

When Recorded, Return to:

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**AMENDED AND RESTATED NON-DISTURBANCE, CONSENT, ESTOPPEL AND
SUBORDINATION AGREEMENT**

THIS AMENDED AND RESTATED NON-DISTURBANCE, CONSENT, ESTOPPEL AND SUBORDINATION AGREEMENT (this "**Agreement**") is made and entered into as of this _____, day of _____, 2018, by and among the **CITY OF SAN JOSE**, a California municipal corporation ("**City**"), **BCH SAN JOSE LLC**, a Delaware limited liability company, with an office at 555 Bryant St. #347, Palo Alto, CA 94301 ("**BCH Sublessee**"), **GILEAD SCIENCES, INC.**, a Delaware corporation, with an office at 333 Lakeside Drive, Foster City, CA 94404 ("**Gilead Sublessee**") and **SIGNATURE FLIGHT SUPPORT CORPORATION**, a Delaware corporation, with an office at 201 South Orange Avenue, Suite 1100 S., Orlando, Florida 32801 ("**Sublessor**") (hereinafter (a) sometimes "City", "BCH Sublessee", "Gilead Sublessee", and "Sublessor" are individually referred to herein as a "**Party**" and collectively referred to as the "**Parties**", and (b) sometimes "BCH Sublessee" and "Gilead Sublessee" are individually referred to herein as a "**Sublessee**" and collectively referred to as the "**Sublessees**").

This Agreement amends and restates in its entirety that certain Non-Disturbance, Consent, Estoppel and Subordination Agreement dated December 12, 2013 by and among City, BCH Sublessee and Sublessor, and recorded in the official records of Santa Clara County on June 3, 2014 as Instrument No. 22610797.

RECITALS:

A. City, as lessor and Sublessor, as lessee, entered into that certain Ground Lease and Operating Agreement dated as of December 12, 2013, as amended by that certain First Amendment to Ground Lease and Operating Agreement dated as of the same date herewith (as amended, the "**Master Lease**") whereby City leases to Sublessor a parcel of real estate containing approximately 33.345 acres of land legally described on the attached **Exhibit A-1** (the "**Development Site**") at the Norman Y. Mineta San Jose International Airport (the "**Airport**").

B. Sublessor, as sublessor and BCH Sublessee, as sublessee entered into that certain Ground Sublease Agreement dated as of December 12, 2013, as amended by that certain First Amendment to Ground Sublease Agreement dated as of July 22, 2015, as further amended by that certain Second Amendment to Ground Sublease Agreement dated as of the same date herewith ("**Second Amendment to BCH Sublease**"), and as further amended by that certain Third Amendment to Ground Sublease Agreement dated as of the same date herewith ("**Third Amendment to BCH Sublease**"), a copy of which is attached hereto as **Exhibit B** (as amended, the "**BCH Sublease**").

C. Pursuant to the BCH Sublease, Sublessor originally subleased to BCH Sublessee approximately 19.106 acres of the Development Site. Concurrently with this Agreement, Sublessor and BCH Sublessee have entered into the Second Amendment to BCH Sublease and the Third Amendment to BCH Sublease, where among other things BCH Sublessee has conveyed to Sublessor the Purchase Property (as defined in the Second Amendment to BCH Sublease) consisting of approximately 2.702 acres of the Development Site originally subleased by BCH and all of the improvements, fixtures and alterations located thereon. Accordingly, as of the date of this Agreement, Sublessor currently subleases to BCH Sublessee the approximately 16.404 acres of the Development Site legally described on the attached **Exhibit A-2** (the “**BCH Leased Premises**”).

D. Pursuant to the BCH Sublease, BCH Sublessee has constructed certain buildings, fixtures and other improvements as more particularly described on the attached **Exhibit B-1** (collectively, the “**BCH Improvements**”) on the BCH Leased Premises based on the express understanding, condition and agreement that the BCH Improvements shall belong to BCH Sublessee throughout the term of the BCH Sublease.

E. Pursuant to the Master Lease, Sublessor has constructed the buildings known as “Hangar 1”, “Hangar 2” and certain other buildings, fixtures and improvements (collectively, the “**FBO Improvements**”) on a portion of the Development Site that Sublessor is not subleasing to BCH Sublessee or Hangar A (as defined below) which portion is legally described on the attached **Exhibit A-3** (the “**FBO Premises**”) based on the express understanding, condition and agreement with City that the FBO Improvements shall belong to Sublessor throughout the term of the Master Lease, except to the extent owned by any City approved sublessee of Sublessor (including without limitation Gilead Sublessee as further described in Recital G below).

F. Sublessor, as sublessor and Gilead Sublessee, as sublessee entered into that certain Ground Sublease Agreement dated December 23, 2015, and with an effective date of November 1, 2015, a copy of which is attached hereto as **Exhibit C** (the “**Gilead Sublease**”), whereby Sublessor subleases to Gilead Sublessee the approximately 1.002 acres of the FBO Premises legally described on the attached **Exhibit A-4** (the “**Gilead Leased Premises**”), and additionally granted Gilead Sublessee the non-exclusive right to use approximately 27,520 square feet of ramp space on the FBO Premises and located in front of the Gilead Leased Premises.

G. Simultaneous with the execution of the Gilead Sublease, Gilead purchased a portion of the FBO Improvements from Sublessor, which purchase and sale consisted of the “Hangar 1” (as defined in the Gilead Sublease) building comprising approximately 30,149 square feet of hangar space together with certain other improvements, fixtures and alterations located on the Gilead Premises and certain exclusive parking rights on the FBO Premises, as the same are more particularly described on the attached **Exhibit C-1** (collectively, the “**Gilead Improvements**”).

H. Sublessor, as sublessor and Hangar A LLC, a Delaware limited liability company (“**Hangar A**”), as sublessee, have entered into that certain Ground Sublease Agreement dated as of the same date herewith (the “**Hangar A Sublease**”), whereby Sublessor subleases to Hangar A an approximately 2.104 acre portion of the Development Site (as described more fully in the Hangar A Sublease, the “**Hangar A Subleased Premises**”) along with the right to access and use certain other portions of the Development Site. Hangar A is not a party to this Agreement and any references to “Sublessee” or “Sublease” herein expressly exclude

Hangar A. The Hangar A Sublease and Hangar A Subleased Premises are referenced in this Agreement solely for purposes of Section 7 of this Agreement regarding the agreements occurring after the termination of the Master Lease.

I. City, BCH Sublessee, Gilead Sublessee and Sublessor desire to enter into this Agreement in order to document and confirm certain understandings and agreements with respect to the BCH Sublease, the Gilead Sublease, the BCH Improvements and the Gilead Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree and covenant as follows:

1. **Consent.** City hereby reaffirms its approvals of and consents to (a) the execution of the BCH Sublease by Sublessor and BCH Sublessee, and (b) the execution of the Gilead Sublease by Sublessor and Gilead Sublessee. City also reaffirms its previous consent, acknowledgement and approval of the construction of (i) the BCH Improvements, and (ii) the Gilead Improvements. Notwithstanding City's re-affirmed consent and approval of the construction of the BCH Improvements and the Gilead Improvements, the improvements shall remain subject to all of the applicable requirements and conditions for "Leasehold Improvements" set forth in the Master Lease.

2. **Nondisturbance.**

a. **BCH Sublessee Nondisturbance.** So long as BCH Sublessee is not in default (beyond any applicable grace or cure period given BCH Sublessee in connection with such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the BCH Sublease to be performed by BCH Sublessee, neither City nor any receiver or other agent of City who has been appointed to take possession or control of the Development Site shall disturb or interfere with the use, possession or occupancy of the BCH Leased Premises and BCH Improvements by BCH Sublessee or anyone lawfully possessing the BCH Leased Premises and the BCH Improvements by, through or under BCH Sublessee during the term of the BCH Sublease or any extension thereto. BCH Sublessee shall not be named or joined in any unlawful detainer or other legal action taken by City to enforce the Master Lease unless the joinder is required by law in order to prosecute such proceeding.

b. **Gilead Sublessee Nondisturbance.** So long as Gilead Sublessee is not in default (beyond any applicable grace or cure period given Gilead Sublessee in connection with such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Gilead Sublease to be performed by Gilead Sublessee, neither City, BCH Sublessee nor any receiver or other agent of City or BCH Sublessee who has been appointed to take possession or control of the Development Site, or portion thereof, shall disturb or interfere with the use, possession or occupancy of the Gilead Leased Premises and Gilead Improvements by Gilead Sublessee or anyone lawfully possessing the Gilead Leased Premises and the Gilead Improvements by, through or under Gilead Sublessee during the term of the Gilead Sublease or any extension thereto. Gilead Sublessee shall not be named or joined in any unlawful detainer or other legal action taken by City, or BCH Sublessee to enforce the Master Lease unless the joinder is required by law in order to prosecute such proceeding.

3. **Status of Master Lease.** City hereby certifies and agrees for the benefit of each Sublessee as follows:

a. A true and complete copy of the Master Lease, and all amendments thereto, is attached hereto as **Exhibit D**. The Master Lease is in full force and effect, and the Master Lease has not been otherwise amended, modified or supplemented, and there are no other agreements between City and Sublessor with respect to the Master Lease or the Development Site. The Master Lease contains the entire agreement between the City and Sublessor with respect to Sublessor's right to use, develop and occupy the Development Site;

b. The rent and other amounts payable under the Master Lease (including, without limitation, the security deposit required under the Master Lease) have been paid in full to the date of City's execution of this Agreement;

c. Neither City nor Sublessor is in default under any of the terms of the Master Lease and to the best of City's knowledge no claim, controversy nor dispute exists under the Master Lease; and

d. No notice has been received by or given by City concerning any default under the Master Lease, and there are no circumstances that with the passage of time or giving of notice would be a default under the Master Lease by City or, to the best of City's knowledge, Sublessor.

4. **Notices and Estoppel Certificates.**

a. City agrees to send to both Sublessees a copy of each notice given by City to Sublessor in connection with the Master Lease. All such notices shall be given concurrent with the notice given by City to Sublessor. Furthermore, at the request of either Sublessee, City will also from time to time sign and provide the requesting Sublessee and/or its lender or other designee with an estoppel certificate in a form reasonably requested by Sublessee confirming (i) the then current status of the Master Lease, (ii) whether or not there are or have been any defaults under the Master Lease, (iii) the amounts owing under the Master Lease, and (iv) such other facts as may be reasonably requested by the requesting Sublessee.

b. Any notice, certificate, statement, request, consent, approval or demand given under this Agreement by any Party to any other Party shall be made in writing and shall be delivered by personal service, overnight courier, United States mail (certified mail/postage prepaid only), or electronic transmission. Notices served by United States mail are deemed property delivered effective the third (3rd) business day following their postmark, and personal service, courier delivery, or electronic transmission are deemed served at the time and date of receipt confirmation provided that such notice is addressed to the Party as follows:

If to City:

Property Manager
Norman Y. Mineta San Jose International Airport
1701 Airport Blvd. Suite B-1130
San Jose, California 95110-1206
Email:

If to Sublessor:

Signature Flight Support Corporation
Attention: General Counsel
201 South Orange Avenue, Suite 1100
Orlando, FL 32301
Email: Jeffrey.bankowitz@us.bbaaviation.com

With simultaneous copy to:

Signature Flight Support Corporation
Attention: Director of Real Estate
201 South Orange Avenue, Suite 1100
Orlando, FL 32301
Email: Brendon.Dedekind@signatureflight.com

And with a second simultaneous copy to:

Signature Flight Support Corporation
Attention: General Manager
325 Martin Avenue
San Jose, CA 95110

If to BCH Sublessee:

BCH San Jose LLC
555 Bryant St. #347
Palo Alto, CA 94301
Attention: Ken Ambrose, President
Email: kambrose@gmail.com

With simultaneous copy to:

Lane Powell PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2375
Attention: Paul Lambert, Esq.
Email: LambertP@lanepowell.com

If to Gilead Sublessee:

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, California 94404
Attention: Mr. Brett Pletcher,
Executive VP, General Counsel and Corporate Secretary
Email: brett.pletcher@gilead.com

with a simultaneous copies to:

Mr. George Dom, Director of Aviation
Gilead Sciences, Inc.
303 Martin Avenue
Santa Clara, California 95050
Email: gdom@solairus.aero

Groom & Cave LLP
1570 The Alameda, Suite 100
San Jose, CA 95126
Attention: Michael P. Groom, Esq.
Email: groom@groomandcave.com

or to such other address(es) as a Party may designate in writing from time to time to the other Parties in the manner prescribed above.

5. Subordination; Title to Leasehold Improvements; Assignments, Sub-subleases and Other Transfers.

a. Subject to the terms and conditions of this Agreement, the BCH Sublease and the Gilead Sublease and the leasehold estates created by them are now, and shall at all times hereafter continue to be, subject and subordinate in each and every respect to the Master Lease and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Master Lease.

b. City acknowledges and agrees that (i) during the term of the BCH Sublease, BCH Sublessee shall own legal title to the BCH Improvements, and (ii) during the term of the Gilead Sublease, Gilead Sublessee shall own legal title to the Gilead Improvements.

c. City has reviewed and approved (i) Section 30 (Assignment and Subletting; Right of Recapture; Sublessee's Right to Mortgage) of the BCH Sublease, and (ii) Section 30 (Assignment and Subletting; Right of Negotiation; Sublessee's Right to Mortgage) of the Gilead Sublease. Notwithstanding anything in this Agreement or the Master Lease to the contrary, City agrees that:

(i) (1) any sale, assignment, sub-sublease, mortgage, pledge, hypothecation, encumbrance or other transfer of any interest of BCH Sublessee in the BCH Sublease, the BCH Leased Premises and/or the BCH Improvements that does not require the prior approval or consent of Sublessor under the BCH Sublease shall not require the prior approval or consent of City, and (2) any sale, assignment, sub-sublease, mortgage, pledge, hypothecation, encumbrance or other transfer of any interest of Gilead Sublessee in the Gilead Sublease, the Gilead Leased Premises and/or the Gilead Improvements that does not require the prior approval or consent of Sublessor under the Gilead Sublease shall not require the prior approval or consent of City;

(ii) (1) any sale, sub-sublease, assignment or other transfer by BCH Sublessee to Sublessor of any interest of BCH Sublessee in the BCH Sublease, the BCH Leased Premises and/or the BCH Improvements shall not require the prior

approval or consent of City, and (2) any sale, sub-sublease, assignment or other transfer by Gilead Sublessee to Sublessor of any interest of Gilead Sublessee in the Gilead Sublease, the Gilead Leased Premises and/or the Gilead Improvements shall not require the prior approval or consent of City; and

(iii) (1) any sub-sublease by BCH Sublessee to any third party of less than all the BCH Sublessee's interest in the Sublease, the BCH Leased Premises and/or the BCH Improvements shall be deemed "in the ordinary course of its business" (as such phrase is used in Section 12 of the Master Lease) and shall not require the prior approval or consent of City, and (2) any sub-sublease by Gilead Sublessee to any third party of less than all the Gilead Sublessee's interest in the Gilead Sublease, the Gilead Leased Premises and/or the Gilead Improvements shall be deemed "in the ordinary course of its business" (as such phrase is used in Section 12 of the Master Lease) and shall not require the prior approval or consent of City.

6. **Payment of Amounts owing under Sublease to City.** In the event that Sublessor defaults under any of its obligations under the Master Lease, City may thereafter elect to notify the Sublessees to pay all rents and other amounts due under their respective Sublease directly to City and Sublessor hereby consents to such payments by Sublessees to City. Upon Sublessee's receipt of any such notice from City, such Sublessee shall thereafter remit all rents and other amounts due under their respective Sublease to City either by wire transfer to an account designated in such notice or by check made payable to "City of San Jose" and delivered or mailed to City at the following address" City of San Jose, Payment Processing - Airport, Finance Department, 200 East Santa Clara Street, San Jose, CA 95113-1905." The payment by Sublessee of any such rents and other amounts to City instead of Sublessor shall not be deemed or construed as a default under their respective Sublease; provided that such direct payments to the City are made only in accordance with this Section. Such payments of rents and other amounts by Sublessee to City by reason of this Section shall be applied for the account of Sublessor pursuant their respective Sublease and shall continue until the first to occur of the following:

a. No further rent is due or payable under the Master Lease; or

b. City gives the Sublessee notice that the default(s) of Sublessor under the Master Lease has been cured and instructs Sublessee that the rents and other amounts due under their respective Sublease should thereafter be paid to Sublessor.

7. **Termination of Master Lease; BCH Replacement Lease; Gilead Replacement Sublease.**

a. The BCH Replacement Lease. In the event that the Master Lease is rejected in bankruptcy, terminated, or otherwise cancelled at any time prior to the expiration of the Master Lease, and provided that no Sublessee Event of Default (as such term is defined in the BCH Sublease) shall have occurred and then be continuing under the BCH Sublease, City and BCH Sublessee hereby expressly covenant and agree to (1) designate BCH Sublessee as a month-to-month tenant in that portion of the Development Site described in 7(a)(2) on and subject to the same terms and conditions set forth in the BCH Sublease and (2) within sixty (60) days following the rejection in bankruptcy, termination, or other cancellation of the Master Lease, enter into a direct ground lease between City, as lessor, and BCH Sublessee, as lessee in the

form attached hereto as **Exhibit E** (the “**BCH Replacement Lease**”) whereby BCH Sublessee shall lease from City a portion of the Development Site (comprised of the entire Development Site less the Hangar A Subleased Premises) consisting of approximately 31.24 acres as more fully described in the BCH Replacement Lease.

(i). For the avoidance of doubt, upon the execution of the BCH Replacement Lease by City and BCH Sublessee following a rejection, termination, or cancellation of the Master Lease as described in Section 7(a) above, both the BCH Improvements and the FBO Improvements shall be deemed “Leasehold Improvements” as defined under the BCH Replacement Lease and belong to BCH Sublessee, except for the Gilead Improvements which shall belong to Gilead Sublessee as provided for in Section 7(b)(i) below. Upon the request of BCH Sublessee, City and Sublessor shall execute such further documentation as may be reasonably necessary to confirm that unencumbered title and ownership of both the BCH Improvements and the applicable portion of the FBO Improvements is vested in the name of BCH Sublessee. Furthermore, following any termination of the Master Lease, so long as BCH Sublessee continues to perform in accordance with the same terms and conditions as the BCH Sublease, BCH Sublessee shall be entitled to occupy and enjoy the BCH Leased Premises and the BCH Improvements as a month to month tenancy on and subject to the same terms and conditions as the BCH Sublease throughout the period of time between the date of the termination of the Master Lease and the date of the execution of the BCH Replacement Lease by City and BCH Sublessee. In the event that BCH Sublessee fails to execute the Replacement Lease within sixty (60) days following the rejection in bankruptcy, termination or other cancellation of the Master Lease, BCH Sublessee’s continued occupancy of the BCH Leased Premises shall thereafter continue on a month-to-month tenancy basis as described above until such time as BCH Sublessee executes the BCH Replacement Lease. Upon executing the BCH Replacement Lease, City and BCH Sublessee shall record a memorandum of the BCH Replacement Lease in the official records of the Santa Clara County Recorder.

b. The Gilead Replacement Lease. In the event that the Master Lease is rejected in bankruptcy, terminated, or otherwise cancelled at any time prior to the expiration of the Master Lease as provided for in Section 7(a) above, then provided that no Sublessee Event of Default (as such term is defined in the Gilead Sublease) shall have occurred and then be continuing under the Gilead Sublease, City, BCH Sublessee and Gilead Sublessee hereby expressly covenant and agree to (1) designate Gilead Sublessee as a month-to-month tenant with respect to the Gilead Leased Premises on and subject to the same terms and conditions set forth in the Gilead Sublease and (2), concurrently with the execution of the BCH Replacement Lease, BCH Sublessee and Gilead Sublessee shall enter into a direct ground sublease with respect to the Gilead Leased Premises (the “**Gilead Replacement Sublease**”), in the form attached hereto as **Exhibit F**, and City hereby expressly consents to same.

(i). For the avoidance of doubt, provided that no Sublessee Event of Default (as such term is defined in the Gilead Sublease) and upon the execution of the Gilead Replacement Sublease by BCH Sublessee and Gilead Sublessee following a rejection, termination, or cancellation of the Master Lease and BCH Sublessee having entered into the BCH Replacement Lease as described in Section 7(a) above, the Gilead Improvements shall be deemed “Improvements” as defined under the Gilead Replacement Sublease and belong to Gilead Sublessee. Upon the request of Gilead Sublessee, BCH Sublessee, City and Sublessor shall execute such further documentation as may be reasonably necessary to confirm that unencumbered title and ownership of the Gilead Improvements is vested in the name of Gilead Sublessee. Furthermore, following any termination of the Master Lease, so long as Gilead

Sublessee continues to perform in accordance with the same terms and conditions as the Gilead Sublease, Gilead Sublessee shall be entitled to occupy and enjoy the Gilead Leased Premises and the Gilead Improvements on a month-to-month tenancy and on and subject to the same terms and conditions as the Gilead Sublease throughout the period of time between the date of the termination of the Master Lease and the date of the execution of the BCH Replacement Lease by City and BCH Sublessee and the Gilead Replacement Sublease. In the event that a Sublessee Event of Default (as such term is defined in the Gilead Sublease) then exists and is not cured within any applicable cure period provided in the Gilead Sublease, or Gilead Sublessee fails to execute the Gilead Replacement Sublease concurrently with the execution of the BCH Replacement Lease, Gilead Sublessee's continued occupancy of the Gilead Leased Premises shall thereupon terminate and title to the Gilead Improvements shall be conveyed directly to BCH Sublessee at the same time as title to the BCH Improvements and the FBO Improvements are conveyed by the City to BCH Sublessee. Upon executing the Gilead Replacement Sublease, then BCH Sublessee and Gilead Sublessee shall record a memorandum of the Gilead Replacement Sublease in the official records of the Santa Clara County Recorder.

(ii). Notwithstanding the foregoing, in the event that (1) BCH Sublessee fails to execute the BCH Replacement Lease within the time frame set forth in Section 7(a) above, or (2) BCH Sublessee and City enter into the BCH Replacement Lease and subsequently the BCH Replacement Lease is rejected in bankruptcy, terminated, or otherwise cancelled at any time prior to the expiration of the BCH Replacement Lease, then provided that no Sublessee Event of Default (as such term is defined in the Gilead Sublease or Gilead Replacement Sublease as applicable) shall have occurred and then be continuing under the Gilead Sublease or Gilead Replacement Sublease, as applicable, then City and Gilead Sublessee hereby expressly covenant and agree to, (aa) designate Gilead Sublessee as a month-to-month tenant with respect to the Gilead Leased Premises on and subject to the same terms and conditions as the Gilead Sublease and (bb) within sixty (60) days following the occurrence of "(1)" or "(2)" above, enter into a direct ground lease between City, as lessor, and Gilead Sublessee, as lessee, with respect to the Gilead Leased Premises and in materially the same form as the Gilead Replacement Sublease with such modifications as necessary to evidence the direct ground lease relationship. In the event that following the occurrence of the events described in this Section 7(b)(ii), Gilead Sublessee fails to execute such direct ground lease with the City, Gilead Sublessee's continued occupancy of the Gilead Leased Premises shall thereafter continue on a month-to-month tenancy basis as described above until such time as Gilead Sublessee executes the direct ground lease. Upon executing the direct ground lease as provided for in this Section 7(e), then City and Gilead Sublessee shall record a memorandum of such direct ground lease in the official records of the Santa Clara County Recorder.

c. City and BCH Sublessee agree that the BCH Replacement Lease provides for an easement allowing Hangar A to use certain portions of the Development Site consistent with Hangar A's rights under the Hangar A Sublease, and that in the event that BCH Sublessee and City enter into the BCH Replacement Lease, City, BCH Sublessee and, where applicable, Gilead Sublessee, shall mutually cooperate and work together in good faith to resolve and agree upon any cost sharing or shared use issues with respect to the portion of the Development Site comprising the Hangar A Subleased Premises and upon reaching agreement on such matters shall enter into such additional documentation, in mutually agreeable form, as is reasonably necessary to memorialize City, BCH Sublessee's, and, where applicable, Gilead Sublessee's agreements regarding same.

8. **Amendments to Master Lease and BCH Sublease.** Notwithstanding anything to the contrary set forth in the Master Lease or the BCH Sublease, so long as the Master Lease and the BCH Sublease remain in effect, City, BCH Sublessee and Sublessor (each for purposes of this Section, a “**Required Consent Party**”) hereby mutually agree and acknowledge that, subsequent to the execution of this Agreement by the Parties, no amendment (including any waiver) of any provision of the Master Lease or the BCH Sublease that would have the result of (i) adding any additional burden, limitation, liability, cost, or responsibility on the other Required Consent Party who is not a party to such agreement, including, without limitation, increasing the amount of rent, charges or liabilities, (ii) changing the term or renewal options, or (iii) decreasing the size of the leased premises or rights of the other Required Consent Party who is not a party under such agreement, shall be effective without the written consent of the Required Consent Party who is not a party to such instrument, which consent shall not be unreasonably withheld, conditioned or delayed by such Required Consent Party.
9. **Conflicts; No Merger.** In the event of any conflict between any of the provisions of the Master Lease, the BCH Sublease, the Gilead Sublease, the BCH Replacement Lease and/or the Gilead Replacement Sublease, on the one hand, and this Agreement, on the other hand, the provisions of this Agreement shall prevail and control. Furthermore, City, BCH Sublessee, Gilead Sublessee and Sublessor agree that at all times during the term of the Master Lease, ownership of the BCH Improvements, the Gilead Improvements and the FBO Improvements, and the leasehold estate in the BCH Leased Premises, the leasehold estate in the Gilead Leased Premises, the leasehold estate in the FBO Premises and the leasehold estate in the Development Site shall not merge by operation of law, but shall remain separate and distinct, notwithstanding the union of any such estates in BCH Sublessee, Gilead Sublessee or any third party by replacement, purchase, assignment, easement or otherwise.
10. **No Brokers.** Each of the Parties hereby represents and warrants to the other Parties that it has not paid, agreed to pay or caused to be paid directly or indirectly in any form, any commission, percentage payment, contingent fee, finder’s fee, brokerage fee or other similar payment of any kind, in connection with the establishment or operation of this Agreement. Each Party shall indemnify and hold the other Parties harmless against any claim for any such broker’s, finder’s or other fee based on the alleged or the actual retention of a broker or finder by the indemnifying Party.
11. **Retention of Rights.** Notwithstanding anything to the contrary set forth elsewhere in this Agreement, but subject to City’s agreements and undertakings in favor of each Sublessee as set forth herein, City expressly retains any and all rights granted to it under or pursuant to the Master Lease or applicable law in connection with and upon the occurrence of any default under the Master Lease, including, but not limited to, the right to terminate or cancel the Master Lease. For the avoidance of doubt, however, in determining whether or not a default has occurred and is continuing at any time while the BCH Sublease and/or the Gilead Sublease is in full force and effect, the obligations and agreements of the Parties in this Agreement shall be taken into account.
12. **General Representations and Warranties.** Each of the Parties hereto hereby represents and warrants to the other Parties hereto that it has the full power and authority to execute, deliver and perform this Agreement, that it has taken all municipal, company or corporate action, as the case may be, necessary to execute, deliver and

perform its obligations under this Agreement, and that this Agreement has been duly authorized and executed by such Party and this Agreement constitutes the legal, valid and binding obligations of such Party.

13. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of each of the Parties. For the avoidance of doubt, the terms “City”, “Sublessor”, “BCH Sublessee” and “Gilead Sublessee” shall each be deemed to include the Party named herein and its respective permitted successors and assigns, including anyone who shall have succeeded such named Party through merger or other legal process.
14. **Choice of Law; Venue.** **THIS AGREEMENT AND THE RIGHTS, DUTIES AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS) AND, TO THE EXTENT THEY PREEMPT THE LAWS OF SUCH STATE, THE LAWS OF THE UNITED STATES.** The Parties hereto agree to submit to the exclusive jurisdiction of the federal and state courts in Santa Clara County, California in connection with any matters arising out of this Agreement and waive any objection to the propriety or convenience of venue in such courts.
15. **Amendments; Binding Effect; Recording.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the Parties or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the Parties and, their successors and assigns. This Agreement may be filed by any of the Parties in the official records of the Santa Clara County Recorder.
16. **Severability.** Each covenant, condition and provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any covenant, condition or provision of this Agreement shall be held to be void or invalid, the same shall not affect the remainder hereof, which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein.
17. **Expenses.** Each of City, Sublessor, BCH Sublessee and Gilead Sublessee shall be responsible for its own costs and expenses incurred with respect to or arising out of the negotiation, preparation, completion and execution of this Agreement and any other related documents, including, but not limited to, fees of outside legal counsel.
18. **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.
19. **Exhibits.** Each writing or description referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.
20. **Disclaimer of Partnership Status.** Nothing in this Agreement shall be deemed in any way to create between the Parties any relationship of partnership, joint venture or association, and the Parties hereby disclaim the existence of any such relationship.

21. **Waiver.** No term or provision hereof shall be deemed waived and no breach consented to, unless such waiver and consent shall be express and in writing and signed by the Party claimed to have waived or consented. Any such waiver and consent shall not constitute a waiver and consent to any other or subsequent breach. The failure of any Party to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of such Party to enforce such provision at any subsequent time.
22. **Counterparts.** This Agreement may be executed in any number of counterparts and each counterpart executed by any of the undersigned, together with all other counterparts so executed, shall constitute a single instrument and agreement of the Parties.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the day and year first above written.

APPROVED AS TO FORM:

CITY:

CITY OF SAN JOSE, a municipal corporation of the State of California

Kevin Fisher
Sr. Deputy City Attorney

By: _____
Name:
Title:

SUBLESSOR:

BCH SUBLESSEE:

SIGNATURE FLIGHT SUPPORT CORPORATION, a Delaware corporation

BCH SAN JOSE LLC, a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

GILEAD SUBLESSEE:

GILEAD SCIENCES, INC., a Delaware corporation

By: _____
Name:
Title:

NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGES

EXHIBITS:

- Exhibit A-1 - Legal Description of Development Site
- Exhibit A-2 - Legal Description of BCH Leased Premises
- Exhibit A-3 - Legal Description of FBO Premises
- Exhibit A-4 - Legal Description of Gilead Leased Premises
- Exhibit B - Copy of BCH Sublease
- Exhibit B-1 - Description of BCH Improvements
- Exhibit C - Copy of Gilead Sublease
- Exhibit C-1 - Description of Gilead Improvements
- Exhibit D - Copy of Master Lease
- Exhibit E - Copy of form BCH Replacement Lease
- Exhibit F - Copy of form Gilead Replacement Sublease

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)
personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

(This area for official notarial seal)

EXHIBIT A – 1

LEGAL DESCRIPTION OF DEVELOPMENT SITE

[See attached.]

Exhibit A – 1 - Legal Description of Development Site

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT " A-1 "
Legal Description of Development Site

REAL PROPERTY in the City of San José, County of Santa Clara, State of California, being a portion of the property described in that certain document recorded June 23, 1953 as Document No. 893591 in Book 2668 of Official Records, Page 579, and in that certain document recorded October 10, 1956 as Document No. 1266626 in Book 3636 of Official Records, Page 637, as shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, being more particularly described as follows:

COMMENCING at a brass pin monument at the intersection of the centerline of Martin Avenue (60 feet wide) with the centerline of Brokaw Road (60 feet wide) as shown on said Record of Survey, from which point a brass pin monument at the intersection of Martin Avenue with the centerline of Reed Street (60 feet wide) bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 277.65 feet more or less;

Thence leaving said centerline, North 49°09'17" East 30.00 feet to the northeasterly line of Martin Avenue, to a point on the southwesterly projection of the northwesterly line of the land described in Document No. DTFA08-03-L-21797, being the TRUE POINT OF BEGINNING;

Thence along said northeasterly line of Martin Avenue, the following three courses:

1. Thence North 40°50'43" West, 2495.44 feet;
2. Thence along a tangent curve to the right, having a radius of 370.00 feet, through a central angle of 48°50'30" for an arc length of 315.40 feet;
3. Thence along a reverse curve to the left, having a radius of 430.00 feet, through a central angle of 02°28'58" for an arc length of 18.63 feet;

Thence leaving said northeasterly line, South 83°19'08" East, 130.42 feet;

Thence South 40°37'45" East, 238.61 feet;

Thence North 49°35'32" East, 335.65 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence along a line parallel with said centerline of Runway 11/29, South 41°06'10" East, 2446.77 feet to the intersection with the northeasterly projection of said northwesterly line described in said Document No. DTFA08-03-L-21797;

Thence leaving said parallel line, along said projection and northwesterly line, South 48°54'33" West, 574.05 feet, to the TRUE POINT OF BEGINNING.

Containing a Gross Area of 33.34 acres, more or less.

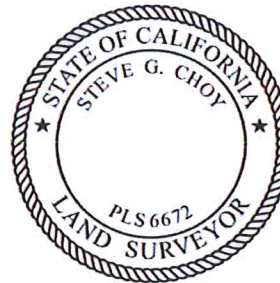
Plat labeled exhibit "B-1" to accompany this description and made a part hereof.
This description, and plat attached, has been compiled from record data and not a field survey.

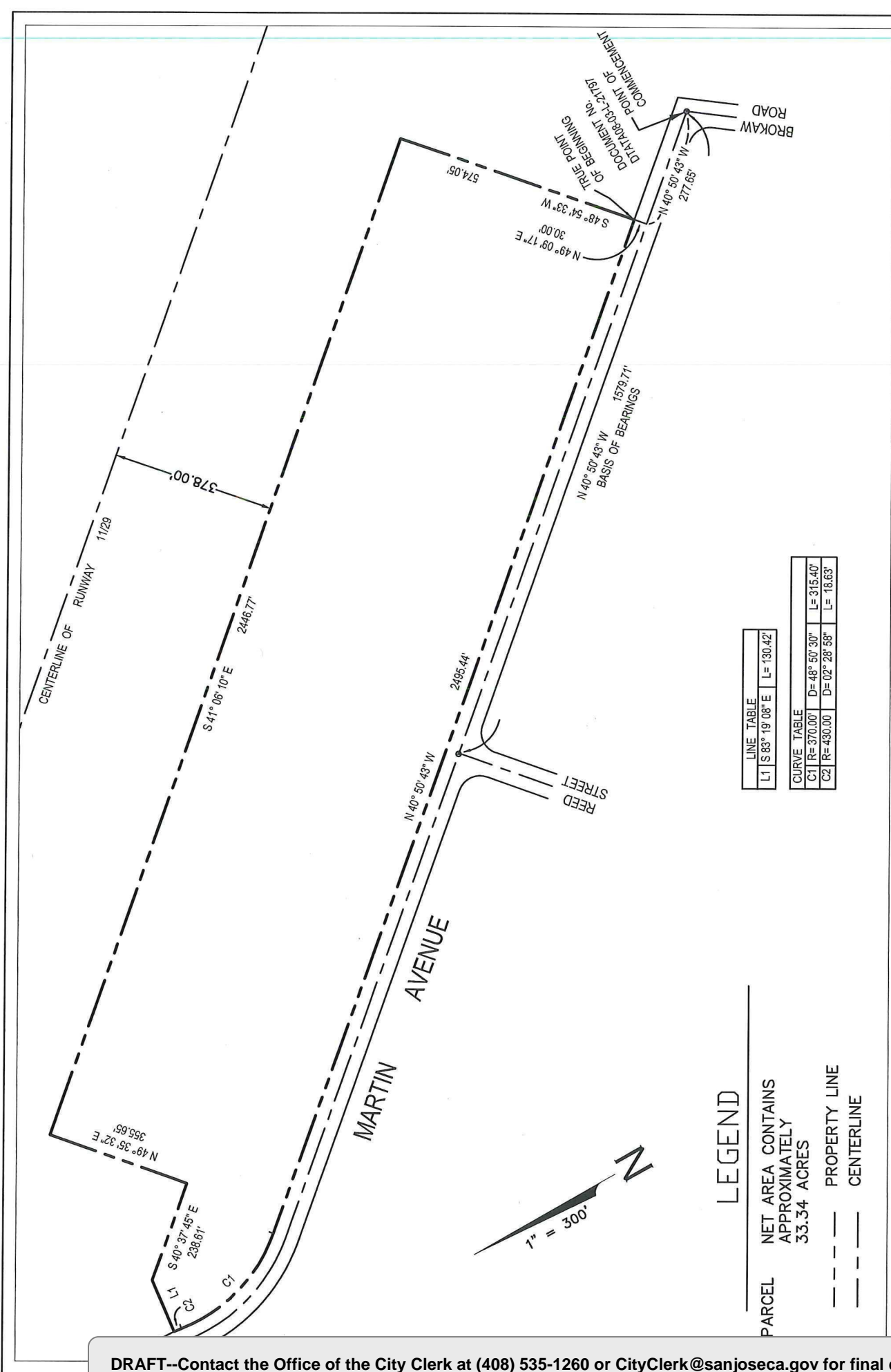
The Basis of Bearings for this description is the bearing North 40° 50' 43" West, for the centerline of Martin Avenue as shown on the Record of Survey, filed for record May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records;

The above description of real property was prepared by me, or under my supervision, in conformance with the requirements of Section 8726 (g, k, l, m) of the Business and Professions Code of the State of California.



Steve G. Choy, PLS 6672



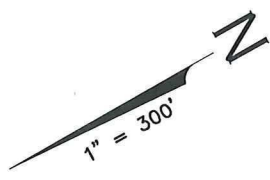


LINE TABLE	
L1	S 83° 19' 08\"/>

CURVE TABLE	
C1	R= 370.00' D= 48° 50' 30\"/>

LEGEND

- PARCEL NET AREA CONTAINS APPROXIMATELY 33.34 ACRES
- PROPERTY LINE
- CENTERLINE



LEGAL DESCRIPTIONS FILE: 16-071
SHEET 3 OF 3

EXHIBIT "A-1"
PLAT TO ACCOMPANY
Legal Description of Development Site

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
NOV. 15, 2016

EXHIBIT A – 2

LEGAL DESCRIPTION OF BCH LEASED PREMISES

[See attached.]

Exhibit A – 2 - Legal Description of BCH Leased Premises

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



Exhibit "A-2"
Legal Description of BCH Leased Premises

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence along said northeasterly line, North 40°50'43" West, 661.04 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said northeasterly line, North 40°50'43" West, 1,463.50 feet;

Thence leaving said northeasterly line, North 49°09'17" East, 195.00 feet;

Thence North 40°37'45" West, 10.00 feet;

Thence North 49°35'32" East, 368.18 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence parallel with said centerline of 11/29, South 41°06'10" East, 489.53 feet;

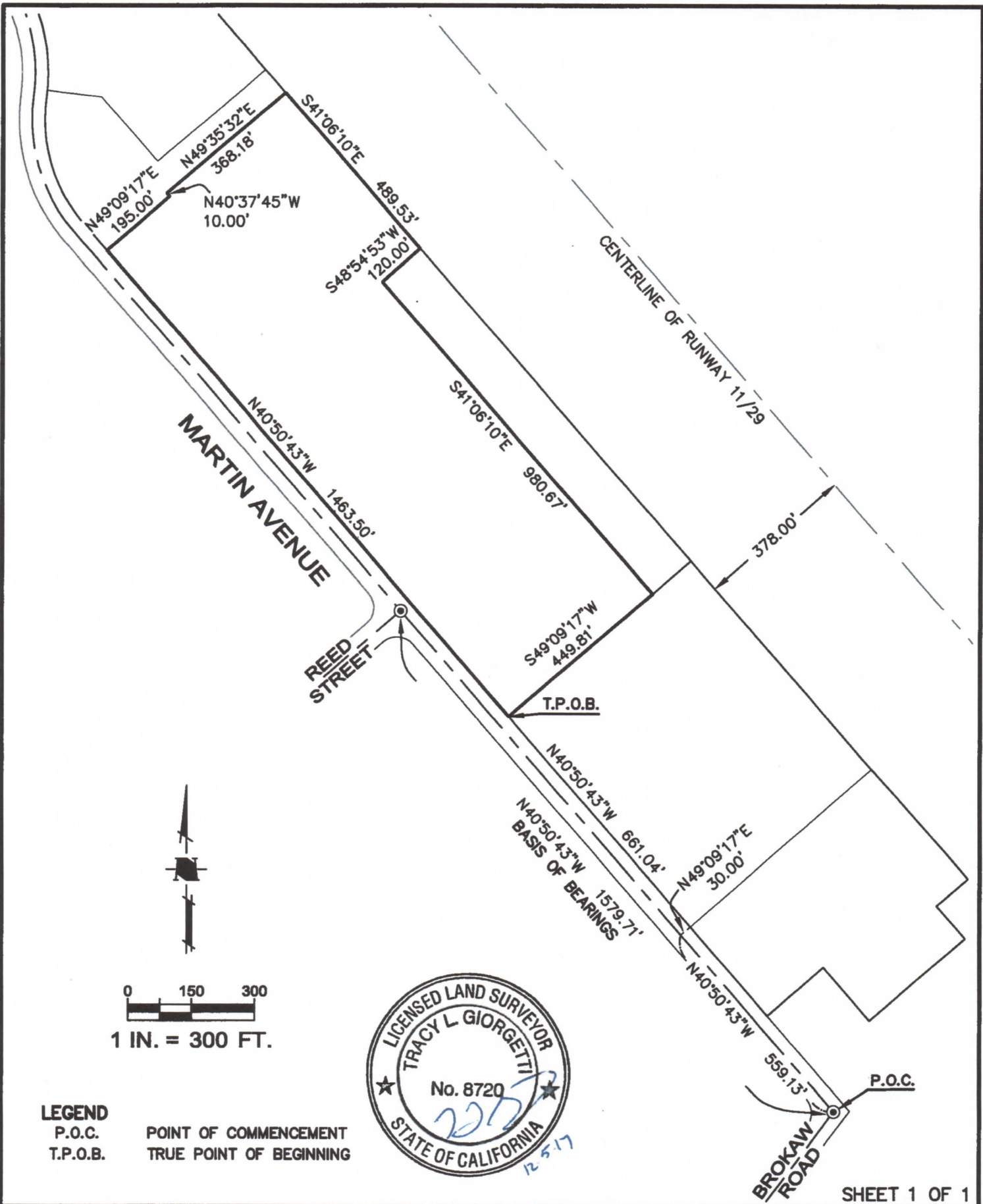
Thence South 48°54'53" West, 120.00 feet;

Thence South 41°06'10" East, 980.67 feet;

Thence South 49°09'17" West, 449.81 feet, to the TRUE POINT OF BEGINNING.

Containing 16.40 acres, more or less.





SHEET 1 OF 1

Date:	12-05-2017
Designed:	-
Drawn:	TG
Checked:	DT
Proj. Engr.:	
368010	



PLAT TO ACCOMPANY DESCRIPTION:
 Exhibit "A-2"
 Legal Description of BCH Leased Premises

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



Page 1 of 1

Tue December 05 14:17:09 2017

Parcel name: 368010PL18

N 40-50-43 W 1463.50

N 49-09-17 E 195.00

N 40-37-45 W 10.00

N 49-35-32 E 368.18

S 41-06-10 E 489.53

S 48-54-53 W 120.00

S 41-06-10 E 980.67

S 49-09-17 W 449.81

S 40-48-15 W 0.01

Perimeter: 4076.70

Area: 714,567 Sq Ft 16.404 Ac.

1752.0855, 7412.9756

2859.1917, 6455.8194

2986.7254, 6603.3327

2994.3148, 6596.8211

3232.9776, 6877.1718

2864.1013, 7198.9946

2785.2395, 7108.5467

2046.2738, 7753.2508

1752.0897, 7412.9792

1752.0821, 7412.9726

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Total: 0.0045 S 40-48-14 W

Precision 1:905,933.33

Error (N, E) -0.00342, -0.00295



EXHIBIT A – 3

LEGAL DESCRIPTION OF FBO PREMISES

[See attached.]



EXHIBIT "A-3"
LEGAL DESCRIPTION OF FBO PREMISES

PARCEL 1

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 277.65 feet; Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue; Thence along said northeasterly line North 40°50'43" West, 287.36 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said northeasterly line, North 40°50'43" West, 655.15 feet;

Thence North 49°09'17" East, 449.81 feet;

Thence North 41°06'10" West, 980.67 feet;

Thence North 48°54'53" East, 120.00 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence parallel with said centerline of 11/29, South 41°06'10" East, 1,921.11 feet;

Thence South 48°53'50" West, 340.12 feet;

Thence North 40°50'43" West, 36.31 feet;

Thence North 49°09'17" East, 100.00 feet;

Thence North 40°50'43" West, 245.61 feet;

Thence South 48°53'50" West, 100.00 feet;

Thence North 40°50'43" West, 255.01 feet;

Thence South 49°09'17" West, 174.51 feet;

Thence South 40°50'43" East, 250.18 feet;

Thence South 49°09'17" West, 59.42 feet, to the TRUE POINT OF BEGINNING.

Containing 11.95 acres, more or less.

PARCEL 2

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet; Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue; Thence along said northeasterly line North 40°50'43" West, 2124.22 feet to the TRUE POINT OF BEGINNING;

Thence along continuing along said northeasterly line, the following three courses:

1. Thence North 40°50'43" West, 89.42 feet;
2. Thence along a tangent curve to the right, having a radius of 370.00 feet, through a central angle of 48°50'04" for an arc length of 315.36 feet;
3. Thence along a reverse curve to the left, having a radius of 430.00 feet, through a central angle of 02°29'20" for an arc length of 18.68 feet;

Thence leaving said northeasterly line, South 83°19'08" East, 130.42 feet;

Thence South 40°37'45" East, 238.61 feet;

Thence North 49°35'32" East, 335.65 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence parallel with said centerline of 11/29, South 41°06'10" East, 36.00 feet;

Thence South 49°35'32" West, 368.18 feet;

Thence South 40°37'45" East, 10.00 feet;

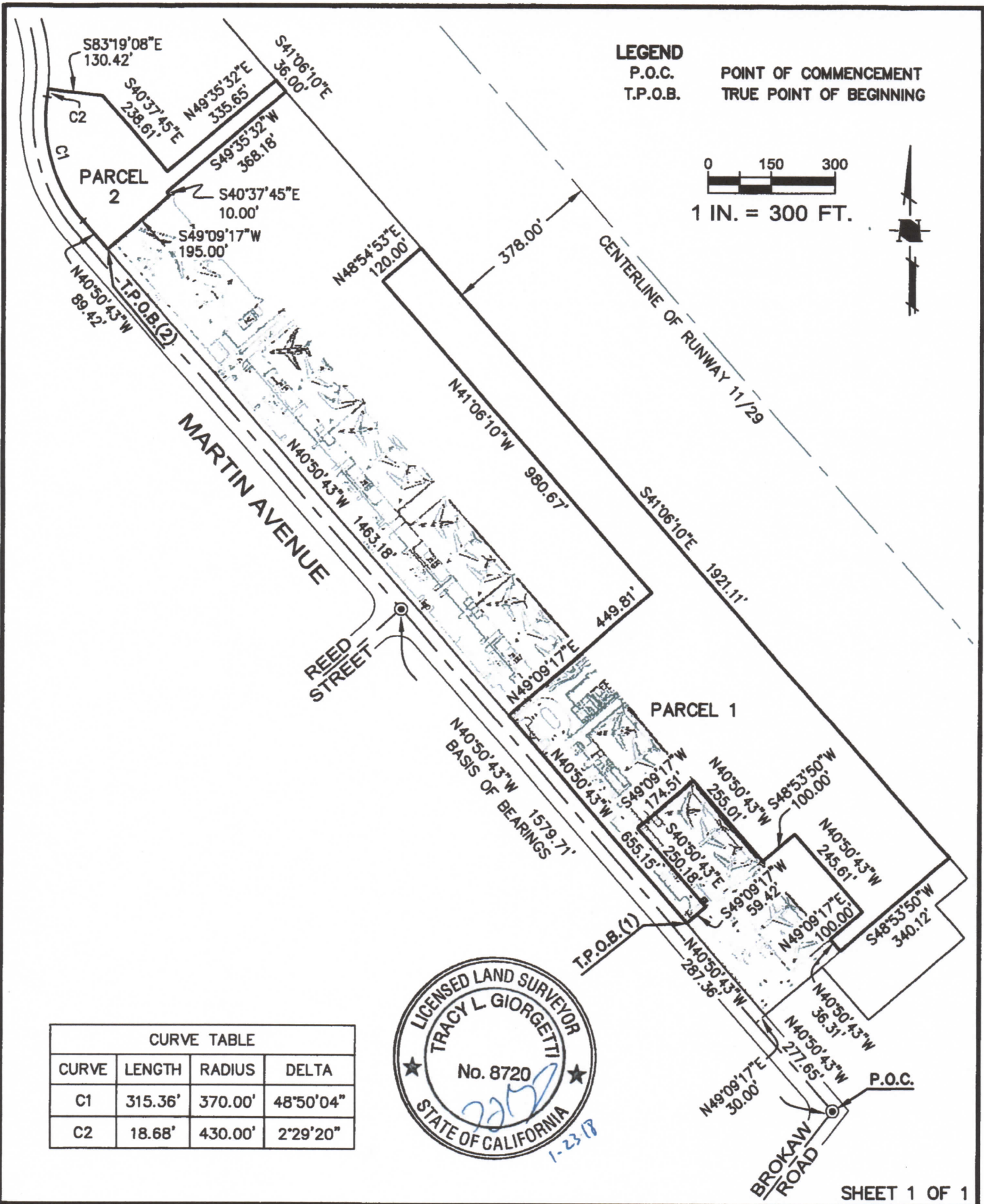
Thence South 49°09'17" West, 195.00 feet, to the TRUE POINT OF BEGINNING.

Containing 1.88 acres, more or less.



368010LD19.docx





Date: 01-23-2018
Designed: —
Drawn: TG
Checked: DRS
Proj. Eng.: —
368010PI19

1570 Oakland Road (408) 487-2200
San Jose, CA 95131 HMHca.com

PLAT TO ACCOMPANY DESCRIPTION:
EXHIBIT "A-3"
LEGAL DESCRIPTION OF FBO PREMISES
SAN JOSE CALIFORNIA

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



MAPCHECKS Tue January 23 17:01:00 2018
Parcel Map Check

Parcel name: 368010PL19-1

N 40-50-43 W	655.15	11491.0521, 2316.8286
N 49-09-17 E	449.81	11986.6589, 1888.3483
N 41-06-10 W	980.67	12280.8430, 2228.6199
N 48-54-53 E	120.00	13019.8088, 1583.9159
S 41-06-10 E	1921.11	13098.6706, 1674.3637
S 48-53-50 W	340.12	11651.0536, 2937.3241
N 40-50-43 W	36.31	11427.4548, 2681.0329
N 49-09-17 E	100.00	11454.9225, 2657.2855
N 40-50-43 W	245.61	11520.3243, 2732.9334
S 48-53-50 W	100.00	11706.1230, 2572.2999
N 40-50-43 W	255.01	11640.3818, 2496.9467
S 49-09-17 W	174.51	11833.2914, 2330.1654
S 40-50-43 E	250.18	11719.1586, 2198.1524
S 49-09-17 W	59.42	11529.9028, 2361.7747
N 19-03-26 E	0.01	11491.0411, 2316.8248
		11491.0505, 2316.8280

Perimeter: 5687.91 Area: 520,726 Sq Ft 11.95 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Total: 0.0016 S 19-03-29 W Error (N, E) -0.00156, -0.00054
Precision 1:3,554,943.75

Parcel name: 368010PL19-2

N 40-50-43 W	89.42				13877.4866, 2141.7240
Arc 315.36	Rad 370.00	Cen 48-50-04	Tan 167.97	Ch: 305.90	13945.1309, 2083.2417
N 49-09-17 E	IN	N 82-00-39 W	OUT	Radius Point	N 16-25-41 W
					14187.1178, 2363.1387
Arc 18.68	Rad 430.00	Cen 2-29-20	Tan 9.34	Ch: 18.68	14238.5426, 1996.7298
N 82-00-39 W	IN	S 84-29-59 E	OUT	Radius Point	N 06-44-41 E
					14298.3065, 1570.9032
S 83-19-08 E	130.42				14257.0908, 1998.9234
					14241.9173, 2128.4577

S 40-37-45 E	238.61	14060.8266, 2283.8311
N 49-35-32 E	335.65	14278.4028, 2539.4119
S 41-06-10 E	36.00	14251.2756, 2563.0788
S 49-35-32 W	368.18	14012.6128, 2282.7280
S 40-37-45 E	10.00	14005.0234, 2289.2396
S 49-09-17 W	195.00	13877.4897, 2141.7263
S 36-10-47 W	0.00	13877.4897, 2141.7263
Perimeter:	1737.32	Area: 81,785 Sq Ft 1.88 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Total: 0.0039 N 36-10-47 E
Precision 1:445,466.67

Error (N, E) 0.00311, 0.00228



EXHIBIT A – 4

LEGAL DESCRIPTION OF GILEAD LEASED PREMISES

[See attached.]

Exhibit A – 4 - Legal Description of Gilead Leased Premises

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



Legal Description of Gilead Premises

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence leaving said northeasterly line, North 48°53'50" East, 233.95 feet;

Thence North 41°06'10" West, 4.84 feet, to the TRUE POINT OF BEGINNING;

Thence North 40°50'43" West, 250.18 feet;

Thence South 49°09'17" West, 174.51 feet;

Thence South 40°50'43" East, 250.18 feet;

Thence North 49°09'17" East, 174.51 feet, to the TRUE POINT OF BEGINNING.

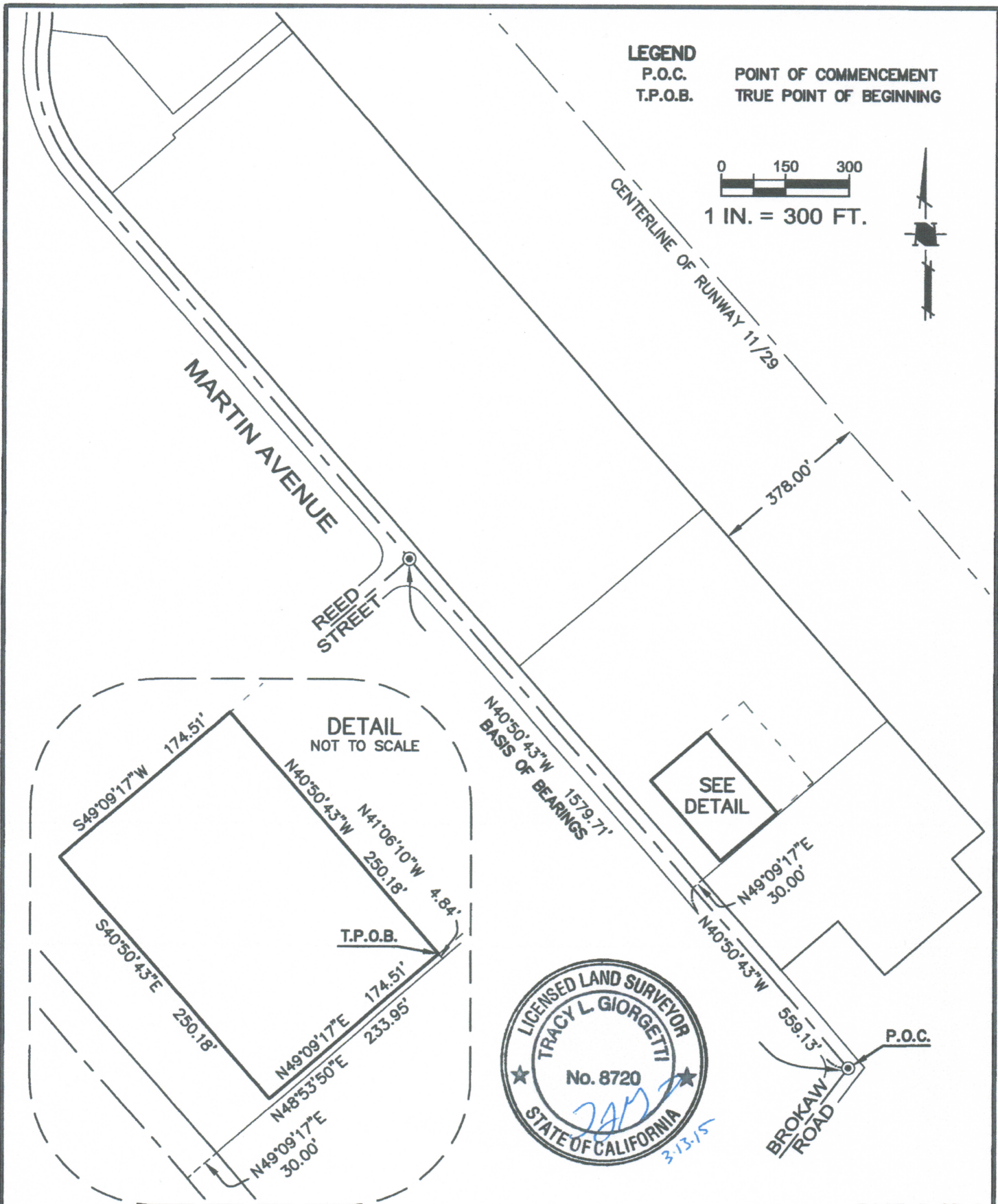
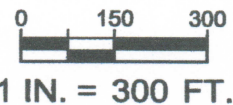
Containing 43,659 square feet or 1.002 acres, more or less.



LEGEND

P.O.C.
T.P.O.B.

POINT OF COMMENCEMENT
TRUE POINT OF BEGINNING

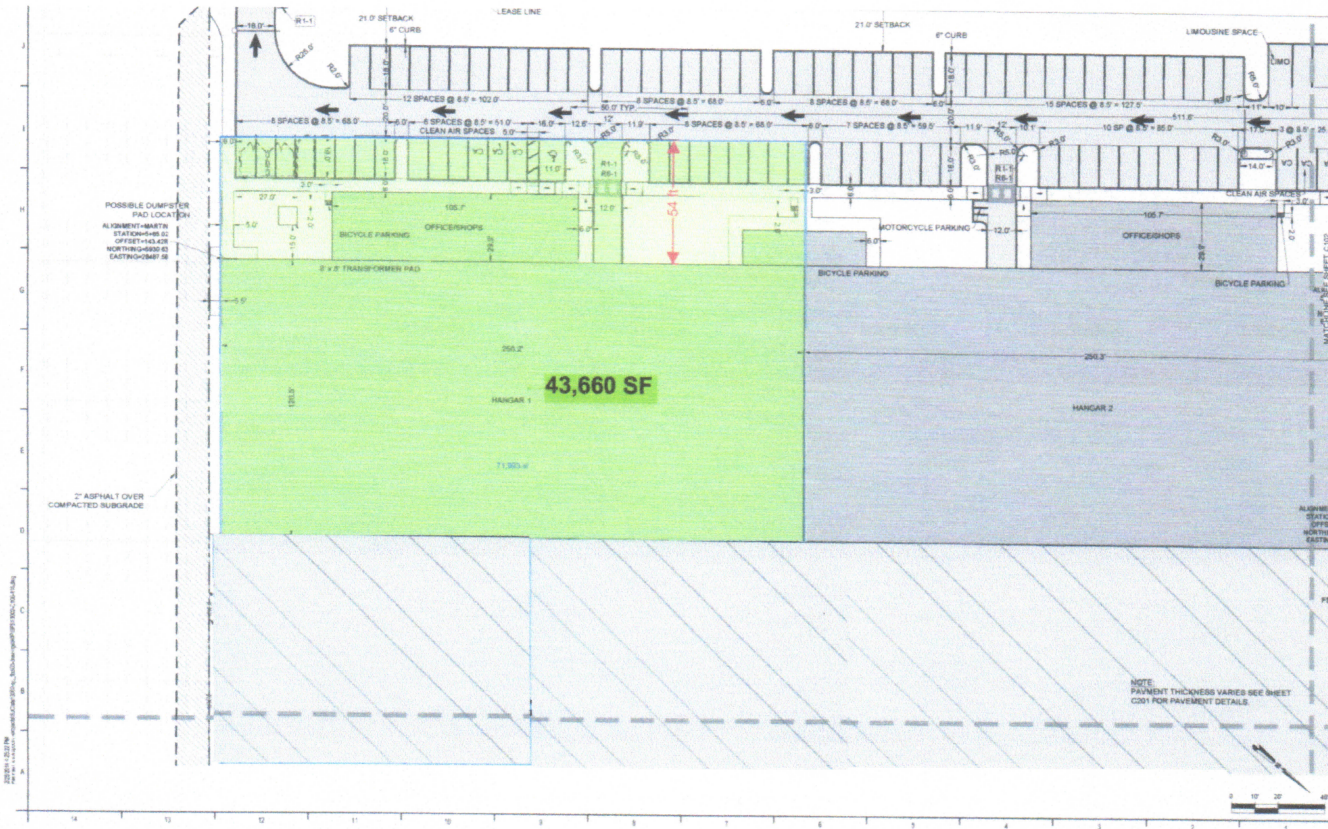


Date:	03-13-2015
Designed:	-
Drawn:	TG
Checked:	DT
Proj. Eng.:	-
36801	00116

1570 Oakland Road (408) 487-2200
San Jose, CA 95131 HMMH.com

Exhibit A-4
PLAT TO ACCOMPANY DESCRIPTION
Legal Description for Gilead Premises
SAN JOSE CALIFORNIA

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



1	11/16/13 CSJ COMMENT
2	12/09/13 SECOND SUBMITTAL
3	2/26/14 CMP

NO: 1300275
 CSJ NO: H348947081
 SEAL
 Drawn: JMT
 Checked: MCJ

C101	C102	C103	C104	C105
C106	C107	C108	C109	C110

VOLUME 1
SITE PLAN
 NOT FOR CONSTRUCTION
 DRAFT AND CONFIDENTIAL

C101
 SHEET
 SITE DEVELOPMENT
 Issue Date: DECEMBER 20, 2013

EXHIBIT B

COPY OF BCH SUBLEASE

For confidentiality purposes, this attachment has been omitted.

Exhibit B – Copy of BCH Sublease

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT B – 1

DESCRIPTION OF BCH IMPROVEMENTS

The BCH Improvements shall mean the buildings, fixtures and other improvements constructed on the portion of the Development Site that is subleased to BCH Sublessee, which includes the following:

- Five (5) aircraft hangars totaling approximately 182,370 SF of hangar deck space.
Associated office /shop space totaling approximately 19,167 SF
Associated car parking areas totaling approximately 103,800 SF
Associated LID and driveway areas totaling approximately 35,291 SF
- Approximately 373,939 SF of aircraft ramp area
- Other site work and infrastructure required to allow for landside/street access and airside access in accordance with the City and Airport requirements.

Total Improvement area approximately 714,567 SF or 16.404 acres.

EXHIBIT C

COPY OF GILEAD SUBLEASE

For confidentiality purposes, this attachment has been omitted.

Exhibit C – Copy of Gilead Sublease

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT C – 1

DESCRIPTION OF GILEAD IMPROVEMENTS

The Gilead Improvements shall mean the buildings, fixtures and other improvements constructed on the portion of the Development Site that is subleased to Gilead Sublessee, which includes the following:

- One (1) aircraft hangar totaling approximately 30,000 SF of hangar deck space.
Associated office /shop space totaling approximately 3,731 SF
Associated car parking areas totaling approximately 9,928 SF

Total Improvement area approximately 43,659 SF or 1.002 Acres.

EXHIBIT D

COPY OF MASTER LEASE

FULLY EXECUTED MASTER LEASE ON FILE WITH PARTIES.

Exhibit D – Copy of Master Lease

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT E

COPY OF FORM BCH REPLACEMENT LEASE

[See attached.]

Exhibit E – Copy of Form of BCH Replacement Lease

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

GROUND LEASE AND OPERATING AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

BCH SAN JOSE LLC

DOCUMENT #

TABLE OF CONTENTS

Section 1. Definitions.....	1
1.1. Activity Fee(s).....	1
1.2. Airport.....	2
1.3. Airport Living Wage Ordinance.....	2
1.4. Airport Operations Area.....	2
1.5. Base Ground Rental.....	2
1.6. Business Day.....	2
1.7. Certificate of Occupancy.....	2
1.8. City Council.....	2
1.9. Construction Contract.....	2
1.10. Days.....	2
1.11. Director.....	2
1.12. Effective Date.....	3
1.13. Environmental Laws.....	3
1.14. Event of Default.....	3
1.15. Expiration Date.....	3
1.16. Fixed Base Operator.....	3
1.17. [Intentionally not used].....	3
1.18. Force Majeure Event.....	3
1.19. Fuel Flowage Fees.....	3
1.20. Ground Rental.....	4
1.21. Hazardous Materials.....	4
1.22. Laws.....	4
1.23. Lease.....	5
1.24. Leasehold Improvements.....	5
1.25. Lessee.....	5
1.26. Lessee Address.....	5
1.27. Master Plan.....	6
1.28. Minimum Standards.....	6
1.29. Municipal Code.....	6
1.30. Noise and Safety Program.....	6
1.31. [Intentionally Not Used].....	6
1.32. Party or Parties.....	6
1.33. Permitted Activities.....	6
1.34. Person.....	6
1.35. Plans and Specifications.....	6
1.36. Premises.....	7
1.37. Security Deposit.....	7
1.38. Sublessee Gilead.....	7
1.39. Gilead Sublessee Improvements.....	7
1.40. Tax.....	7
Section 2. Term/Option to Extend.....	7
Section 3. Premises.....	7
Ground Lease and Operating Agreement	ii

3.1.	Condition of Premises.....	8
Section 4.	Uses, Privileges and Obligations	9
4.1.	Exercise of Rights and Obligations	10
4.2.	Access	12
4.3.	Signs.....	14
Section 5.	Ground Rental, Fees and Charges	14
5.1.	[Intentionally not Used]	14
5.2.	Base Ground Rental	14
5.3.	Adjustments to Base Ground Rental.....	15
5.4.	Minimum Annual Guaranteed Property, Sales and Use Taxes.....	19
5.6.	Security Deposits	19
5.6.	Additional Rent	19
5.7.	Activity Fees.....	21
5.8.	Payment of Ground Rental, Activity Fees and Charges.....	21
5.9.	Net Lease/No Offset or Deduction	23
Section 6.	Leasehold Improvements.....	25
6.1.	General Conditions for Construction.....	25
6.2.	Design of Leasehold Improvements	27
6.3.	Contract Requirements/Bonds/E&I Costs.....	29
6.4.	Construction and Completion of Leasehold Improvements	31
6.5.	General Approvals	33
6.6.	Liens	33
6.7.	Airport Obstructions	34
6.8.	City Not Responsible for Work.....	34
6.9.	Lessee’s Failure to Diligently Pursue Construction.....	34
6.10.	Alterations/Refurbishments	35
6.11.	Title to Leasehold Improvements	35
6.12.	Claims by Mechanics or Material Suppliers.....	35
Section 7.	Mortgage of Premises.....	36
7.1.	Prohibited Encumbrances.....	36
7.2.	Lessee’s Rights to Encumber.	36
7.3.	Notice of Loan Default.	38
7.4.	Notice to and Service on Lender.....	38
7.5.	Rights of Lender.	38
7.6.	Right of Lender to Cure Defaults.	39
7.7.	Lender as Assignee of Lease.	42
7.8.	Lender as Including Subsequent Security Holders.	42
7.9.	Affirmation of Lease in Bankruptcy.	42
Section 8.	Maintenance of Premises	43
8.1.	“Maintenance” Defined.....	43
8.2.	Quality of Maintenance	43
8.3.	Lessee’s Waiver of Any Rights to Make Repairs at City’s Expense	43
8.4.	Janitorial Service.....	43
8.5.	No Waste	44
8.6.	Landscaping/Miscellaneous.....	44
Section 9.	Books and Records	44
Ground Lease and Operating Agreement		iii

9.1.	Minimum Retention Period.....	44
9.2.	Availability of Records.....	44
9.3.	Audit of Records/Discrepancy.....	45
Section 10.	Utilities.....	45
10.1.	Utility Services.....	45
10.2.	Interruption of Utility Services.....	45
Section 11.	Avigation Easement.....	45
11.1.	Lessee’s Assumption of Risk.....	46
11.2.	Waiver and Release.....	46
Section 12.	Assignment or Transfer.....	46
12.1.	Consent.....	46
12.2.	Factors for City to Consider.....	46
12.3.	Processing Fee.....	46
12.4.	Consent Does Not Constitute Waiver.....	46
Section 13.	Default.....	48
13.1.	Events of Default.....	48
13.2.	Remedies.....	51
13.3.	Remedies Cumulative.....	53
Section 14.	Waiver of Claims.....	54
14.1.	No Waiver by City.....	54
14.2.	Express Waivers by Lessee.....	54
Section 15.	Indemnification.....	55
Section 16.	Representations and Warranties.....	56
16.1.	Lease Properly Authorized.....	55
16.2.	No Unresolved Claims or Disputes.....	55
16.3.	Statements, Records and Reports.....	55
16.4.	Compliance with Laws.....	55
16.5.	Hiring Plan for Low and Moderate Income Jobs.....	56
16.6.	Good Standing.....	56
Section 17.	Insurance.....	56
17.1.	Insurance Requirements.....	56
17.2.	Failure to Provide.....	56
17.3.	Waiver of Subrogation.....	56
Section 18.	Right to Enter.....	56
18.1.	Reasons for Entry.....	56
18.2.	No Ground Rental Abatement.....	57
Section 19.	Taxes and Assessments.....	57
19.1.	Lessee to Pay Taxes.....	57
19.2.	Possessory Interest Taxes.....	58
19.3.	No Liens or Encumbrances.....	58
19.4.	Indemnity for Lessee’s Failure to Comply.....	58
19.5.	Payment by City.....	58
19.6.	Contest of Tax of Charge.....	58
Section 20.	Americans with Disabilities Act.....	59
Section 21.	Damage or Destruction.....	60
21.1.	Lessee’s Obligation to Repair.....	60
Ground Lease and Operating Agreement		

21.2.	Insufficient Insurance Proceeds	60
21.3.	Option to Terminate Lease	60
21.4.	Restoration of Premises	60
Section 22.	Eminent Domain.....	61
22.1.	Definitions	61
22.2.	Notice to Other Party	61
22.3.	Termination of Leasehold on Total Condemnation	62
22.4.	Termination of Leasehold on Substantial Condemnation.....	62
22.5.	Ground Rental and Term after Partial Taking.....	62
22.6.	Restoration of Improvements after Partial Taking	62
22.7.	Award	63
22.8.	Relocation Costs	64
22.9.	Voluntary Conveyance in Lieu of Eminent Domain	64
22.10.	Applicability of Section to Condemnation by City	65
Section 23.	Surrender by Lessee	65
23.1.	No Merger	65
23.2.	Condition of Premises	65
23.3.	Lessee’s Duty to Remove	65
23.4.	Removal of Personal Property	65
23.5.	Environmental Remediation	66
Section 24.	Prohibition of Gifts.....	66
Section 25.	Compliance with Laws.....	66
25.1.	Governmental Requirements	66
25.2.	City Rules and Regulations	66
25.3.	Workers’ Compensation Insurance	66
25.4.	Status of Lessee as Independent Contractor	66
25.5.	Airport Living Wage Ordinance	67
Section 26.	Agreements with the United States	67
Section 27.	Grant Agreement Covenants	67
27.1.	Title 49 Requirements	67
27.2.	Non-discrimination.....	68
27.3.	Remedy for Breach of Non-discrimination Covenants.....	68
27.4.	Fair, Equal and Just Provisions	68
27.5.	Remedy for Failure to Comply With Section 27.4	68
27.6.	Provisions to be Included in Lessee’s Other Agreements	68
27.7.	Compliance with Other Laws.....	68
27.8.	City’s Right to Further Develop Airport	69
27.9.	Landing Area.....	69
27.10.	Notice of Future Work	69
27.11.	No Interference	69
27.12.	No Grant of Exclusive Right	70
27.13.	Time of War or National Emergency	70
27.14.	Height Limitations.....	70
Section 28.	Modifications for Granting FAA Funds	70
Section 29.	Airport Security.....	70
29.1.	Airport Master Security Plan.....	71

29.2.	Lessee Security Measures	71
29.3.	City's Right to Implement Security Measures	71
Section 30.	Survival of Indemnities	71
Section 31.	No Personal Liability	71
Section 32.	Force Majeure	71
Section 33.	Surrender/Merger	72
Section 34.	Holding Over	72
Section 35.	No Third Party Beneficiary	72
Section 36.	Miscellaneous	72
36.1.	Bailee Disclaimer.....	72
36.2.	Consent.....	72
36.3.	Controlling Law/Consents to Jurisdiction.....	73
36.4.	Counterparts.....	73
36.5.	Entire Agreement	73
36.6.	Headings	73
36.7.	Modification of Lease	73
36.8.	Resolutions.....	73
36.9.	Severability.....	73
36.10.	Successors and Assigns	73
36.11.	Time of Essence	74
36.12.	Relocation Assistance – Waiver of Claims.....	74
36.13.	No Joint Venture.....	74
36.14.	Number and Gender.....	74
36.15.	Material Considerations.....	74
36.16.	Exhibits and Addenda	74
36.17.	Interpretation	74
36.18.	No Assumption.....	74
36.19.	Memorandum of Lease	75
Section 37.	Notices	76
Section 38.	General Civil Rights.....	80
Section 39.	Title VI Clauses for Compliance with Nondiscrimination Requirements.	80
Section 40.	Title VI List of Pertinent Acts and Nondiscrimination Authorities.....	82
Section 41.	Federal Fair Labor Standards Act (Federal Minimum Wage).....	83
Section 42.	Occupational Safety and Health Act of 1970	84
Section 43.	Hangar A Easements	84
	CORPORATE SECRETARY CERTIFICATE	1

Exhibits

Exhibit A	Airport Map [CONFORM TO TIMING OF TRANSACTION]
Exhibit B	Legal Description of Premises
Exhibit C	Hazardous Materials
Exhibit D	Minimum Annual Guaranteed Property, Sales and Use Taxes
Exhibit E	Letter of Credit Form
Exhibit F	Leasehold Improvements
Exhibit F-1	Gilead Sublessee Improvements

- Exhibit G Wage Requirements
- Exhibit H Insurance
- Exhibit I Intentionally Not Used
- Exhibit J Jobs Listing
- Exhibit K Hiring Plan for Low and Moderate Income Jobs
- Exhibit L Intentionally Not Used
- Exhibit M Incorporated Terms of Lessee's Proposal [**CONFORM TO TIMING OF TRANSACTION**]
- Exhibit N Legal Description of Hangar A Premises [**CONFORM TO CIRCUMSTANCES AT TIME OF TRANSACTION**]

GROUND LEASE AND OPERATING AGREEMENT

This Ground Lease and Operating Agreement (“Replacement Lease”) dated _____, 20__ (the “Effective Date of the Replacement Lease”) is made by and between the **CITY OF SAN JOSE**, a municipal corporation of the State of California, (“City”) and **BCH San Jose LLC**, a Delaware limited liability company authorized to do business in the State of California (“Lessee”).

RECITALS

WHEREAS, City is the owner and operator of the Norman Y. Mineta San Jose International Airport (“Airport”); and

WHEREAS, City and **Signature Flight Support Corporation**, a Delaware corporation (“Signature”), entered into that certain Ground Lease and Operating Agreement (“Signature Lease”) dated December 12, 2013, as amended by that certain First Amendment to Ground Lease and Operating Agreement dated _____, 2018 (the “First Amendment to Signature Lease”), whereby City granted Signature the right and privilege to lease the Premises, as more particularly described therein, and construct and operate a Fixed Based Operation at the Airport along with additional buildings, fixtures and improvements; and

WHEREAS, Signature and Lessee entered into that certain Sublease Agreement (“Sublease Agreement”) dated December 12, 2013, as amended by that certain First Amendment to Ground Sublease Agreement dated July 22, 2015, that certain Second Amendment to Ground Sublease Agreement dated _____, 2018 (“Second Amendment to Sublease Agreement”), and that certain Third Amendment to Ground Sublease Agreement dated _____, 2018, whereby Signature subleased to Lessee portion of the Premises and granted Lessee the right and privilege to construct and operate certain buildings and other improvements thereon; and

WHEREAS, Signature and Gilead Sciences, Inc., a Delaware corporation (“Gilead”) entered into that certain Ground Sublease Agreement (“Gilead Sublease Agreement”) dated December 23, 2015, and with an effective date of November 1, 2015, whereby Signature subleased to Gilead a portion of the Premises and concurrently sold to Gilead the Gilead Sublessee Improvements (as such term is defined below); and

WHEREAS, concurrent with the execution of the First Amendment to Signature Lease and the Second Amendment to Sublease Agreement, City, Signature, Lessee and Gilead entered into that certain Amended and Restated Non-Disturbance, Consent, Estoppel and Subordination Agreement (the “Non-disturbance Agreement”) whereby City consented to the Sublease Agreement and the Gilead Sublease and City, Ground Lease and Operating Agreement

Signature, Lessee and Gilead agreed that in the event the Signature Lease is terminated or cancelled, City would convey ownership of the Leasehold Improvements to Lessee (less the Gilead Sublessee Improvements for which City will convey ownership of to Gilead) and City and Lessee would execute this Replacement Lease, and Lessee, as sublessor, and Gilead, as sublessee, would execute the Gilead Replacement Sublease (as contemplated by and in the form attached to the Non-disturbance Agreement); and

WHEREAS, the Signature Lease has been terminated or cancelled and the City is empowered to convey ownership of the Leasehold Improvements to Lessee and grant Lessee the right and privilege to operate a Fixed Based Operation at the Airport and use the other buildings and improvements on the Premises pursuant to the terms of this Replacement Lease; and

WHEREAS, Lessee desires to receive the privilege of leasing the Premises, operating a Fixed Base Operation and using the other buildings and improvements on the Premises, all as more particularly described herein.

NOW THEREFORE, in consideration of the terms, conditions, covenants and provisions contained in this Replacement Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions

The following words, terms, or phrases, wherever used in this Replacement Lease, shall, for the purpose of this Replacement Lease, have the meanings set forth below, unless this Replacement Lease clearly indicates otherwise:

1.1. Activity Fee(s)

Activity Fee(s) means any fees or charges imposed by City on any and all classes of persons, firms, or organizations for the privilege of using the Airport Operations Area (e.g., landing fees), or of entering upon the Airport to conduct business thereon, (e.g., use fees), which fees and charges are imposed on a nondiscriminatory basis for the privilege of using or entering upon the Airport. The term "Activity Fees" shall, for purposes of this Replacement Lease, be the fees and charges set forth in Section 5.7 below. Notwithstanding anything herein to the contrary, Lessee shall not be responsible for any Activity Fees or other amounts owned by Signature to City pursuant to the Signature Lease.

Lessee's payment of Activity Fees shall not affect Lessee's obligation to pay the Ground Rental, Noise and Safety Program Fees and other charges as provided in this Replacement Lease.

1.2. Airport

Airport means the Norman Y. Mineta San Jose International Airport, located in the County of Santa Clara, as shown on **EXHIBIT A**, together with any appurtenant properties and/or facilities associated therewith, as the same may from time to time be enlarged, diminished or otherwise modified.

1.3 Airport Living Wage Ordinance

Airport Living Wage Ordinance means Chapter 25.11 of the Municipal Code, as amended from time to time.

1.4 Airport Operations Area

Airport Operations Area means those airfield/airside areas inside of the perimeter secured boundary of the Airport utilized for runways, taxiways, ramps, aprons, and movement of aircraft, as said areas may now exist or as they may be modified.

1.5. Base Ground Rental

Base Ground Rental has the meaning set forth in Section 5.3. Notwithstanding anything herein to the contrary, Lessee shall not be responsible for any Base Ground Rental or other amounts owned by Signature to City pursuant to the Signature Lease.

1.6. Business Day

Business Day means any day other than a Saturday or Sunday or a day on which City offices are closed to the public.

1.7. Certificate of Occupancy

Certificate of Occupancy means any temporary or final certificate of occupancy issued by City which allows the full occupancy and use of a building for its intended purpose.

1.8. City Council

The City Council means the San Jose City Council.

1.9. Construction Contract

Construction Contract means any general contract between Lessee and any general contractor to perform Work at the Premises.

1.10. Days

Days, unless otherwise specified in this Replacement Lease, shall mean calendar days.

1.11. Director

The Director shall mean 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 Replacement Lease.

1.12. Effective Date of the Signature Lease

The Effective Date of the Signature Lease is December 12, 2013 (the “Effective Date of the Signature Lease”).

1.13 Effective Date of the Replacement Lease

This Replacement Lease shall be effective as of the date set forth in the Preamble, which is the date of execution by City (the “Effective Date of the Replacement Lease”)

1.13. Environmental Laws

Environmental Laws means and includes all applicable 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 applicable 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 California state super lien or environmental clean-up statutes.

1.14. Event of Default

Event(s) of Default means those events described in Section 13 of this Replacement Lease.

1.15. Expiration Date

Expiration Date means the date fifty (50) years from the Effective Date of the Signature Lease.

1.16. Fixed Base Operator

Fixed Base Operator has the meaning set forth in the Minimum Standards.

1.17. Intentionally Not Used.

1.18. Force Majeure Event

Force Majeure Event means any event or occurrence described in Section 32.

1.19. Fuel Flowage Fees

Fuel Flowage Fee(s) means any fee(s) or charge(s) imposed by City, pursuant to a permit issued by City separate from this Replacement Lease, for the privilege of engaging in the retailing or delivery of fuel petroleum products (both aviation and non-aviation type), lubricants, and propellants on the Premises or on authorized locations on the Airport. Any such Fuel Flowage Fee(s) will be established and revised from time to time by City. Lessee’s payment of any such Fuel Flowage Fee(s) shall not affect or be offset against any Ground Rental or other fees and charges otherwise due pursuant to this Replacement Lease.

[1.20. Ground Rental] [THIS SECTION TO BE UPDATED TO REFLECT THE GROUND RENTAL IN FORCE AT THE TIME OF THE TERMINATION OF THE SIGNATURE LEASE]

Ground Rental means the following amounts to be charged to and paid by Lessee in accordance with Section 5 of this Replacement Lease.

Base Ground Rental – [\$2.06/sf/yr] based upon the actual square footage of premises occupied by Lessee as set forth in the table below. The Base Ground Rental is subject to a CPI increase annually as of the Effective Date of the Signature Lease (except anniversaries which are an Appraisal Adjustment Date) and by appraisal every 5 years, as set forth in Section 5.3 below.

Base Ground Rental – [1,360,878SF] at [\$2.06 /SF/YR]	[\$2,803,137/YR]
----------------------------------------------------------	------------------

Ground Rental is subject to adjustment as provided in Section 5.3.

1.21. Hazardous Materials

Hazardous Materials means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or become 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 with jurisdiction over the Premises; 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.

1.22. Laws

Laws means all present and future applicable, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities with jurisdiction over the Premises, including without limitation city, state, municipal, county, federal agencies or the federal government and the Federal Aviation Administration (the "FAA"), and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of an official entity or body.

1.23. Signature Lease

Signature Lease means the Ground Lease and Operating Agreement between City and Signature dated December 12, 2013, as amended by the First Amendment to Ground Lease and Operating Agreement dated _____, 2018.

1.24. Leasehold Improvements [CONFORM TO CIRCUMSTANCES AT TERMINATION OF SIGNATURE LEASE]

Leasehold Improvements means the FBO Improvements (as defined in the Signature Lease and except as provided for below) and BCH Sublessee Improvements (as defined in the Signature Lease) already constructed on the Premises pursuant to Section 6 of this Replacement Lease and set forth on **EXHIBIT F**. Leasehold Improvements does not mean the Gilead Sublessee Improvements already constructed on the Premises pursuant to Section 6 of this Replacement Lease and set forth on **EXHIBIT F-1**. On the Effective Date of the Replacement Lease, (a) title to all Leasehold Improvements shall automatically vest in Lessee, and (b) title to all of the Gilead Sublessee Improvements shall automatically vest in Gilead. Concurrent with the execution of this Replacement Lease, (i) City shall execute, acknowledge and deliver to Lessee a proper instrument in writing releasing and quitclaiming to Lessee all right, title and interest of City in and to the Leasehold Improvements, and (ii) City shall execute, acknowledge and deliver to Gilead a proper instrument in writing releasing and quitclaiming to Gilead all right, title and interest of City in and to the Gilead Sublessee Improvements. Thereafter, at all times during the Term of this Replacement Lease, (1) Lessee shall own the Leasehold Improvements until the expiration or earlier termination of this Replacement Lease, and (2) Gilead shall own the Gilead Sublessee Improvements until the expiration or earlier termination of the Gilead Replacement Sublease.

1.25. Lessee

Lessee means BCH San Jose LLC, a Delaware limited liability company authorized to

do business in the State of California, and its permitted successors and assigns. For clarity, with the acknowledgment that the use rights enumerated in Section 4 below shall only be extended to parties other than Lessee by the express written authorization of Lessee, everywhere this Replacement Lease references any right, privilege, benefit and/or permitted use of Lessee hereunder, such right, privilege, benefit and/or permitted use shall also extend to all permitted users, guests, invitees, sublessees, and licensees of the Premises, or any portion thereof, as well as their respective permitted successors and assigns, who are now or hereafter authorized to occupy and/or use the Premises, or any portion thereof, by, through or under Lessee.

1.26. Lessee Address [COMPLETE WITH CURRENT LESSEE INFORMATION]

Lessee Address means the following information for notices to Lessee in addition to the notices requirements set forth in Section 37 below:

Name:	Ken Ambrose
Title:	President
Mail Address:	BCH San Jose LLC 555 Bryant St. #347 Palo Alto, CA 94301 Phone: Facsimile:
Street Address: (If different)	Not applicable
Telephone:	(925) 254-8800
Fax No.:	(925) 254-8860
E-mail Address: (email Notices cannot be used in lieu of Notice Required under Section 37 of this Replacement Lease)	kambrose@gmail.com

1.27. Master Plan [UPDATE WITH CURRENT INFORMATION]

Master Plan means the San Jose International Airport Master Plan Update, dated December 1999 and any Master Plan updates adopted subsequent to December 1999.

1.28. Minimum Standards [UPDATE WITH CURRENT INFORMATION]

Minimum Standards means City’s Airport Minimum Standards for Aeronautical Service Providers (adopted February 2012), as amended from time to time, which shall be applied by City to Airport users without unjust discrimination.

1.29. Municipal Code

Municipal Code means the San Jose Municipal Code, as amended from time to time.

1.30. Noise and Safety Program

Noise and Safety Program means the program for cost recovery per Aircraft as established by City according to Airport’s General Fee Resolution 76438, Section 2, A.2.c, entitled “Noise and Safety Program Fees”, and as the Resolution may be revised.

1.31. Intentionally Not Used.

1.32. Party or Parties

Means, as applicable, City and/or Lessee, and their respective permitted successors and assigns.

1.33. Permitted Activities

Permitted Activities means Lessee’s use of the Premises as further described in Section 4 of this Replacement Lease.

1.34. Person

Person means an individual, a corporation, a limited liability company, a partnership, a trust, a joint venture or any other legal entity or form of business association.

1.35. Plans and Specifications

Plans and Specifications means the approved concept and construction drawings of the initial Leasehold Improvements described in Section 6.2.1.

1.36. Premises

Premises means the approximately 31.24 acre parcel on the west side of the Airport as more specifically identified in **EXHIBIT B**.

1.37. Security Deposit

Security Deposit means the amount specified and subject to adjustment as provided in Section 5.5 of this Replacement Lease.

1.38. Gilead

Gilead means Gilead Sciences, Inc., a Delaware corporation authorized to do business in the State of California, and its permitted successors and assigns.

1.39. Gilead Sublessee Improvements

Means the Gilead Sublessee Improvements described on the attached **EXHIBIT F-1**.

1.40. Tax

Tax means and includes any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

Section 2. Term/Option to Extend

The Term of this Replacement Lease shall commence on the Effective Date of the Replacement Lease and shall continue through the Expiration Date, unless sooner terminated in accordance with the terms of this Replacement Lease. Lessee shall have the option to extend the Term for one (1) additional ten-year term on the same terms and conditions. To extend the Term, Lessee must notify City, in writing, of its decision to extend the Term no earlier than one (1) year prior to the Expiration Date and not later than nine (9) months prior to the Expiration Date.

Section 3. Premises; Other Agreements

As of the Effective Date of the Replacement Lease and subject to the terms and conditions herein, City leases to Lessee, and Lessee leases from City, the Premises to be used solely for the Permitted Activities. It is mutually agreed that Lessee's use and occupancy of the Premises is upon and subject to the terms, covenants and conditions hereof, and that Lessee covenants, as a material part of the consideration of this Replacement Lease, to keep, perform and observe each and all of said terms, covenants and conditions to be kept, performed, or observed by Lessee, and that this Replacement Lease is made on condition of such performance.

3.1. Condition of Premises

3.1.1. "As Is" Condition

Lessee has carefully examined the current condition of the Premises, the 31.24 acre parcel designated in **EXHIBIT B**, and is satisfied with the current condition

of the Premises. The Premises shall be leased to Lessee in an "as is" physical condition.

Lessee acknowledges that no representation or warranty has been made by City concerning the nature, quality or suitability of the Premises for the Permitted Activities, or for any other purpose. Subject to City's obligations hereunder, Lessee accepts the Premises "as is", and as being in good, safe and sanitary condition satisfactory for Lessee's use. Lessee assumes all risk and costs related to the development and use of the Leasehold Improvements and Lessee represents that it has made sufficient investigation with regard to construction of the Leasehold Improvements and any other matters relating to the Permitted Activities and the Premises to satisfy itself of all matters related thereto. No rights, easements or licenses, implied or otherwise, are or shall be acquired by Lessee hereunder except as expressly set forth in this Replacement Lease. Without limiting the foregoing, Lessee acknowledges that City has made no representation or warranty regarding the existence of any Hazardous Materials in, on, upon, under or about the Premises or the Airport.

3.1.2. Release

Lessee hereby waives, releases, remises, acquits and forever discharges City, its elected officials, employees, and agents, successors and assigns, of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Lessee shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of: (i) City's use, maintenance, ownership and operation of all or any portion of the Premises prior to the Effective Date of the Replacement Lease; or (ii) the condition, status, quality, nature, contamination or environmental state of all or any portion of the Premises prior to the Effective Date of the Replacement Lease. It is the intention of the Parties to this Replacement Lease that any and all responsibilities and obligations of City, and any and all rights or claims of Lessee against City, its successors and assigns and affiliated entities, arising by virtue of the physical or environmental condition of all or any portion the Premises are by this release provision declared null and void and of no present or future effect as to such parties. Lessee agrees as to the matters released to waive the benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

"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."

3.1.3. Intentionally Not Used.

Section 4. Uses, Privileges and Obligations

Neither Lessee, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Replacement Lease. Lessee shall be entitled to use the Premises for all types of general aviation related businesses, services, operations and activities, including, without limitation, (i) a Fixed Base Operation (including, without limitation, one or more public food and beverage establishments, employee cafeterias and/or vending machines, the sale of aviation and aviation-related products and services, including, without limitation, the sale of aircraft and ground service equipment fuel (subject to the terms and conditions of a fuel permit issued by City separate from this Replacement Lease), lubricants, propellants, parts and accessories, and cleaning, catering, defueling, ground handling (i.e. the loading, unloading, stocking, servicing and ground movement of aircraft while on the ground), deicing, lavatory servicing, passenger and crew terminal support (including associated services, and amenities), weather and flight planning, repair, inspection, rebuilding, overhaul and maintenance services of aircraft and parts and components of aircraft, as well as all services incidental thereto), (ii) aircraft parking and storage and aircraft spare parts, support equipment, tools and records storage, offices and flight department support services, (iii) the operation of a business of buying and selling new and/or used aircraft, aircraft parts and accessories therefor, and aviation equipment of all descriptions at retail, wholesale or as a dealer, (iv) the leasing and/or rental of general aviation aircraft, (v) supplying of line service for general aviation aircraft, (vi) developing, testing and operating experimental aircraft, (vii) the operation of a medical transport or air ambulance service, (viii) scientific and aeronautical research, (ix) providing aircraft arrival and departure guidance upon the Premises, (x) specialized aircraft repair, rebuilding, inspection, licensing, certification and overhaul services (radios, propellers, avionics, instruments and accessories), (x) the operation of air taxi and charter services for the transportation of passengers, cargo and mail to the general public as defined in the Federal Aviation Act of 1958 (the "Act"), as the Act may be supplemented and/or amended from time to time, (xi) the operation and sale of aerial and space survey, photography and mapping services, (xii) passenger and flight crew ground transportation services between the Premises and reasonable destinations on the Airport as required by users of the Premises; (xiii) the sale of aviation products and merchandise incidental to general aviation activities, (xiv) an aircraft wash rack which complies with City, county, state and Federal Environmental Laws, (xv) the operation and maintenance of equipment, facilities and improvements upon the Premises for the purpose of carrying out any of the activities, operations, services and/or businesses provided for herein, (xvi) hangar and tie-down storage facilities for general aviation aircraft, (xvii) the provision of flight instruction and training; (xviii) providing direct business support services to tenants and sub-tenants and clients and guests of tenants and sub-tenants conducting business on the Premises including, without limitation, barber shop services, travel agency services, aviation accident investigation services,

aviation data processing services, aircraft and aviation equipment financing services, aviation medical examination services, accounting services, legal services, insurance services and secretarial and office support services, and (xix) the operation of a twenty-four (24) hour emergency service to disabled general aviation aircraft on the Airport, including, without limitation, towing or transporting disabled aircraft to the Premises at the request of the owner or operator of the aircraft or the Director. It is expressly acknowledged and agreed that all such permitted uses are available to Lessee and its permitted sublessees, licensees, guests and invitees as well as their respective officers, directors, managers, partners, members, shareholders, owners, affiliates and employees for aircraft owned, managed or operated by any of the foregoing. The foregoing restriction on Lessee's use shall not apply to any non-aviation general business office uses, including, without limitation, for sales, general administration, engineering, design, marketing, financial services, purchasing, public relations, accounting, legal and construction support services. All of the foregoing activities are hereinafter collectively referred to as the "Permitted Activities". City shall and does have the right, at the date of this Replacement Lease and at any time during the Term, to deal and contract with any other Persons for the leasing of other premises for general aviation purposes at the Airport. Lessee shall have the right to obtain and purchase materials, supplies, equipment and services in connection with its operations on the Airport from any Person of Lessee's choice, whether on or off the Airport; provided, that City shall retain the sole and exclusive right to license and regulate all Persons doing business on the Airport and provided, further, that City shall retain the sole and exclusive right to impose nondiscriminatory fees and charges on Persons supplying products or providing and performing services on the Airport for the privilege of conducting such business; and provided, further, that City shall retain the sole and exclusive right to require Lessee, after written notice thereof, to terminate its use of any supplier or provider if that supplier or provider fails to conform to any applicable Law or with Airport Rules and Regulations.

The Premises shall not be used, and Lessee shall not permit the Premises to be used, for any purpose(s) other than the Permitted Activities without the prior written consent of the Director, which consent may be withheld in the reasonable discretion of the Director.

4.1. Exercise of Rights and Obligations

Lessee shall at all times comply with the Minimum Standards, as applicable, and as amended from time to time during the Term. Conditions and restrictions that affect Lessee's operations include, but are not limited to, the following:

4.1.1. Permitted Activities

While engaging in any of the Permitted Activities at the Premises, Lessee shall comply with the standards set forth in the Minimum Standards.

4.1.2. No Scheduled Air Carrier Activity

Lessee shall not engage in scheduled air carrier activity (as defined in FAA regulations) for carriage of passengers, baggage, cargo, freight, mail, or express. For the avoidance of doubt, this subsection shall not be construed to prohibit an aircraft being operated by a scheduled air carrier from being chartered by a third party (e.g. a sports team or other group or individual) and operated, parked, loaded or unloaded at the Premises in connection with such charter operation.

4.1.3. No Interference with Other Airport Services

Lessee shall not do or permit to be done anything on or about the Premises or the Airport which may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, public announcement system, access control system, HVAC system, fire hydrants and hoses, if any, installed or located on, within or about the Premises or the Airport.

4.1.4. Inspections

Lessee shall ensure that its employees and agents make regular inspections of the Premises for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the Premises required under this Replacement Lease.

4.1.5. No Interference with Use and Operation of Airport

Lessee shall conduct its operations at the Airport and on the Premises in such manner as will reasonably control the emanation from the Premises of dust, noise, vibration, movement of air fumes and odors so as not to unreasonably interfere with the use and operations of others at the Airport.

4.1.6. No Conflict with Insurance

Lessee shall not knowingly do anything, or permit anything to be done, in or about the Premises that might: (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Premises, the Airport or any property located thereon; (ii) result in a refusal by casualty insurance companies to insure the Premises, the Airport or any other 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 Premises; or (iv) cause any increase in any insurance rates applicable to the Airport taken as whole or any other property located thereon.

4.1.7. Hazardous Materials

Lessee shall comply with all requirements of **EXHIBIT C** in connection with the existence, storage, use, release, and/or disposal of Hazardous Materials on the Premises. The provisions of **EXHIBIT C** shall be in addition to all other obligations or requirements under any Environmental Laws relating to the

Premises. In the event of any conflict between the provisions of **EXHIBIT C** and the provisions of any applicable Environmental Law, the stricter provision shall prevail.

4.1.8. No Waste or Nuisance

Lessee shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will unreasonably increase the risk of fire or explosion on Airport property; or create a nuisance; or in any way obstruct or unreasonably interfere with the rights of others on Airport property, injure or unreasonably annoy them; or allow any sale by auction on the Premises; or commit or suffer to be committed any waste upon the Premises; or use or allow the Premises to be used for any unlawful purposes or to be operated in such a way as to interfere with Airport operations or safety; or do or permit to be done anything in any way tending materially to injure the reputation or appearance of the Premises.

4.2. Access

4.2.1. General

All means of access provided by City pursuant to this Section shall, without exception, be in common with such other Persons as City may authorize or permit, and all such users of access shall be subject to and comply with all applicable Laws.

4.2.2. City's Right to Close or Alter Access

City shall have the right at any time to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Lessee's use pursuant to this Replacement Lease, or otherwise, either temporarily or permanently, provided that reasonable advance written notice shall be provided to Lessee and a reasonably convenient and adequate means of ingress and egress (for pedestrians, vehicles and aircraft) shall exist at all times or be provided in lieu thereof at City's expense. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Lessee's obligations under this Replacement Lease.

4.2.3. Access; No Interference with Access Rights

Lessee shall possess the right of ingress to and egress from the Premises over Airport roads, taxiways and/or other routes as may be necessary in its operations and/or in fulfillment of the terms of this Replacement Lease, subject to Airport Rules and Regulations, including without limitation those pertaining to badge, permitting, and other security requirements Lessee agrees that in its exercise of such right of ingress and egress to and from the Premises that it (a) shall not impede or interfere with the operation of the Airport by City, its lessees, or other

authorized occupants; and (b) may be suspended or revoked by the Director in the event of an emergency or a threat to the Airport.

4.2.4. No Personal Property Outside Premises

Except for permitted fueling and permitted off-Premises operations and notwithstanding its ongoing ingress and egress rights to the Premises, Lessee shall have no right to place any personal property or equipment on, or conduct any operations in, any areas outside the Premises. Truck routes shall be as designated from time to time by the Director. Said rights of ingress, egress and roadway use shall likewise apply to Lessee's suppliers, including without limitation the right of transport of equipment, material, cargo, machinery and other property; provided, that such right of ingress and egress shall not alter or affect whatever contractual arrangements may now or hereafter exist between City and the suppliers or furnishers of service to Lessee.

4.3. Signs

Lessee shall not install, erect, affix, paint or place any sign, lettering or other text or graphic production in or upon any exterior portion of Leasehold Improvements on the Premises except with the prior written consent of the Director, which consent shall not be unreasonably withheld. Any and all signs, lettering, text or graphic production, or any replacement thereof, which may be permitted by the Director shall be subject to, and comply with, present and future Airport signing standards and City ordinances. Any and all such signs, text or graphic production shall be removed by Lessee at its sole cost and expense upon termination or expiration of this Replacement Lease, without injury or damage to or defacement of any part of the Premises. Lessee will promptly restore to their original condition those portions of the Premises from which such advertising device or media have been so removed. Under no circumstances may any advertising sign, text or graphic production be placed on the Premises (excluding approved signage as set forth above).

4.4. Incorporated Terms of Lessee's Proposal

Lessee shall comply with all requirements of **EXHIBIT M**, which are material provisions of Lessee's Proposal not otherwise provided for under this Lease. **[CONFORM TO TIMING OF TRANSACTION]**

Section 5. Ground Rental, Fees and Charges

5.1. Intentionally Not Used.

5.2. Base Ground Rental

Commencing on the Effective Date of the Replacement Lease (the "Base Ground Rental Commencement Date") and continuing throughout the Term, Lessee shall pay

Base Ground Rental subject to the increases below. Base Ground Rental shall be due and payable in advance in twelve equal monthly payments on the first day of every month in accordance with the provisions of Section 5.7. In the event that the Base Ground Rental Commencement Date is not the first of the calendar month, payment of the Base Ground Rental shall be prorated for such partial month. The Base Ground Rental payment for any partial first month shall be due and payable within ten (10) days from the Base Ground Rental Commencement Date. If the Expiration Date or earlier termination date occurs on a day other than the last day of a month, Base Ground Rental for the last month of the Term shall be prorated.

5.3. Adjustments to Base Ground Rental

The Base Ground Rental shall be subject to the following increases (as adjusted the “Adjusted Ground Rental”): (i) on each fifth (5th) anniversary date of the Effective Date of the Signature Lease (“**Appraisal Adjustment Date(s)**”) to reflect increases in the appraised value of the Premises; and (ii) on each one-year anniversary of the Effective Date of the Signature Lease (excluding each fifth anniversary date on which Appraisal Adjustments are made pursuant to Section 5.3.2) in accordance with the provisions set out below (“Percentage Increase Adjustment Date(s)”):

5.3.1. Percentage Increase Adjustment Date(s)

The Base Ground Rental shall be adjusted as of each Percentage Increase Adjustment Date (excluding each fifth anniversary of the Effective Date of the Signature Lease on which Appraisal Adjustments are made pursuant to Section 5.3.2 below), according to the following provisions:

5.3.1.1. Base Figure

The Base Figure for computing the adjustment shall be the Consumer Price Index (“CPI”) for All Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U. S. Department of Labor for the month one year prior to the Percentage Increase Adjustment Date. In the event that the CPI is not published for the applicable month, the Base Figure shall be the next succeeding CPI published.

5.3.1.2. Index Figure

The Index Figure for each Percentage Increase Adjustment Date shall be the most recent CPI for All Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor as of the Percentage Increase Adjustment Date. For example, if the Percentage Increase Adjustment Date is June 15, 2014, the Index Figure shall be the CPI for April 2014. In the event that the CPI is not published for such month, the Index Figure shall be the CPI for the latest CPI published as of the month of the Adjustment Date.

5.3.1.3. Percentage Increase Adjustment Date

For each Percentage Increase Adjustment Date, if the Index Figure has increased over the Base Figure, the Adjusted Ground Rental payable from that Percentage Increase Adjustment Date and until the next Percentage Increase Adjustment Date shall be determined by calculating the percentage increase of the Index Figure over the Base Figure. For example, assuming the Base Figure is 110 and the Index Figure is 121, the percentage to be applied is $121/110 = 1.10 = 110\%$. That percentage shall be applied to the Base Ground Rental last in effect to calculate the Adjusted Ground Rental for the annual period beginning on the Percentage Increase Adjustment Date.

5.3.1.4. No Decrease in Base Ground Rental

Regardless of any year-to-year or cumulative decrease in the CPI during the Term, in no event shall the Adjusted Ground Rental effective for any Percentage Increase Adjustment Date be less than the Base Ground Rental (or Adjusted Ground Rental, as applicable) as of the immediately preceding Base Ground Rental Commencement Date (or Percentage Increase Adjustment Date or Appraisal Adjustment Date, as applicable). In the event that:

5.3.1.4.1. a year-to-year or cumulative decrease occurs in the CPI during the Term; and

5.3.1.4.2. the application of the formula set out in subsection 5.3.1.3 above would result in an Adjusted Ground Rental that is less than the Base Ground Rental (or Adjusted Ground Rental, as applicable) as of the immediately preceding Base Ground Rental Commencement Date (or Percentage Increase Adjustment Date or Appraisal Adjustment Date, as applicable);

the Base Ground Rental (or Adjusted Ground Rental, as applicable) as of the immediately preceding Base Ground Rental Commencement Date (or Percentage Increase Adjustment Date or Appraisal Adjustment Date, as applicable) shall remain in effect until the next Percentage Increase Adjustment Date.

5.3.1.5. Alternative Index

The index for the Percentage Increase Adjustment Date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base different from the base period (1982-84=100) used for the base figure above, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau. If the above-described Department of Labor index is no longer

published, another index generally recognized as authoritative shall be substituted by the Director.

5.3.2. Appraisal Adjustment Date(s)

The Base Ground Rental shall be adjusted as of each Appraisal Adjustment Date, according to the following provisions:

5.3.2.1. No Decrease in Base Ground Rental

In no event shall the Adjusted Ground Rental set pursuant to this Section 5.3.2 be less than the Adjusted Ground Rental in effect as of the immediately preceding percentage increase adjustment date.

5.3.2.2. Identification of One Appraiser

City will notify Lessee of City's proposed appraiser to value the then current fair market ground rental of the Premises pursuant to this Section 5.3. If Lessee does not accept and agree with City's selected appraiser, Lessee may request the Parties meet and attempt for a period of thirty (30) days to agree on a single appraiser to determine the then current fair market ground rental value of the Premises. If City and Lessee are able to agree upon a single appraiser, during such thirty (30) day period, such single Appraiser shall determine the then current fair market ground rental value of the Premises as set out below.

5.3.2.3. Identification of Two Appraisers

If the Parties are unable to agree upon a single appraiser, or if the Parties do not meet before the one hundred fiftieth (150th) day before the Appraisal Adjustment Date, then no later than the one hundred twentieth (120th) day before the Appraisal Adjustment Date, Lessee and City each shall select an independent qualified real estate appraiser who shall be a member of a nationally or state recognized appraisal organization, who shall be certified by the State of California to conduct appraisals, who shall have at least ten (10) years of commercial real estate appraisal experience; and who has performed at least one appraisal of airport property and notify the other Party of such appraiser.

5.3.2.4. Appraisal Process

If the Parties agree on a single appraiser as provided in Section 5.3.2.2 above, such appraiser shall appraise the then current fair market ground rental value of the Premises as provided in this Section 5.3.2.4. If two properly selected appraisers are selected by City and Lessee pursuant to Section 5.3.2.3, each such appraiser within ninety (90) days following its selection, shall conduct an appraisal to establish the then current fair market ground rental value of the Premises taking into consideration the terms of this Replacement Lease as if the Premises were vacant, without the Leasehold Improvements placed thereupon by Lessee and without the Gilead Sublessee Improvements placed thereupon by Gilead, and available for lease under the same terms and conditions as this

Replacement Lease. The cost of each appraisal shall be borne by the Party selecting the appraiser who prepared the appraisal (provided the cost of an appraiser jointly selected by City and Lessee shall be borne equally by each Party). Once each of such appraisers completes its appraisal, a copy of each appraisal shall be delivered to Lessee and to City not later than thirty (30) days before the Appraisal Adjustment Date. Any appraisal not delivered within the time period set out above shall be disregarded.

5.3.2.5. Reconciliation of Appraisals

If the higher appraisal of the fair market ground rental value of the Premises exceeds the value in the lower appraisal of the fair market ground rental value of the Premises by ten percent (10%) or less of the lower appraisal, then the two fair market ground rental values for the Premises contained in the two appraisals shall be added together and divided by two to establish the fair market ground rental value of the Premises. If only one of the two appraisals is timely delivered, then the fair market ground rental value set out in the one timely delivered appraisal shall establish the fair market ground rental value of the Premises. If the higher appraisal of the fair market ground rental value of the Premises is more than ten percent higher than the lower appraisal, then the fair market ground rental value of the Premises shall be determined as set out below. If the fair market ground rental value of the Premises is not determined pursuant to this subsection, then within ten (10) days after the Director's receipt of the last appraisal, the Director shall ask the two appraisers to meet together and determine a single mutually agreed fair market ground rental value for the Premises.

5.3.2.6. Selection of Third Appraiser

If two appraisers are timely selected and the higher appraisal is not within ten percent (10%) of the lower appraisal (as described in subsection 5.3.2.5 above) or the two appraisers fail to reach mutual agreement as to the fair market ground rental value within ten (10) days after they commence fair market ground rental value discussions as provided in subsection 5.3.2.5 above, the two appraisers shall themselves select a third, independent real estate appraiser, who shall have the same qualifications as required above. The cost of the third appraiser shall be borne equally by City and Lessee, as shall any other expenses, if any, of the costs of selecting a third appraiser. The third appraiser shall appraise the Premises taking into consideration the terms of this Replacement Lease, as if said Premises were vacant, without the Leasehold Improvements placed thereupon by Lessee, and were available for lease under the same terms and conditions as this Replacement Lease and shall submit said appraisal to City and Lessee within sixty (60) days of such appraiser's selection.

The three appraisers shall then, within thirty (30) days of the submission of the third appraisal, meet and attempt to agree upon the then fair market ground

rental value of the Premises as set forth above. A decision joined by a majority of the appraisers shall be final.

If a majority of the three appraisers cannot agree upon a fair market ground rental value pursuant to this subsection, then they shall so notify City and Lessee, and the fair market ground rental value of the Premises shall then be established as follows:

- i. If the low appraisal and/or the high appraisal is/are more than ten percent (10%) lower or higher than the middle appraiser, then the low and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2); the resulting quotient shall then be the fair market ground rental value of the Premises.
- ii. If both the low appraisal and the high appraisal are disregarded as stated in subparagraph (i), the middle appraisal shall then be the fair market ground rental value of the Premises.

5.3.2.7. Adjusted Ground Rental

Once the fair market ground rental value of the Premises has been determined as described above, the Adjusted Ground Rental shall be effective as and from the Appraisal Adjustment Date, and until the next following Percentage Increase Adjustment Date, at which time the Adjusted Ground Rental shall be subject to increase pursuant to Section 5.3.1 above.

5.3.2.8. Extensions of Time to Conduct Appraisals

The time periods for calculating the Adjusted Ground Rental by appraisal may be extended by mutual agreement between the Director and Lessee, provided that any Adjusted Ground Rental shall be effective as and from the then applicable Appraisal Adjustment Date. Upon determination of the Adjusted Ground Rental, after the corresponding Appraisal Adjustment Date, the underpayment(s) if any, shall be paid to City within ten (10) days of the date that Lessee is notified of the new adjusted Ground Rental.

5.4. Minimum Annual Guaranteed Property, Sales and Use Taxes

Not later than March 1 each year, Lessee shall provide a report to the Director of all property, sales and use taxes in the categories set out in **EXHIBIT D**, itemizing the total amounts of all such taxes paid by Lessee during the preceding calendar year. This report of taxes paid shall be accompanied by payment to City, as additional rent, a sum equal to the amount by which the total Minimum Annual Guaranteed Property, Sales and Use Taxes specified in **EXHIBIT D**

exceeds the total of such taxes actually paid by Lessee during the preceding calendar year.

5.5. Security Deposits

Lessee agrees that upon execution of this Replacement Lease, it will, at its own expense, deliver to the Director and thereafter maintain during the Term, either a (i) letter of credit in an amount equal to one (1) year of Base Ground Rental, payable to the "City of San Jose" and naming City as obligee, or (ii) the same amount in cash, as a refundable security deposit. The letter of credit shall be an irrevocable ("clean") letter of credit, substantially in the form attached to this Lease as **EXHIBIT E**. Thereafter, the letter of credit or cash security deposit shall be maintained in full force and effect during the Term and during any holdover period at the expense of Lessee, to ensure the faithful performance by Lessee of all the covenants, terms and conditions of this Replacement Lease, inclusive of but not restricted to the payment of all considerations provided herein. Upon the expiration of the Term and full compliance with the requirements of this Replacement Lease by Lessee, City shall return the letter of credit or cash security deposit to Lessee. In addition to the minimum requirements set out in the form attached to this Replacement Lease as **EXHIBIT E**, any letter of credit issued to City under this Replacement Lease shall, at a minimum, meet the following express requirements:

- a. It shall be an irrevocable standby letter of credit, with an expiration date no earlier than twelve (12) months from the date of submittal; and
- b. It shall be issued by a financial institution reasonably acceptable to City's Director of Finance, whose long term obligations are rated at least "B" by Thompson Bank Watch, Inc. (or a similar rating by any other rating agency)

All banking charges with respect to the letter of credit shall be at the sole expense of Lessee. No later than thirty (30) days after each Percentage Increase Adjustment date or Appraisal Adjustment Date, as applicable, Lessee shall increase the Security Deposit to equal one year of the then applicable Adjusted Ground Rental.

In addition to the minimum requirements set out in the form attached to this Replacement Lease as **EXHIBIT E**, any letter of credit issued to City under this Replacement Lease shall, at a minimum, meet the following express requirements:

- c. It shall be an irrevocable standby letter of credit, with an expiration date no earlier than twelve (12) months from the date of submittal; and
- d. It shall be issued by a financial institution reasonably acceptable to the City's Director of Finance, whose long term obligations are rated at least "B" by Thompson Bank Watch, Inc. (or a similar rating by any other rating agency).

All banking charges with respect to the letter of credit shall be at the sole expense of Lessee.

5.6. Additional Rent

In addition to and not by way of limitation of City's rights under specific provisions of this Replacement Lease, City shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Lessee any amount payable under the terms hereof by Lessee, or to otherwise satisfy any of Lessee's obligations hereunder (except payment of monetary obligations which are owing directly to City such as Base Ground Rental or Adjusted Ground Rental), provided that (except in case of emergency calling for immediate payment) City shall first have given Lessee no less than fifteen (15) days advance written notice of City's intention to advance such amounts on behalf of Lessee. No advance by City shall operate as a waiver of any of City's rights under this Replacement Lease and Lessee shall remain fully responsible for the performance of its obligations under this Replacement Lease. Lessee's obligation to reimburse amounts advanced by City pursuant to this Section shall constitute Additional Rent under this Replacement Lease, shall be immediately due and payable by Lessee to City and shall bear interest at the "Reference Rate" of the Bank of America plus three percent (3%) and not to exceed the maximum rate for which the parties may lawfully contract, from the date of advance.

5.7. Activity Fees

If, at any time during the Term, Lessee should use the Premises, or any portion thereof, or (with permission of the Director) any other land or facilities of the Airport for any purpose, use or activity for which Persons using any land or facilities thereof are or shall then be required by City to pay Activity Fees, then in that event Lessee shall pay to City, in addition to the Ground Rentals, charges or other fees for the privilege of using the Lease Premises or other Airport land or facilities for such purpose, such Activity Fees as may at such time be charged by City for the use of any Airport land or facilities for such other purpose, use or activity. The term Activity Fee(s) shall, for purposes of this Replacement Lease, be deemed to include landing fees for any charter operations conducted by Lessee, but shall not otherwise be deemed to include fees or charges imposed upon Lessee's activities which Lessee is authorized to conduct on the Leased Premises pursuant to this Replacement Lease; except that Lessee may be required to pay Fuel Flowage Fees to City. City agrees that any and all such Activity Fees shall be applied on a non-discriminatory basis to all such users of the Airport.

5.7.1. Fuel Flowage Fees

In addition to any other Activity Fees which Lessee is required to pay to City pursuant to Section 5.6 above, City may assess Fuel Flowage Fees for any retailing or delivery of fuel petroleum products by Lessee pursuant to the Minimum Standards and Lessee's fueling permit, and as provided for in the

Airport General Fee Resolution #76438 (adopted September 18, 2012), and as may be amended.

5.7.2. Noise and Safety Program Fees

City has established a Noise and Safety Program for all general aviation lessees and licensees at the Airport. The costs of the Program are allocable to aircraft users of the Airport which are based on Airport land which City leases to general aviation lessees (e.g. fixed based operators and corporate flight departments) and shall be allocated on a per aircraft basis for all aircraft based on the lessee's premises. Lessee shall be obligated to pay to City, for each aircraft based on the Premises, the following fee for the Noise and Safety Program: Twenty-Two dollars and seventy cents (\$22.70) per year or \$1.90 per month or such other rate as approved by the City Council which may be adjusted from time to time. Lessee will provide a monthly report in form and content acceptable to the Director, no later than the fifth (5th) day of each month listing aircraft (i) owned by Lessee and based at the Premises, and (ii) those not owned by Lessee, which are based at the Premises. A delinquent report fee of twenty-five dollars (\$25.00) per day or such other amount as may established by City Council resolution will be assessed if the report is not received by City after the fifth (5th) calendar day of the month.

5.7.3. Monthly Activity Report

On or before the fifth (5th) day of each month following commencement of normal business operations at the Premises and execution of this Replacement Lease, Lessee shall provide to the Director a monthly activity report for all Activity Fees, in such form and detail as the Director may require. For Fuel Flowage Fees, the Monthly Activity Report shall set forth at a minimum, the total amount of gallons of fuel purchased at wholesale and date of purchase, and the retail price of fuel at time of retail sale or delivery, for the past monthly period. If the monthly activity report is not provided on or before the fifth (5th) day of each month as required herein, Lessee shall pay as a delinquency fee for administrative expenses incurred by City for delays and invoices, an amount (established by City Council resolution) per day that the report is late until such date as the monthly activity report is submitted to the Director. City's assessment of the delinquency fee shall be in addition to any other remedies that City may have in law or in equity, including termination and revocation of this Replacement Lease and all rights and privileges granted to Lessee.

5.8. Payment of Ground Rental, Activity Fees and Charges

Description	Amount	Due Date	Late Fee
Ground Rental	See Section 1.13	Due on or before the first day of the month	Late payment fee assessed at 12% per annum, 15 days after due date
Noise & Safety Fee	\$1.90/MO per aircraft	Activity Report and any fees due by the 5th day of the month	\$25.00 per day for delinquent report fee; Late payment fee assessed at 12% per annum after 30 days from date of City's invoice
Additional Rent Based Upon Minimum Annual Guaranteed Property, Sales and Use Taxes	See Section 5.4	March 1 each year	Late payment fee assessed at 12% per annum, 15 days after due date
Fuel Flowage Fee	\$0.20 per gallon	Activity Report and any fees due on the 5 th day of the month.	Late payment fee of 12% per annum or \$10.00 per day, whichever is less, assessed after 30 days from the date of City's invoice
Other Activity Fees	Based Upon Activity	Activity Report due on the 5 th day of the month.	Late payment fee of 12% per annum or \$10.00 per day, whichever is less, assessed after 30 days from the date of City's invoice
Miscellaneous and One Time Charges		Due and payable within 30 days of Lessee's receipt of City's invoice	\$25.00 per day for delinquent report fee; payment fee assessed at 12% per annum after 30 days from the date of City's invoice

5.8.1. Ground Rental, Fees and Charges Payable in Advance

Except as set forth herein to the contrary, Ground Rental and any and all other fees and charges that are payable in advance shall be paid on or before the first day of each month ("Due Date"), without any requirement of notice from City, deduction, credit or offset. Such Ground Rental, fees and charges shall be deemed delinquent if not received by City on or before fifteen (15) days from the Due Date. Lessee shall be required to pay a late payment fee (as established by City Council resolution), calculated from the first day, for each day, or portion thereof, in each month that payment is not timely received by City, until payment is received by City. City reserves the right to require that any late payments be made only in a reasonable form to be specified by the Director, and City further reserves the right to reject any late payment that is not in such form approved by the Director. Notwithstanding anything to the contrary contained herein, if any date on which a payment of Ground Rental, fees and/or charges becomes due and payable is not a Business Day, then such payment shall not be due on such scheduled date but shall be due on the next succeeding Business Day with the same force and effect as if due on such scheduled date and (to the extent any such payment of Ground Rental, fee and/or charge is made on such next succeeding Business Day) no interest shall accrue on the amount of such payment of Base Rental, fee or other charge from and after such scheduled date to such next succeeding Business Day

5.8.2. Fees and Charges Payable in Arrears

Any fees and charges from City which are paid in arrears for the preceding month's activity, except as otherwise expressly provided, are due and payable on or before the thirtieth (30th) day from the date of City's invoice, and shall be deemed delinquent if not received by City on or before thirty (30) days from such date. Lessee shall include a monthly activity report, as set forth above, for all fees and charges due with each monthly payment. Lessee shall be required to pay a late payment fee (as established by City Council resolution) calculated from the first day, for each day, or portion thereof, in each month that payment is not timely received by City. City reserves the right to require that any late payments be made only in a reasonable form as specified by the Director and City further reserves the right to reject any late payment that is not in a form approved by the Director. City reserves the right to audit any monthly activity reports and payments based upon such reports, and acceptance of any payments hereunder shall not operate as a waiver of City's right to collect monies determined to be due and owing.

5.8.3. Location and Form of Payment

All of the Ground Rentals, fees and charges shall be paid by check made payable to the "City of San Jose" and delivered or mailed to "the City of San Jose, Payment Processing – Airport, Finance Department, 200 East Santa Clara Street, San Jose, CA 95113-1905", or to such other address as the Director may notify Lessee in accordance with Section 37. All such Ground Rentals, fees,

charges and other amounts payable by Lessee shall be in lawful money of the United States of America and in same day funds as of the due date.

5.8.4. Late Payment Fee Not Sole Remedy

City's assessment of a late payment fee shall be in addition to any other remedies City may have in law or in equity, including termination and revocation of this Replacement Lease and all rights and privileges granted herein.

5.9. Net Lease/No Offset or Deduction

This Replacement Lease shall be deemed and construed to be a “net lease” and all Ground Rental payments shall be absolutely net. All Ground Rentals, fees, charges and other sums due by Lessee under this Replacement Lease shall be paid without deduction, credit or offset of any kind and exclusive of any amounts which City may now or hereafter owe to Lessee.

Section 6. Leasehold Improvements [CONFORM TO TIMING OF TRANSACTION]

6.1. General Conditions for Construction

6.1.1. Construction of Leasehold Improvements

Construction of the Leasehold Improvements shall be subject to the provisions of this Section and shall be at Lessee’s sole cost and expense, without any reimbursement from City. The construction of the Leasehold Improvements will be done by Lessee pursuant to the terms of this Replacement Lease. Lessee will occupy the Premises in its ‘as is’ condition, and no Leasehold Improvements installed and paid for by Lessee will be subject to subsequent buyout by City under any circumstances. No part of the Leasehold Improvements shall be constructed, installed, expanded, modified or removed nor shall material modifications be made to the Leasehold Improvements without the prior written consent of the Director, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding sentence or anything else in this Replacement Lease to the contrary, any construction, installation, expansion, modification or removal of interior tenant improvements or modifications that do not alter the square footage, exterior appearance or structural elements of a building shall not require the approval of the Director.

6.1.2. Intentionally Not Used.

6.1.3. Intentionally Not Used.

6.2. Design of Leasehold Improvements

6.2.1. Intentionally Not Used.

6.2.2. Lessee Responsible for Design and Construction

Lessee shall be solely responsible for the proper design and construction of Lessee's Leasehold Improvements and for the workmanship performed and materials used therein, and shall be liable to City for any damage or loss to any portion of the Airport, which results from the negligent design or construction of the Leasehold Improvements. If Lessee, in the construction of Leasehold Improvements (including Lessee's demolition of any improvements located on the Premises as of the Effective Date of this Replacement Lease), causes the disturbance or damage of any asbestos or asbestos-containing materials on the Premises, or the Airport, Lessee shall be solely responsible for the costs of remedying the disturbance or damage including, without limitation, the removal of any asbestos and asbestos-containing materials.

6.2.3. Plans and Specifications

Prior to the commencement of any work, from time to time, for the construction, installation, repair, replacement, expansion, alteration, modification or removal of the Leasehold Improvements on the Premises, but specifically excluding the construction, installation, repair, replacement, alteration, modification or removal of any interior, non-structural, tenant improvements and/or trade fixtures at the Leasehold Improvements that do not alter the square footage, the exterior appearance, or the structural elements of a building (the "Work"), Lessee shall submit to the Director, for approval, the Plans and Specifications for such Work, including the manner and method by which excavations in the Premises or the Airport are to be made and the depth at which any underground improvements are to be laid. Eight (8) sets of the complete Plans and Specifications for any Work shall be submitted to the Director at least ninety (90) days prior to the commencement of any planned Work. The Director and the Director of Planning, Building and Code Enforcement shall each have the right, by written approval of said Plans and Specifications, to impose reasonable changes, conditions and requirements relating to the manner, method, design and construction of Work which shall be conditions precedent to the Lessee proceeding with the design and construction thereof. All conditions, requirements and changes reasonably required by the Director and/or the Director of Planning, Building and Code Enforcement shall be incorporated into revised Plans and Specifications for any Work, copies of which shall be submitted to the Director within twenty (20) days after City's comments are delivered to Lessee. The revised Plans and Specifications for any Work shall be submitted, once again, to the Director for approval. This process shall continue until all of City's comments, changes, conditions and requirements have been incorporated into the Plans and Specifications for any Work. Approval of Work by the Director, as set forth in this Section, including the Plans and Specifications

therefore, shall not constitute a representation or warranty as to conformity with Laws or Airport requirements, which shall remain the Lessee's sole responsibility.

6.2.4. Review by Director of Planning, Building and Code Enforcement

City's Director of Planning, Building and Code Enforcement shall have the exclusive right to review and approve or disapprove Lessee's Plans and Specifications for conformity with City's laws and architectural design, and the Director reserves the right to review and reasonably approve all aesthetic considerations of Lessee's Plans and Specifications. The design of Leasehold Improvements shall conform to the general architectural requirements of City and the established architectural design scheme for the Airport. In the event of disapproval of any portion of the Plans and Specifications for any Work by the Director of Planning, Building and Code Enforcement, Lessee shall promptly submit the Plans and Specifications with the necessary modifications and revisions thereof following the procedure set out in subsection 6.2.3 above. o substantial or material changes or alterations shall be made by Lessee to the Plans and Specifications for any Work after the Director and Director of Planning, Building and Code Enforcement grant their approval of the Plans and Specifications without Lessee obtaining the prior written approval from both the Director and the Director of Planning, Building and Code Enforcement, which shall not be unreasonably withheld, conditioned or delayed.

6.2.5. Lessee Responsible for Compliance with Laws

Approval of the Plans and Specifications by the Director and/or the Director of Planning, Building and Code Enforcement shall not constitute a representation or warranty by City that the Plans and Specifications are in conformity with applicable Laws. Lessee shall be solely responsible for compliance of the Plans and Specifications and the Leasehold Improvements as built or as subsequently modified with all applicable Laws.

6.2.6. Inspection/"As Installed Plans" and Specifications

At the request of the Director, Lessee shall inspect the Leasehold Improvements jointly with representatives of the Department of Planning, Building, and Code Enforcement to verify the as-built drawings, which are incorporated in the Plans and Specifications. Upon completion of the Leasehold Improvements, Lessee shall promptly deliver to the Director copies of complete warranty specifications and the sepia and eight (8) complete sets of "as installed" detailed Plans and Specifications of the Work as completed (plus an AutoCad disk), showing all of the Leasehold Improvements in place, including all necessary mechanical and electrical systems.

6.3. Contract Requirements/Bonds/E&I Costs

6.3.1. Construction Contract Requirements

Lessee shall incorporate into any Construction Contract, and shall require its contractor to incorporate into any subcontracts, or contracts for material or equipment: (i) the Prevailing Wage requirements set forth in **EXHIBIT G**; (ii) requirements related to prevention and mitigation of Hazardous Materials releases in conformity with **EXHIBIT C**; and (iii) Section 7, "Legal Relations and Responsibility", of the General Provisions, and applicable Technical Provisions of the City of San Jose Department of Public Works Standard Specifications, dated July 1992 ("City Standard Specifications"). In the event of any conflict between the provisions of this Replacement Lease and the provisions of the City Standard Specifications, the provisions of this Replacement Lease shall apply. Lessee also shall ensure the compliance of all contractors and subcontractors with the provisions described above.

6.3.2. Performance and Payment Bonds

Prior to the commencement of any Work, Lessee shall furnish to City and file with the City Clerk, at no cost to City, a performance bond and a payment bond meeting the requirements set forth below. In addition to the specific requirements set forth below, each bond shall be issued by a surety licensed to do business in California, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the Work, be reasonably satisfactory to and approved by City's Risk Manager and the Director, and be approved as to form by the City Attorney for City. Immediately upon completion of any Work, Lessee shall record in the Official Records of the Santa Clara County Recorder a notice of completion complying with the requirements of California Civil Code Section 3093.

The performance bond shall be conditioned upon Lessee's contractor's faithful performance of the Construction Contract terms within the Construction Contract time, and shall name Lessee's contractor or contractors as principals, and City as obligee.

The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 3181, and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. The payment bond shall protect City from any liens, liability, losses or damages arising from the Work, and shall name Lessee's contractor or contractors as principals, and City as obligee.

6.3.3. E&I Costs

Lessee shall pay City for all of its costs for design and engineering review and inspections (“E & I Costs”) related to the Work performed after commencement of this Replacement Lease. City will establish a billing account (the “Account”) to which E & I Costs for such Work shall be charged. City’s E&I Costs will be billed from time to time against the Account at hourly rates based on City’s actual direct and indirect costs, including but not limited to salaries, benefits, overhead and other administrative expenses. Fees and other costs of any consultants hired by City in connection with construction of the Work shall be billed at the rate actually incurred by City for such services, without any markup or premium not otherwise expressly provided in this section.

6.4. Construction and Completion of Leasehold Improvements

6.4.1. Intentionally Not Used.

6.4.2. Progress of Work

Lessee shall construct and complete any Leasehold Improvements in a good and workmanlike manner in accordance with all applicable Laws, and shall carry such insurance as provided for in Section 17 of this Replacement Lease. During the Work, Lessee shall have the right and obligation to supervise the construction in the field.

6.4.3. Change Orders

Lessee shall obtain the Director’s prior written consent before signing any change order or changing the Plans and Specifications of any Work if: (i) the change materially changes the character or quality of the Work; or (ii) the change requires any extension of the scheduled completion date. Lessee shall provide City with copies of all change orders (whether or not the Director’s approval thereof is required) promptly after the execution thereof by all parties thereto. If Lessee proceeds, without the Director’s prior written approval, with construction on a change order for which the Director’s approval is required hereunder, the costs of reversing, removing or altering the Work covered by such change order shall be borne solely by Lessee.

6.4.4. Failure to Comply with City Requirements or Applicable Laws

If Lessee, for any reason, fails to comply with any of City's requirements or any other applicable Law concerning Lessee's construction of the Leasehold Improvements, City shall give Lessee written notice of such failure and shall have the right to require Lessee, at Lessee's sole expense, to alter, repair, or replace any non-compliant portion of the Leasehold Improvements within thirty (30) days of such notice, or such additional time as may be reasonably necessary provided Lessee commences the correction of such failure within

thirty (30) days of receiving such notice and thereafter diligently pursues correction of such failure to completion. In the event that Lessee fails to perform any such replacements, alterations or repairs after notice and demand from City and the passage of such cure period, City may, in its sole discretion, thereafter cure such failure and cause such replacements, alterations, or repairs to be made or perform any other required action as shall bring the Leasehold Improvements into compliance with any applicable Laws. Lessee agrees to promptly reimburse City for such costs, plus ten percent (10%) thereof for administrative overhead as such percentage is approved and established from time to time by the City Council. In the event that after giving such notice to Lessee and the passage of such cure period City declines to cure such failure and cause the required replacements, alterations or repairs to be performed, City may, in its sole discretion, declare this Replacement Lease in default, terminate this Replacement Lease pursuant to the termination for default provisions in Section 13 of this Replacement Lease. Lessee's obligation to reimburse City for such expenditures shall survive the termination of this Replacement Lease.

6.5. General Approvals

Lessee, at its own cost and expense, shall procure all permits and insurance necessary for all Work (including but not limited to any required environmental permits or clearance and approvals from any governmental agency or entity, including City departments other than the Airport). Lessee shall require in any Construction Contract for the construction of the Leasehold Improvements that its contractor comply with all applicable Laws.

All work required in the construction of Leasehold Improvements, including any site preparation work, landscaping work, utility installation work as well as actual construction work on the Premises, shall be performed only by competent contractors duly licensed under the laws of the State of California and shall be performed pursuant to written contracts with such contractors.

The Director's approval of the Plans and Specifications shall not be deemed to include the approval of City's Director of Planning, Building and Code Enforcement, or any other City department or governmental or public entity which Lessee may be required to obtain.

6.6. Liens

Lessee shall keep the Premises and the Airport free of any liens arising out of the Work performed, materials furnished or obligations incurred by Lessee in the performance of any construction or installation of the Leasehold Improvements. Lessee shall notify City at least ten (10) Business Days prior to the commencement of any Work to be performed or materials to be furnished on the Premises or the Airport which could give rise to any such lien, and City shall have the right to post and keep on the Premises of the Airport any notices that may be required by law or which City may deem proper for Ground Lease and Operating Agreement

the protection of City, the Premises or the Airport from such liens. Notwithstanding the foregoing, if a lien is filed against the Premises or the Airport, Lessee shall not be in default of this Section 6.6 if Lessee is in compliance with the provisions of Section 6.12.

6.7. Airport Obstructions

City reserves the right to take any action it considers necessary, without liability to Lessee for any damage caused thereby, to protect the aerial approaches of the Airport against obstruction or hazard, together with the right to prevent Lessee from erecting, or permitting to be erected, or to require the removal of any building or other structure on the Premises or the Airport which, in the reasonable opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

6.8. City Not Responsible for Work

City shall not be responsible to Lessee or any other party for the performance of the contractor or contractors under any Construction Contract. City shall not be required to pay or provide any moneys for the Work. Failure of the contractor or contractors to complete the, construction, and installation of the Leasehold Improvements in accordance with any Construction Contract shall in no way affect the obligations of Lessee under this Replacement Lease.

6.9. Lessee's Failure to Diligently Pursue Construction

If after commencing any Work on any Leasehold Improvements, Lessee (without the Director's prior written consent) ceases such Work for thirty (30) continuous days (other than cessation of Work due to Force Majeure Event), such cessation of Work shall be an Event of Default hereunder, and, in addition to any remedy under Section 13.2 hereof, City shall have the right, upon seven (7) days written notice to the Lessee, to take over the management, at Lessee's sole cost and expense, of Lessee's construction of the Leasehold Improvements.

6.10. Alterations/Refurbishments [CONFORM TO TIMING OF TRANSACTION AS NOTED BELOW]

Subject to compliance with all applicable permitting and reasonable approval requirements of City and any other regulatory agency having jurisdiction over the Premises, at its own cost and expense (except as otherwise provided herein); install any fixture or tenant improvement or do or make alterations or do any remodeling, repair, construction or modification to the Premises, collectively "Modifications". For the avoidance of doubt, however, Lessee shall only be required to obtain the prior written consent of the Director for any Modifications to structural elements of the Leasehold Improvements, modifications that increase the square footage of a building on the Premises and the construction, installation, replacement, alteration, modification or removal to the exterior of the Leasehold Improvements. Any such Modifications shall

be made in conformance with the construction provisions in this Section 6. Promptly following the completion of any Modifications, Lessee shall furnish the Director the sepia and seven (7) complete sets of "as installed" detailed Plans and Specifications of the Work as completed, and a CAD disk if requested by the Director.

6.11. Title to Leasehold Improvements

On the Effective Date of the Replacement Lease, title to all Leasehold Improvements shall automatically vest in Lessee. Concurrent with the execution of this Replacement Lease, City shall execute, acknowledge and deliver (a) to Lessee a proper instrument in writing releasing and quitclaiming to Lessee all right, title and interest of City in and to the Leasehold Improvements, and (b) to Gilead a proper instrument in writing releasing and quitclaiming to Gilead all right, title and interest of City in and to the Gilead Sublessee Improvements, each of which shall be recorded with the Santa Clara County Recorder. During the Term, title to the Leasehold Improvements shall remain in Lessee and title to the Gilead Sublessee Improvements shall remain in Gilead. For the avoidance of doubt, it is acknowledged that Lessee may during the Term convey to one or more of its other permitted sublessee(s) any Leasehold Improvements that belong to Lessee. Upon the expiration or earlier termination of the Term, except as to those Leasehold Improvements that City requires Lessee to remove, title to the Leasehold Improvements shall automatically vest in City and Lessee shall execute, acknowledge and deliver to City a proper instrument in writing releasing and quitclaiming to City all right, title and interest of Lessee in and to the Premises and any Leasehold Improvements remaining thereon by virtue of this Lease or otherwise.

6.12. Claims by Mechanics or Material Suppliers

Following execution of this Replacement Lease, in the event any of the persons or entities entitled to make claims pursuant to California Civil Code Sections 3181 or 3248(b) record a claim of lien (whether valid or invalid) in the official records of the County of Santa Clara County, California arising from the acts or omissions of Lessee occurring on or after the Effective Date, then Lessee shall, at its election and at its sole cost and expense, and within fifteen (15) days of receiving written notice of such recorded lien, (i) cause the same to be removed; or (ii) pay the same in full or, (iii) commence an action to contest such lien and deliver a bond in the amount of such lien to City. The obligation of Lessee contained in the preceding sentence shall exist notwithstanding the fact that the general contractor or a subcontractor may have been paid for such work.

Section 7. Mortgage of Premises

7.1. Prohibited Encumbrances

Except as permitted in Section 7.2, Lessee shall not:

- a. Engage in any financing or other transaction placing any mortgage or deed of trust upon the Premises herein or the Leasehold Improvements constructed thereon; or
- b. Place or suffer to be placed upon the Premises therein or the Leasehold Improvements any lien, levy, attachment or other encumbrance arising from the acts or omissions of Lessee occurring on or after the Effective Date (other than a lien upon the Premises or the Leasehold Improvements for taxes or assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Lessee shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided the Lessee shall (except for a contest pursuant to Section 19.3) first furnish adequate security to the reasonable satisfaction of City to protect title to the Premises during the pendency of such contest or appeal.

Any such mortgage, deed of trust, levy, attachment, encumbrance or lien (collectively, "Encumbrance") shall be deemed to be a violation of this covenant on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless Lessee shall, within twenty (20) days of receiving notice of the filing of record of the Encumbrance against the Premises and/or Leasehold Improvements, (i), remove such Encumbrance of record, or (ii) or provide adequate security to the reasonable satisfaction of City to protect the Premises and/or the Leasehold Improvements thereon from such Encumbrance.

7.2. Lessee's Rights to Encumber.

An Encumbrance permitted pursuant to this Section 7.2 shall be referred to as a "Permitted Mortgage." Lessee may, at any time and from time to time during the Term, encumber to any Person (hereinafter called "Lender") by deed of trust or mortgage or other security instrument, all of Lessee's interest under this Replacement Lease, the leasehold estate hereby created in Lessee and the Leasehold Improvements owned by Lessee (collectively, "Lessee's Interest"), for the purpose of financing the cost of constructing the Leasehold Improvements owned by Lessee, or to otherwise finance Lessee's business operations (including future improvements) or for the purpose of restructuring or refinancing any debt permitted by this Replacement Lease, provided that Lessee obtains the prior written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned, and further provided that:

- a. Except as otherwise expressly provided in this Replacement Lease or in a separate document executed by City, all rights acquired by a mortgagee under a Permitted Mortgage shall be subject and subordinate to each and all of the covenants, conditions and restrictions set forth in this Replacement Lease, and to all rights of City hereunder, none of which covenants, conditions and restrictions is or shall be waived by City by reason of the giving of

such Permitted Mortgage, except as expressly provided in this Replacement Lease or in a separate document executed by City. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Replacement Lease has not been terminated, Lessee shall remain liable for the payment of Ground Rental and all other fees and charges payable pursuant to this Replacement Lease, and for the performance of all of the terms, covenants and conditions of this Replacement Lease which by the terms hereof are to be carried out and performed by Lessee.

- b. Lessee shall give City thirty (30) days prior written notice of any such Permitted Mortgage, and shall accompany the notice with a true copy of the Permitted Mortgage.
- c. Lessee provides all reasonably requested information to City necessary or desirable in order to obtain consent.
- d. No Encumbrance incurred by Lessee pursuant to this Section shall, and Lessee shall not have power to incur any Encumbrance that will constitute in any way a lien or encumbrance on the fee of the Premises or any interest of City in the Premises.
- e. The principal amount of the Encumbrance shall not exceed (when added to the principal balances of any other then-existing Permitted Mortgages not being refinanced thereby) an amount equal to seventy-five percent (75%) of the then fair market value of Lessee's Interest. Lessee shall submit its Lenders appraisal which shall be used to determine fair market value. In the event that City disagrees with the Lender's appraisal, then the appraisal process stipulated in Section 5.3.2 shall apply.
- f. No Encumbrance incurred by Lessee pursuant to this Section shall extend beyond the Term of this Replacement Lease.
- g. The Encumbrance shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease, except as City may otherwise agree in its sole discretion or as City may have agreed in a separate agreement.
- h. An encumbrance may be given only pursuant to a bona fide loan transaction. The holder of an encumbrance is herein referred to as a Permitted Mortgagee.

In order to facilitate the approval of an Encumbrance obtained for the purpose of constructing the Leasehold Improvements as described in

EXHIBIT F attached hereto, the Director is authorized to consent to said Encumbrance provided that all provisions of this Section 7.2 are complied with by Lessee and that all documents in connection therewith are approved as to form by the City Attorney of City, such consent not to be unreasonably delayed, conditioned or withheld.

7.3. Notice of Loan Default.

Any Permitted Mortgage that contains a power of sale as defined by California law, shall contain a provision that a copy of any notice of default and a copy of any notice of sale under such deed of trust or mortgage shall be mailed to City at the address specified in Section 37 of this Replacement Lease, simultaneously with any such notice to Lessee.

7.4. Notice to and Service on Lender.

Lessee shall at all times keep City informed in writing of the name and mailing address of Lender and any changes in Lender's mailing address. No Permitted Mortgagee shall have the rights or benefits mentioned in this Section 7 nor shall the provisions of this Section 7 be binding upon City, unless and until the name and address of the Permitted Mortgagee shall have been delivered to City, notwithstanding any other form of notice, actual or constructive.

7.5. Rights of Lender.

Should Lessee grant any Permitted Mortgage pursuant to Section 7.2 of this Replacement Lease, the Lender shall have the right at any time during the term of this Replacement Lease and the existence of the Permitted Mortgage to:

- a. Do any act or thing required of Lessee under this Replacement Lease which may be necessary and proper to be done in observance of the covenants and conditions of this Replacement Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Lessee's rights under this Replacement Lease as if done by Lessee, provided that Lender complies with Section 7.6.
- b. Realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the Permitted Mortgage and to:
 - i. Transfer, convey, or assign the title of Lessee to the leasehold estate created by this Replacement Lease to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Permitted Mortgage; provided, however, that Lender first complies with the provisions of Section 7.6.

- ii. Acquire and succeed to the Lessee interest by virtue of any foreclosure sale, whether the foreclosure sale be conducted pursuant to a court order or pursuant to a power of sale contained in the Permitted Mortgage.

7.6. Right of Lender to Cure Defaults.

If Lessee, or Lessee's successors or assigns, shall mortgage this Replacement Lease in compliance with the provisions of this Section 7, then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

- a. City, upon serving upon Lessee any notice of default pursuant to the provisions of Section 13 hereof, or any other notice under the provisions of or with respect to this Replacement Lease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address provided for in such notice by Lessee, and no notice by City to Lessee hereunder shall affect any rights of a Permitted Mortgagee unless and until a copy thereof has been so served to such Permitted Mortgagee.
- b. Any Permitted Mortgagee, in case Lessee shall be in default hereunder, shall, within the period provided for Lessee to cure such default and otherwise as herein provided, have the right, but not the obligation, to remedy such default or cause the same to be remedied, and City shall accept such performance by or at the instance of the Permitted Mortgagee as if the same had been made by Lessee; provided, however, that if the breach or default is with respect to the construction of the Leasehold Improvements, nothing contained in this Section or any other Section or provision of this Replacement Lease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Leasehold Improvements beyond the extent necessary to conserve or protect such Leasehold Improvements or construction already made without first having expressly assumed the Lessee's obligation to City to complete, in the manner provided in this Replacement Lease, the Leasehold Improvements on the Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.
- c. For the purposes of this Section 7, no Event of Default, other than an Event of Default due to a default in the payment of money, shall be deemed to exist under Section 13 hereof with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith,

have been commenced by Lessee or a Permitted Mortgagee within the time permitted therefore to rectify the same and shall be prosecuted to completion with diligence and continuity as Section 13 hereof provides.

- d. Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money, City shall take no action to effect a termination of this Replacement Lease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than thirty (30) days within which to either (i) obtain possession of the mortgaged property (including possession by a receiver), or (ii) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Lessee's interest under this Replacement Lease. A Permitted Mortgagee, upon acquiring Lessee's interest under this Replacement Lease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (i) such Permitted Mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured; (ii) nothing herein contained shall preclude City, subject to the provisions of this Section, from exercising any rights or remedies under this Replacement Lease with respect to any other default by Lessee during the pendency of such foreclosure proceedings; and (iii) such Permitted Mortgagee shall agree with City, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Replacement Lease as are reasonably susceptible to being complied with by such Permitted Mortgagee. Any default by Lessee not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in subsection 13.1.10 of Section 13, shall be deemed waived by City upon completion of such foreclosure proceedings or upon such acquisition of Lessee's interest in this Replacement Lease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the leasehold estate of this Replacement Lease through such foreclosure proceedings or by assignment of this Replacement Lease in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the leasehold estate of this Replacement Lease through foreclosure proceedings or by an assignment of this Replacement Lease in lieu of foreclosure shall

be deemed by such acquisition to have assumed all of Lessee's rights and obligations under this Replacement Lease which are reasonably susceptible to being performed by such party.

- e. In the event of the termination of this Replacement Lease prior to the Expiration because of Lessee's default, or operation of law, City shall serve upon the holder of the senior Permitted Mortgage written notice that the Replacement Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Replacement Lease but for such termination, and of all other defaults, if any, under this Replacement Lease then known to City. The senior Permitted Mortgagee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions:
 - i. Upon the written request of the Permitted Mortgagee, within sixty (60) days after service of such notice that the Replacement Lease has been terminated, City shall enter into a new lease of the Premises and Leasehold Improvements thereon with such holder, or its designee, as follows:
 - ii. Such new lease shall be the same priority as this Replacement Lease, shall be effective as of the date of termination of this Replacement Lease, and shall be for the remainder of the term of this Replacement Lease and at the Ground Rental and upon all the agreements, terms, covenants and conditions hereof. Such new lease shall require that the Lessee perform any unfulfilled obligation of Lessee under this Replacement Lease which is reasonably susceptible to being performed by such Lessee. Upon the execution of such new lease, the Lessee named therein shall pay any and all sums which would at the time of the execution hereof be due under this Replacement Lease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such new lease. Upon the execution of such new lease, City shall allow to the Lessee named therein and such Lessee shall be entitled to an adjustment in an amount equal to such expenses from the net income, if any, derived by City from the Premises during the period from the date of termination of this Replacement Lease to the date of execution of such new lease.

- f. Any notice or other communication which City shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Replacement Lease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for in Section 37 hereof, or at such other address as shall be designated by such holder in writing given to City by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Replacement Lease shall desire or is required to give to or serve upon City shall be deemed to have been duly given or served if (i) sent by certified mail, return receipt requested, addressed to City at City's address as set forth in Section 37 of this Replacement Lease or at such other addresses as shall be designated by City by notice in writing given to such holder by certified mail, return receipt requested, and (ii) sent by certified mail, return receipt requested, to City's other mortgagees, if any.
- g. Effective upon the commencement of the term of any new lease executed pursuant to Subsection e. of this Section, all subleases then in effect shall be assigned and transferred without recourse by City to the Lessee under such new lease, and all monies on deposit with City which Lessee would have been entitled to use but for the termination or expiration of this Replacement Lease may be used by the Lessee under such new lease for the purposes of and in accordance with the provisions of such new lease.
- h. Anything herein contained to the contrary notwithstanding, the provisions of this Section 7 shall inure only to the benefit of the holders of Permitted Mortgages.

7.7. Lender as Assignee of Lease.

No Lender under a Permitted Mortgage granted by Lessee pursuant to Section 7.2 of this Replacement Lease shall be liable to City as an assignee of this Replacement Lease unless and until such time as Lender acquires all rights of Lessee under this Replacement Lease through foreclosure or other proceedings in the nature of foreclosure or as a result of some other action or remedy provided by law or the instrument creating the Permitted Mortgagee and in such event the Lender shall have no personal liability for the prior acts or omission of Lessee. However, Lender shall cure any default in accordance with the terms of the Replacement Lease.

7.8. Lender as Including Subsequent Security Holders.

The term "Lender" as used in this Replacement Lease shall mean not only the Person

or Persons that loaned money to Lessee and is/are named as beneficiary, mortgagee, secured party, or security holder in a Permitted Mortgage, but also all subsequent assignees and holders of the Permitted Mortgage.

7.9. Affirmation of Replacement Lease in Bankruptcy.

In the event of the filing of a petition in bankruptcy by the Lessee, and the Lessee rejects this Replacement Lease under Section 365 of the United States Bankruptcy Code, City shall, upon the request of a Permitted Mortgagee, enter into a new Replacement Lease on the same terms and conditions with the Permitted Mortgagee immediately upon Lessee's rejection of this Replacement Lease.

Section 8. Maintenance of Premises

8.1. "Maintenance" Defined

Lessee shall be obligated at all times throughout the Term, without cost to City, to maintain the Premises in good appearance, repair, clean and safe condition, and in a condition otherwise reasonably satisfactory to the Director, reasonable wear and tear excepted. Lessee, at its sole cost, shall promptly make all necessary repairs and replacements. All maintenance, repair and replacement shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, reasonable wear and tear excepted. When used in this Replacement Lease, the term "maintenance" shall include all repairs, alterations, replacements, maintenance and/or removals deemed reasonably necessary by Director.

8.2. Quality of Maintenance

The Director shall use reasonable discretion in determining the quality of maintenance of the Premises. City's employees and agents may, during normal business hours at reasonable times scheduled in advance with Lessee, enter upon the Premises to inspect the Leasehold Improvements and operations of Lessee and its sublessees(s). The operations of Lessee and its sublessee(s) shall not be disturbed or interfered with by such inspections. If Lessee fails to perform the maintenance of the Leasehold Improvements as required by this Replacement Lease, the Director will notify Lessee in writing of such breach of this Replacement Lease. If the failure to maintain described in such notice is not corrected by Lessee within fifteen (15) days after receipt of notice (or such additional period of time is necessary if Lessee has commenced efforts to cure such breach within such time period and diligently prosecutes the same to completion), City shall have the right (but not the obligation) to enter upon the Premises at reasonable times scheduled in advance with Lessee and perform the necessary maintenance. Upon receipt of the notice of the cost of such maintenance by City along with supporting backup, Lessee agrees to promptly reimburse City for the actual maintenance cost incurred by City (plus an additional amount equal to overhead costs in accordance with then existing written City policy for administrative overhead) to correct such failure to maintain the Leasehold Improvements as required by this Replacement Lease.

8.3. Lessee's Waiver of Any Rights to Make Repairs at City's Expense

Lessee expressly waives all statutory rights to make repairs at the expense of City and to deduct the cost of such repairs from the Ground Rental. Without limiting the generality of the foregoing, Lessee hereby waives California Civil Code Sections 1932(2) and 1933(4), providing for termination of hiring upon destruction of the thing hired, and California Civil Code Sections 1941 and 1942, providing for repairs to and of the Leasehold Improvements.

8.4. Janitorial Service

Lessee, at its sole cost and expense, shall keep and maintain the Premises clean and free of rubbish, dirt, garbage, and other waste matter at all times and shall provide and pay for regular janitorial and other service necessary for the proper maintenance of the Premises in a clean and sanitary manner. Lessee, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage and other waste matter to be removed daily from the Premises.

8.5. No Waste

Neither Lessee, its employees, distributors or agents shall commit, nor suffer, permit or allow to be committed, any waste or public or private nuisance on the Premises nor any other act or thing which may unreasonably disturb the quiet enjoyment of any other lessee, permittee, licensee, invitee or other Person using or occupying any portion of the Airport.

8.6. Landscaping/ Miscellaneous

Lessee, at its sole cost and expense, shall:

- a. make all alterations, additions, or repairs to the Premises required by any applicable Law;
- b. maintain any trees or landscaping on the Premises that City requires as a condition to the development of the Leasehold Improvements, in accordance with the requirements of City;
- c. observe and comply with all applicable Laws made or issued respecting the Premises; and
- d. indemnify and hold City and the property of City including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Lessee's failure to comply with and perform the requirements of this Section 8.

Section 9. Books and Records

9.1. Minimum Retention Period

Lessee shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to fees, charges, taxes or other amounts payable by Lessee to City pursuant to this Replacement Lease for a minimum of four (4) years from the date of each payment to City pursuant to this Replacement Lease.

9.2. Availability of Records

Any records or documents required to be maintained pursuant to this Replacement Lease shall be made available for inspection or audit, at any time during regular business hours, upon the reasonable prior written request by the Director, City Attorney, and City Auditor, City Manager or a designated representative of any of these offices. Copies of such documents shall be provided for inspection at the Premises.

Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Lessee's business, City may, by written request by any of the above-named officers, require that custody of records be given to City and that the records and documents be maintained at a location designated by the Director, City Attorney, City Auditor or City Manager. Access to such records and documents shall be granted to any party authorized by Lessee, its representatives or its successor-in-interest.

9.3. Audit of Records/Discrepancy

If any examination, inspection or audit of Lessee's books and records by City discloses an underpayment by Lessee, Lessee shall promptly pay City the amount of such underpayment, and if such underpayment is in excess of one percent (1%) of fees and charges due, Lessee shall promptly reimburse City for all costs incurred in the conduct of such examination, inspection or audit, including interest from the time such underpayment was due, at the rate of twelve (12%) per annum.

Section 10. Utilities

10.1. Utility Services

Lessee shall secure and pay directly to the respective utility companies any electrical, gas, water, sewer, garbage, recycling and telephone services to the Premises. The location, relocation and coordination of all utilities and telephone facilities to service the Premises shall be subject to the prior written approval of the Director, not to be unreasonably delayed or withheld.

10.2. Interruption of Utility Services

Lessee agrees that it shall take reasonable steps and any such other action that it deems necessary to protect Lessee's equipment from any damage that may be caused to such equipment in the event of any deficiency, impairment and/or interruption of utility services. City shall not be liable for any failure to furnish to, or for any interruption in, any services or utilities benefiting the Premises and Lessee shall not be entitled to

any damages resulting from such failure or to any diminution or abatement in any Ground Rental or other amounts payable by Lessee hereunder. Lessee waives any and all claims and/or causes of action against City for any such damages.

Section 11. Avigation Easement

City hereby reserves to itself and its successors and assigns, for the benefit and use of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. 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 the said airspace or landing at, taking off from or operating on the Airport. For the purpose of this Replacement Lease, all rights reserved pursuant to this Section 11 are referred to collectively herein as the "Avigation Easement." This Avigation Easement shall not operate to deprive Lessee, its sublessee(s), agents, contractors, directors, employees, officers, and representatives, of any rights which Lessee, its agents, sublessee (s), contractors, directors, employees, officers, and representatives, may from time to time have against any operator of aircraft or third parties responsible for any act or omission respecting the operation of aircraft.

11.1. Lessee's Assumption of Risk

As between Lessee and City, Lessee agrees to voluntarily assume all risk of loss, damage, or injury to the property of Lessee (including the right of Lessee to occupy the Premises), its agents, contractors, directors, employees, officers, and representatives, in or about the Airport or the Premises which may be caused by or arise or occur in any manner:

- a. From the flight of any aircraft of any and all kinds now or hereafter flown in, through, across, or about any portion of the air space over the Airport or the Premises; or
- b. From noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during such flight, 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.

This provision does not waive Lessee's right against third parties arising from such third parties' action or inaction.

11.2. Waiver and Release

Lessee hereby waives and releases City, its agents, contractors, directors, employees, officers, and representatives, from any and all claims or causes of action which it may now or hereafter have against City, its agents, contractors, directors, employees,

officers and representatives, for any such loss, damage or injury as it pertains to this reservation of Avigation Easement.

Section 12. Assignment or Transfer

12.1. Consent

Except as otherwise provided for in Section 7 of this Replacement Lease (Mortgage of Premises), Lessee shall not assign, sublease (other than those subleases entered into in the ordinary course of its business), convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Replacement Lease, the Premises or any part thereof, or any rights of Lessee hereunder, whether voluntarily or by operation of law (collectively or singularly, a "Transfer"), without the prior written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. A Transfer within the meaning of this Section shall include, but is not limited to, the following: the incorporation of an individual Lessee and the transfer of Lessee's rights hereunder to the corporation which is not wholly owned by Lessee; in the event that Lessee is a partnership, incorporation of Lessee and transfer of Lessee's rights hereunder to the corporation, or the withdrawal or addition of any partner to Lessee's partnership; in the event that Lessee consists of co-tenants, the incorporation of Lessee and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of his, her or its rights hereunder to his, her or its co-tenant or to a third person; in the event that Lessee is a corporation or a limited liability company, the change in the ownership of fifty percent (50%) or more of the capital stock or membership interests of Lessee; and, in the event that Lessee is an unincorporated association, the incorporation of Lessee and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association. Notwithstanding anything in this Section 12 to the contrary, Lessee may without City's consent assign or sub-sublet to any Affiliate (as such term is defined below) (i) this Lease, (ii) the Premises and/or (ii) the Leasehold Improvements thereon and/or any interest in Lessee, in whole or in part, outright or by operation of law. The term "Affiliate" shall mean Blue City Holdings LLC, Google Inc., and/or any executive, member, manager and/or director (including their heirs, decedents, family trusts and other estate planning entities) of BCH San Jose LLC, Blue City Holdings LLC, and/or Google Inc. and/or any other entity that is controlled or majority-owned by any of the foregoing.

12.2. Factors for City to Consider

In determining whether to consent to a Transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee if the Lessee's interest in this Replacement Lease is being transferred; (ii) the type of activity proposed to be conducted by such transferee at the Airport, if the activity is to change from what the Lessee is then conducting; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity, if Lessee's interest in this

Replacement Lease is being transferred; (iv) the past service record of the proposed transferee, if the Lessee's interest in this Replacement Lease is being transferred; (v) references of the proposed transferee, if the Lessee's interest in this Replacement Lease is being transferred; (vi) any cost to City associated with such proposed Transfer; and (vii) any potential impacts on availability of and competition by FBO services at the Airport. In addition, City's consent to any proposed Transfer under this Replacement Lease may be conditioned upon, among other things, the express written assumption by the proposed transferee (if the Lessee's interest in this Replacement Lease is being transferred) of Lessee's obligations under this Replacement Lease and/or performance of required or necessary repairs or maintenance to the Premises.

12.3. Processing Fee

City may require payment by Lessee of any processing fee established by City pursuant to a resolution or ordinance for reviewing the proposed Transfer and preparing any documents in connection therewith. Lessee's failure to provide City with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for City to deny consent to, or to refuse to review, the proposed Transfer.

12.4. Consent Does Not Constitute Waiver

Consent by City, or if authorized, the Director, to any Transfer shall not in any way be construed to relieve Lessee from obtaining further authorization from City (or the Director) for any subsequent Transfer of any nature whatsoever. Any Transfer of the Premises, or any part thereof, in violation of the provisions of this Section, shall be void and shall be an Event of Default and the acceptance by City of any rent as provided herein or the continuation of the use of the Premises, as provided herein, by Lessee or Lessee's transferee, sublessee, assignee, or successor-in-interest, shall not be deemed a waiver of such Event of Default. Any and all requests by Lessee to City for authorization to make any Transfer shall be made in writing by certified mail to the Director and shall include copies of the proposed documents of Transfer.

Section 13. Default

13.1. Events of Default

In addition to the other defaults specified in this Replacement Lease, City may determine in its sole discretion that Lessee is in default under this Replacement Lease, if any of the following events (individually an "Event of Default" and collectively "Events of Default") shall occur:

13.1.1. Failure to Pay Ground Rental, Fees or Charges

Lessee shall have failed to pay when due any Ground Rental, fee, or charge of Lessee due to City under the terms of this Replacement Lease and such failure shall have not been cured within ten (10) days after written notice thereof; or

13.1.2. Failure to Maintain Operations

Lessee shall have abandoned, or vacated all of the Leasehold Improvements on the Premises or failed to maintain continuous operations of all of the Leasehold Improvements on the Premises for a period of more than forty-eight (48) hours without the consent of Director; provided, however, that if such abandonment or vacation or failure to maintain continuous operations is the result of a casualty damage to the Premises, construction or remodel of improvements on the Premises, any Force Majeure Event or any other similar cause beyond Lessee's reasonable control, such involuntary day period of nonuse shall be excluded in computing the period set out above; or

13.1.3. Failure to Maintain Insurance

Lessee shall have failed to maintain any insurance required under Section 18 and such failure shall have not have been cured within ten (10) days after written notice thereof; or

13.1.4. Failure to Restore Security Deposit

Lessee shall have failed to restore the security deposit if and as required under Section 5.4 and such failure shall have not been cured within ten (10) days after written notice thereof; or

13.1.5. Intentionally Not Used

13.1.6. Failure to Perform Other Terms

Lessee shall have failed to perform any term, covenant, or condition of this Replacement Lease to be performed by Lessee, except those referred to in Sections 13.1.1, 13.1.2, 13.1.3, or 13.1.4 and Lessee shall have failed to cure same within thirty (30) days after written notice from City; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

13.1.7. Representations and Warranties

Any representation or warranty made by Lessee hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or

13.1.8. Assignment of Assets to Creditors

Lessee shall have made a general assignment of its assets for the benefit of its creditors; or

13.1.9. Unauthorized Assignment

Lessee shall have assigned or otherwise transferred its interest in this Replacement Lease in violation of the provisions contained in this Replacement

Lease whether voluntarily or by operation of law (which shall be deemed an incurable default); or

13.1.10. Bankruptcy or Insolvency

A court shall have made or entered any decree or order: (i) adjudging Lessee to be bankrupt or insolvent (ii) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Lessee and such decree or order shall have continued for a period of sixty (60) days; or (v) Lessee shall have voluntarily submitted to or filed a petition seeking any such decree or order; or

13.1.11. Attachment or Levy of Lessee's Interest in Replacement Lease

The sequestration or attachment of or execution or other levy on Lessee's interest in this Replacement Lease or the Premises or any improvements located thereon shall have occurred and Lessee shall have failed to contest such sequestration, attachment, execution or levy or have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever occurs first; or

13.1.12. Revocation or Suspension of Required Authorizations

The occurrence of any act or omission on the part of Lessee which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Lessee to lawfully conduct the Permitted Activities on the Premises which has not been cured within thirty (30) days after written notice to Lessee, provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

13.1.13. Undischarged or Uncontested Liens

Any Lien shall be filed against the Premises because of any act or omission of Lessee, and shall not be discharged or contested by Lessee in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by City; or

13.1.14. Violation of Gift Prohibitions

Lessee violates the Replacement Lease Section titled "Prohibition of Gifts" (which shall be deemed an incurable default); or

13.1.15. Failure to Remedy Hazardous Materials Discharge or Release

Lessee fails to remedy any Hazardous Materials Discharge or Release as required pursuant to the terms of this Replacement Lease, and Lessee shall have failed to cure same within thirty (30) days after written notice from City; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

13.1.16. Failure to Remedy a Violation of Any Laws

Failure to remedy a violation of any laws, rules or regulations as specified under Section 25.1 and 25.2 of this Replacement Lease, now in force or which may hereafter be in force pertaining to the Premises and Lessee's operations and activities thereon, and Lessee shall have failed to cure same within thirty (30) days after written notice from City; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days reasonably are required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

City acknowledges that it will take an undetermined period of time after the execution of this Replacement Lease for Lessee to transition into the resumption the operations of a fixed base operation at the Premises. City will work with Lessee in good faith after the execution of this Replacement Lease to expedite all of the necessary permits, licenses, consents and other approvals necessary for Lessee to operate a fixed base operation at the Premises. In recognition of such transition period, notwithstanding anything herein to the contrary, for a period of not less than (1) one year following execution of this Replacement Lease, with the exception of Lessee's obligations under 13.1.1, 13.1.3, 13.1.4, 13.1.7, 13.1.8, 13.1.9, 13.1,10, 13.1.11 and 13.1.14 Lessee shall not be in default under this Replacement Lease for any failure to perform an obligation hereunder so long as Lessee is using good faith, reasonable efforts to correct the breach or failure to perform.

13.2. Remedies

Upon an Event of Default, City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Replacement Lease, to which City may resort cumulatively, or in the alternative:

13.2.1. City's Right to Cure

City may, at any time without notice to Lessee and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Lessee, and without a waiver of such breach, perform any act which if performed by Lessee would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, Lessee

covenants to pay to City upon demand by City, the sum or sums of money paid or incurred by City, together with interest at the maximum rate allowed by law plus costs and damages, as part of its Ground Rental due on the first (1st) day of the month which immediately follows City's demand therefore.

13.2.2. Termination of Replacement Lease

City may, at its election, terminate this Replacement Lease upon written notice of termination in which event this Replacement Lease shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve Lessee from the payment of any sums then due to City or from any claim for damages or Ground Rental previously accrued or then accruing against Lessee. In no event shall any one or more of the following actions by City, in the absence of a written election by City to terminate this Replacement Lease, constitute a termination of this Replacement Lease:

- a. Appointment of a receiver or keeper in order to protect City's interest hereunder; or
- b. Any other action by City or its agents intended to mitigate the adverse effects of any breach of this Replacement Lease by Lessee, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of Lessee and in the name of Lessee.

13.2.3. Written Notice of Termination Required

This Replacement Lease shall not terminate following an Event of Default and an abandonment of the Premises unless City gives Lessee written notice of its election to terminate this Replacement Lease. No act by or on behalf of City intended to mitigate the adverse effect of such breach shall constitute a termination of Lessee's right to possession unless City gives Lessee written notice of termination.

13.2.4. Damages

In the event City terminates this Replacement Lease following an Event of Default, City shall be entitled to damages in the following sums:

- a. The worth at the time of award of all unpaid Ground Rentals, Fees and Charges which have been earned at the time of termination;
- b. The worth at the time of award of the amount by which the unpaid Ground Rentals, fees and charges which would have been earned after termination until the time of award exceeds the amount of such Ground Rentals, fees and charges loss that Lessee proves could have been reasonably avoided;

- c. The worth at the time of award of the amount by which the unpaid Ground Rental for the balance of the Term after the time of award exceeds the amount of such Ground Rental loss that Lessee proves could be reasonably avoided; and
- d. Any other amount necessary to compensate City for all detriment proximately caused by Lessee's failure to perform its obligations under this Replacement Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following (i) expenses for cleaning, repairing or restoring the Premises; (ii) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of Ground Rental, direct payment or allowance to Lessee, or otherwise); (iii) costs of carrying the Premises such as insurance premiums thereon, utilities and security precautions; (iv) expenses in retaking possession of the Premises; and (v) late payment fees and court costs.
- e. The "worth at the time of award" of the amounts referred to in subparagraphs 13.2.4 (a), (b) and (c) above shall be computed by allowing interest at the rate of twelve percent (12%) per annum, and by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.2.5. Acceptance of Partial Payments by City

No payment by Lessee, or receipt by City, of a lesser amount than any Ground Rental, fee or charge or other amount due by Lessee hereunder shall be deemed to be other than on account, nor shall any endorsement or statement on any check from Lessee, or letter accompanying any check or payment, be deemed an accord and satisfaction. City may accept any such check or payment without prejudice to City's right to recover the balance of such Ground Rental, fee or charge or other amount or to pursue any other right or remedy available to City.

13.3. Remedies Cumulative

No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Replacement Lease or now or hereafter existing at law or in equity. No option, right, power, remedy or privilege of City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

Section 14. Waiver of Claims

14.1. No Waiver by City

14.1.1. Waiver of Specific Breaches/Custom or Practice

The waiver by City of any breach of any provision of this Replacement Lease shall not be deemed to be a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part of any provision be construed to waive or to lessen the right of City to insist upon the performance by Lessee in strict accordance with the provisions of this Replacement Lease.

14.1.2. Acceptance of Ground Rental, Fees or Charges

The acceptance of the Ground Rental fees or charges hereunder by City shall not be deemed to be a waiver of any preceding Event of Default, other than the failure of Lessee to pay the Ground Rental, fees or charges so accepted, regardless of City's knowledge of such Event of Default at the time of acceptance of such Ground Rental, fees or charges, nor shall City's acceptance of payment be deemed to be a waiver of any other right or remedy allowed in law or in equity. The consent or approval by City to any act of Lessee 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 Lessee.

14.2. Express Waivers by Lessee

In addition to the foregoing, except as shall arise out of the sole negligence or the sole willful misconduct of City, its officers, employees and agents, Lessee specifically waives any and all claims or causes of action which it may now or hereafter have against City, its officers, employees, contractors and agents:

14.2.1. Other Airport Lessees or Users

For any loss, injury or damage arising or resulting from any act or omission of any occupant, licensee, sublicensee, concessionaire or other occupant of the Airport, or any Person who uses the Airport with or without the authorization or permission of City; or

14.2.2. Lessee's Use of Premises

For any loss or damage to the property of, or injury or damage to Lessee, its officers, employees, agents, contractors or any other Person, from any cause or condition arising at any time on account of Lessee's use of the Premises; or

14.2.3. Lessee's Operations

For damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the

Premises, and for injuries or death to persons on or about the Premises from any cause or causes arising at any time.

Section 15. Indemnification

Lessee shall protect, defend, indemnify and hold harmless City, its officers, employees contractors and agents against any claim, loss, obligation or liability arising out of or resulting in any way from Lessee's occupation or use of the Premises or the Airport (including without limitation, death or injury to any person) due in whole or in part to the negligent acts (active or passive) by Lessee or to the willful actions or omissions by Lessee, Lessee's officers, employees, or, while acting on behalf of Lessee, Lessee's subcontractors, sublessees and/or agents. Lessee's obligations to indemnify and hold harmless set forth above shall not apply to any such claim, loss, obligation or liability which is due to the sole active negligence or willful misconduct of City and/or its employees, officers or agents. All of Lessee's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Replacement Lease. In an action or claim against City in which Lessee is defending City, City shall have the right to approve legal counsel providing City's defense.

Section 16. Representations and Warranties

Lessee represents and warrants to and covenants with Lessor respect to this Replacement Lease as follows:

16.1. Lease Properly Authorized

That Lessee has the power and authority to enter into this Replacement Lease with City, that the directors, officers and members of Lessee have approved such power and authority to enter into this Lease and bind Lessee, that this Replacement Lease shall be executed, delivered and performed pursuant to the power and authority conferred by the members and be binding upon Lessee, and that the individual executing this Lease is duly authorized to do so.

16.2. No Unresolved Claims or Disputes

That there are no unresolved claims or disputes between Lessee and City that Lessee is aware of.

16.3. Statements, Records and Reports

That Lessee shall furnish true and accurate, records, reports, resolutions, certifications, and other information as may be requested of Lessee by City from time to time during the term of this Replacement Lease that related to an obligation of Lessee under this Replacement Lease that are reasonably necessary for City to verify compliance by Lessee of the terms of this Replacement Lease.

16.4. Compliance with Laws

That to the best of Lessee's knowledge, Lessee is in compliance with all Laws related to Lessee's operations in the United States and the State of California.

16.5. Hiring Plan for Low and Moderate Income Jobs

Lessee shall undertake the efforts set out in Lessee's Hiring Plan for Low and Moderate Income Jobs, which is attached to this Agreement as **EXHIBIT K**, to ensure that low and moderate income persons receive first consideration for the jobs listed by Lessee in the Jobs Listing, which is attached to this Agreement as **EXHIBIT J**.

16.6. Good Standing

That it is now and will remain during the Term in good standing in the State of California, and it is now and will remain during the Term qualified to do business in the State of California.

Section 17. Insurance

17.1. Insurance Requirements

Lessee, at its sole cost and expense and for the full term of this Replacement Lease 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 Lessee (including its subcontractors, agents, representatives and employees) hereunder meeting at least all of the minimum insurance requirements set forth on **EXHIBIT H** attached to this Replacement Lease.

17.2. Failure to Provide

In the event Lessee fails to procure or maintain any insurance required under this Replacement Lease: (a) City shall have the right, but not the obligation after providing at least ten (10) days prior written notice to Lessee, without limiting or waiving any other rights or remedies it may have at law or in equity, to procure such insurance and at City's sole option charge Lessee for the cost of maintaining and procuring such insurance or to offset the cost thereof against any amount that may be due or subsequently become due to Lessee; and (b) in the event a loss occurs which would have been covered by the insurance required by this Replacement Lease had such insurance been maintained, Lessee shall pay all amounts that would have been paid by such coverage, minus such amounts actually received by City under a policy procured by City pursuant to this Section 17.

17.3. Waiver of Subrogation

City and Lessee hereby mutually agree that so long as their respective insurance carriers concur, City and Lessee shall waive all rights of recovery against the other on account of loss and damage occasioned to such waiving Party for its property or the property of others under its control but only to the extent that such loss or damage is insured against under any insurance policies which may be in force at the time of such loss or damage.

Section 18. Right to Enter

18.1. Reasons for Entry

City reserves and shall have the right by its officers, employees, agents and contractors to enter into and upon the Premises at all reasonable times scheduled in advance with Lessee (and in emergencies at all times):

18.1.1. Inspections

To make any inspection Director may deem expedient or desirable for the proper oversight and/or enforcement of the covenants, conditions, restrictions, limitations and provisions of this Replacement Lease;

18.1.2. Installation of Utility Lines and Sewer Lines

To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Premises, so long as the same does not unreasonably interfere with the use or enjoyment of the Premises;

18.1.3. City's Exercise of Rights Pursuant to This Replacement Lease

To otherwise maintain, repair or replace the Premises and the Leasehold Improvements, or to do any other repair, maintenance, alteration or removal, under the conditions set forth herein; or

18.1.4. Posting of Notices

To post notices of nonresponsibility for improvements, alterations or repairs, if and when City shall desire to do so.

18.2. No Ground Rental Abatement

Any action taken by City under this Section 18 shall be without abatement of Ground Rental or payment of damages or other amounts to Lessee for any loss of occupancy or quiet enjoyment of the Premises, without liability on the part of City for loss or damage that may be sustained by Lessee thereby, and without such action by City being construed as an eviction of Lessee or a release of Lessee from the duty of observing and performing any of the provisions of this Replacement Lease; provided, however, that such action shall be conducted and undertaken at times and in a manner so as not to unreasonably interfere with the normal operations and business of Lessee, and its sublessees and users, whenever reasonably possible.

Section 19. Taxes and Assessments

19.1. Lessee to Pay Taxes

Lessee shall pay before delinquency any and all taxes, assessments, licenses, fees, possessory interest taxes and other public charges which may be levied, assessed or

imposed upon any of Lessee's leasehold interest, upon Lessee's business, or upon Lessee for the privilege of conducting business within the Premises, or upon any other property of Lessee within the Airport. Payment of any possessory interest tax shall not reduce in any way any Ground Rental, charges, or other fees required to be paid herein.

19.2. Possessory Interest Taxes

Lessee recognizes and understands that this Replacement Lease may create a real property possessory interest that may be subject to real property taxation, and that any such possessory interest may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the land comprising the Premises, the Leasehold Improvements and/or, the Lessee's estate created by this Replacement Lease, Lessee shall pay such tax before delinquency. City shall have no obligation to pay any possessory interest tax. No such possessory interest tax, or any other tax by any government entity, shall in any way reduce or substitute for the Ground Rentals, fees or charges required in this Replacement Lease.

19.3. No Liens or Encumbrances

Lessee shall not permit or suffer any liens or encumbrances to be imposed upon the Premises, the Airport, or any building or structure thereon as a result of its activities without promptly discharging the same; provided, however, that Lessee may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Lessee shall provide a bond in an amount and in a form reasonably acceptable to City immediately following request therefor by City.

19.4. Indemnity for Lessee's Failure to Comply

Lessee shall defend, indemnify and hold City and any Leasehold Improvements now or hereafter on the Premises free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments or other charges required by this Replacement Lease to be paid by Lessee and from all interest, penalties and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments or other charges.

19.5. Payment by City

If Lessee fails to pay any tax or charge required by this Section to be paid by Lessee, City may, but is not obligated to, on five (5) days' prior written notice to Lessee, pay, discharge, or adjust such tax or charge for Lessee's benefit. In such event, Lessee, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging, or adjusting such tax or charge together with interest thereon from its due date at the maximum interest rate then allowed by law until paid, plus pay any penalties.

19.6. Contest of Tax of Charge

19.6.1. Notice of Contest

In the event that Lessee desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Lessee, at least ten (10) days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give City written notice of its intention to contest such tax or charge.

19.6.2. Procedure for Contest

Lessee may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Replacement Lease has expired or terminated) without delay at Lessee's sole cost and expense.

19.6.3. Payment upon Final Determination

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Lessee shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Replacement Lease has then expired or terminated).

19.6.4. Failure to Pay Constitutes Event of Default

The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Replacement Lease.

Section 20. Americans with Disabilities Act

Lessee shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (ADA), as amended from time to time, with respect to the Premises and its operations at the Airport. Lessee shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Lessee shall deliver to City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Lessee's activities under this Replacement Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Pursuant to Section 15 of this Replacement Lease, Lessee agrees to indemnify, defend and hold City harmless from any and all costs incurred by City with respect to Lessee's failure to comply with the ADA as it applies to operations at the Airport.

Section 21. Damage or Destruction

21.1. Lessee's Obligation to Repair

If the Premises, the Leasehold Improvements or any portion thereof, are damaged or destroyed in whole or in part by fire or other casualty, the proceeds of insurance required hereunder with respect thereto shall be available to Lessee, and Lessee, subject to such reasonable terms and conditions as may be imposed by City, including but not limited to the provisions of this Agreement regarding construction (Section 6), shall forthwith repair, reconstruct and restore (subject to unavoidable delays and force majeure) the damaged or destroyed Premises and/or Leasehold Improvements (i) to substantially the same condition, character and utility value as existed prior to the event causing such damage or destruction, or (ii) to such other condition, character and value as may be agreed upon by City and Lessee.

21.2. Insufficient Insurance Proceeds

If Lessee has complied with all the insurance requirements of this Replacement Lease and the net proceeds of insurance on account of such damage or destruction (together with the deductible under such policy) are insufficient to restore or replace the Premises, it shall be optional for Lessee to provide such additional funds and complete repairs.

21.3. Option to Terminate Replacement Lease

21.3.1 If Lessee fails to expeditiously commence to repair, or if Lessee fails diligently to pursue any repair to completion and to restore the damaged or destroyed Premises and/or Leasehold Improvements, in addition to any other remedies City may have, on thirty (30) days' notice City may elect to terminate this Replacement Lease.

21.3.2 Notwithstanding anything herein to the contrary, if during the last five (5) years of the Lease Term, the Premises or the Leasehold Improvements are materially damaged, Lessee may in its discretion elect to either terminate this Replacement Lease or rebuild and repair in accordance with Section 21.1. In the event Lessee elects to so terminate this Replacement Lease, Lessee shall be responsible for delivering the Premises in the condition required under Section 21.23 of this Replacement Lease, with the understanding that while City may require Lessee to remove any remaining improvements, Lessee shall not be required to rebuild any damaged improvements. If the Replacement Lease is so terminated, Lessee shall be entitled to retain all proceeds from insurance on the Leasehold Improvements. However, City shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Premises pursuant to the terms of this Replacement Lease.

21.4. Restoration of Premises

If City elects pursuant to the default rights granted herein to terminate this Replacement Lease following a damage or destruction and Lessee fails to restore as set forth herein, then at its sole cost Lessee shall remove all damaged and destroyed portions of the Premises and otherwise shall return the Premises to City in accordance with Section 23 below, with the understanding that while City may require Lessee to remove any remaining improvements, Lessee shall not be required to rebuild any damaged improvements. If City terminates the Replacement Lease hereunder, Lessee shall be entitled to retain all proceeds from insurance on the Leasehold Improvements. However, City shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Premises pursuant to the terms of this Replacement Lease.

Section 22. Eminent Domain

22.1. Definitions

22.1.1. Eminent Domain

“Eminent domain” is the right of any governmental or other permitted authority to take property for public use. As used in this Section, the words “condemned” and “condemnation” are coextensive with such right, and a voluntary conveyance by City or Lessee to the condemnor under threat of a taking under the power of eminent domain in lieu of or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section.

22.1.2. Total Condemnation/Total Taking

As used in this Section, the terms “total condemnation” and “total taking” mean the taking of the fee title to the entire Premises and all Leasehold Improvements on the Premises under the power of eminent domain.

22.1.3. Substantial Condemnation

As used in this Section, the terms “substantial condemnation” and “substantial taking” mean the taking of so much of the Premises or Leasehold Improvements, or both, under such power as to prevent or substantially impair the conduct of Lessee’s business and/or operations thereon.

22.1.4. Partial Condemnation/Partial Taking

As used in this Section, the term “partial condemnation” and “partial taking” mean any condemnation of the Premises other than a total or substantial taking as defined in subparagraph 22.1.2 and 22.1.3 of this Section.

22.2. Notice to Other Party

The Party receiving any notice of the kinds specified below shall promptly give the other Party notice of the receipt, contents and date of the notice received:

Ground Lease and Operating Agreement

59

- a. Notice of intended taking;
- b. Service of any legal process relating to condemnation of the Premises or Leasehold Improvements;
- c. Notice in connection with any proceedings or negotiations with respect to such a condemnation; or
- d. Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

22.3. Termination of Leasehold on Total Condemnation

In the event that there shall be a total taking of the Premises during the Lease Term under the power of eminent domain as in this Section defined, Lessee's obligation to pay Ground Rental and the leasehold estate hereby created shall cease and terminate as of the date title to the property is taken by the Person who will put it to public use or at the time the condemnor is authorized to take possession of the property as stated in an order for possession, whichever is earlier.

22.4. Termination of Leasehold on Substantial Condemnation

In the event that there shall be a substantial taking of the Premises and/or Leasehold Improvements during the Lease Term under the power of eminent domain as in this Section defined, this Replacement Lease shall terminate as to the portion of the Premises and/or Leasehold Improvements so taken on the date title to the property is taken by the Person who will put it to public use or at the time the condemnor is authorized to take possession of the property as stated in an order for possession, whichever is earlier. Lessee, at its option, may terminate this Replacement Lease, as a result of a substantial taking of the Premises and/or Leasehold Improvements, if the land taken by eminent domain results in a net loss of twenty percent (20%) or more of the total area of the Premises or if the Leasehold Improvements taken, if any, result in a net loss of twenty percent (20%) or more of the total rentable building and hangar space or if such taking substantially and detrimentally impacts Lessee's business or operations at the Premises. In such event, Lessee shall notify City of its intention to terminate this Replacement Lease within thirty (30) days of Lessee's receipt from any condemning authority of a notice of any such intended taking. If Lessee does not so notify City of such election to terminate, the taking shall be deemed a partial taking. If Lessee elects to terminate this Replacement Lease, this Replacement Lease shall terminate as of the last day of the calendar month following the calendar month in which the notice of termination is served on City. On termination of this Replacement Lease pursuant to this Section, all subleases and subtenancies in or to the Premises or any portion or portions of the Premises created by Lessee under this Replacement Lease shall also terminate, and the Premises shall be delivered to City free and clear of all such subleases and subtenancies. On termination of the Replacement Lease

pursuant to this Section, both Parties shall be released from all obligations under this Replacement Lease except those specified in Section 30 of this Replacement Lease.

22.5. Ground Rental and Term after Partial Taking

In the event that there shall be a partial taking of the Premises during the Lease Term under the power of Eminent Domain as in this Section defined, this Replacement Lease shall remain in full force and effect, covering the remaining property, except that the Ground Rental shall be reduced in the same ratio as the percentage of the area of the ground taken bears to the total area of the Premises.

22.6. Restoration of Improvements after Partial Taking

Promptly after a partial taking of the Premises during the Lease Term under the power of eminent domain as in this Section defined, at Lessee's sole expense and in the manner specified in provisions of this Replacement Lease relating to maintenance, repairs, and alterations, Lessee shall repair, alter, modify, or reconstruct the Leasehold Improvements so as to make them economically and feasibly usable by Lessee. If Lessee does not repair, alter, modify, or reconstruct as set forth herein, the cost of such repair shall be deducted from Lessee's share of the award and paid to any Lender of Lessee demanding it.

22.7. Award

City and Lessee shall each be entitled to fully participate in all negotiations and/or actions relating to the condemnation. Awards and other payments on account of a taking of the Premises or the Leasehold Improvements thereon (including, without limitation, all buildings, tenant improvements, equipment and trade fixtures on the Premises), the leasehold estate created by this Replacement Lease, the leasehold bonus value, damages to Gilead's or any other sublessee's business and business goodwill at the Premises, severance damages, relocation assistance, moving costs and all other amounts allowed by law in connection with the taking) (collectively the "Award"), shall be applied as follows:

- a. Awards received on account of a total or substantial taking of the Premises, the Leasehold Improvements and/or the leasehold estate created by this Replacement Lease shall be paid in the following order of priority:
 - i. First, to any Lender under a Permitted Mortgage, that portion of the Award attributable to the Leasehold Improvements and/or the Leasehold Estate created by this Replacement Lease in an amount up to, but not to exceed, the unpaid balance of said Permitted Mortgage;
 - ii. Second, to City that portion of the Award attributable to any land that is part of the Premises;

- iii. Third, to Lessee that portion of the Award attributable to the Leasehold Improvements that equals the percentage of the Term of this Replacement Lease that has, at the time of the taking, not expired;
 - iv. Fourth, to City that portion of the Award attributable to the Leasehold Improvements that equals the percentage of the Term of this Replacement Lease that has, at the time of the taking, expired;
 - v. Fifth, to Lessee that portion of the Award attributable to Lessee's loss of goodwill and any cost or loss that Lessee may incur in the removal and relocation of Lessee's business and its trade fixtures; and
 - vi. Sixth, to City that portion of the Award attributable to severance damages.
 - vii. Seventh, without duplicating any award referenced above, to Lessee that portion of the award attributable to any excess of the market value of the Leasehold Estate for the remainder of the Lease Term over the present value of the Leasehold Estate as of the Lease termination date under Sections 22.3 and 22.4 (commonly referred to as the "bonus value" of the Replacement Lease).
- b. Awards and payments received on account of a partial taking of the Premises or the Leasehold Improvements thereon shall be applied in the following order of priority:
- i. First, to pay the cost of restoration, repair, and reconstruction of the Premises and the Leasehold Improvements so as to make them economically and feasibly usable by Lessee;
 - ii. Second, to any Lender under a Permitted Mortgage in an amount equal to the decrease (if any) in its security as a result of the partial taking, less amounts payable or recovered pursuant to such taking, but not to exceed the unpaid balance of the Permitted Mortgage;
 - iii. Third, to City that portion of the Award attributable to any land that is part of the Premises; and
 - iv. Fourth, to City, that portion of the award attributable to severance damages for City's fee interest in the remainder property.

22.8. Relocation Costs

Lessee shall have the right to make a separate claim for relocation cost under Government Code Section 7262 in the event of a total or substantial taking of the Premises, the Leasehold Improvements, and/or the Leasehold Estate.

22.9. Voluntary Conveyance in Lieu of Eminent Domain

A voluntary conveyance by City or Lessee of title to all or a portion of the Premises to a public or quasi-public agency of entity in lieu of or under threat by such agency or entity to take the same by eminent domain proceeding shall be considered a taking of title to all or such portion of the Premises including all or any portion of the Leasehold Improvements owned by Lessee under the power of eminent domain subject to this Section.

22.10. Applicability of Section to Condemnation by City

Should City condemn the leasehold estate created by this Replacement Lease and/or all or part of the Leasehold Improvements or the Premises during the term of this Replacement Lease, then the provisions contained in this Section shall also apply.

Section 23. Surrender by Lessee

23.1. No Merger

The voluntary or other surrender of this Replacement Lease by Lessee, or a mutual cancellation thereof, shall not work a merger.

23.2. Condition of Premises

On the Expiration Date, Lessee shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Premises and all alterations, additions, Leasehold Improvements and betterments which may have been made in or to the Premises, except: (i) movable and unattached personal property, furniture, equipment and trade fixtures installed at the expense of Lessee or any sublessee; and (ii) such other property, if any, which Lessee is expressly authorized in writing by Director to remove from the Premises.

23.3. Lessee's Duty to Remove

Lessee shall ascertain in writing from Director not less than one hundred eighty (180) days prior to the end of the Term whether Director desires to have Lessee remove any Leasehold Improvements, construction, betterment, alterations or additions which may have been made by Lessee upon the Premises and cap off all utilities. Lessee shall remove the Leasehold Improvements, construction, betterment, alterations or additions existing upon the Premises if so requested by Director to be removed and Lessee shall restore the Premises at Lessee's sole cost and expense no later than one hundred twenty (120) days after the end of the Term. For these purposes, "restore the Premises" means removal of all facility improvements to bare dirt, and termination of all utilities at the Premises boundary. If Lessee fails to restore the Premises, City shall have the right, but not the obligation, to restore the Premises and seek reimbursement from Lessee through whatever remedies are allowed by law or as set forth in this Replacement Lease. Any failure by Lessee to so notify Director shall not relieve Lessee of its obligations under this Section. At the end of the Term, as to those Leasehold Improvements that City elects to have remain on the Premises, Lessee

agrees to do all acts and execute and deliver all documents necessary to confirm in City title to those Leasehold Improvements.

23.4. Removal of Personal Property

Lessee shall, on or before the expiration or earlier termination of this Replacement Lease, remove all personal property (except such as it may be required to surrender under the provisions of the two immediately preceding paragraphs) from the Premises, and all such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Premises shall be deemed, at the option of the Director, to have been abandoned by Lessee. City may, at the option of the Director, retain any such personal property so abandoned by Lessee or remove and/or dispose of such property; Lessee shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City.

23.5. Environmental Remediation

Lessee shall on or before the expiration or earlier termination of this Replacement Lease perform all environmental remediation necessary to render the Premises free and clear of any Hazardous Materials.

Section 24. Prohibition of Gifts

Lessee 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. Lessee agrees not to knowingly offer any City officer or designated employee any gift which Lessee is aware is prohibited by said Chapter.

Section 25. Compliance with Laws

25.1. Governmental Requirements

Lessee shall, at its sole cost and expense, promptly and faithfully observe and comply with all requirements of all Laws now in force or which may hereafter be in force, pertaining to the Premises and Lessee's operations and activities thereon. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceedings against Lessee, whether City be a party thereto or not, that Lessee has violated any such Law in the use of the Premises or the Airport shall be conclusive of that fact as between City and Lessee.

25.2. City Rules and Regulations

Lessee agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of all Airport property, Terminals, the Premises and related facilities. City shall enforce all Airport Rules and Regulations in a uniform and non-discriminatory manner.

25.3. Workers' Compensation Insurance

At all times during the term of this Replacement Lease, Lessee shall subscribe to and comply with the Workers' Compensation Laws of the State of California and pay such premiums as may be required thereunder and save City harmless from any and all liability arising from or under said act.

25.4. Status of Lessee as Independent Contractor

Lessee shall be and remain an independent contractor with respect to all installations, construction, and services performed hereunder and agrees to and hereby accepts full and exclusive liability for the payment of any and all contributions, or taxes for social security; unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Lessee on work performed under the terms of this Replacement Lease, and further agree to obey all rules and regulations which are now, or hereafter may be, issued or promulgated under Laws by any duly authorized state or federal officials; and Lessee shall indemnify and save harmless City from any such contributions or taxes or liability therefor.

25.5. Airport Living Wage Ordinance

Lessee is an "Airport Business" as defined in the Airport Living Wage Ordinance and Lessee shall, at its sole cost and expense, promptly and faithfully observe and comply with all applicable requirements of the Airport Living Wage Ordinance now in force or which may hereafter be in force, pertaining to Lessee's employees, the Premises and Lessee's operations and activities thereon. Prior to the Effective Date of the Replacement Lease, Lessee shall provide to City the employee work environment information and labor peace assurances as required under the Airport Living Wage Ordinance.

Section 26. Agreements with the United States

This Replacement Lease shall be subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which Federal agreement has been or may now or hereafter be required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations. Lessee agrees that to the extent that any such Federal agreement shall affect Lessee and its use of the Premises and the Airport, Lessee shall act in compliance therewith.

Section 27. Grant Agreement Covenants

Lessee 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 Lessee:

Ground Lease and Operating Agreement

65

27.1. Title 49 Requirements

Lessee for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, that in the event facilities are constructed, maintained, or otherwise operated on the Premises 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, Lessee 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.

27.2. Non-discrimination

Lessee for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) 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; (ii) that in the construction of any improvements on, over, or under the Premises 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 (iii) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

27.3. Remedy for Breach of Non-discrimination Covenants

That in the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this Replacement Lease, and to re-enter and repossess the Premises, and hold the same as if this Replacement Lease had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulations Part 21 are followed and completed including expiration of appeal rights.

27.4. Fair, Equal and Just Provisions

Lessee 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. Lessee shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

27.5. Remedy for Failure to Comply With Section 27.4

Without limiting the generality of any other terms or provisions of this Replacement Lease, noncompliance with Section 27.4 above shall constitute an Event of Default, and

in the event of such noncompliance, City (through the Director) shall have the right to terminate this Replacement Lease 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 Sections 27.1, 27.2, 27.3, and 27.4 above.

27.6. Provisions to be Included in Lessee's Other Agreements

Lessee agrees that it shall insert the above five (5) provisions in any agreement by which Lessee grants a right or privilege to any Person to render accommodations and/or services to the public on the Premises or at the Airport.

27.7. Compliance with Other Laws

Lessee 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 27.7 obligates Lessee 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 27.7 obligates Lessee or transferee for the longer of the following periods: (i) 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 (ii) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, Section 27.7 binds the contractors from the bid solicitation period through the completion of the contract.

27.8. City's Right to Further Develop Airport

City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Lessee, and without interference or hindrance.

27.9. Landing Area

27.9.1 City reserves the right, but shall not be obligated to Lessee, 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 activities of Lessee in this regard. This Replacement Lease 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.

27.9.2 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport. 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 the said airspace or landing at, taking off from or operation on the Airport.

27.10. Notice of Future Work

Lessee 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.

27.11. No Interference

Lessee, by accepting this Replacement Lease, agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon the Premises occupied by Lessee and cause the abatement of such interference at the expense of Lessee.

27.12. No Grant of Exclusive Right

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.) § 1349a).

27.13. Time of War or National Emergency

This Replacement Lease 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.

27.14. Height Limitations

Lessee, by accepting this Replacement Lease 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 Premises to a height above the mean sea level that would exceed 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 Lessee and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

Section 28. 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 Replacement Lease, Lessee 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 Replacement Lease 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 Lessee hereunder. A failure by Lessee to so consent shall constitute a breach of this Replacement Lease.

Section 29. Airport Security

29.1. Airport Master Security Plan

Lessee agrees to abide by all provisions of the Airport's Master Security Plan (including all amendments or revisions to the Plan during the term of this Replacement Lease) approved by the FAA the United States Transportation Security Administration (TSA), or any successor agency, and agrees to institute and carry out all security measures as provided in said Plan. Any violations of the Security Plan which result in fines to City by the FAA, TSA or any successor agency and which are caused by Lessee, its officers, agents, employees or invitees, will be assessed to Lessee by City and will be deemed to be additional Ground Rental payable by Lessee to City following invoice thereof by City to Lessee pursuant to Section 5 of this Replacement Lease. Additionally, Lessee in recognition of the nature of the Premises and the damage that could occur as a result of vandalism on the Premises, shall institute a security plan, approved by Director, to deter vandals and to limit access to the Premises to authorized persons.

29.2. Lessee Security Measures

Lessee shall be solely responsible for instituting and carrying out specific security measures required by the Airport's Master Security Plan in the areas where it is authorized to operate to prevent vandalism or damage to persons or property. City shall be responsible only for providing general security throughout the Airport; however, City shall provide no security at the Premises and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Lessee's operation.

29.3. City's Right to Implement Security Measures

Lessee 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, Lessee waives all rights against City for such limitation, and City shall not be liable to Lessee for any amount, including compensation, in the form of reduction of any Ground Rental or fees.

Section 30. Survival of Indemnities

Expiration or termination of this Replacement Lease shall not affect the right of either Party to enforce any and all indemnities given or made to the other Party under this Replacement Lease, nor shall it effect any provision of this Replacement Lease that expressly states it shall survive termination hereof. Each Party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Replacement Lease, the indemnitor has an immediate and independent obligation to defend the indemnitee from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee.

Section 31. No Personal Liability

No elected official, director, officer, member, manager, agent or employee of either Party shall be personally liable by or to the other Party pursuant to any term or provision of this Replacement Lease or because of any breach thereof or because of its or their execution or attempted execution of this Replacement Lease.

Section 32. Force Majeure

Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Replacement Lease which results or arises from an act of God, an act of any governmental authority, (other than City's own actions in connection with its obligations), war, embargo, strike, labor dispute, boycott, act of terrorism, act of nature, fire, flood, unusually severe weather, shortage of items, or materials, riot, rebellion, civil commotion, insurrection, war, compliance in good faith with any applicable governmental regulation or order whether or not it proves to be invalid, delays of suppliers (unless due to non-payment by the Party), an act of a public enemy, earthquake, sabotage, litigation, a court order or other legal action (regardless of whether such court order arises from litigation or other legal action that was filed before or after the Effective Date), or any other cause or circumstance beyond the reasonable control of such Party.

Section 33. Surrender/Merger

On the last day or sooner termination of the Term, Lessee shall quit and surrender the Premises subject to the provisions of Section 23 and in accordance with the provisions of this Section 33. If Lessee has made a Transfer in accordance with the provisions of this Replacement Lease and if Lessee's rights hereunder shall be terminated prior to the expiration of the Term, City may elect either (i) to terminate all or any existing subleases, subtenancies or other rights created by the Transfer (notwithstanding any prior consent of City) or (ii) to continue the rights created by the Transfer, in which event all rights of Lessee with regard to the Transfer shall be deemed assigned to City as of the date Lessee's rights are terminated.

Section 34. Holding Over

Lessee's tenancy shall automatically expire at the end of the Term. Any holding over after the expiration or earlier termination of the Term shall be conditioned upon the approval of the City Council on terms and conditions approved by the City Council. Any holding over without written agreement between Lessee and City regarding Ground Rental, shall be at Ground Rental equal to one hundred twenty five (125%) of the Ground Rental for the last month of the Term. In addition, Lessee shall be responsible for any other damage to City caused by Lessee's failure to comply with the Replacement Lease terms.

Section 35. No Third Party Beneficiary

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute

the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Lessee or Persons claiming under Lessee, shall have any rights hereunder resulting therefrom or otherwise.

Section 36. Miscellaneous

36.1. Bailee Disclaimer

It is hereby understood and agreed that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Lessee, Lessee's contractors, agents, employees and invitees.

36.2. Consent

Unless expressly stated otherwise, whenever in this Replacement Lease the approval or consent of a Party is required, in order for such approval to be effective: (i) such approval or consent must be obtained in advance; (ii) must be in writing; and (iii) must be executed by a person having the express authority to grant such approval or consent. In addition, except to the extent expressly provided to the contrary herein, all consents or approvals required hereunder shall not be unreasonably withheld, conditioned or delayed.

36.3. Controlling Law/Consents to Jurisdiction

Except as Federal law may apply, the Parties agree that this Replacement Lease shall be governed and construed by and according to the laws of the State of California without regard to conflict of law principles. In the event that suit, action or proceeding shall be brought by either Party under this Replacement Lease, the Parties agree that jurisdiction over such proceeding shall be vested in the state courts of California in the County of Santa Clara or in the United States District Court in the Northern District of California.

36.4. Counterparts

This Replacement Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

36.5. Entire Agreement

This instrument contains all of the terms and conditions entered into and made by and between the parties with respect to City's lease to Lessee of the Premises and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

36.6. Headings

The headings of the several Articles and Sections of this Replacement Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Replacement Lease and shall not

be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

36.7. Modification of Replacement Lease

This Replacement Lease shall not be modified, unless the parties first agree to and approve of such modification in writing.

36.8. Resolutions

Lessee shall submit a copy of an appropriate company resolution, if requested by City, which authorizes any director or officer to act on behalf of Lessee or which authorizes Lessee to enter into this Replacement Lease.

36.9. Severability

If a court of competent jurisdiction finds or rules that any Section of this Replacement Lease is void or unenforceable, the remaining Sections of this Replacement Lease shall remain in effect.

36.10. Successors and Assigns

The provisions of this Replacement Lease shall, subject to the provisions of this Replacement Lease concerning transfer, apply to and bind the successors and assigns of the parties hereto.

36.11. Time of Essence

Time is of the essence of this Replacement Lease and each of its provisions and failure to comply with this provision shall be a material breach of this Replacement Lease.

36.12. Relocation Assistance – Waiver of Claims

Lessee acknowledges that it will not be a “displaced person” at the time this Replacement Lease is terminated or expires by its own terms, regardless of any extension whether by hold-over or otherwise. By its execution of this Replacement Lease and in consideration of its terms, Lessee fully releases, waives, and discharges forever any and all claims or other losses against and covenants not to sue City or any City entity under any laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

36.13. No Joint Venture

The relationship between Lessee and City hereunder is strictly that of landlord and tenant. The Parties intend and agree that City is not in any way or for any purpose, a partner of Lessee in the conduct of Lessee’s business or a member of a joint enterprise with Lessee. Neither Party assumes any responsibility for the other Party’s conduct or performance under this Replacement Lease.

36.14. Number and Gender

Whenever the singular number is used in this Replacement Lease and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

36.15. Material Considerations

Each and every term, condition, covenant and provision of this Replacement Lease is and shall be deemed to be a material part of the consideration of each Party's entry into this Replacement Lease, and any breach hereof by a Party shall be deemed to be a material breach. Each term and provision of this Replacement Lease performable by a Party shall be construed to be both a covenant and a condition.

36.16. Exhibits and Addenda

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Replacement Lease as if set forth fully herein.

36.17. Interpretation

The language of this Replacement Lease shall be construed according to its fair meaning, and not strictly for or against either City or Lessee.

36.18. No Assumption

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Lessee or Persons claiming under Lessee shall have any rights hereunder resulting therefrom or otherwise.

36.19. Memorandum of Replacement Lease

Upon the request of Lessee or City, City and Lessee shall execute, acknowledge and record in the real property records of Santa Clara County a short-form memorandum of this Replacement Lease, in form and content reasonably acceptable to the Parties.

Section 37. 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. All notices shall be sufficiently given and served upon the other Party if (i) sent by U.S. mail, postage prepaid, certified or registered, return receipt requested or (ii) by facsimile to the facsimile numbers indicated herein for either Party, with a copy mailed U.S. mail, first class, postage prepaid within twenty four hours or (iii) by recognized overnight courier or (iv) personally served.

If to City, the same shall be addressed to:

Norman Y. Mineta San Jose International Airport
Director of Aviation
1701 Airport Blvd. Suite B-1130
San Jose, CA 95110-1206
Phone: (408) 392-3600
Facsimile: (408) 441-4591

or to such other places as City may designate in writing.

If to Lessee, the same shall be addressed to:

BCH San Jose LLC
555 Bryant St. #347
Palo Alto, CA 94301
Attention: Ken Ambrose, President
Phone: (925) 254-8800
Facsimile: (925) 254-886

with a simultaneous copy to:

Lane Powell PC
420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2375
Attention: Paul Lambert, Esq.
Phone: (206) 223-7724
Facsimile: (206) 223-7107

or such other place as Lessee may designate in writing. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as it may be amended or modified.

Section 38 General Civil Rights

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

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

Section 39 Title VI Clauses for Compliance with Nondiscrimination Requirements

During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to in this Section 39 as the “Lessee”), agrees as follows:

1. **Compliance with Regulations:** Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Lessee of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Lessee’s noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such

contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to Lessee under the contract until Lessee complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

Section 40 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as "Lessee") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

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

- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

Section 41 Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with

the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Lessee has full responsibility to monitor compliance to the referenced statute or regulation. The Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Section 42 Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Section 43 Hangar A Easement Area[CONFORM TO CIRCUMSTANCES AT TIME OF TRANSACTION]

As of the Effective Date of this Replacement Lease, City is leasing to Hangar A LLC, a Delaware limited liability company ("Hangar A") that certain portion of land described on **EXHIBIT N** attached hereto (the "Hangar A Premises"). Lessee hereby agrees to grant the following easements in the portions of the Premises described below (the "Hangar A Easement Area") for the benefit of Hangar A and its successors and assigns throughout the balance of the Term: (i) a non-exclusive "non-priority" easement to move aircraft to and from the Hangar A Premises over, upon and through those portions of the Premises that are improved with taxiways and ramp areas for the purpose of moving Hangar A's aircraft and for accessing taxiway connector "G" or "J", and (ii) a non-exclusive "non-priority" pedestrian and vehicular easement over, upon and through those portions of the Premises intended for vehicular and pedestrian ingress and egress to and from the Hangar A Premises. All pedestrians and aircraft, vehicles and vehicle operators using such easements shall fully comply with the then prevailing rules and regulations of Lessee and the City regarding AOA access. For purposes hereof, "non-priority" use shall mean that at all times Hangar A shall ensure that aircraft transiting the Hangar A Easement Area shall have the ability to safely ingress and egress across the Hangar A Easement Area upon reasonable coordination between Lessee and Hangar A; provided that in no event shall Lessee be required to move aircraft or other equipment located wholly within the Hangar A Easement Area. The rights and privileges granted to Hangar A shall be subject to the terms of the "Avigation Easement" set forth in Section 11 of this Replacement Lease.

Hangar A shall protect, defend, indemnify and hold harmless Lessee, its officers,
Ground Lease and Operating Agreement

78

employees contractors and agents against any claim, loss, obligation or liability arising out of or resulting in any way from Hangar A's occupation or use of the Hangar A Easement Area (including without limitation, death or injury to any person) due in whole or in part to the negligent acts (active or passive) by Hangar A or to the willful actions or omissions by Hangar A, Hangar A's officers, employees, or, while acting on behalf of Hangar A, Hangar A's subcontractors, sublessees and/or agents. Hangar A's obligations to indemnify and hold harmless set forth above shall not apply to any such claim, loss, obligation or liability which is due to the sole active negligence or willful misconduct of Lessee and/or its employees, officers or agents. All of Hangar A's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Replacement Lease. In an action or claim against Lessee in which Hangar A is defending Lessee, Lessee shall have the right to approve legal counsel providing Lessee's defense.

Hangar A shall name Lessee as an additional insured under all of Hangar A's insurance policies as are required to be held under Hangar A's direct lease with City.

SIGNATURES ON FOLLOWING PAGE

WITNESS THE EXECUTION HEREOF the date set below our respective names.

“City”

“Lessee”

CITY OF SAN JOSE, a municipal corporation

BCH SAN JOSE LLC, a Delaware limited liability company authorized to do business in the State of California

By: _____

Toni J. Taber,
Acting City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

KEVIN FISHER
Sr. Deputy City Attorney

By: _____

Name:

Title:

Address:

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____

Date

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

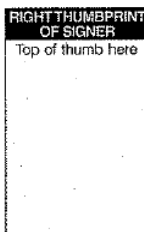
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

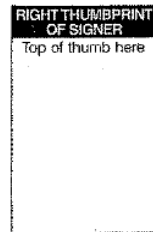
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Ground Lease and Operating Agreement

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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

Ground Lease and Operating Agreement

EXHIBIT A

AIRPORT MAP

[CONFORM TO TIMING OF TRANSACTION]

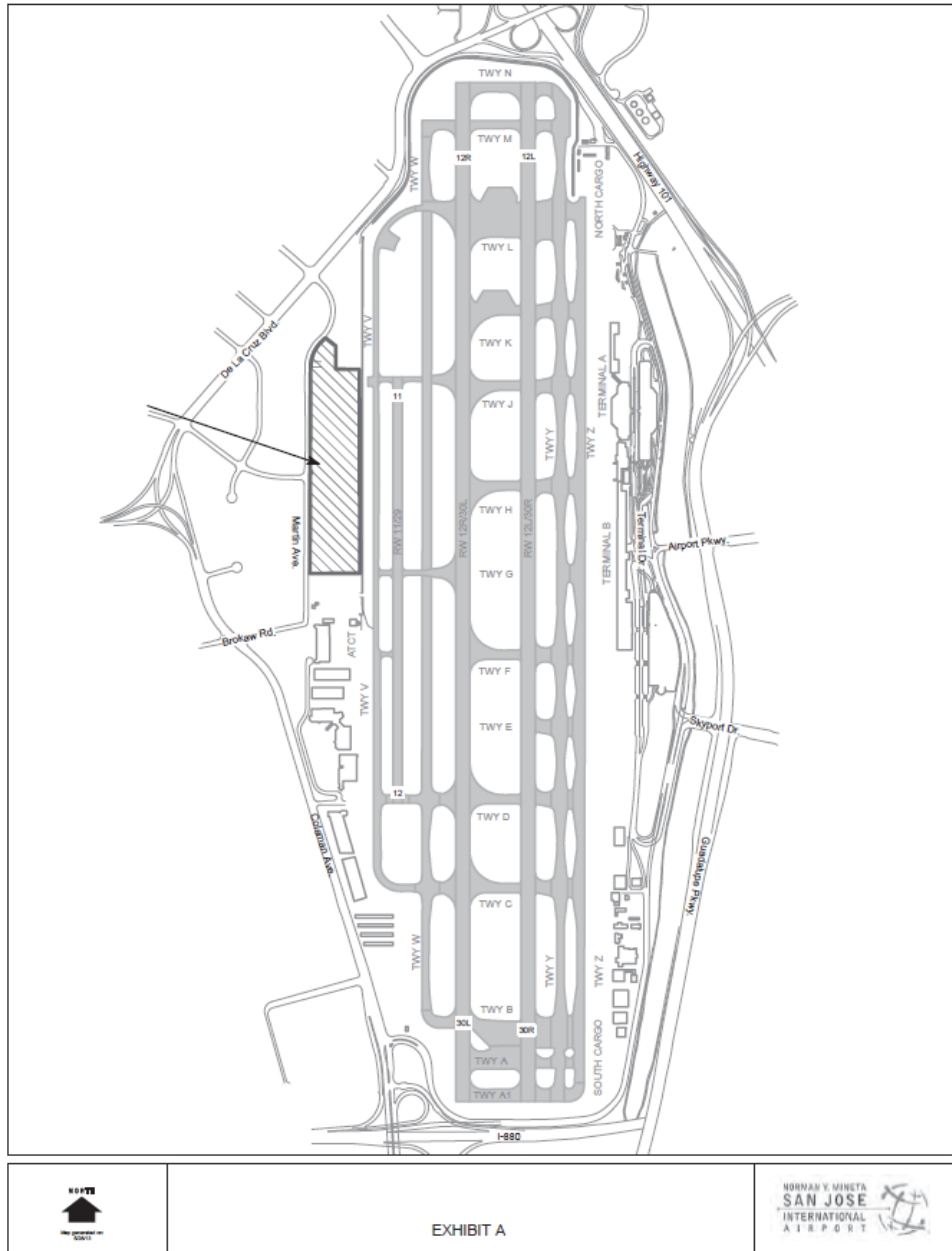


EXHIBIT B
LEGAL DESCRIPTION OF PREMISES

[*See Attached.*]



EXHIBIT "B"
LEGAL DESCRIPTION OF PREMISES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 277.65 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence along said northeasterly line, North 40°50'43" West, 287.36 feet to the TRUE POINT OF BEGINNING;

Thence along continuing along said northeasterly line, the following three courses:

1. Thence North 40°50'43" West, 2,208.07 feet;
2. Thence along a tangent curve to the right, having a radius of 370.00 feet, through a central angle of 48°50'04" for an arc length of 315.36 feet;
3. Thence along a reverse curve to the left, having a radius of 430.00 feet, through a central angle of 02°29'20" for an arc length of 18.68 feet;

Thence leaving said northeasterly line, South 83°19'08" East, 130.42 feet;

Thence South 40°37'45" East, 238.61 feet;

Thence North 49°35'32" East, 335.65 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence parallel with said centerline of 11/29, South 41°06'10" East, 2,446.64 feet;

Thence South 48°53'50" West, 340.12 feet;

Thence North 40°50'43" West, 36.31 feet;

Thence North 49°09'17" East, 100.00 feet;

Thence North 40°50'43" West, 245.61 feet;

Thence South 48°53'50" West, 100.00 feet;

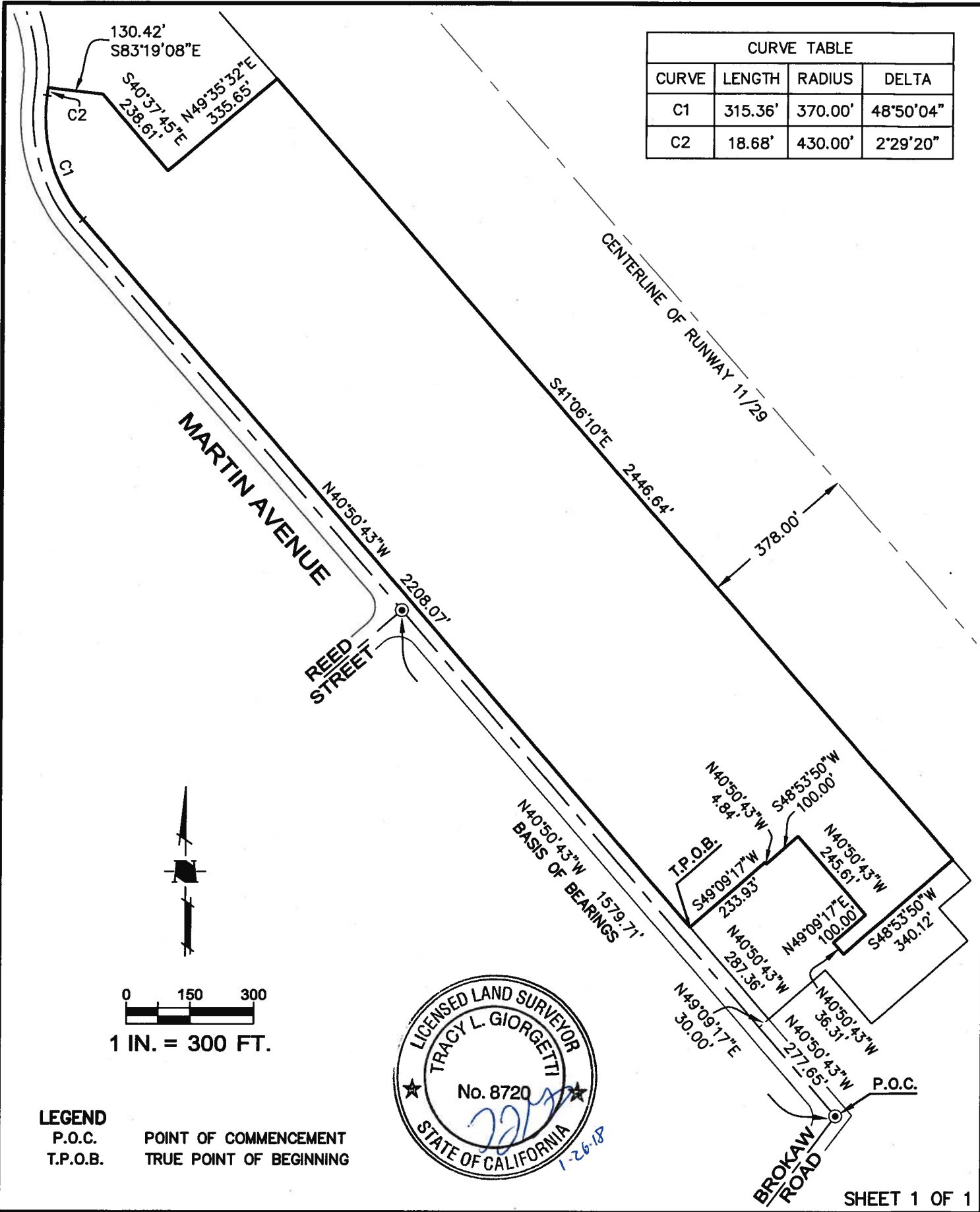
Thence North 40°50'43" West, 4.84 feet;

Thence South 49°09'17" West, 233.93 feet, to the TRUE POINT OF BEGINNING.

Containing 1,360,746 square feet or 31.24 acres, more or less.



CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	315.36'	370.00'	48°50'04"
C2	18.68'	430.00'	2°29'20"



LEGEND
P.O.C. POINT OF COMMENCEMENT
T.P.O.B. TRUE POINT OF BEGINNING



SHEET 1 OF 1

Date:	01-26-2018
Designed:	-
Drawn:	TG
Checked:	DRS
Proj. Eng.:	368010



PLAT TO ACCOMPANY DESCRIPTION:
EXHIBIT "B"
LEGAL DESCRIPTION OF PREMISES

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT C

HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this Replacement Lease, Lessee agrees to the following provisions:

1. Notification of Release. Lessee shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Premises, or is caused by or results from the activities of Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on the Airport other than the Premises. Lessee shall, as soon as reasonably possible after learning thereof, notify City of any Hazardous Material release which occurs on the Premises, regardless of whether the release was caused by or results from Lessee'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 Premises and is caused by or results from the activities of Lessee, Lessee'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. Lessee shall be solely and fully responsible and liable for:
 - (a) any Hazardous Material Release which is caused by or results from the activities of Lessee, Lessee's officers, agents, employees, contractors, or sublessees on the Airport.
 - (b) any Hazardous Material Release which is caused by or results from the activities of permittees or invitees on the Airport if the same was caused by the negligent or intentional misconduct of Lessee.
 - (c) any Hazardous Material release that commences during the term of the Replacement Lease on the Premises, unless Lessee establishes through investigation, sampling, testing and analysis acceptable to City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors, tenants or permittees or solely by migration of Hazardous Materials onto the Premises from a source off the Premises.
3. Prevention of Release. Lessee 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 City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. Lessee, at Lessee'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 Premises, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system, which, was caused, or results, in whole or in part from the activities of Lessee, Lessee's officers, agents, employees, contractors, and sublessees;

b) any Hazardous Material Release which is caused by or results from the activities of permittees or invitees on the Airport if the same was caused by the negligent or intentional misconduct of Lessee;

(c) any release or danger of release of Hazardous Material which commenced during the term of this Replacement Lease and which is discovered on the Premises, unless Lessee establishes through investigation, sampling, testing and analysis acceptable to City, that 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 Premises from a source off the Premises.

The failure to immediately 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 (or such additional period of time that is reasonably necessary under the circumstances) shall constitute prima facie evidence of failure to promptly commence remediation. In addition to all other rights and remedies of City hereunder, if Lessee does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay, to have same remediated and Lessee shall reimburse City within fifteen (15) business days of City's demand for payment. The reasonable 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 Lessee.

5. Indemnification. Lessee 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) any Hazardous Material release on the Airport other than the Premises, including, but not limited to any release into soil or groundwater, or City's sewage or storm drainage system, which is caused by or results directly from the activities of Lessee, Lessee's officers, agents, employees, contractors, and sublessees; or

(b) any Hazardous Material Release which is caused by or results from the activities of permittees or invitees on the Airport if the same was caused by the negligent or intentional misconduct of Lessee;

(c) any Hazardous Material release which commenced during the term of this Replacement Lease on the Premises, including, but not limited to any release into soil or groundwater, except a release which Lessee establishes, through investigation, sampling, testing and analysis acceptable to City, was 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 Premises from a source off the Premises.

6. Release of Claims Against City. Lessee 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 Lessee 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 Lessee may have against City in the event that Lessee 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 Lessee is not responsible and liable under this Replacement Lease. Lessee understands and agrees that Lessee 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. Lessee shall cease its activities on the Premises to the extent reasonably requested by City, if City determines, in its reasonable opinion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Lessee shall not recommence its activities on the Premises 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 City.

(b) Abatement of Fees and Charges on Premises. Lessee shall not be entitled to an abatement of any fees or charges due under this Replacement Lease after Lessee has been requested to cease activities for investigation, cure or remediation of Hazardous Materials on the Premises, except if Lessee establishes, through

investigation, sampling, testing and analysis that the presence of Hazardous Materials on the Premises was due to any event for which Lessee is not responsible and liable under this Replacement Lease.

8. Records and Inspections.

(a) Lessee shall maintain, during the term of this Replacement Lease and for a period of not less than four (4) years after the expiration or termination of this Replacement Lease, 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 Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(b) Upon request by City, Lessee 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 Replacement Lease, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Lessee, Lessee'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 Replacement Lease, Lessee may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Lessee, Lessee's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Lessee 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 Replacement Lease, nor as creating any right in any person not a party to this Replacement Lease to enforcement of any obligation created under this Replacement Lease.

10. Survival of Obligations

Each Party's obligations under this Exhibit C shall survive the expiration or earlier revocation or suspension of this Replacement Lease.

EXHIBIT D

**MINIMUM ANNUAL GUARANTEED PROPERTY, SALES AND USE TAXES
[CONFORM TO EFFECTIVE DATE OF REPLACEMENT LEASE]**

Replacement Lease Term: [50 years]

<u>Year</u>	<u>Taxes MAG</u>	<u>Year</u>	<u>Taxes MAG</u>
1	\$70,000	16	\$300,000
2	\$70,000	17	\$300,000
3	\$150,000	18	\$300,000
4	\$150,000	19	\$300,000
5	\$300,000	20	\$300,000
6	\$300,000	21	\$300,000
7	\$300,000	22	\$300,000
8	\$300,000	23	\$300,000
9	\$300,000	24	\$300,000
10	\$300,000	25	\$300,000
11	\$300,000	26	\$300,000
12	\$300,000	27	\$300,000
13	\$300,000	28	\$300,000
14	\$300,000	29	\$300,000
15	\$300,000	30	\$300,000

Notes:

1. Minimum annual guaranteed taxes should include property tax assessment, taxes on based aircraft, and sales and use taxes.
2. Lessee will be required to provide City with documentation of taxes paid on an annual basis demonstrating that the minimum annual guaranteed taxes submitted on this form have been paid.
3. Lessee will be required to pay City the difference, if any, of any shortfall between taxes submitted on this form and documented taxes paid.
4. All entries shall be in US dollars and rounded to the nearest \$1.

EXHIBIT E

LETTER OF CREDIT FORM

[BANK NAME AND ADDRESS]

STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF [Date] CREDIT NO. _____

BENEFICIARY:

CITY OF SAN JOSE, CALIFORNIA
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

1701 Airport Blvd. Suite B-1130
SAN JOSE, CALIFORNIA 95110-1206

APPLICANT:

Ladies and Gentlemen:

We hereby open our irrevocable standby letter of credit no. _____ in your favor for account of the applicant for an amount not to exceed in the aggregate U.S. dollars _____.\$_____ available by your draft(s) drawn at sight on us accompanied by:

Your written statement purportedly signed by an authorized representative of City of San Jose, California showing the name and title of the signer and reading as follows:

"The undersigned, a duly authorized representative of City of San Jose, California does hereby certify that _____ is in default of contractual obligations with respect to payments due City of San Jose, California and, as such, is entitled to draw down on this Letter of Credit".

This letter of credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reason of our reference to any agreement or instrument referred to herein or in which this letter of credit is referred to.

E-1

Ground Lease and Operating Agreement

Any such agreement or instrument shall not be deemed incorporated herein by reference.

Draft(s) must be marked "drawn under [Name of Bank] Letter Of Credit No _____"

Draft(s) must be presented to [Name of Bank] located At [Address], not later than [date] (the "expiration date") or any such automatically extended expiration date as provided herein below. Partial draws are allowed.

It is a condition of this standby letter of credit that the expiration date shall be automatically extended, without amendment, for periods of one year from each successive expiration date, unless, no less than thirty (30) days before the then current expiration date, we notify you in writing by registered mail (return receipt) that this letter of credit will not be extended beyond the then current expiration date. Any such notice shall be deemed received by you on the date such notice is deposited in the U.S. mails, registered (return receipt), postage prepaid.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this letter of credit shall be duly honored on due presentation to [Name of Bank].

Except as otherwise expressly stated herein, this letter of credit is issued subject to the Uniform Customs And Practice For Documentary Credits (1993 Revision), International Chamber Of Commerce Publication No. 500.

Communications to us with respect to this letter of credit must be in writing and shall be addressed to us at [Name of Bank], [Address], specifically referring thereon to this letter of credit by number.

Very truly yours

Authorized signature

EXHIBIT F

LEASEHOLD IMPROVEMENTS

The Leasehold Improvements shall mean the buildings, fixtures and other improvements constructed on the portion of the Premises that is not subleased to Gilead and shall include the following:

- Executive terminal area approximately 11,000 SF
 - Associated outdoor garden areas approximately 7,000 SF
 - Associated storefront and vehicle circulation area approximately 16,000 SF
- Six (6) aircraft hangars totaling approximately 212,370 SF of hangar deck space
 - Associated office/shop space approximately 22,167 SF
 - Associated secured driveway and LID areas approximately 50,291 SF
 - Associated car parking areas approximately 126,800 SF
- Ramp area consisting of approximately 789,665 SF
- General aviation fuel farm and circulation area consisting of approximately 81,785 SF which includes the following:
 - Up to 80,000 gallons of Jet A
 - Up to 15,000 gallons of Avgas
 - Up to 500 gallons of Mogas
 - Up to 500 gallons of Diesel
 - 3,600 SF of ground service equipment maintenance and shop areas
- Other site work and infrastructure required to allow for landslide/street access and airside access in accordance with the City and Airport requirements.

Total Leasehold Improvement Area approximately 1,317,078 SF or 30.24 acres.

EXHIBIT F-1

GILEAD SUBLESSEE IMPROVEMENTS

The Gilead Sublessee Improvements shall mean the buildings, fixtures and other improvements constructed on the portion of the Premises that is subleased to Gilead Sublessee, which includes the following:

- One (1) aircraft hangar totaling approximately 30,000 SF of hangar deck space.
Associated office /shop space totaling approximately 3,731 SF
Associated car parking areas totaling approximately 9,928 SF

Total Improvement area approximately 43,659 SF or 1.002 Acres.

EXHIBIT G

WAGE REQUIREMENTS

Pursuant to Section 6.3 of this Agreement, Lessee shall require each Contractor or subcontractor for any Leasehold Improvement construction work in excess of One Thousand Dollars (\$1,000) (hereafter, "covered contractor or subcontractor") to pay not less than the prevailing wage as indicated in this EXHIBIT G. This EXHIBIT G applies only to Lessee's covered contractor or subcontractor. Wage requirements for Lessee's employees and any sublessee employees are set in City's Living Wage Ordinance (San Jose Municipal Code Chapter 25.11).

PREVAILING WAGE POLICY

Resolutions of City (collectively, the "Prevailing Wage Policy") require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the Term of this Agreement.

Prevailing Wages established by City shall mean the wages paid under a collective bargaining agreement between the covered contractor or subcontractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by City's Office of Equality Assurance.

The Prevailing Wage rates will be subject to annual adjustment on the anniversary of the contract. Adjustment will be based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

A. Reports

The Office of Equality Assurance will monitor the payment of Prevailing Wages by requiring the covered contractor or subcontractor to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

G-3

Ground Lease and Operating Agreement

The covered contractor or subcontractor shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Prevailing Wage Policy.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of each contract with a covered contractor or subcontractor at the address below.

City of San Jose
Office of Equality Assurance
200 East Santa Clara Street, Fifth Floor
San Jose, CA 95113
Phone: 408-535-8430

B. Remedies for Concessionaire's Breach of Prevailing Wage Provisions

- 1. Liquidated Damages for Failure to Provide Documentation:** Concessionaire agrees that the reports required under this EXHIBIT G are critical to City's ability to monitor compliance by covered contractors and subcontractors with these wage requirements. Lessee further agrees its breach of these reporting requirements would result in the need for additional enforcement action to verify compliance with these wage requirements. **City and Lessee mutually agree for each day beyond due date that a covered contractor or subcontractor fails to submit labor compliance documentation and certified payroll to City's OEA, Lessee shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00).**
- 2. Restitution:** Lessee agrees that in the event of a breach of its covered contractor's or subcontractor's obligations it will require its covered contractor or subcontractor to pay to its employees any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by City.
- 3. Liquidated Damages for Breach of Wage Provision:** Lessee agrees a breach of these wage requirements by its covered contractor or subcontractor would cause City damage by undermining City's Prevailing Wage Policy, and City's damage would not be remedied by the covered contractor's or subcontractor's payment of restitution to the workers who were paid a substandard wage. Lessee further agrees that such damage would increase the greater the number of employees not paid the applicable Prevailing Wage and the longer the amount of time over which such wages were not paid. City and Lessee mutually agree that making a precise determination of the amount of City's damages as a result of the covered contractor's or subcontractor's

G-4

Ground Lease and Operating Agreement

breach of these wage requirements would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Lessee shall pay to City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid by its covered contractor or subcontractor.

4. **Additional Remedies:** Lessee agrees that in addition to the remedies set forth above, City retains the right to suspend or terminate the Agreement for cause and to debar the covered contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.

C. Audit Rights

All records or documents required to be kept pursuant to this Agreement to verify compliance with these wage requirements shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Lessee' address indicated for receipt of notices in this Agreement.

D. Coexistence with Any Other Employee Rights

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.



**LABOR COMPLIANCE
WORKFORCE STATEMENT**

CONTRACTOR NAME: _____

AGREEMENT TITLE: _____

In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above contract. See example below.

EMPLOYEE NAME	CRAFT/TRADE CLASSIFICATION	BASIC HOURLY RATE OF PAY (On City of San Jose Contract)	DATE OF HIRE (Indenture Date If Apprentice)
<i>Example: Bob Jones</i>	<i>Recycle Driver</i>	\$24.28	6/1/2002

Questions regarding classifications allowed on San Jose projects should be directed to the Office of Equality Assurance at 408-535-8430.



LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

CONTRACTOR NAME: _____

PROJECT: _____

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
<p>1. <i>Documentation of Plan contribution must be returned with this statement</i> Please attach a copy of your most recent transmission into each medical, pension or profit sharing plan account indicating worker name and amount of contribution.</p>	Vacation	
	\$ _____	_____
	Health & Welfare	_____
	\$ _____	_____
	Pension	_____
	\$ _____	_____
	Apprentice	_____
	\$ _____	_____
	Other (specify)	_____
	\$ _____	_____
<p>2. _____</p>	Vacation	_____
	\$ _____	_____
	Health & Welfare	_____
	\$ _____	_____
	Pension	_____
	\$ _____	_____
	Apprentice	_____
	\$ _____	_____
	Other (specify)	_____
	\$ _____	_____

Other (specify)
\$ _____

All (or some) fringes are paid as a cash payment in the employee's basic hourly rate.

Company Name (Please Print)

Name and Title (Please Print)

Date Signature

EXHIBIT H
INSURANCE

REQUIRED COVERAGE.

Lessee, at Lessee's sole cost and expense and for the full term of this Replacement Lease or any renewal thereof shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any operations under this Replacement Lease:

- A. A COMPREHENSIVE GENERAL LIABILITY policy with a minimum limit of not less than \$5,000,000 combined single limit for bodily injury and property damage providing at least all of the following minimum coverages (without deductibles):
 - 1. Premises Operations
 - 2. Premises Medical
 - a. Minimum limit of \$1,000/10,000
 - 3. Completed Operations
 - 4. Products
 - 5. Personal Injury
 - a. Coverage for A, B & C
 - 6. Liquor Liability with a minimum limit of not less than \$1,000,000
 - 7. Blanket Contractual
 - 8. Owners' and Contractors' Protective

- B. A Course of Construction Policy equal to 100% of the total value of the construction.
 - 1. This policy shall be maintained during the entire course of construction

- C. A FIRE ALL RISK replacement cost policy (upon completion of the construction of the Leasehold Improvements) for an amount not less than the replacement value of the Leasehold Improvements at each anniversary or renewal of the policy and providing at least the following minimum coverages:
 - 1. Difference in Conditions (DIC) excluding earthquake coverage if not commercially available in reasonable amounts at reasonable costs on the open market from reputable insurance companies.
 - 2. Vandalism and Malicious Mischief (V & M M)
 - 3. Extended Coverage (EC)
 - 4. Loss of Income

- a. This coverage shall provide for continuing lease payments to City in the event of partial or total destruction of any buildings.
 - b. The coverage for the lease payments shall be in an amount equal to, or greater than, the lease payments owed by the Lessee to City for a period of one year.
 - c. No deductible is permitted except for the basic fire coverage and that deductible shall not exceed \$10,000 or such higher amount as is customary from time to time in the industry for similar coverage.
 - d. This policy shall continuously be maintained in force for the entire term of the Replacement Lease after construction and/or occupancy begins whichever comes first.
- D. A COMPREHENSIVE BUSINESS AUTO policy with a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage, providing at least all of the following coverages (without deductibles):
- 1. Coverages shall be applicable to any and all leased, owned, hired or non-owned vehicles used in pursuit of any of the activities associated with this Replacement Lease.
 - 2. Any and all mobile equipment including cranes which is not covered under the above Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy.
- E. A COMPREHENSIVE AIRCRAFT LIABILITY policy which shall include but not necessarily be limited to all of the following coverages and carry at least the following minimum limits of liability for bodily injury and property damage:
- 1. \$5,000,000 combined single limit for charter for bodily injury and property damage.
 - 2. \$5,000,000 for military charters for bodily injury and property damage with a minimum sublimit of \$100,000 per passenger seat.
 - 3. \$5,000,000 limits whenever the aircraft is being used solely for transportation of cargo consisting of non-hazardous materials. While carrying hazardous materials as defined by the FAA (see Part 171) and DOT, the limit shall be not less than \$10,000,000.
- F. A COMPREHENSIVE AIRPORT LIABILITY policy with a minimum limit of not less than \$5,000,000 which shall include but not necessarily be limited to at least all of the following coverages:
- 1. Airport Operations
 - a. Premises Operations

2. Fueling, Defueling or Refueling Operations with a minimum limit of \$5,000,000 if such operations are conducted by the Lessee.
- G. A HANGARKEEPERS' LIABILITY policy with a minimum of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate and providing at least the following coverages:
1. Completed Operations.
 2. Fueling, Defueling or Refueling Operations with a minimum limit of \$5,000,000 if such operations are conducted by the Lessee.
- H. A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Lessee:
1. This policy shall provide coverage for Workers' Compensation (Coverage A); and
 2. This policy shall also provide coverage for \$100,000 Employers' Liability (Coverage B); and
 3. This policy shall require an "ALL STATES" endorsement if Lessee is domiciled outside of the State of California.
- I. ENDORSEMENTS: All of the following endorsements are required to be made a part of each of the above required policies as stipulated below (For the Excess Liability policy only, identify on the Certificate of Insurance as "following form"):
1. "The City of San Jose, its employees, officers, agents and contractors are hereby added as additional insureds."
 2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of San Jose may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only."
 3. "This insurance shall act for each insured, and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
 4. "Thirty (30) days prior written notice of cancellation shall be given to City of San Jose in the event of cancellation and/or reduction in coverage of any nature." Such notice shall be sent to:

CITY OF SAN JOSE
Risk & Insurance

H-3

Ground Lease and Operating Agreement

200 East Santa Clara St. 13th Floor
San Jose, CA 95113
Fax No.: (408) 292-6447

With a copy mailed to:

Property Manager
Norman Y. Mineta San Jose International Airport
1701 Airport Blvd. Suite B-1130
San Jose, California 95110-1206
Fax No. (408) 441-4588

5. Endorsement #4 (30 days' notice) listed above is the only endorsement required to be made a part of the Workers' Compensation and Employers' Liability policy.
 6. For the Fire policy and the Course of Construction policy, the additional insured endorsement #1 shall be replaced by an endorsement making the City of San Jose (and any lender) as lender-loss payee.
 7. The Fire policy shall also carry an "INFLATION GUARD" endorsement to track any increases in the value of the real property.
- J. **PROOF OF COVERAGE:** Copies of all of the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE, which shall be provided by the Lessee's insurance company as evidence of the stipulated coverages. This Proof of Insurance shall then be mailed to:

CITY OF SAN JOSE
Risk & Insurance
200 East Santa Clara St. 13th Floor
San Jose, CA 95113
Fax No.: (408) 292-6447

With a copy mailed to:

Property Manager
Norman Y. Mineta San Jose International Airport
1701 Airport Blvd. Suite B-1130
San Jose, California 95110-1206
Fax No. (408) 441-4588

- K. **BAILEE DISCLAIMER:** It is hereby understood and agreed that City in no way purports to be a bailee, and is therefore not responsible in any way for

any damage to the property of Lessee, the Lessee's contractors, agents, employees and invitees.

- L. These insurance requirements shall be subject to annual review by City's Risk Manager. Should the Risk Manager reasonably require any change in coverage, such change shall be provided in writing to Lessee and Lessee shall comply with the said change with the next succeeding renewal of Lessee's insurance.

Except as set forth below, Lessee shall be required to have any prime contractors engaging in the construction of the Leasehold Improvements provide all the required insurance listed on this **EXHIBIT H**, that is applicable to such prime contractor (i.e. A, D and H above). Lessee shall provide City's Risk Manager with such insurance and with notice of the name of each contractor providing it, and the purpose for which the insurance was procured on or before commencement of construction. Subcontractors shall only be required to carry \$1,000,000.00 limits for Comprehensive General Liability rather than \$5,000,000.00. Liquor liability coverage shall not be required of the contractors.

EXHIBIT I
Intentionally Not Used

Ground Lease and Operating Agreement

H-1

EXHIBIT J

JOBS LISTING

Prior to commencement of Lessee's operations, Lessee will be focused on hiring for low and moderate income jobs such as:

- Line Service Technician
 - Performs a variety of duties related to providing requested services to general aviation aircraft, crews and passengers
- Line Service Technician Lead
 - Responsible for leading and directing activities of Line Service Technicians engaged in providing requested services to general aviation aircraft, crew and passengers. May perform the same or similar functions as those assigned to the workgroup
- Customer Service Representative
 - Promotes and sells the Lessee's services and products to aircraft passengers and crew. Handles and coordinates customer service requests in a professional and courteous manner to ensure the best possible service
- Customer Service Representative Lead
 - Leads and directs activities of Customer Service Representatives engaged in providing requested services to general aviation aircraft, customers, passengers and crew. May perform the same or similar functions as those assigned to the workgroup
- Ground Service Equipment Mechanic
 - Performs daily inspections, corrective and preventive maintenance on all ground support equipment

Lessee reserves the right to modify the foregoing job positions and job descriptions as necessary in its reasonable commercial business judgment.

Ground Lease and Operating Agreement

EXHIBIT K

HIRING PLAN FOR LOW AND MODERATE INCOME JOBS

It is the policy of Lessee to recruit individuals in all job titles without regard to race, color, religion, sex, age, disability, or national origin or any other basis prohibited by applicable law. Our recruiting is handled in partnership with our centralized recruitment department and our management team in the field. The assigned recruiter will prescreen and set up customer service assessments for candidates that meet basic qualifications. For candidates that advance in the recruiting process an interview is set up with the Hiring Manager and the Hiring Manager will select candidates for open positions based on employment background, customer service skills and job specific skills and responses to behavioral based interview questions.

Ground Lease and Operating Agreement

EXHIBIT L
INTENTIONALLY NOT USED

Ground Lease and Operating Agreement

EXHIBIT M

ADDITIONAL INCORPORATED TERMS

[CONFORM TO TIMING OF TRANSACTION]

1. In the event of a significant local or regional disaster, and following the written request of City, Lessee will work with City in collaboration with the Santa Clara County Office of Emergency Services to, at no charge, provide City with the use of one (1) thirty thousand (30,000) square foot hangar at the Premises for use as a quarantine or emergency worker staging center for up to fourteen (14) days.
2. Lessee to purchase new alternatively powered ground support equipment (GSE) for its FBO at the Airport.
3. Lessee to investigate electric vehicle solutions for use by Lessee's customers, rental car partner, employees, the local community and electrified public transport services.
4. Lessee to specifically promote its FBO at the Airport with an annual budget of two hundred thousand dollars (\$200,000), which such promotions shall include, but not be limited to: (i) the promotion of Lessee's FBO at the Airport at industry conventions such as NBAA's Schedulers and Dispatchers, NBAA, EBACE, Asian Aerospace and Singapore Airshow amongst others; (ii) target non-tenant aircraft through pricing and loyalty promotions to entice the use of Lessee's FBO at the Airport; (iii) assisting and sponsoring various San Jose area aviation organizations and users groups to further encourage the increase of business and general aviation in the Bay Area. In addition to the foregoing, Lessee shall include the FBO at the Airport in Lessee's overall global marketing initiatives.
5. Lessee has committed \$250,000, payable over a five (5) year period (e.g., \$50,000 per year) to San Jose City Year to fund new City Year corps members who will assist high-risk 3rd-9th graders in San Jose's neediest schools.
6. Lessee has committed to supporting the San Jose 2020 Bike Plan by contributing a private match of \$150,000 (in a single lump sum payment, conditioned on the commitment of a partner to match such amount) to the Silicon Valley Bicycle Coalition to support the 3-mile bike path adjacent to the Airport along Coleman and De La Cruz.
7. Lessee has committed to be a branded co-sponsor for a five (5) year period of the Santa Run 5k run/walk benefitting San Jose's Christmas in the Park and Downtown Ice, with a contribution of \$10,000.

Ground Lease and Operating Agreement

EXHIBIT N

LEGAL DESCRIPTION OF HANGAR A PREMISES

[*See Attached.*]

Ground Lease and Operating Agreement



EXHIBIT "N"
LEGAL DESCRIPTION OF HANGAR A PREMISES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 277.65 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue, being the TRUE POINT OF BEGINNING;

Thence along said northeasterly line, North 40°50'43" West, 287.36 feet;

Thence North 49°09'17" East, 233.93 feet;

Thence South 40°50'43" East, 4.84 feet;

Thence North 48°53'50" East, 100.00 feet;

Thence South 40°50'43" East, 245.61 feet;

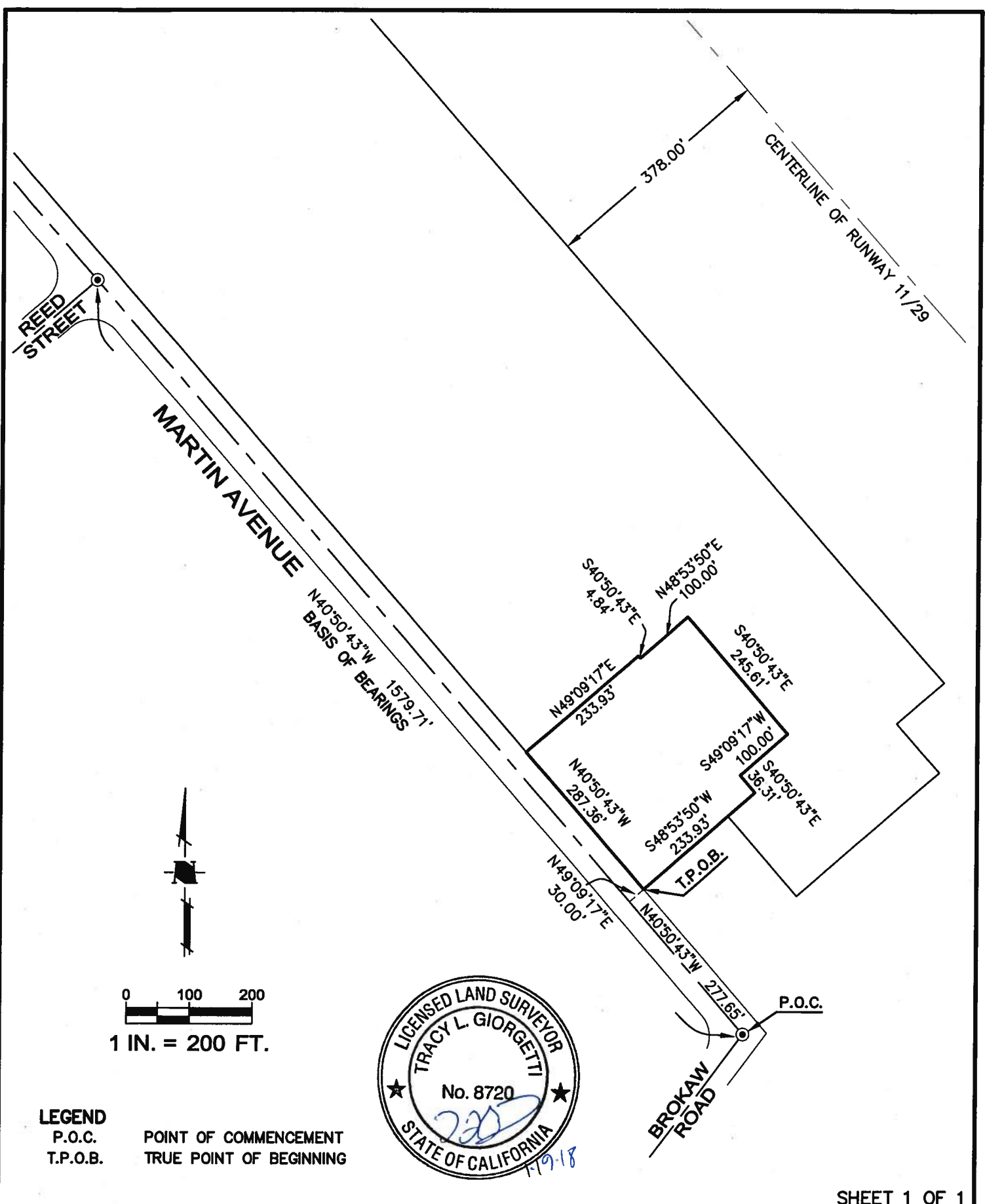
Thence South 49°09'17" West, 100.00 feet;

Thence South 40°50'43" East, 36.31 feet;

Thence South 48°53'50" West, 233.93 feet, to the TRUE POINT OF BEGINNING.

Containing 2.10 acres, more or less. (91 , 638 SF)





LEGEND
P.O.C. POINT OF COMMENCEMENT
T.P.O.B. TRUE POINT OF BEGINNING

SHEET 1 OF 1

Date:	01-19-2018
Designed:	-
Drawn:	TG
Checked:	DRS
Proj. Eng.:	
368010	



PLAT TO ACCOMPANY DESCRIPTION:
EXHIBIT N

LEGAL DESCRIPTION OF HANGAR A PREMISES

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT F

COPY OF FORM GILEAD REPLACEMENT SUBLEASE

[See attached.]

Exhibit F – Copy of Form of Gilead Replacement Lease

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

REPLACEMENT GROUND SUBLEASE AGREEMENT

by and between

BCH SAN JOSE LLC

and

GILEAD SCIENCES, INC.

covering real property located at

Norman Y. Mineta San Jose International Airport
San Jose, California

to be effective

_____, 20__

REPLACEMENT GROUND SUBLEASE AGREEMENT

THIS RELACEMENT GROUND SUBLEASE AGREEMENT (this "*Replacement Sublease*") is entered into effective as of _____, 20__ (the "*Effective Date of the Replacement Sublease*"), by and between **BCH SAN JOSE LLC**, a Delaware limited liability company, with its principal offices located at 555 Bryant St. #347, Palo Alto, California 94031 ("*Sublessor*") and **GILEAD SCIENCES, INC.**, a Delaware corporation, with its principal offices located at 333 Lakeside Drive, Foster City, California 94404 ("*Sublessee*"). For purposes of this Replacement Sublease, Sublessor and Sublessee may from time to time be referred to individually as a "*Party*" and collectively as the "*Parties*." To the extent not defined herein, any capitalized terms used herein without definition shall have the meanings given in **Schedule 1** attached hereto.

WITNESSETH:

WHEREAS, pursuant to that certain Ground Lease and Operating Agreement dated December 12, 2013, as amended by that certain First Amendment to Ground Lease and Operating Agreement dated June ____, 2018 (the "*First Amendment to Signature Master Lease*") (as amended, the "*Signature Master Lease*"), the City of San Jose, a municipal corporation of the State of California ("*City*") leased to Signature Flight Support Corporation, a Delaware corporation ("*Signature*") a certain parcel of real property including the approximately 31.24 acres of land legally described on **Exhibit A-1** attached hereto (the "*Master Leasehold Parcel*"), at the Norman Y. Mineta San Jose International Airport ("*Airport*") in San Jose, California; and,

WHEREAS, Signature constructed, owned and operated an FBO consisting of a terminal building, one (1) hangar of approximately 33,731 square feet and associated ramp and vehicular parking areas on a portion of the Master Leasehold Parcel consisting of approximately 602,633 square feet of land legally described on **Exhibit A-2** attached hereto (the "*FBO Parcel*"); and,

WHEREAS, pursuant to that certain Ground Sublease Agreement (the "*Original Gilead Sublease*") with an effective date of November 1, 2015 (the "*Effective Date of the Original Gilead Sublease*") Signature subleased to Sublessee and Sublessee sublet from Signature a portion of the Master Leasehold Parcel consisting of approximately 43,659 square feet of land, as legally described on **Exhibit A-3** attached hereto (the "*Leased Premises*"), upon which Signature constructed and conveyed to Sublessee a hangar building of approximately 30,149 square feet ("*Hangar 1*") including certain tenant upgrades selected by Sublessee (the "*Gilead Leasehold Upgrades*"), and an area of approximately 13,510 square feet (the "*Exclusive Parking Area*"), for use exclusively by Sublessee for vehicular parking, as well as other associated infrastructure, as more particularly described on **Exhibit A-4** attached hereto (collectively, the "*Improvements*"), to be used and operated in accordance with the terms and conditions of this Replacement Sublease, together with the easements set forth in Section 1(b) below; and,

WHEREAS, concurrent with the execution of the First Amendment to Signature Master Lease, City, Signature, Sublessor and Sublessee entered into that certain Amended and Restated Non-Disturbance, Consent, Estoppel and Subordination Agreement (the "*Non-disturbance Agreement*") whereby City among other things consented to the Original Gilead Sublease and City, Signature, Sublessor and Sublessee agreed that in the event the Signature Master Lease is terminated or cancelled, City and Sublessor would enter into a direct lease for the Master Leasehold Parcel, City would convey ownership of the Leasehold Improvements (as defined in the Replacement Master Lease (as defined below)), City would convey ownership of the

Improvements to Sublessee, and Sublessor and Sublessee would execute this Replacement Sublease; and

WHEREAS, the Signature Master Lease has been terminated or cancelled, City, as Lessor and Sublessor, as Lessee, have entered into the Ground Lease and Operating Agreement dated _____, 20__ (the "**Replacement Master Lease**"), providing for City's lease of the Master Leasehold Parcel to Sublessor, City has conveyed ownership of the Leasehold Improvements to Sublessor, City has conveyed ownership of the Improvements to Sublessee, and Sublessor agrees to sublet the Leased Premises to Sublessee and Sublessee agrees to sublet the Leased Premises from Sublessor on the terms and conditions set forth in this Replacement Sublease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

1. **Leased Premises; Easements; Condition.**

(a) **Leased Premises.** As of the Effective Date of the Replacement Sublease and subject to the terms and conditions herein, Sublessor subleases to Sublessee, and Sublessee subleases from Sublessor, the Leased Premises. It is mutually agreed that Sublessee's use and occupancy of the Leased Premises is upon and subject to the terms, covenants and conditions hereof, and that Sublessee covenants, as a material part of the consideration of this Replacement Sublease, to keep, perform and observe each and all of said terms, covenants and conditions to be kept, performed, or observed by Sublessee, and that this Replacement Sublease is made on condition of such performance. The number of square feet of land in the Leased Premises and the FBO Parcel (as listed in the Recitals above) are sometimes hereinafter respectively referred to as the "**Leased Premises Area**" and the "**FBO Parcel Area**".

(b) **Sublessee Easements.** Sublessor grants to Sublessee, the following easements:

(i) a non-exclusive easement to stage aircraft for departures and arrivals within the Non-Exclusive Ramp Area depicted on Exhibit A-6 below and to move aircraft to and from the Leased Premises over, upon and through those portions of the FBO Parcel that are improved with taxiways and ramp areas for the purpose of moving Permitted Aircraft and for accessing taxiways and runways at the Airport, including taxiway connector "G." Notwithstanding the foregoing, Sublessee acknowledges and agrees that Sublessor is not granting an easement for the use of any other portion of the Master Leasehold Parcel, including taxiway connector "J."

(ii) a non-exclusive pedestrian and vehicular easement over, upon and through those portions of the FBO Parcel intended for vehicular and pedestrian ingress and egress to and from the Leased Premises. All pedestrians and aircraft, vehicles and vehicle operators using such easements shall fully comply with the then prevailing rules and regulations of Sublessor and the City regarding AOA access.

(iii) a non-exclusive easement for the parking of vehicles upon those portions of the FBO Parcel identified as shared spaces on **Exhibit A-5**, the number of such shared spaces utilized by Sublessee and the Sublessee's Related Parties shall not exceed a percentage of such non-exclusive spaces equal to the Allocated Share (the "**Shared Parking Area**"); provided however that Sublessor reserves the right to promulgate reasonable rules and regulations governing the use of such parking areas to be uniformly applied, including the institution of identification procedures (e.g., a decal system) with respect to the use of the Exclusive Parking Area and the Shared Parking Area. Sublessee shall reimburse Sublessor for the reasonable cost to repair and maintain the

Shared Parking Area on a prorated basis in accordance with the ratio between the Leased Premises Area (43,660 SF) and the FBO Parcel Area (376,905 SF) that is agreed to be Eleven and 58/100ths percent (11.58%) (the "*Allocated Share*").

(c) Avigation Easement. Sublessee acknowledges and agrees that the rights and privileges granted herein shall include but be subject to the terms of the "Avigation Easement" set forth in Section 11 of the Master Replacement Lease.

(d) Non-Exclusive Ramp Area; Cost to Repair and Maintain. The area of the Leased Premises depicted on the attached **Exhibit A-6** ("*Non-Exclusive Ramp Area*"), shall be jointly used by Sublessor and Sublessee for the ingress and egress of aircraft, vehicles and equipment, provided, Sublessee shall have the right to temporarily stage Permitted Aircraft within the Non-Exclusive Ramp Area but may not park such aircraft (or any vehicles or other equipment) thereon, or otherwise obstruct the Sublessor's rights to transit the Non-Exclusive Ramp Area, for only the period reasonably necessary to stage the aircraft for flight operations. Sublessor shall have the right to park aircraft upon and transit aircraft and equipment through the Non-Exclusive Ramp Area provided that such parking does not unreasonably interfere with the foregoing right of Sublessee. The actual costs and expenses (without mark-up) to maintain, repair and replace, as necessary, expended by Sublessor with respect to the Non-Exclusive Ramp Area shall be shared equally by the Parties.

(e) Reciprocal Easements. Each party grants to the other party, a surface water runoff easement over, upon and across the portions of each party's premises that are improved with taxiways and ramp areas in accordance with the surface water drainage plan approved by the City for the Master Leasehold Parcel. Each party agrees that it will grant to the other party underground utility or drainage line easements as may be reasonably necessary for each parcel to be developed.

(f) "As Is" Condition. Sublessee has carefully examined the current condition of the Leased Premises, its zoning and suitability for Sublessee's intended use. Except as otherwise expressly set forth herein, the Leased Premises shall be leased to Sublessee in an "as is" physical condition and Sublessee acknowledges that no representation or warranty has been made by Sublessor to Sublessee concerning the nature, quality or suitability of the Leased Premises for Sublessee's intended use, or for any other purpose. Except as otherwise set forth in this Replacement Sublease, Sublessee accepts the Leased Premises "as is", and as being in good, safe and sanitary condition satisfactory for Sublessee's use. No rights, easements or licenses are or shall be acquired by Sublessee hereunder except as expressly set forth in this Replacement Sublease or granted in another instrument executed by Sublessor. Without limiting the foregoing, except as otherwise expressly provided herein, Sublessee acknowledges that Sublessor has not made any representation or warranty to Sublessee regarding the existence of any Hazardous Materials in, on, upon, under or about the Leased Premises or the Airport.

(g) Sublessor Entry onto Leased Premises to Service Permitted Aircraft. It is acknowledged that from time to time employees and vehicles of Sublessor may enter the Leased Premises at the request of Sublessee to provide services to Permitted Aircraft.

2. Subordination and Incorporation of Master Lease.

(a) Subordination. This Replacement Sublease is at all times conditioned upon the Replacement Master Lease continuing in force, and shall at all times be subordinate and subject to the terms and conditions of the Replacement Master Lease, as amended from time to time, provided, however, Sublessor shall not cause or allow the Replacement Master Lease to be

amended in any way that adversely affects the rights and obligations under this Replacement Sublease, nor terminated, without Sublessee's consent which may be withheld in Sublessee's reasonable discretion. Except as expressly amended herein, all of the terms, provisions, covenants, and conditions contained in the Replacement Master Lease, as amended from time to time (as set forth above), shall be made a part of this Replacement Sublease. Notwithstanding the preceding sentence or anything else herein to the contrary, any terms, provisions, covenants, and conditions contained in the Replacement Master Lease that by their context, nature or express terms apply to the FBO Parcel and/or Sublessor's business or operations at the Airport shall not be made a part of this Replacement Sublease or become the responsibility of Sublessee to the extent they apply to the FBO Parcel and/or Sublessor's business or operations at the Airport. Sublessee shall not violate any of the terms of the Replacement Master Lease, as amended from time to time, and shall comply with such terms as are expressly applicable to Sublessee. Performance by City of any requirement or obligation of Sublessor hereunder shall be deemed performance by Sublessor of such requirement or obligation hereunder and accepted by Sublessee as though performed by Sublessor.

(b) Termination of Replacement Master Lease. Provided that Sublessee is not in default under this Replacement Sublease beyond any applicable notice and/or cure period, Sublessor covenants and agrees not to voluntarily cancel, terminate or otherwise surrender the Replacement Master Lease without the prior written consent of Sublessee, which may be given or withheld in the sole discretion of Sublessee; provided, however, Sublessor may voluntarily cancel, terminate or surrender the Replacement Master Lease and the City and Sublessee shall thereafter enter into a direct lease as provided for in the Non-Disturbance Agreement.

(c) Copies of City Notices and Demands. If either Sublessor or Sublessee receives any notice or demand from the City, the Party receiving such notice or demand shall promptly give a copy thereof to the other Party.

(d) Compliance with Replacement Master Lease. Sublessor shall not breach any of the terms of the Replacement Master Lease and shall at all times comply with all the terms thereof. Sublessee shall not violate any of the terms of the Replacement Master Lease applicable to the Leased Premises and shall comply with the terms thereof that are applicable to the Leased Premises. Sublessee acknowledges that it has reviewed the Replacement Master Lease and is familiar with the terms and conditions thereof.

3. Term.

(a) Term. This Replacement Sublease shall commence on the Effective Date of the Replacement Sublease and expire on November 30, 2063, subject to any early termination pursuant to the terms of this Replacement Sublease, or the termination of the Replacement Master Lease pursuant to its terms (the "**Term**").

4. Rent; Security Deposit.

(a) Base Rent. Commencing on the Effective Date of the Replacement Sublease and continuing on the first calendar day of each month thereafter until the expiration or earlier termination of the Term, Sublessee agrees to pay to Sublessor the base rental amounts as described below, together with any Sales Tax payable by Sublessee thereon (collectively, "**Base Rent**"). Base Rent for each year is payable in twelve (12) equal monthly installments, each of which shall be paid in advance without setoff, demand or deduction, except as provided in this Replacement Sublease. Base Rent for the first and last month of the Term is subject to pro-ration for any partial month. The Base Rent payment for any partial first month shall be due and payable on the

Effective Date of the Replacement Sublease. Base Rent for each year shall be calculated as follows (subject to adjustment pursuant to Section 5(a) below): Sublessee shall pay to Sublessor "Base Rent" in an amount equal to the product of (x) Two and 06/100 Dollars (\$2.06); and (y) the square footage of the Leased Premises Area. [THIS SECTION TO BE UPDATED TO REFLECT THE BASE RENT IN FORCE AT THE TIME OF THE EXECUTION OF THE REPLACEMENT MASTER LEASE.]

(b) No Security Deposit. Sublessee is not required to deliver a security deposit to Sublessor to secure the payment or performance of any of its obligations under this Replacement Sublease.

5. **Base Rent Adjustment and Other Amounts.**

(a) Base Rent Adjustment. The Base Rent shall be adjusted in accordance with the CPI increase and appraised value adjustment methodologies set forth in Section 5.3 of the Replacement Master Lease when such methodologies are applied to the Leased Premises Area and Base Rent, as applicable. Sublessor shall control the selection of the appraiser as described in Section 5.3.2 of the Replacement Master Lease.

(b) Airport Fees. Any fees as may from time to time be charged on a non-discriminatory basis by City, including but not limited to those fees set forth in Sections 5.7 (Activity Fees), 5.7.1 (Fuel Flowage Fees), and 5.7.2 (Noise and Safety Program Fees) of the Replacement Master Lease (collectively, the "***Airport Fees***"), for Sublessee's use of the Leased Premises or any other land or facilities of the Airport for any purpose, use or activity for which persons using land or facilities thereof are or shall be required by City to pay fees for the privilege of using same which are in addition to ground rentals, charges or other similar fees, shall be paid by Sublessee to Sublessor (unless otherwise directed by City). The applicability of the Airport Fees to Sublessee shall be determined by City and shall be binding upon Sublessee. Sublessee shall deliver to Sublessor, upon request, such reports and information as may be reasonably required by Sublessor in order to comply with Sublessor's Airport Fees reporting requirements set forth in Section 5.7.3 of the Replacement Master Lease (unless otherwise directed by City).

(c) Additional Rent. If Sublessor shall make any expenditure for which Sublessee is expressly responsible or liable pursuant to the terms of this Replacement Sublease, or if Sublessee is obligated under this Replacement Sublease for the payment of any sum other than Base Rent (as adjusted from time to time), including Airport Fees, the amount thereof shall be deemed to constitute additional rent (collectively, "***Additional Rent***") and the total amount thereof shall be due and payable by Sublessee to Sublessor simultaneously with the next succeeding installment of Base Rent (as adjusted from time to time), or at such other time as may be expressly provided in this Replacement Sublease for the payment of the same. The Base Rent and Additional Rent are sometimes referred to herein collectively as the "***Aggregate Rent.***"

(d) Sales Tax. In addition to the Base Rent, and any Additional Rent and any other sums or amounts required to be paid by Sublessee to Sublessor pursuant to the provisions of this Replacement Sublease, Sublessee shall also pay to Sublessor the amount of any applicable sales, use, possessory interest or excise tax on any such rents or other sums or amounts so paid by Sublessee to Sublessor pursuant to this Replacement Sublease, as may be levied, imposed or assessed by the State of California (the "***Sales Tax***"). Any such Sales Tax shall be paid by Sublessee to Sublessor at the time that each installment of the Base Rent, Additional Rent or any other sum or amount is paid by Sublessee to Sublessor pursuant to the terms of this Replacement Sublease with respect to which Sales Tax is payable by Sublessee to Sublessor.

(e) Late Fees. Aggregate Rent shall be paid by Sublessee without any set-off, demand or deduction whatsoever. Sublessor and Sublessee agree that it would be impossible or extremely impracticable to determine the actual amount of damages Sublessor would sustain in the event Sublessee fails to pay any Aggregate Rent by the time required hereunder. Therefore, Sublessor and Sublessee agree that if Sublessee shall fail to pay Aggregate Rent within seven (7) calendar days after the due date, Sublessee shall pay to Sublessor, without further notice, as liquidated damages to compensate Sublessor for its administrative costs resulting from such failure, a late payment charge equal to five percent (5%) of such unpaid amount. Such late payment charge shall not be deemed consent by Sublessor to late payments, or a waiver of Sublessor's right to insist upon timely payments at any time, nor a waiver of any remedies to which Sublessor is entitled as a result of the late payment of Aggregate Rent. Sublessor may apply payments received from Sublessee to any obligations of Sublessee then accrued in any order as may be designated by Sublessor, provided that, upon the request of Sublessee, Sublessor shall inform Sublessee of Sublessor's manner of application of any payment made by Sublessee to the outstanding obligations of Sublessee then accrued. Regardless of the foregoing, Sublessee shall be entitled to one (1) written five day notice to cure during each calendar year prior to a late charge becoming due and such late charge shall not be due if Sublessee so cures within such five day period.

(f) Allocation of Third Party Invoices. Sublessor and Sublessee shall use good faith, reasonable efforts to cause the invoicing of any amount payable to a third party, which is not otherwise specifically addressed in this Replacement Sublease, and which is related to the use, occupancy, or operation of both the Leased Premises and the FBO Parcel, to be pro-rated and specifically allocated between those parcels based on the square footages of the land of their respective parcels, or the respective improvements, whichever is more equitable (except in cases where the Parties have agreed that another proration formula is applicable, in which case the Parties shall request the third party to use the applicable proration formula when creating the invoices). Sublessee shall not be responsible for any such costs as may be allocable to the other portions of the Master Leasehold Parcel that do not constitute the FBO Parcel. In the event any invoice is received by Sublessor from any third party for any such amount and any part of such invoice is payable by Sublessee pursuant to this Replacement Sublease as Additional Rent, or in the event any invoice is received by Sublessee from any third party for such amount, and such invoice is not allocated between Sublessor and Sublessee, the Parties acknowledge and agree that the amount owing under such invoice shall be pro-rated in accordance with the foregoing.

6. Construction of the Improvements. Prior to the Effective Date of the Replacement Sublease, Signature had developed and constructed the Improvements pursuant to the terms and conditions of that certain Purchase Agreement dated December 23, 2015 by and between Signature and Sublessee (the "Purchase Agreement"). Following the Effective Date of the Replacement Sublease, in the event the Sublessee undertakes any development or construction upon the Leased Premises, Sublessee shall do so in conformity with Exhibit B attached hereto and in accordance with the requirements of the Replacement Master Lease that are applicable to the Leased Premises as well as this Section, including the provisions of Section 6 of the Replacement Master Lease, which terms and conditions shall supersede any conflicting provisions of this Replacement Sublease.

7. Third Party Vendors. Except as provided below, any third party vendor hired by Sublessee to enter upon all or any part of the FBO Parcel (except for the Shared Parking Area) to perform any repair, service or other commercial activity for the benefit of the Leased Premises

(each, a “*Third Party Vendor*”) may enter the Master Leasehold Parcel (including the Leased Premises) only after the third party Vendor has:

- (a) Executed the Vendor Release, an exemplar of which is attached hereto as **Exhibit C**;
- (b) Provided Sublessor with a Certificate of Insurance for the requisite insurance coverage; and
- (c) Obtained written authorization for entry from Sublessor via its execution of the Vendor Release.

For the avoidance of doubt, Sublessee shall not be required to obtain the above items (a), (b) and (c) if a third party vendor hired by Sublessee to perform any repair, service or other commercial activity for the benefit of the Leased Premises does not enter upon the FBO Parcel in connection with such work.

Sublessee shall bear any and all costs associated with ensuring its Third Party Vendors fully comply with any and all Airport and government regulations then prevailing which are applicable to their presence and/or activities at the Master Leasehold Parcel, including, but not limited to, the regulations of the FAA and the TSA (e.g. regulations relating to security, identification, and clearance for access).

Sublessee agrees to use commercially reasonable efforts to attempt to assure that that at no time shall its activities or its Third Party Vendor’s activities unreasonably and materially interfere with the ability of Sublessor’s other customers or Sublessor to conduct business or operate aircraft at the FBO Parcel, including, but not limited to, ingress and egress from the FBO Parcel.

8. Utilities.

(a) Utility Services. Subject to the provisions of Section 3(c) above, Sublessor shall not be obligated or required to furnish to Sublessee any utility services of any kind whatsoever during the term of this Replacement Sublease (including, without limitation, electricity, telephone, data, natural gas, sanitary sewer, or potable water). Sublessee shall and hereby agrees to make all appropriate applications and arrangements for utility services required to serve the Leased Premises and Improvements directly with the utility companies serving the Leased Premises, and to pay all fees, charges and deposits for the installation of such utilities, including all meters required by such utility companies as a condition to their providing such utility services to the Leased Premises and Improvements. Sublessee shall be solely responsible to coordinate the installation, repair and maintenance of such utilities with the requirements of City pursuant to the Replacement Master Lease, and pay for such costs, including any applicable impact fees associated with the installation of such utilities to the Leased Premises.

(b) Payment for Utility Services. Sublessee shall be solely and directly liable and responsible for and shall pay directly to the applicable utility companies all bills for utility services provided by them to and consumed and used on, at, in and from the Leased Premises and Improvements on or before the date due in accordance with the payment instructions contained in such bills.

(c) Interruptions of Utility Services. Unless caused by the negligence or willful misconduct of Sublessor or Sublessor’s Related Parties, Sublessor shall have no liability or

responsibility for any loss or damage occasioned by any interruption or failure in the supply of any utility services to the Leased Premises or Improvements for any cause or reason beyond the reasonable control of Sublessor. No such interruption, termination or cessation of utility services shall relieve Sublessee of its duties and obligations pursuant to this Replacement Sublease, including, without limitation, its obligation to pay all Aggregate Rent as and when the same shall be due hereunder.

9. **Taxes.** Sublessee shall be responsible for payment of any and all applicable taxes or assessments against the Leased Premises, the property of Sublessee at the Leased Premises or its operations at the Leased Premises, including, but not limited to, all sales and use taxes, real estate taxes, *ad valorem* taxes, possessory interest taxes, and assessments. Sublessor agrees to furnish Sublessee promptly with all official tax bills, statements, invoices, and assessments received by Sublessor in connection with the Leased Premises, the Improvements and/or any personal property or fixtures located thereon promptly following Sublessor's receipt of same. Any taxes or assessments payable by Sublessee shall be, if necessary, equitably prorated based upon the same methodology utilized by City or any other governing tax authority, as applicable with any reasonable dispute between Sublessor and Sublessee on the correct methodology of proration decided by apportioning the amounts in accordance with the ratios of the area of the Land and/or Improvements (as applicable) upon the Leased Premises in relation to the area of land and/or improvements (as applicable) upon the FBO Parcel included in such tax or assessment. The Parties shall apply to the Santa Clara County Assessor for separate tax parcel identification numbers for the Leased Premises and the FBO Parcel. Sublessee shall have the right at its own cost and expense to initiate and prosecute any proceedings permitted by law for the purpose of contesting the validity or amount of any such taxes or assessments. If required, Sublessee may take such action in the name of Sublessor, who will cooperate with Sublessee to such extent as Sublessee may reasonably require and assist Sublessee in any related proceedings. Sublessee shall indemnify and hold Sublessor harmless from all cost, loss, damage and expense incurred in the prosecution of such proceedings by Sublessee.

10. **Approved Uses, Access, Affiliates, Guests and Licensees.** Sublessee is permitted to use the Leased Premises for any use permitted by the Replacement Master Lease including without limitation the storage and light maintenance of Permitted Aircraft, subject only to the prohibitions set forth in Section 11 of this Replacement Sublease. Sublessee shall have access to the Leased Premises twenty-four (24) hours a day, every day of the year throughout the Term, subject only to any lawful limitation imposed by City and expressly permitted by the Replacement Master Lease. Notwithstanding anything in this Replacement Sublease to the contrary, any provision in this Replacement Sublease granting any right, benefit or privilege to Sublessee shall be deemed to also include and benefit Affiliates, Licensees, their Guests and their permitted successors and assigns.

11. **Prohibited Uses.**

(a) **Prohibited Uses of Leased Premises.** Sublessor owns certain buildings and other improvements as more particularly described on **Exhibit A-7** hereto (collectively, the "**FBO Improvements**") on the FBO Parcel and operates an "FBO" (as defined below) at the FBO Parcel. Sublessee shall not use the Leased Premises in any manner which violates the terms and conditions of the Replacement Master Lease, or any applicable governmental law, rule or regulation, nor shall Sublessee operate, or permit to be operated, upon all or any part of the Leased Premises an FBO. For purposes of this Replacement Sublease, an "FBO" shall mean an operation that provides some or all of the "**Fueling Services**" or "**Non-Fueling Services**" (as such terms are defined below).

(i) **“Fueling Services”** shall mean the following services with respect to any aircraft, vehicle or equipment:

Aircraft and ground service equipment fueling and defueling, including but not limited to the installation of any fuel storage and dispensing facilities, or mobile delivery of fuel, or the receipt and storage of any fuel product (such as aviation or motor fuels), into plane or into truck delivery of aviation or motor fuels;

(ii) **“Non-Fueling Services”** shall mean the following services with respect to Transient Aircraft upon the Leased Premises:

- a. Aircraft parking, hangaring, storage, and handling;
- b. Aircraft deicing;
- c. Aircraft lavatory servicing;
- d. Passenger and crew terminals and amenities;
- e. Weather and flight planning services;
- f. Ground handling;
- g. Office space;
- h. To the extent provided by Sublessor, other aviation related services permitted by or required of a fixed base operator under the Airport’s minimum standards or other regulations.
- i. Rotorcraft or aircraft sales or rentals (Sublessee and Licensee demonstration flights of Transient Aircraft being expressly excluded);
- j. Flight training (Sublessee and Licensee in-house flight training on Transient Aircraft being expressly excluded);
- k. Rotorcraft or aircraft radio and instrument sales and service (avionics);
- l. Aircraft maintenance and repair services (including avionics); and/or
- m. Air transport of mail or cargo for hire.

For the avoidance of doubt, Sublessor shall be the sole provider of any Fueling Services for aircraft when they are located upon the Leased Premises, and the sole provider of any Non-Fueling Services to Transient Aircraft while they are located upon the Leased Premises; provided however that Sublessee or Licensees shall be permitted to provide directly (but not via a contract with an unaffiliated third party) Non-Fueling Services to Permitted Aircraft upon the Leased Premises. Sublessee, its Guests, Affiliates, Licensees or other users shall comply with Sublessor’s standard operating procedures upon the Master Leasehold Parcel regarding the provision by Sublessor of the Fueling Service and Non-Fueling Services.

12. Damage or Destruction of Leased Premises.

(a) If the Leased Premises, the Improvements or any portion thereof, are damaged or destroyed in whole or in part by fire or other casualty during the Term, the proceeds of insurance required hereunder with respect thereto shall be available to Sublessee, and Sublessee shall as soon as reasonably possible repair, reconstruct and restore (subject to unavoidable delays and force majeure) the damaged or destroyed Leased Premises and/or Improvements (i) to substantially the same condition, character and utility as existed prior to the event causing such damage or destruction, or (ii) to such other condition, character and utility as may be agreed upon by Sublessor and Sublessee. Such repair, reconstruction and restoration shall be at Sublessee’s sole cost and expense (regardless of the availability of insurance proceeds) in conformity with **Exhibit**

B attached hereto, and in accordance with the requirements of the Replacement Master Lease that are applicable to the Leased Premises.

(b) Notwithstanding anything herein to the contrary, if during the last five (5) years of the Term, the Leased Premises and/or the Improvements are materially damaged, Sublessee may in its sole discretion elect to either (i) terminate this Replacement Sublease and not rebuild and repair the Leased Premises and Improvements or (ii) rebuild and repair the Leased Premises and/or Improvements in accordance with this Section 12. In the event Sublessee elects to so terminate this Replacement Sublease, Sublessor may require Sublessee to remove any remaining Improvements to bare dirt, but Sublessee shall not be required to rebuild any damaged Improvements. If the Replacement Sublease is so terminated, Sublessee shall be entitled to retain all proceeds from insurance on the Leased Premises, Improvements and any other property of Sublessee at the Leased Premises. However, Sublessor shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Leased Premises and/or Improvements pursuant to the terms of this Replacement Sublease.

13. **Condemnation of Leased Premises.**

(a) As used in this Section, the terms "*total condemnation*" and "*total taking*" mean the taking of fee title to the entire Leased Premises and all Improvements on the Leased Premises under the power of Eminent Domain.

(b) As used in this Section, the terms "*substantial condemnation*" and "*substantial taking*" mean the taking of so much of the Leased Premises and/or Improvements, under the power of Eminent Domain as to prevent or materially impair the conduct of Sublessee's business and/or operations thereon.

(c) As used in this Section, the terms "*partial condemnation*" and "*partial taking*" mean any condemnation of the Leased Premises and/or Improvements other than a total taking or substantial taking as defined in Sections 13(a) and 13(b) above.

(d) The Party receiving any notice of the kinds specified below shall promptly give the other Party notice of the receipt, contents and date of the notice received:

(i) Notice of any intended taking of some or all of the Leased Premises and/or Improvements;

(ii) Service of any legal process relating to any condemnation of some or all of the Leased Premises and/or Improvements;

(iii) Notice in connection with any proceedings or negotiations with respect to a condemnation of some or all of the Leased Premises and/or Improvements; or

(iv) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation of some or all of the Leased Premises and/or Improvements.

(e) In the event that there shall be a total taking of the Leased Premises and the Improvements during the Term under the power of Eminent Domain, Sublessee's obligation to pay rent and the leasehold estate hereby created shall cease and terminate as of the date title to the property is taken by the person who will put it to public use or at the time the condemner is

authorized to take possession of the property as stated in an order for possession, whichever is earlier.

(f) In the event that there shall be a substantial taking of the Leased Premises and/or Improvements during the Term under the power of Eminent Domain, this Replacement Sublease shall terminate as to the portion of the Leased Premises and/or Improvements so taken on the date title to the property is taken by the person who will put it to public use or at the time the condemner is authorized to take possession of the property as stated in an order for possession, whichever is earlier. Sublessee, at its option, may terminate this Replacement Sublease, as a result of a substantial taking of the Leased Premises and/or Improvements, if the land taken by Eminent Domain results in a net loss of twenty percent (20%) or more of the total area of the Leased Premises or if the Improvements taken, if any, result in a net loss of twenty percent (20%) or more of the total rentable building and/or hangar space or if such taking materially and detrimentally impacts Sublessee's business or operations at the Leased Premises. In such event, Sublessee shall notify Sublessor of its intention to terminate this Replacement Sublease within thirty (30) days of Sublessee's receipt from any condemning authority of a notice of any such intended taking. If Sublessee does not so notify Sublessor of such election to terminate, the taking shall be deemed a partial taking. If Sublessee elects to terminate this Replacement Sublease, this Replacement Sublease shall terminate as of the last day of the calendar month following the calendar month in which the notice of termination is served on Sublessor. On termination of this Replacement Sublease pursuant to this Section, all sub-subleases and sub-subtenancies in or to the Leased Premises or any portion or portions of the Leased Premises created by Sublessee under this Replacement Sublease shall also terminate, and the Leased Premises shall be delivered to City free and clear of all such sub-subleases and sub-subtenancies. On termination of this Replacement Sublease pursuant to this Section, both Parties shall be released from all obligations under this Replacement Sublease except those specified in Sections 15, 17(c) and 17(d) of this Replacement Sublease.

(g) In the event that there shall be a partial taking of the Leased Premises during the Term under the power of Eminent Domain, this Replacement Sublease shall remain in full force and effect, covering the remaining property, except that the Base Rent shall be reduced in the same ratio as the percentage of the area of the ground taken bears to the Leased Premises Area.

(h) Promptly after a partial taking of the Leased Premises during the Term under the power of Eminent Domain, at Sublessee's sole expense and in the manner specified in provisions of this Replacement Sublease relating to maintenance, repairs, and alterations, Sublessee shall repair, alter, modify, or reconstruct the Improvements so as to make them economically and feasibly usable by Sublessee.

(i) Sublessor and Sublessee shall each be entitled to fully participate in all negotiations and/or actions relating to any condemnation. Awards and other payments on account of a taking of the Leased Premises and/or the Improvements thereon (including, without limitation, any buildings, tenant improvements, equipment and trade fixtures on the Leased Premises), the leasehold estate created by this Replacement Sublease, the leasehold bonus value, damages to Sublessee's business and business goodwill at the Leased Premises, consequential damages, relocation assistance, moving costs and all other amounts allowed by law in connection with the taking (collectively, the "*Award*"), shall be applied as follows:

(i) Awards received on account of a total or substantial taking of the Leased Premises, the Improvements and/or the leasehold estate created by this Replacement Sublease shall be paid in the following order of priority:

(A) First, to any Lender under a Permitted Mortgage, that portion of the Award attributable to the Leased Premises, Improvements and/or the leasehold estate created by this Replacement Sublease in an amount up to, but not to exceed, the unpaid balance of said Permitted Mortgage;

(B) Second, to City that portion of the Award attributable to fee ownership of the land underlying the Leased Premises;

(C) Third, to Sublessee that portion of the Award attributable to the Improvements that equals the percentage of the Term of this Replacement Sublease that has, at the time of the taking, not expired, and that portion of the Award attributable to any excess of the market value of Sublessee's leasehold estate for the remainder of the Term over the present value of Sublessee's leasehold estate as of the Replacement Sublease termination date pursuant to the taking (commonly referred to as the "bonus value" of this Replacement Sublease);

(D) Fourth, to City that portion of the Award attributable to the Improvements that equals the percentage of the Term of this Replacement Sublease that has, at the time of the taking, expired;

(E) Fifth, to Sublessee that portion of the Award attributable to Sublessee's loss of business and business goodwill and any cost or loss that Sublessee may incur in the removal and relocation of Sublessee's business and its equipment and trade fixtures;

(F) Sixth, to City that portion of the Award attributable to severance damages; and

(G) Seventh, without duplicating any Award referenced above, to Sublessee that portion of the Award attributable to any excess of the market value of Sublessee's leasehold estate for the remainder of the Term over the present value of Sublessee's leasehold estate as of the Lease termination date under Sections 13(e) and 13(f) above (commonly referred to as the "bonus value" of this Replacement Sublease).

(ii) Awards and payments received on account of a partial taking of the Leased Premises or the Improvements thereon shall be applied in the following order of priority:

(A) First, to pay the cost of restoration, repair, and reconstruction of the Leased Premises and the Improvements so as to make them economically and feasibly usable by Sublessee;

(B) Second, to any Lender under a Permitted Mortgage in an amount equal to the decrease (if any) in its security as a result of the partial taking, less amounts payable or recovered pursuant to such taking, but not to exceed the unpaid balance of the Permitted Mortgage;

(C) Third, to City that portion of the Award attributable to any land that is part of the Leased Premises;

(D) Fourth, to City, that portion of the Award attributable to severance damages for City's fee interest in the remainder property; and

(E) Fifth, to Sublessee, that portion of the Award attributable to severance damages for Sublessee's leasehold interest in the Improvements and under the Replacement Sublease.

(j) A voluntary conveyance by City, Sublessor or Sublessee of title to all or a portion of the Leased Premises to a public or quasi-public agency or entity in lieu of or under threat by such agency or entity to take the same by Eminent Domain proceeding shall be considered a taking of title to all or such portion of the Leased Premises under the power of Eminent Domain subject to this Section 13.

(k) Should City condemn the leasehold estate created by this Replacement Sublease and/or all or part of the Improvements or the Leased Premises during the Term, then the provisions contained in this Section shall also apply.

14. **Maintenance of Leased Premises and Improvements**

(a) Sublessee shall be obligated at all times throughout the Term, without cost to Sublessor, to maintain the Leased Premises and Improvements in good appearance and repair, and clean and safe condition, reasonable wear and tear excepted. Sublessee, at its sole cost and expense, shall promptly make all repairs and replacements necessary to so maintain the Leased Premises and Improvements, the foregoing obligation shall expressly include the Sublessee's fulfillment of any maintenance required on the Leased Premises and Improvements as set forth in Section 8 of the Replacement Master Lease. All maintenance, repair and replacement work shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, reasonable wear and tear excepted.

(b) Sublessor's employees and agents may, during normal business hours at reasonable times scheduled in advance with Sublessee, enter upon the Leased Premises to inspect the Improvements and operations of Sublessee and its Licensee(s), Guest(s) and other users. The operations of Sublessee and its Licensee(s), Guest(s) and other users shall not be disturbed thereby or interfered with by such inspections. If Sublessee fails to perform the maintenance of the Leased Premises or Improvements as required by this Replacement Sublease, Sublessor will notify Sublessee in writing of such breach of this Replacement Sublease. If the failure to maintain described in such notice is not corrected by Sublessee within seven (7) days after receipt of written notice (or such additional period of time as is necessary if Sublessee has commenced efforts to cure such breach within such time period and diligently prosecutes the same to completion), Sublessor shall have the right (but not the obligation) to enter upon the Leased Premises at reasonable times scheduled in advance with Sublessee and perform the necessary maintenance and upon receipt of the notice of cost of such maintenance by Sublessor with supporting back-up, Sublessee agrees to promptly reimburse Sublessor for the actual maintenance cost incurred by Sublessor to correct such failure to maintain the Leased Premises as required by this Replacement Sublease.

(c) Sublessee expressly waives all statutory rights to make repairs to the Leased Premises and Improvements at the expense of Sublessor and to deduct the cost of such repairs from the Base Rent. Without limiting the generality of the foregoing, Sublessee hereby waives California Civil Code Sections 1932(2) and 1933(4), providing for termination of hiring upon destruction of the thing hired, and California Civil Code Sections 1941 and 1942, providing for repairs to and of the Leased Premises and Improvements.

(d) Sublessee, at its sole cost and expense, shall keep and maintain the Leased Premises and Improvements clean and free of rubbish, dirt, garbage, and other waste matter at all

times and shall provide and pay for regular janitorial and other service necessary for the proper maintenance of the Leased Premises and Improvements in clean and sanitary condition.

(e) Neither Sublessee nor its employees, distributors or agents shall commit, suffer, permit or allow to be committed, any waste or public or private nuisance on the Leased Premises, Improvements, nor any other act or thing which may unreasonably disturb the quiet enjoyment of any other lessee, permittee, licensee, invitee or other person using or occupying any portion of the Airport.

(f) Sublessee, at its sole cost and expense, shall maintain any trees or other landscaping on the Leased Premises in good condition.

(g) Sublessor shall at all times during the Term, and at its sole cost and expense (except as otherwise set forth in this Replacement Sublease), keep, replace and maintain the FBO Parcel and the improvements and landscaping thereon in accordance with the terms of Section 8 of the Replacement Master Lease. Except as may be otherwise specified herein, the actual and direct costs incurred by Sublessor in complying with the foregoing with respect to any improvements used in common by Sublessor and Sublessee (e.g., common utility lines serving both the Leased Premises and the FBO Parcel) shall be reasonably and equitably allocated in accordance with the methodology set forth in Section 5(f) above.

15. Indemnification.

(a) Sublessee's Indemnification of Sublessor. Sublessee is liable for the acts or omissions of itself and its officers, directors, employees, agents, servants, vendors, contractors, subcontractors, sublessees, invitees, Affiliates, Guests, Licensees, and their respective successors and assigns (collectively "***Sublessee's Related Parties***") at the Master Leasehold Parcel and further agrees to indemnify, defend, and forever hold harmless Sublessor, and its respective officers, directors, employees, agents, servants, contractors, subcontractors, vendors, invitees (collectively, "***Sublessor's Related Parties***") for, from and against any and all claims, liabilities, losses, demands, fines, suits, penalties, actions, judgments or other expenses in connection with the Master Leasehold Parcel, including, but not limited to, Airport, City, FAA and TSA fines or assessments, reasonable attorneys' fees and costs or for loss of or damage to property or injury or death to any person (collectively, "***Damages***"), incurred by Sublessor or Sublessor's Related Parties arising from any negligent acts or willful misconduct of Sublessee or Sublessee's Related Parties; provided, however, that this indemnity does not apply to Damages caused by the negligence or willful misconduct of Sublessor or Sublessor's Related Parties. Such indemnification is subject to and limited by Section 18 entitled Disclaimer of Liability, below.

(b) Sublessor's Indemnification of Sublessee. Sublessor shall be liable for the acts or omissions of itself and Sublessor's Related Parties at the Master Leasehold Parcel and further agrees to indemnify, defend, and forever hold harmless Sublessee and Sublessee's Related Parties for, from and against any and all Damages incurred by Sublessee or Sublessee's Related Parties and arising from any negligent or willful misconduct of Sublessor or Sublessor's Related Parties in connection with the Master Leasehold Parcel; provided, however, that this indemnity does not apply to Damages caused by the negligence or willful misconduct of Sublessee or of Sublessee's Related parties. Such indemnification is subject to and limited by Section 18 entitled Disclaimer of Liability, below.

(c) Exclusion and Duration. The provisions of this Section 15 expressly exclude all Environmental Damages that are covered in Section 17 below. The indemnifications set forth in

this Section 15 herein (i) shall survive the termination or expiration of the Replacement Sublease, and (ii) shall not be construed to negate or abridge any other indemnity obligation which would exist at common law or pursuant to this Replacement Sublease, and (iii) shall not be limited by any provision of insurance.

16. **Security.** Sublessee shall comply at its own expense and in conformity with all applicable security requirements, including, but not limited to those of the FAA, the TSA, and any security program instituted by City for the Airport (including as required by Section 29 of the Replacement Master Lease), as amended from time to time. Sublessee shall take all action reasonably necessary or as directed by City to ensure that Sublessee and Sublessee's Related Parties comply with such requirements. If Sublessor incurs any fines as a result of Sublessee's acts or omissions, Sublessee agrees to pay all such fines and penalties in accordance with its indemnification obligation set forth above and to promptly cure any security deficiency of which Sublessee is promptly notified. Sublessor reserves the right to take whatever action necessary to cure any security deficiency if Sublessee fails to promptly remedy the security deficiency after notice thereof. Furthermore, Sublessee shall reimburse Sublessor for any and all costs and expenses associated with such action in accordance with its indemnification provision set forth above. Notwithstanding the foregoing, Sublessee shall not be responsible for any such fines and penalties or curative actions resulting from a breach of any applicable security requirements to the extent Sublessor or Sublessor's Related Parties were the cause of such breach.

17. **Hazardous Materials; Environmental Laws.**

(a) **Condition of Leased Premises.** As provided for in Section 1(f) above, the Leased Premises shall be leased to Sublessee "as is" and Sublessee acknowledges that Sublessor has not made any representation or warranty regarding the existence of any Hazardous Materials in, on, upon, under or about the Leased Premises or the Airport.

(b) **Hazardous Materials.** Sublessee, with respect to the Leased Premises, and Sublessor, with respect to the remainder of the Master Leasehold Parcel, shall be solely responsible for compliance with the terms and conditions of the Replacement Master Lease with respect to Hazardous Materials and Environmental Laws; provided that Sublessee's obligations for compliance with Section 23.5 of the Replacement Master Lease shall be limited to the remediation of the Leased Premises as necessary in order to render the Leased Premises free and clear of Hazardous Materials that entered the Leased Premises following the Effective Date of the Original Gilead Sublease solely as a result of the acts or omissions of Sublessee, or its agents, guests or invitees.

(c) **Environmental Audits.** Sublessee acknowledges that Sublessor may enter the Leased Premises from time to time to conduct environmental audits; provided that, other than in a situation deemed an emergency in Sublessor's reasonable discretion, such entrance shall occur during ordinary business hours following at least forty-eight (48) hours prior written notice to Sublessee and such audit shall not unreasonably interfere with the business operations of Sublessee or Sublessee's Related Parties. If such environmental audit reveals the presence of contaminants in excess of levels permitted under applicable law as a result of Sublessee's use of the Leased Premises, Sublessor shall serve written notice to Sublessee to promptly correct the condition. Sublessee shall act diligently to remove any and all such contaminants and to take all such prompt action reasonably necessary to verify that proper remediation has occurred as described above. If Sublessee fails to promptly act within a reasonable timeframe, Sublessor may act to correct the condition and shall be entitled to reimbursement for any and all costs directly associated with such corrective action.

(d) Environmental Indemnification by Sublessee. Sublessee shall indemnify, defend, and forever hold harmless Sublessor and Sublessor's Related Parties from and against any and all environmental claims, liabilities, damages, fines, penalties, losses or impairments, including, but not limited to any penalty or fine imposed by any governmental agency and the expense of cleaning up or disposing of any Hazardous Materials, as well as any and all reasonable attorneys' fees (collectively, "**Environmental Damages**") resulting from the use and/or occupancy of the Leased Premises by Sublessee or Sublessee's Related Parties during the Term and any negligence or willful misconduct of Sublessee or Sublessee's Related Parties during the Term, but in no event shall Sublessee be obligated to indemnify, defend or hold Sublessor harmless for Environmental Damages to the extent such Environmental Damages (i) arise from the negligence or willful misconduct of Sublessor or Sublessor's Related Parties; or (ii) arise from a release of Hazardous Materials upon the Leased Premises prior to the Effective Date of the Original Gilead Sublease or (iii) arise from the condition of the soil as set forth in that certain Voluntary Cleanup Program statement attached as Exhibit 14 to the Purchase Agreement.

(e) Indemnification by Sublessor. Sublessor shall indemnify, defend, and forever hold harmless Sublessee and Sublessee's Related Parties from and against any and all Environmental Damages resulting from any use and/or occupancy of the Leased Premises prior to or after the Term or any negligence or willful misconduct of Sublessor or Sublessor's Related Parties, but in no event shall Sublessor indemnify, defend or hold Sublessee harmless for Environmental Damages to the extent such Environmental Damages arise from the negligence or willful misconduct of Sublessee or Sublessee's Related Parties.

(f) Compliance. Sublessee shall comply with the provisions of **Exhibit "D"** (Environmental Protection Procedures) and **Exhibit "E"** (Hazardous Materials) attached hereto.

(g) Survival. The foregoing indemnities survive termination or expiration of this Replacement Sublease.

18. DISCLAIMER OF LIABILITY. THE PARTIES HEREBY AGREE THAT UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, DIMINUTION OR LOSS OF VALUE, LOSS OF USE, LOSS OF ANTICIPATED PROFITS OR THE COST ASSOCIATED WITH SUBSTITUTE OR REPLACEMENT AIRCRAFT.

19. Insurance.

(a) Sublessee shall comply with the requirements and maintain the insurance coverage described on the attached **Exhibit F** from financially solvent insurance carriers licensed to do business in the State of California and reasonably acceptable to Sublessor. Sublessor shall maintain all insurance required of it under and pursuant to the Replacement Master Lease.

(b) Each policy shall be primary and non-contributing with any insurance maintained by Sublessor and the City and shall expressly waive subrogation against Sublessor and its respective insurers. Each policy with the exception of the Hull, Workers Compensation and Employer's Liability policies shall name Sublessor and the City as additional insureds or in connection with the All-risk Property, as loss payee, and Sublessee shall furnish duly executed

certificates of all required insurance and additional insured endorsements together with satisfactory evidence of the premium payment as of the effective date of this Replacement Sublease. Sublessee shall furnish to Sublessor and the City all duly executed certificates. Each policy shall provide at least thirty (30) days advance written notice to Sublessor and the City of any cancellation or non-renewal and Sublessee shall be obligated to notify Sublessor of any material changes or changes adverse to the interests of Sublessor and the City.

(c) Sublessor's acceptance of such certificates is not to be construed as any waiver of Sublessor's rights to the insurance required under this Replacement Sublease. Furthermore, if Sublessor fails for any reason to receive certificates or other evidence of insurance from Sublessee, such failure shall not be deemed a waiver of required coverage.

(d) **THE PARTIES EACH ACKNOWLEDGE THAT ITS POTENTIAL LIABILITY IS NOT LIMITED TO THE AMOUNT OF ANY LIABILITY INSURANCE COVERAGE OR TO INSURANCE POLICY LIMITS REQUIRED IN THIS REPLACEMENT SUBLEASE.**

20. **Compliance With Laws.** Sublessee and Sublessor each shall comply with the terms and conditions of Section 25 of the Replacement Master Lease, inclusive of all subsections, Section 26 of the Replacement Master Lease, Section 29 of the Replacement Master Lease, inclusive of all subsections, Section 38 of the Replacement Master Lease, inclusive of all subsections, Section 39 of the Replacement Master Lease, inclusive of all subsections, Section 40 of the Replacement Master Lease, inclusive of all subsections, Section 41 of the Replacement Master Lease, inclusive of all subsections, and Section 42 of the Replacement Master Lease, inclusive of all subsections, and shall comply with all prevailing and applicable federal, state and local rules, regulations, orders, and laws of all governmental authorities having authority over the Leased Premises, including, but not limited to those of the United States Federal Government, City (including any aircraft operation curfew or noise regulations), FAA, and TSA. Sublessee's compliance with FAA rules, regulations, orders and laws shall include compliance with, and this Replacement Sublease shall be subject to, any applicable FAA grant agreement covenants in accordance with Section 27.1 of the Replacement Master Lease, and Section 28 of the Replacement Master Lease.

21. **Leasehold Alterations.** Sublessee agrees that it shall not alter the building envelope, structural components or exterior of the Improvements without Sublessor's written approval, which approval shall not be unreasonably withheld or conditioned, and upon any additional conditions required by the Replacement Master Lease; and any such approved alterations shall be constructed in accordance with the terms and conditions of **Exhibit B** attached hereto and the applicable provisions of the Replacement Master Lease. Notwithstanding the foregoing, Sublessee shall have the right to construct and remodel any interior tenant improvement at the Leased Premises upon satisfaction of the following conditions: (i) consent and approval of City pursuant to the Replacement Master Lease; (ii) obtaining all necessary governmental approvals for such work, including but not limited to building permits; (iii) such work shall be conducted in a good and workmanlike manner, free and clear of liens and in compliance with applicable governmental rules, regulations and codes; and (iv) Sublessor receives prior written notice of such intended work.

22. **Signage.** Sublessee shall not place or permit to be placed any signs on the exterior of the Leased Premises without Sublessor's written approval, which approval shall not be unreasonably withheld or conditioned, and upon any additional conditions required by the Replacement Master Lease. Subject to the foregoing condition, Sublessee may place appropriate interior and exterior signs at the Leased Premises to identify and direct visitors to its operations and specific locations at the Leased Premises.

23. **Brokers.** The Parties acknowledge that no broker was used to identify the Leased Premises, introduce the Parties to each other, or consummate this Replacement Sublease and that no conversations or prior negotiations were had by either or both Parties with any broker. Sublessor agrees to defend, indemnify and hold Sublessee harmless for, from and against any claims for a brokerage commission(s) arising out of any conversations or negotiations had by Sublessor with any broker. Sublessee agrees to defend, indemnify and hold Sublessor harmless for, from and against any claims by any broker for a brokerage commission(s) arising out of this Replacement Sublease and/or any conversations or negotiations had by Sublessee with any broker.

24. **Notices.** Any notice, statement, request, consent, approval or demand required under this Replacement Sublease by either Party to the other Party shall be made in writing and shall be delivered by personal service, overnight courier, United States mail (certified mail/postage prepaid only), or electronic transmittal. Notices served by United States mail shall be deemed delivered effective as of the third (3rd) business day following their postmark, and personal service and courier delivery on the date of delivery. Notices sent by electronic mail transmittal notices (provided such emails are followed with simultaneous overnight delivery of such notice via recognized overnight courier) shall be deemed delivered at the time and date of receipt confirmation provided that such notice is addressed to Sublessee or Sublessor as follows: [COMPLETE WITH CURRENT SUBLESSOR/SUBLESSEE INFORMATION]

If to Sublessor:

BCH San Jose LLC
555 Bryant St. #347
Palo Alto, California 94301
Attention: Ken Ambrose, President
Email: kambrose@gmail.com

With a simultaneous copy to:

Lane Powell PC
420 Fifth Avenue, Suite 4200
Seattle, WA 98101-2375
Attention: Paul Lambert, Esq.
Email: LambertP@lanepowell.com

If to Sublessee:

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, California 94404
Attention: Mr. Brett Pletcher,
Executive VP & General Counsel
Email: brett.pletcher@gilead.com

with a simultaneous copy to:

Groom and Cave LLP
1570 The Alameda, Suite 100

San Jose, CA 95126
Attention: Michael P. Groom or Timothy H. Hopkins
groom@groomandcave.com
thopkins@groomandcave.com

or to such other places as Sublessor or Sublessee may designate in writing from time to time. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as it may be amended or modified.

25. **Default and Remedies.**

(a) **Sublessee Default.** Without limitation, each of the following shall constitute a default by Sublessee under, and breach of, this Replacement Sublease (any default by Sublessee hereunder after the passage of any applicable notice and cure period, shall constitute a “*Sublessee Event of Default*”)

(i) If (y) Sublessee shall fail to pay any portion of Base Rent when due; or (z) unless disputed in good faith, any Airport Fees, Additional Rent, Sales Taxes or any other monetary obligation due under this Replacement Sublease and such failure shall not have been remedied within five (5) days following Sublessee’s receipt of Sublessor’s written notice and demand for payment thereof; or

(ii) If, at any time during the Term of this Replacement Sublease, Sublessee shall file in any court, pursuant to any statute of either the United States or of any State, a petition in bankruptcy or insolvency, or for reorganization or arrangement, or for the appointment of a receiver or trustee of all or any portion of Sublessee’s property, including, without limitation, its leasehold interest in the Leased Premises, or if Sublessee shall make a general assignment for the benefit of its creditors; or

(iii) If, at any time during the Term of this Replacement Sublease, there shall be filed against Sublessee in any courts pursuant to any statute of the United States or of any State, an involuntary petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or substantially all of Sublessee’s property, including, without limitation, its leasehold interest in the Leased Premises, and any such proceeding against Sublessee shall not be dismissed within ninety (90) days following the commencement thereof; or

(iv) If Sublessee’s leasehold interest in the Leased Premises or property therein shall be seized under any levy, execution, attachment or other process of court where the same shall not be vacated or stayed on appeal or otherwise within ninety (90) days thereafter, or if Sublessee’s leasehold interest in the Leased Premises is sold by judicial sale and such sale is not vacated, set aside or stayed on appeal or otherwise within ninety (90) days thereafter; or

(v) If the Leased Premises is used or permitted to be used for any use restricted or prohibited pursuant to this Replacement Sublease, or for an unlawful purpose, or for the conduct of any unlawful activity, and such restricted, prohibited or unlawful use or activity shall not be discontinued within thirty (30) days after Sublessor’s written notice thereof to Sublessee; or

(vi) If any assignment, transfer, sublease or encumbrance shall be made or deemed to be made that is in violation of the provisions of this Replacement Sublease; or

(vii) Sublessee fails to comply with the provisions of Section 19 (Insurance) of this Replacement Sublease for a period of five (5) days following written notice thereof; or

(viii) Sublessee shall fail to perform or comply with any other term or condition of this Replacement Sublease, or breach any representation or warranty given by Sublessee to Sublessor herein, and such failure to comply or breach shall continue for a period of thirty (30) days after Sublessor's written notice to Sublessee thereof, or such longer reasonable period of time if such compliance or cure cannot reasonably be accomplished within such thirty (30) day period, provided that Sublessee diligently prosecutes such cure to completion after receiving such notice.

(b) Sublessor's Remedies. If any Sublessee Event of Default herein above specified shall occur, Sublessor, at any time thereafter, shall have and may exercise any of the following rights and remedies:

(i) Terminate Sublessee's right to possession of the Leased Premises by any lawful means, in which case this Replacement Sublease shall terminate and Sublessee shall immediately surrender possession of the Leased Premises to Sublessor (including without limitation the Improvements). In the event that Sublessor shall so elect to terminate this Replacement Sublease, then Sublessor may recover from Sublessee:

(A) All costs and expenses (including, without limitation, reasonable attorney's fees) incurred by Sublessor in connection with the enforcement of its remedies under this Replacement Sublease, which costs shall expressly include (but not be limited to) any and all court filing fees, reasonable attorneys' fees and other litigation expenses associated with any unlawful detainer action filed against Sublessee to recover possession of the Leased Premises; plus

(B) All unpaid Aggregate Rent due and owing under the Replacement Sublease through and including the Turnover Date (as defined below), together with any (i) applicable late payment charges on the unpaid Aggregate Rent as provided in this Replacement Sublease and (ii) interest on such Aggregate Rent at the published prime commercial rate being charged by the Bank of America N.A., plus two percent (2%) per annum, but not to exceed the then legal maximum rate of interest (the "**Interest Rate**"). For purposes of this Subsection B, the term "**Turnover Date**" shall mean either (i) the date that Sublessee voluntarily surrenders possession of the Leased Premises (including without limitation the Improvements) to Sublessor and has satisfied all of the conditions set forth in Section 44 hereof (including, without limitation, executing releases and bills of sale in favor of Sublessor required by Section 44), or (ii) in the event that Sublessee does not voluntarily surrender possession of the Leased Premises to Sublessor, the earlier of (A) the date that Sublessee surrenders possession of the Leased Premises to Sublessor and has satisfied all of the conditions set forth in Section 44 hereof (including, without limitation, executing any releases and bills of sale in favor of Sublessor required in Section 44); or (B) the date that the levying officer or sheriff physically removes Sublessee from the Leased Premises pursuant to a writ of possession.

(ii) If any personal property of Sublessee is not removed on or before the termination or sooner expiration of this Replacement Sublease, Sublessor shall provide written notice to Sublessee of such property and if such property is not removed within thirty (30) days of receipt of such notice such property shall be deemed abandoned. Sublessor shall thereafter be entitled to remove such items of personal property from the Leased Premises at Sublessee's sole cost and expense and Sublessee shall promptly after receiving notice of the cost of removal (together with supporting documentation) reimburse Sublessor for the cost of such removal.

(iii) If after any applicable notice and cure period Sublessee, but prior to any termination of this Replacement Sublease, fails to keep and perform any of the covenants or agreements in this Replacement Sublease to be kept and performed by Sublessee, Sublessor, in addition to all other remedies now or hereafter afforded or provided by this Replacement Sublease, at law or in equity, may, at its election, perform such covenant or agreement for or on behalf of Sublessee, and any amount or amounts which Sublessor shall advance on Sublessee's behalf in connection therewith shall be repaid by Sublessee to Sublessor upon notice of such amount (together with supporting documentation), together with interest thereon at the "prime rate" then published in the Wall Street Journal plus four percent (4%) from the date of such advance to the date of repayment thereof in full.

The rights, powers and remedies of Sublessor under this Replacement Sublease shall be cumulative and not exclusive of any other right, power or remedy which Sublessor may have against Sublessee pursuant to this Replacement Sublease. Sublessor is further entitled to injunctive relief if Sublessee breaches or threatens breach of this Replacement Sublease. If Sublessor files any action against Sublessee to protect its interests under this Replacement Sublease or enforce its rights or remedies hereunder, if Sublessor is the prevailing party under such action then it shall be entitled to recover its reasonable attorney's fees and costs in connection with such action.

No re-entry, alteration, repair, or re-letting shall be construed as Sublessor's election to terminate this Replacement Sublease unless Sublessor has so indicated in the default notice provided to Sublessee. Sublessee for itself and its successors and assigns hereby irrevocably constitutes and appoints Sublessor as its agent to collect the rents due and to become due under any of Sublessee's Licensee's use of the Leased Premises (or any parts thereof) without in any way affecting Sublessee's obligation to pay any unpaid balance of Aggregate Rent due or to become due hereunder.

(c) Sublessor's Default. Without limitation, each of the following shall constitute a default by Sublessor under, and breach of, this Replacement Sublease (any default by Sublessor hereunder after the passage of any applicable notice and cure period, shall constitute an "***Sublessor Event of Default***").

(i) Replacement Master Lease Defaults. An "Event of Default" (as such term is used in the Replacement Master Lease) occurs under the Replacement Master Lease (other than a wrongful act, omission, circumstance or failure directly caused by Sublessee or any Affiliate, Licensee or Guest of Sublessee); or

(ii) Non-Exclusive Ramp and Shared Parking Obligations. With respect to the Non-Exclusive Ramp Area, or the Shared Parking Area, if Sublessor shall fail to perform or comply with any term or condition of this Replacement Sublease, and such failure to comply or breach shall continue for a period of five (5) days after Sublessee's written notice to Sublessor thereof, or if such breach cannot reasonably be cured within such five (5) day period, such longer time as may be reasonably necessary provided Sublessor commences to cure such breach within such five (5) day period of time and thereafter diligently and continuously endeavors to cure such breach until it is cured. Any extension of such five (5) day cure period shall cease if any time Sublessee's operations at the Leased Premises are interrupted or interfered with by such breach or any of Sublessee's rights or interests under this Replacement Sublease are exposed to imminent forfeiture or seizure.

(iii) Sublessor's Failure to Perform Other Obligations. In all other events, if Sublessor shall fail to perform or comply with any term or condition of this Replacement Sublease,

or breach any representation or warranty given by Sublessor to Sublessee herein, and such failure to comply or breach shall continue for a period of thirty (30) days after Sublessee's written notice to Sublessor thereof, or if such breach cannot reasonably be cured within such thirty (30) day period, such longer time as may be reasonably necessary provided Sublessor commences to cure such breach within such 30-day period of time and thereafter diligently and continuously endeavors to cure such breach until it is cured. Any extension of such 30-day cure period shall cease if any time Sublessee's operations at the Leased Premises are interrupted or interfered with by such breach or any of Sublessee's rights or interests under this Replacement Sublease are exposed to imminent forfeiture or seizure.

(d) Sublessee's Remedies. If Sublessor fails to timely cure any Sublessor Event of Default in accordance with the foregoing, (i) Sublessee may pursue all rights and remedies allowed by law and/or equity, (ii) if the Sublessor Event of Default shall relate to subsection 25(c)(i) above and remains uncured beyond the applicable cure period, Sublessee shall have also have the right, following written notice to Sublessor, to cure such default on the part of Sublessor, set-off monies due and to become due to Sublessor until Sublessee has recovered all sums advanced to cure such default as well as its attorney fees and costs, and (iii) if the Sublessor Event of Default shall relate to subsection 25(c)(ii) above and remains uncured beyond the applicable cure period, Sublessee shall have also have the right, following written notice to Sublessor, to cure such default on the part of Sublessor, set-off monies due and to become due to Sublessor until Sublessee has recovered all sums advanced to cure such default as well as its attorney fees and costs. Notwithstanding the foregoing, Sublessee shall not bring an action for damages against Sublessor unless the Sublessor Event of Default arises as a result of the intentional acts or omissions of Sublessor or results in the loss by Sublessee of its use and enjoyment of the Leased Premises, the Non-Exclusive Ramp Area or the Shared Parking Area. Further, Sublessee may only seek to terminate this Replacement Sublease due to a Sublessor Event of Default which results in the loss by Sublessee of a material use or enjoyment of the Leased Premises, the Non-Exclusive Ramp Area or the Shared Parking Area and such loss continues for a period in excess of thirty (30) days.

26. Independent Contractor. The relationship between the Parties shall be that of independent contractors for all purposes and in no event shall any persons employed or retained by either Party, irrespective of the type of uniform worn, be held or construed to be employees or agents of the other Party. Each Party is responsible to pay any and all local, state, and federal taxes associated with the employment of its personnel. All persons' performance hereunder and the manner and details of performance thereof shall be under the exclusive control of the respective employing or contracting Party, with such employing or contracting Party possessing the sole right to direct and oversee such persons' work and performance.

27. Force Majeure Events. Excepting the payment of Aggregate Rent and any other sums due hereunder by either Party, neither Party shall be deemed to be in default hereunder on account of any failure or delay to perform its obligations under the Replacement Master Lease or this Replacement Sublease which results or arises from an act of God, an act of any governmental authority, war, embargo, strike, labor dispute, boycott, act of terrorism, act of nature, fire, flood, unusually severe weather, shortage of items or materials, riot, rebellion, civil commotion, insurrection, war, compliance in good faith with any applicable governmental regulation or order whether or not it proves to be invalid, delays of suppliers (unless due to non-payment by the Party), an act of a public enemy, earthquake, sabotage, litigation, a court order or other legal action (regardless of whether such court order arises from litigation or other legal action that was filed before or after the Effective Date of the Replacement Sublease), or any other cause or circumstance beyond the reasonable control of such Party (each a "*Force Majeure Event*"); provided, however,

that each Party shall undertake commercially reasonable efforts to mitigate the effects of a Force Majeure Event.

28. **Governing Law; Venue.** Except as Federal law may apply, the Parties agree that this Replacement Sublease shall be construed, interpreted and enforced in accordance with the laws of the State of California without regard to conflict of law principles. Any legal suit, action or proceeding arising out of or relating to this Replacement Sublease shall be instituted in the federal courts of the United States of America located in the United States District Court in the Northern District of California or the state courts of the State of California located in the City of San Jose and County of Santa Clara, and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

29. **Waiver of Jury Trial.** To the maximum extent permitted by law, the Parties each irrevocably waive their right to trial by jury in any action or controversy brought in connection with this Replacement Sublease.

30. **Assignment and Subletting; Right of Negotiation; Sublessee's Right to Mortgage.**

(a) **Sublessee's Conditional Right to Assign.** Subject to the provisions of this Section 30(a) and Sections 30(d) and 30(f) below, Sublessee shall not, without the prior written consent of Sublessor and City, as required by the Replacement Master Lease, take any of the following actions: sell, assign, sub-sublet, mortgage, pledge, hypothecate, encumber, or otherwise transfer this Replacement Sublease, or Sublessee's interest in the Leased Premises, the Improvements, and/or any rights or interest which Sublessee may have under this Replacement Sublease, or permit the use of the Leased Premises and/or the Improvements by any other party, or transfer a controlling interest or beneficial interest of Sublessee (subject to the terms of this Section 30, each, a "*Transfer*"), which consent shall not be unreasonably withheld, conditioned, or delayed.

(i) **Sublessor's Consent.** In determining whether to reasonably grant or withhold Sublessor's consent to any proposed Transfer, Sublessor shall take into consideration and evaluate the proposed assignee's creditworthiness, operational experience, reputation and proposed use of the Leased Premises. If given, the consent of Sublessor to one Transfer of this Replacement Sublease shall not be construed to relieve Sublessee or the assignee from the obligation of obtaining the express consent in writing of Sublessor to any further or subsequent Transfer. No Transfer by Sublessee will release or diminish the continuing obligation of Sublessee to perform all of the covenants required to be performed by Sublessee under the terms of this Replacement Sublease unless the net worth of the Transferee shall be substantially similar to or greater than that of the Sublessee at the time of the Transfer, as reasonably determined by Sublessor in writing, in which case Sublessee shall be released from all further Replacement Sublease obligations first arising after the date of the Transfer. In addition, any approved assignee of Sublessee's interest in this Replacement Sublease shall expressly assume this Replacement Sublease by a written agreement, an original executed counterpart of which shall be delivered to Sublessor concurrent with any assignment of this Replacement Sublease. The terms of this Section 30 shall apply to any subsequent Transfer by any party of an interest in the Leased Premises, including but not limited to the further sub-subleasing of any or all of the Leased Premises beyond any initial sub-sublease.

(b) Permitted Transfers. Notwithstanding anything herein to the contrary, the assignment or subletting by Sublessee of all or any portion of this Replacement Sublease or the Leased Premises to (i) a parent or subsidiary of Sublessee or any other Affiliate of Sublessee, or (ii) any entity which purchases all or substantially all of the assets of Sublessee, or (iii) any entity into which Sublessee is merged or consolidated, or (iv) to any person or entity following a decision by Sublessee to relocate its headquarters outside of the Bay Area (all such persons or entities described in clauses (i), (ii), (iii) and (iv) being sometimes herein referred to as "**Permitted Transferee**"), shall not be deemed a Transfer under this Section 30 (hence, the aforesaid events shall not be subject to the conditions and requirements of this Section 30), provided in all instances that:

(i) any such Permitted Transferee was not formed as a subterfuge to avoid the obligations of this Section;

(ii) Sublessee shall give Sublessor notice of any such assignment or sublease to a Permitted Transferee within twenty days from the date of such Transfer;

(iii) any such assignment or sublease shall be subject to all of the terms and provisions of this Replacement Sublease, and such assignee or sublessee, other than in the case of a Transfer resulting from a merger or consolidation, shall assume the obligations of Sublessee under this Replacement Sublease arising following the date of such Transfer; and

(iv) unless the net worth of the Permitted Transferee shall be substantially similar to or greater than that of the Sublessee at the time of the Transfer (in which case Sublessee shall be released from further obligations to be performed by Sublessee under this Replacement Sublease following the date of such Transfer), Sublessee shall remain fully liable for all obligations to be performed by Sublessee under this Replacement Sublease.

(c) Subletting to Third Parties. Notwithstanding anything herein to the contrary, (i) Sublessee may assign or sub-sublet to any Affiliate this Replacement Sublease, the Leased Premises and/or the Improvements thereon and/or any interest in Sublessee, in whole or in part, outright, or by operation of law, without Sublessor's consent, (ii) in the case of a Proposed Transaction (as defined below) with a Proposed Transferee (as defined below) as provided in Section 30(d) where Sublessor elects not to exercise and consummate its Right of Negotiation (as defined below), Sublessee may assign or sublet the Offered Space (as defined below) to the identified Proposed Transferee without Sublessor's consent, and (iii) Sublessee may grant in one or more instances a mortgage, deed of trust and/or security interest in the Improvements and/or its leasehold interest under the Replacement Sublease in accordance with the terms of Section 30(f) below without Sublessor's consent; provided in each such case written notice of the assignment, sub-subletting, encumbrance, or other Transfer is promptly given to Sublessor following the closing of the assignment, sub-subletting, encumbrance, or other Transfer.

(i) If Sublessor consents in writing to Sublessee sub-subletting any portion of the Leased Premises and/or Improvements, any sub-sublease shall be subject to the terms and conditions of this Replacement Sublease and the Replacement Master Lease and Sublessee shall incorporate the terms and conditions of this Replacement Sublease and the Replacement Master Lease into such sub-sublease. The indemnities, waivers, insurance endorsements, and limitations of liability shall be deemed applicable and binding upon Sublessee and its sub-subtenants. No assignment or sub-subletting by Sublessee will release or diminish the continuing obligation and liability of Sublessee to perform all of the covenants required to be performed by Sublessee under

the terms of this Replacement Sublease, and Sublessee remains liable for the acts or omissions of its sub-subtenants, permittees and invitees irrespective of any assignment or sub-sublease.

(ii) The term of any sub-sublease agreement entered into by Sublessee with respect to some or all of the Leased Premises and any Improvements shall at no time exceed the Term specified in the Replacement Sublease and shall in no event have a term of not less than nine (9) consecutive months. In the event this Replacement Sublease is thereafter terminated for any reason prior to the expiration date of the Term including, but not limited to, Sublessee's uncured acts of default, then the termination of this Replacement Sublease shall also serve as the termination of any and all subsequent agreements entered into by Sublessee, concurrent with the effective date of the Replacement Sublease termination.

(d) Proposed Transactions with Third Parties. Prior to Sublessee entering into any sale, sub-sublease, or assignment of some or all of Sublessee's interest under this Replacement Sublease and/or the Improvements (each a "**Proposed Transaction**") with any third party, other than a Permitted Transferee, an Affiliate, or as otherwise authorized above, as set forth above in Section 30(c) (each, a "**Proposed Transferee**") for all or a portion of the Leased Premises (other than a "**Termination Transaction**" defined below), Sublessee will deliver to Sublessor a description of the Leased Premises and Improvements to be transferred ("**Offered Space**") along with a detailed term sheet describing the financial and other material terms and conditions of such Proposed Transaction for the Offered Space (the "**Proposed Term Sheet**").

(i) Sublessor's Right of Negotiation. Provided that Sublessor has adequate space then immediately available and substantially similar to the Offered Space to offer to the Proposed Transferee within the improvements located on the FBO Parcel, Sublessor shall then have fifteen (15) days from and after the date of its receipt of such notice and Proposed Term Sheet from Sublessee to negotiate with said Proposed Transferee, provided that Sublessor shall be free to reach agreement with the Proposed Transferee on terms acceptable to the Sublessor and the Proposed Transferee in their sole discretion (the "**Right of Negotiation**"). If Sublessor does not notify Sublessee that Sublessor and the Proposed Transferee have reached such agreement and provide Sublessee with a written copy of the terms of such agreement (redacted as deemed necessary by Sublessor to protect confidential or privileged information) within such fifteen (15) day period, Sublessee shall have the right to consummate the Proposed Transaction on the terms and conditions substantially set forth in the Proposed Term Sheet and the Proposed Transferee shall have quiet enjoyment of the Offered Space in accordance with the applicable executed definitive agreement. If Sublessor consummates a transaction with the Proposed Transferee, in accordance with the foregoing, in no event shall the Sublessee thereafter consummate the Proposed Transaction with the Proposed Transferee. The Right of Negotiation will be deemed a continuing right and will apply to each sale, assignment and sub-sublet of Offered Space by Sublessee to a Proposed Transferee during the Term. For the avoidance of doubt, notwithstanding anything herein to the contrary, Sublessor's Right of Negotiation as provided in this Section 30(d) shall not apply to any Transfer to any Permitted Transferee.

(e) Termination Transfers. Notwithstanding the foregoing, to the extent such Proposed Transaction involves a final and absolute sale, assignment, or sub-sublet of the Leased Premises for the entire remainder of the Term (a "**Termination Transfer**"), and Sublessor consummates a Termination Transfer with the Proposed Transferee in conformance with the requirements of Section 30(d) above, then Sublessor and Sublessee shall execute a mutually acceptable written instrument terminating this Replacement Sublease and Sublessee shall be released from any further liability hereunder.

(f) Notice of Available Space. Notwithstanding the foregoing, Sublessee may deliver written notice to Sublessor inquiring as to whether Sublessor has space then available, and if so, how much. Sublessor shall within five (5) business days thereafter notify Sublessee as to what space Sublessor has available.

Non-Solicitation of Sublessor's Subtenants. Sublessee agrees not to, directly or indirectly, knowingly entice, persuade or solicit (or attempt to entice, persuade or solicit) any then-existing subtenant of Sublessor at the Airport to relocate to any space within the Leased Premises. In no event shall Sublessee agree to sublease space within the Leased Premises to any party that has been an occupant of any space within the FBO Parcel during the prior twelve (12) month period. Upon the request of Sublessee, Sublessor shall promptly provide Sublessee with a current list of all of Sublessor's current subtenants at the Airport and occupants of space within the FBO Parcel during the prior twelve (12) month period.

(g) Permitted Mortgages. An encumbrance permitted pursuant to this Section 30(f) shall be referred to as a "**Permitted Mortgage.**" Sublessee may, at any time and from time to time during the term of this Replacement Sublease, encumber to any person or entity (each hereinafter sometimes called "**Lender**") by deed of trust or mortgage or other security instrument, all of Sublessee's interest under this Replacement Sublease, the subleasehold estate hereby created in the Leased Premises and the Improvements owned by Sublessee (collectively, "**Sublessee's Interest**"), for the purpose of financing the cost of constructing the Improvements, or to otherwise finance Sublessee's business operations (including future improvements at the Leased Premises) or for the purpose of restructuring or refinancing any debt permitted by this Replacement Sublease, provided that Sublessee obtains the prior written consent of Sublessor, which consent shall not be unreasonably withheld, and further provided that:

(i) Except as otherwise expressly provided in this Replacement Sublease or in a separate document executed by Sublessor, all rights acquired by a Lender under a Permitted Mortgage shall be subject and subordinate to each and all of the covenants, conditions and restrictions set forth in this Replacement Sublease, and to all rights of Sublessor hereunder, none of which covenants, conditions and restrictions is or shall be waived by Sublessor by reason of the granting of such Permitted Mortgage, except as expressly provided in this Replacement Sublease or in a separate document executed by Sublessor. Notwithstanding any foreclosure of any Permitted Mortgage and so long as this Replacement Sublease has not been terminated, Sublessee shall remain liable for the payment of Base Rent and all other fees and charges payable pursuant to this Replacement Sublease, and for the performance of all of the terms, covenants and conditions of this Replacement Sublease which by the terms hereof are to be carried out and performed by Sublessee.

(ii) Sublessee shall give Sublessor forty-five (45) days prior written notice of any such Permitted Mortgage, and shall accompany the notice with a true copy of the Permitted Mortgage.

(iii) Sublessee provides to Sublessor all reasonably requested information in connection with such consent.

(iv) No encumbrance incurred by Sublessee pursuant to this Section shall, and Sublessee shall not have power to incur any encumbrance that will constitute in any way a lien or encumbrance on the fee of the Leased Premises or any interest of Sublessor in the Leased Premises.

(v) The principal amount of the encumbrance shall not exceed (when added to the principal balances of any other then-existing Permitted Mortgages not being refinanced

thereby) an amount equal to seventy-five percent (75%) of the then fair market value of Sublessee's Interest. Sublessee shall submit to Sublessor Lender's appraisal which shall be used to determine fair market value. In the event that Sublessor disagrees with Lender's appraisal, then the appraisal process stipulated in Section 5.3.2 of the Replacement Master Lease (with appropriate modifications to account for the fact that different property is being appraised) shall apply and be used to determine the current fair market value of Sublessee's Interest.

(vi) No encumbrance incurred by Sublessee pursuant to this Section shall extend beyond the term of this Replacement Sublease.

(vii) The encumbrance shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Replacement Sublease, except as Sublessor may otherwise agree in its sole discretion or as City may have agreed in a separate agreement with Sublessor.

(ix) An encumbrance may be given only pursuant to a bona fide loan transaction. The holder of an encumbrance is sometimes herein referred to as a "**Permitted Mortgagee**".

(h) In order to facilitate the approval of an encumbrance obtained for the purpose of financing the Improvements as described in **Exhibit A-4** attached hereto, Sublessor is authorized to consent to said encumbrance provided that all provisions of Section 30(g) are complied with by Sublessee and that all documents in connection therewith are approved as to form by Sublessor, such consent not to be unreasonably delayed or withheld.

(i) Any Permitted Mortgage that contains a power of sale as defined by California law, shall contain a provision that a copy of any notice of default and a copy of any notice of sale under such deed of trust or mortgage shall be mailed to Sublessor at the address specified in Section 24 of this Replacement Sublease and City as specified in the Replacement Master Lease, simultaneously with any such notice to Sublessee.

(j) Sublessee shall at all times keep Sublessor informed in writing of the name and mailing address of Lender and any changes in Lender's mailing address. No Permitted Mortgagee shall have the rights or benefits mentioned in Section 30(g) nor shall the provisions of Section 30(g) be binding upon Sublessor, unless and until the name and address of the Permitted Mortgagee shall have been delivered to Sublessor, notwithstanding any other form of notice, actual or constructive.

(k) Should Sublessee grant a Permitted Mortgage to any Permitted Mortgage pursuant to Section 30(g), Lender shall have the right at any time during the Term of this Replacement Sublease and the existence of the Permitted Mortgage to:

(i) Do any act or thing required of Sublessee under this Replacement Sublease which may be necessary and proper to be done in observance of the covenants and conditions of this Replacement Sublease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Sublessee's rights under this Replacement Sublease as if done by Sublessee, provided that Lender complies with Section 30(g).

(ii) Realize on the security afforded by the leasehold estate under this Replacement Sublease and Improvements by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the Permitted Mortgage and to:

A. Transfer, convey, or assign the title of Sublessee to the leasehold estate created by the Replacement Sublease and the Improvements to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Permitted Mortgage; provided, however, that Lender first complies with the provisions of this Subsection; or

B. Acquire and succeed to Sublessee's interest in the leasehold estate created by the Replacement Sublease and the Improvements by virtue of a conveyance in lieu of foreclosure or any foreclosure sale, whether the foreclosure sale be conducted pursuant to a court order or pursuant to a non-judicial power of sale contained in the Permitted Mortgage.

(l) If Sublessee, or Sublessee's successors or assigns, shall mortgage this Replacement Sublease in compliance with the provisions of Section 30(g), then, so long as any such Permitted Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(i) Sublessor, upon serving upon Sublessee any notice of default pursuant to the provisions of Section 25 hereof, or any other notice under the provisions of or with respect to this Replacement Sublease, shall also serve a copy of such notice upon any Permitted Mortgagee at the address provided for in such notice by Sublessee, and no notice by Sublessor to Sublessee hereunder shall affect any rights of a Permitted Mortgagee unless and until a copy thereof has been so served to such Permitted Mortgagee.

(ii) Any Permitted Mortgagee, in case Sublessee shall be in default hereunder, shall, within the period provided for Sublessee to cure such default and otherwise as herein provided, have the right, but not the obligation, to remedy such default or cause the same to be remedied, and Sublessor shall accept such performance by or on behalf of the Permitted Mortgagee as if the same had been made by Sublessee; provided, however, that if the breach or default is with respect to the initial construction of the Improvements, nothing contained in this Section or any other Section or provision of this Replacement Sublease shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or other action in lieu thereof, to undertake or continue the construction or completion of the improvements beyond the extent necessary to conserve or protect the improvements or construction already made without first having expressly assumed the Sublessee's obligation to Sublessor to complete, in the manner provided in this Replacement Sublease, the Improvements on the Leased Premises or the part thereof to which the lien or title of such Permitted Mortgagee relates.

(iii) For the purposes of Section 30(g), no Sublessee Event of Default, other than a Sublessee Event of Default due to a default in the payment of money, shall be deemed to exist hereunder with respect to the performance of work required to be performed, or of acts to be done or of conditions to be remedied, if steps shall, in good faith, have been commenced by Sublessee or a Permitted Mortgagee within the time permitted therefore to rectify the same and shall be prosecuted to completion with diligence and continuity as required hereunder.

(iv) Anything herein contained to the contrary notwithstanding, upon the occurrence of a Sublessee Event of Default, Sublessor shall take no action to effect a termination of this Replacement Sublease without first giving to any Permitted Mortgagee written notice thereof and a reasonable time thereafter which shall not be less than (a) ten (10) days with respect to a default in the payment of money and (b) with respect to non monetary defaults, thirty (30) days or such longer period as may be reasonably necessary so long as Permitted Mortgagee is diligently working on curing such default within which to either (i) obtain possession of the mortgaged

property (including possession by a receiver), or (ii) institute, prosecute and complete foreclosure proceedings or otherwise diligently acquire Sublessee's interest under this Replacement Sublease. A Permitted Mortgagee, upon acquiring Sublessee's interest under this Replacement Sublease, shall be required promptly to cure all defaults then reasonably susceptible to being cured by such Permitted Mortgagee; provided, however, that: (i) such Permitted Mortgagee shall not be obligated to continue such possession or continuous use of the Leased Premises or to continue such foreclosure proceedings after such defaults shall have been cured; (ii) nothing herein contained shall preclude Sublessor, subject to the provisions of this Section, from exercising any rights or remedies under this Replacement Sublease with respect to any other default by Sublessee during the pendency of such foreclosure proceedings; and (iii) such Permitted Mortgagee shall agree with Sublessor, in writing, to comply during the period of such forbearance with such of the terms, conditions and covenants of this Replacement Sublease as are reasonably susceptible to being complied with by such Permitted Mortgagee. Any default by Sublessee not reasonably susceptible to being cured by such Permitted Mortgagee, or the occurrence of any of the events specified in subsections (a)(ii) and (iii) of Section 25, shall be deemed waived by Sublessor upon completion of such foreclosure proceedings or upon such acquisition of Sublessee's interest in this Replacement Sublease, except that any such events of default which are reasonably susceptible to being cured after such completion and acquisition shall then be cured with reasonable diligence. Such Permitted Mortgagee, or its designee or other purchaser in foreclosure proceedings, may become the legal owner of the Sublessee's leasehold estate of under this Replacement Sublease and owner of the Improvements through such foreclosure proceedings or by assignment conveyance of Sublessee's leasehold estate of under this Replacement Sublease and ownership of the Improvements in lieu of foreclosure. A Permitted Mortgagee or its designee or other party which becomes the legal owner of the Sublessee's leasehold estate of under this Replacement Sublease and owner of the Improvements through foreclosure proceedings or by an assignment conveyance of Sublessee's leasehold estate of under this Replacement Sublease and ownership of the Improvements in lieu of foreclosure shall be deemed by such acquisition to have assumed all of Sublessee's rights and obligations under this Replacement Sublease which are reasonably susceptible to being performed by such party.

(v) In the event of the termination of this Replacement Sublease prior to its expiration because of Sublessee's default, or operation of law, Sublessor shall serve upon the holder of the senior Permitted Mortgage written notice that the Replacement Sublease has been terminated, together with a statement of any and all sums which would at that time be due under this Replacement Sublease but for such termination, and of all other defaults, if any, under this Replacement Sublease then known to Sublessor. The senior Permitted Mortgagee shall thereupon have the option to obtain a new sublease in accordance with and upon the following terms and conditions:

(A) Upon the written request of the Permitted Mortgagee, within sixty (60) days after service of such notice that the Replacement Sublease has been terminated, Sublessor shall enter into a new sublease of the Leased Premises (including ownership of the Improvements thereon by such holder) with such holder, or its designee, as follows:

(B) Such new sublease shall be the same priority as this Replacement Sublease, shall be effective as of the date of termination of this Replacement Sublease, and shall be for the remainder of the term of this Replacement Sublease and at the Base Rent and upon all the agreements, terms, covenants and conditions hereof. Such new sublease shall require that the new sublessee perform any unfulfilled obligation of Sublessee under this Replacement Sublease which is reasonably susceptible to being performed by such sublessee. Upon the execution of such new sublease, the sublessee named therein shall pay any and all sums which would at the time of the

execution hereof be due under this Replacement Sublease but for such termination, and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by Sublessor in connection with such defaults and termination, the recovery of possession of the Leased Premises and Improvements, and the preparation, execution and delivery of such new sublease. Upon the execution of such new sublease, Sublessor shall allow to the sublessee named therein and such sublessee shall be entitled to an adjustment in an amount equal to such expenses from the net income, if any, derived by Sublessor from the Leased Premises and Improvements during the period from the date of termination of this Replacement Sublease to the date of execution of such new sublease.

(vi) Any notice or other communication which Sublessor shall desire or is required to give to or serve upon the holder of a Permitted Mortgage under this Replacement Sublease shall be in writing and shall be served by certified mail, return receipt requested, addressed to such holder at the address provided for in Section 30(g), or at such other address as shall be designated by such holder in writing given to Sublessor by certified mail, return receipt requested. Any notice or other communication which the holder of a Permitted Mortgage under this Replacement Sublease shall desire or is required to give to or serve upon Sublessor shall be deemed to have been duly given or served if (i) sent by certified mail, return receipt requested, addressed to Sublessor at Sublessor's address as set forth in Section 25 of this Replacement Sublease or at such other addresses as shall be designated by Sublessor by notice in writing given to such holder by certified mail, return receipt requested, and (ii) sent by certified mail, return receipt requested, to the Sublessor's other mortgagees, if any.

(vii) Effective upon the commencement of the term of any new sublease executed pursuant to this Section, all sub-subleases then in effect shall be assigned and transferred without recourse by Sublessor to the new sublessee under such new sublease, and any monies on deposit with Sublessor which Sublessee would have been entitled to use but for the termination or expiration of this Replacement Sublease may be used by the new sublessee under such new sublease for the purposes of and in accordance with the provisions of such new sublease.

(viii) Anything herein contained to the contrary notwithstanding, the provisions of Section 30(g) shall inure only to the benefit of the holders of Permitted Mortgages.

(m) No Lender under a Permitted Mortgage granted by Sublessee pursuant to Section 30(g) shall be liable to Sublessor as an assignee of this Replacement Sublease unless and until such time as Lender acquires all rights of Sublessee under this Replacement Sublease and ownership of the Improvements through foreclosure, a conveyance in lieu of foreclosure or other legal proceedings in the nature of foreclosure or as a result of some other action or remedy provided by law or the instrument creating the Permitted Mortgagee and in such event the Lender shall have no personal liability for the prior acts or omissions of Sublessee, however, Lender shall cure any default in accordance with the terms of the Replacement Sublease.

(n) The term "**Lender**" as used in this Replacement Sublease shall mean not only the person, persons, or entity that loaned money to Sublessee and is named as beneficiary, mortgagee, secured party, or security holder in a Permitted Mortgage but also all subsequent assignees and holders of the Permitted Mortgage.

(o) In the event of the filing of a petition in bankruptcy by Sublessee, and Sublessee rejects this Replacement Sublease under Section 365 of the United States Bankruptcy Code, Sublessor shall, upon the request of a Permitted Mortgagee, enter into a new sublease on the same

terms and conditions as this Replacement Sublease with the Permitted Mortgagee immediately upon Sublessee's rejection of this Replacement Sublease.

31. **Fuel Purchases; Pricing.** Sublessor shall be the exclusive and sole provider of the Fueling Services upon the Leased Premises and Sublessee agrees to purchase or cause to be purchased fuel from Sublessor in connection with the operation of the Sublessee Aircraft and Licensee Aircraft based at the Leased Premises or otherwise operated from the Leased Premises when such aircraft are at the Leased Premises and elect to purchase fuel. Such fuel purchases constitute an integral part of the basis of bargain and material consideration for Sublessor to enter into this Replacement Sublease. Fuel pricing and the provision of other FBO services from Sublessor for Sublessee Aircraft shall be as set forth in the Fuel Agreement. Pricing for Fueling Services and Non-Fueling Services for Licensee Aircraft and Transient Aircraft shall be at Sublessor's then prevailing market rates and terms at the Airport.

32. **Aircraft Towing.** Sublessor shall have the primary responsibility to tow all aircraft on the Leased Premises or on the Non-Exclusive Ramp Area at no additional cost to Sublessee and shall reposition such aircraft within a reasonable period of time after notification from Sublessee. Sublessee shall provide reasonable notice in advance of Sublessee's needs for the movement of Permitted Aircraft on the Leased Premises or on the Non-Exclusive Ramp Area, whether for staging aircraft for departure, for maintenance, engine run-ups, or otherwise. Subject to the foregoing, any towing performed by Sublessor with respect to the Permitted Aircraft shall be performed by sufficiently and properly trained personnel using appropriate towing equipment, including, but not limited to, chocks, tow bars and tugs, to perform all such required towing in a safe and efficient manner. Sublessee expressly agrees not to undertake the towing/repositioning of aircraft outside the Leased Premises except in the event of an "emergency." In this context "emergency" is defined as any urgent operational need of Sublessee or any unanticipated and sudden event in which the safety, security or integrity of an aircraft or person is in imminent peril or jeopardy, such as fire, explosion, or injury.

33. **Headings.** The headings of the Sections of this Replacement Sublease are inserted only as a matter of convenience and for reference and in no way are intended by the Parties to define, limit or describe the scope or intent of any provisions of this Replacement Sublease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

34. **Modification of Replacement Sublease.** No amendment, modification or alteration of the terms of this Replacement Sublease shall be binding unless it is in writing and executed by both Parties.

35. **Resolutions.** Each of the Parties shall promptly submit a copy of an appropriate company resolution to the other, if requested by the other Party, which authorizes the director, member, manager, agent or officer signing this Replacement Sublease to act on behalf of the Party and which authorizes Party to enter into this Replacement Sublease.

36. **Time of Essence.** Time is of the essence for the performance of this Replacement Sublease and each of its provisions.

37. **Severability.** If a court of competent jurisdiction or other governing authority determines that any provision hereof is illegal, unenforceable, or invalid in whole or in part for any reason, all other valid and enforceable provisions hereof shall nonetheless remain unaffected and in full force and effect.

38. **Election of Remedies.** The Parties' respective rights and remedies under this Replacement Sublease are cumulative and in addition to all other rights and remedies available at law and in equity. No action initiated by either Party shall be construed or interpreted as a sole election of remedies and will in no way diminish, restrict, prejudice or otherwise waive any other right or remedy of that Party.

39. **Estoppel Certificates.** Either Party shall, within fifteen (15) days after any written request from the other Party or its lender, execute, acknowledge and deliver a statement (i) certifying that this Replacement Sublease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Replacement Sublease as so modified, is in full force and effect (or if this Replacement Sublease is claimed not to be in force and effect, specifying the grounds therefor) and any dates to which any Aggregate Rent has been paid in advance, and the amount of any security deposit, (ii) acknowledging that no uncured defaults exist on the requesting Party's part, to the certifying Party's knowledge, or, alternatively, specifying such defaults, if any are claimed, and (iii) certifying such other matters as the requesting Party may reasonably request or as may be requested by such Party's current or prospective holders, insurance carriers, auditors, and prospective purchasers. Any such statement may be relied upon by any such parties. If a Party shall fail to execute and return such statement within the time required herein, the Party failing to execute and return such statement shall be deemed to have agreed with the matters set forth therein and the requesting Party and its lender and/or other assignee may rely upon deemed matters in such statement.

40. **Memorandum of Replacement Sublease.** Upon the request of either Party that the other join in executing a Memorandum of this Replacement Sublease in the form of **Exhibit G** attached hereto ("***Memorandum of Sublease***"), the Parties shall execute such Memorandum of this Replacement Sublease which may be recorded at the expense of the requesting Party in the official records of the County Recorder of Santa Clara County, California.

41. **Covenant of Quiet Enjoyment.** Sublessee shall have the right to peaceably and quietly hold and enjoy the Leased Premises throughout the Term subject to the provisions of this Replacement Sublease, provided Sublessee is in compliance with the terms, covenants, agreements, and conditions of this Replacement Sublease. Sublessor shall immediately notify Sublessee of any notice of default that it may receive from City in connection with the Replacement Master Lease.

42. **Sublessor's Right of Entry; City's Right of Entry.** Sublessor and Sublessor's agents shall have the right to enter the Leased Premises, as follows: (i) at any time, in the case of an emergency; (ii) at reasonable times for the purpose of inspecting the Leased Premises following at least forty-eight (48) hours prior written notice to Sublessee; and (iii) as reasonably necessary for Sublessor to provide any service described in this Replacement Sublease following at least forty-eight (48) hours prior written notice to Sublessee. Sublessee shall not be entitled to any abatement of rent or damages by reason of the exercise of any such right of entry. In no event shall such entry unreasonably interfere with the business operations of Sublessee or Sublessee's Related Parties. Notwithstanding the foregoing, Sublessee acknowledges and agrees that the right of entry of City shall be governed by the provisions of Section 18 of the Replacement Master Lease.

43. **"Net" Sublease.** Sublessee shall be obligated hereunder to pay all costs and expenses incurred with respect to, and associated with, the Leased Premises, the Improvements or the business operated thereon and therein, including, without limitation, all taxes and assessments, utility charges, insurance costs, maintenance costs and repair, replacement and restoration expenses (all as more particularly herein provided) together with any and all other assessments, charges,

costs and expenses of any kind or nature whatsoever related to, or associated with, the Leased Premises, the Improvements or the business operated thereon and therein. Except as expressly provided in this Replacement Sublease and any other binding written agreement now or hereafter entered into between Sublessor and Sublessee, Sublessor shall bear no cost or expense of any type or nature with respect to, or associated with, the Leased Premises, the Improvements or the business operated thereon and therein.

44. **Surrender of the Leased Premises.** Sublessee shall, on or before the last day of the Term of this Replacement Sublease or upon any sooner termination, peaceably and quietly surrender and deliver to Sublessor the Leased Premises and the Improvements, in good order, condition and repair, reasonable wear and tear excepted, and free and clear of all liens and encumbrances. Sublessee's interests, if any, and rights of possession to the Leased Premises and Improvements shall terminate upon the termination of this Replacement Sublease, and Sublessor shall thereafter have unencumbered title to all Improvements. Following the expiration or earlier termination of the Term of this Replacement Sublease, upon Sublessor's request, Sublessee shall execute such releases, deeds, or bills of sale which are reasonably requested by Sublessor, which are necessary to effect the provisions of this Section. Sublessee shall be entitled to remove from the Leased Premises and retain possession and ownership of Sublessee's personal property, furniture, fixtures and equipment (including any trade fixtures, aircraft, ground equipment, spare parts, records and inventory) and will repair any damage occasioned by such removal. Any personal property remaining on the Leased Premises beyond thirty (30) days after the expiration of the Term will be considered to have been abandoned and will become the property of Sublessor. Notwithstanding any provision of this Replacement Sublease to the contrary, in the event City requires the removal of any Improvements upon termination of the Replacement Master Lease, in accordance with Section 23.3 of the Replacement Master Lease, Sublessor shall be solely responsible for performing such removal in accordance with the Replacement Master Lease (including the cost of any such removal).

45. **Holding Over.** If Sublessee or any other person or party shall remain in possession of the Leased Premises and the Improvements following the expiration of the Term or earlier termination of this Replacement Sublease without an agreement in writing between Sublessor and Sublessee, the person or party remaining in possession shall be deemed to be a tenant at sufferance, and during any such holdover, the Base Rent payable under this Replacement Sublease by such tenant at sufferance shall be double the rate or rates in effect immediately prior to the expiration of the Term or earlier termination of this Replacement Sublease. Sublessor shall retain all of its rights and remedies under this Replacement Sublease, at law and in equity, against Sublessee or any other person or party during any holdover period. In no event shall there be any renewal of this Replacement Sublease by operation of law if Sublessee or any other person or party remains in possession of all of a portion of the Leased Premises and the Improvements after the expiration or early termination of Term.

46. **Sublessor's Interest Not Subject to Liens.**

(a) Except for a Permitted Mortgage, as set forth in Section 30(f) above, Sublessee shall not place or suffer to be placed upon the Leased Premises therein or the Improvements any lien, levy attachment or other encumbrance (other than a lien upon the Leased Premises or the Improvements for taxes or assessments levied but not delinquent or payable with penalty); provided, however, the foregoing notwithstanding, Sublessee shall have the right to contest or appeal the validity of any such lien, levy, encumbrance or attachment, provided the Sublessee shall first furnish adequate security to the reasonable satisfaction of Sublessor to protect title to the Leased Premises during the pendency of such contest or appeal.

(b) Sublessee shall keep the Leased Premises and the Airport free of any liens arising out of the work performed, materials furnished or obligations incurred by Sublessee in the performance of any construction or installation of the Improvements. Sublessee shall notify Sublessor at least five (5) business days prior to the commencement of any such work to be performed or materials to be furnished on the Leased Premises or the Airport which could give rise to any such lien, and Sublessor shall have the right to post and keep on the Leased Premises of the Airport any notices that may be required by law or which Sublessor may deem proper for the protection of Sublessor, the Leased Premises or the Airport from such liens.

(c) Notwithstanding the foregoing, if a lien is filed against the Leased Premises or the Airport, Sublessee shall not be in default of this Section 46 if Sublessee is in compliance with the provisions of this Section 46(c). In the event any of the persons or entities entitled to make claims pursuant to California Civil Code Sections 3181 or 3248(b) record a claim of lien (whether valid or invalid) in the official records of the County of Santa Clara County, California, then Sublessee shall, at its election and at its sole cost and expense, and within seven (7) days of receiving written notice of such recorded lien, (i) cause the same to be removed; or (ii) pay the same in full or, (iii) commence an action to contest such lien and deliver a bond in the amount of such lien to Sublessor. The obligation of Sublessee contained in the preceding sentence shall exist notwithstanding the fact that the general contractor or a subcontractor may have been paid for such work.

47. **Miscellaneous.**

(a) **Attorneys' Fees.** In the event that any Party institutes any legal suit, action or proceeding against the other Party to enforce the covenants contained in this Replacement Sublease (or obtain any other remedy in respect of any breach of this Replacement Sublease) or otherwise arising out of or relating to this Replacement Sublease, the prevailing Party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.

(b) **Confidentiality.** This Replacement Sublease is executed with the understanding that, except as required by applicable law or legal process or as set forth in the Replacement Master Lease, the terms and conditions herein will be kept confidential and will not be disclosed to any third party by either Party without the other Party's prior written approval. The recordation of the Memorandum of Replacement Sublease by either Party shall not be deemed a breach of the foregoing provision. The termination of this Replacement Sublease shall not affect the Parties' obligations hereunder with respect to the confidentiality of the terms and conditions herein. In the event that a Party becomes legally compelled to disclose any of the terms or conditions herein, to the extent allowed by law such Party will provide the other Party with prompt notice, in advance of disclosure. In the event that no protective order or other remedy is able to be obtained by the disclosing Party prior to disclosure, the disclosing Party will furnish only that information which it is advised by its counsel is legally required and will exercise reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to such information.

(c) **Third Party Beneficiaries.** This Replacement Sublease is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Replacement Sublease.

(d) Successors and Assigns. The provisions of this Replacement Sublease shall, subject to the provisions of this Replacement Sublease concerning assignments, transfers and Permitted Mortgages, apply to and bind the permitted successors and assigns of the Parties hereto.

(e) Relationship of the Parties. Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto or an employee/employer relationship. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third Party, unless in each instance express authority to bind the other Party has been given by granting Party in a separate written document signed by the granting Party.

(f) Sublessee's Representations and Warranties. Sublessee hereby represents and warrants to Sublessor that as of the Effective Date of the Replacement Sublease:

(i) Sublessee is a corporation that has been duly organized pursuant to the laws of the State of Delaware and is in good standing therein and is qualified to do business and in good standing in the State of California. The individual executing this Replacement Sublease on behalf of Sublessee has been authorized to do so by appropriate company action, as necessary, and has full corporate power and authority to enter into this Replacement Sublease, and to otherwise perform the obligations hereunder. The execution of this Replacement Sublease will not (i) conflict with, or result in a breach of, the terms, conditions or provisions, or constitute a default under, any agreement or instrument to which Sublessee is a party or (ii) violate any restriction or court order to which Sublessee is subject; and

(ii) There is no pending or threatened litigation, proceeding or investigation known to Sublessee involving Sublessee that could foreseeably affect Sublessee's right to perform its obligations hereunder. [CONFORM TO TIMING OF TRANSACTION]

(iii) Sublessee is financially solvent and able to pay its debts as they mature.

(g) Sublessor's Representations and Warranties. Sublessor hereby represents and warrants to Sublessee that as of the Effective Date of the Replacement Sublease:

(i) Sublessor is a limited liability company that has been duly organized pursuant to the laws of the State of Delaware and is in good standing therein and is qualified to do business and in good standing in the State of California. The individual executing this Replacement Sublease on behalf of Sublessor has been authorized to do so by appropriate company action, as necessary, and has full limited liability company power and authority to enter into this Replacement Sublease, and to otherwise perform the obligations hereunder. The execution of this Replacement Sublease will not (1) conflict with, or result in a breach of, the terms, conditions or provisions, or constitute a default under, any agreement or instrument to which Sublessor is a party or (2) violate any restriction or court order to which Sublessor is subject;

(ii) There is no pending or threatened litigation, proceeding or investigation involving Sublessor that could foreseeably affect Sublessor's right to perform its obligations hereunder. [CONFORM TO TIMING OF TRANSACTION]

(iii) Sublessor is financially solvent and able to pay its debts as they mature;
and

(iv) No Event of Default (as defined in the Replacement Master Lease) exists with respect to Sublessor's performance pursuant to the Replacement Master Lease.

(h) **Material Considerations.** Each and every term, condition, covenant and provision of this Replacement Sublease is and shall be deemed to be a material part of the consideration of the other Party's entry into this Replacement Sublease, and any breach hereof by either Party shall be deemed to be a material breach. Each term and provision of this Replacement Sublease performable by a Party shall be construed to be both a covenant and a condition.

(i) **Number and Gender.** Whenever the singular number is used in this Replacement Sublease and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

48. **Counterparts/Signatures.** This Replacement Sublease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Faxed, emailed and/or photocopied signatures hereon shall be deemed originals for all purposes.

49. **Consents.** Unless expressly stated otherwise, whenever in this Replacement Sublease the approval or consent of a Party is required, in order for such approval to be effective: (i) such approval or consent must be obtained in advance; (ii) must be in writing; and (iii) must be executed by a person having the express authority to grant such approval or consent. In addition, except to the extent expressly provided to the contrary herein, all consents or approvals required hereunder shall not be unreasonably withheld, conditioned or delayed.

50. **Limitation of Liability.** No director, officer, member, manager, shareholder, agent or employee of either Party shall be personally liable to the other Party pursuant to any term or provision of this Replacement Sublease or because of any breach thereof or because of his, her, its or their execution or attempted execution of this Replacement Sublease.

51. **Survival of Indemnities.** The expiration or termination of this Replacement Sublease shall not affect the right of either Party to enforce any and all indemnities given or made to the other Party under this Replacement Sublease, nor shall it effect any provision of this Replacement Sublease that expressly states it shall survive termination hereof. Each Party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Replacement Sublease, the indemnitor has an immediate and independent obligation to defend the indemnitee from any claim which actually or after allegation and demand potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee.

52. **No Waiver.** Neither Party's waiver of any provision of this Replacement Sublease shall be deemed a waiver of any other provision hereof, or of any subsequent breach by the other Party of the same or any other provision. Sublessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of any applicable consent or approval of Sublessor.

53. **Entire Agreement.** The schedules and exhibits attached hereto are herein incorporated by reference. This Replacement Sublease, together with the attached schedules and exhibits and the Fuel Agreement constitute the entire agreement between the Parties with regard to the use and possession of the Leased Premises and the design, development, construction and use of the Improvements thereon. All prior correspondence, memoranda, negotiations, or understandings (written or oral) are merged into and superseded by this Replacement Sublease and the Other

Documents. This Replacement Sublease shall be interpreted simply according to the plain meaning of its terms and not strictly for or against a Party regardless of which Party drafted it. The Parties hereby acknowledge, agree and understand that this Replacement Sublease and its wording have been arrived at through a process of negotiation between the Parties in which each Party participated to the fullest extent desired by that Party and that neither Party is to be deemed the Party who prepared this Replacement Sublease or the Party who caused any uncertainty to exist within the meaning of California Civil Code Section 1654.

[Signatures appear on following page]

IN WITNESS WHEREOF, the authorized representatives of Sublessor and Sublessee have executed this Replacement Ground Sublease Agreement as of the Effective Date of the Replacement Sublease.

BCH SAN JOSE LLC

GILEAD SCIENCES, INC.

By: _____

By: _____

Name: _____

Name: _____

Name: _____

Name: _____

Date: _____, 20__

Date: _____, 20__

LIST OF SCHEDULES AND EXHIBITS

1. Schedule 1: Definitions.
2. Exhibit A-1: Legal Description of Master Leasehold Parcel
3. Exhibit A-2: Legal Description of the FBO Parcel
4. Exhibit A-3: Legal Description of the Leased Premises
5. Exhibit A-4: Description of the Improvements
6. Exhibit A-5: Description of the Shared Parking Area
7. Exhibit A-6: Sublessee's Non-Exclusive Ramp Area
8. Exhibit A-7: Description of the FBO Improvements
9. Exhibit B: Improvement Construction Rules
10. Exhibit C: Form of Third Party Vendor Release
11. Exhibit D: Environmental Protection Procedures
12. Exhibit E: Hazardous Materials
13. Exhibit F: Insurance
14. Exhibit G: Memorandum of Sublease
15. Exhibit H: List of Permitted Aircraft Inventory

SCHEDULE 1

(DEFINITIONS)

“Activity Fees” means any fees or charges imposed by City on any and all classes of persons, firms, or organizations for the privilege of using the AOA (e.g., landing fees) (as defined in the Replacement Master Lease), or of entering upon the Airport to conduct business thereon, (e.g., use fees), which fees and charges are imposed on a nondiscriminatory basis for the privilege of using or entering upon the Airport. The term “Activity Fees” shall, for purposes of this Replacement Sublease, be the fees and charges set forth in Section 5.7 of the Replacement Master Lease.

“Additional Rent” has the meaning given in Section 5(c).

“Aggregate Rent” has the meaning given in Section 5(c).

“Airport” has the meaning given in the recitals of this Replacement Sublease.

“Airport Fees” has the meaning given in Section 5(b).

“AOA” means the aircraft operations areas of the Airport, as such areas are designated by City from time to time.

“Affiliates” and **“Affiliate”**, as the context may require, shall mean and refer any entity which controls, is controlled by or is under common control with Sublessee. For purposes of this definition, “control” shall mean the ownership of at least fifty percent (50%) of the voting share capital of such entity or any other comparable equity or ownership interests.

“Avigation Easement” has the meaning given in Section 1(c).

“Award” has the meaning given in Section 13(i).

“Base Rent” has the meaning given in Section 4(a).

“Bonds” has the meaning set out in the attached **Exhibit B**.

“City” has the meaning set forth in the recitals of this Replacement Sublease.

“CPI” means the Consumer Price Index (“CPI”) for All Urban Consumers, All Items, for the San Francisco- Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U. S. Department of Labor.

“Completed or Completion” with respect to the construction of the Improvements, shall mean the date on which the City issues a temporary or final occupancy permit for the Improvements which allows the full occupancy and use of the Improvements as intended.

“Damages” has the meaning set out in Section 15(a).

“Effective Date of the Original Gilead Sublease” shall have the meaning set forth in the preamble of this Replacement Sublease.

“Effective Date of the Replacement Sublease” shall have the meaning set forth in the preamble of this Replacement Sublease.

“Eminent Domain” shall have the same meaning as set forth in the Replacement Master Lease.

“Environmental Damages” has the meaning given in Section 17(d).

“Environmental Laws” shall have the same meaning as set forth in the Replacement Master Lease.

“FAA” means the United States Federal Aviation Administration.

“FBO” has the meaning given in Section 11.

“FBO Improvements” has the meaning given in Section 11(a).

“FBO Parcel” has the meaning given in the recitals of this Replacement Sublease.

“FBO Parcel Area” has the meaning given in Section 1(a).

“Force Majeure Event” means any event or occurrence described in Section 27.

“Fueling Services” has the meaning set forth in Section 11(a)(i).

“Fuel Agreement” means that certain Fuel and FBO Services Agreement between Sublessor and Sublessee of even date herewith in substantially the form as the Fuel and FBO Services Agreement between Signature and Sublessee in place as of the termination of the Signature Master Lease.

“General Contract” has the meaning set out in the attached **Exhibit B**.

“Guest” or ***“Guests”*** as the context may require, means any guest, invitee, customer, visitor, employee, agent or other entrant at the Leased Premises who has entered upon the Leased Premises with the approval of Sublessee or its Licensee.

“Improvements” shall have meaning set forth in the recitals of this Replacement Sublease.

“Hazardous Materials” shall have the same meaning as set forth in the Replacement Master Lease.

“Interest Rate” shall have the meaning set out in Section 25(b)(i)(B).

“Leased Premises” shall have the meaning set forth in the recitals of this Replacement Sublease.

“Leased Premises Area” has the meaning given in Section 1(a).

“Lender” has the meaning given in Section 30(g).

“Licensee” and ***“Licensees”*** means any permitted sub-sublessee, licensee or authorized occupant or user of some or all of the Leased Premises pursuant to a written agreement with Sublessee.

“Licensee Aircraft” means any aircraft where (i) the owner or beneficial owner of the aircraft or (ii) the operator of the aircraft, is any executive, member, manager and/or director of a Licensee and/or any other person or entity that is controlled or majority-owned by any of the foregoing.

“Master Leasehold Parcel” has the meaning set forth in the recitals of this Replacement Sublease.

“Memorandum of Sublease” has the meaning set forth in Section 40.

“Noise and Safety Program Fees” shall have the same meaning as set forth in the Replacement Master Lease.

“Non-Fueling Services” has the meaning set forth in Section 11(a)(ii).

“Offered Space” has the meaning given in Section 30(d).

“Original Gilead Sublease” shall have the meaning set forth in the preamble of this Replacement Sublease.

“Party” or **“Parties”** shall have the meaning set forth in the preamble of this Replacement Sublease.

“Partial Condemnation” shall have the meaning given in Section 13(c).

“Partial Taking” shall have the meaning given in Section 13(c).

“Permitted Aircraft” means collectively the Licensee Aircraft, together with the Sublessee Aircraft, provided however that in no event shall the total area necessary to simultaneously store the Permitted Aircraft exceed the square footage of the hangar floor area of the Improvements upon the Leased Premises as calculated in accordance with a reasonable hangar stacking plan. At all times during the Term only those aircraft referenced in the Permitted Aircraft Inventory shall be deemed to constitute the Permitted Aircraft, subject to the foregoing limitation.

“Permitted Aircraft Inventory” means only the Permitted Aircraft identified on **Exhibit H** attached hereto and incorporated herein by this reference, provided however that Sublessee may amend the Permitted Aircraft Inventory by written notice to Sublessor, subject to the limitation set forth above in the definition of Permitted Aircraft.

“Permitted Mortgage” has the meaning given in Section 30(f).

“Permitted Mortgagee” has the meaning given in Section 30(f)(ix).

“Permitted Transferee” has the meaning given in Section 30(b).

“Proposed Transaction” has the meaning given in Section 30(d).

“Proposed Transferee” has the meaning given in Section 30(d).

“Replacement Master Lease” shall have the meaning set forth in the recitals of this Replacement Sublease.

“*Right of Negotiation*” has the meaning given in Section 30(d).

“*Sales Tax*” has the meaning set forth in Section 5(d).

“*Signature Master Lease*” shall have the meaning set forth in the recitals of this Replacement Sublease.

“*Sublessee*” has the meaning set forth in the preamble of this Replacement Sublease.

“*Sublessee Aircraft*” means any aircraft where (i) the owner or beneficial owner of the aircraft or (ii) the operator of the aircraft, is Sublessee and/or one or more of its Affiliates.

“*Sublessee Event of Default*” has the meaning set forth in Section 25(a).

“*Sublessee’s Related Parties*” has the meaning set forth in Section 15(a).

“*Sublessee’s Interest*” has the meaning set forth in Section 30(f).

“*Sublessor*” has the meaning set forth in the preamble of this Replacement Sublease.

“*Sublessor Event of Default*” has the meaning set forth in Section 25(c).

“*Sublessor’s Related Parties*” has the meaning given in Section 15(a).

“*Substantial Condemnation*” shall have the meaning given in Section 13(b).

“*Substantial Taking*” shall have the meaning given in Section 13(b).

“*Term*” has the meaning set forth in Section 3(a).

“*Third Party Vendor*” has the meaning given in Section 7.

“*Total Condemnation*” shall have the meaning given in Section 13(a).

“*Total Taking*” shall have the meaning given in Section 13(a).

“*Transfer*” has the meaning set forth in Section 30(a).

“*TSA*” means the United States Transportation Security Administration.

“*Transient Aircraft*” shall mean any aircraft that is not a Permitted Aircraft referenced on the Permitted Aircraft Inventory.

“*Turnover Date*” shall have the meaning set out in Section 25(b)(i)(B).

“*Vendor Release*” shall have the meaning set forth in Section 7.

EXHIBIT A-1

LEGAL DESCRIPTION OF MASTER LEASEHOLD PARCEL



EXHIBIT "A-1"
LEGAL DESCRIPTION OF MASTER LEASEHOLD PARCEL

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 277.65 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence along said northeasterly line, North 40°50'43" West, 287.36 feet to the TRUE POINT OF BEGINNING;

Thence along continuing along said northeasterly line, the following three courses:

1. Thence North 40°50'43" West, 2,208.07 feet;
2. Thence along a tangent curve to the right, having a radius of 370.00 feet, through a central angle of 48°50'04" for an arc length of 315.36 feet;
3. Thence along a reverse curve to the left, having a radius of 430.00 feet, through a central angle of 02°29'20" for an arc length of 18.68 feet;

Thence leaving said northeasterly line, South 83°19'08" East, 130.42 feet;

Thence South 40°37'45" East, 238.61 feet;

Thence North 49°35'32" East, 335.65 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence parallel with said centerline of 11/29, South 41°06'10" East, 2,446.64 feet;

Thence South 48°53'50" West, 340.12 feet;

Thence North 40°50'43" West, 36.31 feet;

Thence North 49°09'17" East, 100.00 feet;

Thence North 40°50'43" West, 245.61 feet;

Thence South 48°53'50" West, 100.00 feet;

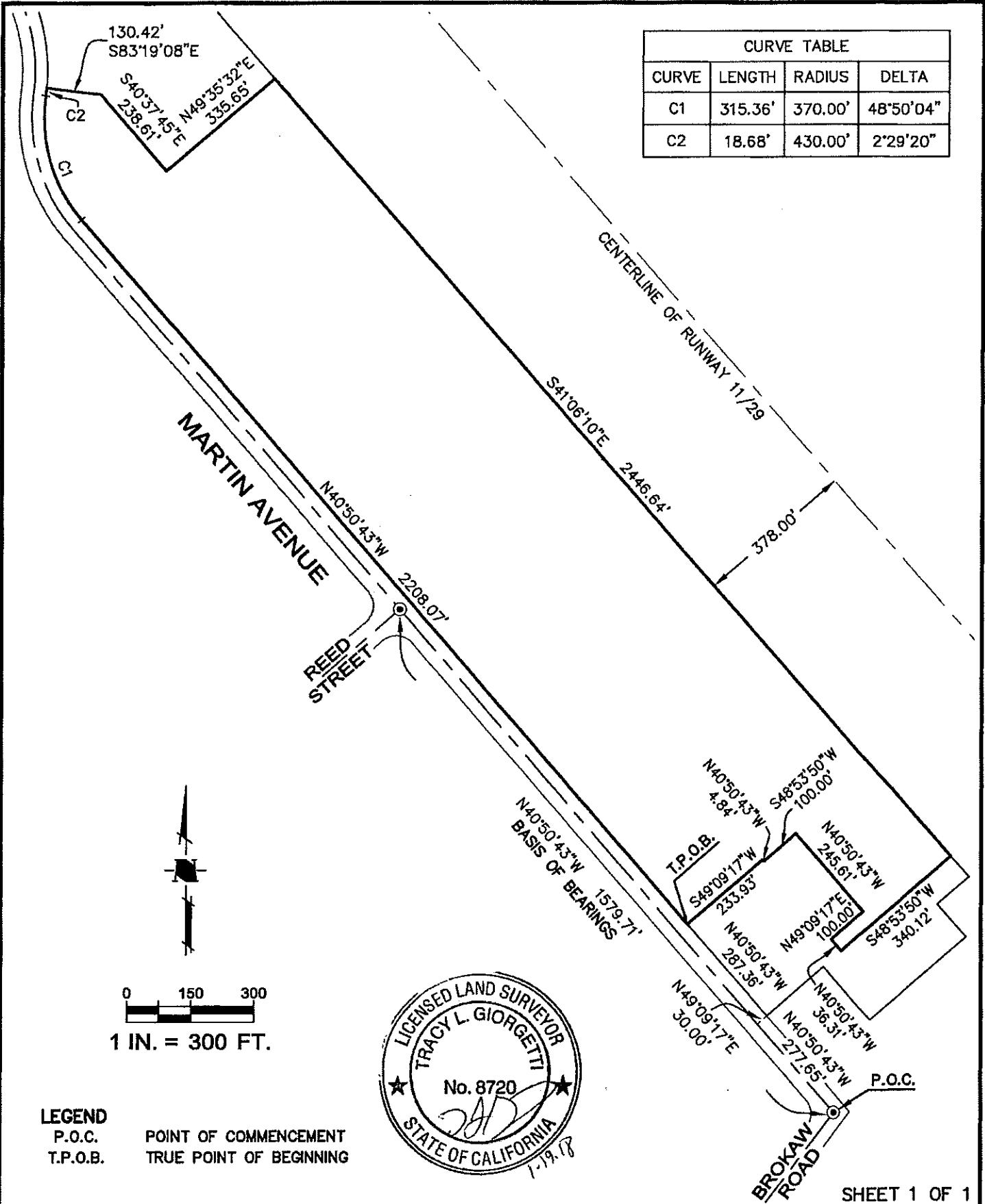
Thence North 40°50'43" West, 4.84 feet;

Thence South 49°09'17" West, 233.93 feet, to the TRUE POINT OF BEGINNING.

Containing 31.24 acres, more or less.



CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	315.36'	370.00'	48°50'04"
C2	18.68'	430.00'	2°29'20"



SHEET 1 OF 1

Date:	01-19-2018
Designed:	-
Drawn:	TG
Checked:	DRS
Proj. Engr.:	-
	36801221-00

HMM

1570 Oakland Road (408) 487-2200
 San Jose, CA 95131 HMMca.com

PLAT TO ACCOMPANY DESCRIPTION:
EXHIBIT "B"
 Legal Description of Master Leasehold Parcel
 SAN JOSE CALIFORNIA

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A-2

LEGAL DESCRIPTION OF THE FBO PARCEL



EXHIBIT "A-2"
LEGAL DESCRIPTION OF THE FBO PARCEL

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue, being the TRUE POINT OF BEGINNING;

Thence along said northeasterly line, the following three courses:

1. Thence North 40°50'43" West, 2,213.96 feet;
2. Thence along a tangent curve to the right, having a radius of 370.00 feet, through a central angle of 48°50'04" for an arc length of 315.36 feet;
3. Thence along a reverse curve to the left, having a radius of 430.00 feet, through a central angle of 02°29'20" for an arc length of 18.68 feet;

Thence leaving said northeasterly line, South 83°19'08" East, 130.42 feet;

Thence South 40°37'45" East, 238.61 feet;

Thence North 49°35'32" East, 335.65 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

Thence parallel with said centerline of 11/29, South 41°06'10" East, 2,165.17 feet;

Thence South 48°53'50" West, 572.78 feet, to the TRUE POINT OF BEGINNING.

Excepting therefrom:

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence along said northeasterly line, North 40°50'43" West, 661.04 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said northeasterly line, North 40°50'43" West, 1,463.50 feet;

Thence leaving said northeasterly line, North 49°09'17" East, 195.00 feet;

Thence North 40°37'45" West, 10.00 feet;

Thence North 49°35'32" East, 368.18 feet, to a point which is 378.00 feet southwesterly, measured at a right angle, from the centerline of Runway 11/29;

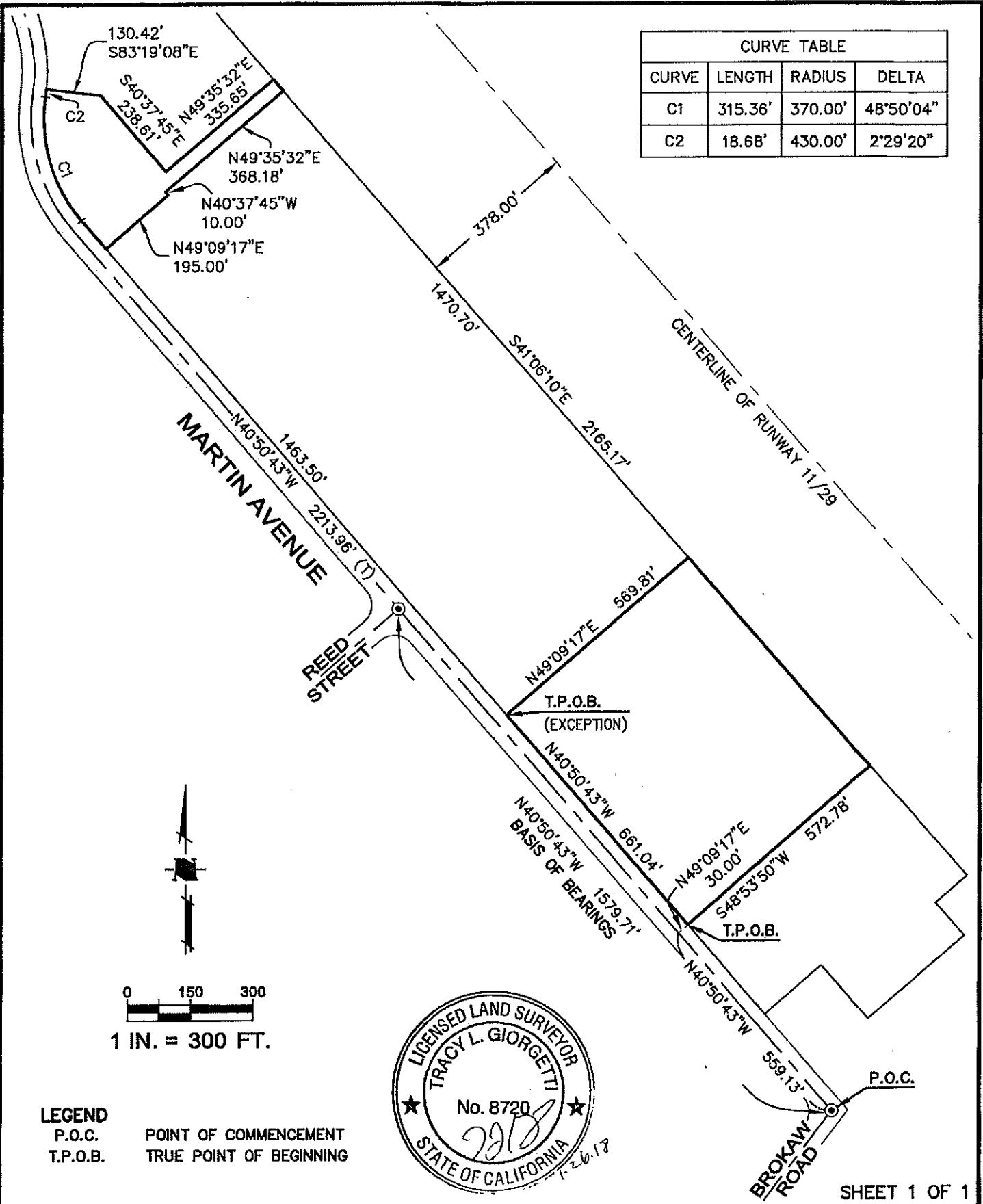
Thence parallel with said centerline of 11/29, South 41°06'10" East, 1,470.70 feet;

Thence South 49°09'17" West, 569.81 feet, to the TRUE POINT OF BEGINNING.

Containing 458,708 square feet or 10.530 acres, more or less.



CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	315.36'	370.00'	48°50'04"
C2	18.68'	430.00'	2°29'20"



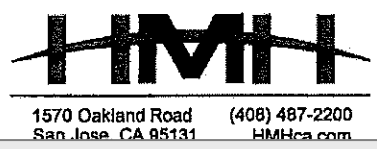
0 150 300
1 IN. = 300 FT.

LEGEND
P.O.C. POINT OF COMMENCEMENT
T.P.O.B. TRUE POINT OF BEGINNING



SHEET 1 OF 1

Date: 01-26-2018
Designed: —
Drawn: TG
Checked: DRS
Proj. Engr: —
368010PL11



PLAT TO ACCOMPANY DESCRIPTION:
EXHIBIT "A-2"
LEGAL DESCRIPTION OF FBO PARCEL
SAN JOSE CALIFORNIA

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A-3

LEGAL DESCRIPTION OF LEASED PREMISES



Legal Description of Leased Premises

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence leaving said northeasterly line, North 48°53'50" East, 233.95 feet;

Thence North 41°06'10" West, 4.84 feet, to the TRUE POINT OF BEGINNING;

Thence North 40°50'43" West, 250.18 feet;

Thence South 49°09'17" West, 174.51 feet;

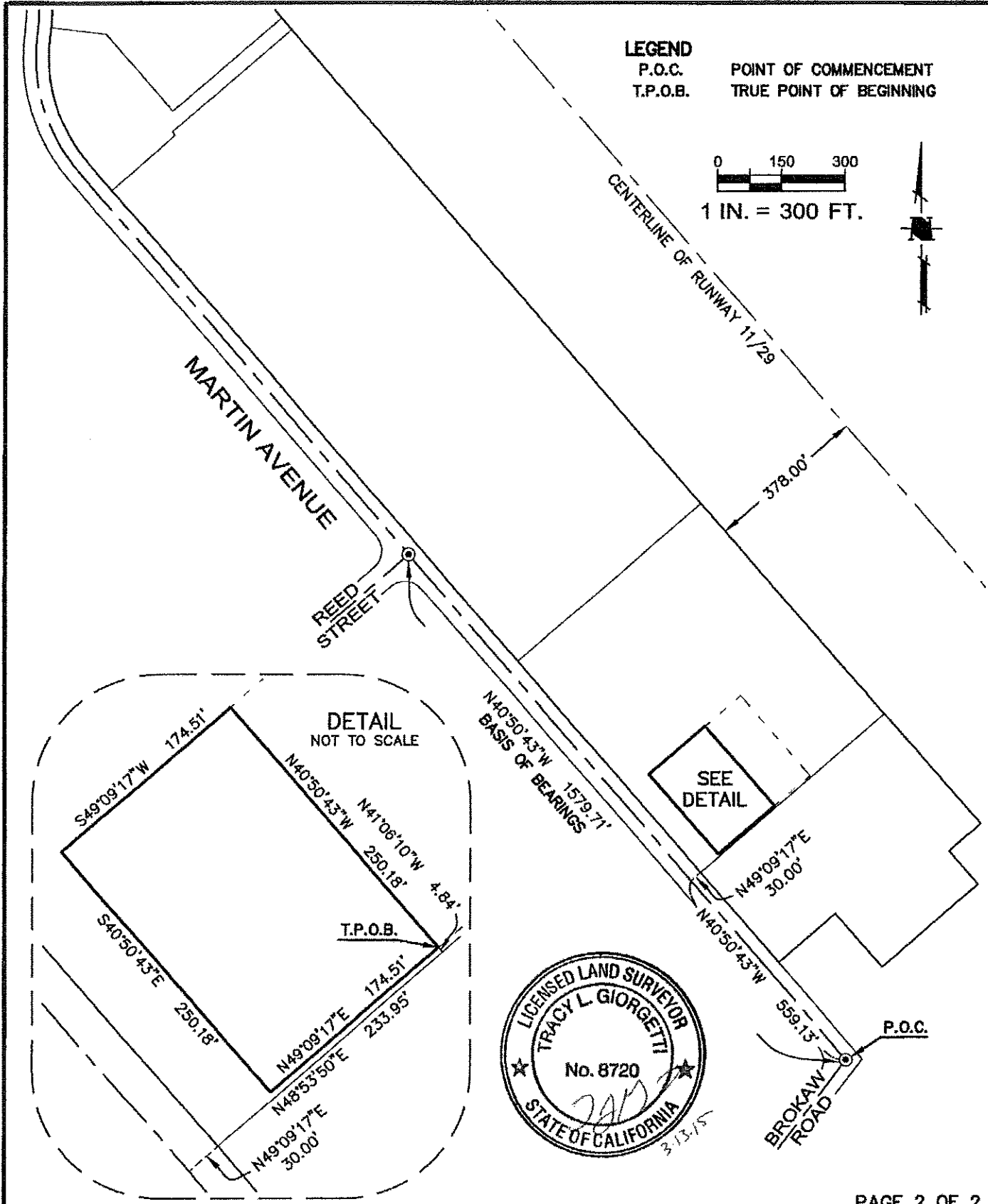
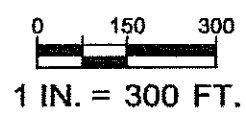
Thence South 40°50'43" East, 250.18 feet;

Thence North 49°09'17" East, 174.51 feet, to the TRUE POINT OF BEGINNING.

Containing 43,659 square feet or 1.002 acres, more or less.



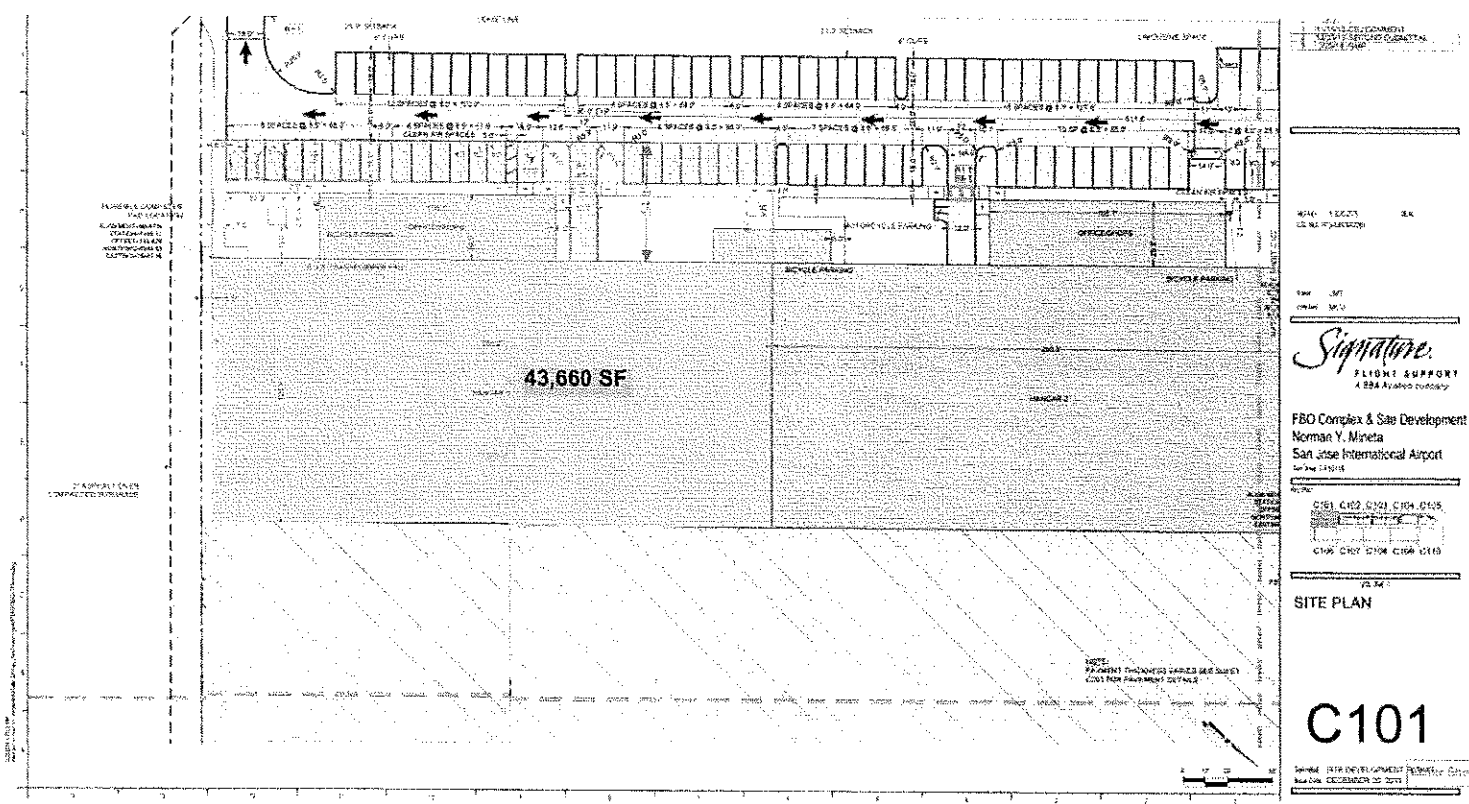
LEGEND
 P.O.C. POINT OF COMMENCEMENT
 T.P.O.B. TRUE POINT OF BEGINNING



Date:	03-13-2015
Designed:	—
Drawn:	TG
Checked:	DT
Prof. Eng.:	—
368010PL16	

1570 Oakland Road (408) 487-2200
 San Jose, CA 95131 HMMca.com

Exhibit A-3
PLAT TO ACCOMPANY DESCRIPTION
Legal Description for Leased Premises
 SAN JOSE CALIFORNIA



1. THIS DEVELOPMENT NEEDS TO BE COMPLETED BY 12/31/2014

DATE: 1/22/14 BY: [Signature]

SCALE: 1/8" = 1'-0"

Signature
FLIGHT SUPPORT
4284 AVIATION CIRCLE

FBO Complex & SaaS Development
Norman Y. Mineta
San Jose International Airport
Site No. C101

PROJECT NO.: C101, C102, C103, C104, C105, C106, C107, C108, C109, C110, C111, C112, C113, C114, C115, C116, C117, C118, C119, C120, C121, C122, C123, C124, C125, C126, C127, C128, C129, C130, C131, C132, C133, C134, C135, C136, C137, C138, C139, C140, C141, C142, C143, C144, C145, C146, C147, C148, C149, C150, C151, C152, C153, C154, C155, C156, C157, C158, C159, C160, C161, C162, C163, C164, C165, C166, C167, C168, C169, C170, C171, C172, C173, C174, C175, C176, C177, C178, C179, C180, C181, C182, C183, C184, C185, C186, C187, C188, C189, C190, C191, C192, C193, C194, C195, C196, C197, C198, C199, C200

SITE PLAN

C101

DATE: 1/22/14 BY: [Signature]

EXHIBIT A-4

DESCRIPTION OF THE IMPROVEMENTS

EXHIBIT A-4

DESCRIPTION OF THE IMPROVEMENTS

The Gilead Improvements shall mean the buildings, fixtures and other improvements constructed on the Leased Premises, which includes the following:

- One (1) aircraft hangar totaling approximately 30,000 SF of hangar deck space.
Associated office /shop space totaling approximately 3,731 SF
Associated car parking areas totaling approximately 9,929 SF

Total Improvement area approximately 43,660 SF or .9954 Acres.

EXHIBIT A-5
DESCRIPTION OF SHARED PARKING AREA

EXHIBIT "A-5"

GILEAD GROUND SUBLEASE AGREEMENT

**DESCRIPTION OF THE GILEAD
EXCLUSIVE VEHICULAR PARKING AREA**

The *Gilead Exclusive Vehicular Parking Area* is an area of approximately 9,929 square feet containing twenty-one (21) vehicle parking spaces and other related improvements, as reflected on the diagram attached hereto as Schedule A-5, for the exclusive use by Gilead and its employees, guests and invitees for vehicular parking.

SCHEDULE A-5

GILEAD VEHICLE PARKING SPACES AND RELATED IMPROVEMENTS

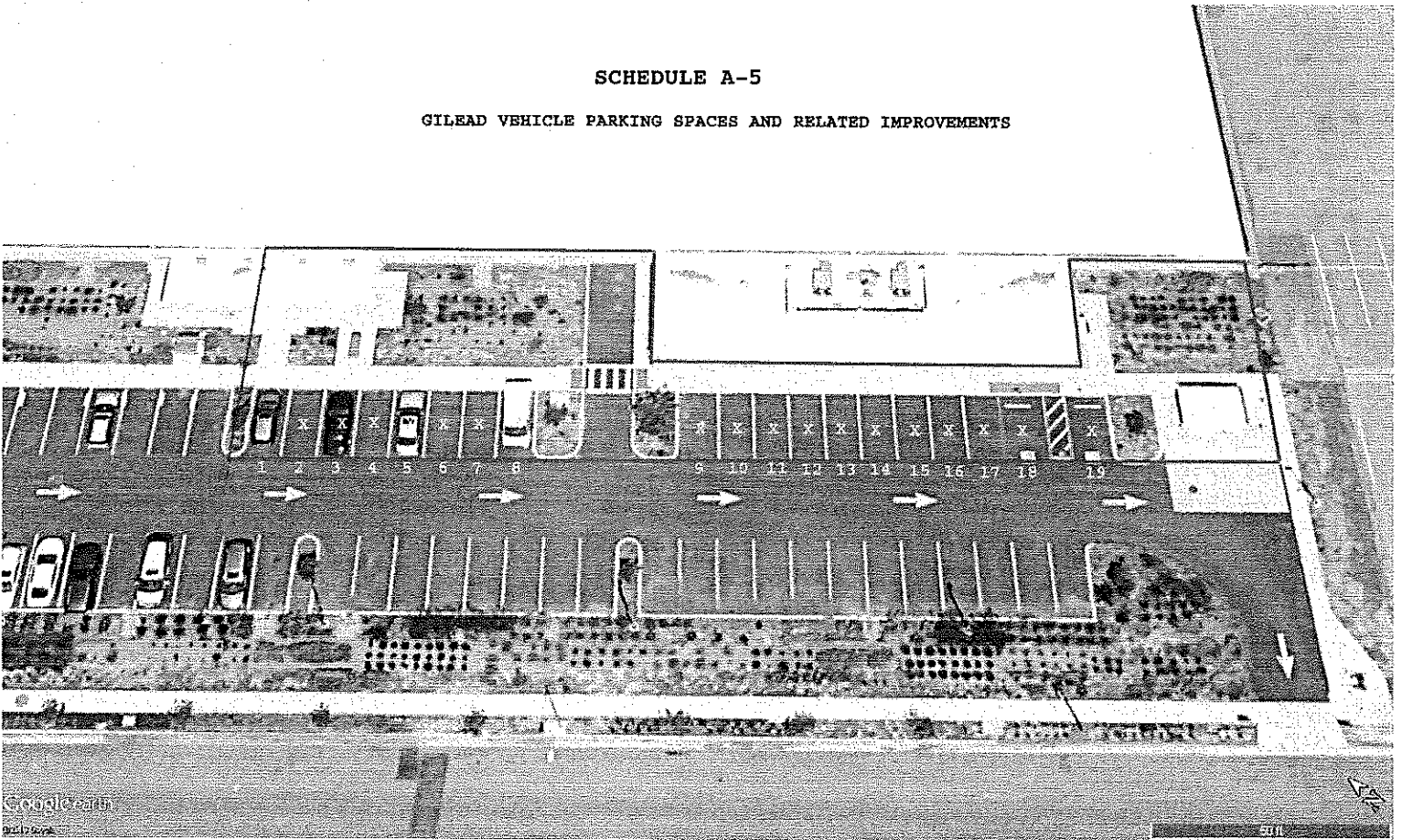


EXHIBIT A-6

SUBLESSEE'S NON-EXCLUSIVE RAMP AREA



EXHIBIT A-6
SUBLESSEE 'S NON-EXCLUSIVE RAMP AREA

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence leaving said northeasterly line, North 48°53'50" East, 233.95 feet;

Thence North 41°06'10" West, 4.84 feet, to the TRUE POINT OF BEGINNING;

Thence North 40°50'43" West, 250.18 feet;

Thence North 49°09'17" East, 110.00 feet;

Thence South 40°50'43" East, 250.18 feet;

Thence South 49°09'17" West, 110.00 feet, to the TRUE POINT OF BEGINNING.

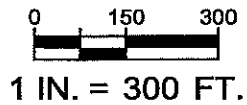
Containing 27,520 square feet or 0.632 acres, more or less.



LEGEND

P.O.C.
T.P.O.B.

POINT OF COMMENCEMENT
TRUE POINT OF BEGINNING



CENTERLINE OF RUNWAY 11/29

MARTIN AVENUE

REED STREET

378.00'

DETAIL
NOT TO SCALE

SEE
DETAIL

N40°50'43"W 1579.71'
BASIS OF BEARINGS

N49°09'17"E 110.00'

S40°50'43"E 250.18'

N40°50'43"W 250.18'

S49°09'17"W 110.00'

T.P.O.B.

N48°53'50"E 233.95'

N41°06'10"W 4.84'

N49°09'17"E 30.00'

N49°09'17"E 30.00'

N40°50'43"W 559.13'

P.O.C.

BROKAW ROAD



Date:	03-13-2015
Designed:	—
Drawn:	TG
Checked:	DT
Proj. Engr.:	—
3680	



1570 Oakland Road (408) 487-2200

PLAT TO ACCOMPANY DESCRIPTION

EXHIBIT A-6

SUBLESSEE'S NON-EXCLUSIVE RAMP AREA

EXHIBIT A-7

DESCRIPTION OF THE FBO IMPROVEMENTS

EXHIBIT A-7

DESCRIPTION OF FBO IMPROVEMENTS

The FBO Improvements shall mean the buildings, fixtures and other improvements constructed on the FBO Parcel and shall include the following:

- Approximately 11,000 SF of executive terminal
Associated outdoor garden areas 7,000 SF
Storefront and circulation Area 16,000 SF
- One (1) aircraft hangar totaling approximately 30,000 SF of hangar deckspace
Associated office/shop space totaling approximately 3,000 SF
Secured Driveway and LID areas 15,000 SF
Associated car parking area(s) 23,000 SF
- Approximately 415,726 SF of aircraft ramp area
- General aviation fuel farm and circulation area 81,785 SF which includes the following:
Up to 80,000 gallons of Jet A
Up to 15,000 gallons of Avgas
Up to 500 gallons of Mogas
Up to 500 gallons of Diesel
3,600 SF of ground service equipment maintenance and shop area
- Other site work and infrastructure required to allow for landside/street access and airside access in accordance with the City and Airport requirements.
- Total Improvement area contains approximately 602,511 or 13.83 acres.

EXHIBIT E

HAZARDOUS MATERIALS

In addition to complying with the environmental provisions set forth earlier in this Replacement Sublease and in Exhibit D, Sublessee agrees to the following provisions:

1. **Notification of Release.** Sublessee shall be solely and fully responsible for notifying Sublessor and the appropriate public agencies of any Hazardous Material release which occurs on the Leased Premises or, to its knowledge, at the Airport other than the Leased Premises and must be reported under applicable Environmental Laws, which in each case is caused by or results from the activities of Sublessee or Sublessee's officers, agents, employees, contractors, permittees or invitees at the Leased Premises or on the Airport other than the Leased Premises, as applicable. Additionally, Sublessee shall, as soon as reasonably possible after learning thereof, notify Sublessor of any Hazardous Material release which occurs on the Leased Premises, regardless of whether the release was caused by or results from Sublessee's activities or is in a quantity that would otherwise be reportable to a public agency under applicable Environmental Laws or which occurs on the Airport other than the Leased Premises and is caused by or results from the activities of Sublessee, Sublessee'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 under applicable Environmental Laws.

2. **Liability.** Sublessee shall be solely and fully responsible and liable for any Hazardous Material release on the Airport other than at the Leased Premises during the Term which is caused by or results from the activities of Sublessee or Sublessee's officers, agents, employees, contractors, or sub-sublessees of Sublessee on the Airport and while acting for or on behalf of Sublessee, unless Sublessee establishes through investigation, sampling, testing and/or analysis that the release was caused by the negligence or willful misconduct of Sublessor, City, or other user of the Airport, or any of their respective officers, agents, employees, contractors, tenants or permittees or by migration of Hazardous Materials onto the Airport from a source off the Airport.

3. **Prevention of Release.** Sublessee shall take commercially reasonable efforts to prevent its activities at the Airport during the Term from causing any Hazardous Material release to occur on the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

4. **Records and Inspections.**

(a) Sublessee shall maintain, during the Term of this Replacement Sublease and for a period of not less than four (4) years and one (1) month after the expiration or termination of the Term of this Replacement Sublease, 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 by Sublessee, Sublessee's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(b) After the expiration of four (4) years and one (1) month following the termination of this Replacement Sublease, Sublessee may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Sublessee, Sublessee's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Sublessee shall

notify Sublessor no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by Sublessor within twelve days (12) days after such notice is received, deliver copies of said records to Sublessor.

5. **No Third Party Beneficiaries.** Nothing contained in this **Exhibit E** shall be construed as conferring any benefit on any person not a party to this Replacement Sublease, nor as creating any right in any person not a party to this Replacement Sublease to enforcement of any obligation created under this Replacement Sublease.

6. **Survival of Obligations.** Each Party's obligations under this **Exhibit E** of the Replacement Sublease shall survive the expiration or earlier termination of this Replacement Sublease.

EXHIBIT F

INSURANCE

REQUIRED COVERAGE.

Sublessee, at Sublessee's sole cost and expense and for the full Term of this Replacement Sublease or any renewal thereof shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any operations under this Replacement Sublease:

A. A COMPREHENSIVE GENERAL LIABILITY policy with a minimum limit of not less than \$5,000,000 combined single limit for bodily injury and property damage providing at least all of the following minimum coverages (without deductibles):

1. Premises Operations
2. Premises Medical
 - a. Minimum limit of \$1,000/10,000
3. Completed Operations
4. Products
5. Personal Injury
 - a. Coverage for A, B & C
6. Liquor Liability with a minimum limit of not less than \$1,000,000
7. Blanket Contractual
8. Owners' and Contractors' Protective, with respect to any construction activities undertaken by Sublessee

B. A Course of Construction Policy equal to 100% of the total value of the construction.

1. This policy shall be maintained during the entire course of construction performed by Sublessee, if any.

C. A FIRE ALL-RISK replacement cost policy (upon completion of the construction of the Improvements) for an amount not less than the replacement value of the Improvements at each anniversary or renewal of the policy and providing at least the following minimum coverages:

1. Difference in Conditions (DIC) excluding earthquake coverage if not commercially available in reasonable amounts at reasonable costs on the open market from reputable insurance companies.
2. Vandalism and Malicious Mischief (V & M M)
3. Extended Coverage (EC)
4. Loss of Income
 - a. This coverage shall provide for continuing lease payments to Sublessor in the event of partial or total destruction of any buildings.

b. The coverage for the lease payments shall be in an amount equal to, or greater than, the lease payments owed by the Sublessee to Sublessor for a period of one year.

c. No deductible is permitted except for the basic fire coverage and that deductible shall not exceed \$10,000 or such higher amount as is customary from time to time in the industry for similar coverage.

d. This policy shall continuously be maintained in force for the entire term of the Replacement Sublease after construction and/or occupancy begins whichever comes first.

D. A COMPREHENSIVE BUSINESS AUTO policy with a minimum limit of not less than \$5,000,000 combined single limit for bodily injury and property damage, providing at least all of the following coverages (without deductibles):

1. Coverages shall be applicable to any and all leased, owned, hired or non-owned vehicles used in pursuit of any of the activities associated with this Replacement Sublease.

2. Any and all mobile equipment including cranes which is not covered under the above Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy.

E. A COMPREHENSIVE AIRCRAFT LIABILITY policy which shall include but not necessarily be limited to all of the following coverages and carry at least the following minimum limits of liability for bodily injury and property damage:

1. To the extent Sublessee undertakes charter operations, \$5,000,000 combined single limit for charter for bodily injury and property damage.

2. To the extent Sublessee undertakes military charters, \$5,000,000 for military charters for bodily injury and property damage with a minimum sublimit of \$100,000 per passenger seat.

3. To the extent Sublessee transports non-hazardous cargo, \$5,000,000 limits whenever the aircraft is being used solely for transportation of cargo consisting of non-hazardous materials. To the extent Sublessee transports hazardous cargo, while carrying hazardous materials as defined by the FAA (see Part 171) and DOT, the limit shall be not less than \$10,000,000.

F. A COMPREHENSIVE AIRPORT PREMISES LIABILITY policy with a minimum limit of not less than \$5,000,000 which shall include but not necessarily be limited to at least all of the following coverages:

1. Airport Operations

a. Leased Premises Operations

2. Fueling, Defueling or Refueling Operations with a minimum limit of \$5,000,000 if such operations are conducted by the Sublessee.

G. A HANGARKEEPERS' LIABILITY coverage with a minimum of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate and providing at least the following coverages:

1. Completed Operations.
2. Fueling, Defueling or Refueling Operations with a minimum limit of \$5,000,000 if such operations are conducted by the Sublessee.

H. A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Sublessee:

1. This policy shall provide coverage for Workers' Compensation (Coverage A); and
2. This policy shall also provide coverage for \$100,000 Employers' Liability (Coverage B); and,
3. This policy shall require an "ALL STATES" endorsement if Sublessee is domiciled outside of the State of California.

I. Pollution/Environmental Liability Insurance – Two Million Dollars (\$2,000,000.00); provided however that Pollution/Environmental Liability Insurance shall be waived only in the event that no aircraft maintenance is performed upon the Leased Premises, prior to the commencement of aircraft maintenance upon the Leased Premises, Sublessor shall obtain such coverage and deliver evidence of same to Sublessor in accordance with this Replacement Sublease.

J. ENDORSEMENTS All of the following endorsements are required to be made a part of each of the above required policies as stipulated below (For the Excess Liability policy only, identify on the Certificate of Insurance as "following form"):

1. "BCH San Jose LLC, The City of San Jose, and their employees, officers, agents and contractors are hereby added as additional insureds."
2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance Sublessor may possess, including any self-insured retention either Sublessor may have, and any other insurance Sublessor does possess shall be considered excess insurance only."
3. "This insurance shall act for each insured, and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
4. "Thirty (30) days prior written notice of cancellation shall be given to Sublessor in the event of cancellation and/or by Sublessee to Sublessor for any reduction in coverage of any nature." Such notice shall be sent to:

BCH San Jose LLC
555 Bryant St. #347

Palo Alto, California 94301
Attention: Ken Ambrose, President

5. Endorsement #4 (45 days' notice) listed above is the only endorsement required to be made a part of the Workers' Compensation and Employers' Liability policy.

6. For the Fire policy and the Course of Construction policy, the additional insured endorsement #1 shall be replaced by an endorsement making Sublessor, City of San Jose (and any lender) as lender-loss payee.

K. **PROOF OF COVERAGE:** Copies of all of the require ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE, which shall be provided by the Sublessee's insurance company as evidence of the stipulated coverages. This Proof of Insurance shall then be mailed to:

BCH San Jose LLC
555 Bryant St. #347
Palo Alto, California 94301
Attention: Ken Ambrose, President

L. **BAILEE DISCLAIMER:** It is hereby understood and agreed that Sublessor in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Sublessee, or Sublessee's contractors, agents, employees and invitees.

M. These insurance requirements shall be subject to annual review by Sublessor's Risk Manager. Should Sublessor reasonably require any change in coverage, such change shall be provided in writing to Sublessee and Sublessee shall comply with the said change with the next succeeding renewal of Sublessee's insurance.

Except as set forth below, Sublessee shall be required to have any prime contractors engaging in the construction of the Improvements provide all the required insurance listed on this Exhibit F, that is applicable to such prime contractor (i.e. A, B, D and H above). Sublessee shall provide Sublessor with such insurance and with notice of the name of each contractor providing it, and the purpose for which the insurance was procured on or before commencement of construction. Subcontractors shall only be required to carry \$1,000,000.00 limits for Comprehensive General Liability rather than \$5,000,000.00. Liquor liability coverage shall not be required of the contractors, except to the extent such contractors serve liquor.

EXHIBIT B

IMPROVEMENT CONSTRUCTION RULES

Sublessee hereby acknowledges and agrees that all development of and construction of Improvements occurring after the Effective Date of the Replacement Sublease upon the Leased Premises shall be conducted and completed in accordance with the following terms and conditions:

(a) Before the commencement of work on the Leased Premises, final plans and specifications for the Improvements shall be furnished to Sublessor for its review and approval (which shall not be unreasonably withheld, conditioned or delayed so long as the plans and specifications comply with all applicable governmental regulations, rules, ordinances and provisions of the Replacement Master Lease.

(b) Before the commencement of work on the Improvements, Sublessee shall obtain (and provide evidence to Sublessor of) the approval thereof by all governmental departments or authorities having or claiming jurisdiction of or over the Leased Premises, including the Airport, if required by such departments or authorities, and with any public utility companies having an interest therein, if required by such utility companies. In any such work, Sublessee shall comply with all applicable laws, ordinances, requirements, order, directions, rules and regulations of the federal, state, county and municipal governments and of all other governmental authorities having jurisdiction of or over the Leased Premises and of all their respective departments, bureaus and offices, and with the requirements and regulations, if any, of such public utilities, of the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction, or any other body exercising similar functions, and of all insurance companies then writing policies covering the Leased Premises or any part thereof.

(c) Before the commencement of work on the Improvements, Sublessee shall provide Sublessor with a copy of its general construction contract for the construction of the Improvements (the "**General Contract**"). Sublessee shall require its contractor to furnish a general contractor's payment bond and an industry standard performance bond each, separately, in the amount of the General Contract price (together the "**Bonds**"). The General Contract shall include the agreement of the general contractor therein to indemnify and hold harmless Sublessor and Sublessee hereunder from any and all claims, liability, damage, cost and expense, including attorneys' fees and costs, incurred in connection with or as a result of the negligence of the general contractor, its subcontractors, employees and/or agents. The Bonds shall each name Sublessor as Co-obligee and the parties hereto agree that the proceeds of the Bonds shall be used to complete the construction of the Improvements.

(d) Sublessee represents and warrants to Sublessor that all work on the Improvements will be performed in a good and workmanlike manner and in accordance with the terms, provisions and conditions of this Replacement Sublease, the Replacement Master Lease, and all governmental requirements.

(e) Sublessor shall have the right to inspect any such construction work at all times during normal working hours and to maintain at the Leased Premises for that purpose (at its own expense) such inspector(s) as it may deem necessary so long as such inspections do not

interfere with Sublessee's work (but Sublessor shall not thereby assume any responsibility for the proper performance of the work in accordance with the terms of this Replacement Sublease, nor any liability arising from the improper performance thereof). Sublessor reserves the right to require Sublessee, at its expense, to remove and replace any deviations in the design or construction at variance from the approved plans and specifications, and to stop all construction, at Sublessee's expense, until such deviations are corrected to the reasonable satisfaction of Sublessor. If any construction work is stopped pending such corrections in the work, the term of the Replacement Sublease will not be extended.

(f) All such work shall be performed at Sublessee's cost and expense and free of any expense to Sublessor and free of any liens (including mechanics liens) on Sublessor's and Sublessee's leasehold interest in the Leased Premises.

(g) Upon substantial completion of work on the Improvements, Sublessee shall procure a certificate of occupancy, if applicable, from the appropriate governmental authorities verifying the substantial completion thereof.

(h) Subject to the respective rights of the Parties herein set forth, Sublessee shall own the Improvements constructed by Sublessee on the Leased Premises throughout the Term and any extension thereof. Upon expiration or early termination hereof, title to the Improvements shall pass to Sublessor in accordance with the Replacement Sublease.

EXHIBIT C

FORM OF THIRD PARTY VENDOR RELEASE

Third Party Vendor Release

GILEAD SCIENCES, INC., a Delaware corporation subleases space from BCH SAN JOSE LLC, a Delaware limited liability company ("**BCH**"), which maintains a Fixed Base Operation (FBO) at the Norman Y. Mineta San Jose International Airport, (hereinafter "**Airport**"), and by its execution hereof, hereby authorizes the following person or entity, ("**Vendor**"), to enter Gilead's subleased premises ("**Gilead's Subleased Premises**") and to the extent necessary the premises of BCH ("**BCH's Leased Premises**") on a temporary basis, consistent with the terms and conditions hereinafter stated.

1. Vendor. The name, address and telephone number of the Vendor are as follows:

Name _____ Address: _____
Telephone: _____ Email: _____
Service Provided: _____

2. Services To Be Performed. Vendor shall enter Gilead's Subleased Premises and, to the extent necessary, the BCH's Leased Premises for the sole purpose of performing work, repair, maintenance or other services ("**Service**") at the request of Gilead, or its designated representative. Vendor shall be authorized to perform the Service noted above and only in the area designated for such Service by local Gilead management. Vendor expressly agrees that at no time shall its activities infringe upon Gilead or BCH or their customers' ability to operate aircraft or use their respective leaseholds, including, but not limited to, ingress and egress from the leaseholds and FBO, or their associated offices, shops, ramps or parking lots.

3. Compliance With Laws. Vendor represents that it shall adhere to the prevailing and applicable rules of the Airport, United States Federal Aviation Administration ("**FAA**") and the United States Transportation Security Administration ("**TSA**")

4. Indemnification. Vendor agrees to indemnify, defend and hold harmless Gilead, BCH and the Airport, their respective officers, directors, agents and employees and Gilead's and BCH's parent, subsidiary, related and affiliated companies from and against any and all liabilities, damages, injuries, losses, claims, fines, penalties or judgments, of any kind whatsoever (including those arising from third parties), including all costs, attorneys' fees, and expenses incidental thereto, which may be suffered by, or charged to, Gilead and/or BCH by reason of any loss of or damage to any property or injury to or death of any person arising out of or by reason of any breach, violation or non-performance by Vendor or its agents, servants, consultants, contractors, subcontractors, licensees or employees of any covenant or condition of this Release or by reason of the negligence or willful misconduct of such persons.

5. a. Insurance – Before commencing Services Vendor shall provide Gilead and BCH with evidence the following types and amounts of insurance.

i. Liability – Airport Premises

(1) Commercial general Combined single limit \$2,000,000 per occurrence, products and completed operations

(2) Motor Vehicle Combined single limit \$2,000,000 per occurrence

(a) this coverage is conditionally waived if Vendor does not have a motor vehicle that is both (1) registered in its name and driven on Gilead's or BCH's ramp. If Vendor subsequently registers vehicle in its name and drives on the ramp, the waiver shall be automatically revoked and Vendor shall obtain the requisite coverage.

(3) If Vendor is handling hazardous materials on the leaseholds, Environmental/pollution Combined Single Limit \$2,000,000 per occurrence.

ii. Worker's Compensation & Employer's Liability

Worker's compensation Statutory

Employer's liability \$500,000 each occurrence for bodily injury by accident

\$500,000 each occurrence for bodily injury by disease

\$500,000 aggregate policy limit

b. Special Provisions For certificates of Insurance: If the required liability policies do not contain a standard separation of insured provision, they shall be endorsed to provide cross liability coverage. All required insurance policies, except (1) motor vehicle, (2) worker's compensation, and (3) employer's liability shall contain standard waivers of subrogation. Minimum insurance amounts stated shall not be lowered without express written consent of Gilead and BCH. Higher insurance limits may be required by the Airport, in which case, the Airport's limits shall supersede the limits stated above.

VENDOR ACKNOWLEDGES THAT ITS POTENTIAL LIABILITY IS NOT LIMITED TO THE AMOUNT OF ANY LIABILITY INSURANCE COVERAGE OR TO INSURANCE POLICY LIMITS REQUIRED IN THIS RELEASE.

(Vendor)

By: _____

Its: _____

Date: _____

GILEAD SCIENCES, INC.,
a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D

ENVIRONMENTAL PROTECTION PROCEDURES

In addition to complying with the environmental provisions set forth earlier in this Replacement Sublease and in this **Exhibit D**, Sublessee shall comply with all applicable Environmental Laws in its use and operation of the Leased Premises and Sublessee shall also comply with the following:

- a. Sublessee shall on a regular basis provide Sublessor copies of Material Safety Data Sheets for each and every Hazardous Material used or stored in any material quantity on the Leased Premises stating the name, location, description, and quantity of any Hazardous Material in, on, or at the Leased Premises;
- b. Sublessee shall provide Sublessor written notice and copies of documents verifying that Sublessee has removed and disposed of any and all Hazardous Materials safely, properly, and in a manner which meets or exceeds applicable Environmental Laws;
- c. Sublessee shall not wash or clean its equipment, including, but not limited to aircraft on the Leased Premises, provided, however, that Sublessee may dry clean its equipment, including, but not limited to aircraft, in a manner that complies with all applicable Environmental Laws. Sublessee shall at all times protect drains on the Leased Premises from the introduction of spills of Hazardous Material and agrees to instruct all its employees, agents, servants, contractors, subcontractors, invitees, and other representatives in writing regarding such requirement and the proper operation and maintenance of the drainage system at the Leased Premises;
- d. Sublessee shall not place or maintain open containers outside the Improvements during inclement weather;
- e. Sublessee shall cover any and all trash containers placed or maintained outside the Improvements.

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Groom & Cave LLP
1570 The Alameda, Suite 100
San Jose, CA 95126
Attn: Michael P. Groom, Esq.

MAIL TAX STATEMENTS TO:

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, CA 94404
Attn: Clinton Wu

A Portion of A.P.N. 230-02-026

Space above this Line for Recorder's Use

**MEMORANDUM OF GILEAD
REPLACEMENT GROUND SUBLEASE AGREEMENT**

This Memorandum of Replacement Ground Sublease Agreement (this "*Memorandum*") is made this ____ day of _____, 20__, between BCH San Jose LLC, a Delaware limited liability company ("*Sublessor*"), and Gilead Sciences, Inc., a Delaware corporation ("*Sublessee*").

RECITALS

A. **WHEREAS**, the City of San Jose, a Municipal corporation of the State of California ("*City*"), is the owner of certain real property consisting of approximately 29.64 acres located at the Norman Y. Mineta San Jose International Airport (the "*Property*"); and,

B. **WHEREAS**, on December 12, 2013, the City, as Lessor, and Signature Flight Support Corporation ("*Signature*"), as Lessee, entered into that certain Ground Lease and Operating Agreement (the "*Master Lease*"), pursuant to which the City leased the Property to Signature; and,

C. **WHEREAS**, on November ____, 2015, Signature and Sublessee entered into that certain Option to Sublease Land and to Purchase Certain Leasehold Improvements (the "*Option Agreement*"), pursuant to which Signature granted Sublessee the option ("*Option*") to (a) sublease a portion of the Property from Signature (the "*Gilead Premises*"), as more particularly described on Exhibit "A" hereto and (b) purchase from Signature certain leasehold improvements situated on the Gilead Premises (the "*Gilead Leasehold Improvements*"), as are more particularly described on Exhibit "B" attached hereto; and,

D. **WHEREAS**, Sublessee exercised the Option and Signature and Sublessee entered into that certain Ground Sublease Agreement, dated November 1, 2015 (the "*Gilead Sublease*"); and,

E. **WHEREAS**, on June ____, 2018, the City, Signature, BCH and Gilead entered into that certain Amended and Restated Non-Disclosure, Consent, Estoppel and Subordination Agreement (the "*Amended and Restated NDA*"), that provided (among other things) that upon any termination or cancellation of the Master Lease, Sublessor would enter into a Replacement Ground Master Lease Agreement with the City and thereafter enter into a Replacement Ground Sublease Agreement with Sublessee for the Gilead Premises (the "*Gilead Replacement Sublease*"); and,

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

F. **WHEREAS**, (i) the Signature Master Lease has been terminated or cancelled, (ii) City, as Lessor and Sublessor, as Lessee, have entered into that certain Replacement Ground Lease and Operating Agreement, dated _____, 20__ (the "**Replacement Master Lease**"), providing for the City's lease of the Master Leasehold Parcel to Sublessor, (iii) City has conveyed ownership of certain leasehold improvements to Sublessor and the Gilead Improvements to Sublessee, and (iv) Sublessor and Sublessee have entered into the Gilead Replacement Sublease for the Gilead Premises, dated _____, 20__; and,

G. **WHEREAS**, Sublessor and Sublessee desire by the execution, delivery and recordation of this Memorandum to place all potentially interested parties on notice of the existence of the Sublease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sublessor and Sublessee agree as follows:

1. **Term of Gilead Replacement Sublease.** The Gilead Replacement Sublease commenced on _____, 20__ and expires on _____, 20__ (the "**Term**").

2. **Successors and Assigns.** The covenants, conditions and agreements contained in the Gilead Replacement Sublease shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, representatives, successors and assigns of Sublessor and Sublessee.

3. **Subordinate to Master Lease.** All of the terms and conditions of the Gilead Replacement Sublease are subject and subordinate to the terms and conditions of the Replacement Master Lease.

4. **Conflicts with the Replacement Master Lease.** This Memorandum is solely for notice and recording purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Replacement Master Lease or the Gilead Replacement Sublease. In the event of any inconsistency between the provisions of this Memorandum and the provisions of the Replacement Master Lease or the Gilead Replacement Sublease, the provisions of the Replacement Master Lease and the Gilead Replacement Sublease, as applicable, shall govern.

[Signatures Appear on Following Page]

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

WHEREFORE, the parties hereto have executed and delivered this Memorandum of Gilead Replacement Sublease as of the dates appearing below.

SUBESSOR:

BCH San Jose, LLC
a Delaware limited liability company,

By: _____

Its; _____

Dated: _____

SUBLESSEE:

Gilead Sciences, Inc.,
a Delaware corporation,

By: _____

Its; _____

Dated: _____

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
 : ss.
COUNTY OF _____)

On _____, 20__ , before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF _____)
: ss.
COUNTY OF _____)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

EXHIBIT "A"

MEMORANDUM OF GILEAD REPLACEMENT SUBLEASE

Legal Description of the Gilead Premises

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the property shown on that certain Record of Survey filed for record on May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records, described as follows:

COMMENCING at the brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Brokaw Road as shown on said Record of Survey, from which point a brass pin monument at the intersection of the centerline of Martin Avenue with the centerline of Reed Street bears North 40°50'43" West, 1579.71 feet;

Thence along said centerline of Martin Avenue, North 40°50'43" West, 559.13 feet;

Thence leaving said centerline, North 49°09'17" East, 30.00 feet, to the northeasterly line of Martin Avenue;

Thence leaving said northeasterly line, North 48°53'50" East, 233.95 feet;

Thence North 41°06'10" West, 4.84 feet, to the TRUE POINT OF BEGINNING;

Thence North 40°50'43" West, 250.18 feet;

Thence South 49°09'17" West, 174.51 feet;

Thence South 40°50'43" East, 250.18 feet;

Thence North 49°09'17" East, 174.51 feet, to the TRUE POINT OF BEGINNING.

Containing 43,659 square feet or 1.002 acres, more or less.

APN: ___-___-___

EXHIBIT G TO
GILEAD REPLACEMENT SUBLEASE

EXHIBIT "B"

MEMORANDUM OF GILEAD REPLACEMENT SUBLEASE

Description of Gilead Leasehold Improvements

The *Gilead Leasehold Improvements* are comprised of (i) the hangar building, containing approximately 30,149 square feet and related fixtures commonly known as Hangar 1, (ii) certain leasehold upgrades to the leasehold improvements contained in Hangar 1 as are described on Schedule A-4 attached hereto, and (iii) an area of approximately 9,929 square feet to be used exclusively by Gilead and its employees, guests and invitees for vehicular parking.

EXHIBIT H

Attach List of Permitted Aircraft Inventory

(to be updated periodically by Sublessee)

Registration # Manufacturer Model