



NORMAN Y. MINETA

SAN JOSE

INTERNATIONAL

A I R P O R T

REVOCABLE LICENSE AGREEMENT

FOR BASING

GENERAL AVIATION AIRCRAFT AT

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

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AGREEMENT SUMMARY

EFFECTIVE DATE: _____

AGREEMENT NUMBER: _____ **ASSIGNED SPACE #:** _____

AIRCRAFT TYPE: _____ **AIRCRAFT NO.:** _____

AIRCRAFT MODEL: _____

NAME OF PILOT: _____

PILOT IS AN: Individual Corporation Partnership
(check one) Limited Liability Company Other: _____

ADDRESS FOR NOTICES:

Street Address: _____
City, State, Zip Code: _____
Email: _____
Phone No.: _____ (home) Phone No. _____ (business)
Fax No.: _____

ADDRESS FOR NOTICES TO CITY:

Norman Y. Mineta San Jose International Airport
Airport Operations Division - General Aviation Business Office
1701 Airport Blvd, Suite B-1130
San Jose, CA 95110-1206
Fax No.: (408) 392-3598

ADDRESS FOR PAYMENT OF FEES:

City of San Jose
Treasury Division
200 East Santa Clara Street, 13th Floor Tower
San Jose, CA 95113

FEES AND CHARGES:

ALL FEES ESTABLISHED BELOW ARE SUBJECT TO ADJUSTMENT AS PROVIDED
IN THE LICENSE AGREEMENT.

Security Deposit:_____

Parking Fee:_____

Self-Fueling Fees: as established by San Jose City Council Resolution.

Other Fees:_____

Each reference in the License Agreement to the Agreement Summary shall mean the respective information set forth above which shall be deemed to incorporate all of the terms provided in the License Agreement pertaining to such information. To the extent there is a conflict between the provisions of this Agreement Summary and any more specific provision of the License Agreement, such more specific provision shall control.

REVOCABLE LICENSE AGREEMENT

This License Agreement is entered into this ____ day of _____, 201__, by the City of San Jose, a municipal corporation ("City") and _____ ("Pilot").

RECITALS

WHEREAS, General Aviation has been an important aspect of the Norman Y. Mineta San Jose International Airport ("Airport") since its inception; and

WHEREAS, the City of San Jose ("City") has available for use by the owners and operators of General Aviation aircraft ("Pilots") certain tie-down and hangar spaces at Airport; and

WHEREAS, pursuant to the authorization of Chapter 25.08.1370 of the San Jose Municipal Code and other authority vested in the Director of Aviation ("Director") or his or her designee, Director, on behalf of City, is authorized to enter into this Revocable License Agreement for basing General Aviation aircraft ("License Agreement") at Airport;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and provisions contained in this License Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

SECTION 1. SUMMARY OF TERMS AND DEFINITIONS

Each reference in the body of this License Agreement to specific terms or phrases set forth in this **Section 1** shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this **Section 1** and any more specific provision of this License Agreement, such more specific provision shall control.

"Airport" means the Norman Y. Mineta San Jose International Airport.

"Assigned Space" means the parking area for Pilot's aircraft, as more specifically defined in the Agreement Summary.

"Director" means the person designated Director of Aviation by City, or such other person, division, department, bureau or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation; the term also includes any person expressly designated by the Director of Aviation to exercise rights and/or obligations empowered in the "Director" under this License Agreement.

“Effective Date” (§2-Term) means the date set forth on the first page of this License Agreement.

“Environmental Laws” (§5 Standards of Operation) means and includes all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

“Fees and Charges” means those amounts to be charged to Pilot as are more specifically defined in the Agreement Summary. All fees are subject to adjustment as provided in **Section 6 – Fees and Charges**.

“Hazardous Materials” (§ 5- Standards of Operation) means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

SECTION 2. TERM

The Term of this License Agreement shall commence on the Effective Date set forth on the first page of this License Agreement and shall continue on a month to month basis until either party gives thirty (30) days written notice to the other party, or unless sooner terminated pursuant to the terms of this License Agreement.

SECTION 3. AUTHORIZED ACTIVITIES

- A. Pilot shall have a revocable license to use the Assigned Space for the following activities:

1. Parking and storage on the Assigned Space of the Aircraft identified in the Agreement Summary.
 2. Storage of aircraft support equipment directly related to the Aircraft identified in the Agreement Summary in accordance with Airport Rules and Regulations and applicable federal, state and local security requirements.
- B. In connection with Pilot's revocable license to use the Assigned Space, Pilot may also utilize designated areas at the Airport for the following activities:
1. Parking of Pilot's and Pilot's guests' motor vehicle(s) in designated spaces as such spaces may be available and in compliance with Airport Rules and Regulations and applicable federal, state and local security requirements.
- C. Pilot may conduct self-service aircraft fueling on the Assigned Space only upon issuance of a Self-Service Aircraft Fueling Permit by Director.

SECTION 4. RESTRICTIONS AND CONDITIONS ON ACTIVITIES

Pilot shall have no interest in any property of the City, including the Assigned Space. Neither Pilot, nor any of its employees, shall conduct, transact or otherwise carry on any business or service on the Assigned Space that is not specifically authorized by this License Agreement. The following restrictions and conditions shall apply to the activities authorized by this License Agreement:

- A. Pilot's activities shall not impede parking, ingress or egress for other aircraft.
- B. Pilot shall be solely responsible for properly securing the aircraft when the aircraft is not in use.
- C. Pilot shall provide upon request by Director, proof of the airworthiness of the aircraft which proof may be evidenced by, but not limited to, the Federal Aviation Regulation required annual inspections, and inspections of the aircraft engine log book(s).
- D. Upon thirty (30) days advance written notice to Pilot, Director may change the designated location of the Assigned Space for the safety of any person, or property, or for the convenience of City. Pilot shall move Pilot's aircraft to the new location within thirty (30) days of receipt of written notice from Director. In the event of an immediate threat to the public health, safety, welfare, or emergency requiring the removal of such aircraft, Director may change the designated location of the Assigned Space, and Director shall notify Pilot within twenty-four (24) hours of the change in location.

- E. If Pilot occupies a hangar, Pilot agrees to lock Assigned Space with a padlock supplied by Airport, or with a padlock or combination lock approved by Airport, with either a spare key or the combination code (as appropriate) provided to Airport.
- F. Pilot shall keep the Assigned Space clean and free of debris. Refuse or waste products must be removed or deposited in containers specifically provided for that purpose.
- G. Pilot shall report to Airport (General Aviation Office) any defect in the Assigned Space, which may require maintenance.
- H. To promote proper use of the Assigned Space for the parking and storage of air worthy aircraft, any period of non-utilization of the Assigned Space by Pilot for greater than ninety (90) consecutive days shall be deemed a vacation or abandonment of such Assigned Space. Extensions to such ninety (90) day time period may be approved at Director's discretion upon application by Pilot.
- I. Pilot shall not park any aircraft other than the Aircraft identified in the Agreement Summary in the Assigned Space.
- J. Pilot shall notify Director of any change in registered ownership of the Aircraft identified in the Agreement Summary. This License Agreement is personal to Pilot, and is not transferable or assignable, in whole or in part, by operation of law or otherwise. A prohibited "transfer" or "assignment" for the purpose of this License Agreement shall include but not be limited to parking any aircraft other than the Aircraft identified in the Agreement Summary in the Assigned Space. Any voluntary transfer or assignment of this License Agreement by Pilot shall be of no force and effect and shall render this License Agreement null and void.
- K. Pilot, including any entities owned in whole or in part by Pilot are limited to the occupation of no more than five (5) total spaces, including both tie-down and hangar spaces.
- L. Prior to Pilot's occupation of the Assigned Space by any aircraft, Pilot shall provide City with both proof of proper registration of aircraft and proof of insurance satisfactory to City's Risk Manager.
- M. Pilot shall not conduct self-service aircraft fueling on the Assigned Space at any time unless Pilot has a currently effective Self-Service Aircraft Fueling Permit that has been issued Director.

SECTION 5. **STANDARDS OF OPERATION**

A. Commercial Use of Assigned Space

The Assigned Space is made available to Pilot solely for the purpose of parking and storage of Pilot's aircraft, and not for the operation of a commercial enterprise from the Assigned Space. Although Pilot may utilize the Aircraft for any business or commercial purpose, the utilization of the Assigned Space for the operation of commercial activities, such as (but not limited to) aircraft charter, rental, repair or instructional (flight school) service is prohibited, except where Pilot has obtained a separate written agreement from City to operate such commercial enterprise in the Assigned Space.

B. Disposal Use and Storage of Hazardous Materials

Pilot shall at all times comply with the provisions of this License Agreement, including those provisions of Exhibit C, regarding Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- (a) Pilot may store and use Hazardous Materials on the Assigned Space in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this License Agreement. Pilot shall provide Director with a copy of any application for a permit for use or storage of Hazardous Materials on the Assigned Space from any regulatory agency responsible for enforcement of Environmental Laws, and shall also provide a copy of any permit received from such agency; and
- (b) Pilot may use Hazardous Materials on the Airport other than the Assigned Space, only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this License Agreement, and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

C. Space Modifications

In using its Assigned Space, Pilot shall not: (1) use any electrical equipment which exceeds the amperage available in the Assigned Space, or modify existing wiring in any way; (2) attach any hoisting or holding mechanism to any part of the Assigned Space, or pass any such mechanism over the struts or braces in such space except as approved by Director; (3) paint, remove, deface, bend, drill, cut or otherwise modify or alter any part of the Assigned Space.

D. Storage of Inoperable Aircraft

Storage of inoperable aircraft in the Assigned Space for a period greater than ninety (90) consecutive days is prohibited, unless Pilot: (a) demonstrates, to Director's reasonable satisfaction, that Pilot is actively engaged in an effort to bring such aircraft into airworthy condition; and (b) obtains the express written consent of Director to continue storage of such aircraft for an additional specified period of time. Director may cause or authorize the tow away, removal or storage of any inoperable aircraft or components thereof not complying with this condition, at Pilot's sole cost and expense.

E. Other Activities

- (a) Spray painting, open flame torch work arc welding, sand blasting and paint stripping are prohibited in the Assigned Space.
- (b) Pilot shall conduct its operations at the Airport and on the Assigned Space in such manner as will reduce to the minimum that it is reasonably practicable the emanation from the Assigned Space of dust, noise, vibration, movement of air fumes and odors so as not to interfere unreasonably with the use of adjoining premises and operations of others at the Airport.
- (c) Pilot shall not do anything, or permit anything to be done, in or about the Assigned Space that might (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Assigned Space, the Airport or any property located thereon, (ii) result in a refusal by casualty insurance companies to insure the Assigned Space, the Airport or any property located thereon in amounts and on terms and conditions required by City, (iii) subject City to any liability or responsibility for injury or damages to any person or property by reason of any activity, use, business operation or other practice conducted on the Assigned Space, or (iv) cause any increase in any insurance rates applicable to the Assigned Space, the Airport or any property located thereon.
- (d) Pilot shall not use or knowingly allow the use of the Assigned Space for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any controlled substance specified in Division 10 of the California Health and Safety Code.
- (e) Pilot shall at all times keep any areas free and clear of obstructions to provide ingress into and egress from any hangar, tie-down and properties adjoining the Assigned Space.

- (f) If authorized pursuant to a separate Self-Service Aircraft Fueling Permit, self-service aircraft fueling activities shall at all times be conducted in accordance with the requirements of such Permit.

SECTION 6. FEES AND CHARGES

In addition to any other fees, general charges or other amounts set forth elsewhere in this License Agreement, Pilot shall pay when due the following fees and charges for the privilege of conducting its activities at the Airport:

A. Parking Fee

Pilot shall pay to City the monthly parking fee set forth in the Agreement Summary for each month, or part thereof, that this Agreement is in effect, computed as set forth in the Airport Rate Resolution, approved by City Council. The parking fee shall be due and payable, in advance, on or before the first day of each month, except that the first month's parking fee, or prorated portion of the first month's fee, shall be tendered upon execution of this Agreement.

B. Self-Fueling Fees

If Pilot is authorized by Director to engage in self-fueling as set forth in a Self-Service Aircraft Fueling Permit, then Pilot shall abide by and adhere to all terms, conditions and provisions set forth in such Permit, including payment of fees as established by the Airport Rate Resolution, approved by City Council.

C. Payment

Payments shall be made to the City of San Jose, Treasury Division, 200 East Santa Clara Street, 13th Floor Tower, San Jose, CA 95113, or other place as City may designate, and are due without demand and without notice from the City, and without deduction, credit or offset. All such fees, charges and other amounts payable by Pilot shall be in lawful money of the United States of America and in the same day funds as of the due date. The parking fee and any other fee required to be paid in advance on or before the first (1st) day of each month pursuant to the terms of this License shall be paid on or before the first (1st) day of each month without any requirement of notice from City. Any fees or charges which are payable by Pilot in arrears for the preceding month's activity are due and payable on or before the fifteenth (15th) day from the date of City's invoice. Pilot hereby acknowledges that late payment to City of any fee, charge or other sum due hereunder will cause City to incur costs not contemplated by this License Agreement, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Pilot is not received by City on or before the fifteenth (15th) day from the due date, then Pilot shall pay to City a late payment fee equal to one percent (1%) per month of the amount not paid, calculated for each day, from the due date until the date that payment is

received by City. Late payments made by Pilot to the City will be made in a form as specified by the Director. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that City will incur by reason of Pilot's late payment. City's acceptance of such late fees shall not constitute a waiver of Pilot's default with respect to such overdue amount or estop City from exercising any of the other rights and remedies granted hereunder either at law or in equity.

E. Adjustment of Fees

Fees and charges for basing General Aviation Aircraft at Airport are established by resolution of the Council of the City of San Jose and may be changed or revised from time to time. Pilot shall be required to pay, and Pilot hereby agrees to pay, the changed or revised fees on the effective date thereof. Any such change in fees shall be noticed in writing to Pilot by Director, 30 days prior to the change. However, failure to provide such notice shall not constitute a waiver of City's right to collect any increase in fees.

F. Security Deposit

In addition to and at the time of the first fee payment, Pilot shall deposit with City, at the address set forth in Subsection C of Section 6 above, a sum equal to one month's fees as a security deposit against which City may deduct any delinquent fees, costs or charges (including any late payment fees) resulting from the use of the Assigned Space at Airport. In no event shall a Security Deposit be less than the monthly fee, rounded to the nearest dollar. Should the monthly fee be adjusted, the amount maintained by Pilot as a Security Deposit due to fee adjustments, or resulting from deductions as a result of late payment, shall be deposited by Pilot within thirty (30) days after receiving written notice of the adjustment from Director. Any portion of the Security Deposit remaining after termination of this License Agreement, shall be returned to Pilot, without interest.

SECTION 7. INSURANCE

Prior to commencing any operations under this License Agreement, Pilot, at its sole cost and expense and for the full term of this License Agreement or any renewal thereof, shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, the activities of Pilot (including its agents, representatives and employees) hereunder meeting at least all of the minimum insurance requirements set forth on Exhibit A, attached hereto.

SECTION 8. REGISTRATION OF AIRCRAFT

Pilot will provide Director with a copy of the applicable aircraft registration certificate filed with the Federal Aviation Administration for the aircraft to be based in the Assigned Space, prior to the execution of this License Agreement by Pilot, together with any and all lease agreements pertaining to the Aircraft.

SECTION 9. COMPLIANCE WITH LAWS AND AIRPORT RULES

Pilot shall, throughout the term of this License Agreement and any renewals thereof, abide by, and act in full compliance with this License Agreement and all present and future applicable statutes, laws, ordinances and codes of all governmental authorities as may have jurisdiction, as well as Airport Rules and Regulations duly promulgated by City from time to time such as, but not limited to, the Airport Noise Control Program as adopted by Resolution No. 57211 and amended by Resolution No. 71797, and the Airport Safety Program.

By execution of this License Agreement, Pilot acknowledges receipt of a current copy of all applicable Municipal Code provisions and Airport Rules and Regulations, and agrees to abide by such Code and Rules and Regulations as they may be amended, modified or revised. Airport agrees to furnish Pilot, from time to time, with courtesy copies of any future amended, modified or revised Municipal Code provisions and Airport Rules and Regulations as may be applicable to Pilot's activities under this License Agreement.

SECTION 10. RIGHT TO ENTER

City reserves and shall have the right, with a minimum of twenty-four (24) hours written notice, by its officers, employees, agents and contractors, to enter into and upon the Assigned Space at any time convenient to City:

- A. To make any inspection Director may deem expedient or desirable for the proper enforcement of this License Agreement.
- B. To maintain the Assigned Space and adjacent structures and facilities.

City also reserves and shall have the right, without notice, to enter into and upon the Assigned Space in an emergency at all times.

SECTION 11. SECURITY MEASURES

Pilot agrees to abide by all provisions of the Airport's Master Security Plan approved by the Federal Aviation Administration ("FAA") and/or the Transportation Security Administration ("TSA"), and agrees to institute and carry out all security measures as provided in the plan. Any violations of the security plan which result in fines to the City by the FAA and/or the TSA, and which are caused by Pilot, its officers, agents, subcontractors or employees, will be assessed to Pilot by City and will be deemed to be additional fees and charges payable by Pilot to City following invoice thereof by City to Pilot pursuant to **Section 6** of this License Agreement.

Pilot shall be solely responsible for instituting and carrying out specific security measures required by Airport's Master Security Plan in the areas where Pilot is authorized to operate to prevent vandalism or damage to persons or property. City shall be responsible only for general security throughout the Airport and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Pilot's operation.

Pilot understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, Pilot waives all rights against City for such limitation, and City shall not be liable to Pilot for any amount, including compensation, in the form of reduction of any fees.

SECTION 12. INDEMNITY

By accepting this License Agreement, Pilot hereby agrees to the fullest extent permitted by law, to defend, indemnify, protect and hold harmless City, its officers, agents and employees from and against any and all claims, demands, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs (including but not limited to fines) at any time received, incurred, or accrued by City, its officers, agents or employees, as a result of or arising out of in whole or in part, directly or indirectly, the existence of or exercise of the rights or obligations of Pilot under this License Agreement, including, but not limited to, Pilot's use of the assigned Space or Airport, or the conduct of its business, or from any activity, work or thing done, permitted or suffered by Pilot, its agents, contractors, employees or invitees in or about the assigned Space or elsewhere, except as may arise from the willful misconduct or active negligence of City, its officers, agents or employees.

Pilot hereby agrees to further indemnify and hold harmless City against and from any and all claims arising from any breach or default in the performance of any obligation on Pilot's part to be performed under the terms of this License Agreement, or arising from any act, neglect, fault or omission of Pilot, or of its agents, employees or invitees.

SECTION 13. WAIVER OF CLAIMS

As a material part of the consideration to be rendered to City under this License Agreement, Pilot hereby waives any and all claims or causes of action against City, its officers, agents, or employees which it may now or hereafter have for damages or theft of Pilot's aircraft or other property in, about, or on Airport, and for injuries or death to persons in, about, or on Airport, from any cause or causes arising at any time out of the use or parking of Pilot's aircraft or other property at Airport, except as may arise from the active negligence or willful misconduct of City, its officers, agents or employees.

By way of example and not limitation, save and except as arises out of the active negligence or the willful misconduct of City, its officers, agents, contractors or employees, Pilot hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (a) for loss,

injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Airport; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other Pilot, subPilot, licensee, contractor, airline concessionaire or occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of City; (c) from the flight of any aircraft of any kind and all kinds in, through, across or about any portion of the airspace above the Airport; (d) from noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during the flight of any aircraft or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up, and take-off of such aircraft and the approach and departure of aircraft to or from the Airport; and (e) for any loss or damage to the property of, or injury or damage to Pilot, its officers, agents, employees, contractors or any other person whomsoever, from any cause or causes arising at any time because of Pilot's uses or occupancy pursuant to this License Agreement of such Assigned Space or of the Airport, or its operations thereon.

SECTION 14. BAILEE DISCLAIMER

Pilot acknowledges and agrees that City has granted its permission for use of the Assigned Space only for the purposes and in accordance with the provisions of this License Agreement. By entering into this License Agreement, City is not agreeing in any manner to accept obligations or responsibility for the safekeeping of the aircraft or other property of Pilot or of Pilot's agents, contractors, officers, employees or invitees. This License Agreement is not a contract for bailment and City in no manner whatsoever purports to be a bailee.

SECTION 15. TAXES AND ASSESSMENTS

Pilot shall pay before delinquency any and all taxes, assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon Pilot. Payment of any taxes, assessments, licenses, fees, or other public charges shall not in any manner reduce the fees and charges owed by Pilot to City pursuant to this License Agreement.

A. Possessory Interest Subject to Taxation

Pilot recognizes and understands that this License Agreement may create, but is not intended to create, a real property possessory interest that may be subject to real property or other taxation, and that Pilot shall be subject to and liable for the payment of any taxes levied on such interest. No such possessory interest tax, or any other tax, shall reduce or constitute a substitute for the fees or charges required to be paid as a condition of this License Agreement or as otherwise required by City. Pilot agrees to pay all such taxes when due.

B. Liens

Pilot shall not permit or suffer any liens to be imposed upon the Airport or any building or structure thereon as a result of its activities without promptly

discharging the same, provided, however, that Pilot may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Pilot shall provide a bond in an amount and in a form acceptable to City immediately following request therefor by City.

C. **Tax – Hold Harmless**

Pilot shall defend, protect, indemnify and hold City free and harmless from any and all liability, loss, or damage resulting from any taxes, assessments, or other charges required by, or relating to, this License Agreement to be paid by Pilot, and from all interests, penalties and other sums imposed thereon, and from any proceedings to enforce collection of any such taxes, assessments, or other charges.

SECTION 16. PILOT NOT AN AGENT OF CITY

Neither issuance of this License Agreement, nor any acts of Pilot under this License Agreement shall in any way constitute Pilot as an agent, contractor, partner, or employee of City for any purpose.

SECTION 17. ASSIGNMENT, TRANSFER OR SALE

This License Agreement shall not constitute a deed, lease or grant of an easement by City. This License Agreement is personal to Pilot and is not transferable or assignable, in whole or in part, by operation of law or otherwise. Any voluntary transfer or assignment of this License Agreement by Pilot shall be of no force and effect and shall render this License Agreement null and void. A prohibited “transfer” or “assignment” for the purpose of this License Agreement shall include but not be limited to parking any aircraft other than the Aircraft identified in the Agreement Summary in the Assigned Space.

SECTION 18. SIGNS/ADVERTISING

Pilot will not install, erect, affix, paint or place any sign, lettering or other advertising device or media in or upon any portion of the Airport or the Assigned Space without the prior written consent of Director. Any and all signs, lettering or other advertising device or media, or any replacement thereof, which may be permitted by Director shall be subject to, and comply with, present and future Airport signing standards. Any and all such advertising device or media shall be removed by Pilot at its sole cost and expense upon termination or expiration of this License Agreement, without injury or damage to or defacement of any part of the Assigned Space or of the Airport. Pilot will promptly restore to their original condition those portions of the Assigned Space or Airport from which such advertising device or media have been so removed.

SECTION 19. GRANT AGREEMENT COVENANTS

Pilot acknowledges that City is subject to Federal grant agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and accordingly, agrees to, and agrees to be bound by, the following covenants provided by the FAA, as they may apply to Pilot:

- A. Pilot, for itself, its personal representatives and successors in interest as a part of the consideration hereof, covenants and agrees as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this License Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Pilot shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- B. Pilot for itself, its personal representatives and successors in interest as a part of the consideration hereof, covenants and agrees that: (1) 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 in the use of the facilities; (2) that in the construction of any improvements on, over, or under the Assigned Space and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Pilot shall use the Assigned Space in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended;
- C. That in the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this License Agreement and to reenter and repossess the Assigned Space, and hold the same as if this License Agreement had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulation Part 21 are followed and completed, including expiration of appeal rights;
- D. Pilot shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Pilot may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers;

- E. Without limiting the generality of any other terms or provisions of this License Agreement, non-compliance with Provision D above, shall constitute a material breach thereof, and in the event of such non-compliance, City (through Director) shall have the right to terminate this License Agreement and the estate hereby created without liability therefor or, at the election of City or the United States, either or both said Governments shall have the right to judicially enforce Provisions A, B, C and D of this **Section 19**;
- F. Pilot agrees that it shall insert the above five (5) provisions in any agreement by which Pilot grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Assigned Space;
- G. Pilot assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This **Section 19(G)** obligates Pilot or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this **Section 19(G)** obligates Pilot or transferee for the longer of the following periods: (a) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which City or any transferee retains ownership or possession of the property;
- H. City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Pilot, and without interference or hindrance;
- I. City reserves the right, but shall not be obligated to Pilot to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Pilot in this regard;
- J. This License Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport;
- K. There is hereby reserved to City 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 Assigned Space. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from or operation on the Airport;

- L. Pilot agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport;
- M. Pilot, by accepting this License Agreement, agrees for itself, its successors and assigns that it will not make use of the Assigned Space in any manner which might interfere with the landing and taking off of aircraft from the Norman Y. Mineta San Jose International Airport or otherwise constitute a hazard. In the event this covenant is breached, Director reserves the right to enter the Assigned Space and cause the abatement of such interference at the expense of Pilot;
- N. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349[a]);
- O. This License Agreement and its provisions shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency; and
- P. Pilot, by accepting this License Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Assigned Space to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Pilot and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Pilot.

SECTION 20. MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this License Agreement, Pilot agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this License Agreement as may be reasonably required to enable City to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Pilot hereunder. A failure by Pilot to so consent shall constitute a breach of this License Agreement.

SECTION 21. TERMINATION WITHOUT CAUSE

City or Director, may, at any time upon thirty (30) days advance written notice to Pilot, terminate this License Agreement without cause at the sole discretion of City or Director. Pilot may, at any time upon thirty (30) days advance written notice to City or Director, cancel this License Agreement, provided that Pilot promptly pays City all fees and charges owed to date of cancellation and promptly removes all aircraft, equipment and personal property from the Assigned Space and the Airport as of the date of cancellation.

SECTION 22. **DEFAULT**

The occurrence of any one of the following events shall constitute a Default hereunder by Pilot:

- A. Failure to timely pay any fees, charges, or deposits required to be paid to City as specified in **Section 6**.
- B. Failure to maintain in full force and effect the minimum insurance coverage specified in **Section 7**.
- C. Failure to maintain proper registration of aircraft as specified in **Section 8**.
- D. Failure to maintain aircraft in an airworthy condition as specified in **Section 4**.
- E. Failure to conform to, or the violation of, any of the terms, conditions or provisions contained in this License Agreement.

SECTION 23. **CITY'S REMEDIES**

A. **Termination**

Upon any default by Pilot, City may, at its election, terminate this License Agreement upon written notice of termination, in which event, this License Agreement shall terminate on the date set forth for termination in such notice. Any termination under this paragraph shall not relieve Pilot from the payment of any sums then due to City or from any claim for damages or fees previously accrued or then accruing against Pilot. In no event shall City have any obligation to Pilot, financial or otherwise, as a result of the termination of this License Agreement following a default.

B. **City's Right to Cure**

Upon any default of Pilot, City may, at City's election, after first giving Pilot written notice, cure any default in the payment of money or performance of any act required under this License Agreement, but without any obligation of City to make such payment or perform such act and without waiving any rights of City or relieving Pilot from any obligation under this License Agreement. All amounts incurred by City, plus ten percent (10%) thereof for administrative overhead as such percentage is approved, established or modified from time to time by the City Council, and all penalties, interest and costs in connection therewith shall be due and payable by Pilot to City on demand together with interest thereon at the rate of one percent (1%) per month from the date paid by City, plus any collection costs. The receipt for any payment by City on behalf of Pilot shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Pilot.

C. **Damages**

In the event City elects to terminate this License Agreement, Pilot shall pay to City all amounts owing at the time of termination on account of Pilot's breach of any term, covenant or condition of this License Agreement including, but not limited to, unpaid fees plus interest thereon on all such amounts from the date due until paid at the rate of one percent (1%) per month, and any other amount to compensate City fully for all detriment proximately caused by Pilot's failure to perform its obligations hereunder or which in the ordinary course would likely result therefrom.

D. **No Waiver of Fees or Charges by City Of San Jose**

The acceptance of any fee or charge hereunder by City shall not be deemed to be a waiver of any preceding violation by Pilot of any provision of this License Agreement, other than the failure of Pilot to pay the fee or charge so accepted, regardless of City's knowledge of such preceding or subsequent violation at the time of acceptance of such fee or the waiver of any other right or remedy allowed in law or in equity. The consent or approval by City to any act of Pilot requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent to or approval of any subsequent similar act of Pilot.

SECTION 24. WAIVER OF BREACH

No waiver of default by either party of any of the terms, conditions and provisions of this License Agreement shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, conditions and provisions contained herein, to be kept and observed by the other party. The consent or approval by one party to the act of the other party shall not be deemed to waive or render unnecessary the need for consent or approval of any subsequent, similar act. No waiver, consent or approval by City shall be effective unless made by a duly authorized representative of City.

SECTION 25. **QUITTING ASSIGNED SPACE**

- A. On the last day of the term or sooner termination of this License Agreement, Pilot shall vacate areas occupied or utilized by the Pilot and leave any improvements thereon in good condition and repair (reasonable wear and tear and damage by acts of God excepted). If Pilot's officers, employees, subcontractors and/or agents cause any injury, damage or loss at the Airport that is in excess of normal wear and tear, Pilot, at its sole cost and expense, shall repair such injury, damage, or loss within thirty (30) days after termination of this License Agreement. The rights of City, as set forth in this **Section 25** are not in derogation of any right of City to be indemnified by Pilot for any such injury, damage or loss.

- B. Pilot shall, on or before the end of the term of this License Agreement, remove the aircraft and all other property owned by it (except such as it may be required to surrender under the provisions of the above paragraph) from the Assigned Space, and all such property not so removed prior to any vacation or abandonment, or other ceasing of Pilot's use of the Assigned Space, shall be deemed, at the option of Director, to have been abandoned by Pilot. City may, at the option of Director, retain any such property so abandoned by Pilot or remove and/or dispose of such property. Pilot shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City, as well as any parking rates as may be applicable at Airport for the parking of aircraft.

SECTION 26. **DAILY RATE**

Upon termination of this License Agreement, Pilot shall be obligated to pay fees computed at the then current daily rates for comparable spaces until Pilot has removed the aircraft and all property from the Assigned Space and Airport.

SECTION 27. **GIFTS**

- A. Pilot is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code. Pilot agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

- B. The offer or giving of any gift prohibited by San Jose Municipal Code Chapter 12.08 shall constitute a material breach of this License Agreement by Pilot. In addition to any other remedies City may have in law or equity, City may terminate this License Agreement for breach as provided in **Section 23** of this License Agreement.

SECTION 28. **NOTICES**

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows:

If to City, the same shall be addressed to:

Norman Y. Mineta San Jose International Airport
Airport Operations Division - General Aviation Business Office
1701 Airport Blvd, Suite B-1130
San Jose, CA 95110-1206
Fax No.: (408) 392-3598

If to Pilot, the same shall be addressed to the address set forth in the Agreement Summary or to such other place as Director or Pilot, respectively may notify the other in writing. All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers indicated herein for either party. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as it may be amended or modified.

Either party may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is received by Pilot or by City. Any provision herein that one party shall notify the other of some matter is to be construed as a requirement that notice is to be given in accordance with the provisions of this Section.

SECTION 29. AUTHORIZATION

- A. If Pilot executes this License Agreement as a corporation, then Pilot and the persons executing this License Agreement on behalf of Pilot represent and warrant that the individuals executing this License Agreement on Pilot's behalf are duly authorized to do so in accordance with a duly-adopted resolution of the Board of Directors of Pilot, a copy of which is delivered to Director on execution hereof, and in accordance with the bylaws of Pilot, and that this License Agreement is binding on Pilot in accordance with its terms.

- C. If Pilot is a partnership or joint venture, at least two (2) partners or each of the joint venturers, as the case may be, shall execute this License Agreement on behalf of Pilot.

SECTION 30. SUMMARY AND EXHIBITS

RD:KWF:SBM
June 6, 2011

The provisions of the Agreement Summary and any Exhibits or Addenda attached hereto are incorporated by reference.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

FORM OF AGREEMENT APPROVED
BY THE CITY ATTORNEY

CITY OF SAN JOSE, a municipal
corporation

By _____
John Aitken, A.A.E.
Director of Aviation

“PILOT”

_____ a _____ corporation

By _____
Name:
Title:

By _____
Name:
Title:

By _____
Name:
Title:

RD:KWF:SBM
June 6, 2011

CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of a corporation.

I, _____, certify that I am the _____ secretary of the corporation named in the attached agreement; that _____ signed the agreement on behalf of the corporation as the _____ of the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

Date

Corporate Seal

EXHIBIT A

INSURANCE REQUIREMENTS

PILOT, at PILOT'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by PILOT, his/her agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance. This insurance could be waived if the PILOT operates as a sole proprietor.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

PILOT shall maintain limits no less than:

1. Aircraft Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, including \$100,000 for bodily injury to any one person. If Aircraft Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or PILOT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Aircraft Liability and Automobile Liability Coverages

- a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, PILOT; products and completed operations of PILOT; premises owned, leased or used by PILOT; and automobiles owned, leased, hired or borrowed by PILOT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
- b. PILOT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of PILOT's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by PILOT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
- d. Coverage shall state that PILOT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

PILOT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: ga@sjc.org, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

San José International Airport
Airport Operations Division
1701 Airport Blvd. Suit B1130
San Jose, CA 95110

G. Cancellation

Failure to maintain required insurance coverage will result in cancellation of this Agreement.

EXHIBIT B

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT GENERAL AVIATION AIRPORT SECURITY REQUIREMENTS

1. GENERAL.
Pilot shall abide by all provisions of Airport's Security Plan as listed herein.
2. PRESENTATION OF PILOT CERTIFICATE.
Upon request by a law enforcement officer, any person piloting an aircraft shall present his pilot's certificate for inspection.
3. GENERAL AVIATION SECURITY AREA.
The General Aviation Security Area is that portion of Airport lying south of Taxiway Charlie, north of the perimeter fence located along the southern end of Airport and that area east of the western perimeter fence line of Airport, and west of the taxiways and runways.

Pilots and Pilots' guests do not have authorization to leave the General Aviation Security Area unless accessing the taxiways or runways in an aircraft.

4. SECURITY ACCESS CONTROL AND ACCESS IDENTIFICATION BADGES.
An automated Security Access Control System has been installed to limit access to the General Aviation Security Area. Only those persons authorized by Airport are permitted to be within the General Aviation Security Area.

The following policies and procedures apply to the issuance of Airport issued Access Identification ("I.D.") Badges for access to the General Aviation Security Area.

The guidelines under which badges will be issued are based on the type of Agreement with the Airport. Agreements can be for an individual, a partnership, a corporation, or a flying club. Distribution of badges are as follows:

- **Individual** – Issue one (1) badge to each individual identified in the basing agreement as the owner / pilot of the aircraft including spouses and/or domestic partners. Also eligible to receive one (1) badge are family members identified by the pilot of record who are licensed pilots and who regularly fly the aircraft. Please complete an Affidavit of Family Relation for each additional family member applying for a badge. The Airport Security Coordinator may approve additional badges when justified by the basing agreement holder.

- **Partnership** – Issue one (1) badge to each individual identified in the basing agreement as the owner / pilot of the aircraft including spouses and/or domestic partners. Also eligible to receive one (1) badge are family members identified by the pilot of record who are licensed pilots and who regularly fly the aircraft. Please complete an Affidavit of Family Relation for each additional family member applying for a badge . The Airport Security Coordinator may approve additional badges when justified by the basing agreement holder.
- **Corporation** – Issue one (1) badge per company pilot and/or authorized corporate officer. The Airport Security Coordinator may approve additional badges when justified by the basing agreement holder.
- **Flying Club** – Issue (1) badge per active club member. Flying Club badges may have additional restrictions. The Airport Security Coordinator may approve additional badges when justified by the basing agreement holder.

5. VEHICLES

Pilot and Pilot's guests may park their personal vehicles in their Assigned Space, or other authorized vehicle parking space, provided the vehicle is properly identified with an Airport Restricted Area Parking Permit.

Guest vehicles must be escorted by Pilot.

Private vehicles are not permitted unrestricted movement in the General Aviation Security Area.

EXHIBIT C HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this License Agreement, Pilot agrees to the following provisions:

1. Notification of Release. Pilot shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Assigned Space, or is caused by or results from the activities of Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees on the Airport other than the Assigned Space. Pilot shall immediately notify City of any Hazardous Material release which occurs on the Assigned Space, regardless of whether the release was caused by or results from Pilot's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Airport other than the Assigned Space and is caused by or results from the activities of Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.

2. Liability. Pilot shall be solely and fully responsible and liable for:
 - (a) storage, use or disposal of Hazardous Materials on the Airport, by Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees;
 - (b) any Hazardous Material release which is caused by or results from the activities of Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees on the Airport;
 - (c) any Hazardous Material release that commences during the term of the License Agreement on the Assigned Space, unless the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Assigned Space.

3. Prevention of Release. Pilot shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airport, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.

4. Obligation to Investigate and Remediate. Pilot, at Pilot's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- (a) any release or danger of release of Hazardous Material on the Airport other than the Assigned Space, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which, was caused, or results, in whole or in part from the activities of Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees;
- (b) any release or danger of release of Hazardous Material which commenced during the term of this License Agreement and which is discovered on the Assigned Space, unless the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Assigned Space.

In addition to all other rights and remedies of City hereunder, if Pilot does not promptly commence, and diligently pursue to remediation, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and Pilot shall reimburse City within fifteen (15) business days of City's demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Pilot.

5. Indemnification. Pilot shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:
- (a) storage, use or disposal of Hazardous Materials on the Airport, by Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees.
 - (b) any Hazardous Material release on the Airport other than the Assigned Space, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results from the activities of Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees; or
 - (c) any Hazardous Material release which commenced during the term of this License Agreement on the Assigned Space, including, but not limited to any release into soil or groundwater, except a release caused by the sole negligence or willful misconduct of City, City's officers, agents, employees,

contractors or permittees or by migration of Hazardous Materials onto the Assigned Space.

6. Release of Claims Against City. Pilot releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Pilot may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airport. This release shall not apply to any claims for contribution that Pilot may have against City in the event that Pilot incurs any cost in undertaking any cleanup of Hazardous Material from the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Pilot is not responsible and liable under this License Agreement. Pilot understands and agrees that Pilot is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

7. (a) Cessation of Activities. Pilot shall cease its activities on the Assigned Space and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Pilot shall not recommence its activities on the Assigned Space or the Airport, as appropriate, until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to the City.

(b) Abatement of Fees and Charges on Assigned Space. Pilot shall not be entitled to an abatement of any fees or charges due under this License Agreement after Pilot has been requested to cease activities for investigation, cure or remediation of Hazardous Materials on the Assigned Space, except if the presence of Hazardous Materials on the Assigned Space was due to the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Assigned Space.

(c) Abatement of Fees and Charges on Airport other than Assigned Space. Pilot shall not be charged fees or charges for use of the Airport other than the Assigned Space, to the extent that City requests Pilot to cease activities on that portion of the Airport due to City's efforts to investigate, cure or remediate

contamination, unless the release is one for which Pilot is responsible under this License Agreement.

8. Records and Inspections.

- (a) Pilot shall maintain, during the term of this License Agreement and for a period of not less than four (4) years after the expiration or termination of this License Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees on or from the Airport.
- (b) Upon request by City, Pilot shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this License Agreement, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees on or from the Airport.
- (c) After the expiration of four (4) years following the termination of this License Agreement, Pilot may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Pilot, Pilot's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Pilot shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty days (30) days after such notice is received, deliver copies of said records to City.

9. No Third Party Beneficiaries

Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this License Agreement, or as creating any right in any person not a party to this License Agreement to enforcement of any obligation created under this License Agreement.

10. Survival of Obligations

Pilot's obligations under this License Agreement shall survive the expiration or earlier revocation or suspension of this License Agreement.

RD:KWF:SBM
June 6, 2011

EXHIBIT D
LOCATION OF ASSIGNED SPACE