

**NOTE: This Sample Ground Lease is provided for informational purposes only of typical terms and conditions contained in City ground leases. It is subject to revision based on the City’s best interests, and in the City’s sole discretion, prior to execution of a ground lease.**

**SAMPLE GROUND LEASE**

**31 Airpark Road (aka “Executive Ramp”)**  
**Lebanon, New Hampshire**

*Lebanon Municipal Airport*  
*City of Lebanon, New Hampshire*

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**SAMPLE GROUND LEASE**

**31 Airpark Road (aka "Executive Ramp")**  
**Lebanon, New Hampshire**

*Lebanon Municipal Airport*  
*City of Lebanon, New Hampshire*

THIS LEASE AGREEMENT (hereinafter "Lease") executed on the date set forth and notarized below, by and between the Lessor, **the City of Lebanon**, a New Hampshire municipal corporation with a mailing address of 51 North Park Street, Lebanon, New Hampshire 03766 (hereinafter "City"), and the Lessee, \_\_\_\_\_, a \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter "Tenant").

WITNESSETH that:

WHEREAS, the City of Lebanon owns the Lebanon Municipal Airport in Lebanon, New Hampshire (hereinafter "Airport");

WHEREAS, the City has made a long-term commitment to the Airport since its inception and has expended significant monies over many years to maintain it as an aeronautical and transportation resource which has provided a substantial benefit to the general public in the Upper Valley region;

WHEREAS, the City seeks to promote the economic development of the Airport and generation of revenue to support the Airport so that the Airport will be self-sustaining and complement the goals set forth in Lebanon's Principles for a Sustainable Community;

WHEREAS, the City also seeks qualified tenants who are willing to support the goals of the Airport and use the City's land for aeronautical activities;

WHEREAS Tenant seeks to lease certain premises at the Airport for its private commercial aeronautical activities;

WHEREAS, \_\_\_\_\_;

WHEREAS, the City has agreed to lease premises to Tenant under the terms herein as a result of action of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2018, where the terms herein were approved by both the Council and Tenant (the "Agreement Date");

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WHEREAS, the parties have executed this Lease to confirm their mutual agreement to the terms herein;

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements contained herein and for other good and valuable consideration, the parties hereto agree as follows:

**Article 1. Description of Leased Premises**

The City hereby leases to the Tenant, together with a right of ingress and egress for vehicles or aircraft at the Airport, an area of land identified as \_\_\_ x \_\_\_ feet (\_\_\_\_\_ square feet) immediately north of 31 Airpark Road, Lebanon, New Hampshire, as shown in **Appendix A** attached and made a part of this Lease (“Leased Premises”). The Leased Premises contains the following area:

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Only land is leased to the Tenant and the term “Leased Premises” as used herein refers only to that leased land.

Reservation of Public Right over Leased Premises: The City hereby reserves on behalf of itself and properly-authorized persons from the general public a right of ingress and egress through the Leased Premises and Airport security gates to permit safe passage to and from the Executive Ramp. The locations of such public passageways shall be identified on the ground with white striping or other visible markings installed and maintained by the Airport. Tenant shall permit unimpeded access to such properly-authorized persons on or over these marked areas.

Tenant, having inspected the Leased Premises prior to execution of this Lease and conducted its due diligence of the Leased Premises, hereby agrees to lease the Leased Premises in its “as is” condition.

**1.1 Subdivision and Survey Required**

The Leased Premises is a portion of a larger area of Airport land owned by the City that was never subdivided to become a separate lot. The Tenant shall cooperate with the City in order to facilitate subdivision but the City will take responsibility for subdivision of the lot from the remainder of Airport land under the laws and rules applicable to subdivisions in Lebanon. For the purpose of the subdivision process with the City’s planning board, the City shall cause a survey to be performed of the Leased Premises. Appendix A attached hereto shall be used as the basis for the survey and said survey shall be recorded at the Grafton County Registry of Deeds and will thereafter control the precise boundaries of the Leased Premises, including but not limited to the square footage of the Leased Premises for the purpose of determining the annual base rent. See Article 4.1 below. Tenant shall be provided a copy of the completed survey prior to the survey being approved by the Planning Board and recorded at the Registry.

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**Article 2. Use of Leased Premises and Tenant Improvements; Operating Agreement and License**

The Leased Premises shall be used only for the following aeronautical activities: \_\_\_\_\_ . The preceding aeronautical activities may use existing improvements owned by the City on the Leased Premises consisting of a \_\_\_\_\_ square foot paved vehicular parking lot and \_\_\_\_\_ square foot paved aircraft ramp providing access to Taxiway A (hereinafter “City Improvements”). In addition, said aeronautical activities shall take place in improvements constructed by Tenant on a \_\_\_\_\_ square foot area on the Leased Premises that is shown at the Commencement of this Lease as \_\_\_\_\_ on Exhibit A.

It is agreed that the parties’ obligations herein are contingent upon the Tenant obtaining all licenses, certificates, permits and approvals necessary to allow for the Tenant’s lawful use of the Leased Premises consistent with the requirements herein.

**2.1 Anticipated Tenant Improvements and Title Thereto**

The Tenant’s anticipated improvements (hereinafter “Tenant Improvements”) shall consist of \_\_\_\_\_ which shall be constructed and completed pursuant to the terms of this Lease and all approvals required under local, state or federal ordinances or laws, including but not limited to the City’s building codes and zoning and planning ordinances, at Tenant’s sole cost, no later than \_\_\_\_\_. Said Tenant Improvements shall be used and occupied for the intended aeronautical activities and operations by \_\_\_\_\_.

The requirements of Article 5.1 below, including indemnification of the City and insurance, shall apply to all Tenant Improvements planned or constructed pursuant to this Article.

Title to Tenant Improvements shall be, for the duration of this Lease, solely in the Tenant; nevertheless, said title in Tenant shall be subject to Article 3.1 below regarding termination of the Lease and reversion of the Leased Premises to the City at that time.

**2.2 Operations at, from or on Leased Premises; Operating Agreements and License**

*If required under the Airport Rules and Regulations for the intended use, insert:* Consistent with the Airport Rules and Regulations, Tenant shall enter into an operating agreement on or before the Execution Date of this Lease with the City that authorizes Tenant to conduct \_\_\_\_\_ aeronautical activities prior to Tenant conducting any such activities at, from or on the Leased Premises or at, from or on the Airport.

*Possible insert:* The City may grant a non-exclusive license to Tenant to use some portion of the paved ramp area for Tenant’s aeronautical activities contiguous with the Leased Premises. The license would be granted as part of the operating agreement.

The Leased Premises shall be used only in support of Tenant’s operating agreement. Default by Tenant of the terms of its operating agreement [*and license*] shall constitute a default under this

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Lease. Failure of Tenant to maintain a valid operating agreement, if required for aeronautical activities, or failure of Tenant to use or occupy the Leased Premises consistent with the requirements of this Lease or any operating agreements shall be cause for termination of this Lease under the terms set forth in Article 11.

### 2.3 Sublease of Leased Premises

Any sublease or assignment of any portion of the Leased Premises, including but not limited to the sublease or assignment of Tenant Improvements on the Leased Premises, are subject to Article 7.

### 2.4 Non-Exclusive Use of Airport Facilities

Tenant shall be entitled, non-exclusively and in common with others so authorized, to the use of all facilities and improvements of a public nature which are now, or may hereafter be, connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by the City.

## **Article 3. Term of Lease; Commencement, Expiration and Termination Dates**

Unless otherwise terminated in accordance with the provisions of this Lease, the Term of this Lease shall be for twenty (20) years, commencing on \_\_\_\_\_ (the “Commencement Date”) and expiring at midnight on \_\_\_\_\_ (the “Expiration Date”). In the event this Lease is terminated prior to the Expiration Date for any reason (hereinafter the “Termination Date”), it shall terminate at midnight on the day established as the Termination Date as set forth by either the City or Tenant in a written notice to the other party, in a manner consistent with the terms of this Lease for said termination.

All terms agreed upon for this Lease will take effect as of the Agreement Date, and this Lease shall be executed by the parties within five (5) days of the Agreement Date (“Execution Date”).

### 3.1 Option to Extend

Tenant may extend this Lease for one additional period of ten (10) years (the “Extension Term”) beginning immediately after the Expiration Date of the prior Term, upon the same terms and conditions of this Lease, with the following exceptions:

- (1) the Term of the Lease shall be modified and shall have a new Commencement Date of July 1, 2031 and a new Expiration Date of June 30, 2041;
- (2) the Monthly Ground Rent shall be revised at the start of the Extension Term and determined in the manner consistent with the terms in Article 4.4 below; and
- (3) there is no additional Option to Extend beyond the new Expiration Date set forth above in Article 3.2(1).

As a precondition to the exercise and implementation of this Option to Extend, Tenant must:

- (1) not be in Default of the terms and conditions of this Lease at the time it exercises the Option to Extend;
- (2) have had a consistent pattern and practice of being in substantial compliance with all

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terms of this Lease, including but not limited to regulations applicable under the Airport Rules and Regulations promulgated by the City and/or those by the FAA (or successor agencies), with no uncured violations, during the five years preceding the date that it exercises the Option to Extend; and

- (3) give notice to the City in writing that Tenant is exercising its Option to Extend at least one hundred and eighty (180) days but not more than three hundred and sixty-five (365) days before the prior Term ends.

### 3.2 Reversion of Leased Premises and Obligations Regarding Improvements at End of Lease

Beginning at 12:01 a.m. on the day following the Expiration Date or the Termination Date, regardless of the reason(s) therefor, the Leased Premises shall revert to the City’s exclusive control. Unless, upon the request of the City, the Tenant, at its sole discretion, elects to leave, convey, assign or gift the Tenant Improvements to the City, the Tenant shall, prior to the Expiration or Termination Date, raze and remove from the Leased Premises with diligent efforts, at its sole cost and after obtaining all regulatory approvals required, all Tenant Improvements, including all structures and improvements, signs, trade fixtures, furnishings, personal property, equipment, storage or underground tanks, and other materials that Tenant was permitted to install or maintain under this Lease, leaving and restoring the Leased Premises in a clear and safe condition to the satisfaction, in writing, of the Airport Manager.

In the event Tenant elects to raze and remove all Tenant Improvements and its obligations under this Article are not completed by the Expiration or established Termination Date, this Lease shall terminate on the first day of the month following completion of Tenant’s removal of all such improvements to the satisfaction, in writing, of the Airport Manager. Tenant shall have no right to conduct any aeronautical activities at, from or on the Leased Premises in the event the razing and removal process is not completed by the Expiration or established Termination Date but Tenant shall continue to be responsible to make all payments and meet all obligations under this Lease through the revised Termination Date.

Nevertheless, if Tenant shall fail to make reasonable and diligent efforts as determined by the City to remove any or all of its real or personal property in a timely manner as set forth in the preceding paragraph, then the City in its sole discretion may treat all such property as abandoned by Tenant and the City may take possession of all such real or personal property. In the event the City chooses to effect removal or restoration of the real property that Tenant was obligated to do, it may be performed at Tenant’s expense, in a manner and to any extent that is solely within the City’s discretion, and Tenant agrees to pay the City such expense promptly upon receipt of a proper invoice.

### 3.3 Notice of Lease

The Tenant and the City agree that, no later than thirty (30) days after the Agreement Date, the parties will execute a mutually-agreed-upon written Notice of Lease in recordable form pursuant to RSA 477:7-a, which shall include the Commencement Date and Expiration Date of this Lease and incorporate the terms and conditions of this Lease by reference.



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**Article 4. Rent**

**4.1 Monthly Ground Rent**

For the use and enjoyment of the Leased Premises as described herein, the Tenant shall, during the first year after the Commencement Date, pay the City an Annual Ground Rent of \$0.\_\_\_\_ per Square Foot of Leased Premises for an annual estimated base rent of \$\_\_\_\_\_ (\_\_\_\_\_ Dollars), which equates to \$0.\_\_\_\_\_ per Square Foot on a monthly basis and Monthly Ground Rent payments due to the City of \$\_\_\_\_\_. All Monthly Ground Rent payments shall be due, without notice or invoice, to the City in advance of the next month’s tenancy on or before the first day of each month in the form of checks or electronic payments, whichever form is agreed by the parties. The annual base rent may need to be adjusted once the survey of the Leased Premises under Article 1.1 is completed. In the event the survey results in a change to the approximated square footage comprising the Leased Premises as initially described in this Lease in Article 1, the annual base rent shall be adjusted by the actual square feet included in this Lease; nevertheless, such adjustment in annual base rent shall apply only to future Monthly Ground Rent payments due after the City gives Tenant a copy of the recorded survey and written notice of the final determination of square footage and the amount of the annual base rent and subsequent Monthly Ground Rent payments due.

The first Monthly Ground Rent payment under this Lease shall be due, without notice, within fourteen (14) days of the Agreement Date of this Lease.

**4.2. Escalation of Rent For Subsequent Years**

Subject to Article 4.4, beginning on \_\_\_\_\_ (the one (1) year anniversary of the Commencement Date of this Lease) and on each succeeding anniversary date thereafter, the Monthly Ground Rent to the City will be adjusted in accordance with the Consumer Price Index - All Urban Consumers, All-Items, Northeast (base period 1982-84 = 100), hereinafter referred to as “CPI-U”, for the past year.

The Monthly Ground Rent beginning on \_\_\_\_\_ and for each succeeding year shall be determined by multiplying the Monthly Ground Rent for the preceding year by a fraction, the numerator of which shall be the CPI-U for the month of April prior to the applicable anniversary date of the Commencement Date, and the denominator of which shall be the CPI-U for the month of April for the preceding year; provided however that if such fraction is less than one, the Monthly Ground Rent for the succeeding one-year period shall remain the same as the Monthly Ground Rent for the preceding one-year period. Payment of the difference in the adjusted Monthly Ground Rent will be made promptly in arrears for any month past if the adjusted Monthly Ground Rent cannot be calculated until the CPI-U needed for the numerator is published. Thereafter, the Monthly Ground Rent, as adjusted by the CPI-U for that succeeding year, will become due on the same monthly basis as described in Article 4.1.

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### 4.3 Late Payments

In the event any rental payment due under this Lease is not paid in full within fifteen (15) days after its due date, the Tenant shall pay to the City a late charge of five percent (5%) of the amount due but not timely paid. Payment of said late charge shall be due to the City, without notice or invoice, upon and along with payment of the overdue Monthly Ground Rent amount. The Tenant shall also pay interest at a rate of one and a half percent (1-1/2%) per month (18% per annum) from the due date on any amount not received by the City within fifteen (15) days of the due date. Tenant agrees that it shall pay all attorneys’ fees and costs incurred by the City as a result of Tenant’s failure to pay the full amount of rent when due. Failure to make any payment required by this Lease within thirty (30) days of the due date shall constitute a default and entitle the City to its rights of termination under Article 11 below.

### 4.4 Five Year Review of Ground Rent

The parties agree that the terms and conditions of ground rent set forth in this Article 4 shall be reviewed and adjusted, as appropriate, every five (5) years from the Commencement Date of this Lease. The purpose of the review will be to determine if the ground rent is fair and reasonable to both parties in light of economic conditions and market values at the time of review in order to provide a factual basis for an adjustment of the ground rent. Rental rates applicable in earlier years under this Lease are non-binding when evaluating economic conditions or market values to determine the adjusted rental rate in a future year.

It is acknowledged and agreed that the ground rent is expected to remain reasonably consistent with the fair market rental value of the Leased Premises, at its highest and best use, assuming it is unimproved and unencumbered by this ground lease.

If the parties are unable to agree on the ground rent adjustment, then this matter of rental adjustment may be submitted to mediation and/or arbitration using the dispute resolution procedure as provided in Article 13. Notwithstanding other terms to the contrary, each party shall bear its own expense for the mediation and/or arbitration, including its own attorneys’ fees and costs. The arbitrator shall have experience in real estate appraising, and the cost of the arbitrator shall be borne equally by both parties. The arbitrator shall have the power to decide the rent that is representative of fair market rental value but shall not decide on a rental rate that is lower, or higher, than the rates included in the submissions of each party. Any adjustment or change in the terms of payment shall be effective as of the first day of the month on the fifth year from the Commencement Date and similarly on the tenth and fifteenth anniversary dates of the Commencement Date thereafter, regardless of the time when such terms are actually finalized between the parties.

## **Article 5. Covenants of Tenant**

The following are the obligations of the Tenant in exchange for the rights and privileges granted to the Tenant in this Lease:

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### 5.1 Alterations, Renovations, Repairs or Improvements on or related to Leased Premises

The Tenant may, at its sole expense, make alterations, renovations, restorations, repairs or improvements to its Tenant Improvements or parts thereof, or to the Leased Premises, provided the detailed plans and specifications of all proposed changes are first reviewed and approved in writing by the Airport Manager, such consent not to be unreasonably withheld. Notwithstanding the preceding sentence, this paragraph requiring the approval of the Airport Manager shall not apply to ordinary repairs or maintenance of the Tenant’s Improvements, nor to minor interior alterations or renovations to Tenant’s facility that do not increase or decrease the floor area or volume of the building, nor require any movement or removal of interior or exterior walls, nor change the footprint of the building. The Airport Manager shall either approve the plans and specifications as submitted or transmit written comments or proposed revisions to Tenant within thirty (30) calendar days of receipt of the plans and specifications from Tenant, failing which the plans shall be deemed approved by the Airport Manager. The approval by the Airport Manager is required for all alterations, renovations, restorations, repairs or improvements as defined in this paragraph.

Regardless whether the Airport Manager’s approval is required or not under the preceding paragraph, Tenant must obtain at its sole cost all approvals required under Lebanon codes, ordinances and regulations administered by the City or by any official, agency, department or board under local, state or federal ordinances or laws for any alterations, renovations, restorations, repairs or improvements on or related to the use of the Leased Premises. Such additional approvals are beyond the control of the Airport Manager and not subject to the 30-day calendar day limit stated above.

In the event that Tenant initiates construction of any alterations, renovations, restorations, repairs or improvements, Tenant shall indemnify, defend, and hold harmless the City by reason of construction or occupancy of Tenant Improvements and from all costs and expenses, including legal fees and costs, or such costs and expenses arising from any claim for workers’ compensation costs or benefits resulting from injury of any kind or death of any person performing services pursuant to this Lease who is not required to be covered by workers’ compensation insurance, incurred by the City arising out of the Tenant’s activities, or those of its employees, agents, contractors, consultants or invitees during the construction of the same. Tenant shall require any contractor or subcontractor engaged by or for the Tenant for construction of alterations, renovations, restorations, repairs or improvements on or related to the use of the Leased Premises, to provide evidence to the City that the City has been named as Additional Insured, in the form of endorsements, of all general liability insurance and workers’ compensation insurance policies, and such other insurance as is commercially reasonable and as may be applicable, prior to beginning any construction on the Leased Premises. All construction of improvements that are initiated by Tenant and/or completed by Tenant shall be owned by Tenant and added to and included in the definition of “Tenant Improvements” (see Article 2), subject to the provisions of Article 3.1.

### 5.2 Repairs, Maintenance and Security of Leased Premises

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At all times during the term of this Lease, and at its sole cost and expense, the Tenant will keep and maintain the Leased Premises and City Improvements and Tenant Improvements placed therein and thereon in a good state of repair and condition, use all reasonable precautions to prevent waste, damage, or injury to the Leased Premises and all City and Tenant Improvements, and be responsible for all repairs, maintenance and security of the Leased Premises and all such Improvements. The Tenant shall also be responsible for all snow removal on the Leased Premises.

### 5.3 Aircraft Maintenance and Repairs By Any Transient Operator

In the event Tenant desires any aviation services to be performed, including but not limited to maintenance or repairs on any aircraft based or located on or in the Leased Premises, which services are to be provided by a company or person that does not lease real estate at the Airport (such as, for example, a “Transient Aviation Services Operator” or Temporary Specialized Aviation Services Operator as such terms are defined in the Airport Rules and Regulations), Tenant shall comply with all requirements of the Airport Regulations with respect to said services being provided by any transient operator. Tenant shall require such transient operator to supply the Airport with any certification, insurance or other information as the Airport may require and to obtain a permit from the Airport Manager prior to services being performed as well as to pay any fees as required by the Airport Regulations. In the event a transient operator fails to perform the aviation services consistent with the Airport’s requirements and/or Tenant permits a transient operator to do so, the Airport may deny access to the transient operator until all such requirements are met.

### 5.4 Avoid Unreasonable Disturbance

Without limiting Tenant’s aeronautical activities or use of the Leased Premises for the purposes intended under Article 2, the Tenant shall use the Leased Premises in a manner so as not to unreasonably annoy, disturb or be offensive to others at the Airport or to residents abutting the Airport.

### 5.5 Compliance with Laws and Rules

The Tenant shall comply with all federal, state and/or local laws, ordinances and regulations, including but not limited to those of the Federal Aviation Administration (“FAA”), the United States Department of Transportation, the United States Department of Homeland Security, the United States Environmental Protection Agency, the New Hampshire Department of Transportation and the New Hampshire Department of Environmental Services with respect to the use and occupancy of the Leased Premises and will hold harmless, indemnify, and defend the City, its officers, employees or agents for any damage, penalty or charge imposed or incurred for the violation of any laws, ordinances or regulations, whether occasioned by the Tenant, its agents, contractors, employees, invitees, Sublessees or assigns.

Tenant shall keep in effect and post in a prominent location all necessary and/or required licenses or permits. Tenant shall pay to the City an amount equal to all fines levied by any governmental

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entity or agency against the City for any breach of governmental requirements by Tenant within fifteen (15) days of the levy.

The Tenant shall also comply with the Airport Rules and Regulations (which address aeronautical, commercial and other operational matters at the Lebanon Municipal Airport), as adopted on September 1, 1993 and as amended thereafter, including but not limited to the payment of all fees or charges required therein. Said Regulations, including any terms defined therein, are made a part of this Lease by reference and incorporated into this Lease as if fully set forth herein. In the event of a conflict between the Regulations and this Lease, the provision that establishes the more stringent standard, limitation or requirement shall control. All fees or charges set forth in the Rules and Regulations, and their payment, shall be in addition to payments otherwise due under this Lease.

In the event an amendment to the Regulations is proposed, the City shall provide Tenant with a copy and a reasonable period of time for Tenant to comment on the same. Once an amendment to the Regulations has been adopted, the City shall promptly give written notice to the Tenant of the same and provide a copy to Tenant; said Regulations are also available upon request. Subject to the terms of Article 10, to the extent Tenant’s improvements and size of leasehold area meet the minimum operational standards set forth in the Regulations for the intended use of the Leased Premises as of the Agreement Date herein, such improvements and leasehold area are deemed grandfathered for the duration of the Term of this Lease (but no longer than the Expiration Date of this Lease) for the same intended use, in the event future amendments to the Regulations impose standards that would otherwise require structural alterations to Tenant’s currently-existing improvements and/or a change in the size of leasehold area granted herein; provided, however, that in the event any Regulations are amended due to changes imposed for purposes of public safety and security and/or by state or federal laws including FAA regulations, such amendments shall control and supersede this grandfather clause to the extent there is a conflict.

### 5.5.A. Non-Discrimination

Notwithstanding any other or inconsistent provision of this Lease, during the performance of this Lease, Tenant for itself, its agents, contractors, employees, invitees, Sublessees or assigns, as part of the consideration for this Lease, does hereby covenant and agree that:

- (1) No person on the grounds of race, creed, color, age, religion, sex, disability, national origin or sexual orientation shall be excluded from participation in or denied the use of the Leased Premises or any services furnished by Tenant at the Airport.
- (2) In the construction of any improvements on, over or under such Leased Premises and the furnishing of services thereon or anywhere at the Airport, no person on the grounds of race, creed, color, age, religion, sex, disability, national origin or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.
- (3) Tenant shall use the Leased Premises and provide services at the Airport, if applicable, in compliance with all requirements imposed by or pursuant to Title 49 of

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the Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, 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.

- (4) Tenant will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered by 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Tenant assures that it will require that its covered sub-organizations provide assurances to Tenant that they similarly will undertake affirmative action programs and will require assurances from their sub-organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

### 5.6 Personal Property

The personal property of the Tenant located on the Leased Premises shall remain the property of the Tenant while this Lease is in effect. If Tenant fails to remove its personal property from the Leased Premises as set forth in Article 3, Tenant’s personal property will be considered abandoned and the City may dispose of all personal property as it sees fit without any liability for doing so.

### 5.7 Vehicles

Tenant agrees to utilize only the existing designated parking areas for the parking of motor vehicles on the Leased Premises. The parking of any motor vehicles inside the hangar is not allowed with the exception of aircraft crew vehicles for use of customers, vehicles of Tenant and Tenant’s invitees, and other vehicles so long as all such vehicles described in this sentence are required for or used in conjunction with the movement, maintenance or operation of aircraft. The use, storage and parking of all motor vehicles on the Leased Premises shall be subject to applicable Rules and Regulations of the Lebanon Municipal Airport, as may be amended from time to time.

### 5.8 Lighting

Any Tenant lighting of the Leased Premises shall first be approved by the Airport Manager, which approval shall not be unreasonably withheld. Tenant further agrees to maintain, replace, repair or remove, as necessary, this illumination for the duration of the Lease. Tenant lighting shall not interfere with aircraft operations or unreasonably disturb others at or near the Airport. The approval by the Airport Manager is required in addition to approvals required by any other official, agency, department or board under local, state or federal ordinances or laws, including but not limited to the Lebanon code office and its zoning and planning boards or departments. Such additional approvals required are beyond the control of the Airport Manager.

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### 5.9 Advertising and Signage

During the term of this Lease, Tenant shall have the right, at its sole expense, to place in or on the Leased Premises a sign or signs identifying itself. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved in writing by the Airport Manager, which approval shall not be unreasonably withheld. Tenant shall remove, at its expense, all lettering, signs and placards so erected on the Leased Premises at the Termination or Expiration Date of this Lease. The approval by the Airport Manager is required in addition to approvals required by any other official, agency, department or board under local, state or federal ordinances or laws, including but not limited to the Lebanon code office and its zoning and planning boards or departments. Such additional approvals required are beyond the control of the Airport Manager.

### 5.10 Antennas

Tenant shall not install, erect, or place any antennas or the structures for any antennas without the prior written approval of the Airport Manager, which approval shall not be unreasonably withheld. The approval by the Airport Manager is required in addition to approvals required by any other official, agency, department or board under local, state or federal ordinances or law, including but not limited to the Lebanon code office and its zoning and planning boards or departments. Such additional approvals required are beyond the control of the Airport Manager.

### 5.11 Utilities

Water and sewer service, which are provided by the City, as well as electrical service provided by other utilities, are stubbed to the building site on the Leased Premises.

Tenant agrees to be responsible to arrange for and pay all charges, costs, expenses, taxes and assessments, including so-called “hook-up” charges if applicable, for all utilities, including but not limited to water and sewer contracted for, consumed or used by Tenant, its agents, contractors, employees, invitees, Sublessees or assigns on the Leased Premises during the term of this Lease. The City shall not be responsible to provide any utility to Tenant that is not already available at the boundary line of the Leased Premises, nor for the expense of any utilities. Tenant shall have the right pursuant to local and state law, at its sole expense and cost, to apply for the reduction of, or to challenge, the amount or legality of any rates, assessments or other charges related to utilities which Tenant may be obligated to pay or of any assessment upon which the same may be based.

### 5.12 Taxes or Other Governmental Levies or Assessments

#### 5.12.A. Real Estate Taxes

For the duration of this Lease, the Tenant shall pay all real property taxes levied upon the Leased Premises and upon any and all improvements located or constructed therein and thereon, no later than the due date for payment thereof. The failure of Tenant to pay duly assessed real estate taxes when due shall be cause for termination of this Lease by the City under Article 11.

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The parties agree that Tenant shall be responsible for the payment of all such taxes beginning with the \_\_\_\_ tax year applicable to the Commencement Date of this Lease. In the event the Lease terminates for any reason during a tax year or expires as of the Expiration Date, Tenant shall be liable only for its pro rata share of the real property taxes assessed for the entire tax year.

### 5.12.B. Other Governmental Levies or Assessments

Tenant shall timely pay all taxes, other than real estate taxes as provided for in Article 5.12.A., expenses and payments in connection with the use of the Leased Premises, including but not limited to taxes on personal property, special or betterment assessments, permit fees, license fees, application fees, or any other governmental fees or levies.

### 5.12.C. Tenant’s Right to Protest

Tenant shall have the right pursuant to local, state or federal law, at its sole expense and cost, to apply for the reduction of, or to challenge, the amount or legality of any fees, taxes or assessments which Tenant may be obligated to pay or of any assessment upon which the same may be based.

## 5.13 Liability Insurance

### 5.13.A. Types of Insurance and Amounts

The Tenant will obtain and maintain continuously in effect at all times during the term of this Lease, at its sole expense, the following occurrence-based insurance policies that a) name the City as additional insured by endorsement (except for workers’ compensation coverage), b) are purchased from insurance company(ies) qualified to do business in the State of New Hampshire with a financial rating of A- or better in “Best’s Insurance Guide” and c) also provide primary, non-contributory coverage to Tenant:

- (1) Commercial or Aviation General Liability Insurance with respect to the Airport, the Leased Premises and all Licensed Property at the Airport under a City-issued operating agreement and license, but not less than, each occurrence, Two Million Dollars (\$2,000,000) each person, Two Million Dollars (\$2,000,000) each accident, and Five Million Dollars (\$5,000,000) in the aggregate. The policy shall be occurrence-based and name the City as additional insured by endorsement and cover any and all claims for products-completed operations hazards, products liability, death, bodily injury, personal injury and property damage with respect to liability arising out of events or occurrences related to the subject matter of this Lease and any City-issued operating agreement and license with the City at the Airport, including but not limited to activities performed by or on behalf of Tenant at the Airport; premises and improvements owned, leased, used or occupied by Tenant at the Airport including but not limited to the Leased Premises and all Licensed Property; and/or vehicles, equipment or aircraft owned, leased, hired, borrowed or operated by Tenant at the Airport.



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(2) Fire and other property loss insurance with extended coverage in an amount not less than eighty percent (80%) of the Leased Premises’ insurable value inclusive of all improvements and naming the City as additional insured by endorsement.

(3) Workers Compensation/Employer’s Liability Insurance with coverage as required by New Hampshire law.

(4) *If applicable:* Hangar Keeper’s Liability Insurance for aviation operations, aircraft in the care, custody or control of Tenant, and products-completed operations hazards of Tenant at the Airport in the minimum amount of \_\_\_\_\_ (\$ \_\_\_\_\_) each aircraft and \_\_\_\_\_ (\$ \_\_\_\_\_) each occurrence and naming the City as additional insured by endorsement.

(5) Aircraft Liability Insurance for the aviation operations of Tenant, including bodily injury to pilots and passengers as well as property damage insurance, in the minimum amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) each occurrence and naming the City as additional insured by endorsement.

(6) Environmental Liability Insurance with respect to the Airport, the Leased Premises and any Licensed Property at the Airport under a City-issued operating agreement and license in an amount not less than One Million Dollars (\$1,000,000) each occurrence or incident, and Two Million Dollars (\$2,000,000) in the aggregate. Notwithstanding the requirement above in this Article 5.13.A. that all insurance policies shall be occurrence-based, an exception is acceptable for this policy and Tenant may obtain environmental liability insurance that is a claims-made policy. Any policy obtained pursuant to this paragraph shall name the City as additional insured by endorsement, shall include an Indemnity Contracts endorsement and cover any and all claims arising out of events, occurrences or incidents related to the presence, use, storage, removal or disposal of, or a claim asserting the presence, use, storage, removal or disposal of, any Hazardous Materials at, in or on the Airport, the Leased Premises and any Licensed Property under a City-issued operating agreement and license or any improvements therein or thereon, or at, in or on any off-site location outside of the boundaries of the Leased Premises or any Licensed Property, arising from Tenant’s conduct or operations pursuant to this Lease or any City-issued operating agreement and license. Without limiting the foregoing, said policy shall cover all fueling operations, underground and/or above-ground storage tanks, clean-up or restoration costs required by all federal, state and local environmental laws and rules, and the discharge, dispersal, seepage, migration, release or escape of Hazardous Materials into or upon any land and/or improvements, atmosphere, or groundwater at the Airport and/or on the Leased Premises or any Licensed Property.

5.13.B. Certification and the City as Additional Insured

Two days prior to the Execution Date of this Lease, the City shall be provided a duplicate original or a certified copy of the above policies in Article 5.13.A. that shall be in force as of the Execution Date of this Lease and attached to this Lease as **Appendix \_\_\_\_**. All such policies shall name the City as Additional Insured by endorsement attached to the policies (except for workers’

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compensation coverage) on a primary and noncontributory basis. The Tenant shall thereafter ensure the City receives advance written notice whenever there is any material change to any policy (including but not limited to a change in the insurer) not less than ten (10) days before such policy change takes effect.

### 5.13.C. Review of Coverage Limits

The types of insurance and limits of liability coverage as set forth herein shall be periodically reviewed and adjustments made by the City so as to provide insurance coverage in keeping with increases in the Consumer Price Index or with what the City deems to be prudent and reasonable.

### 5.13.D. Notice to City of Any Claim

Tenant agrees to notify the City in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Tenant has knowledge, and to cooperate with the City in the investigation and defense thereof.

### 5.13.E. Notice of Impending Termination of Coverage

Coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after 30 calendar days prior written notice, or 10 days prior written notice for cancellation for non-payment of premiums, by certified mail, return receipt requested, to the City. The issuing company or the Tenant will mail all such written notices to the City. In the event that any of the above-described policies will expire without Tenant renewing the same, Tenant will mail written notice of impending expiration to the City at least thirty (30) days in advance of expiration with an explanation and Tenant’s plan to maintain all required coverage under this Lease.

## 5.14 Indemnification

The Tenant shall indemnify, defend and hold harmless (collectively, “indemnify”) the City, its officers, agents or employees, from and against all claims, losses, costs, damages, actions, liabilities or expenses of any sort or nature, including legal fees and court costs or any claim for workers’ compensation costs or benefits resulting from injury of any kind or death of any person performing services under this Lease or any City-issued operating agreement and license who is not required to be covered by workers’ compensation insurance or other coverage, caused by or arising out of any acts of negligence, failure, fault or breach of Tenant, its agents, contractors, employees, invitees, Sublessees or assigns a) to perform and comply, in any respect, with any of the requirements, provisions or conditions of this Lease and/or any City-issued operating agreement and license; and/or b) arising out of, resulting from, or in connection with Tenant’s activities at, from or on the Airport; and/or c) for any reason associated with or connected to the use and occupancy of the Leased Premises or any City-issued operating agreement and license and/or improvements thereon, regardless whether permission for such use and occupancy exists or existed or wherever such act or acts may occur.

The Tenant’s obligation to indemnify as provided herein shall survive the expiration or termination of this Lease or any City-issued operating agreement and license.

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### 5.15 Environmental Indemnification

The Tenant shall indemnify, defend and hold harmless (collectively, “indemnify”) the City, its officers, agents or employees, from and against all claims, losses, costs, damages, actions, liabilities or expenses of any sort or nature, including legal fees and court costs or any claim for workers’ compensation costs or benefits resulting from injury of any kind or death of any person performing services under this Lease or any City-issued operating agreement and license who is not required to be covered by workers’ compensation insurance or other coverage for performing services related to this Article 5.15, that the City, its officers, agents or employees may incur or be put to remedy as a result of the presence, use, storage, removal or disposal of, or a claim asserting the presence, use, storage, removal or disposal of, any Hazardous Materials at, in or on the Airport, the Leased Premises and any Licensed Property under a City-issued operating agreement and license or any improvements therein or thereon, or at, in or on any off-site location outside of the boundaries of the Leased Premises or any Licensed Property, caused by or resulting from the conduct or operations of Tenant, its agents, contractors, employees, invitees, Sublessees or assigns during the term of this Lease or any City-issued operating agreement and license, or arising from Tenant’s conduct or operations, including that of its agents, contractors, employees, invitees, Sublessees or assigns, pursuant to this Lease or any operating agreement and license.

The Tenant’s obligation to indemnify as provided herein shall survive the expiration or termination of this Lease or any City-issued operating agreement and license.

The term Hazardous Materials in this Lease, both in this Article and elsewhere in this Lease or any City-issued operating agreement and license, is defined as any item or agent (biological, chemical, radiological, and/or physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through the interaction with other factors that are subject to regulation by or under any federal, state or local laws and ordinances.

### 5.16 Tenant Responsibility for Tenant’s Property and For Persons Using Leased Premises

The Tenant shall be solely responsible to maintain a reasonably safe environment for the safety and security of persons at, in or on the Leased Premises and any licensed property under a City-issued operating agreement and license or any improvements therein or thereon and accepts the sole risk of damage or loss related to all real or personal property of every kind at, in or on the Leased Premises. The City shall not be liable to the Tenant, its agents, employees, invitees, successors or assigns or to any other person for any injury, loss, damage or inconvenience occasioned by any cause whatsoever.

### 5.17 Operating, Monitoring and Securing of Aircraft

The Tenant agrees that it shall be responsible for the proper operating, monitoring, securing, and storing of all aircraft on the Leased Premises and in or on the improvements thereon, including but not limited to, as applicable, setting parking brakes on, placing chocks or tying down all aircraft on the Leased Premises. *[If applicable: Tenant shall also ensure unimpeded safe ingress*

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*and egress on behalf of the City and properly-authorized persons on marked passageways through the Leased Premises (see Appendix \_\_\_) to permit safe passage for vehicles and pedestrians to and from the public ramp and any aircraft parked there. Tenant shall place temporary orange cones or similar visible markers around any temporary obstructions to such passageways.]*

5.18 City Inspection

The Tenant consents and agrees, upon reasonable prior notice, to allow City officials, employees or agents onto the Leased Premises, or any portion thereof, during the City’s normal business hours, for the purpose of inspecting same to determine compliance with the terms, conditions, and requirements of this Lease. Nevertheless, in the event of an emergency, the terms of Article 6.3 shall control.

5.19 Re-delivery

The Tenant agrees, consistent with Article 3, that upon the occurrence of the Expiration or Termination Date of this Lease, it will quit and surrender the Leased Premises, leaving the land, as well as City and Tenant Improvements located thereon in reasonably good and clean condition and fit for the use specified in Article 2 of this Lease, reasonable wear and tear excepted. In the event that Tenant must raze and remove all Tenant Improvements on the Leased Premises, the land and City Improvements shall be left in good clean condition and without any Hazardous Materials, waste, or construction and demolition materials remaining on the Leased Premises. The requirements described in the preceding two sentences shall be performed to the written satisfaction of the Airport Manager and in compliance with all local, state and federal laws and regulations. If the Tenant fails to fully perform its obligation to leave the land in a good clean condition and without any Hazardous Materials, waste, or construction and demolition materials remaining on the Leased Premises and the City incurs expense to perform this obligation of Tenant, Tenant shall be liable for the City’s expenses and shall reimburse the City within 30 days of the City presenting an invoice to Tenant listing such costs. This obligation of Tenant shall survive the Termination Date of this Lease.

**Article 6. Covenants of the City**

6.1 Title to Real Estate

At the time of execution of this Lease, the City is the sole owner in fee simple of the Leased Premises and City Improvements described herein, has marketable title and the full right to lease the same to Tenant for the term stated herein, and the City warrants and will defend its title thereto.

6.2 Maintenance and Operation of the Airport Common Areas

The City will maintain all public and common use areas of the Airport’s facilities in good repair and shall make such repairs, replacements or additions thereto as, in its sole reasonable discretion, are required and necessary for the safe and efficient operation of the Airport,

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including but not limited to mowing and the clearing and removal of snow from public aircraft operating areas as is reasonable and necessary to permit aircraft operations as soon as practicable under the circumstances, as customarily performed at the Airport. The City shall not have any duty to mow grass or remove snow from any portion of the Leased Premises.

### 6.3 Safety and Security of the Airport

The City shall be responsible to maintain a reasonably safe environment for all public and common use areas of the Airport’s facilities over which it has control and to provide general Airport security in a customary manner and within the City’s sole discretion. The City reserves the right, with reasonable notice, to inspect the Leased Premises and, in the event of an emergency, to take such immediate action with respect to the Leased Premises (with or without notice, as reasonable under the circumstances) as may be required for the protection of persons or property at the Airport without, however, having any obligation to do so.

### 6.4 Right of Ingress and Egress

The City shall provide Tenant with the right, in common with others, of ingress and egress from the Leased Premises for the purpose of accessing the airfield without additional charge to the Tenant, its agents or invitees, unless required by a City-issued operating agreement and license or the Airport’s Rules and Regulations.

### 6.5 Quiet Enjoyment

Subject to Article 9 but notwithstanding any other provision of this Lease or applicable local, State, or federal laws, in consideration for Tenant’s timely payment of rent and performance of all Lease terms, covenants, and conditions contained herein, the Tenant may peaceably and quietly have, hold, occupy, and enjoy the Leased Premises for the purposes set forth in Article 2 without hindrance from the City.

### 6.6 Cooperation

The Airport Manager shall cooperate with Tenant in Tenant’s obtaining all approvals, permits, certificates and licenses required for the Tenant’s use and operation of the Leased Premises as contemplated herein.

### 6.7 Imaginary Surfaces or Obstructions

The City reserves the right to take any action it considers necessary to protect the imaginary surfaces of the Airport against obstruction or to require the removal of any obstruction, together with the right to prevent Tenant from erecting, or permitting to be erected, any structure on or adjacent to the Airport which, in the opinion of the Airport Manager, would limit the usefulness of the Airport or constitute a hazard to aircraft or be in violation of any FAA order or regulation.

### 6.8 City’s Right to Develop

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Subject to the Tenant’s right of quiet enjoyment under Article 6.5 and the Tenant’s right under Article 2 to use the Leased Premises for its intended aeronautical purpose, the City reserves the right to further develop or improve the landing area and all publicly owned land and facilities of the Airport as it sees fit, regardless of the desires or views of the Tenant and without interference or hindrance from Tenant.

### 6.9 Right of Flight over Leased Premises

There is hereby reserved to the City for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace over the surface of the Leased Premises, together with a right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air using said airspace or landing at, taking off from, or operating on or about the Airport.

## **Article 7. Assignments, Mortgages or Subleasing**

### 7.1 Assignments or Subleases

The Tenant shall not assign, convey, transfer or sublease all or any portion of the Leased Premises or any portion of the improvements owned by Tenant without first obtaining the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or unduly delayed. The City’s consent to one assignment, transfer or sublease shall not constitute consent to any other such conveyances.

Notwithstanding the above, this Lease shall not be transferable by assignment, merger or sale to any successor entity without express advance written consent by the City, which consent shall not be unreasonably withheld. Subject to Article 11.1, Tenant and its shareholders or members may assign or convey shares or financial interests within its business organization so long as such transactions do not have a negative impact on Tenant’s viability as a business organization or fulfillment of its obligations under this Lease.

All assignments, conveyances, transfers or subleases shall be subordinate to and governed by the terms of this Lease.

#### 7.1.A. Reasonableness

The City’s consent shall not be considered unreasonably withheld or conditioned if consent is denied because:

- A. The proposed subtenant’s or assignee’s financial and other responsibility does not meet the same criteria the City uses to select comparable tenants;
- B. The proposed subtenant’s or assignee’s business is not suitable for the Leased Premises considering the business of other tenants; applicable local, state or federal rules, ordinances or laws; the Airport Rules and Regulations; or the Airport’s obligations or assurances under any grant or contract; or
- C. The proposed use is inconsistent with the use permitted by Article 2.

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### 7.1.B. Procedure

Tenant must provide the Airport Manager in writing:

- A. The name and address of the proposed subtenant or assignee;
- B. The nature of the proposed subtenant’s or assignee’s business that will operate on or in the Leased Premises;
- C. The proposed sublease; and
- D. Reasonable financial, insurance and permitting or certification information so that the City can evaluate the proposed subtenant or assignee.

After the Airport Manager reviews the proposed sublease and other information from Tenant, the information will be submitted for legal review and for review and approval by the City Manager and City Council. There is no approval by the City of any sublease, assignment or other encumbrance unless there is written approval of the City Manager duly authorized by an affirmative vote of the City Council. The Tenant’s proposed sublease or assignment shall be signed by Tenant and the potential subtenant/assignee prior to submission to the Council but shall not take effect unless, and until, approval has been obtained from the Council at a public meeting and there is a written approval of the sublease from the City Manager authorizing the sublease and incorporating the terms of Article 7.1.C below. The Tenant’s proposed sublease or assignment shall be deemed approved if the Council does not either approve or reject the Tenant’s request within 45 days of the date such proposal is submitted to the office of the City Manager. If the City rejects any such subtenant or assignee, the City shall provide the specific basis for the rejection in writing.

### 7.1.C. Conditions of Assignment or Sublease

It shall be a condition of the City’s approval to any assignment or sublease that all provisions in this Lease shall apply with equal force and effect to the assignment or sublease and shall be incorporated into such agreement. All assignments and subleases by Tenant are also subject to the following conditions:

- A. Tenant shall remain liable for all obligations under this Lease;
- B. Consent to one sublease or assignment does not waive the consent requirement for future assignments or subleases;
- C. Tenant or any assignee or subtenant shall not occupy or use the Leased Premises or permit the same to be occupied or used for any purpose which is unlawful or for any activity which materially differs from the intended use of the Leased Premises provided for in Article 2 of this Lease;
- D. Tenant shall demonstrate how the assignment or sublease will comply with the Airport Rules and Regulations in effect at the time of the proposed assignment or sublease; and
- E. The subtenant/assignee shall provide notarized certification that it understands, is bound by and will comply with all terms of this Lease.

### 7.1.D. Short-Term Tie-Downs or Aircraft Storage Use of Leased Premises

Notwithstanding the above and because Tenant is required, as a FBO, to provide aircraft storage

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services, Tenant is permitted to license space for hangar storage or tie-downs of aircraft on the Leased Premises without prior approval of the City. The intention of this paragraph is to allow Tenant to invite owners or operators of aircraft to store their aircraft on the Leased Premises without invoking the approval procedure required for subleases or assignments.

### 7.1.E. Recordation of Sublease or Assignment

Once approved by the City as provided in Article 7.1, any assignment or sublease of the Leased Premises shall be set forth in a writing in recordable form pursuant to RSA 477:7-a and shall be duly recorded in the Grafton County Registry of Deeds.

### 7.2 Mortgages

After written notice to the Airport Manager and subject to the requirements of Article 5.1 and all other terms herein, Tenant may mortgage or encumber its leasehold interest in the Leased Premises and in any Tenant Improvements Tenant owns, installs or constructs to secure indebtedness incurred by Tenant to finance the construction, reconstruction or repair of improvements at the Leased Premises, provided however, that: (i) the term and existence of such mortgage, together with the name and address of the mortgagee, is duly recorded in the Grafton County Registry of Deeds, (ii) a copy of said recorded mortgage is given to the City within fifteen (15) days of recordation; and (iii) in the event of foreclosure, said mortgagee shall become the owner of Tenant’s interest in the Lease and shall be liable to perform all of the terms and conditions of this Lease as Tenant had been liable to perform before said foreclosure. Tenant shall have no authority to mortgage or encumber in any manner the City’s underlying fee interest in land or improvements owned, constructed or installed by the City, or in the City’s reversionary interest in all land or improvements.

## **Article 8. Damage to or Destruction of Improvements or the Leased Premises**

### 8.1 Notification

If any of the land or improvements at or on the Leased Premises should be damaged or destroyed by fire or other casualty, the Tenant will promptly notify the City of such casualty. Tenant shall promptly secure the Leased Premises from further damage and protect the public from any hazards related to said damage or destruction. In the event of a spill or release of any Hazardous Materials at, in, or on the land or improvements at the Leased Premises, Tenant shall immediately notify the City and the applicable local, state or federal regulatory authority in writing of the same based on applicable local, state or federal laws or rules.

### 8.2 Restoration/Reconstruction of Improvements or Leased Premises; Termination

#### 8.2.A. Release of Hazardous Materials

If a release of any Hazardous Materials takes place at, in, or on the Leased Premises or the improvements thereon, Tenant shall promptly and fully remediate the hazardous condition according to procedures and standards required by law and/or by the Lebanon Fire Department



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or other City department or any regulatory agency and bring the Leased Premises and the improvements reasonably near to their condition immediately prior to the release. Failure by Tenant to promptly and fully remediate and restore the Leased Premises or improvements as required herein shall be grounds for termination of this Lease under Article 11 subject to Tenant’s continuing responsibility and liability to the City for the release and complete remediation and restoration of the Leased Premises, including but not limited to the costs thereof and/or Tenant’s indemnification of the City for the same.

### 8.2.B. Damage Due to Fire or Other Casualty

In the event of damage or destruction to the improvements or the Leased Premises due to fire or other casualty:

- (1) Tenant will promptly secure the damaged improvements and/or Leased Premises as necessary to avoid any hazard or nuisance to the public and visually mitigate unsightly damage as soon as reasonably possible.
- (2) Tenant may, in its sole discretion, elect to repair or reconstruct the improvements to be reasonably amenable to the same use as that to which it was put immediately prior to the fire or other casualty. If it so elects, Tenant shall obtain all necessary permits for such repairs or reconstruction with due diligence within eighteen (18) months of the damage or destruction and shall diligently perform and complete such repairs or reconstruction within one (1) year of obtaining all necessary permits.
- (3) In the event Tenant elects not to repair or reconstruct the improvements, fails to obtain all necessary permits for such repairs or reconstruction within the time frame set forth in the preceding paragraph or fails to perform and complete the repairs or reconstruction as also set forth above, then the Lease shall terminate, a Termination Date shall be established in writing by the Airport Manager and the terms of Article 3.3 shall apply.

### 8.3 Lease Terms Still Applicable

So long as this Lease is not terminated, in the event any damage, release of Hazardous Materials or destruction occurs to the Leased Premises and/or in the event of any period of untenability of the Leased Premises, all terms and conditions of this Lease, including all fees and rental payments due, shall remain in effect and unaltered.

## **Article 9. Airport Closure or Condemnation**

### 9.1 Permanent Airport Closure by Agency Other Than City

In the event that any governmental agency, other than the City, duly acting under legal authority, shall cause or require the Airport to be permanently closed or abandoned as an airport or airfield for reasons outside of the City’s control, the Tenant or the City may elect to terminate the Lease as of the date of permanent closure. Permanent closure shall be defined as the date of closure required by the governmental agency or shall be deemed to have occurred if, due to government orders, the Airport provides no flight services and both of its runways are unavailable for any flights in or out of the Airport for a period of six or more consecutive months, whichever occurs

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earlier. Tenant shall have no recourse against the City for damages in the event of permanent closure under these circumstances. All Lease terms, with the exception of Article 4.1 (Monthly Ground Rent) as set forth below in Article 9.3, shall remain in effect to the date of permanent closure which shall also be the Termination Date and the terms of Article 3.3 shall apply.

### 9.2 Condemnation by Agency Other Than City

#### 9.2.A. Entire Premises Condemned

In the event that the whole of the Leased Premises or of Tenant’s Improvements thereon is permanently taken or condemned by any competent public authority, other than the City, for any public or quasi-public use or purpose during the term of this Lease, this Lease shall automatically terminate as of the date when such public authority takes possession of the Leased Premises. Tenant shall have the right, at its sole expense, to prosecute its claim for just compensation against said authority other than the City based upon its leasehold interest and for the value of its improvements for such taking; nevertheless, Tenant shall have no right in making said claim to impair any rights or interests of the City under this Lease or in the City’s interest in the underlying fee or reversion. Tenant shall not make a claim against the City where the condemning agency is other than the City.

#### 9.2.B. Portion of Premises Condemned

In the event that a portion of the Leased Premises is permanently taken or condemned by any competent authority, other than the City, during the term of this Lease and that portion so taken (i) includes the improvements on the Leased Premises or any part thereof or (ii) results in cutting off direct access from the Leased Premises to the adjacent public street or taxiway at the Airport, Tenant may, no later than sixty (60) days after the date when possession of a portion of the Leased Premises is taken by the condemning authority, elect to terminate this Lease subject to the terms of Article 3.3. Tenant shall have the right, at its sole expense, to prosecute any claim for just compensation against said authority other than the City based upon its leasehold interest and for the value of its improvements for such taking; nevertheless, Tenant shall have no right in making said claim to impair any rights or interests of the City under this Lease or the City’s interest in the underlying fee or reversion. Tenant shall not make a claim against the City where the condemning agency is other than the City.

#### 9.2.C. Duty to Mitigate

In the event Tenant fails to exercise an option to terminate this Lease as set forth above in Article 9.2.B. or in the event Tenant has no such option to terminate under Article 9.2.B., Tenant shall, with reasonable promptness, make reasonable repairs to and alterations of the improvements on the Leased Premises as are required to restore the Leased Premises to an economic architectural unit, amenable to the same use as that to which it was put immediately prior to such taking, to the extent necessitated by such condemnation.

#### 9.2.D. Awards and Damages

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If the whole, or a portion, of the Leased Premises or Tenant Improvements is permanently taken or condemned by any competent authority, other than the City, for any public or quasi-public use or purpose during the term of this Lease, each party may seek its own award of damages or compensation at its own expense.

### 9.3 Temporary Closure

In the event that any governmental agency, duly acting under legal authority, shall cause or require the Airport to be temporarily closed, this Lease shall remain in effect and unaltered. Temporary closure shall occur on the date of closure required by the governmental agency or shall be deemed to have occurred if, due to government orders, the Airport provides no flight services and both of its runways are unavailable for any flights in or out of the Airport for a period of more than 14 consecutive days but less than six consecutive months. Tenant shall not make claims against the City or the condemning authority for damages under these circumstances.

All Lease terms shall remain in effect during temporary closure. Notwithstanding the preceding sentence, in the event both runways are unavailable for any flights in or out of the Airport for a period of three or more consecutive months, Tenant’s obligation to pay monthly rent shall be suspended beginning with the third monthly ground rent payment due after the date temporary closure has occurred, which shall remain suspended for the duration of such closure until the date at least one of the runways is again available for flights. The obligation to resume payment of monthly ground rent shall be calculated on a pro rata basis as of the date in the month that flights resume. Tenant shall not be required to pay rent to the City during the period of temporary closure by a governmental agency if the order for said temporary closure is due to an action taken by or omission of the City alone.

### 9.4 Permanent Condemnation by City

If any portion of the Leased Premises or Tenant Improvements thereon is permanently taken by the City through condemnation proceedings, the Tenant may pursue compensation for its leasehold interest and the value of its improvements at its sole cost consistent with the laws of New Hampshire.

## **Article 10. Subordination of Lease**

### 10.1 Subordination of Lease to Applicable State and Federal Laws

This Lease is subject to all applicable laws, rules and regulations of the State of New Hampshire and the United States of America and any duly constituted government agency or department thereof while said agency or department is legally acting under its proper authority, and the rights granted to the parties hereunder shall be subordinate to all such laws, rules, and regulations.

### 10.2 Subordination of Lease to Agreements with the State or the United States

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This Lease is subject to the provisions of any past, existing or future agreements in effect between the City and the State of New Hampshire or the United States Government, or any agency thereof including but not limited to the Federal Aviation Administration, relative to the City’s ownership, administration or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the maintenance, development, operation or improvement of the Airport. The City shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Tenant in and to the Leased Premises. Tenant acknowledges the City may have no control over any requirements of the State or United States or any agency thereof and it assumes the risk, along with the City, that state or federal requirements in the future may require certain actions of the City or of Tenant that may affect Tenant’s rights hereunder. This paragraph is included in this Lease for informational purposes only; no rights different than those elsewhere expressly stated in this Lease are intended to be granted to Tenant as a result of this paragraph.

### **Article 11. Default**

#### **11.1 Tenant Default**

Should the Tenant be in default of any of the provisions, conditions, covenants or terms contained in this Lease, the Tenant shall have thirty (30) days after the date the Tenant receives written notice from the City of said default, or within such lesser period of time as may be appropriate to protect the City’s interests or to preserve or protect persons or property from harm or liability, to cure said default.

In addition to the above circumstances, the City shall have the right to declare the Tenant in default in the event Tenant files a voluntary petition for bankruptcy without a reorganization plan, makes a general or other assignment of its assets for the benefit of creditors, is involuntarily declared or adjudicated as bankrupt or if a receiver is appointed for the property or affairs of Tenant and such receivership is not vacated within thirty (30) days after the appointment of such receiver.

Tenant acknowledges that this is a commercial lease.

#### **11.1.A. Result of Failure to Cure**

Should the Tenant fail to cure the default within the time specified under Article 11.1, the City may (i) declare this Lease terminated by written notice to the Tenant and (ii) enter onto the Leased Premises, or any part or improvements thereon or thereof, and remove the Tenant or any other person occupying the Leased Premises and to use such reasonable force as may be necessary to repossess and enjoy the Leased Premises, with or without process of law. The Tenant waives claims for trespass or damages by reason of the City’s reentry or repossession, or by reason of any legal process. The Tenant shall remain liable for all payments due under this Lease, including real estate taxes, until such time as the City re-lets the Leased Premises to a new lessee or until the Expiration Date, whichever occurs sooner. Tenant shall also be liable for the

## **SAMPLE “Executive Ramp” Ground Lease**

following sums paid by the City attributable to Tenant’s default within thirty (30) days of receiving the City’s invoice for said amounts:

- (1) Reasonable costs or fees incurred by the City for reletting part or all of the Leased Premises;
- (2) The costs of removing or storing Tenant’s personal or real property, including removal of signs, trade fixtures, furnishings, equipment, buildings, storage tanks and material which Tenant was permitted to install or maintain under the rights granted herein; and
- (3) Other necessary and reasonable expenses incurred by the City, including but not limited to its reasonable attorneys’ fees and costs, in enforcing its remedies.

### 11.1.B. Tenant Attempts to Cure Default

If the Tenant shall be in default for reason(s) other than nonpayment of rent, real estate taxes or other payments due under this Lease, and said default cannot, with due diligence, be cured within thirty (30) days after being given notice of default as stated above, and if Tenant also commences to eliminate the cause of such default and to cure such default with diligence and reasonable dispatch (including obtaining required approvals), the City shall not have the right to declare that the Lease is terminated by reason of such default.

### 11.1.C. Tenant’s Right to Removal of Personal Property

Subject to Article 3.3 and Article 5.6 as applicable, in the event of termination due to default, the Tenant shall have the right to remove all personal property including signs, furniture, machinery and equipment installed by the Tenant on the Leased Premises on or before the date established by the City as the Termination Date, which shall not be less than forty-five (45) days after the date of written notice of default issued to Tenant under Article 11.1.

## 11.2 City Default

Should the City be in default of any of the provisions, conditions, covenants and terms contained in this Lease, the City shall have thirty (30) days after the date the City receives written notice from the Tenant of said default, or within such lesser period of time as may be appropriate to reasonably protect the Tenant’s interests or to preserve or protect persons or property from harm or liability, to cure said default.

### 11.2.A. City Attempts to Cure Default

If the City is in default, and said default cannot, with due diligence, be cured within thirty (30) days after being given notice of default as aforesaid, and the City also commences to eliminate the cause of such default and to cure such default with diligence and reasonable dispatch (including obtaining required approvals), the Tenant shall not have the right to declare that the Lease is terminated by reason of such default.

## 11.3 Waiver

## **SAMPLE “Executive Ramp” Ground Lease**

The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

### 11.4 Attorney’s Fees

If either party hereto deems it necessary to enforce any provision of this Lease by legal action of any kind, the prevailing party as determined by the court shall be entitled to the payment of its reasonable attorneys’ fees, court costs and other costs for such legal proceedings.

### **Article 12. Waiver of Subrogation**

The City and the Tenant, and all parties claiming under either of them, hereby mutually release and discharge each other from any liability for any destruction to the Leased Premises, or the improvements thereon, caused by any act or omissions of the party so released, or its agents, servants or employees, to the extent that the party so damaged will receive complete restitution for such loss from a valid insurance policy then in effect with respect to the loss. This release shall be valid and binding only in the event that it is recognized and accepted by the fire and hazard insurance companies under the respective policies of the City and the Tenant without substantial increase in cost to either. In the event that acceptance of this waiver of subrogation requires an increase in cost to either party, the party so insured shall give notice of the increase to the other, who may at its option:

- A. Bear such increase in cost; or
- B. Inform the party so insured that it no longer wishes to be protected by the waiver of subrogation contained in this paragraph.

In the event that the party not so insured wishes to waive the protection of the waiver of subrogation, it shall prepare, execute and deliver such instruments as are necessary to enable the party so insured to establish with the insuring company that the waiver of subrogation otherwise provided herein is no longer in force with respect to the non-insured party.

### **Article 13. Dispute Resolution**

Any controversy arising out of or relating to the application or interpretation of this Lease may be settled by the assistance of a neutral party through mediation and/or arbitration. If the parties choose arbitration, the parties shall set forth in writing a submission agreement that agrees on the scope of the issue(s) for the arbitrator to decide and select an arbitrator. In the event the parties are unable to agree on the issue and scope of dispute prior to submission to arbitration, the dispute will be resolved in court. The arbitrator shall adopt appropriate arbitration rules similar to the American Arbitration Association or any other arbitration procedure. The place of arbitration shall be in Lebanon, New Hampshire. The arbitration hearing shall be held within thirty (30) days after the notice of arbitration is delivered by one party to the other party, unless otherwise agreed. In the event the parties are unable to agree on the arbitrator, then application may be

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made to the Grafton County Superior Court under RSA Chapter 542 or the dispute will be resolved in court.

The arbitrator shall have the power solely to construe or apply the terms of the Lease or to issue an order to cure a violation in order for the parties to implement its terms. New Hampshire law shall not be, in any way, abridged or limited by the Lease and in the event of any inconsistency, New Hampshire law shall prevail. Moreover, the arbitrator shall have no power to change, amend, add to, subtract from, modify or amend any of the terms or provisions of this agreement and any errors of law in any award of an arbitrator shall be reviewable in an appeal to court in addition to those issues that are reviewable under RSA Chapter 542. Interest shall be awarded consistent with the terms of this Lease or as modified by the parties’ submission agreement.

Nothing herein relative to arbitration shall diminish or interfere with the right of either party to terminate the Lease due to the default of the other party or to seek declaratory, injunctive and other relief in court.

**Article 14. Miscellaneous Provisions**

14.1 Joint and Several Obligations

Tenant, Alpha Sierra, LLC and Tenant’s Affiliate, Granite Air Center, LLC, are related companies. Any reference to “Tenant” as used in this Lease shall mean the Tenant and Tenant’s Affiliate jointly and severally, and both companies shall be jointly and severally obligated to fulfill all terms and conditions of this Lease as set forth herein.

14.2 Choice of Law; City’s Rights Under Law

The provisions of this Lease shall be governed and construed in accordance with the laws of the State of New Hampshire. Nothing herein shall be deemed to act as a waiver of the City’s right to assert any and all protections, defenses, limitations of liabilities or immunities authorized by contract, law or otherwise, and in the event of a conflict, this provision shall control.

14.3 Headings and Terms

The headings used in the various articles of this Lease have been inserted for convenient reference only and shall not, in any manner, be construed as modifying, amending, or in any other way affecting the express terms and provisions hereof. The term “person” when used in this Lease means any individual, corporation, partnership, firm, trust joint venture, business association, syndicate, organization, or any other entity.

14.4 Separability

Each and every covenant and agreement contained in this Lease shall, for all purposes, be construed to be a separate and independent covenant and agreement, and the breach of any covenant and agreement contained herein by either party shall in no way or manner, discharge or relieve the other party from its obligation to perform each and every covenant and agreement

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contained herein.

14.5 Severability

If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be judged to be legally invalid and/or unenforceable, the validity and/or enforceability of any other term, clause or provision in this Lease will not be affected thereby.

14.6 Binding Effect

All of the covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of the respective legal representatives, successors and permitted assigns of the parties hereto to the same extent as if each such successor and assign were in such case named as a party to this Lease.

14.7 Modifications/Entire Agreement

This Lease constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and as of the Agreement Date, supersedes all prior or independent agreements between the parties covering the subject matter hereof. No part of it may be changed, altered, amended, modified, limited or extended orally or by agreement between the parties unless such agreement is expressed in writing, approved by the City Council and Tenant, and signed by the parties hereto.

14.8 Tenant as Independent Entity

The Tenant is not an agent, agency or department of the City, nor shall anything herein be construed as creating an agency relationship between the City and the Tenant.

14.9 Notice

Any and all notices, demands, or communications required to be given hereunder to the parties of this Lease shall be in writing and sent by certified mail, with an additional copy by fax:

A. If to the City, addressed to:

City Manager Lebanon City Hall 51 North Park Street Lebanon, NH 03766 603-448-4220 (Phone) 603-966-3122 (Fax)	Airport Manager Lebanon Airport 5 Airpark Road, Suite 1 West Lebanon, NH 03784 603-298-8878 (Phone) 603-298-5845 (Fax)
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B. If intended for the Tenant, addressed to:



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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tenant is solely responsible to provide changed names and addresses for the purposes of Notice. Unless the City is informed in writing of a change, the City shall send notices as set forth herein or in any prior written notice.

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**SAMPLE "Executive Ramp" Ground Lease**

IN WITNESS WHEREOF, the parties have executed this Lease on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF LEBANON, NEW HAMPSHIRE

\_\_\_\_\_  
By Shaun Mulholland  
City Manager  
Duly Authorized  
By vote of City Council on \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
GRAFTON, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_ 2019, before me, the undersigned officer, personally appeared Shaun Mulholland, known to me or satisfactorily proven to be the person whose name is subscribed in the foregoing instrument and acknowledged that he executed the same on behalf of the City of Lebanon as City Manager, being duly authorized to do so for the purposes herein contained.

Before me,

\_\_\_\_\_  
Justice of the Peace  
Notary Public

\*\*\*\*\*

[TENANT]

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Duly Authorized

STATE OF NEW HAMPSHIRE  
GRAFTON, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_ 2019, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed in the foregoing instrument and acknowledged that he executed the same on behalf of \_\_\_\_\_ as \_\_\_\_\_, being duly authorized to do so for the purposes herein contained.

Before me,

\_\_\_\_\_  
Justice of the Peace  
Notary Public