

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 544

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR
OR HIS DESIGNEE TO EXECUTE GROUND LEASES FOR HANGARS AT THE LOS
ALAMOS COUNTY MUNICIPAL AIRPORT**

WHEREAS, the Incorporated County of Los Alamos ("the County") has heretofore operated the Los Alamos County Municipal Airport ("Airport") under lease from the United States Department of Energy ("DOE"); and

WHEREAS, DOE has conveyed fee title to the Airport to the County as of October 20, 2008; and

WHEREAS, Section 3-54-1, N.M.S.A. (1978) provides that a municipality may lease any municipal facility or real property of any value normally leased in the regular operations of the municipal facility or real property; and

WHEREAS, the County has normally made ground leases for hangars available as subleases in the regular operations of the Airport; and

WHEREAS, the County desires, as owner and operator, to continue providing ground leases for hangars; and

WHEREAS, Section 203 of the Los Alamos County Charter provides that any lease or authorization to lease real property owned by the County shall be by ordinance; and

WHEREAS, the County Council desires to authorize the County Administrator or his designee to enter into ground leases for hangars on commercially reasonable terms substantially according to the lease forms attached hereto as Attachments 1 and 2.

NOW, THEREFORE, BE IT ORDAINED that:

SECTION 1. Finding. The County is authorized to lease real property pursuant to the provisions of Section 3-54-1, N.M.S.A. (1978).

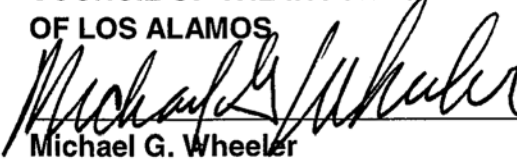
SECTION 2. Authorization to Lease the Premises; Execution of Lease by Authorized Officers. The County Administrator, or his designee, is hereby authorized to execute hangar ground lease agreements for portions of the Airport on commercially reasonable terms substantially according to the lease forms attached hereto as Attachments 1 and 2.

SECTION 3. Effective Date. This ordinance shall become effective thirty (30) days after publication of notice of its adoption.

ADOPTED this 6th day of October, 2009.

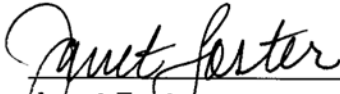


**COUNCIL OF THE INCORPORATED COUNTY
OF LOS ALAMOS**



**Michael G. Wheeler
Council Chair**

ATTEST: (Seal)



**Janet Foster
County Clerk**

**INCORPORATED COUNTY OF LOS ALAMOS
LOS ALAMOS AIRPORT
LEASE OF REAL ESTATE FOR AN AIRCRAFT HANGAR**

This Lease ("Lease") is entered into this ____ day of _____, 200__ by and between the Incorporated County of Los Alamos, an incorporated county of the State of New Mexico, whose address is 1040 Airport Road, Los Alamos, New Mexico 87544 ("County"), and _____ ("Tenant").

1. Legal Description and Lease of Premises.

- (a) County hereby leases to the Tenant and the Tenant hereby leases from County the following described real estate ("Premises"), being a part of the Los Alamos Airport, Los Alamos County, New Mexico; to-wit:

Aircraft Ramp Space No. ____ as shown on the Airport Property layout maintained by the Airport Manager.

- (b) The improvements on the premises belonging to County and provided by County for Tenant's use include only the surface of the land, whether in a natural state or paved/concrete.
- (c) The terms "facility," "hangar," "building," "structure," or similar terminology refer to construction improvements owned by Tenant on the premises.

2. Rent.

- (a) The Tenant will pay to the County annual rent for the parcel described in Paragraph 1 of this Lease as follows:

The Tenant will pay to the County an annual rent in the amount of five hundred dollars (\$500.00) during the initial term. The rent for the first year is payable in full at the time of delivery to County of an executed original of this Lease and thereafter on or before the same day of any subsequent year this Lease is in force and effect.

- (b) Subject to the provisions of subparagraph (e) herein, the applicable annual rent will be determined by the County and Tenant will be notified no later than thirty (30) days before the annual rent is due.
- (c) The rent for renewal terms shall be set by county at the time of renewal.
- (d) If, for any reason, the rent as set forth in this Section is not paid when due, a carrying charge of two percent (2%) per month or any portion of the month thereof shall be imposed on the amount which remains due and unpaid.

- (e) Tenant shall not be entitled to refund of the rent, in whole or in part, after this Lease is executed by both parties, if County terminates this Lease for cause. If Tenant terminates this Lease, then County shall refund an amount equal to the then-current annual rent divided by 12 and multiplied by the number of whole calendar months remaining in the Lease, less a processing fee of \$50. If County terminates this Lease without cause, Tenant shall receive a refund of a part of the rent as described above except that the processing fee shall not apply.
- (f) There shall be an annual cost of living adjustment, payable by Tenant with the annual rent, applied to each year's rent during the initial term, beginning with the second year of rent. This cost of living adjustment will be that determined by the federal CPIU, US city average, all items (1982-84=100) as prepared by the US Bureau of Labor Statistics.

3. Lease Term.

- (a) **Initial Term.** The term of this Lease shall begin on October 1, 2008 and shall continue for a period of twenty (20) years, expiring on September 30, 2028.
- (b) **Renewal Terms.** Lessee may renew the lease for a second term of ten (10) years, and for two subsequent terms of five (5) years each.

4. Expiration of Lease, Termination and Surrender.

- (a) **Expiration of Lease.** Upon expiration of the initial term or any renewal term, County may renew the lease at the request of Tenant, or may purchase the improvements as follows, provided, that if Tenant chooses at any such time not to renew the lease, the improvements shall become the property of County on the same terms as upon expiration of the final renewal as identified herein:
 - i. **Expiration of initial term.** County may purchase the improvements for fifty (50) percent of fair market value.
 - ii. **Expiration of first (10-year) renewal term.** County may purchase the improvements for twenty-five (25) percent of fair market value.
 - iii. **Expiration of second (5-year) renewal term.** County may purchase the improvements for ten (10) percent of fair market value.
 - iv. **Expiration of final (5-year) renewal term.** Tenant shall surrender the leased premises, including all buildings and site improvements constructed or installed by the Tenant, in good condition, reasonable wear and tear and damage by fire, explosion, windstorm or any other casualty excepted. All such buildings and improvements shall become the sole property of the County.
- (b) **Termination of Lease Prior to Expiration.** The parties may terminate the lease prior to expiration as provided herein, provided, that the termination of this Lease shall not affect the obligations or liabilities previously incurred or accrued under this Lease.

- i. **Mutual Termination.** This Lease may be terminated at any time by written agreement of the parties.
 - ii. **Termination by Tenant.** This lease may be terminated at any time by Tenant upon thirty (30) days written notice. Upon the termination of this Lease, Tenant shall quietly and peacefully remove itself and its property from the premises and surrender the possession thereof to County. County may, in its discretion, declare any property that has not been removed from the premises upon termination of this Lease, as abandoned property subject to use or disposal by County.
 - iii. **Termination by County.** County may terminate this lease at any time upon thirty (30) days written notice. Upon any such termination, County shall pay to Tenant the fair market value of the improvements, adjusted as follows:

During initial term:	Full fair market value
During first renewal term:	50 % of fair market value
During second renewal term:	25% of fair market value
During final renewal term:	10% of fair market value
- (c) **Determination of Fair Market Value.** The purchase price of the improvements shall be based on an appraisal of the fair market value of the improvements at the time of conveyance, as established by County through an appraisal paid for by Tenant. The appraiser and the appraisal instructions must be approved by county. All appraisers must possess a Certified General Appraiser Certification issued by the New Mexico Board of Real Estate Appraisers and membership in good standing in one of the following nationally recognized appraisal societies: American Institute of Appraisers; Members Appraisal Institute; Society of Real Estate Appraisers; Senior Real Property Appraisers; National Association of Independent Fee Appraisers; Independent Fee Appraiser Senior; National Society of Real Estate Appraisers; or a Certified Real Estate Appraiser. If Tenant or County does not agree with the results of an appraisal, Tenant or County may contest the results of such appraisal. In such case, Tenant and County shall each select one appraiser to be known as "Secondary Appraisers," whose costs shall be individually paid by each party. The Secondary Appraisers shall each conduct an independent appraisal of the subject improvements. If the Secondary Appraisers do not agree on the appraisal value of the subject improvements, the Secondary Appraisers shall jointly select a third appraiser known as the "Independent Appraiser." The Independent Appraiser will engage the Secondary Appraisers in a discussion regarding the Secondary Appraisers' appraisals of the subject Improvements, and the Secondary Appraisers and the Independent Appraiser shall work together to reach an agreement on the appraisal value of the subject improvements. In the event such an agreement cannot be obtained, the Independent Appraiser shall make a determination of the appraisal value of the subject improvements based upon the Independent Appraiser's review of the Secondary Appraisers' appraisals and his own analysis in accordance with certified appraisal standards. The determination by the Independent Appraiser will be final and binding upon Tenant and County. The fees and other costs of the Independent Appraiser shall be shared equally by Tenant and County.

5. Use of Premises.

- (a) Tenant agrees that the use of the premises shall be limited to the storage of airworthy aircraft (as specified or as may be replaced as provided in this Lease, the "aircraft") in accordance with the terms and conditions of this Lease and for related purposes specifically allowed by the Airport Rules and Regulations, and for no other purpose, including without limitation any business purpose.
- (b) Tenant's use of the premises is subject to all utilities easements and other easements that may be currently existing or granted in the future.
- (c) In the event Tenant wishes to occupy the premises for the purpose of constructing an aircraft, Tenant shall notify the Airport Manager in writing and provide a description of the aircraft to be constructed and the anticipated timeline for construction of the aircraft. Tenant shall provide, in writing, any other information the Airport Manager requests relating to the aircraft construction activities.

6. Care of Leased Premises/County Access.

- (a) Tenant shall keep and maintain the leased premises and all improvements of any kind, which may be erected, installed or made thereon by Tenant in good and substantial repair and condition, including the exterior condition thereof, and shall make all necessary repairs and alterations thereto. Maintenance includes, but is not limited to, any and all environmental clean-ups of the site and/or removal of the facility. Tenant agrees to hold County harmless from any responsibility or expense for any maintenance of the facilities during the lease. Tenant shall provide proper containers for trash and garbage and shall keep the premises free and clear of rubbish, debris and litter at all times.
- (b) **Access.** The County hereby reserves the right to enter upon the leased premises at reasonable times for the purpose of making inspections to determine if the conditions and requirements of this Lease are being fully complied with. Should any buildings on the leased premises become deficient in maintenance or in need of repair, Tenant shall cause repairs to be made to same within thirty (30) days after receipt of notice from County. Failure to comply shall be considered an event of default.

- 7. Building Construction Requirement.** Tenant shall be required to abide by all Fire Codes and Building Codes, as adopted by the County of Los Alamos, in the operation and alteration of the facilities on space as described herein. The type, size, style and appearance of construction must be approved by the County prior to submittal for building permits. Said approval shall not be unreasonably withheld. Tenant agrees to pay or cause to be paid, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery or equipment which may have been furnished or ordered with Tenant's consent to be furnished to or for the Tenant in, upon or about the premises herein leased, and shall cause to be discharged any mechanic's, materialmen's or other lien against the premises herein leased or County's interest therein.

- 8. Use of Airport Facilities.** The Tenant shall have use of the Los Alamos Airport, including, but not by way of limitation, the landing areas, aprons, taxiways and vehicle parking areas during the pendency of the Lease. This Lease shall not be construed to convey to the Tenant the exclusive use of any part of the Los Alamos Airport except those premises described in Section 1 herein, or to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 47107 of Title 49 USC, Subtitle VII, as amended. The County reserves the right to lease to any other party any portion of the Los Alamos Airport not described in Paragraph 1 herein other than public facilities, and to grant to others the privilege and right of conducting any one or more activities of an aeronautical nature.
- 9. Hazardous Substances.** In no event shall Tenant use, except in quantities and for purposes consistent with the permitted use, or dispose hazardous substances, pollutants, or contaminants on the premises. Any use, except as specifically provided in this paragraph, or disposal of hazardous substances, pollutants, or contaminants on the premises shall constitute an event of default.
- 10. Historic or Archeological Sites.** In no event shall Tenant undertake any activity anywhere on the Airport Property that may adversely affect a historic or archeological property and shall cease any activity anywhere on the Airport Property immediately upon written notification from County.
- 11. Substitution of Tie-Down Space.** County reserves the right to require any Tenant using a space on which a hangar is located to use a substitute space, whether or not it has a hangar on it, for purposes of maintenance and repair of the Airport facilities. If, within five (5) days after notice is given that Tenant will be assigned a substitute space, Tenant notifies the Airport Manager in writing of unusual circumstances that render the aircraft unable to relocate, the Airport Manager will take such unusual circumstances into consideration and, to the extent reasonably practicable, allow additional time for the relocation as necessary, in the Airport Manager's sole discretion, for Tenant to relocate to the assigned substitute space.
- 12. Closure of the Airport.** In the event of an emergency declared by County, or at the request of the state or federal governments, or for any other reason as set out in the Airport Rules and Regulations, County may close the Airport and Tenant may not have access to the premises during the period the Airport is closed. In the event the Airport is closed, County will attempt, as circumstances permit, to provide reasonable advance notice to Tenant and allow Tenant access to the premises as may be allowed and reasonably practicable given the circumstances and other competing priorities.
- 13. Documentation.** Tenant shall submit to County, together with this Lease, the following documentation:
- (a) Federal aircraft registration.
 - (b) Evidence of Tenant's ownership of or leasehold interest in the aircraft.
 - (c) Proof of Insurance.

Upon any change in aircraft, Tenant shall notify county within thirty (30) days of acquiring or removing said aircraft, and shall provide the above-specified documentation with respect to said acquired aircraft.

14. Removal of Aircraft and Personal Property.

- (a) Tenant shall not place or park any aircraft that is not airworthy, parts and other personal property, on the premises or elsewhere at the Airport except as provided in this Lease or as otherwise expressly authorized in writing by the Airport Manager.
- (b) Subject to the provisions of section 5(a) or as otherwise provided herein, County may, upon thirty (30) days written notice, move any aircraft that is not airworthy or any parts or other personal property located on the premises or otherwise placed or left by Tenant at the Airport from the place where they are located and may store said items in such reasonable location as County may determine on Tenant's behalf and at Tenant's sole expense and without liability to County for damage that may result. Tenant shall immediately pay to County any and all costs incurred by County in any removal, placement or storage undertaken pursuant to this paragraph.
- (c) In the event that any aircraft or other personal property of Tenant interferes with the operations or other needs of the Airport, County may provide reasonable notice to Tenant to move any such aircraft or property to such place as County may designate. Said removal shall be at Tenant's sole cost and expense. Provided, that in the event of an emergency or other similar situation necessitating removal and reasonable notice is not possible or practical, County may, with the exercise of reasonable care, remove the aircraft or property and Tenant shall have no recourse against County for any damages suffered as a result of said removal.

15. Condition of The Premises. Tenant has made or has had a reasonable opportunity to make an inspection of the premises, and accepts the premises "AS IS, WHERE IS." County makes no warranty, express or implied, as to the condition of the premises, the general usability of the premises, or the suitability of the premises for any particular purpose. Upon Tenant's acceptance of the premises, County shall owe Tenant the duty of quiet enjoyment. County shall also be responsible for snow removal in accordance with the county's snow-removal policy.

16. Structures, Improvements, Alteration or Additions.

- (a) Construction of any improvements or alterations, additions, excavations, improvements to, installations upon or other modification or alterations to the premises, including signage of any kind (the "improvements"), shall be made only upon the prior written specific authorization of County, which authorization may be given or denied in County's sole discretion, provided, that denial of approval for construction of hangar facilities such as would defeat the purposes of this lease shall entitle Tenant to termination of the lease. All improvements shall be made at the sole expense of Tenant and title to the improvements shall remain in Tenant unless and until title vests in County as expressly

provided herein. Tenant shall make no improvements other than those improvements specifically authorized by the Airport Manager.

- (b) Tenant shall repair any damage to the premises or other County property resulting from Tenant's installation, construction, or removal of such improvements, equipment, personal property or other items belonging to Tenant. County shall be entitled to remove and dispose of any improvements, personal property, and other items belonging to Tenant remaining on the premises after the termination of this Lease without the express written authorization of the Airport Manager, without liability of any kind to County, and repair any resulting damage, and Tenant agrees to promptly reimburse County for any and all costs and expenses County may incur in such removal and disposal.

17. Sale of Improvements. Before Tenant sells any improvements on the premises, Tenant shall provide County first right of refusal to purchase such improvements at a purchase price equal to the amount of any offer received by Tenant. County shall have thirty_(30) days to accept said offer, after which the offer will be deemed refused. Any sale of the improvements and transfer of the lease shall be contingent upon the new owner executing an agreement to assume the remainder of the Lease in the then-current annual fee to be effective contemporaneously with said sale. The expiration, termination and surrender provisions of this lease shall be binding upon any such new owner according to the initial term and renewal provisions of this lease, and no new term shall commence. Any such Lease with a new owner shall be effective immediately upon transfer of this Lease.

18. Utilities and Services. County will not furnish utilities, trash or garbage collection services to the premises. Procurement of utilities to the premises shall be the sole responsibility of Tenant and Tenant shall timely pay any and all utilities bills and invoices for other services provided to the premises.

19. Taxes. Tenant will promptly pay such taxes, levies, fines and/or assessments, if any, as may be lawfully imposed upon Tenant's property or interests with respect to the premises, by any federal, state, county or other authority.

20. Compliance with Environmental, Health & Safety and Other Applicable Laws. Tenant shall comply with all applicable environmental, safety and health laws and regulations. Tenant shall not interfere with the environmental clean-up or restoration actions of County, or any of their contractors. Tenant shall also comply with any and all other applicable federal and state laws, rules and regulations, all applicable provisions of the County Code, and the Airport Rules and Regulations.

21. Insurance. During the term of this Lease, Tenant shall maintain in force and effect the following insurance, listing County as an additional insured, in such minimum amounts as are specified in the New Mexico Tort Claims Act, Sections 41-4-1 et seq., NMSA (1978), as amended from time to time. The insurance shall provide that County be notified no less than thirty (30) days in advance in the event of cancellation. Failure to maintain required insurance shall be considered an event of default.

- (a) Aircraft Liability Insurance: \$1,000,000.00 per occurrence.
- (b) Premise General Liability Insurance for property damage, injury or death resulting from occurrences on the Airport premises: \$1,000,000.00 per occurrence, which insurance may be provided in an endorsement or rider to Tenant's Aircraft Liability Insurance.

22. Indemnity. Tenant hereby releases County from any loss or damage suffered by Tenant or any third party as a result of Tenant's use of the premises, and Tenant hereby agrees to indemnify and hold harmless and defend County from and against all liabilities, claims, demands, settlements, actions, costs and expenses (including reasonable attorneys' fees) of any kind or nature, legal or equitable, arising from injury or death to persons or damages to property in any way arising out of, or related to, Tenant's use of the premises or this Lease, provided, that said indemnification shall not extend to damages resulting from the negligent acts or willful misconduct of County, its employees, contractors or agents, and provided further that any such indemnification or defense shall be limited as specified in Tenant's insurance policy.

23. Default.

(a) An "Event of Default" under this lease means the occurrence of any of the following:

- i. Tenant breaches any provision of or defaults under this lease, and such breach or default is not cured or remedied within thirty (30) days after written notice of such breach or default, provided that County may extend said cure-period for an additional ninety (90) days upon good cause shown, and provided further that County's remedies for default in rent payments shall not be subject to these notice requirements.
- ii. Tenant files a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors.
- iii. A receiver, trustee or liquidator of Tenant or of all or substantially all of the property of Tenant, including the leased premises, shall be appointed in any proceeding.

(b) Upon the occurrence of any Event of Default:

- i. The County may terminate this Lease and the Term hereof without any right on the part of Tenant to waive the forfeiture by payment of any sum due or by performance of any other condition, term or covenant broken or in any other manner to reinstate this Lease; upon such termination, the County shall be entitled to retain and to recover: (i) all Rent that shall have accrued through the date of termination, plus (ii) any other reasonable amount necessary to compensate the County for all damages, if any, caused by Tenant's failure to perform its obligations under this Lease (including, without limitation, reasonable attorneys' fees, disbursements and other charges, costs of alterations of the Leased Premises, interest costs and brokers' fees incurred upon any re-letting of the Leased Premises for the remainder of the Term if the Event of Default had not occurred); and

- ii. The County may terminate Tenant's right of possession and may repossess the Leased Premises by legal proceedings or otherwise, with or without terminating this Lease, after reentry or retaking or recovering of the Leased Premises, whether by termination of this Lease or not, the County may re-let the same or a portion thereof for such rent and upon such terms as are commercially reasonable and be deemed advisable by the County; and whether or not the Leased Premises are re-let, Tenant shall be liable for the losses and damages provided for and pursuant to Lease; provided however, if the County seeks to recover lost rent from Tenant, the County shall attempt to mitigate its losses by using good faith efforts to re-let the Leased Premises; and
 - iii. The County may exercise any other right, remedy, or privilege that may be available to it under this Lease or under applicable federal, state, or local law.
- (c) All remedies of the County shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. The County shall be required hereby to mitigate any of its damages hereunder. No termination of this Lease, cure by the County of any Event of Default hereunder, repossession or re-letting of the Leased Premises, exercise of any remedy or collection of any damages shall relieve the Lessee of any of its obligations hereunder. Upon any termination due to Tenant's uncured default, all improvements shall become the property of County.
- (d) County Event of Default. In the event that the County fails to perform or observe any obligations under this Lease, and any such failure is not cured or remedied within thirty (30) days after written notice of such breach or default (provided that such cure period shall be extended by Tenant for up to an additional ninety (90) days if such breach or default cannot reasonably be cured within the initial thirty (30) days and the County demonstrates to Tenant that the County is diligently attempting to cure the same), then such failure shall, unless and until cured or remedied, constitute a **"County Event of Default"** under this Lease; provided that any such breach or default shall not be on account of any action or inaction on the part of another party. Tenant shall have no claim or rights against the County with respect to any failure by the County unless an uncured County Event of Default shall exist. Upon such event of default, Tenant may terminate this Lease. Tenant's disposal of improvements upon such termination shall be as specified in paragraph 4(b)(iii) herein, relating to County's early termination.
- (e) Neither Tenant nor the County shall be in default under this Lease if such performance of any obligation, duty or act is delayed or prevented by or due to events of Force Majeure.
- i. Notwithstanding any other provision herein, the term **"Force Majeure"** shall mean any delay in completing or performing any obligation under this Lease which arises from acts of God, labor disputes, fire, freight embargos, unavoidable casualty, flood (assuming the Lessee has taken reasonable precautions), earthquake, epidemic, civil disturbance, terrorism, war, riot, sabotage (by persons other than the Lessee, its agents, employees or assigns), the discovery of archeological remains or objects of antiquity, the discovery of Hazardous Materials in, on or under the Land other than those that were brought to the Land by the Lessee, its subcontractors, invitees or tenants, or other similar acts or conditions, each case only to the extent the event in

question is beyond the reasonable control and without the fault or negligence of the delayed party or its respective agent, employee or assign.

- ii. In the case of delay due to Force Majeure, the time within which the Party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the Party is delayed or prevented by the causes specified above, provided that within thirty (30) days of the commencement of the cause of delay the Party shall have notified the other Party of the existence of such cause of delay.

24. Notice. Any notice required or permitted to be delivered pursuant to this Lease shall be deemed received when hand delivered to the other party or three (3) days after deposit in the United States mail, postage prepaid, addressed to County or Tenant, as the case may be, at the address stated below:

County:

Airport Manager
County Administrator's Office
Incorporated County of Los Alamos
1040 Airport Road
Los Alamos, New Mexico 87544

Tenant:

Either party may give notice of change of address by following the notice procedure set out herein. Any such change of address shall be effective immediately upon receipt by the other party.

25. Successors and Assigns. The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the successors and/or assigns of the parties hereto.

26. Applicable Law.

- (a) This lease shall be governed by New Mexico law. Venue for any judicial action shall be in the First Judicial District Court in Los Alamos County, New Mexico.
- (b) State and Federal Law

This Lease is subject to all applicable State and Federal laws as well as all articles and conditions of grant agreements entered into between the County and the Federal Aviation Administration and the Division of Aviation, Department of Transportation of the State of New Mexico and nothing contained herein shall be construed to prevent the County from making such further commitments as it desires to make to the Federal Government or to the State of New Mexico so as to qualify for further expenditure of federal and/or state funds at the Los Alamos Airport.

(c) Local Ordinances

This Lease shall be subject and subordinate to all ordinances of the County of Los Alamos, the Rules and Regulations of the Los Alamos Airport and/or the Minimum Standards for Aeronautical Business Activities at the Los Alamos Airport, as the same may be in effect and amended from time to time.

- 27. No Waiver of Defaults.** The failure of either party to take any action with respect to any default by the other party hereunder shall not be construed as a waiver or relinquishment of the non-defaulting party's right to the future performance of any such terms, covenants or conditions and the defaulting party's obligations in respect to such future performance shall continue in full force and effect.
- 28. Assignment.** Tenant shall not assign this Lease in whole or in part or sublet the premises without the prior written consent of the Airport Manager and any attempted unauthorized assignment or subletting shall be void and shall be considered an event of default.
- 29. Liens, Attachments and Encumbrances.** Should Lessee permit or cause to be filed of record any encumbrance, attachment or lien against the premises, such filing shall be deemed an event of default unless cured by Lessee within ninety (90) days of the filing of such encumbrance, attachment or lien or unless within such ninety (90) day period Lessee shall initiate a contest of such encumbrance, attachment or lien in a court of competent jurisdiction.
- 30. Interpretation.**
- (a) Severability
It is the intention of the parties hereto that the provisions of this Lease shall be severable with respect to declaration of invalidity of any provision contained herein. Should any provision be found to be void or unenforceable, the remaining provisions shall remain in full force and effect.
- (b) Headings
The paragraph headings are for convenience only and do not define, limit or describe the contents of such paragraphs.
- 31. Modification of Lease.** Any modification of this Lease shall be binding only if evidenced in writing signed by both parties.
- 32. Entire Lease.** This Lease constitutes the entire Lease between the parties regarding the subject matter hereof. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent incorporated in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the dates indicated.

TENANT:

Signature

Printed Name: _____

Title: _____

Date: _____

Tenant's Telephone Numbers and E-Mail Address

Work No.: _____

Home No.: _____

Alternate No.: _____

E-Mail Address: _____

COUNTY:

Incorporated County of Los Alamos

Max H. Baker
County Administrator

Date _____

Attest:

County Clerk

By _____
Deputy Clerk

**INCORPORATED COUNTY OF LOS ALAMOS
LOS ALAMOS AIRPORT LEASE OF REAL ESTATE
FOR AN AIRCRAFT HANGAR AND AERONAUTICAL BUSINESS**

This Lease ("Lease") is entered into this ____ day of _____, 200__ by and between the Incorporated County of Los Alamos, an incorporated county of the State of New Mexico, whose address is 1040 Airport Road, Los Alamos, New Mexico 87544 ("County"), and _____ ("Tenant").

1. Legal Description and Lease of Premises.

- (a) County hereby leases to the Tenant and the Tenant hereby leases from County the following described real estate ("Premises"), being a part of the Los Alamos Airport, Los Alamos County, New Mexico; to-wit:

Aircraft Ramp Space No. ____ as shown on the Airport Property layout maintained by the Airport Manager.

- (b) The improvements on the premises belonging to County and provided by County for Tenant's use include only the surface of the land, whether in a natural state or paved/concrete.
- (c) The terms "facility," "hangar," "building," "structure," or similar terminology refer to construction improvements owned by Tenant on the premises.

2. Rent.

- (a) The Tenant will pay to the County annual rent for the parcel described in Paragraph 1 of this Lease as follows:

The Tenant will pay to the County an annual rent in the amount of five hundred dollars (\$500.00) during the initial term. The rent for the first year is payable in full at the time of delivery to County of an executed original of this Lease and thereafter on or before the same day of any subsequent year this Lease is in force and effect.

- (b) Subject to the provisions of subparagraph (e) herein, the applicable annual rent will be determined by the County and Tenant will be notified no later than thirty (30) days before the annual rent is due.
- (c) The rent for renewal terms shall be set by county at the time of renewal.
- (d) If, for any reason, the rent as set forth in this Section is not paid when due, a carrying charge of two percent (2%) per month or any portion of the month thereof shall be imposed on the amount which remains due and unpaid.

- (e) Tenant shall not be entitled to refund of the rent, in whole or in part, after this Lease is executed by both parties, if County terminates this Lease for cause. If Tenant terminates this Lease, then County shall refund an amount equal to the then-current annual rent divided by 12 and multiplied by the number of whole calendar months remaining in the Lease, less a processing fee of \$50. If County terminates this Lease without cause, Tenant shall receive a refund of a part of the rent as described above except that the processing fee shall not apply.
- (f) There shall be an annual cost of living adjustment, payable by Tenant with the annual rent, applied to each year's rent during the initial term, beginning with the second year of rent. This cost of living adjustment will be that determined by the federal CPIU, US city average, all items (1982-84=100) as prepared by the US Bureau of Labor Statistics.

3. Lease Term.

- (a) **Initial Term.** The term of this Lease shall begin on October 1, 2008 and shall continue for a period of twenty (20) years, expiring on September 30, 2028.
- (b) **Renewal Terms.** Lessee may renew the lease for a second term of ten (10) years, and for two subsequent terms of five (5) years each.

4. Expiration of Lease, Termination and Surrender.

- (a) **Expiration of Lease.** Upon expiration of the initial term or any renewal term, County may renew the lease at the request of Tenant, or may purchase the improvements as follows, provided, that if Tenant chooses at any such time not to renew the lease, the improvements shall become the property of County on the same terms as upon expiration of the final renewal as identified herein:
 - i. **Expiration of initial term.** County may purchase the improvements for fifty (50) percent of fair market value.
 - ii. **Expiration of first (10-year) renewal term.** County may purchase the improvements for twenty-five (25) percent of fair market value.
 - iii. **Expiration of second (5-year) renewal term.** County may purchase the improvements for ten (10) percent of fair market value.
 - iv. **Expiration of final (5-year) renewal term.** Tenant shall surrender the leased premises, including all buildings and site improvements constructed or installed by the Tenant, in good condition, reasonable wear and tear and damage by fire, explosion, windstorm or any other casualty excepted. All such buildings and improvements shall become the sole property of the County.
- (b) **Termination of Lease Prior to Expiration.** The parties may terminate the lease prior to expiration as provided herein, provided, that the termination of this Lease shall not affect the obligations or liabilities previously incurred or accrued under this Lease.

- i. **Mutual Termination.** This Lease may be terminated at any time by written agreement of the parties.
 - ii. **Termination by Tenant.** This lease may be terminated at any time by Tenant upon thirty (30) days written notice. Upon the termination of this Lease, Tenant shall quietly and peacefully remove itself and its property from the premises and surrender the possession thereof to County. County may, in its discretion, declare any property that has not been removed from the premises upon termination of this Lease, as abandoned property subject to use or disposal by County.
 - iii. **Termination by County.** County may terminate this lease at any time upon thirty (30) days written notice. Upon any such termination, County shall pay to Tenant the fair market value of the improvements, adjusted as follows:

During initial term:	Full fair market value
During first renewal term:	50 % of fair market value
During second renewal term:	25% of fair market value
During final renewal term:	10% of fair market value
- (c) **Determination of Fair Market Value.** The purchase price of the improvements shall be based on an appraisal of the fair market value of the improvements at the time of conveyance, as established by County through an appraisal paid for by Tenant. The appraiser and the appraisal instructions must be approved by county. All appraisers must possess a Certified General Appraiser Certification issued by the New Mexico Board of Real Estate Appraisers and membership in good standing in one of the following nationally recognized appraisal societies: American Institute of Appraisers; Members Appraisal Institute; Society of Real Estate Appraisers; Senior Real Property Appraisers; National Association of Independent Fee Appraisers; Independent Fee Appraiser Senior; National Society of Real Estate Appraisers; or a Certified Real Estate Appraiser. If Tenant or County does not agree with the results of an appraisal, Tenant or County may contest the results of such appraisal. In such case, Tenant and County shall each select one appraiser to be known as "Secondary Appraisers," whose costs shall be individually paid by each party. The Secondary Appraisers shall each conduct an independent appraisal of the subject improvements. If the Secondary Appraisers do not agree on the appraisal value of the subject improvements, the Secondary Appraisers shall jointly select a third appraiser known as the "Independent Appraiser." The Independent Appraiser will engage the Secondary Appraisers in a discussion regarding the Secondary Appraisers' appraisals of the subject Improvements, and the Secondary Appraisers and the Independent Appraiser shall work together to reach an agreement on the appraisal value of the subject improvements. In the event such an agreement cannot be obtained, the Independent Appraiser shall make a determination of the appraisal value of the subject improvements based upon the Independent Appraiser's review of the Secondary Appraisers' appraisals and his own analysis in accordance with certified appraisal standards. The determination by the Independent Appraiser will be final and binding upon Tenant and County. The fees and other costs of the Independent Appraiser shall be shared equally by Tenant and County.

5. Use of Premises. The use of the premises shall be limited to the following activities:

(a) Storage of aircraft.

- i. Tenant may store airworthy aircraft in which Tenant has an ownership or leasehold interest.

- ii. Construction of aircraft.

In the event Tenant wishes to occupy the premises for the purpose of constructing an aircraft, Tenant shall notify the Airport Manager in writing and provide a description of the aircraft to be constructed and the anticipated timeline for construction of the aircraft. Tenant shall provide, in writing, any other information the Airport Manager requests relating to the aircraft construction activities.

(b) Operation of aircraft maintenance or rental facility.

- i. Tenant is authorized to utilize the premises for operation of an aircraft maintenance or rental facility. Said business activities shall be limited to Tenant, and no other activities or business shall be authorized without prior written approval from the County of Los Alamos. Any separate or affiliated person (corporation, individual, partnership, LLC, joint venture, etc.) operating from the premises without prior written approval from the County of Los Alamos shall be deemed to be in violation of this Lease Agreement. Should the Tenant not actively be engaged in any of the approved activities set forth in this paragraph for a period of time exceeding three (3) consecutive months, the County reserves the right to rescind its approval for such activity.

- ii. Compliance with regulations.

- a. For all aeronautical leases involving services to the public; each lease must be in conformance with Section 47107 of Title 49, USC, Subtitle VII, as amended, as follows:

“It is hereby agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 47107 of Title 49, USC, Subtitle VII, as amended, and the lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.”

- b. All leases involving services to the public must contain the assurances required by Title VI of the Civil Rights Act of 1964, and by Part 21 of the regulations of the Office of the Secretary of Transportation, as follows:

“The lessee for himself, his personal representatives, successors in interest and assigns as part of the consideration hereof, does hereby covenant and agree that: 1) no person on the grounds of race, color or national origin shall be excluded for participation in, denied the benefits of or otherwise be subjected to discrimination in the use of said facilities; 2) 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 otherwise be subjected to discrimination; 3) the lessee shall use the premises in compliance with all the other requirements imposed by 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, as amended."

- c. All aeronautical leases involving services to the public must contain the provisions of the airport Grant Assurances, as follows:

"The lessee agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or services; PROVIDED, that the lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers."

- d. In the event of breach of any of the above covenants, Tenant shall have thirty (30) days to resolve said breach to the satisfaction of the County.
- (c) Tenant's use of the premises is subject to all utilities easements and other easements that may be currently existing or granted in the future.

6. Care of Leased Premises/County Access.

- (a) Tenant shall keep and maintain the leased premises and all improvements of any kind, which may be erected, installed or made thereon by Tenant in good and substantial repair and condition, including the exterior condition thereof, and shall make all necessary repairs and alterations thereto. Maintenance includes, but is not limited to, any and all environmental clean-ups of the site and/or removal of the facility. Tenant agrees to hold County harmless from any responsibility or expense for any maintenance of the facilities during the lease. Tenant shall provide proper containers for trash and garbage and shall keep the premises free and clear of rubbish, debris and litter at all times.
- (b) **Access.** The County hereby reserves the right to enter upon the leased premises at reasonable times for the purpose of making inspections to determine if the conditions and requirements of this Lease are being fully complied with. Should any buildings on the leased premises become deficient in maintenance or in need of repair, Tenant shall cause repairs to be made to same within thirty (30) days after receipt of notice from County. Failure to comply shall be considered an event of default.

- 7. Building Construction Requirement.** Tenant shall be required to abide by all Fire Codes and Building Codes, as adopted by the County of Los Alamos, in the operation and alteration of the facilities on space as described herein. The type, size, style and appearance of construction must be approved by the County prior to submittal for building permits. Said approval shall not be unreasonably withheld. Tenant agrees to pay or cause to be paid, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery or equipment which may have been furnished or ordered with Tenant's consent to be furnished to or for the Tenant in, upon or about the premises herein leased, and shall cause to be discharged any mechanic's, materialmen's or other lien against the premises herein leased or County's interest therein.

- 8. Use of Airport Facilities.** The Tenant shall have use of the Los Alamos Airport, including, but not by way of limitation, the landing areas, aprons, taxiways and vehicle parking areas during the pendency of the Lease. This Lease shall not be construed to convey to the Tenant the exclusive use of any part of the Los Alamos Airport except those premises described in Section 1 herein, or to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 47107 of Title 49 USC, Subtitle VII, as amended. The County reserves the right to lease to any other party any portion of the Los Alamos Airport not described in Paragraph 1 herein other than public facilities, and to grant to others the privilege and right of conducting any one or more activities of an aeronautical nature.
- 9. Hazardous Substances.** In no event shall Tenant use, except in quantities and for purposes consistent with the permitted use, or dispose hazardous substances, pollutants, or contaminants on the premises. Any use, except as specifically provided in this paragraph, or disposal of hazardous substances, pollutants, or contaminants on the premises shall constitute an event of default.
- 10. Historic or Archeological Sites.** In no event shall Tenant undertake any activity anywhere on the Airport Property that may adversely affect a historic or archeological property and shall cease any activity anywhere on the Airport Property immediately upon written notification from County.
- 11. Substitution of Tie-Down Space.** County reserves the right to require any Tenant using a space on which a hangar is located to use a substitute space, whether or not it has a hangar on it, for purposes of maintenance and repair of the Airport facilities. If, within five (5) days after notice is given that Tenant will be assigned a substitute space, Tenant notifies the Airport Manager in writing of unusual circumstances that render the aircraft unable to relocate, the Airport Manager will take such unusual circumstances into consideration and, to the extent reasonably practicable, allow additional time for the relocation as necessary, in the Airport Manager's sole discretion, for Tenant to relocate to the assigned substitute space.
- 12. Closure of the Airport.** In the event of an emergency declared by County, or at the request of the state or federal governments, or for any other reason as set out in the Airport Rules and Regulations, County may close the Airport and Tenant may not have access to the premises during the period the Airport is closed. In the event the Airport is closed, County will attempt, as circumstances permit, to provide reasonable advance notice to Tenant and allow Tenant access to the premises as may be allowed and reasonably practicable given the circumstances and other competing priorities.
- 13. Documentation.** Tenant shall submit to County, together with this Lease, the following documentation:
- (a) Federal aircraft registration.
 - (b) Evidence of Tenant's ownership of or leasehold interest in the aircraft.
 - (c) Proof of Insurance.

(d) Los Alamos Business Registration.

(e) New Mexico Department of Taxation and Revenue CRS number.

Upon any change in aircraft, Tenant shall notify county within thirty (30) days of acquiring or removing said aircraft, and shall provide the above-specified documentation with respect to said acquired aircraft.

14. Removal of Aircraft and Personal Property.

- (a) Tenant shall not place or park any aircraft that is not airworthy, parts and other personal property, on the premises or elsewhere at the Airport except as provided in this Lease or as otherwise expressly authorized in writing by the Airport Manager.
- (b) Subject to the provisions of section 5(a) or as otherwise provided herein, County may, upon thirty (30) days written notice, move any aircraft that is not airworthy or any parts or other personal property located on the premises or otherwise placed or left by Tenant at the Airport from the place where they are located and may store said items in such reasonable location as County may determine on Tenant's behalf and at Tenant's sole expense and without liability to County for damage that may result. Tenant shall immediately pay to County any and all costs incurred by County in any removal, placement or storage undertaken pursuant to this paragraph.
- (c) In the event that any aircraft or other personal property of Tenant interferes with the operations or other needs of the Airport, County may provide reasonable notice to Tenant to move any such aircraft or property to such place as County may designate. Said removal shall be at Tenant's sole cost and expense. Provided, that in the event of an emergency or other similar situation necessitating removal and reasonable notice is not possible or practical, County may, with the exercise of reasonable care, remove the aircraft or property and Tenant shall have no recourse against County for any damages suffered as a result of said removal.

15. Condition of the Premises. Tenant has made or has had a reasonable opportunity to make an inspection of the premises, and accepts the premises "AS IS, WHERE IS." County makes no warranty, express or implied, as to the condition of the premises, the general usability of the premises, or the suitability of the premises for any particular purpose. Upon Tenant's acceptance of the premises, County shall owe Tenant the duty of quiet enjoyment. County shall also be responsible for snow removal in accordance with the county's snow-removal policy.

16. Structures, Improvements, Alteration or Additions.

- (a) Construction of any improvements or alterations, additions, excavations, improvements to, installations upon or other modification or alterations to the premises, including signage of any kind (the "improvements"), shall be made only upon the prior written specific authorization of County, which authorization may be given or denied in County's sole discretion, provided, that denial of approval for construction of hangar facilities such

as would defeat the purposes of this lease shall entitle Tenant to termination of the lease. All improvements shall be made at the sole expense of Tenant and title to the improvements shall remain in Tenant unless and until title vests in County as expressly provided herein. Tenant shall make no improvements other than those improvements specifically authorized by the Airport Manager.

- (b) Tenant shall repair any damage to the premises or other County property resulting from Tenant's installation, construction, or removal of such improvements, equipment, personal property or other items belonging to Tenant. County shall be entitled to remove and dispose of any improvements, personal property, and other items belonging to Tenant remaining on the premises after the termination of this Lease without the express written authorization of the Airport Manager, without liability of any kind to County, and repair any resulting damage, and Tenant agrees to promptly reimburse County for any and all costs and expenses County may incur in such removal and disposal.
- 17. Sale of Improvements.** Before Tenant sells any improvements on the premises, Tenant shall provide County first right of refusal to purchase such improvements at a purchase price equal to the amount of any offer received by Tenant. County shall have thirty (30) days to accept said offer, after which the offer will be deemed refused. Any sale of the improvements and transfer of the lease shall be contingent upon the new owner executing an agreement to assume the remainder of the Lease in the then-current annual fee to be effective contemporaneously with said sale. The expiration, termination and surrender provisions of this lease shall be binding upon any such new owner according to the initial term and renewal provisions of this lease, and no new term shall commence. Any such Lease with a new owner shall be effective immediately upon transfer of this Lease.
- 18. Utilities and Services.** County will not furnish utilities, trash or garbage collection services to the premises. Procurement of utilities to the premises shall be the sole responsibility of Tenant and Tenant shall timely pay any and all utilities bills and invoices for other services provided to the premises.
- 19. Taxes.** Tenant will promptly pay such taxes, levies, fines and/or assessments, if any, as may be lawfully imposed upon Tenant's property or interests with respect to the premises, by any federal, state, county or other authority.
- 20. Compliance with Environmental, Health & Safety and Other Applicable Laws.** Tenant shall comply with all applicable environmental, safety and health laws and regulations. Tenant shall not interfere with the environmental clean-up or restoration actions of County, or any of their contractors. Tenant shall also comply with any and all other applicable federal and state laws, rules and regulations, all applicable provisions of the County Code, and the Airport Rules and Regulations.
- 21. Insurance.** During the term of this Lease, Tenant shall maintain in force and effect the following insurance, listing County as an additional insured, in such minimum amounts as are specified in the New Mexico Tort Claims Act, Sections 41-4-1 et seq., NMSA (1978), as amended from time to time. The insurance shall provide that County be notified no less than

thirty (30) days in advance in the event of cancellation. Failure to maintain required insurance shall be considered an event of default.

- (a) Aircraft Liability Insurance: \$1,000,000.00 per occurrence.
- (b) Premise General Liability Insurance for property damage, injury or death resulting from occurrences on the Airport premises: \$1,000,000.00 per occurrence, which insurance may be provided in an endorsement or rider to Tenant's Aircraft Liability Insurance.
- (c) Public liability and other insurance in the amounts specified by the Los Alamos Airport Minimum Standards for Aeronautical Business Activities.
- (d) Worker's Compensation: In an amount as may be required by law.

22. Indemnity. Tenant hereby releases County from any loss or damage suffered by Tenant or any third party as a result of Tenant's use of the premises, and Tenant hereby agrees to indemnify and hold harmless and defend County from and against all liabilities, claims, demands, settlements, actions, costs and expenses (including reasonable attorneys' fees) of any kind or nature, legal or equitable, arising from injury or death to persons or damages to property in any way arising out of, or related to, Tenant's use of the premises or this Lease, provided, that said indemnification shall not extend to damages resulting from the negligent acts or willful misconduct of County, its employees, contractors or agents, and provided further that any such indemnification or defense shall be limited as specified in Tenant's insurance policy.

23. Default.

(a) An "Event of Default" under this lease means the occurrence of any of the following:

- i. Tenant breaches any provision of or defaults under this lease, and such breach or default is not cured or remedied within thirty (30) days after written notice of such breach or default, provided that County may extend said cure-period for an additional ninety (90) days upon good cause shown, and provided further that County's remedies for default in rent payments shall not be subject to these notice requirements.
- ii. Tenant files a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors.
- iii. A receiver, trustee or liquidator of Tenant or of all or substantially all of the property of Tenant, including the leased premises, shall be appointed in any proceeding.

(b) Upon the occurrence of any Event of Default:

- i. The County may terminate this Lease and the Term hereof without any right on the part of Tenant to waive the forfeiture by payment of any sum due or by performance of any other condition, term or covenant broken or in any other manner to reinstate this Lease; upon such termination, the County shall be entitled to retain and to recover: (i) all Rent that shall have accrued through the date of termination, plus (ii)

- any other reasonable amount necessary to compensate the County for all damages, if any, caused by Tenant's failure to perform its obligations under this Lease (including, without limitation, reasonable attorneys' fees, disbursements and other charges, costs of alterations of the Leased Premises, interest costs and brokers' fees incurred upon any re-letting of the Leased Premises for the remainder of the Term if the Event of Default had not occurred); and
- ii. The County may terminate Tenant's right of possession and may repossess the Leased Premises by legal proceedings or otherwise, with or without terminating this Lease, after reentry or retaking or recovering of the Leased Premises, whether by termination of this Lease or not, the County may re-let the same or a portion thereof for such rent and upon such terms as are commercially reasonable and be deemed advisable by the County; and whether or not the Leased Premises are re-let, Tenant shall be liable for the losses and damages provided for and pursuant to Lease; provided however, if the County seeks to recover lost rent from Tenant, the County shall attempt to mitigate its losses by using good faith efforts to re-let the Leased Premises; and
 - iii. The County may exercise any other right, remedy, or privilege that may be available to it under this Lease or under applicable federal, state, or local law.
- (c) All remedies of the County shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. The County shall be required hereby to mitigate any of its damages hereunder. No termination of this Lease, cure by the County of any Event of Default hereunder, repossession or re-letting of the Leased Premises, exercise of any remedy or collection of any damages shall relieve the Lessee of any of its obligations hereunder. Upon any termination due to Tenant's uncured default, all improvements shall become the property of County.
- (d) **County Event of Default.** In the event that the County fails to perform or observe any obligations under this Lease, and any such failure is not cured or remedied within thirty (30) days after written notice of such breach or default (provided that such cure period shall be extended by Tenant for up to an additional ninety (90) days if such breach or default cannot reasonably be cured within the initial thirty (30) days and the County demonstrates to Tenant that the County is diligently attempting to cure the same), then such failure shall, unless and until cured or remedied, constitute a **"County Event of Default"** under this Lease; provided that any such breach or default shall not be on account of any action or inaction on the part of another party. Tenant shall have no claim or rights against the County with respect to any failure by the County unless an uncured County Event of Default shall exist. Upon such event of default, Tenant may terminate this Lease. Tenant's disposal of improvements upon such termination shall be as specified in paragraph 4(b)(iii) herein, relating to County's early termination.
- (e) Neither Tenant nor the County shall be in default under this Lease if such performance of any obligation, duty or act is delayed or prevented by or due to events of Force Majeure.
- i. Notwithstanding any other provision herein, the term **"Force Majeure"** shall mean any delay in completing or performing any obligation under this Lease which arises from acts of God, labor disputes, fire, freight embargos, unavoidable casualty, flood

(assuming the Lessee has taken reasonable precautions), earthquake, epidemic, civil disturbance, terrorism, war, riot, sabotage (by persons other than the Lessee, its agents, employees or assigns), the discovery of archeological remains or objects of antiquity, the discovery of Hazardous Materials in, on or under the Land other than those that were brought to the Land by the Lessee, its subcontractors, invitees or tenants, or other similar acts or conditions, each case only to the extent the event in question is beyond the reasonable control and without the fault or negligence of the delayed party or its respective agent, employee or assign.

- ii. In the case of delay due to Force Majeure, the time within which the Party must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by the Party is delayed or prevented by the causes specified above, provided that within thirty (30) days of the commencement of the cause of delay the Party shall have notified the other Party of the existence of such cause of delay.

24. Notice. Any notice required or permitted to be delivered pursuant to this Lease shall be deemed received when hand delivered to the other party or three (3) days after deposit in the United States mail, postage prepaid, addressed to County or Tenant, as the case may be, at the address stated below:

County:

Tenant:

Airport Manager
County Administrator's Office
Incorporated County of Los Alamos
1040 Airport Road
Los Alamos, New Mexico 87544

Either party may give notice of change of address by following the notice procedure set out herein. Any such change of address shall be effective immediately upon receipt by the other party.

25. Successors and Assigns. The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the successors and/or assigns of the parties hereto.

26. Applicable Law.

(a) This lease shall be governed by New Mexico law. Venue for any judicial action shall be in the First Judicial District Court in Los Alamos County, New Mexico.

(b) State and Federal Law

This Lease is subject to all applicable State and Federal laws as well as all articles and conditions of grant agreements entered into between the County and the Federal Aviation Administration and the Division of Aviation, Department of Transportation of the State of New Mexico and nothing contained herein shall be construed to prevent the County from making such further commitments as it desires to make to the Federal Government

or to the State of New Mexico so as to qualify for further expenditure of federal and/or state funds at the Los Alamos Airport.

(c) Local Ordinances

This Lease shall be subject and subordinate to all ordinances of the County of Los Alamos, the Rules and Regulations of the Los Alamos Airport and/or the Minimum Standards for Aeronautical Business Activities at the Los Alamos Airport, as the same may be in effect and amended from time to time.

27. No Waiver of Defaults. The failure of either party to take any action with respect to any default by the other party hereunder shall not be construed as a waiver or relinquishment of the non-defaulting party's right to the future performance of any such terms, covenants or conditions and the defaulting party's obligations in respect to such future performance shall continue in full force and effect.

28. Assignment. Tenant shall not assign this Lease in whole or in part or sublet the premises without the prior written consent of the Airport Manager and any attempted unauthorized assignment or subletting shall be void and shall be considered an event of default.

29. Liens, Attachments and Encumbrances. Should Lessee permit or cause to be filed of record any encumbrance, attachment or lien against the premises, such filing shall be deemed an event of default unless cured by Lessee within ninety (90) days of the filing of such encumbrance, attachment or lien or unless within such ninety (90) day period Lessee shall initiate a contest of such encumbrance, attachment or lien in a court of competent jurisdiction.

30. Interpretation.

(a) Severability

It is the intention of the parties hereto that the provisions of this Lease shall be severable with respect to declaration of invalidity of any provision contained herein. Should any provision be found to be void or unenforceable, the remaining provisions shall remain in full force and effect.

(b) Headings

The paragraph headings are for convenience only and do not define, limit or describe the contents of such paragraphs.

31. Modification of Lease. Any modification of this Lease shall be binding only if evidenced in writing signed by both parties.

32. Entire Lease. This Lease constitutes the entire Lease between the parties regarding the subject matter hereof. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent incorporated in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed the Lease on the dates indicated.

TENANT:

Signature

Printed Name: _____

Title: _____

Date: _____

Tenant's Telephone Numbers and E-Mail Address

Work No.: _____

Home No.: _____

Alternate No.: _____

E-Mail Address: _____

COUNTY:

Incorporated County of Los Alamos

Max H. Baker
County Administrator

Date

Attest:

County Clerk

By _____
Deputy Clerk