or submanagement shall not diminish in any way rents due LANDLORD from TENANT. If this Lease Agreement is assigned, or if the Leased Premises or any part thereof is sublet or occupied by anybody other than TENANT, with or without LANDLORD'S consent, LANDLORD may collect rent directly from such assignee, sub-lessee or occupant, and apply the net amount collected to the rent herein reserved. However, no such collection of

rent shall be deemed a waiver of this covenant, or shall be deemed the acceptance of such assignee, sub-tenant or occupant as, or in place of, TENANT, or a release of TENANT for obligations on the part of TENANT herein contained. Stock transfers, asset transfers, and any other ownership transfer of a tenant that changes the management or policy making individuals of the TENANT shall be considered an "indirect transfer" of the Lease, requiring the express written consent of the LANDLORD prior to any such transfer or change in ownership or management. Any assignment or sublease, whether approved by LANDLORD or not, shall be subject to the terms of the Lease Agreement with TENANT and all attachments and amendments.

**4. ALTERATIONS:** TENANT shall not make any alterations, changes, additions or improvements to the Leased Premises without the prior express written consent of the LANDLORD. All work shall be performed in a good and workmanlike manner and shall be made in accordance with plans and specifications approved by LANDLORD, and with all applicable laws, rules and regulations, including, without limitation, the Americans With Disabilities Act. In the event that any governmental authority directs any modification or alteration to the Leased Premises as the result of TENANT'S occupancy, TENANT shall pay for the cost of the modification or alteration. If, because of any act or omission of the TENANT, his successors or assigns, any mechanic's, materialman's, laborer's or any other lien or other order for payment of money shall be recorded against the Leased Premises, or any part thereof, or otherwise asserted against the LANDLORD, then the TENANT shall, at TENANT'S own cost and expense, cause the same to be satisfied, cancelled and discharged of record, and further shall indemnify and hold harmless the LANDLORD from

and against any and all costs, expenses, claims, losses or damages, including reasonable attorney's fees, through trial and appeal, resulting therefrom or by reason thereof.

**5. ASSIGNMENT OF RENTS:** As additional security under the Lease Agreement, TENANT assigns, transfers, and sets over unto LANDLORD all of the rents for the Leased Premises accruing to TENANT pursuant to any assignment or sublease whether approved by LANDLORD or not; this assignment shall become operative upon any default by TENANT under the terms of the Lease Agreement and shall remain in full force and effect so long as any default continues to exist in the making of any of the payments or performance of any of the covenants of the Lease Agreement, and LANDLORD shall have the right to collect same directly from the person(s) or entity in possession.

**6. NO ABATEMENT OF RENTS:** No diminution or abatement of rent or offset shall be claimed or allowed for any reason whatsoever. If TENANT has a disagreement or claim arising from the Lease Agreement or the Leased Premises, TENANT shall make such disagreement or claim known to LANDLORD in writing, but TENANT shall continue to pay all rents, fees and applicable federal, state, and local taxes, fees, and assessments as they become due. Failure by TENANT to pay all monies as they become due may be deemed a default under the terms of the Lease Agreement at LANDLORD'S sole option.

**7. LIMITATION ON LANDLORD'S LIABILITY:**

(a) TENANT accepts the condition of the Leased Premises as is and recognizes and agrees to fully assume all risks, known and unknown, that arise or might arise incidental to, arising out of, or in any way connected with use of the Leased Premises, the Airport, and the roadways and other means of ingress and egress, and on behalf of itself, its successors, assigns, administrators, receivers, and trustees, release and forever

discharge the LANDLORD, its elected officials, officers, employees, agents, their successors and assigns, of and from any and all liabilities, claims, demands, damages, actions, costs or expenses of any nature, known or unknown, arising out of or in any way connected with such uses by TENANT. TENANT understands and agrees that this release includes claims based on the negligence, actions or inaction of the LANDLORD and the other above released individuals and entities and covers any cause or condition whatsoever, including, but not limited to, bodily injury, death and property damage or loss. LANDLORD makes no warranty of the suitability of the Leased Premises for any particular use contemplated by TENANT.

(b) LANDLORD shall not be liable to TENANT for any claim for compensation or any losses, damages or injuries sustained by TENANT resulting from failure of any water supply or sewer service, heat or electrical current, whether on the surface or underground, including, but not limited to, stability, moving, shifting, settlement or displacement of materials by fire, water, windstorm, tornado, act or state of war, civilian commotion or riot, or any other cause beyond the control of LANDLORD.

#### **8. TAXES:**

(a) In the event that taxes are legally imposed, TENANT is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax., accruing during the term of the Lease Agreement or any renewal thereof. In the event that taxes are legally imposed, TENANT is solely responsible for all ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Leased Premises and the buildings on the Leased Premises, accruing during the term of the Lease

Agreement or any renewal thereof. TENANT shall pay all such legally imposed taxes directly to the respective taxing authority. All ad valorem and non-ad valorem taxes that are legally imposed shall be paid directly to the Indian River County tax collector's office on a quarterly basis. If applicable, TENANT shall be responsible for timely electing the quarterly tax payment program with the Indian River County tax collector's office, and shall continue participation during the term of the Lease Agreement, including renewal periods, if any. If such election is applicable, within ten (10) days after execution of the Lease Agreement, or as soon thereafter as feasible, dependent upon the Indian River County tax collector's office, TENANT shall provide LANDLORD with documentation from the Indian River County tax collector's office stating that the required election has been made. If such election is applicable, TENANT shall provide such documentation annually.

(b) TENANT acknowledges that any taxes legally imposed on the leasehold under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on TENANT, and not on LANDLORD. TENANT acknowledges that any ad valorem taxes legally imposed on the leasehold under Section 196.199, Florida Statutes (taxation of government leaseholds), any non-ad valorem taxes, impact fees and assessments, if any, are imposed on TENANT, and that the LANDLORD, as a governmental entity, is immune or exempt from such imposition.

**9. INDEMNIFICATION:** TENANT agrees to indemnify and hold harmless LANDLORD for any and all actions, claims, losses, and litigation including all costs and attorney's fees, through trial and appeal, arising out of or connected in any way with TENANT'S occupancy or use of the Leased Premises, except with respect to any condition existing on the Leased

Premises that is in LANDLORD'S sole control or arising from LANDLORD'S willful misconduct or gross negligence. TENANT further agrees to hold LANDLORD harmless for any loss, damage or destruction of any personal property, fixtures or improvements within or on the Leased Premises.

**10. INSURANCE:**

(a) TENANT shall procure, maintain and pay for commercial general liability insurance providing all risks coverage which protects the LANDLORD, the LANDLORD'S elected officials, employees, officers and agents, and TENANT, from claims arising from bodily injury, property damage, operations, premises and fire legal liability. Such insurance coverage shall have a combined single limit of not less than \$1,000,000.00. Coverage shall be provided in a form no more restrictive than the latest edition of the commercial general liability policy filed by the Insurance Services Office. TENANT'S insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with TENANT'S insurance.

(b) During the full term of the Lease Agreement, at TENANT'S sole cost and expense, TENANT shall provide, maintain and pay for a property insurance policy providing coverage of not less than 100% of the insurable replacement value, without deduction for depreciation, for the demised premises of which any buildings are a part, including any improvements and betterments which may be insurable as part of the realty. Said property insurance shall cover the improvements and betterments from loss due to fire, windstorm, flood and any other peril included in the broadest available standard form of extended coverage. Coverage shall be in an amount sufficient to meet the co-insurance requirements of the policies, but not less than the full insurable value thereof. Deductibles

for all perils shall not be greater than \$2,500.00. The policy shall be endorsed to make any loss payments payable jointly to the LANDLORD and TENANT for losses covered under such policies.

In the event of damage and/or destruction to the buildings, improvements, betterments and equipment, all proceeds from such policy shall be utilized by TENANT to repair and/or replace the damaged or destroyed buildings, improvements, betterments and equipment. TENANT may request consent from LANDLORD not to repair and/or replace the damaged or destroyed buildings, improvements, and equipment. LANDLORD, in its sole discretion, may either accept or reject TENANT'S request not to repair and/or replace.

If the LANDLORD rejects TENANT'S request not to repair and/or replace, then TENANT must utilize all insurance proceeds to repair and/or rebuild pursuant to this paragraph. If LANDLORD consents to TENANT'S request not to repair and/or replace, then the insurance proceeds shall be prorated between the LANDLORD and the TENANT based upon the time period left in the Lease Agreement before the reversion of all structures and improvements (fixtures) to the LANDLORD (example: if LANDLORD consents to TENANT'S request not to repair and/or replace and the lease is in the 28<sup>th</sup> year of a 30 year lease, the insurance proceeds would be dispersed 28/30<sup>th</sup> to the LANDLORD and 2/30<sup>th</sup> to the TENANT).

Within 6 months after damage and/or destruction to the buildings, improvements, betterments and equipment, and sooner if reasonably possible, TENANT shall, at the TENANT'S sole expense (using insurance proceeds available for that purpose, along with TENANT'S own funds), either repair or restore the buildings, improvements, betterments and equipment as completely as possible to their condition immediately prior to the

damage, or, in the alternative, replace the buildings, improvements, betterments and equipment with structures the same general size and character as the damaged buildings, improvements, betterments and equipment.

In the event any insurance proceeds of such policy shall remain unused after the completion of restoration or rebuilding to the LANDLORD'S satisfaction, evidenced in writing, and if the TENANT shall not be in default under the Lease Agreement, then the remaining funds shall be paid to LANDLORD for any unpaid rent and other sums due, with any remaining sum paid to the TENANT.

(c) All insurance required by this Section shall be with a company licensed to do business in the state of Florida, and be otherwise satisfactory to the LANDLORD.

(d) Recognizing the extended term of the Lease Agreement, TENANT agrees that the LANDLORD shall have the right to periodically review the adequacy of the required insurance and amend the insurance requirements of this section. Factors which may be considered include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes in TENANT'S use of the premises, measurable changes in local and national economic indicators and changes in City policies and procedures.

(e) The insurance policy shall name the LANDLORD as an additional insured and shall include provision for at least thirty (30) days advance notice to LANDLORD by the insurer prior to any policy change, amendment, termination or expiration of coverage. TENANT shall cause the insurer to provide proof of the required insurance to the LANDLORD before TENANT takes possession of the Leased Premises and shall cause the insurer to continue to supply such proof to the LANDLORD for each term of coverage.

TENANT'S insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with TENANT'S insurance.

**11. USE OF LEASED PREMISES; RESTRICTIONS ON USE:**

(a) TENANT agrees to observe and obey all laws, ordinances, rules and regulations promulgated and enforced by LANDLORD and by any other proper authority having jurisdiction over the conduct of operations at the Airport, and all further revisions or amendments thereto. Further, TENANT agrees that TENANT shall not occupy or use or permit or suffer the Leased Premises or any part thereof, to be occupied or used for any unlawful or illegal business or purpose, nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future laws, rules, requirements, orders, ordinances, regulations of the United States of America, or of the State, County, or City government, or their administrative boards or agencies.

(b) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, to prevent any use of the herein described Leased Premises which would interfere with or adversely affect the operations or maintenance of the Airport, or otherwise constitute an Airport hazard.

(c) TENANT shall have the right to use the Leased Premises for any use permitted in the zoning district in which the property is located, and in conformance with an approved site plan or minor change of use application, as may be appropriate, subject to applicable laws and ordinances.

(d) LANDLORD reserves unto itself, its 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 real property herein described, together with the right to cause in such

airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from, or operating on the Airport.

(e) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, that temporary structures shall not be allowed on the Leased Premises without the written permission of the Airport Director and the proper permitting by the City of Vero Beach Planning Department. Any structure that is not permanently attached to a properly engineered poured concrete foundation shall be considered a temporary structure.

(f) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the herein-described real property to such a height so as to comply with Federal Aviation Regulations, Part 77, as amended.

## **12. CONSTRUCTION OF IMPROVEMENTS:**

(a) Where the Special Provisions section of the Lease Agreement requires site plan application, TENANT shall submit a complete site plan application to the City of Vero Beach Planning Department within one hundred fifty (150) days of the approval of the Lease, and shall diligently pursue site plan approval. Upon the receipt of acceptable justification from TENANT, said time limit for submission of a complete site plan to the City of Vero Beach Planning Department may be extended by LANDLORD.

(1) If the Planning and Zoning Board rejects the site plan, TENANT shall either appeal the Board's rejection to the City Council or submit an amended site plan application within thirty (30) days of notice of such rejection.

(2) If the Planning and Zoning Board approves the site plan, TENANT shall complete construction within twenty-four (24) months thereafter.

(b) Notwithstanding subsection (a) above, if TENANT fails to receive site plan approval within eighteen (18) months after the effective date of the Lease Agreement, LANDLORD may elect to terminate the Lease Agreement. If LANDLORD elects to terminate the Lease Agreement due to TENANT'S failure to obtain site plan approval:

(1) LANDLORD shall have the right to immediately reenter and take possession of the Leased Premises; and

(2) All title to and interest in any structures built and improvements made by TENANT upon the Leased Premises shall vest in LANDLORD.

(c) If the project intended for construction on the Leased Premises is a phased project, all construction and phasing shall be in accordance with the applicable laws and ordinances relating to such construction.

### **13. RESPONSIBILITY FOR AND MAINTENANCE OF LEASED PREMISES:**

(a) TENANT agrees that LANDLORD shall have no responsibility for the maintenance of the Leased Premises, including any improvements thereon, and that TENANT shall, at TENANT'S own expense, keep in good order and repair, inside and out:

(1) any building on the real property herein described, and all structural attributes, including roofs, of such buildings; and

(2) all equipment located within any buildings, including, but not limited to, the air conditioning, machinery, plumbing, wiring, pipes, gas, steam and electrical fittings, and all other equipment. TENANT further agrees, from time to time, to make renewals and replacements of such equipment so that, at all times, any

building and its equipment will be in good operating condition, order and repair. The replacements and renewals made by TENANT shall be first class and modern in character and efficiency, of a quality at least equal to the original equipment and sufficient for the same service.

(b) TENANT shall keep the Leased Premises clean, shall dispose of all debris and other waste matter which may accumulate, and shall provide metal containers with proper covers for waste within the buildings on said premises.

(c) TENANT shall maintain the grounds, landscaping and parking areas in keeping with the same standards under which the City of Vero Beach maintains the Vero Beach Municipal Airport grounds, landscaping and parking areas.

**14. DEFAULT:**

(a) Default in Payment of Rent. Should the TENANT fail to pay to the LANDLORD any installment of rent when due, the TENANT shall be deemed in default of the Lease Agreement and the TENANT shall either cure such default or surrender possession of the Leased Premises to the LANDLORD within three (3) days after written notice of the default is served on the TENANT.

(b) Defaults Other than Rent. Should the TENANT fail to perform or comply with any of its obligations, covenants, conditions, agreements or assurances, other than payment of rent, the TENANT shall be deemed in default of the Lease Agreement and the TENANT shall either cure such default or surrender possession of the Leased Premises to the LANDLORD within fifteen (15) days after written notice of the default is served on the TENANT.

(c) Abandonment. Should the TENANT abandon the Leased Premises, whether such abandonment is actually known to the LANDLORD or presumed, the TENANT shall be deemed in default of the Lease Agreement. Absent actual knowledge by the LANDLORD of abandonment of the Leased Premises by the TENANT, abandonment shall be presumed when: (a) the TENANT has been absent from the Leased Premises for a period of thirty (30) consecutive days; and (b) the TENANT has not notified the LANDLORD in writing of the absence being intended; and (c) the rent is not current; and (d) ten (10) days have elapsed since service of a written notice on the TENANT of the default and the LANDLORD'S intent to retake possession.

(d) Right of Possession on Default. The LANDLORD may retake possession of the Leased Premises without judicial action upon surrender or abandonment of the Leased Premises by the TENANT. Should TENANT fail to cure a default under the Lease Agreement or in the alternative to surrender or abandon possession of the Leased Premises within the time provided, the LANDLORD shall have the right to recover possession of the Leased Premises as provided by law in an action for possession. The LANDLORD'S retaking of possession of the Leased Premises, whether by the TENANT'S surrender or abandonment of the Leased Premises, or by judicial action, shall not be deemed a waiver of any of the LANDLORD'S other claims, rights or remedies and will not terminate the Lease Agreement absent notice of termination by the LANDLORD. The LANDLORD may at any time after retaking possession or reletting terminate the Lease Agreement for the default because of which the LANDLORD reentered or relet the Leased Premises.

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(e) Remedies In Addition To Repossession. In addition to recovery of possession of the Leased Premises as provided herein, the LANDLORD shall have the right, at its sole option, to exercise one or more of the following remedies:

(1) Terminate the Lease Agreement and recover from the TENANT all rents, fees, taxes and other amounts due through the date of termination together with any and all loss, expense, or damage which the LANDLORD may suffer by reason of such termination, whether for the costs of reletting or through an inability to relet the Leased Premises, or through a decrease in rent, or any other reason, including, but not limited to, attorney's fees and costs, through trial and appeal.

(2) Without terminating the Lease Agreement, declare the entire amount of the rent accelerated and to be due and payable immediately for the remainder of the full term of the Lease Agreement or the renewal term, in which event TENANT agrees to pay such sum at once, together with all arrearages, costs and expenses, including, but not limited to, attorney's fees and costs, through trial and appeal.

(3) Without terminating the Lease Agreement, relet the premises for any term at such rent and on such terms as the LANDLORD may choose during the remainder of the TENANT'S term for the account of the TENANT and recover from the TENANT at the end of the term or at the time each payment of rent comes due under the Lease Agreement, whichever the LANDLORD may choose, the difference between all the rent, costs and fees specified in the Lease Agreement and all the rent, costs and fees actually received from the reletting, together with any and all loss, expense, or damage which the LANDLORD may suffer for the costs of reletting the Leased Premises or any other reason, together with all arrearages,

costs and expenses, including, but not limited to, attorney fees and costs, through trial and appeal.

(f) No Waiver By Extension. Any extension of time to cure a default that may be granted to TENANT by LANDLORD after the aforementioned written notice is served shall not be deemed a waiver of LANDLORD'S right to retake possession without additional notice.

(g) Notices. The method for serving notices shall be as otherwise provided herein, or, if the TENANT is absent from the Leased Premises or the address designated by the TENANT for service of notices, by leaving a copy thereof at such place or by posting on the Leased Premises.

(h) LANDLORD may, as agent of the TENANT, do whatever the TENANT is obligated to do, other than payment of rents, by the provisions of the Lease Agreement, and may enter the Leased Premises, without being liable to prosecution of any claims for damages therefor, in order to accomplish this purpose. The TENANT hereby grants LANDLORD irrevocable authority and permission to enter the premises for this purpose and agrees to reimburse the LANDLORD immediately upon written demand for any expense which the LANDLORD may incur in thus affecting compliance with the Lease Agreement on behalf of the TENANT, and the TENANT further agrees that the LANDLORD shall not be liable for any damages resulting to the TENANT from such action, whether caused by the negligence of the LANDLORD or otherwise.

(i) In the event of any breach or threatened breach by the TENANT of any of the terms, covenants, agreements, provisions or conditions in the Lease Agreement, the LANDLORD shall have the right to invoke any right and remedy allowed at law or in equity

or by statute or otherwise as through reentry, summary proceedings, and other remedies not provided for in the Lease Agreement.

(j) Upon the termination of the Lease Agreement and the term created, or upon the termination of the TENANT'S right of possession, whether by lapse of time or at the option of the LANDLORD, the TENANT will at once surrender possession of the Leased Premises to the LANDLORD and remove all of its personal property (non-fixtures) from it. If possession is not immediately surrendered, the LANDLORD may obtain possession of the Leased Premises as provided by law (Section 83.05, Florida Statutes, or as that provision may be amended).

(k) Should the TENANT, at any time during the term of this Lease Agreement, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it, or institute a proceeding under Chapters 7, 11, or 13 of the United States Bankruptcy Code, as they may be amended, the TENANT, and/or the TENANT'S successor in interest, including but not limited to the trustee assuming or assigned the Lease Agreement, shall provide adequate protection and adequate assurances of future performance of the Lease Agreement as are required by the Bankruptcy Code which will include but not be limited to the following:

(1) All monetary and non-monetary defaults existing prior to the institution of the filing of the bankruptcy petition shall be cured within forty-five (45) days of service of written demand made upon the TENANT by the LANDLORD which will include all costs and attorney's fees expended by LANDLORD to the date of the curing of the default; and

(2) An additional one month of advance rental will be required as additional security of future performance which must be paid to the LANDLORD within forty-five (45) days of the filing of the petition in bankruptcy; and

(3) All obligations of the TENANT must be performed in accordance with the terms of the Lease Agreement.

If at any time during the pendency of the bankruptcy proceeding, the TENANT or its successor in interest fails to perform any of the monetary or non-monetary obligations required under the terms of the Lease Agreement, or fails to cure any pre-filing default, or fails to make the additional security deposit required under the adequate protection and adequate assurances of future performance clause above, the TENANT and/or its successor in interest stipulates and agrees to waive its rights to notice and hearing and to allow the LANDLORD total relief from the automatic stay under 11 U.S.C. 362 to enforce its rights under the Lease Agreement and under state law including, but not limited to, issuance and enforcement of a judgment for possession and writ of possession.

(l) General Provisions Relating to Default. Pursuit by LANDLORD of any of the foregoing remedies shall not preclude the pursuit of any of the other remedies herein provided or any other remedies provided by law. No act or thing done by the LANDLORD or its agents during the term hereby granted shall be deemed an acceptance of a surrender of said Leased Premises, and no agreement to accept a surrender of said Leased Premises shall be valid unless the same be made in writing and subscribed by the LANDLORD. The mention in the Lease Agreement of any particular remedy shall not preclude the LANDLORD from any other remedy the LANDLORD might have, either in law

or in equity, nor shall the waiver of or redress for any violation of any covenant or condition in the Lease Agreement or any of the rules and regulations set forth herein, or hereafter adopted by LANDLORD, prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The acceptance by the LANDLORD of any rent with knowledge of the breach of any covenant in the Lease Agreement, other than a breach by non-payment, shall not be deemed a waiver of such breach. Termination of the Lease Agreement by lapse of time or otherwise, prior to the ending thereof as agreed to by the parties shall not affect the LANDLORD'S right to collect rent for the period prior to the termination thereof.

**15. SURRENDER AT END OF TERM:** At the expiration or termination of the initial term or any renewal term of the Lease Agreement or earlier termination hereof, TENANT shall peaceably and quietly leave, surrender and deliver to LANDLORD the Leased Premises, together with any buildings, improvements, and fixtures, excluding any personal property of TENANT not affixed to the Leased Premises, broom clean, and in thorough repair, good order, and safe condition. TENANT shall remove all of TENANT'S unaffixed personal property from the Leased Premises upon termination. If TENANT fails to remove TENANT'S unaffixed personal property within fifteen (15) days after the date of expiration or earlier termination, such property shall be deemed to have been abandoned without notice to TENANT. LANDLORD may appropriate, sell, store, destroy or otherwise dispose of any such abandoned property without notice to TENANT and without obligation to account therefor. Further, TENANT shall pay to LANDLORD the cost LANDLORD incurs in removing, selling, storing, destroying and disposing of such abandoned property in excess of any value recovered for such abandoned property.

**16. HOLDOVER TENANCY:** If the TENANT remains in possession of the Leased Premises after the Lease Agreement expires or terminates for any reason:

(a) TENANT will be deemed to be occupying the Leased Premises as a TENANT from month-to-month at the sufferance of the LANDLORD. The TENANT will be subject to all of the provisions of the Lease Agreement, except that, at the LANDLORD'S discretion, the base rent will be at a monthly rate equal to twice the amount of a single monthly installment of fixed rent at the rate in effect for the last month of the term of the Lease Agreement;

(b) TENANT shall reimburse LANDLORD for any additional damages which LANDLORD suffers by reason of TENANT'S continued occupancy; and

(c) TENANT shall indemnify LANDLORD from and against all claims made by any succeeding tenant insofar as such delay is occasioned by TENANT'S failure to surrender the Leased Premises. For purposes of this Section, "Base Rent" shall be that portion of the rent based on a square footage rate, as adjusted by the CPI.

**17. ACCORD AND SATISFACTION/WAIVER:**

(a) If the TENANT pays to LANDLORD an amount that is less than the full amount stipulated to be paid under the terms of the Lease Agreement, that payment shall be considered to be made only on account and applied to the stipulated amount due. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The LANDLORD may accept any check or payment without prejudice to the LANDLORD'S right to recover the balance due or to pursue any other available remedy.

(b) Any default in the payment of the fixed or additional rent or other charges, or any failure of LANDLORD to enforce the provisions of the Lease Agreement upon any

default by TENANT, shall not be construed as creating a custom of deferring payment or as modifying in any way the terms of the Lease Agreement, or as a waiver of LANDLORD'S right to terminate the Lease Agreement as herein provided, or otherwise to enforce the provisions thereof for any subsequent default.

**18. MORTGAGING THE LEASEHOLD:** Unless specifically excluded under the Standard or Special Provisions of the Lease Agreement, and unless TENANT is in default under the terms of the Lease Agreement, TENANT shall have the right to mortgage TENANT'S interest created under the Lease Agreement, subject to all the terms and conditions of the Lease Agreement, to a Federal or State Savings and Loan Association, Bank or Trust Company, Insurance Company, Pension Fund or Trust or similar lending institution authorized and licensed to make leasehold mortgage loans in the State of Florida. If TENANT mortgages the leasehold estate, and if the holder of the mortgage (hereinafter the "Mortgagee"), within forty-five (45) days of its execution, delivers to LANDLORD a true copy of the mortgage and all pertinent documents related thereto, together with written notice specifying the name and address of the Mortgagee and the pertinent recording data with respect to the mortgage, then, as long as any such leasehold mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to LANDLORD, the following provisions shall apply:

(a) Upon serving TENANT with any notice of default pursuant to Paragraph 14, LANDLORD shall simultaneously mail or otherwise deliver a copy of the notice to the Mortgagee. If TENANT fails to cure the default(s) within the time stated in the notice of default, LANDLORD shall deliver to Mortgagee an additional notice so stating. Mortgagee shall have fifteen (15) days from the date of the additional notice to remedy or cause to

have remedied the default(s) listed on the notice of default, and LANDLORD shall accept the remedy by or at the instigation of the Mortgagee as if performed by TENANT. TENANT shall cooperate fully in giving notice to the Mortgagee and otherwise assisting in correcting any default(s).

(b) LANDLORD agrees that the name of the Mortgagee may be added to the "Loss Payable Endorsement" of any insurance policies required by the Lease Agreement to be carried by TENANT on condition that the insurance proceeds are to be applied strictly in the manner specified in the Lease Agreement and any mortgage and all collateral document(s) shall so provide. Any expense resulting thereby shall be the TENANT'S responsibility.

(c) TENANT shall also have the right from time to time during the term of the Lease Agreement to place any substitute or additional mortgage on the leasehold estate created by the Lease Agreement and on TENANT'S interest in the leasehold estate; provided, however, that all such mortgages shall be subordinate to the Lease Agreement and no such mortgage shall extend beyond the initial term or the option term, if any, then in effect; provided, further, that LANDLORD shall have the right to approve or deny TENANT'S request to place the additional or substitute mortgage on the leasehold estate. LANDLORD shall not unreasonably withhold such approval.

(d) No mortgage on the leasehold estate created by the Lease Agreement or on the TENANT'S interest in the leasehold estate shall be binding upon the LANDLORD in the enforcement of LANDLORD'S rights under the Lease Agreement.

**19. ENVIRONMENTAL PROVISIONS:**

(a) Subject to any limitations in federal or state law, the LANDLORD agrees that the TENANT shall have no liability for any pre-existing environmental contamination of the Leased Premises, provided the TENANT demonstrates that an event causing such environmental contamination was a pre-occupancy event as described in Paragraph (k) of this section for which TENANT is not liable hereunder. The LANDLORD will hold the TENANT harmless from all costs and expenses associated with any such pre-existing environmental contamination of the Leased Premises arising out of a pre-occupancy event which was not caused by the TENANT.

(b) Notwithstanding the foregoing, the TENANT shall be solely responsible for and indemnify LANDLORD for all costs and expenses including, but not limited to, remediation, fines, and attorney's fees through trial and appeal, that arise in any manner out of environmental contamination caused by the TENANT, the TENANT'S agents, employees, contractors, or invitees during any prior or current tenancy or occupancy of the Leased Premises or any portion thereof.

(c) The parties' responsibilities, obligations, and liabilities pursuant to this Lease Agreement shall survive the expiration or early termination of the Lease Agreement or any renewal term.

(d) Nothing in the Lease Agreement shall be deemed to be a waiver of the LANDLORD'S right to take action against responsible parties for remediation of or payment for environmental contamination on the Leased Premises, nor be deemed to be an assumption by the LANDLORD of the responsibility for such remediation or payment, except as may be imposed on the LANDLORD as a matter of law.

(e) The TENANT acknowledges that remediation steps taken to correct any environmental contamination may extend over a number of years and may cause inconvenience and business interruption to the TENANT. The LANDLORD shall not be liable to the TENANT in any manner for such inconvenience and disruption, but will exercise reasonable efforts to minimize them to the extent feasibly possible.

(f) Except as properly permitted under federal, state and local laws, rules and regulations, TENANT shall not conduct nor permit or authorize to any other person, the generation, storage, treatment, or disposal of any hazardous materials (as defined under federal, state, and local environmental laws), on or in any location that might adversely affect or contaminate the Leased Premises. This paragraph (f) shall not apply to properly permitted storage, if any, allowed under the terms of the Lease Agreement.

(g) The TENANT shall store, utilize and dispose of all industrial, domestic, hazardous, and solid wastes permitted under the terms of the Lease Agreement in accordance with applicable federal, state, and local laws, rules, and regulations.

(h) TENANT shall immediately provide LANDLORD verbal notice of any spill or release of hazardous materials at or from the Leased Premises. TENANT shall promptly confirm the verbal notice to LANDLORD in writing providing the details of such spill or release and the remediation taken by TENANT.

(i) TENANT shall not install or utilize any irrigation wells on the Leased Premises.

(j) In the event that any environmental condition arises on the Leased Premises or any hazardous materials prohibited by or actionable under applicable law should now or hereafter contaminate, or be located on the Leased Premises, except for pre-occupancy

events as described in Paragraph (k) of this section, TENANT hereby agrees, at its expense, to immediately (1) remove said materials from the Leased Premises; (2) comply with any and all orders or directives of any federal, state, or local agency or department relative thereof; and (3) return the Leased Premises to its pre-existing condition without any diminution in the value thereof.

(k) As used herein, "pre-occupancy event" shall mean any condition, occurrence, or event, including, but not limited to, a spill, the storage, disposal, or use of a hazardous material or waste as defined by federal, state or local law, ordinance, rule or regulation, occurring prior to the commencement date of the Lease Agreement and not caused by TENANT, whether originating on or off of the Leased Premises, whether known or unknown at the time of the commencement date of the Lease Agreement, and whether or not any plume or contamination is determined to be ongoing or continuous.

## **20. PAYMENT AND PERFORMANCE BONDS:**

(a) TENANT shall obtain a payment and performance surety bond for any construction project TENANT undertakes on the Leased Premises, the cost of which exceeds \$10,000.00. Such bonds shall be in an amount equal to one hundred twenty-five percent (125%) of the estimated construction costs and shall be underwritten by a surety meeting the LANDLORD'S requirements then in effect. TENANT may substitute for a Bond required by LANDLORD, an Irrevocable Letter of Credit from a bank authorized to do business in the State of Florida, which shall remain in effect through completion of said construction project. TENANT shall cause a copy and proof of such bond or Letter of Credit to be provided to LANDLORD for approval prior to commencement of construction.

(b) TENANT shall provide LANDLORD a Contractor's Final Affidavit, stating that TENANT has made final payment to all subcontractors, before the Payment Bond or Letter of Credit may be terminated.

**21. NOTICES:**

(a) Any notice required or permitted to be given hereunder shall be in writing and deemed to have been duly given: (i) upon delivery (personally, by courier service, or other messenger) to the address of the appropriate party; or (ii) upon receipt as evidenced by the appropriate form of the United States Postal Service after mailing by United States registered or certified mail, return receipt requested, postage prepaid to such address; or (iii) upon mailing if such registered or certified mail is refused by the recipient or returned unclaimed to the sender. Any notice of default by TENANT of the Lease Agreement shall be given pursuant to the default provision.

(b) LANDLORD designates the Airport Director as its official representative with the full power to represent LANDLORD in all dealings with TENANT in connection with the Leased Premises and in administration of the Lease Agreement. LANDLORD may designate different or additional representatives from time to time by written notice to TENANT as provided herein. All notices shall be given to the LANDLORD at the address set forth below or at such other address as specified by written notice delivered to the TENANT as provided herein.

City of Vero Beach  
Airport Director's Office  
3400 Cherokee Drive (32960)  
P.O. Box 1389  
Vero Beach, Florida 32961-1389

All notices shall be given to the TENANT at the address of the Leased Premises or such other address as specified by written notice delivered to the LANDLORD as provided herein.

**22. REAL ESTATE COMMISSION:** LANDLORD and TENANT each covenant and warrant to the other that they have not authorized any person, firm, or corporation as a real estate agent or broker to deal on behalf of such party with respect to the Lease. TENANT agrees to indemnify and hold harmless LANDLORD from any claim for remuneration, commissions or broker's fees arising out of this transaction and Lease.

**23. ENTRY OF LANDLORD:** LANDLORD may enter the Leased Premises for any legal purpose, including, but not limited to:

(a) To inspect or protect the Leased Premises;

(b) To determine whether TENANT is complying with the terms of the Lease Agreement, applicable laws, orders or regulations of any lawful authority having jurisdiction over the Leased Premises or any business conducted therein; or

(c) To exhibit the Leased Premises to any prospective tenant when TENANT is in default of the Lease Agreement or has notified LANDLORD of intention to terminate the Lease Agreement or during the last six (6) months of the term of the Lease.

No authorized entry by LANDLORD shall constitute an eviction of TENANT or deprivation of TENANT'S rights under the Lease; nor shall such entry alter LANDLORD'S obligations hereunder or create any right in LANDLORD adverse to TENANT'S interest hereunder.

**24. CONSTRUCTION:**

(a) The Lease Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(b) The Lease Agreement shall be subordinate and subject to the provisions of any existing or future contract between LANDLORD and the United States, relative to the development, operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development, operation or maintenance of the Airport.

(c) If any part of the Lease Agreement is found invalid or unenforceable by any court or any branch of the federal government having jurisdiction over the operation of the Vero Beach Municipal Airport, including, but not limited to, the Federal Aviation Administration, such invalidity or unenforceability shall not affect the other parts of the Lease Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effectuated. To that end, the separate provisions of the Lease Agreement are declared severable.

(d) If any branch of the federal government having jurisdiction over the operation of the Vero Beach Municipal Airport, including, but not limited to, the Federal Aviation Administration, deems any lease provision to be in non-compliance, the parties agree to delete, insert, or modify to the extent necessary any such provision to bring the Lease Agreement into compliance.

**25. LITIGATION:**

LANDLORD and TENANT expressly agree that in the event suit or any other legal action arising out of or in any way connected with the Lease Agreement or use of the Leased Premises is initiated:

- (a) Venue shall be in Indian River County, Florida.
- (b) Trial by jury is hereby waived, on any matter whatsoever, including, without limitation, any claim for injury or damage.
- (c) The prevailing party shall be awarded their costs and all reasonable attorney's fees incurred through trial and appeal.
- (d) In the event any distress for rent action is brought by LANDLORD against TENANT, TENANT expressly waives all constitutional, statutory or common law requirements for a bond by LANDLORD, including the requirements of Section 83.12, Florida Statutes, or as that provision may be amended. TENANT specifically agrees that no bond shall be required of the LANDLORD in any action.
- (e) In any eviction action initiated by LANDLORD, TENANT shall pay into the court registry the accrued rents as alleged in the complaint or as determined by the court pursuant to Section 83.232, Florida Statutes, or as that provision may be amended. Failure of the TENANT to pay the rents into the court registry shall be deemed an absolute waiver of the TENANT'S defenses and shall entitle LANDLORD to an immediate default for possession without further notice or hearing thereon.
- (f) TENANT shall not bring any counterclaim of any kind in any action or proceeding commenced by LANDLORD to recover possession of the Leased Premises. The parties acknowledge that any such counterclaim would be prejudicial to the rights of

LANDLORD granted under the Lease Agreement. The parties stipulate that any such counterclaim shall be severed and tried separately from the action for eviction pursuant to Florida Rule of Civil Procedure 1.270(b) and other applicable law. The eviction action shall proceed pursuant to the summary procedure set forth in Chapter 51, Florida Statutes, or as that provision may be amended.

(g) TENANT shall utilize its best efforts to participate to the extent deemed necessary and directed by LANDLORD in the defense of any lawsuit brought by any person or entity challenging the validity of the Lease Agreement between the parties, the circumstances under which it was entered into, or any other such causes of action relating to the power of the parties to enter into the Lease Agreement or the procedures utilized by the parties for leasing the Leased Premises.

## **26. MISCELLANEOUS PROVISIONS:**

(a) Notwithstanding anything herein contained that may be or appear to be to the contrary, it is expressly understood and agreed that the rights granted to the TENANT under the Lease Agreement are non-exclusive and the LANDLORD herein reserves the right to grant similar privileges to another tenant or tenants on other parts of the Airport.

(b) LANDLORD reserves the right to explore, dig, drill and construct water wells of such depth and dimension as may suit its needs on any part of the Leased Premises with the right of ingress, egress and regress for such exploring, digging, drilling and construction and for laying of pipes to transport such water at such depth and for such distance over the Leased Premises as may be deemed necessary by LANDLORD. If LANDLORD exercises this right, TENANT'S rent will be reduced, based solely on the square footage of land and/or commercial space made unavailable for TENANT'S use, at

the applicable rates as described in the rent provisions of the Lease Agreement. If LANDLORD exercises this right, LANDLORD shall, to the extent possible, locate such wells in such a manner as not to disturb TENANT'S operations.

(c) TENANT assures LANDLORD that it will undertake an affirmative action program as required by 14 Code of Federal Regulations Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in or receiving the services or benefits of any program or activity covered by subpart. TENANT assures LANDLORD that it will require that its covered suborganizations provide assurances to the LANDLORD that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 Code of Federal Regulations, Part 152, Subpart E, to the same effect.

(d) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, that no person, on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; that the TENANT and TENANT'S successors and assigns shall use the 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 IV of the Civil Rights Act of 1964, and as

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such regulations may be amended; that in the event of breach of any of the above nondiscrimination covenants, LANDLORD shall have the right to terminate the Lease Agreement and to retake possession pursuant to law. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

(e) If TENANT is a corporation, partnership or limited liability company, TENANT'S status shall continuously be in good standing and active and current with the state of its incorporation or registration and the state of Florida, and TENANT shall keep its status active and current throughout the term of the Lease Agreement and renewal. Failure of TENANT to keep its status active and current shall constitute a default.

(f) LANDLORD reserves the right to develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways as it may deem appropriate, free from any and all liability to TENANT for TENANT'S loss of business or damages of any kind or nature whatsoever arising out of or connected to the making of such improvements, repairs, and alterations.

(g) Any construction, reconstruction, remodeling, installation of improvements, or other work done to the Leased Premises by TENANT shall be performed in compliance with the requirements of the Americans With Disabilities Act ("ADA"), at TENANT'S expense. In the event that a regulatory agency, private party, organization or any other person or entity makes a claim under the ADA against either (or both) parties, the party whose breach (or alleged breach) of responsibility under this Lease Agreement gave rise to the claim shall, in good faith and at that party's sole cost, promptly take whatever actions are necessary to bring the Leased Premises into compliance with ADA requirements. That

party shall defend, save and hold harmless the other party from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors, court costs, and costs incurred for bringing the Leased Premises into compliance.

(h) The captions and paragraphs or letters appearing in this Attachment B and the Lease Agreement are inserted only as a matter of convenience and in no way affect, define, limit, construe, or describe the scope or intent of the sections or articles of this Attachment B and the Lease Agreement.

(i) This Attachment B, together with the Lease Agreement and all related attachments, agreements, resolutions, and ordinances approved by the City of Vero Beach, set forth all the promises, agreements, conditions, and understandings between LANDLORD and TENANT relative to the Leased Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Lease Agreement will be binding on LANDLORD or TENANT unless in writing and signed by them and made a part of this Lease Agreement by direct reference.

(j) The terms of this Attachment B and the Lease Agreement shall be binding on the respective successors, representatives, and assigns of the parties.

(k) The Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together will constitute one and the same instrument.

(l) Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed

to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(m) The parties hereto were given the opportunity to have their legal counsel review this Attachment B and the Lease Agreement that shall be construed neither against nor in favor of any party hereto, but rather in accordance with the fair meaning thereof.