

**FIRST AMENDMENT TO
GROUND LEASE AND OPERATING AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SIGNATURE FLIGHT SUPPORT CORPORATION**

This FIRST AMENDMENT TO GROUND LEASE AND OPERATING AGREEMENT ("***First Amendment***") is entered into this 2nd day of July, 2018 (the "***First Amendment Effective Date***"), by the CITY OF SAN JOSE, a municipal corporation of the State of California ("***City***"), and SIGNATURE FLIGHT SUPPORT CORPORATION, a Delaware corporation authorized to do business in California ("***Lessee***").

RECITALS

WHEREAS, on December 12, 2013, City and Lessee entered into a Ground Lease and Operating Agreement entitled "GROUND LEASE AND OPERATING AGREEMENT BETWEEN THE CITY OF SAN JOSE AND SIGNATURE FLIGHT SUPPORT CORPORATION" ("***Lease***") with respect to a parcel of land containing approximately 29.64 acres (1,291,118 SF) herein the Original Master Leasehold Parcel; and

WHEREAS, Lessee has completed the development of its Leasehold Improvements and is aware of the current site conditions that may impact the development of the Additional Premises (as defined below) to be added pursuant to this First Amendment, including, but not limited to any soil or groundwater contamination; and

WHEREAS, City and Lessee desire to amend the Lease (i) by adding a new parcel of land containing 3.734 acres (162,653 SF), of which 1,255 SF were previously a part of the Original Master Leasehold Parcel, (the "***Additional Premises***") to the Original Master Leasehold Parcel, which shall increase the total Premises (as defined in 1.37 below) to contain approximately 33.345 acres (1,452,516 SF), (ii) to provide for Lessee's installation of certain Tower Road Entrance Improvements, (iii) to revise **Exhibit A** (Airport Map), (iv) to revise **Exhibit B** (Legal Description of Premises), (v) to incorporate a new **Exhibit O** (Work Letter for Tower Road Improvements), and (vi) to add certain requirements as required under federal law and regulations; and

WHEREAS, in addition to the BCH Sublease (as defined below) entered into by Lessee and BCH (as defined below) as contemplated in the Lease, Lessee and Gilead (as defined below) have entered into the Gilead Sublease (as defined below), and then concurrently with this First Amendment, Lessee and Hangar A LLC (as defined below) shall enter into the Hangar A Sublease (as defined below) for a portion of the Additional Premises, and Lessee and City wish to amend the Lease to accurately memorialize these sublease agreements and related terms within the Lease.

NOW, THEREFORE, effective upon the First Amendment Effective Date, the parties agree to amend the Lease as follows:

SECTION 1. SECTION 1, "Definitions", the following terms, and all places where such terms are used in the Lease, are amended to read as follows:

"1.12. Effective Date

Shall mean December 12, 2013.

1.20. Ground Rental

Ground Rental means the following amounts calculated based upon actual square footage of Premises occupied by Lessee as set forth in the table below, to be charged to, annually adjusted, and paid by Lessee in accordance with Section 5 of this Lease.

Interim Ground Rental (for the Original Premises) – 1,291,118.4SF at \$1.03 /SF/YR	\$1,329,851.95/YR for the earlier of 24 months or date of Certificate of Occupancy for the original Leasehold Improvements
Interim Ground Rental for the Additional Premises for 18 months from the First Amendment Effective Date or the date of Certificate of Occupancy for the Leasehold Improvements on the Additional Premises, whichever is earlier 162,653 SF (3.734 acres) at \$1.18072/SF/YR	 \$192,047.65/YR
Base Ground Rental (Less 1,255 SF Transferred to Additional Premises) 1,289,863 SF (29.61 acres) at \$2.36144/SF/YR (reflecting the current rate as of the First Amendment Effective Date, as adjusted pursuant to the terms of the Lease from the original Lease rate of \$2.06/SF/YR)	 \$3,045,934.08/YR
Base Ground Rental for the Additional Premises commencing 18 months from the First Amendment Effective Date or the date of Certificate of Occupancy for the Leasehold Improvements on the Additional Premises, whichever is earlier 162,653 SF (3.734 acres) at \$2.36144/SF/YR	 \$384,095/YR

Total Base Ground Rental commencing 18 months from the First Amendment Effective Date or the date of Certificate of Occupancy for the Leasehold Improvements on the Additional Premises, whichever is earlier 1,452,516 SF (33.345) at \$2.36144/SF/YR	\$3,430,029.38/YR
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Ground Rental is subject to adjustment as provided in Section 5.3”

1.32. Non-disturbance Agreement

Non-disturbance Agreement means individually and collectively as the context may require (a) that certain Amended and Restated Non-disturbance, Consent, Estoppel and Subordination Agreement among City, Lessee, Sublessee BCH and Sublessee Gilead of even date with the First Amendment Effective Date with respect to the BCH Sublease, the Gilead Sublease, the BCH Sublessee Improvements and the Gilead Sublessee Improvements, and (b) that certain Non-disturbance, Consent, Estoppel and Subordination Agreement among City, Lessee, Sublessee Hangar A of even date with the First Amendment Effective Date with respect to the Hangar A Sublease and the Hangar A Sublessee Improvements.

1.36 Plans and Specifications

Plans and Specifications means (a) the approved construction drawings for the completed Leasehold Improvements existing as of the First Amendment Effective Date, and (b) the approved concept and construction drawings for the Leasehold Improvements to be constructed on the Additional Premises subsequent to the First Amendment Effective Date, each as described in Section 6.2.1.

1.37. Premises

Premises means the approximately 33.345 acre parcel on the west side of the Airport as more specifically identified in **REVISED EXHIBIT B** attached to and incorporated by the First Amendment.

1.39. Sublessee

Sublessee means individually or collectively, as the context may require: (a) BCH San Jose LLC (“BCH”), a Delaware limited liability company authorized to do business in the State of California, and its permitted successors and assigns; (b) Hangar A LLC (“*Hangar A*”), a Delaware limited liability company, and its permitted successors and assigns; and (c) Gilead Sciences, Inc. (“*Gilead*”), a Delaware corporation authorized to do business in the State of California, and its permitted successors and assigns.

1.40. Sublessee Improvements

Sublessee Improvements means: (a) for BCH, the Leasehold Improvements described on **REVISED EXHIBIT F-2** attached to and incorporated by the First Amendment (the “*BCH Sublessee Improvements*”); (b) for Hangar A, the Leasehold Improvements described on **EXHIBIT F-3** attached to and incorporated by the First Amendment (the “*Hangar A Sublessee Improvements*”); and (c) for Gilead, the Leasehold Improvements described on **EXHIBIT F-4** attached to and incorporated by the First Amendment (the “*Gilead Sublessee Improvements*”).”

SECTION 2. Section 2, "Term" is amended to read as follows:

"Section 2. Term/Option to Extend

The Term of this Lease shall commence on the Effective Date and shall continue through the Expiration Date, unless sooner terminated in accordance with the terms of this 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. Section 3, "Premises; Other Agreements", is amended to add the following new subsection 3.1.1.1 to read as follows:

"3.1.1.1 "As Is" Condition – Additional Premises

Lessee has carefully examined the current condition of the Additional Premises, as more specifically identified in **REVISED EXHIBIT B**, and is satisfied with the current condition of the Additional Premises. The Additional Premises shall be leased to Lessee in an "as is" physical condition.

Lessee acknowledges that all information provided by City regarding the Additional Premises, and/or the Airport, is for information purposes only and no representation or warranty has been made by City concerning the nature, quality, site conditions, including but not limited to environmental conditions on the Additional Premises or environmental conditions on any other location at the Airport, projected or current operations, or suitability of the Additional Premises for the Permitted Activities, or for any other purpose.

Subject to City's obligations hereunder, Lessee accepts the Additional 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 of the Leasehold Improvements on the Additional Premises 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 Additional Premises to satisfy itself of all matters related thereto.

Lessee acknowledges that City has made the Additional Premises available to Lessee for inspection and testing."

SECTION 4. Section 3, "Premises; Other Agreements", subsection 3.1.3 is amended and restated as follows:

"3.1.3 Other Agreements

3.1.3.1 Other Agreements - BCH

Lessee and BCH (i) have entered into that certain Ground Sublease Agreement dated December 12, 2013, as amended by the First Amendment to Ground Sublease Agreement dated July 22, 2015, as further amended by the Second Amendment to Ground Sublease Agreement dated _____, 2018, and as further amended by the Third Amendment to Ground Sublease Agreement dated _____, 2018 (as amended, the "**BCH Sublease**"), and (ii) concurrently with the execution of this First Amendment, City, Lessee, BCH and Gilead have entered into that certain Amended and Restated Non-disturbance, Consent, Estoppel and Subordination Agreement dated _____, 2018 ("**Amended and Restated NDA**"), which amends and restates in its entirety the Non-disturbance, Consent, Estoppel and Subordination Agreement between City, Lessee and BCH dated December 12, 2013.

3.1.3.2 Other Agreements - Gilead

Lessee and Gilead (i) have entered into that certain Ground Sublease Agreement dated December 23, 2015, with an effective date of November 1, 2015 (the "**Gilead Sublease**"), and (ii) concurrently with the execution of this First Amendment, City, Lessee, BCH and Gilead have entered into the Amended and Restated NDA.

3.1.3.3 Other Agreements - Hangar A

Concurrent with the execution of this First Amendment, (i) Lessee and Hangar A have entered into that certain Ground Sublease Agreement, dated _____, 2018 (the "**Hangar A Sublease**"), and (ii) City, Lessee and Hangar A have entered into that certain Non-disturbance, Consent, Estoppel and Subordination Agreement dated June __, 2018."

SECTION 5. Section 4, "Uses, Privileges and Obligations", subsection 4.2.2 is hereby amended to read as follows:

"4.2.2. City's Right to Close or Alter Access

Lessee acknowledges that Lessor is undertaking a Runway Incursion Mitigation (RIM) study to analyze the configuration of the airfield, including the runway and taxiway system. The results of the RIM study may affect the current airfield configuration. On account of the RIM study or for any other reason in City's sole discretion, 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 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 Lease."

SECTION 6. Section 5, "Ground Rental, Fees and Charges", is hereby amended as follows:

(a) Subsection 5.1 is amended to add the following new sub-subsection to read as follows:

“5.1.1 Interim Ground Rental for the Additional Premises

Commencing on the First Amendment Effective Date, Lessee shall pay Interim Ground Rental for the Additional Premises in the amount provided in Section 1.20 above until the earlier of (i) the first day of the eighteenth (18th) full calendar month from the Effective Date or (ii) the date a Certificate of Occupancy is issued for the use and occupancy of the Leasehold Improvements on the Additional Premises. Notwithstanding anything herein to the contrary, in the event that Lessee is issued a temporary Certificate of Occupancy for only a portion of the Leasehold Improvements on the Additional Premises, the issuance date of such temporary Certificate of Occupancy for such portion of the Leasehold Improvements on the Additional Premises shall be deemed to be the date of issuance of a Certificate of Occupancy for the purpose of determining the commencement of Base Ground Rental for that portion of the Premises covered by the temporary Certificate of Occupancy under this Section. Interim Ground Rental for the Additional Premises shall be due and payable in advance on the first day of every month in accordance with the provisions of Section 5.7 herein. In the event that the First Amendment Effective Date is not the first day of a calendar month, payment of the Interim Ground Rental for the Additional Premises shall be prorated for that partial month. The Interim Ground Rental for the Additional Premises for any partial first month shall be due and payable on the First Amendment Effective Date, and any such partial month shall be counted as the first month of the 18-month Interim Ground Rental period.”

(b) Subsection 5.2 is hereby amended and restated as follows:

“5.2 Base Ground Rental

Lessee shall pay Base Ground Rental in the amounts provided in Section 1.20 above, subject to increase as set out 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.”

(c) Subsection 5.8 is amended and restated as follows:

“5.8 Payment of Ground Rental, Activity Fees and Charges

Description	Amount	Due Date	Late Fee
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Interim Ground Rental (for the Original Premises and Additional Premises) – Ground Rental	See Section 1.20	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 as modified by Council	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
Other Activity Fees	Based Upon Activity	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
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 Lease and all rights and privileges granted herein."

SECTION 7. Section 6, “Leasehold Improvements/Taxiway Improvements” is hereby retitled as follows:

“Section 6 Leasehold Improvements/Taxiway Improvements/Tower Road Entrance Improvements”

SECTION 8. Section 6, “Leasehold Improvements/Taxiway Improvements/Tower Road Entrance Improvements”, subsections 6.1.1 and 6.1.2 are hereby amended to read as follows:

“6.1.1. Construction of Leasehold Improvements, Taxiway Improvements and Tower Road Entrance Improvements

Construction of the Leasehold Improvements and the Tower Road Entrance Improvements shall be subject to the provisions of this Section 6 and shall be constructed at Lessee’s (or Sublessee’s, as applicable) sole cost and expense, without any reimbursement from City. The parties acknowledge and agree that the Tower Road Entrance between Martin Avenue and the security gate for the Airport shall be available for use by the public. City and Lessee acknowledge and agree that the Taxiway Improvements were previously constructed by Lessee and were completed in accordance with the terms of the Work Letter attached as **Exhibit L** to the Lease. The Tower Road Entrance Improvements will be located on the Airport outside the Additional Premises and constructed by Lessee or by Hangar A in accordance with the terms of the Tower Road Entrance Improvements Work Letter attached to this First Amendment as **EXHIBIT O**. The construction of the Leasehold Improvements will be done by Lessee (or Sublessee, as applicable) pursuant to the terms of this Lease. Lessee will occupy the Premises (including the Additional Premises) in its ‘as is’ condition, and no Leasehold Improvements installed and paid for by Lessee (or Sublessee, as applicable) 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 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.

The Federal Clean Water Act requires states to operate under a National Pollutant Discharge Elimination System (NPDES), which regulates storm water runoff. The San Francisco Bay Regional Water Quality Control Board is tasked with implementing the NPDES program and regulating 76 permittees, including City of San Jose. City will not approve an airside bioswale or the placement of bioretention cells near or within the Airport taxiways or runways, because of the potential for landscaped-based treatment and standing water to attract wildlife.

The FAA has radio towers located on the Airport adjacent to the southern edge of the Additional Premises. Lessee will coordinate its construction of the Leasehold Improvements with appropriate FAA staff to ensure no interference with FAA operations at the Airport, including receipt of written correspondence from the FAA confirming that construction of the Leasehold Improvements shall have no adverse impact on the adjacent RTR Site.

From and after the First Amendment Effective Date, any new fencing installed by Lessee as part of the Leasehold Improvements must meet current Airport standards for height, mesh and 3" barb placement on wire with top 'V' and subject to final approval by the Director. Airport staff will provide all current Airport fencing standards to Lessee during Lessee's design development for the Leasehold Improvements."

SECTION 9. Section 6, "Lessee Responsible for Design and Construction", subsection 6.2.2. is hereby amended to read as follows:

"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 First Amendment Effective Date), causes the disturbance or discharge of any Hazardous Materials on the Premises (including the Additional Premises), or the Airport, and specifically, if Lessee's construction of the Leasehold Improvements requires the movement, treatment or disposal of any soil or groundwater from the Premises (including the Additional Premises) Lessee shall be solely responsible for the costs of moving, treating or disposing the soil or groundwater regardless of any level of Hazardous Materials found in the soil or groundwater, and without financial contribution from City."

SECTION 10. Section 6, "Leasehold Improvements/Taxiway Improvements/Tower Road Entrance Improvements", subsection 6.3.3. is hereby amended to add the following new sub-subsection:

"6.3.3.1 E&I Costs for Additional Premises

Lessee shall pay City for all E & I Costs related to the Work on the Additional Premises, including costs incurred prior to the First Amendment Effective Date. 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 on the Additional Premises 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. City estimates that its costs of review, engineering and inspections related to the Work for the construction of the Leasehold Improvements on the Additional Premises will total TWENTY-FIVE THOUSAND DOLLARS (\$25,000) ("*Additional Premises Estimated E & I Fee*"). The Additional Premises Estimated E & I Fee does not include fees that may be payable to City Departments other than the Airport in connection with the Work (which Lessee shall pay directly

to the responsible City Department when due). Lessee shall pay the Additional Premises Estimated E & I Fee in installments ("**E & I Deposits**"). Prior to Lessee's delivery of the initial construction drawings for the Additional Premises, Lessee and City shall agree upon a reasonable E&I deposit and payment schedule. Concurrent with submission of final construction plans to City for the construction of the Leasehold Improvements on the Additional Premises, Lessee shall pay City as an E & I Deposit twenty five percent (25%) of the Additional Premises Estimated E & I Fee. Thereafter, Lessee shall pay additional E & I Deposits equal to 25% of the Additional Premises Estimated E & I Fee during the construction of the Work pursuant to a mutually agreed E&I deposit and payment schedule, in each case within seven (7) days after written notice from the Director. Any portion of the E & I Deposits held by City after the Work is completed, which exceed the E & I Costs actually incurred by City, shall be returned to Lessee within twenty-one (21) days after a final accounting of all costs has been made by City to Lessee, but in no event later than ninety (90) days after the Notice of Completion of Construction of the Work has been filed. City will promptly notify Lessee if City determines that the E & I Costs will exceed the Additional Premises Estimated E & I Fee, which notice shall include an estimate of the amount by which the E & I Costs will exceed the Additional Premises Estimated E & I Fee. Any additional E & I Fees exceeding the Additional Premises Estimated E & I Fee and the E & I Deposits actually made by Lessee to City shall be due by Lessee to City within fifteen (15) days after the final accounting of all costs has been made by City. E & I Costs may be immediately withdrawn by City from the E & I Deposits held by City as E & I Costs are incurred by City. Any E & I Costs incurred by City prior to the First Amendment Effective Date may be immediately reimbursed to City from the first E & I Deposit by Lessee to City."

SECTION 11. Section 6, "Leasehold Improvements/Taxiway Improvements/Tower Road Entrance Improvements", subsection 6.4.1. is hereby amended to add the following new sub-subsection:

"6.4.1.1. Notice to Proceed regarding Leasehold Improvements for the Additional Premises

Lessee shall commence construction of the Leasehold Improvements for the Additional Premises only after the Director has issued a notice to proceed with regard to the Leasehold Improvements for the Additional Premises, which shall be issued only after the following all have occurred:

- i. All E & I Deposits required as of that date shall have been paid to City;
- ii. Lessee's contractor and subcontractor have complied with all applicable pre-construction provisions of the City Standard Specifications, including but not limited to the deposit of required insurance policies or certificates; and
- iii. City (through its planning and/or public works and fire departments, as the case may be) has issued all required permits and approvals for the commencement of construction of the Leasehold Improvements for the Additional Premises;"

SECTION 12. Section 6, “Leasehold Improvements/Taxiway Improvements/Tower Road Entrance Improvements”, subsection 6.10. is hereby amended to read as follows:

“6.10 Alterations/Refurbishments

After issuance of the Certificate of Occupancy for the Leasehold Improvements or specific portions thereof, Lessee may, 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.”

SECTION 13. Section 10, “Utilities”, subsection 10.2. is hereby amended to read as follows:

“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 City’s, tenant’s of the City, and Lessee's equipment from any damage that may be caused to such equipment in the event of construction, 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.

Lessee acknowledges that there are current utility services located on the Additional Premises in use by the City and tenants of the City. Prior to any construction of the Leasehold Improvements on the Additional Premises, Lessee shall conduct research as may be mutually agreed upon by City and Lessee, to ensure compliance with the requirements stated above. Lessee shall ensure that existing utilities are protected during construction, or relocated, as necessary, as part of the Lessee’s Leasehold Improvements on the Additional Premises. Lessee shall take any and all necessary steps to ensure that there is no interruption to City’s, tenants of the City, and Lessee's utility services during construction.”

SECTION 14. A new SECTION 38, “General Civil Rights,” which shall be effective from and after the First Amendment Effective Date, is hereby added as follows:

“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 15. A new SECTION 39, “Title VI Clauses for Compliance with Nondiscrimination Requirements,” which shall be effective from and after the First Amendment Effective Date, is hereby added as follows:

“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. **Nondiscrimination:** 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:
- Withholding payments to Lessee under the contract until Lessee complies; and/or
 - 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 16. A new SECTION 40, "Title VI List of Pertinent Nondiscrimination Acts and Authorities," which shall be effective from and after the First Amendment Effective Date, is hereby added as follows:

"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 17. A new SECTION 41, “Federal Fair Labor Standards Act (Federal Minimum Wage),” which shall be effective from and after the First Amendment Effective Date, is hereby added as follows:

“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 18. A new SECTION 42, “Occupational Safety and Health Act of 1970”, which shall be effective from and after the First Amendment Effective Date, is hereby added as follows:

“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 19. **Exhibit A** “Airport Map” attached to the Lease is amended and restated to read as shown on the Revised Exhibit A “Airport Map”, as attached to and incorporated into this First Amendment.

SECTION 20. **Exhibit B** “Legal Description of Premises” attached to the Lease is amended and restated

to read as shown on the Revised Exhibit B “Legal Description of Premises”, as attached to and incorporated into this First Amendment.

SECTION 21. **Exhibit F-1** “Description of FBO Improvements” attached to the Lease is amended and restated to read as shown on the Revised Exhibit F-1 “Description of FBO Improvements”, as attached to and incorporated into this First Amendment.

SECTION 22. **Exhibit F-2** “Description of Sublessee Improvements” attached to the Lease is amended and restated to read as shown on the Revised Exhibit F-2 “Leasehold Improvements for Sublessee BCH San Jose”, as attached to and incorporated into this First Amendment.

SECTION 23. The Lease is amended to add a new **Exhibit F-3** “Leasehold Improvements for Sublessee Hangar A” as attached to and incorporated into this First Amendment.

SECTION 24. The Lease is amended to add a new **Exhibit F-4** “Leasehold Improvements for Sublessee Gilead” as attached to and incorporated into this First Amendment.

SECTION 25. All of the terms and conditions of the Lease not modified by this First Amendment shall remain in full force and effect.

SIGNATURES AND CONSENTS ON FOLLOWING PAGES

RD:KWF/MPG 05.28.18
5/9/2018

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

“CITY”

APPROVED AS TO FORM:

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

KEVIN FISHER
Chief Deputy City Attorney

TONI J. TABER, CMC
City Clerk

Date: _____

“LESSEE.”

SIGNATURE FLIGHT SUPPORT
CORPORATION, a Delaware Corporation,
authorized to do business in California

Signature

Print Name

Title

Date

Pursuant to the Amended and Restated Non-Disturbance Attornment and Subordination Agreement, Sublessee BCH San Jose LLC hereby consents to this First Amendment.

“SUBLESSEE”

BCH SAN JOSE LLC, a Delaware Corporation,
authorized to do business in California

Signature

Print Name

Title

Date

CORPORATE SECRETARY CERTIFICATE

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

I, _____ certify that I
Name of Secretary or Assistant Secretary

am the ☐ Secretary or ☐ Assistant Secretary of the corporation named in the

attached agreement; that _____
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the _____
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and on behalf of
the corporation by authority of its Board of Directors, and is within the scope of its
corporate powers.

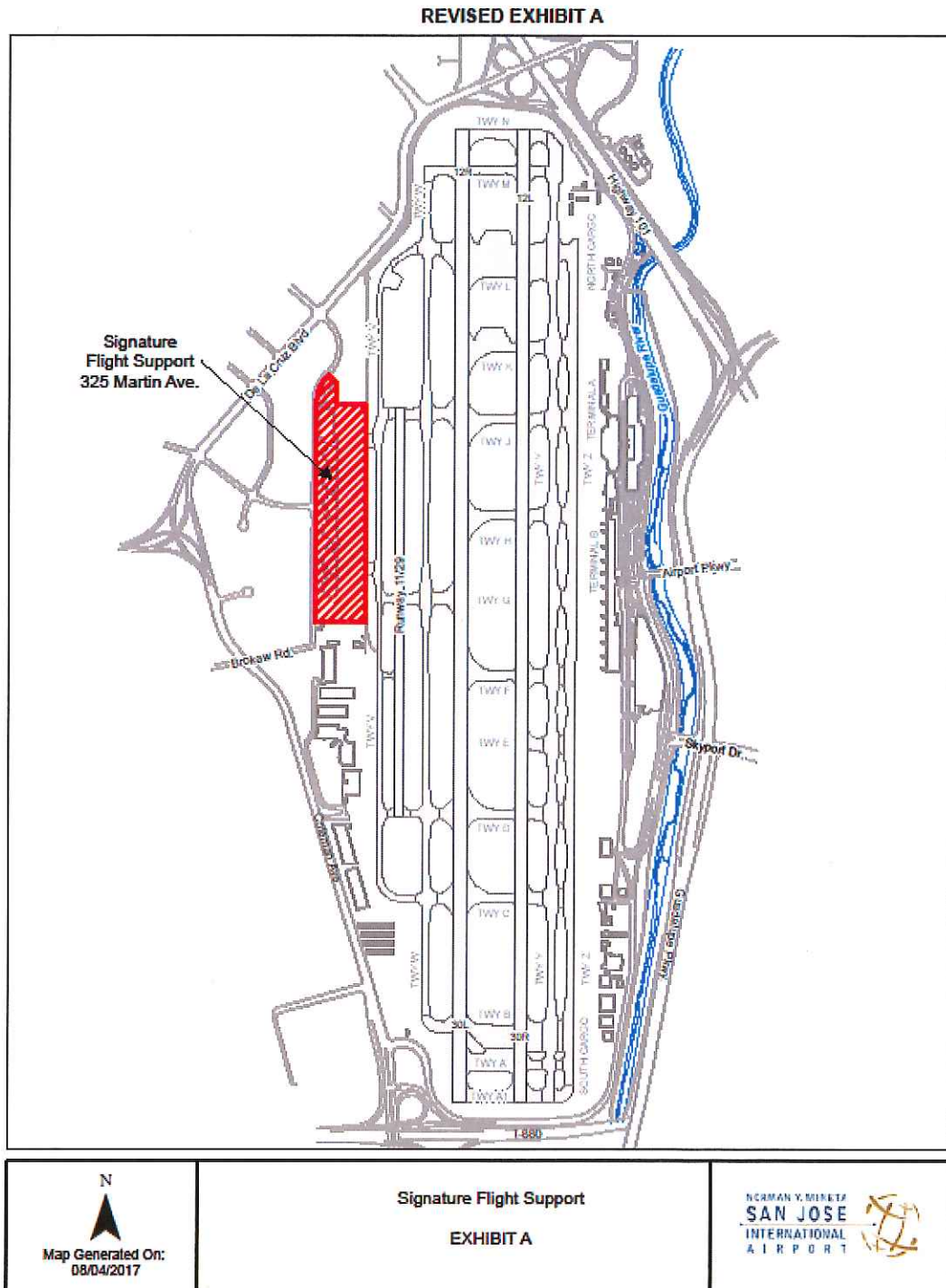
Signature of Secretary or Assistant Secretary

Corporate Seal

Date

REVISED EXHIBIT A

AIRPORT MAP



Revised EXHIBIT "B"
Legal Description of Premises

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.

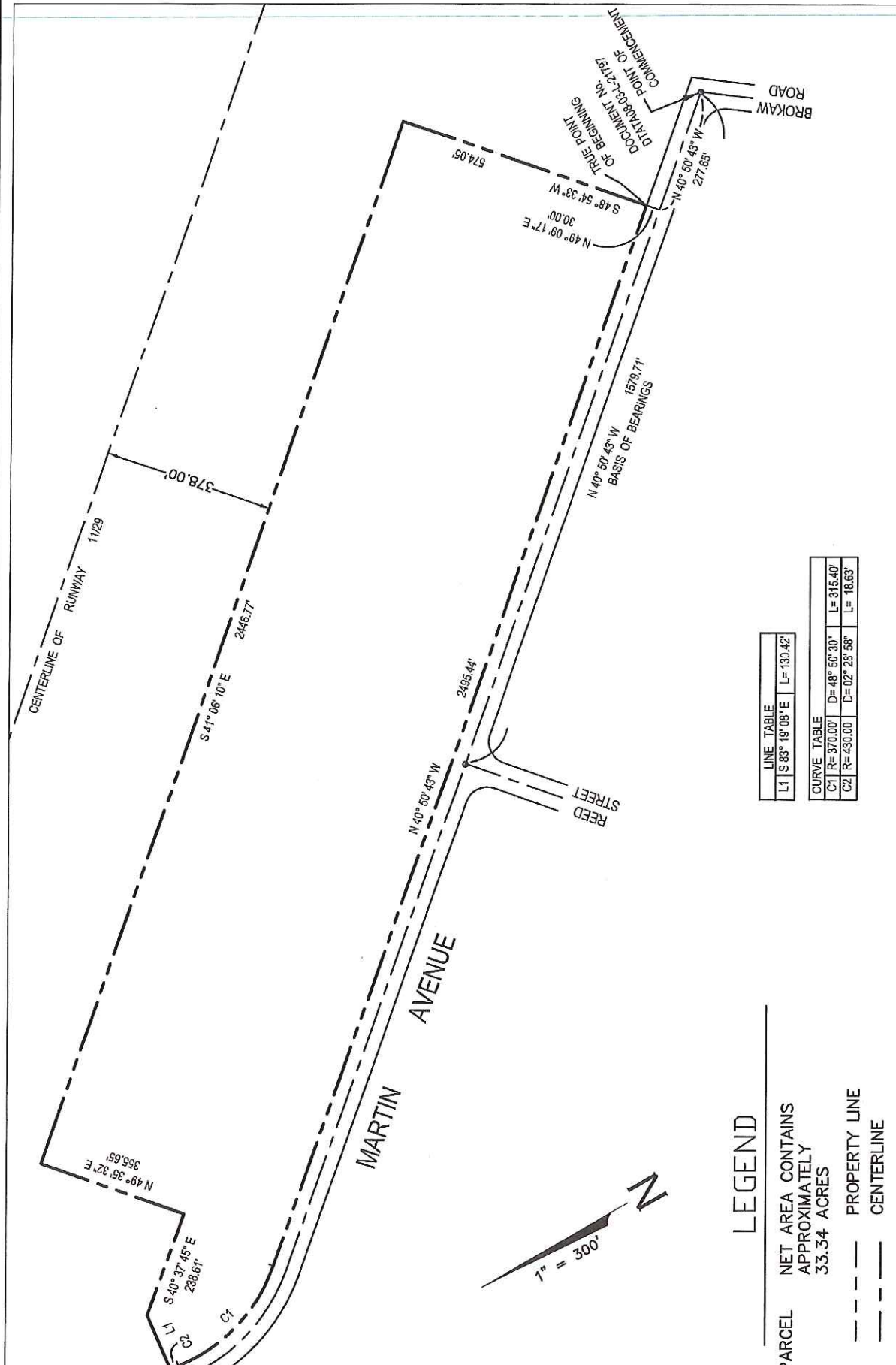
The Basis of Bearings for this description is the bearing North 40° 50' 43" West, for the centerline of Martin Avenue as shown on the Record of Survey, filed for record May 11, 1979 in Book 441 of Maps, pages 20-27, Santa Clara County Records;

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





REVISED EXHIBIT F-1
DESCRIPTION OF FBO IMPROVEMENTS

As of the First Amendment Effective Date, The FBO Improvements shall mean the buildings, fixtures and other improvements constructed on the portion of the Premises that is not subleased to BCH, Gilead or Hangar A, which shall include the following:

- Approximately 10,000 SF Executive Terminal
 - Including associated outdoor area (s)
 - Including associated car parking area
- One Aircraft Hangar totaling approximately 30,000 SF of Hangar Deck Space
 - Associated office/shop space totaling approximately 3,000 SF
 - Associated car parking area (s)
- Approximately 339,716 SF of aircraft ramp area
- General Aviation fuel farm and circulation to accommodate the following capacity
 - 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
- Other ancillary and related site work and infrastructure required to allow for landside/street access and airside access in accordance with City and Airport requirements.

REVISED EXHIBIT F-2

LEASEHOLD IMPROVEMENTS FOR SUBLESSEE BCH SAN JOSE

As of the First Amendment Effective Date, the Premises are improved with the Leasehold Improvements that are owned by Sublessee BCH San Jose and are as described below:

- 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 714,566 SF or 16.404 acres.

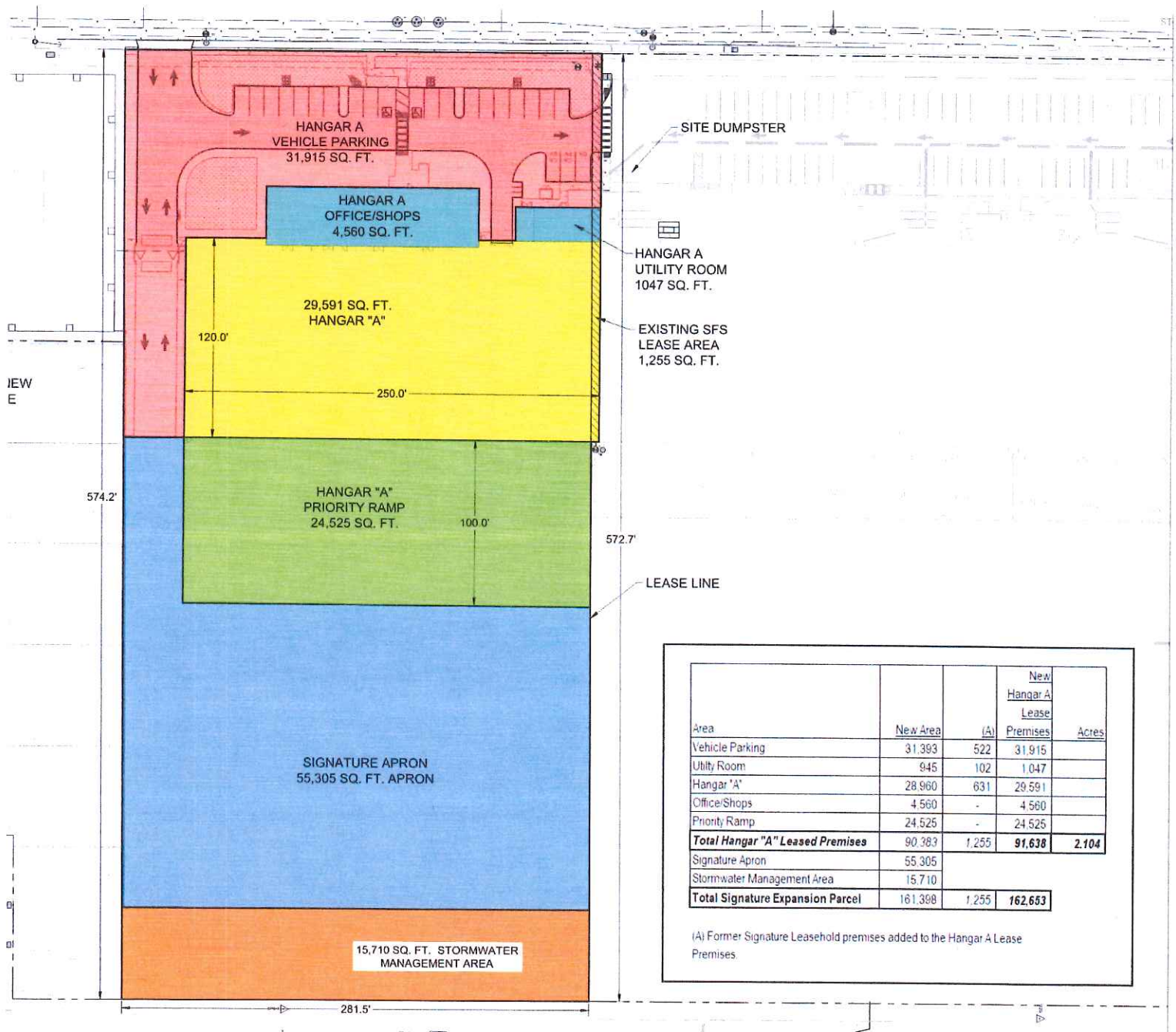
EXHIBIT F-3

LEASEHOLD IMPROVEMENTS FOR SUBLESSEE HANGAR A

The Hangar A Sublessee Improvements shall mean the buildings, fixtures and other improvements to be constructed on the portion of the premises that is subleased to Hangar A Sublessee and shall include the following:

- One (1) approximately 30,000 SF Aircraft Hangar
- Office /Shop/Support areas consisting of approximately 4,560 SF
- Exterior Utility Room consisting of approximately 1,047 SF
- Vehicle Parking and Driveway area consisting of approximately 31,915 SF
- Priority Ramp Space consisting of approximately 24,525 SF

Total Improvement area contains approximately 91,638 SF or 2.10 acres



Area	New Area	(A)	New Hangar A Lease Premises	Acres
Vehicle Parking	31,393	522	31,915	
Utility Room	945	102	1,047	
Hangar "A"	28,960	631	29,591	
Office/Shops	4,560	-	4,560	
Priority Ramp	24,525	-	24,525	
Total Hangar "A" Leased Premises	90,383	1,255	91,638	2.104
Signature Apron	55,305			
Stormwater Management Area	15,710			
Total Signature Expansion Parcel	161,398	1,255	162,653	

(A) Former Signature Leasehold premises added to the Hangar A Lease Premises.

EXHIBIT F-4

LEASEHOLD IMPROVEMENTS FOR SUBLESSEE GILEAD

As of the First Amendment Effective Date, the Premises are improved with certain Leasehold Improvements that are owned by Sublessee Gilead and are as described below:

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 O

WORK LETTER FOR TOWER ROAD ENTRANCE IMPROVEMENTS

1. CONSTRUCTION OF TOWER ROAD ENTRANCE IMPROVEMENTS

(a) GENERAL CONDITIONS FOR CONSTRUCTION; RIGHT OF ENTRY.

Construction of the Tower Road Entrance Improvements shall be subject to the provisions of this Work Letter and shall be at Lessee's sole cost and expense as provided herein, without any reimbursement from City. City hereby grants Lessee the right of entry upon the land underlying and surrounding the Tower Road Entrance Improvements for the purpose of building the Tower Road Entrance Improvements, including all activities ancillary thereto, which such right shall expire upon substantial completion of the Tower Road Entrance Improvements. Lessee shall be solely responsible for the proper design and construction of the Tower Road Entrance 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 Tower Road Entrance Improvements. If Lessee, in the construction of Tower Road Entrance Improvements (including Lessee's demolition of any improvements located on the Airport as of the First Amendment Effective Date), causes the disturbance or discharge of any Hazardous Materials on the Airport, and specifically, if Lessee's construction of the Tower Road Entrance Improvements requires the movement, treatment or disposal of any soil or groundwater from the Airport, Lessee shall be solely responsible for the costs of moving, treating or disposing the soil or groundwater regardless of any level of Hazardous Materials found in the soil or groundwater, and without contribution from City. City intends to continue to allow other Airport tenants and users access to the site adjacent to and south of the Additional Premises (the "Southern Site"). To the extent that access to the Southern Site is restricted or limited prior to completion of Lessee's construction of the Tower Road Entrance Improvements, Lessee shall provide alternate access to the Southern Site, which could involve right of way or a new access using the tower access road from Martin Ave. Lessee's access plan for the Southern Site shall be subject to Director approval as provided below in subsection (b)(ii) of this Work Letter.

(b) DESIGN OF TOWER ROAD ENTRANCE

- i) **CONSTRUCTION GUIDELINES.** City has approved the taxiway "Hotel" and "Juliet" taxiway extension improvements consistent with the latest version of the City's approved "Airport Layout Plan" as shown in concept form on the attached **Schedule 1** (the "***Concept Plan***"). Lessee shall develop the taxiway "Hotel" and "Juliet" taxiway extension improvements shown in the Concept Plan and the final construction drawings for such taxiway extension improvements, which are subject

to City's review and approval as provided below (collectively, the "***Tower Road Improvements***"). Hereinafter, the Concept Plan and the final construction drawings approved by City for the Tower Road Improvements are known as the "***Taxiway Improvement Plans***". During the course of the planning, final detailed design and construction of the Tower Road Entrance Improvements, Lessee shall cooperate with City's officers, employees, representatives and agents and follow the Airport's Tenant Design and Construction Guidelines at Norman Y. Mineta San Jose International Airport. If there is a conflict between the construction guidelines outlined in this Work Letter and the above referenced Tenant Design and Construction Guidelines, the terms of the Tenant Design and Construction Guidelines shall prevail. Lessee acknowledges and agrees that as of the Effective Date of this First Amendment the final working drawings and detailed design of the Tower Road Entrance Improvements have not received final approval by City and the Federal Aviation Administration ("FAA"), and that City's and FAA's representatives, acting in their sole discretion, reserve the right to approve such final working drawings and final design concept.

- ii) **TOWER ROAD ENTRANCE IMPROVEMENT PLANS; RIGHT TO INSPECT.** Prior to the commencement of any work on the Tower Road Entrance (the "***Tower Road Entrance Work***"), Lessee shall submit to the Director for approval, the Tower Road Entrance Plans for the Tower Road Entrance, including the manner and method by which excavations are to be made, the materials to be used and the depth at which any underground improvements are to be laid. Eight (8) sets of the complete Tower Road Entrance Plans for the Tower Road Entrance Work shall be submitted to the Director at least thirty (30) days prior to the commencement of the planned Tower Road Entrance Improvements. The Director shall have the right, by written approval of said Tower Road Entrance Improvement Plans, to impose reasonable changes, conditions and requirements relating to the manner, method, design and construction of the Tower Road Entrance Improvements, which shall be conditions precedent to Lessee proceeding with the design and construction thereof. All conditions, requirements and changes reasonably required by the Director shall be incorporated into the revised Tower Road Entrance Improvement Plans for the Tower Road Entrance Improvements, copies of which shall be submitted to the Director within twenty (20) days after City's comments are delivered to Lessee. The revised Tower Road Entrance Improvement Plans for the Tower Road Entrance Improvements 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 Tower Road Entrance Improvement Plans for the Tower Road Entrance Improvements. City shall at all times have the right to inspect the work of Lessee in connection with the Tower Road Entrance Improvements.
- iii) **LESSEE RESPONSIBLE FOR COMPLIANCE WITH LAWS.** Approval of the Tower Road Entrance Improvement Plans by the Director shall not constitute a representation or warranty by City that the Tower Road Entrance Improvement

Plans are in conformity with applicable Laws. Lessee shall be solely responsible for compliance of the Tower Road Entrance Plans and the Tower Road Entrance as built with all applicable Laws.

- iv) **AS "INSTALLED PLANS" AND SPECIFICATIONS.** Upon completion of the construction of the Tower Road Entrance 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 Tower Road Entrance Improvement Plans of the Tower Road Entrance Improvements as completed (plus an AutoCad disk), showing all of the Tower Road Entrance Improvements in place.
- (c) **CONSTRUCTION CONTRACT REQUIREMENTS.** Lessee shall incorporate into any Construction Contract for the Tower Road Entrance Improvements, 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** to the Lease; (ii) requirements related to prevention and mitigation of Hazardous Materials releases in conformity with **Exhibit C** to the Lease; and (iii) the City Standard Specifications (as defined in Section 6.3.1 of the Lease). In the event of any conflict between the provisions of this Work Letter and the provisions of the City Standard Specifications, the provisions of this Work Letter shall apply. Lessee also shall ensure the compliance of all contractors and subcontractors with the provisions described above.
- (d) **CONSTRUCTION AND COMPLETION OF TOWER ROAD ENTRANCE IMPROVEMENTS.**
 - i) **NOTICE TO PROCEED.** Lessee shall commence construction of the Tower Road Entrance Improvements only after the Director has issued a notice to proceed with regard to the Tower Road Entrance Improvements, which shall be issued only after the following all have occurred:
 - (1) All E & I Deposits required as of that date shall have been paid to City;
 - (2) Lessee's contractor and subcontractor have complied with all applicable pre-construction provisions of the City Standard Specifications, including but not limited to the deposit of required insurance policies or certificates; and
 - (3) City (through its planning and/or public works and fire departments, as the case may be) has issued all required permits and approvals for the commencement of construction of the Tower Road Entrance Improvements;
 - ii) **PROGRESS OF WORK.** Promptly after Lessee's receipt of all required construction permits for the Tower Road Entrance Improvements, but in any event not later than twelve (12) months from the Effective Date, Lessee shall present adequate documentation as listed in Subsection 1(d)(i) above to allow the Director to issue its notice to proceed in accordance with the requirements of this Work Letter and to

ensure timely completion of the Tower Road Entrance Improvements in accordance with the Tower Road Entrance Improvement Plans. Lessee acknowledges that the current Martin Road Entrance is currently used by other tenants of the Airport whose leased space is adjacent to Lessee's premises and that cutting off access to this entrance would impact their operations. Lessee shall diligently proceed to complete the Tower Road Entrance Improvements at the earliest reasonable date, but in any event Lessee shall complete the Tower Road Entrance Improvements as shown in the Tower Road Entrance Plans prior to restricting access to the Martin Road Entrance. Lessee shall ensure that all Airport tenants have continuous access to the Airport during construction. For these purposes, completion of the Tower Road Entrance Improvements as shown in the Tower Road Entrance Improvement Plans shall mean the issuance by supervising architect of a certificate confirming the substantial completion of the Leasehold Improvements.

Lessee shall construct and complete the Tower Road Entrance 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 the Lease. Construction of the Tower Road Entrance Improvements shall commence prior to (i) the expiration of any required site development or conditional use permit or other licenses or permits which may be issued by City and (ii) the expiration of any other required discretionary approvals, consents or permits which may be issued by any governmental body.

During Lessee's performance of the Tower Road Entrance Improvements Work, Lessee shall have the right and obligation to supervise the construction in the field. During Lessee's performance of the Tower Road Entrance Improvements Work, Lessee shall conduct all materials testing and inspections required by Law and customary to the Work, as applicable, and provide documentation of the results of such testing to City for confirmation that the Tower Road Entrance Improvements Work meets the requirements of the approved plans and specifications, applicable laws, and industry standards. During Lessee's performance of the Tower Road Entrance Improvements Work, Lessee shall provide City with reasonable notice and the opportunity to inspect the Work prior to and during construction for the purposes of confirming that the Work is constructed in accordance with the plans and specifications, applicable laws, and industry standards.

- iii) **CHANGE ORDERS.** Lessee shall obtain the Director's prior written consent before signing any change order changing the Tower Road Entrance Improvement Plans for the Tower Road Entrance Improvements Plans if: (i) the change materially changes the character or quality of the Tower Road Entrance Improvements 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 with making a change order to the Tower Road Entrance

Improvements Plans and constructing such portion of the Tower Road Entrance Improvements without the Director's prior written approval where the Director's approval is required hereunder, the costs of reversing, removing or altering the Tower Road Entrance Improvements Work covered by such change order shall be borne solely by Lessee.

- iv) **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 Tower Road Entrance 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 Tower Road Entrance 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 Tower Road Entrance 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.
- (e) **GENERAL APPROVALS.** Lessee shall procure all permits and insurance necessary for all Tower Road Entrance Improvement 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 Tower Road Entrance Improvements that its contractor comply with all applicable Laws.

All work required in the construction of Tower Road Entrance Improvements, including any site preparation work, landscaping work, utility installation work as well as actual construction work, 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.

- (f) **LIENS.** Lessee shall keep the Airport free of any liens arising out of the Tower Road Entrance Improvement Work performed, materials furnished or obligations incurred by Lessee in the performance of any construction or installation of the Tower Road Entrance Improvements. Lessee shall notify City at least ten (10) Business Days prior to the commencement of any Tower Road Entrance Improvement Work to be performed or materials to be furnished on the Airport which could give rise to any such lien, and City shall have the right to post and keep on the Airport any notices

that may be required by law or which City may deem proper for the protection of City or the Airport from such liens.

(g) 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 for the Tower Road Entrance Improvements. City shall not be required to pay or provide any moneys for the Tower Road Entrance Improvement Work. Failure of the contractor or contractors to complete the construction and installation of the Tower Road Entrance Improvements in accordance with any Construction Contract for the Tower Road Entrance Improvements shall in no way affect the obligations of Lessee under this Work Letter.

(h) LESSEE'S FAILURE TO DILIGENTLY PURSUE CONSTRUCTION. In the event of Lessee's failure to (i) provide the Director with the documentation necessary for the Director to issue a Notice to Proceed or (ii) complete construction of the Tower Road Entrance Improvements as provided in Subsection 1(d)(ii) above (other than a Force Majeure Event) and such failure is the result of matters within the reasonable control of the Lessee, the Director shall notify Lessee in writing of such failure and Lessee shall have thirty (30) days to remedy such delay. If Lessee fails to remedy such failure within thirty (30) days after written notice from the Director, such failure shall be considered an event of default under this Work Letter and City shall have the right, upon seven (7) days written notice to Lessee, to take over the management, at Lessee's sole cost and expense, of Lessee's construction of the Tower Road Entrance Improvements.

If after commencing any Tower Road Entrance Improvement Work, Lessee (without the Director's prior written consent) ceases such Tower Road Entrance Improvement Work for thirty (30) continuous days (other than a cessation of Tower Road Entrance Improvement Work due to a Force Majeure Event), such cessation of Tower Road Entrance Improvement Work shall be a default hereunder and City shall have the right, upon seven (7) days written notice to Lessee, to take over the management of the construction of the Tower Road Entrance Improvements.

(i) TITLE TO TOWER ROAD ENTRANCE IMPROVEMENTS. During the construction of the Tower Road Entrance Improvements, title to the Tower Road Entrance Improvements shall be and remain in City. Upon the request of City, 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 Tower Road Entrance Improvements by virtue of this Work Letter or otherwise.

(j) CLAIMS BY MECHANICS OR MATERIAL SUPPLIERS. 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 Lessee shall, at its election and at its sole cost and expense, and within twenty (20) 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.

2. **WARRANTY; DISCLAIMER.** City acknowledges that no representations or warranties have been made by Lessee concerning the nature, quality or suitability of the Tower Road Entrance Improvements as aircraft taxiway, or for any other purpose. Upon Lessee's completion of its obligations hereunder, City shall accept Lessee's conveyance of the Tower Road Entrance Improvements to City "as is" and "where is", and as being in a good and safe condition satisfactory for City's use. Upon completion of the Tower Road Entrance Improvements as evidenced by the issuance of the certificate described in Section 1(d) (ii) above, City assumes all risks and costs whatsoever related to the ownership, upkeep and maintenance of the Tower Road Entrance Improvements and City represents to Lessee that upon such completion, City will have made sufficient investigation with regard to construction of the Tower Road Entrance Improvements and any other matters relating thereto. Without limiting the foregoing, City acknowledges that Lessee has made no representation or warranty regarding the existence of any Hazardous Materials in, on, upon, under or about the Tower Road Entrance Improvements. Upon the request of City, Lessee shall transfer to City without any warranty or recourse any and all warranties of the contractor(s) and materialmen contained in the construction contract(s) for the Tower Road Entrance Improvements.
3. **NO RENT/ BOND AND E&I REQUIREMENTS.** For the avoidance of any doubt, the Parties agree that City will not charge Lessee any rent (including Interim Ground Rental, Base Ground Rental or Additional Rent), Activity Fees, security deposits or other charges for use of the ground on which the Tower Road Entrance Improvements are being constructed during the construction of the Tower Road Entrance Improvements. Notwithstanding the foregoing, Lessee shall pay the permit fees for any permits that are necessary for Lessee to construct the Tower Road Entrance Improvements and the construction of the Tower Road Entrance Improvements shall be subject to the Performance and Payment Bond and E&I Fees provisions of Sections 6.3.2 and 6.3.3 of the Lease.
4. **PROHIBITED ENCUMBRANCES.** Lessee shall not engage in any financing or other transaction placing any mortgage or deed of trust or lien, levy attachment or other encumbrance upon the Tower Road Entrance Improvements and/or the land thereunder.
5. **MAINTENANCE.** At all times following Lessee's substantial completion of the Tower Road Entrance Improvements as evidenced by the issuance of the certificate described in Section 1(d)(ii) above, the City shall be responsible for all ongoing maintenance, repair, care and upkeep for the Tower Road Entrance Improvements.

6. **MISC.** The provisions of Sections 30, 31, 32, 35, 36.1, 36.2, 36.3, 36.4, 36.5, 36.7, 36.9, 36.10., 36.11, 36.13, 36.14, 36.15, 36.16, 36.17, 37, 38, 39, 40, 41, and 42 of the Lease are incorporated herein by this reference, with any necessary modifications as the context hereof may require.

Schedule 1

Concept Plan Description of Tower Road Improvements

The project will include re-establishing access to the remaining parking lot southeast of the Hangar A site. Access to the parking lot will be established from Brokaw Road northeast of Martin Avenue (tower Roadway). One new driveway cut and associated pavement in accordance with the City of San Jose engineering standards will be provided for access to the lot on the southwest corner of the lot adjacent to the RTR site

Existing pavement markings will be used to the extent possible. New markings will be provided where necessary to incorporate the new driveway into the existing parking scheme. Remaining parking lot lighting will remain and circuits will be terminated at the edge of the project to keep the existing lighting in operation and terminate the circuit at the edge of the Hangar A leasehold. No new landscaping plants or irrigation or stormwater management facilities are anticipated to be added to the parking lot access.

The Airport Service Road (located at the east edge of the site), will be relocated by Signature to accommodate the project.

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