

**MASTER LEASE  
OF REAL PROPERTY**

**AT**

**PENSACOLA INTERNATIONAL AIRPORT**

**BETWEEN**

**VT MOBILE AEROSPACE ENGINEERING, INC.**

**AND**

**CITY OF PENSACOLA**

**EFFECTIVE DATE: \_\_\_\_\_, 2019**

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**List of Exhibits**

Exhibit A Land

Exhibit B FAA Approved ALP

Exhibit C FAA Airspace Determination Letter

Exhibit D MRO Performance Agreement

**MASTER LEASE OF REAL PROPERTY AT  
PENSACOLA INTERNATIONAL AIRPORT**

**THIS MASTER LEASE** is hereby made and entered into as of the Effective Date (hereinafter defined), by and between **VT MOBILE AEROSPACE ENGINEERING, INC.**, a corporation organized in the State of Alabama and duly qualified to do business in the State of Florida ("the Company"), as lessee, and the **CITY OF PENSACOLA, FLORIDA**, a Florida municipal corporation ("the City"), as lessor, in its capacity as owner and operator of **PENSACOLA INTERNATIONAL AIRPORT** ("the Airport"). The City and the Company may, from time to time, be referred to in this Lease individually as "a Party" and collectively as "the Parties."

**RECITALS**

WHEREAS, the City is the owner and operator of the Airport (as hereinafter defined); and

WHEREAS, the City, as lessor, desires to lease to the Company, as lessee, certain Leased Premises (as hereinafter defined) located within the Airport, and the Company, as lessee, desires to lease the Leased Premises from the City, all upon the terms and subject to the conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the promises, covenants, terms, and conditions herein set forth, the Parties hereby agree as follows:

## ARTICLE 1. DEFINITIONS

### Section 1.01 DEFINITIONS

The following words and phrases, wherever used in this Lease, shall, for purposes of this Lease, have the following meanings:

**"Additional Land"** means that portion of the Airport land designated on Exhibit A attached hereto and incorporated herein by reference as the Additional Land.

**"Affiliate"** means any corporation or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Company.

**"Aircraft MRO"** means the maintenance, repair, overhaul, inspection, or modification of aircraft or aircraft components, and all ancillary activities.

**"Airport"** means Pensacola International Airport located in Pensacola, Florida, as it now exists, as shown on Exhibit B, and as it may exist in the future.

**"Airport Director"** means the person who from time to time holds the position of "Airport Director" of the Airport. Said term shall also include any person expressly designated by the City to exercise functions with respect to the rights and obligations of the Airport enterprise.

**"Airport Master Plan"** means the assembly of appropriate documents and drawings addressing development of the Airport from physical, economic, social, and political jurisdictional perspectives as designated from time to time by the City and the Airport Director as the Airport Master Plan. The Airport Master Plan includes, without limitation, forecasts of aviation demand, an Airport land use plan, an Airport layout plan set, an Airport approach and runway protection zone plan, a terminal area plan, an Airport access and parking plan, a staging plan, a capital improvement plan, and a financial plan.

**"Baseline Environmental Conditions Study"** means, with respect to each Parcel, a study or studies prepared pursuant to Article 14 to document environmental conditions existing with respect to such Parcel at the time of the study. The Baseline Environmental Conditions Study for a Parcel shall be attached to and made a part of the Lease Supplement for such Parcel.

**"Bond Resolution"** means Resolution No. 59-88, adopted as of September 8, 1988, as it may be amended or supplemented from time to time, and any other Resolution of the City regulating or authorizing the issuance of Bonds, as amended or supplemented from time to time, other than Special Purpose Facility Bonds (as defined in Resolution No. 59-88), payable from Airport revenue.

**"City"** means the City of Pensacola, Florida, and any successor to the City in ownership of the Airport.

**"Common Use Space"** means space and areas within the Leased Premises which the Company is granted the non-exclusive right to use in common with others, in accordance with this Lease and the Rules and Regulations, which Common Use Space may include taxiways, aircraft maneuvering areas and other portions of the Airport as designated in this Lease or in the Rules and Regulations. The Common Use Space is shown or described in the Lease Supplement for such Parcel.

**"Company"** means VT Mobile Aerospace Engineering, Inc., a corporation organized in the State of Alabama, and any assignee of the lessee's leasehold estate in the Leased Premises pursuant to an assignment permitted by this Lease.

**"Control"** of an entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

**"Date of Beneficial Occupancy"** means, with respect to a Parcel, the date that the Program Manager certifies that the Facilities constructed on such Parcel have been substantially completed in substantial compliance with the "Final Project Plans" for such Facilities (as defined in the Development Agreement) and a Certificate of Occupancy has been issued for such Facilities. The Date of Beneficial Occupancy with respect to each Parcel shall be specified in the Lease Supplement for such Parcel.

**"Development Agreement"** means the Development Agreement between City and Owner dated the same date as this Lease which provides, inter alia, for the construction of the Facilities.

**"Effective Date"** means the date upon which this Lease is executed by the last Party to execute this Lease, as shown by the respective dates set forth after the places provided herein below for the Parties' execution of this Lease.

**"Environmental Laws"** means, collectively, all federal, state, water management district, and local environmental, land use, safety, and health laws, rules, regulations, and ordinances, and common law, applicable to the Airport, the Company or the Leased Premises, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.)("CAA"); the Safe

Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing any environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The term Environmental Laws shall also mean and include the Airport's Spill Prevention, Control, and Countermeasure Plan ("SPCC") and all future amendments thereto and the Airport's Storm Water Pollution Prevention Plan ("SWPPP") and all future amendments thereto.

**"Event of Default"** shall have the meaning assigned in Article 17 below.

**"Exclusive Use Space"** means space and areas within the Leased Premises which the Company is granted the exclusive right to use to the exclusion of all others. The Exclusive Use Space included within a Parcel is shown or described in the Lease Supplement for such Parcel.

**"FAA"** means the Federal Aviation Administration of the United States government, or any federal agencies succeeding to its jurisdiction.

**"Facilities"** means the buildings and improvements to be constructed by the City upon the Land pursuant to the Development Agreement.

**"Fair Market Rent"** means the fair market rent of the Leased Premises as determined in accordance with Article 2 and Article 5.

**"Ground Rent"** means the annual rent for the Leased Premises as specified or determined in this Lease and the Lease Supplements.

**"Hazardous Substances"** means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight ("Lead Based Paint"), infectious substances, or raw materials which include hazardous constituents), or any other substances or materials that are included under or regulated by Environmental Laws.

**"Land"** means the land within the Airport depicted on Exhibit A attached hereto upon which the Facilities will be constructed.

**"Lease"** means this Master Lease of Real Property as amended and supplemented from time to time.

**"Leased Premises"** means the Land and the Facilities at any time constructed or existing on the Land.

**"Lease Supplement"** means a supplement or amendment to this Lease, executed by both City and Company, which by its terms is made a material part of this Lease and which supplements or amends this Lease. Each Lease Supplement shall be sequentially numbered.

**"Lease Term"** shall have the meaning assigned in Section 3.01 below and in each Lease Supplement.

**"Lease Year"** means each period of twelve consecutive calendar months that begins on an anniversary of the Effective Date or, if the Effective Date is not the first day of a month, each period of twelve consecutive calendar months that begins on the first day of the next month after each such anniversary of the Effective Date; provided, however, that the first Lease Year shall commence on the Effective Date and continue to, but not including, the first day of the next Lease Year.

**"MAI Appraiser"** means a Member of the Appraisal Institute.

**"Minority Business Enterprise"** means a Minority Business Enterprise as defined in and subject to Title 49, CFR, Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs" as Part 23 may be amended from time to time.

**"Parcel"** means a parcel of Land identified in Exhibit A hereto and all Facilities at any time constructed or existing thereon.

**"Project"** means the entire project, including but not limited to the Facilities, to be constructed on the Land and upon certain other areas of the Airport pursuant to plans and specifications approved by both the City and the Company in accordance with the Development Agreement.

**"Rent Commencement Date"** with respect to each Parcel means the Date of Beneficial Occupancy of the portion of the Facilities constructed on such Parcel.

**"Rules and Regulations"** means those rules and regulations promulgated from time to time by the City or the Airport Director governing conduct on, and operations at, the Airport and use of any of the land and/or facilities of the Airport.

**"Subsidiary"** means any corporation or other entity more than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) is, at the relevant time, owned by the Company or by another Subsidiary of the Company.

**"TSA"** means the Transportation Security Administration under the Department of Homeland Security of the United States government, or any federal agencies succeeding to its jurisdiction.

#### Section 1.02 **CROSS-REFERENCES**

All references in this Lease to articles, sections, and exhibits pertain to articles, sections, and exhibits of this Lease unless otherwise specified.

END OF ARTICLE



## ARTICLE 2 LEASED PREMISES; RIGHT OF FIRST REFUSAL TO LEASE ADDITIONAL LAND; AND OPTION TO LEASE ADDITIONAL LAND

### Section 2.01 LEASED PREMISES

The City does hereby lease to the Company, and the Company does hereby lease from the City, the Land and the Facilities to be constructed upon the Land pursuant to the Development Agreement (collectively, the "Leased Premises") for the rent, upon the terms, and subject to the conditions set forth in this Lease.

### Section 2.02 RIGHT OF FIRST REFUSAL TO LEASE ADDITIONAL LAND

During the first fifteen (15) Lease Years, the Company shall have, and is hereby granted, a right of first refusal to lease the Additional Land upon the terms and subject to the conditions hereinafter set forth in this Section 2.02 and in Section 2.04. The parties agree that upon completion of Project design pursuant to the Development Agreement, the City shall cause a current survey and legal description of the Additional Land to be prepared by a Florida-licensed land surveyor as part of the Project, and that the parties shall amend this Lease to delete the reference to the Additional Land in Exhibit A and replace it with such survey and legal description. If, as, and when the City receives a bona fide arm's length written offer to lease the Additional Land for rent and upon terms and conditions that the City desires to accept (the "Third Party Lease Offer"), and if, but only if, at the time the City receives the Third Party Lease Offer there then exist no Event of Default and no state of facts which with the giving of notice or the lapse of time, or both, would constitute an Event of Default, the City shall provide the Company with the salient details of the Third Party Lease Offer in the form of a written notice to the Company. The Company shall have thirty (30) days from the date of delivery of the notice within which to exercise its right of first refusal by entering into a binding written lease for the Additional Land for the same rent and upon the same terms and conditions as set forth in the Third Party Lease Offer. If the Company does not so exercise its right of first refusal within such thirty (30) day period, both the right of first refusal hereby granted in this Section 2.02 and the option to lease granted in Section 2.03 shall automatically terminate without further notice to the Company, and thereupon the City shall be free to accept such Third Party Lease Offer and lease the Additional Land to the offeror in accordance with the material terms of such Third Party Lease Offer

The Company may waive in writing the right of first refusal granted by this Section 2.02 at any time during the Lease Term, and such right of first refusal shall terminate upon the City's receipt of such written waiver.

If not sooner terminated pursuant to this Article 2, the right of first refusal granted by this Section 2.02 shall automatically terminate, without notice to the Company, at the end of the fifteenth (15<sup>th</sup>) Lease Year.

### Section 2.03 OPTION TO LEASE ADDITIONAL LAND

During the first fifteen (15) Lease Years, the Company shall have, and is hereby granted, an option to lease the Additional Land upon the terms and subject to the conditions hereinafter set forth in this Section 2.03 and in Section 2.04. This option to lease shall be exercised by Company, if at all, by written notice (the "Notice to Exercise") delivered to City as provided in Section 23.05 hereof, which Notice to Exercise shall state that the Company thereby exercises its option to lease granted by this Section 2.03. Upon the City's receipt of the Notice to Exercise, the following rights and obligations shall arise:

(a) Within forty-five (45) days after receiving the Notice to Exercise, the City shall engage an MAI Appraiser to determine the Fair Market Rent for the Additional Land, such Fair Market Rent to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to the terms of the Additional Land Lease (as defined in subsection (c) below) and the Additional Land in size, and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. Upon receiving the MAI Appraiser's report, the City shall deliver the same to the Company and the Company shall have a period of twenty (20) days to send the City written notice of its (a) acceptance of the MAI Appraiser's report and agreement to pay Ground Rent for the Additional Land in the amount set forth in such report, (b) objection to the MAI Appraiser's report and notice of its desire to obtain its own appraisal pursuant to the provisions of the following paragraph, or (c) objection to the MAI Appraiser's report and notice that it terminates the Notice to Exercise. If the Company fails to deliver to the City written notice under option (a) or (b) above within the twenty (20) day period, the Company shall be deemed to terminate the Notice to Exercise. If the Notice to Exercise is terminated as hereinabove provided, the option to lease granted by this Section 2.03 and the right of first refusal granted by Section 2.02 shall nevertheless remain in full force and effect unless previously terminated or unless the City has been or is notified otherwise in writing by the Company.

Should the Company choose option (b) above, the Company shall then select, at its own cost and expense, an MAI Appraiser to perform an appraisal to determine the Fair Market Rent for the Additional Land based on the same criteria used by the City's MAI Appraiser. Such appraisal by the Company's MAI Appraiser shall be completed within sixty (60) days after the expiration of the 20-day period provided in the preceding paragraph. Following the completion of the appraisal by the Company's MAI Appraiser, the two appraisers shall jointly select a third MAI Appraiser who shall review the work of each appraiser. In the event the two MAI Appraisers cannot agree upon the selection of the third qualified MAI Appraiser, then the parties shall petition an arbitrator for the appointment of a third qualified MAI Appraiser. The review appraiser shall evaluate each report in all respects, with the validity and reasonableness of the final valuation conclusion being the principal focal point. The review appraiser should attempt to reconcile any variances between the different appraisals. However,

the review appraiser is not the appraiser and should not substitute his or her judgment for that of an appraiser. The review appraiser should secure necessary corrective material from an appraiser prior to the final recommendation of the Fair Market Rent rate for the Additional Land. The review appraiser shall make a recommendation of a single value and not a range of values. The review appraiser shall not derive a value different from the appraisals by using separate parts of the individual appraisals, nor shall the review appraiser average the appraisal conclusions. The review appraiser must approve the Fair Market Rent for the Additional Land from one of the appraisals only. The review appraiser's determination of the Fair Market Rent for the Additional Land shall be final, binding and non-appealable upon the parties. Upon the determination of the Fair Market Rent for the Additional Land by the third appraiser, the Company shall have a period of twenty (20) days to notify the City of its (a) acceptance of the third MAI Appraiser's determination and agreement to pay Ground Rent for the Additional Land in the amount determined by such third MAI Appraiser, or (b) objection to the third MAI Appraiser's determination and notice that it terminates the Notice to Exercise. If the Company fails to give written notice to the City pursuant to option (a) above within the twenty (20) day period, the Company shall be deemed to terminate the Notice to Exercise. If the Notice to Exercise is terminated as hereinabove provided, the option to lease granted by this Section 2.03 and the right of first refusal granted by Section 2.02 shall nevertheless remain in full force and effect unless previously terminated or unless the City has been or is notified otherwise in writing by the Company.

Each party shall bear the costs incurred by its own appraisers, and each shall bear one-half (1/2) the fees of the third party appraiser, and one-half (1/2) the arbitrator's fees incurred if an arbitrator is engaged.

(b) The City shall in good faith seek to enlist the assistance of the State of Florida, Escambia County, Florida and others in an initiative to generate financial grants to fund, in whole or in part, the construction of the Additional Facilities (as defined in subsection (c) below) and the recruitment of other incentives. The Company acknowledges and agrees that funding from these sources will be based upon a number of factors beyond the City's control, including but not limited to the number and quality of jobs to be created, the scope of the facilities to be constructed and the status and availability of economic development incentive programs at that time. The Company further acknowledges and agrees that the City makes no representation or warranty with respect to the availability or extent of any such financial grants or incentives, and that the City shall not be obligated to make any financial grant or contribution to the construction of the Additional Facilities. In the event that the financial grants and incentives available from the State of Florida, Escambia County, Florida, and others are insufficient, as determined by the Company in its sole and absolute discretion, the Company may terminate the Notice to Exercise by giving written notice of such termination to the City at any time within one hundred eighty (180) days after the City's receipt of the Notice to Exercise. If the Company fails to give written notice to the City pursuant to the preceding sentence within the one hundred eighty (180) day period, the

Company shall be deemed to terminate the Notice to Exercise. If the Notice to Exercise is terminated as hereinabove provided, the option to lease granted by this Section 2.03 and the right of first refusal granted by Section 2.02 shall nevertheless remain in full force and effect unless previously terminated or unless the City has been or is notified otherwise in writing by the Company.

(c) If the Notice to Exercise is not terminated pursuant to the provisions of subsections (a) or (b) of this Section 2.03, then within thirty (30) days after the later of (i) the determination of the Ground Rent pursuant to subsection (a) above or (ii) the expiration of the six-month period provided in subsection (b) above, the Company and the City shall execute, deliver and enter into a lease for the Additional Land (the "Additional Land Lease") whereby the Company, as lessee, leases the Additional Land from the City, as lessor, upon the following terms and conditions:

(1) The Additional Land Lease shall be a triple net lease as defined in this agreement and shall be for a term of thirty (30) years.

(2) The Additional Land Lease shall require the Company, at its sole cost and expense, to construct upon the Additional Land an Aircraft MRO hangar and improvements (the "Additional Facilities") pursuant to plans and specifications approved in advance by the City in writing, such approval not to be unreasonably withheld, conditioned or delayed. Such Additional Facilities shall be substantially the same as an Aircraft MRO hangar and improvements constructed upon the Land pursuant to the Development Agreement. The Additional Land Lease shall obligate the Company to substantially commence actual construction of the Additional Facilities within six (6) months after the effective date of the Additional Land Lease, to thereafter continuously and diligently prosecute such construction to completion, and to complete the Additional Facilities in substantial compliance with the City-approved plans and specifications, and to obtain a Certificate of Occupancy for the Additional Facilities, within eighteen (18) months after the effective date of the Additional Land Lease. The Company shall cause the Additional Facilities to be designed and constructed in a good and workmanlike manner in accordance with all applicable laws, building codes, ordinances, regulations and orders of any public authority bearing on the design and/or construction of the Additional Facilities. The City shall become the sole and absolute owner of the Additional Facilities upon the expiration or earlier termination of the Additional Land Lease. Notwithstanding the foregoing, in the event that sufficient grant funds are available from the State of Florida, Escambia County, Florida, and others to pay a majority of the costs of constructing the Additional Facilities, the City may elect, in its sole discretion, to construct the Additional Facilities and to retain ownership thereof.

(3) The Additional Land Lease shall provide that the Company shall pay Ground Rent (as determined pursuant to subsection (b) above) to the City commencing upon the earlier of (i) the date of substantial completion of the Additional Facilities and the issuance of a Certificate of Occupancy therefor, or (ii) the date that the Company actually occupies and begins doing business on or from the Additional Facilities, and continuing during the term of the Additional Land Lease. The Ground Rent shall be adjusted during the term of the Additional Land Lease in the same manner and upon the same terms and conditions as provided in Article 5 of this Lease with respect to Ground Rent payable under this Lease.

(4) The Additional Land Lease shall contain all other terms and condition of this Lease, unless any such term or condition is contrary to or inconsistent with any provision of this Section 2.03 or unless such term or condition is manifestly not applicable to or appropriate for the Additional Land Lease.

The Company may waive in writing the option to lease granted by this Section 2.03 at any time during the Lease Term, and such option to lease shall irrevocably terminate upon the City's receipt of such written waiver.

If not sooner terminated pursuant to this Article 2, the option to lease granted by this Section 2.03 shall automatically terminate, without notice, at the end of the fifteenth (15<sup>th</sup>) Lease Year.

Notwithstanding any contrary or conflicting provision in this Section 2.03, in the event that the Company gives a Notice to Exercise and such Notice to Exercise is thereafter terminated, the Company shall be solely responsible and obligated to pay all reasonable out-of-pocket costs and expenses of the City related to any subsequent Notice to Exercise, including without limitation the entire cost of all appraisals obtained pursuant to paragraph (a) above and all reasonable out-of-pocket costs and expenses of the City related to seeking and obtaining any financial grants and incentives pursuant to paragraph (b) above.

#### **Section 2.04 RIGHT OF FIRST REFUSAL AND OPTION FEE**

In consideration of the right of first refusal and option granted in this Article 2, the Company shall pay the City the following amounts each year, payable in advance on or before first day of the applicable Lease Year:

- (a) For each of the initial five (5) Lease Years: \$0
- (b) For each of the next five (5) Lease Years: an amount equal to twenty five percent (25.0%) of the average annual Ground Rents per square foot of the Land in effect for each such Lease Year multiplied by the square footage of the Additional Land.

(c) For each of the next five (5) Lease Years: an amount equal to fifty percent (50.0%) of the average annual Ground Rents per square foot of the Land in effect for each such Lease Year multiplied by the square footage of the Additional Land.

In the event that the Company fails to pay any of the foregoing amounts, as and when due, both the right of first refusal granted by Section 2.02 and the option to lease granted by Section 2.03 shall automatically terminate without notice.

Upon the termination of both the right of first refusal granted by Section 2.02 and the option to lease granted by Section 2.03, the Company's obligation to make any future payments under this Section 2.04 shall terminate.

END OF ARTICLE

## ARTICLE 3. TERM

### Section 3.01 LEASE TERM

The Company shall have the right to occupy, possess and use each Parcel for a term beginning on the Date of Beneficial Occupancy of such Parcel and continuing for a period of thirty (30) full Lease Years after such Date of Beneficial Occupancy, or, if such Date of Beneficial Occupancy is not the first day of a month, after the first day of the next month after such Date of Beneficial Occupancy (the "Lease Term"). For the avoidance of doubt, the Company shall not have the right to occupy, possess, use or control any Parcel prior to the Date of Beneficial Occupancy of such Parcel except as otherwise expressly provided in the Development Agreement, notwithstanding any contrary provision in this Lease. Rather, prior to the Date of Beneficial Occupancy of a Parcel, the City shall have the exclusive right to occupy, possess, use and control such Parcel for the construction of the Facilities in accordance with the Development Agreement. The Date of Beneficial Occupancy of each Parcel and the corresponding Lease Term for such Parcel shall be set forth in the Lease Supplement for such Parcel.

### Section 3.02 COMPANY'S RIGHTS UPON EXPIRATION OR EARLIER TERMINATION OF LEASE

Upon expiration of the Lease Term for a Parcel or earlier termination of this Lease with respect to a Parcel, all of the Company's rights, authority, and privileges to use such Parcel, services, facilities and property of the Airport as granted herein shall cease with respect to such Parcel (but not as to any other Parcels or any other property leased by the Company from the City) without notice to the Company except as expressly required by this Lease.

### Section 3.03 SURRENDER OF LEASED PREMISES

Upon expiration of the Lease Term for a Parcel or earlier termination of this Lease with respect to a Parcel, the Company shall surrender such Parcel to the City in the same condition as on the Date of Beneficial Occupancy of such Parcel, except for reasonable wear and tear that could not have been prevented through routine or preventive maintenance and except for an event of a casualty or a condemnation as set forth in Article 20.

Except as otherwise provided in this Article 3, all equipment, trade fixtures, and other personal property installed or placed by the Company, at its sole expense, in the Leased Premises that can be removed without structural damage to the Leased Premises or any other City-owned property shall remain the property of the Company unless otherwise provided in subsequent agreements between the Company and the City. The Company shall have the right at any time during the Lease Term for a Parcel and prior to its expiration or earlier termination of this Lease with respect to such Parcel to remove any and all of said property from such Parcel provided that at the time of removal there exists no Event of Default hereunder or any event or state of facts which with the giving of notice or lapse of time, or both, would constitute an Event of Default.

The Company agrees to repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of removal of the Company's property by the Company shall be restored at the Company's expense to substantially the same condition as, or better condition than, it was prior to such damage.

Any and all property not removed by the Company within thirty (30) days after expiration of the Lease Term for a Parcel or, if this Lease ends by early termination with respect to a Parcel, within 30 days following receipt by the Company of a written notice from the Airport Director to remove such property, shall thereupon become a part of the Land upon which it is located and title thereto shall vest with the City. The City reserves the right to remove and dispose of any or all of such property not so removed by the Company, without any liability or obligation to the Company, and if such removal is accomplished by the City within the 60-day period following expiration of the Lease Term for such Parcel or the 60-day period following receipt by the Company of written notice to remove such property after such earlier termination of this Lease with respect to such Parcel, as the case may be, such removal by the City shall be at the Company's expense, and the Company shall reimburse the City for such expenses promptly upon demand. During the time that any such property of the Company remains on the Leased Premises and until the expiration of such 60-day period or the removal of such property, whichever first occurs, the Company shall continue to pay rent on such Parcel at the rental rate in effect on the expiration of the Lease Term for such Parcel or earlier termination of this Lease with respect to such Parcel, as the case may be.

The provisions of this Section 3.03 shall survive the expiration of the Lease Term or earlier termination of this Lease, as the case may be, and shall be fully enforceable by the City against the Company notwithstanding the termination of this Lease.

END OF ARTICLE



## ARTICLE 4. USE OF LEASED PREMISES

### Section 4.01 USE OF LEASED PREMISES ONLY FOR AIRCRAFT MRO SERVICES

The Company shall use and suffer or permit the use of each Parcel only for the specific purpose and use for such Parcel stated in the following paragraph and for no other use or purpose whatsoever except with the City's prior written consent, which consent may be given or withheld in the City's sole and absolute discretion.

The respective permitted purposes for each Parcel are:

- (a) Parcel 1 - Aircraft MRO services, support services center, and related ancillary services
- (b) Parcel 2 - Aircraft MRO services and related ancillary services
- (c) Parcel 3 - Aircraft MRO services and related ancillary services
- (d) Parcel 4 - Support services center and related ancillary services
- (e) Parcel 5 - General offices

Without limiting the generality of the foregoing, the Company shall not use or suffer or permit the use of the Leased Premises for the storage or sale of fuel. The Company acknowledges and agrees that in the event that the City, in its sole and absolute discretion, should hereafter consent to the sale and/or storage of fuel on or from the Leased Premises, the Company must fully satisfy and comply with all of the conditions for such use set forth in the Airport's Minimum Standards for Fixed Base Operators, in addition to all other applicable laws, rules, regulations and Airport Rules and Regulations.

### Section 4.02 INGRESS AND EGRESS

Subject to the other provisions of this Lease and Airport Rules and Regulations, the following privileges of ingress and egress are hereby granted:

- (a) For the Company, its agents, employees, and contractors: access to the Leased Premises on and over the public areas of the Airport. This right extends to the Company's vehicles, machinery, and equipment used in its Aircraft MRO business.
- (b) For the Company's guests and invitees: access to areas leased to the Company and to areas provided for the use of the public. This privilege shall extend to vehicles of employees, guests, and invitees.

(c) For Company's suppliers of material and furnishers of service, access to public areas of the Airport into areas and facilities leased exclusively to the Company and areas and facilities provided for common use. This privilege extends the vehicles, machinery, or equipment of such suppliers and furnishers of services used in their business of furnishing supplies and services to the Company

The privileges of ingress and egress provided for above shall not be used by, enjoyed by, or extended to any person or vehicle engaging in any activity or performing any act or furnishing any service to, for or on behalf of the Company that the Company is not authorized to engage in or perform under the provisions hereof unless expressly authorized in writing by the Airport Director.

#### Section 4.03 RESTRICTIONS

In connection with the exercise of Company's rights under this Lease, Company or any of its agents, employees, directors, officers, contractors, invitees, licensees, or representatives shall not:

(a) Do anything that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the premises of the Airport.

(b) Knowingly do anything that may invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

(c) Keep or store, at any time, flammable or combustible liquids except in storage facilities especially constructed for such purposes in accordance with federal, State, and City laws, including the Uniform Fire Code and the Uniform Building Code. For purposes of this Lease, flammable or combustible liquids shall have the same definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.

(d) Do anything that may be in conflict with 14 CFR Part 139 Airport Certification as that regulation may be amended from time to time, or jeopardize the operating certificate of the Airport.

(e) Do anything that may be in conflict with 49 CFR Part 1542 Airport Security or the TSA-approved security plan for the Airport.

(f) Engage in non-aircraft MRO business activities not specifically permitted in this Lease.

**Section 4.04 REMOVAL OF DISABLED AIRCRAFT**

Except as otherwise agreed to by the Airport Director, the Company shall promptly remove any disabled aircraft that is in the care, custody, or control of the Company from any part of the Airport (other than the Leased Premises), including, without limitation, runways, taxiways, aprons, and gate positions, and place any such disabled aircraft in the Leased Premises or, in the sole discretion of the Airport Director, in such storage areas as may be designated by the Airport Director. Except aircraft subject to bailment or for which the Company is owed money from a customer, the Company may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by the Airport Director.

If the Company fails to remove any disabled aircraft promptly, as required hereunder, the Airport Director may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, that the removal or store of such disabled aircraft shall not be inconsistent with federal laws and regulations and the Company agrees to reimburse the City for all reasonable costs of such removal, and the Company further hereby releases the City from any and all reasonable claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal or storage by the City.

**Section 4.05 APPROACH SURVEILLANCE RADAR AND AIRSPACE COMMUNICATIONS**

The Company shall not undertake or permit to exist or continue any activities or improvements on the Leased Premises that interfere with the Airport's Approach Surveillance Radar or the Airport's airspace communications. Exhibit C<sup>1</sup> to this Lease is the FAA airspace determination letter and the FAA approved Airport Layout Plan that documents that the contemplated Facilities will not interfere with the FAA Approach Surveillance Radar or the Airport's airspace communications.

END OF ARTICLE

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<sup>1</sup> If Exhibit C is not available at the time of execution of this Lease, the parties agree to add the FAA airspace determination letter as Exhibit C when it becomes available.

## ARTICLE 5. RENTS, FEES, & CHARGES

In consideration for use of the Leased Premises, facilities, rights, and privileges granted hereunder and for the undertakings of City, except as specifically provided for herein, the Company agrees to pay the City, without notice, deduction or set-off, certain rents, fees, and other charges as set forth herein, as from time to time recalculated according to the procedures described below.

### Section 5.01 GROUND RENT

The initial annual Ground Rent payable by the Company to the City with respect to each Parcel shall be an amount equal to the "Initial Ground Rent Rate" (as hereinafter determined) multiplied by the number of square feet of land in such Parcel, calculated to the nearest one-hundredth of a square foot; provided, however, that the initial Ground Rent Rate applicable to a Parcel as of the Rent Commencement Date for such Parcel shall be such Initial Ground Rent Rate increased in direct proportion to the increase, if any, in the CPI (defined in Section 5.03 below) for the most recent month that is more than thirty (30) days prior to such Rent Commencement Date for which the CPI has been published over the CPI for the month of the Effective Date, such increase, if any, to be calculated in accordance with the formula provided in Section 5.03 below. In no event, however, shall such increase in the Initial Ground Rent Rate applicable to a Parcel exceed two percent (2.0%) of the Initial Ground Rent Rate compounded annually from the Effective Date to and including the Rent Commencement Date for such Parcel. The estimated land area of each Parcel is shown on Exhibit "A" hereto. The actual initial Ground Rent for each Parcel shall be calculated at the Initial Ground Rent Rate (adjusted as provided hereinabove) multiplied by the square footage of such Parcel as shown on the current survey of such Parcel to be attached to the Lease Supplement for such Parcel. The "Initial Ground Rent Rate" shall be determined as follows: Within sixty (60) days after the Effective Date, the City shall engage an MAI Appraiser to determine the Fair Market Rent rate per square foot for the Land (exclusive of improvements) as of the Effective Date, such Fair Market Rent rate to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to this Lease and the Land in size, length of term, other terms and conditions (including without limitation apportionment of property taxes, insurance and other expenses between lessor and lessee) and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. The Fair Market Rent rate as so determined shall be the "Initial Ground Rent Rate" for purposes of this Section. If the Company disagrees with such Fair Market Rent Rate, then the provisions of Section 5.04 below shall be applied to resolve the disagreement. In any event, if the Initial Ground Rent Rate exceeds \$0.40 per square foot, the Company may terminate this Lease and the Development Agreement by giving written notice of termination within the later of (i) thirty (30) days after the City gives the Company written notice of the Initial Ground Rent Rate established by the

MAI appraiser under this Section or (ii) thirty (30) days after completion of the process provided in Section 5.04 if the Company elects to pursue such process. In the event that the Company terminates this Lease and the Development Agreement as hereinabove provided, the Parties' respective obligations to pay Project Cost under Article 3 of the Development Agreement shall nevertheless survive such termination with respect to all Project Cost obligations arising or incurred prior to or as a result of such termination.

**Section 5.02 GROUND RENT PAYMENT**

Except as specifically provided for herein, the annual Ground Rent for each Parcel shall be paid by the Company to the City without invoicing, notice, demand or set-off, in equal monthly installments payable in advance on or before the first day of each calendar month, beginning on the Rent Commencement Date for such Parcel and continuing through the remainder of the Lease Term for such Parcel. In the event that such Rent Commencement Date is a day other than the first day of a calendar month, then, and in such event, the Ground Rent payable for the month in which such Rent Commencement Date occurs shall be prorated based on the actual number of days elapsing between and including such Rent Commencement Date and the last day of such month.

**Section 5.03 GROUND RENT RECALCULATION**

The annual Ground Rent payable with respect to each Parcel shall be adjusted from time to time in accordance with this Section 5.03 and Section 5.04, as follows: The annual Ground Rent for each Lease Year shall be increased over the annual Ground Rent for the immediately preceding Lease Year in direct proportion to the percentage increase, if any, in the "CPI" (as hereinafter defined) for the most recent month that is more than thirty (30) days prior to the commencement of such new Lease Year for which the CPI has been published (the "New CPI") over the CPI for the same month one year earlier (the "Base CPI"). The Ground Rent for the immediately preceding Lease Year shall be multiplied by a fraction, the numerator of which shall be the New CPI and the denominator of which shall be the Base CPI. The product of such multiplication shall be the new annual Ground Rent for the new Lease Year and the City shall notify the Company of the revised annual Ground Rent at least fifteen (15) days prior to the commencement of the new Lease Year. In no event, however, shall the annual Ground Rent for any Lease Year be less than the annual Ground Rent for the immediately preceding Lease Year, nor shall the annual Ground Rent for any Lease Year be more than two percent (2%) greater than the annual Ground Rent for the immediately preceding Lease Year. As used herein, "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, 1982-84 = 100 reference base, published by the Bureau of Labor Statistics of the United States Department of Labor. If the Bureau of Labor Statistics of the United States Department of Labor ceases publishing the CPI or materially changes the method of its computation, components, base year, consumers whose experiences are included therein or other features thereof, a comparable index published by a governmental

agency, responsible financial periodical, trade association or educational institution selected by the City, in its sole discretion, shall be substituted for the CPI and used in making the computations required herein.

Notwithstanding the foregoing, however, the Ground Rent payable for the eleventh (11th) Lease Year shall be determined as follows: Within sixty (60) days prior to the end of the tenth (10th) Lease Year, the City shall engage an MAI Appraiser to determine the Fair Market Rent for the Land (exclusive of improvements) as of the end of the tenth (10th) Lease Year, such Fair Market Rent to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to this Lease and the Land in size, length of term, other terms and conditions (including without limitation apportionment of property taxes, insurance and other expenses between lessor and lessee) and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. The Fair Market Rent as so determined shall be the new annual Ground Rent commencing on the first day of the eleventh (11th) Lease Year and continuing until further adjustment in accordance with this Article; provided, however, that the rent adjustment as the result of such determination shall not exceed two percent (2.0%) of the initial Ground Rent under this Lease compounded annually from the Rent Commencement Date through the tenth (10th) Lease Year. The City shall notify the Company of such revised Ground Rent at least fifteen (15) days prior to the first day of the eleventh (11th) Lease Year.

Notwithstanding the foregoing however, the Ground Rent payable for the twenty first (21st) Lease Year shall be determined as follows: Within sixty (60) days prior to the end of the twentieth (20th) Lease Year, the City shall engage an MAI Appraiser to determine the Fair Market Rent for the Land (exclusive of improvements) as of the end of the twentieth (20th) Lease Year, such Fair Market Rent to be determined in accordance with sound appraisal practices on the basis of, to the extent possible, the terms and conditions of leases and leased premises comparable to this Lease and the Land in size, length of term, other terms and conditions (including without limitation apportionment of property taxes, insurance and other expenses between lessor and lessee) and in other material respects then being entered into in the relevant market area as determined by the MAI Appraiser, with appropriate adjustments to account for relevant and material differences. The Fair Market Rent as so determined shall be the new annual Ground Rent commencing on the first day of the twenty first (21<sup>st</sup>) Lease Year and continuing until further adjustment in accordance with this Article; provided, however, that the rent adjustment as the result of such determination shall not exceed two percent (2.0%) of the initial Ground Rent under this Lease compounded annually from the Rent Commencement Date through the twentieth (20<sup>th</sup>) Lease Year. The City shall notify the Company of such revised Ground Rent at least fifteen (15) days prior to the first day of the twenty first (21<sup>st</sup>) Lease Year.

#### Section 5.04 **REVIEW APPRAISAL**

Should the Company disagree with the City's appraisal, the Company may select, at its own cost and expense, a MAI Appraiser to perform an appraisal to determine the Fair Market Rent. The two appraisers shall jointly select a third MAI Appraiser who shall review the work of each appraiser. In the event the two MAI Appraisers cannot agree upon the selection of the third qualified MAI Appraiser, then the parties shall petition an arbitrator for the appointment of a third qualified MAI Appraiser.

The review appraiser shall evaluate each report in all respects, with the validity and reasonableness of the final valuation conclusion being the principal focal point.

The review appraiser should attempt to reconcile any variances between different appraisals. However, the review appraiser is not the appraiser and should not substitute his or her judgment for that of an appraiser. The review appraiser should secure necessary corrective material from an appraiser prior to the final recommendation of the Fair Market Rent rate.

The review appraiser shall make a recommendation of a single value and not a range of values. The review appraiser shall not derive a value different from the appraisals by using separate parts of the individual appraisals, nor shall the review appraiser average the appraisal conclusions. The review appraiser must approve the Fair Market Rent from one of the appraisals only.

The review appraiser's determination of the Fair Market Rent shall be final, binding and non-appealable upon the parties. Each party shall bear the costs incurred by their own appraisers, and each shall bear one-half (1/2) the fees of the third party appraiser, and one-half (1/2) the arbitrator's fees incurred if an arbitrator is engaged.

#### Section 5.05 **LATE FEE.**

If any payment of Ground Rent and applicable sales tax is not received by the City in good funds on or before its due date, the Company shall pay the City a late charge of five percent (5%) of the amount due.

#### Section 5.06 **FEES AND CHARGES**

Fees and charges for miscellaneous items and services, including, but not limited to current and future taxes, fees, assessments, employee badges, landing fees and other airfield uses for the Company's customers not having an airfield use permit or agreement with the City, parking charges for areas other than the Leased Premises, and airfield drivers' licenses and security classes, will be assessed by the City in connection with the ordinary use of Airport facilities, provided that such fees and charges shall be equally applicable to all similarly situated parties.

Section 5.07 PAYMENTS

The payment of all rental, fees, and charges that become due and payable by the Company shall be made to the City of Pensacola without the City invoicing the Company. Payments shall be mailed or delivered to Office of the Airport Director, Pensacola International Airport, 2430 Airport Boulevard, Suite 225, Pensacola, Florida 32504 unless the Company is notified otherwise in writing. The City reserves the right to require that payment be made by wire transfer. All rentals, fees, and other charges unpaid for ten (10) days after their due date shall bear interest at the rate of eighteen percent (18%) per annum, or the maximum rate allowed by law, whichever is less, from the date the payment was originally due until paid.

Notwithstanding the foregoing, in the event that the Company objects, in good faith, to a portion of any invoice presented by the City, the Company shall within ten (10) days of its due date notify the City of its objection to a portion of the amount due (disputed amount). The Company must pay the undisputed portion of the invoice in a timely manner or interest shall accrue on the late payment of the undisputed amount.

With regard to the disputed amount of any invoice, the parties shall have period of thirty (30) days to work together, in good faith, to resolve issues or concerns for the disputed amount of invoice. If the parties are not able to resolve any disagreement within said period of time, the matter shall be subject to the provisions of Section 23.34 hereof. If the Company has objected, in good faith, within ten (10) days of the due date as outlined above, no interest shall accrue on the late payment.

END OF ARTICLE



## ARTICLE 6. LETTER OF CREDIT

The Company shall deliver to the Airport Director, on or before the date of execution of this Lease by the City, and shall keep in force throughout the Lease Term, an irrevocable standby letter of credit in favor of the City issued by a bank or financial institution satisfactory to the City in its sole and absolute discretion. The beneficiary of such letter of credit shall be the City of Pensacola, Pensacola International Airport, and such letter of credit shall be in a form and content satisfactory to the City in its sole and absolute discretion.

Without limiting the generality of the foregoing, the initial term of such letter of credit shall be for three (3) years and such letter of credit shall contain an "evergreen" provision whereby such letter of credit automatically renews for an additional one-year term upon the expiration of the prior term unless the issuer gives the City written notice of its intent not to renew such letter of credit at least ninety (90) days prior to its expiration date. Further, such letter of credit shall be payable in full upon the issuer's receipt of written certification by the City that there exists an uncured Event of Default under this Lease by the Company or that the issuer has given the City notice of non-renewal of the letter of credit and the Company has failed to deliver to the City a replacement letter of credit complying with the requirements of the Lease within thirty (30) days after the date of such non-renewal notice.

The amount of such letter of credit shall at times during the Lease Term be the total annual Ground Rent in effect from time to time. The Company shall cause such letter of credit to be amended from time to time as necessary, so that such letter of credit shall, at all times, comply with the preceding sentence. Without limiting the generality of the foregoing, the letter of credit shall be amended within thirty (30) days after the Date of Beneficial Occupancy of each building in the Project to include the annual Ground Rent for such building.

END OF ARTICLE

## ARTICLE 7. JOB CREATION

There are three "clawback" provisions in this Master Lease:

- (a) Minimum Jobs Level Relating to Non-Triumph Grants (Section 7.01 below);
- (b) Minimum Jobs Level Relating to Triumph Grant (Section 7.02 below); and
- (c) Default by the Company Resulting in Clawback of any Grant (Section 7.03 below).

The amounts, if any, that become due and payable by the Company under this Article shall be paid to the City as Additional Rent in accordance with the terms of this Article 7. The provisions of this Article 7 shall survive the construction and completion of the Project and the expiration or earlier termination of this Lease.

### Section 7.01 **MINIMUM JOBS LEVEL RELATING TO NON-TRIUMPH GRANTS**

The Company shall use its best efforts to create and maintain a minimum of 1,325 new full time equivalent "Jobs", as defined in Section 7.04, during the ten (10) year period that commences on the Date of Beneficial Occupancy of Parcel 3 and the Facilities constructed thereon (also being sometimes referred to as Hangar 4) or such other time period as specified in a "Non-Triumph Grant Agreement" (hereinafter defined). Such minimum jobs level is more specifically defined to be 9,275 Job man-years (1,325 Jobs X 7 years). A Job man-year is defined as 2,080 man-hours worked.

The Company acknowledges that in order to secure funding for the Project, the City has entered into, or will enter into, various grant agreements with grant providers other than Triumph Gulf Coast, Inc., including but not limited to Escambia County, the U. S. Economic Development Agency, the Florida Department of Economic Opportunity, the Florida Department of Transportation, and others (such grant agreements being hereinafter referred to as the "Non-Triumph Grant Agreements"). Further, the Company acknowledges that that some or all of the Non-Triumph Grant Agreements will require that the City repay some or all of the grant funds advanced thereunder in the event that the Company fails to create and maintain at least 1,325 new full time equivalent jobs within the time frames and upon the terms and conditions set out in the pertinent Non-Triumph Grant Agreement. The Company hereby assumes and agrees to pay, as and when due and payable by the City under the applicable Non-Triumph Grant Agreement, all jobs-related clawback obligations of the City now or hereafter created or arising under each Non-Triumph Grant Agreement, and, further, the Company shall indemnify, defend and hold harmless the City from and against any

and all claims, causes of action, suits, proceedings, losses, liabilities, damages, costs and expenses, including without limitation reasonable attorneys' fees, suffered or incurred by the City by reason of the operation of any jobs-related clawback provision in any of the Non-Triumph Grant Agreements or the failure of the Company to create and/or maintain jobs in accordance with the terms and conditions of the Non-Triumph Grant Agreements.

The Company must annually provide documentation to the City regarding its compliance with the minimum jobs requirements of the Non-Triumph Grant Agreements in a manner consistent with the requirements imposed upon the City by the Non-Triumph Grant Agreements and the City's grant agreement with Triumph Gulf Coast, Inc. Further, within thirty (30) days following the end of each calendar quarter, the Company shall provide the Airport Director a Jobs Report showing in detail the number of Jobs at the Leased Premises for the preceding three month period. The Jobs Report shall be in sufficient detail to evidence Job levels and the compensation associated with each Job. The Jobs Report shall list, by worker identification number assigned by the Company, the number of hours each worker worked during the reporting period and the total wages and other compensation paid each worker during such reporting period, exclusive of benefits, and shall include such additional Job reporting information as initially required by the Non-Triumph Grant Agreements or the City's grant agreement with Triumph Gulf Coast, Inc. The City shall have the right to audit Company records to validate the information presented in the Jobs Report.

**Section 7.02 MINIMUM JOBS LEVEL RELATING TO THE TRIUMPH GULF COAST, INC. GRANT**

(a) That certain MRO Performance Agreement by and between Triumph Gulf Coast, Inc. ("Triumph") and the Company is attached hereto as Exhibit "D" and is hereby incorporated herein by reference.

(b) The Company hereby agrees with the City that the Company shall observe and perform all obligations under the Performance Agreement to be observed and performed by the Company. The Company agrees that the City shall be entitled to enforce the Company's obligations to Triumph under the MRO Performance Agreement to the same extent as Triumph is or shall be entitled to enforce such obligations.

(c) All payments under the MRO Performance Agreement will be made by the Company directly to Triumph. The Parties expressly agree that Triumph is and shall be an intended third party beneficiary of the obligations of the Company under this Section 7.02 and shall be entitled to enforce the covenants and obligations of the Company under this Section 7.02 directly against the Company as if Triumph were a party to this Lease.

(d) The Company will be solely liable to Triumph for all clawback payments arising under the MRO Performance Agreement or this Section 7.02.

(e) It is the Parties' intent that the document attached hereto as Exhibit "D" and referred to herein as the "MRO Performance Agreement" shall at all times be the identical document as the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, as the same may be modified and amended from time to time. To that end, in the event of any conflict between Exhibit "D" hereto and the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, as the same may be modified and amended from time to time, the provisions of the MRO Performance Agreement and amendments and modifications actually executed and entered into by and between Triumph and the Company shall control, and the conflicting provisions of Exhibit "D" shall be deemed to be automatically modified and amended to the full extent necessary in order for the provisions of Exhibit "D" to be identical to the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, as the same may be modified and amended from time to time. Further, the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, as the same may be modified and amended from time to time shall be substituted for and in place of Exhibit "D" hereto, without the consent of the Company or the City being required, as necessary from time to time in order that at all times the MRO Performance Agreement actually executed and entered into by and between Triumph and the Company, as the same may be modified and amended from time to time, shall constitute Exhibit "D" to this Agreement. Notwithstanding the foregoing, in no event shall the MRO Performance Agreement or any amendment or modification thereto create any obligation or liability on the party of the City to Triumph, the Company, or any other person or entity.

**Section 7.03 ACT OR FAILURE TO ACT BY THE COMPANY RESULTING IN CLAWBACK UNDER ANY GRANT**

The Company acknowledges that the Non-Triumph Agreements and the Triumph Grant Agreement may require the City to repay all or portions of the grant funds disbursed thereunder in the event that (i) the Project is terminated or abandoned, in whole or in part, prior to full completion; (ii) the Company withdraws from the Project in whole or in part; (iii) the Company becomes unwilling or unable to satisfy its jobs creation obligations under this Lease or the Development Agreement; or (iv) the commencement, prosecution, or timely completion of the Project is rendered improbable, infeasible, impossible, or illegal. The Company hereby agrees to indemnify, defend and hold harmless the City from and against any and all clawbacks, claims, suits, causes of action, liabilities, damages, costs and expenses, including without limitation reasonable attorneys' fees, suffered or incurred by the City by reason of or arising out of any act or failure to act by the Company that results in or gives rise to any obligation or liability by the City under all or any of the Non-Triumph Agreements and/or the Triumph Agreement. Notwithstanding the foregoing, the

Company shall not be obligated to indemnify the City if and to the extent that such act or failure to act by the Company is due to Force Majeure.

**Section 7.04 JOB DEFINITIONS**

Except as otherwise provided in Section 7.02 or in any Non-Triumph Agreement, as used in this Agreement, the term "Jobs" shall mean "jobs" as defined in Section 288.106(2)(i), Florida Statutes, as in effect on the Effective Date, which pay the average wages or equivalent compensation required by Section 7.02(a)(2).

**Section 7.05 WAGES**

The Company shall pay average high head of household wages or equivalent compensation for the 1,325 full time equivalent Jobs required under Section 7.01. "High head of household wages" shall mean an average annual wage of at least \$44,461.00, excluding benefits, for the Jobs. In no event will the Company pay less than the minimum wage for each Job, as required by federal and State of Florida statutes.

END OF ARTICLE

## ARTICLE 8. INSURANCE AND INDEMNIFICATION

### Section 8.01 REQUIRED INSURANCE

Prior to taking possession of any portion of the Leased Premises, the Company shall procure and maintain insurance of the types and to the limits specified herein.

As used in this Article of the Lease, "the City" is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives, and agents.

The Company and the City understand and agree that the minimum limits of insurance herein required may become inadequate during the term of this Lease. The Company agrees that it will increase such coverage to commercially reasonable levels required by the City within ninety (90) days following the receipt of written notice from the Airport Director.

Insurance shall be procured from an insurer whose business reputation, financial stability, and claims payment reputation are satisfactory to the City in its good faith discretion, for the City's protection only. Unless otherwise agreed, the amounts, form, and type of insurance shall conform to the following minimum requirements:

Insurance Requirements		
	Type	Amount
(1)	Worker's Compensation and Employer's Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
(2)	Broad Form Commercial General Liability Policy to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000 per occurrence or its equivalent with an aggregate of not less than \$5,000,000 per location (i.e., hangar, warehouse, or office building)
	(A) Premises Operations	
	(B) Independent Contractors	
	(C) Products/Completed Operations	
	(D) Personal Injury	
	(E) Contractual Liability	
	(F) Damage to Leased Premises	
(3)	Automobile Liability (any automobile)	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent in excess of umbrella coverage, \$5,000,000 per occurrence or its equivalent in excess of umbrella coverage for vehicle(s) with access to the Air Operations Area.
(4)	Umbrella Coverage written on an occurrence basis that is no more restrictive than the underlying insurance policy coverages.	\$10,000,000
(5)	Property Insurance including flood insurance for physical damage to the property of the Company, including improvements and betterments to the Leased Premises	Coverage for replacement value of property for each location. City to be named as loss payee.
(6)	Property Insurance for physical damage to the Facilities, including improvements and betterments to the Leased Premises, resulting from fire, theft, vandalism, windstorm, flood (if and to the extent any of the Facilities are located in a federally-designated special flood hazard area), and other risks commonly insured against for similar airport improvements	Coverage for replacement value of Facilities for each location. City to be named as loss payee.
(7)	Above Ground and/or Underground Storage Tank Liability (but only if such tanks exist at the Leased Premises)	\$10,000,000 per claim
(8)	Airport Liability including coverage for premises, operations, products and completed operations and independent contractors, and including Hangar Keeper's Liability (including Aircraft Liability) Endorsement.	\$10,000,000 per occurrence and in the aggregate, Combined single limit, per location written on an occurrence form, with \$30,000,000 umbrella

(9)	Pollution Legal Liability for transporting or handling hazardous materials or regulated substances / Environmental Impairment Liability	\$2,000,000 per occurrence, with an annual aggregate not less than \$4,000,000
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In addition, the Company will acquire and maintain Terrorism coverage (TRIA) to the extent it maintains TRIA coverage at its Mobile Aeroplex at Brookley, Mobile, Alabama operation.

**Section 8.02 CERTIFICATES OF INSURANCE**

Required insurance shall be documented in the Certificates of Insurance, which provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, nonrenewal, or adverse change or restriction in coverage. The City shall be named on each Certificate as an Additional Insured and this Lease shall be listed. Certificates of Insurance shall be provided promptly upon the City’s request from time to time, but in no event less than annually. Each such Certificate of Insurance shall be on the appropriate ACORD form or its equivalent as determined by the City. Any wording on a Certificate that would make notification to the City of cancellation, adverse change, or restriction in coverage an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. In addition, upon any change in any insurance policy coverage or endorsement, the Company shall also deliver to the City revised Certificates of Insurance.

The Company shall replace any cancelled, adversely changed, restricted, or non-renewed policies with new policies that comply with Section 10.1 above and shall file with the City Certificates of Insurance and a copy of each new or modified endorsement regarding the new policies prior to the effective date of such cancellation, adverse change, or restriction. If any policy is not timely replaced, the Company shall, upon instructions from the City, cease all operations under the Lease until directed by the City, in writing, to resume operations. The “Certificate Holder” address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy of the Certificate shall be sent to Pensacola International Airport, Attn: Manager of Properties, 2430 Airport Boulevard, Suite 225, Pensacola, FL 32504.

**Section 8.03 INSURANCE OF THE COMPANY PRIMARY**

The Company’s required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Company's coverage. The Company's policies of coverage will be considered primary as relates to all provisions of the Lease. Notwithstanding the primary coverage responsibility of the Company, the Company shall protect the indirect and direct interests of the City by at all times promptly complying with all terms and conditions of its insurance policies, including without limitation timely and complete notification of claims. All written notices of



property claims made to carriers that relate to the damage, impairment, or condition of the Leased Premises shall be copied to the City's Department of Risk Management at the following address: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy shall be sent to Pensacola International Airport, Attn: Manager of Properties, 2430 Airport Boulevard, Suite 225, Pensacola, FL 32504.

**Section 8.04 LOSS CONTROL AND SAFETY**

The Company shall retain control over its employees, agents, servants, subcontractors, and invitees, as well as its and their activities on and about the Leased Premises and the manner in which such activities shall be undertaken; to that end, the Company shall not be deemed to be an agent of the City. Precaution shall be exercised by the Company at all times regarding the protection of all persons, including employees, and property. The Company shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

**Section 8.05 ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers that have a current A.M. Best rating of no less than A.

**Section 8.06 HOLD HARMLESS**

The Company shall hold indemnify, defend and harmless the City, its divisions, subsidiaries and affiliates, elected and appointed officials, employees, volunteers, representatives and agents from any and all claims, suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury, or property damage, including loss or use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the performance of this Lease or on or about the Leased Premises, provided any such claim, suit, action, damage, liability or expense is caused in whole or in part by an act or omission of the Company, or the Company's subtenants, contractors, subcontractors, representatives, guests, invitees, agents or employees or the employees of any of the aforementioned individuals or entities. The Company's obligations shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance. Nothing contained herein shall obligate the Company to hold harmless the City for the intentional or negligent acts or omissions of the City or any of its employees, representatives or agents. Subject to the last paragraph of this Section and to Section 10.08 below, nothing in this Lease shall limit or prohibit Company from pursuing any claim or cause of action under Section 768.28, Florida Statutes, or as otherwise available at law, common law or in equity against the City for all claims, suits, actions, damages, liability and expenses in connection with the loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of, or occurring in connection with the City's performance of this Lease, or on or about the Leased Premises, but only if and to the extent that such claim, suit, action, damage, liability or expense is caused by any negligent or intentional act or omission of the City or any of its employees, representatives or agents. Further, nothing in this Lease shall limit or prohibit Company from pursuing any

claim or cause of action against the City for breach of this Lease or against any contractor or subcontractor of the City doing any work on or about the Leased Premises at the request of or under the direction of the City.

Nothing in this Section shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the City. This Section shall in no way be construed as a waiver, in whole or in part, of the City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.

**Section 8.07 NON-LIABILITY OF THE CITY**

The City shall not, in any event, be liable to the Company or to any other person or entity for any acts or omissions of the Company, its successors, assigns or sublessees or for any condition resulting from the operations or activities of any such person or entity.

Without limiting the generality of the foregoing, the City shall not be liable for the Company's failure to perform any of the Company's obligations under this Lease or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by the City.

**Section 8.08 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.**

Any other provision of this Lease to the contrary notwithstanding, in no event shall the City or the Company be liable to the other or to any other person for any special or consequential damages by reason of any breach or default by the City or the Company, as the case may be, under this Lease, including without limitation any loss of income or other loss or damages suffered by the City or the Company arising from the interruption or cessation of the business conducted by the City at the Airport or conducted by the Company under this Lease; provided, however, that the damages set forth in Section 20.02 shall not be considered special or consequential damages.

**Section 8.09 PAYMENT ON BEHALF OF THE CITY**

The Company agrees to pay on behalf of the City, and to provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims or other actions or items which are the Company's responsibility under Section 10.06, "Hold Harmless. Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

**END OF ARTICLE**

## ARTICLE 9. COMMON AIRCRAFT FACILITIES; INSPECTION OF FACILITIES

### Section 9.01 USE OF COMMON AIRCRAFT FACILITIES

The City hereby grants to the Company, and, if and to the extent necessary in the ordinary course of the Company's business, to the Company's employees, customers, supplier and invitees, the following general, nonexclusive privileges, uses, and rights, subject to the Rules and Regulations and the terms, conditions, and covenants herein set forth:

(a) The general use by the Company of all common aircraft facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to the Airport, except as hereinafter provided, subject to all applicable fees for these areas (provided that such fees are applicable to all tenants at the Airport). "Common Airport facilities" shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, public taxiways, public ramps/public aprons, public roadways, public sidewalks, navigational and aviation aids, lighting facilities, terminal facilities, or other common or public facilities appurtenant to the Airport.

(b) The right of ingress to and egress from the Leased Premises, over and across public roadways serving the Airport for the Company, its agents, servants, patrons, invitees, suppliers of services, furnishers of materials, and permitted sublessees/sublicensees. Said right shall be subject to all laws, ordinances, Rules and Regulations, and Airport policies, as now or may hereafter apply at the Airport, provided that such laws, ordinances, Rules and Regulations, and Airport policies shall be applicable in a nondiscriminatory manner to all similarly situated parties.

### Section 9.02 COMPLIANCE

The right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with all laws (including without limitation all Environmental Laws), ordinances, Rules and Regulations, and Airport policies of the United States, the State of Florida, Escambia County, the City of Pensacola and the Airport. The rules and regulations promulgated by their authority with reference to aviation, navigation, security, and all reasonable and applicable rules, regulations, and ordinances of the City, now in force or hereafter prescribed or promulgated by charter authority or by law, provided that such laws Rules and Regulations, and ordinances, and Airport policies shall be applicable in a nondiscriminatory manner to all similarly situated parties.

**Section 9.03 INSPECTION OF FACILITIES AND IMPROVEMENTS**

The City reserves the right to enter the Leased Premises during normal business hours with prior notice to the Company, unless in the event of an emergency, for the purpose of inspecting same or verifying that Environmental Laws, Airport Rules and Regulations, fire, safety, and sanitation regulations, and other provisions contained in this Lease are being adhered to by the Company. During its presence in the Leased Premises, the City shall comply with all federal security requirements imposed on the Company unless in the case of an emergency, such as, but not limited to, flood, fire, or chemical spill, where human life or health may be threatened or endangered. During its presence in the Leased Premises, including in the event of an emergency, the City shall comply with all government security requirements and, to the extent reasonable and feasible, the published rules and regulations the Company concerning safety and security, and shall make reasonable efforts to avoid undue interference with the Company's operations. Provided that the Company receives prior notice of the City's entry into the Leased Premises, the Company shall use its best efforts to guide, direct, and inform the City's representative of conditions, situations, or actions that could or might result in loss, injury or damages.

END OF ARTICLE

## ARTICLE 10. ACCEPTANCE AND CONDITION OF LEASED PREMISES

The parties agree that this Lease is granted by the City, at the Company's request, and that on the Date of Beneficial Occupancy of each Parcel, the Facilities constructed on such Parcel pursuant to the Development Agreement shall be new and in pristine condition at the time of occupancy by the Company.

Prior to the Date of Beneficial Occupancy of each Parcel, the Company shall have an opportunity to inspect such Parcel and the Facilities constructed thereon. As between the City and the Company for the purposes of the parties' respective rights and obligations under this Lease, the Company's taking possession of a Parcel shall be considered the Company's acceptance thereof in new condition and the Company's agreement that such Parcel is suitable for the purposes for which it is being leased, subject to latent defects not reasonably discoverable by an inspection of such Parcel. It is expressly understood and agreed that nothing in the preceding sentence or elsewhere in this Article 9 shall be construed as a waiver of any claim by the Company or the City against any third party (including without limitation design professionals and the Construction Manager at Risk) related to the design or construction of the Facilities.

On the Date of Beneficial Occupancy of a Parcel, the Company will take possession and occupy such Parcel in accordance with the terms and subject to the conditions of this Lease.

The Company agrees that no representations regarding the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by the City or its agents to the Company, unless contained herein or made a part hereof by specific reference.

END OF ARTICLE

## ARTICLE 11. CONSTRUCTION BY THE COMPANY

The Company shall not erect, alter, remodel, or renovate any building or other improvements on the Leased Premises without the prior written approval of the City, which approval may be given or withheld in the City's reasonable discretion.

In the event that the Company desires to alter, remodel or renovate the Facilities, or construct improvements on the Leased Premises, it shall submit to the Airport Director plans and specifications prepared by registered architects and engineers setting forth the renovations, construction, alterations, or improvements that the Company desires to implement in sufficient detail for the City to determine whether or not the proposed improvements are in the best interest of the Airport, and such other detail as may be required by the Airport Director. The Company shall reimburse the City upon demand for its reasonable out of pocket expenses incurred by the City to review and act upon the Company's request, which expenses may include without limitation the fees and expenses of architects, engineers, attorneys and other professionals

The City agrees to examine and approve or disapprove plans and specifications submitted in accordance with the provisions above within thirty (30) days after receipt thereof and to give the Company written notification of same. The City, by giving its approval, assumes no liability or responsibility therefor or for any defects in such plans and specifications or for any defects in any work performed according to such plans and specifications. The Company shall not initiate any renovations, construction, alterations, or improvements until the City, through the Airport Director, has given written approval of the Company's plans and specifications.

Further, prior to the initiation of construction, the Company shall procure any and all additional approvals of the plans and specifications for its buildings and improvements required by any federal, State of Florida, water management district, county or municipal authorities, agencies, officers, and departments having jurisdiction thereof, and shall obtain any and all requisite building and construction licenses, permits, or approvals. The Company shall be solely responsible for paying the costs of obtaining all approvals for its improvements.

The Company shall insure that all construction shall be performed by appropriately licensed contractors and shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, State of Florida, water management district, county, or municipal agency or department having jurisdiction thereof. Further, all work and improvements shall be performed and constructed in a good and workmanlike manner with high quality, new materials.

The Company specifically agrees that it shall release, indemnify, defend, and hold the City harmless from and against any and all claims, causes of action and

liabilities, whether actual or potential, associated with any construction undertaken by the Company.

The cost of all such renovations, construction, alterations, or improvements upon the Leased Premises shall be borne and paid for solely by the Company unless otherwise provided for herein. Except as may be otherwise set forth herein, the City shall have no financial or other obligation of any kind under this Lease, other than the renting to the Company of the Leased Premises that are the subject hereof for the term and consideration hereinbefore set forth.

Upon completion of all renovations, construction, alterations, or improvements, a conformed set of "as built" plans and specifications, certified by the appropriate design professional(s) and a Certificate of Occupancy, if required, shall be provided by the Company to the Airport Director.

Unless otherwise agreed to in a written instrument signed by the Parties at the time that plans for any renovations, construction, alterations, or improvements are approved by the City, such renovations, construction, alterations, or improvements constructed by the Company at the Leased Premises (except the installation of removable trade fixtures by the Company) shall, immediately upon such construction thereof, become and remain the property of the City and part of the Leased Premises and shall remain at the Leased Premises upon the expiration of the Lease Term or early termination of this Lease.

END OF ARTICLE



## ARTICLE 12. LIENS PROHIBITED

No person or entity performing or providing labor, work, services or materials to or upon the Leased Premises by, through or at the request of the Company shall be entitled to claim or assert any lien against the Leased Premises or any portion thereof. The Company shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against the Company's leasehold interest in the land, buildings, or improvements thereon, by reason of any work, labor, services or materials supplied or claimed to have been supplied, to the Company or to anyone holding the Leased Premises, or any part thereof, through or under the Company.

If any such construction lien shall be recorded against the Leased Premises or any portion thereof, the Company shall immediately cause the same to be removed or bonded against in accordance with applicable law.

END OF ARTICLE

## ARTICLE 13. MAINTENANCE AND REPAIR

### Section 13.01 TRIPLE NET LEASE

This Lease constitutes a triple net lease of the Leased Premises and, notwithstanding any language herein to the contrary, it is intended and the Company expressly covenants and agrees that all rent and other payments herein required to be paid by the Company to the City shall be absolutely net payments to the City, meaning that, during the Lease Term, the City is not and shall not be required to expend any money or do any acts or take any steps affecting or with respect to the use, occupancy, operation, maintenance, preservation, repair, restoration, protection or insuring of the Leased Premises, or any part thereof, except as otherwise expressly provided in this Lease or the Development Agreement.

### Section 13.02 COMPANY RESPONSIBILITIES

From the Date of Beneficial Occupancy of each Parcel, the Company shall, throughout the term of this Lease, be solely and entirely responsible for all costs and expenses for, related to or arising out of the use, operation, repair, maintenance and replacement of such Parcel, all buildings and improvements thereon and all components thereof, whether such repair, maintenance or replacement be ordinary, extraordinary, structural, or otherwise. The Company shall also:

(a) At all times perform commercially reasonably routine maintenance and preventive maintenance of such Parcel, all buildings and improvements thereon and all components thereof and maintain all of the foregoing in a good and clean condition, repair and preservation, excepting ordinary wear and tear;

(b) Replace or substitute any fixtures, equipment and components that have become worn out with replacement or substitute fixtures, equipment and components, free of all liens and encumbrances, that shall automatically become a part of the buildings and improvements;

(c) At all times keep such Parcel's grounds and exterior of such Parcel, its buildings and improvements, fixtures, landscaping, equipment, and personal property in a maintained, clean, and orderly condition and appearance, excepting ordinary wear and tear;

(d) Provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions, or regulations of any competent authority, including the City and the Airport Director, provided that such rules, regulations, and ordinances shall be applicable in a non-discriminatory manner to all similarly situated parties;

(e) Observe all insurance regulations and requirements concerning the use and condition of such Parcel for the purpose of reducing fire hazards and increasing the safety of the Company's operations on the Airport;

(f) Repair any damage to paving or other surfaces of such Parcel or the Airport caused by the Company, in connection with the scope of the Lease, as the result of any oil, gasoline, grease, lubricants, flammable liquids, or substances having a corrosive or detrimental effect thereon, or for any other reason whatsoever;

(g) At all times comply with the Airport's Storm Water Pollution Prevention Plan and Spill Prevention, Control, and Countermeasure plan and take measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of such Parcel; the planting, maintaining, and replanting of any landscaped areas; the designing and constructing of improvements on such Parcel; and the preservation of as many trees as possible, consistent with the Company's construction and operations;

(h) Be responsible for the maintenance and repair of all utility services lines upon and serving such Parcel, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers, and storm sewers;

(i) Keep and maintain all vehicles and equipment operated on the Airport by the Company in safe condition, good repair, and insured, as required by this Lease;

(j) Replace broken or cracked plate glass, paint/repaint structures upon such Parcel, and, where applicable, mow the grass, and keep landscaped areas weeded; and

(k) Provide and use suitable covered metal receptacles for all garbage, trash, and other refuse; assure that boxes, cartons, barrels, or similar items are not piled in an unsightly, unsafe manner on or about such Parcel; provide a complete and proper arrangement, satisfactory to the Airport Director, for the adequate sanitary handling and disposal away from the Airport, of all trash, garbage, and refuse resulting from operation of the Company's business.

**Section 13.03 QUARTERLY CONDITION SURVEYS**

The City's Airport Properties Manager, together with a representative of the Company may, at the City's option, inspect the Leased Premises quarterly to observe and note its condition, cleanliness, and existing damage and to determine repairs and maintenance required pursuant to the terms of this Lease, provided that such inspections do not materially interfere with the Company's use of the Leased Premises. Neither the City's inspection of the Leased Premises nor the City's failure to inspect the Leased Premises shall relieve the Company of any of its obligations under this Lease or applicable law.

**Section 13.04 ADEQUACY OF COMPANY'S MAINTENANCE PERFORMANCE**

Should the Company refuse or neglect to undertake any maintenance, repair or replacements required pursuant to the terms of this Lease following written notice and no less than a thirty (30) day cure period, or if the City is required to perform any maintenance or repair necessitated by the negligent acts or omissions of the Company, its employees, agents, assignees, sublessees, subtenants, or licensees following written notice and no less than a 30 day cure period, and provided that the Company has not commenced to cure and is not diligently and continuously pursuing same, then the City shall have the right, but not the obligation, to perform such maintenance, repair or replacement on behalf of and for the Company. The costs of such maintenance, repair or replacement, plus fifteen (15.0%) percent for administration, shall be reimbursed by the Company to the City no later than 30 days following receipt by the Company of written demand from the City for same. In cases not involving maintenance, repair or replacement requiring exigent action, the City shall provide the Company a written request that the Company perform such maintenance or repair, at least 30 days before the City effects such maintenance or repair on behalf of the Company.

**Section 13.05 ANNUAL MAINTENANCE AND REPAIR REPORT**

Each January 15th during the term of this Lease, the Company shall provide a report on the prior year's maintenance and repair of the Leased Premises. The report shall include a breakdown of the costs incurred by the Company in maintaining and repairing the Facilities. Each year, the Airport Director, or other designated employee, may, at the City's option, present the Company with a suggested maintenance and repair program for the next twelve (12) months, but in such case the Company shall only be required to provide such maintenance and repairs as required hereunder.

**Section 13.06 UTILITIES CONSUMPTION**

Effective as of the Date of Beneficial Occupancy of a Parcel and during the Lease Term for such Parcel, the Company shall, at no cost to the City, arrange for all utilities necessary to serve such Parcel and promptly pay when due all the utilities costs incurred with respect to such Parcel. The Company shall pay or cause to be paid any and all charges for water, heat, gas, electricity, sewer, and any and all other utilities

used on such Parcel throughout the Lease Term applicable to such Parcel, including, but not limited to, any connection fees and any and all additional third party costs related to utility connection, metering, maintenance, repair, and usage.

**Section 13.07 UTILITIES SUPPLY OR CHARACTER**

The City shall not be liable in any way to the Company for any failure or defect in the supply or character of electrical energy, gas, water, sewer, or other utility service furnished to the Leased Premises by reason of any requirement, act, or omission of the public utility providing such service or for any other reason. The City shall have the right to shut down electrical or other utility services to the Leased Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, or reconnections or for any other reason with respect to any such utility system regardless of whether the need for such utility work arises with respect to the Leased Premises or any other facility at the Airport. Whenever possible, the City shall give the Company not less than two (2) days prior notice of any such utility shutdown. The City shall not be liable to the Company for any losses, including the loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Leased Premises.

END OF ARTICLE

## ARTICLE 14. TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY

### Section 14.01 TITLE TO FACILITIES

It is understood and agreed that the Facilities constructed upon each Parcel are and shall remain the property of the City during the Lease Term for such Parcel and upon the expiration of the Lease Term for such Parcel or earlier termination of this Lease with respect to such Parcel.

### Section 14.02 TITLE TO PERSONAL PROPERTY

Except as otherwise provided in Section 3.03 above, it is expressly understood and agreed that any and all items of personal property owned, placed, or maintained by the Company on a Parcel during the Lease Term for such Parcel shall be and remain the Company's property.

### Section 14.03 IMPROVEMENTS

Unless otherwise provided in this Lease, all foundations, buildings, alterations, additions, or improvements, except removable trade fixtures (hereinafter referred to as "Improvements") made upon the Leased Premises by the Company shall be the property of the City during the Lease Term for the Parcel upon which such Improvements were made and upon the expiration of the Lease Term for such Parcel or earlier termination of this Lease with respect to such Parcel. Any attempted conveyance, transfer, or assignment of Improvements by the Company to any person or entity, whether voluntary, by operation of law, or otherwise, shall be void and of no effect.

Notwithstanding the foregoing, the City may, in its discretion, require the Company to remove any or all of such Improvements upon expiration of the Lease Term for the Parcel upon which such Improvements were made or earlier termination of this Lease with respect to such Parcel, in which event within in thirty (30) days after written notice from the City, the Company shall remove such Improvements at the Company's sole cost and risk, in compliance with all applicable laws and regulations and, to the degree reasonably possible, shall restore the Leased Premises to the condition that existed prior to the construction of same. Further, and in any event, should the Company fail to undertake such removal within ninety (90) days following the Company's unequivocal surrender of occupancy of such Parcel, the City may undertake such removal and dispose of such Improvements, all at the Company's expense, and the Company shall promptly reimburse the City upon demand for all removal and disposal costs incurred by the City.

END OF ARTICLE

## ARTICLE 15. ENVIRONMENTAL COMPLIANCE

### Section 15.01 ENVIRONMENTAL LAWS

The Company shall, at all times, abide by all Environmental Laws applicable to, concerning, or arising from the Company's actions or inactions resulting directly or indirectly from its occupancy, use, or lease of the Leased Premises, including, without limitation, state and federal laws regulating storm water runoff contamination and pollution prevention, numeric nutrient criteria requirements, state and federal laws regulating soil, water, and groundwater quality, and state and federal laws regulating air quality. Thirty (30) days prior to the Date of Beneficial Occupancy of a Parcel, the Company shall identify in writing to the Airport Director and its Fire Department all Hazardous Substances that are or may be used in the course of its occupation of such Parcel. This list shall be updated by Company in March of each year and include quantities of materials stored on the Leased Premises. The City shall have the right to inspect the Leased Premises at any reasonable time to ensure compliance with Environmental Laws and the provisions of this Article 15.

The Company shall comply with the Airport's Spill Prevention, Control, and Countermeasure plan and Storm Water Pollution Prevention Plan and all amendments thereto irrespective of whether it has its own Spill Prevention, Control, and Countermeasure plan or Storm Water Pollution Prevention Plan.

The Company shall not, directly or indirectly, allow the disposal or discharge of Hazardous Substances on the Leased Premises or other Airport Complex property.

### Section 15.02 BASELINE ENVIRONMENTAL CONDITIONS STUDIES

Prior to each initial occupation of a Parcel or any other portion of the Leased Premises by the Company or any assignee of this Lease (in whole or in part) or any sublessee of all or any portion of the Leased Premises, and immediately following each vacating, abandonment or surrender of a Parcel or any other portion of the Leased Premises by the Company or any such assignee or sublessee, the City and the Company, at the Company's sole cost and expense, shall cause to be completed a baseline environmental conditions study of the Leased Premises or pertinent portion thereof by a licensed professional retained by the City. The Company shall pay or reimburse to the City the cost of each such baseline environmental conditions study promptly upon demand and shall release, indemnify, defend, and hold the City harmless with respect thereto in accordance with Article 8 of this Lease. The pre- and post- baseline environmental conditions studies shall be prepared as follows:

(a) OCCUPANCY BY THE COMPANY

The City, at the Company's sole cost and expense, shall cause a baseline environmental conditions study of each Parcel to be completed by a licensed professional agreed to by both parties at least thirty (30) days prior to the Date of Beneficial Occupancy for such Parcel. The Company shall have fifteen (15) days after receipt of the completed study to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of precedent to the Company's occupying such Parcel.

(b) ASSIGNMENT

At least sixty (60) days prior to any assignment of this Lease or any portion thereof pursuant to the provisions of Article 20, the Company shall notify the City of its intent to assign. The City, at the Company's sole cost and expense, shall cause a baseline environmental conditions study of the Leased Premises (or that portion to be assigned, if it is a partial assignment) to be completed at least thirty (30) days prior to assignment of the Lease. The Company shall have fifteen (15) days after receipt of the completed study to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of approval of any assignment. All assignments must contain all of the Environmental Compliance requirements of this Article 15, shall not permit any further assignment or sublease of this Lease, and shall include a provision stating that the provisions of this Article shall survive the termination of any assignment.

(c) SUBLEASE

At least sixty (60) days prior to any sublease of the Leased Premises or any portion thereof pursuant to the provisions of Article 20, the Company shall notify the City of its intent to sublet. The City, at the Company's sole cost and expense, shall cause a baseline environmental conditions study of the Leased Premises (or that portion to be subleased, if it is a partial sublease) to be completed at least thirty (30) days prior to any sublease. The Company shall have fifteen (15) days to review and comment on the completed study. Completion of the study and final acceptance of the study by the City shall be a condition of approval of any sublease. All subleases must contain all of the Environmental Compliance requirements of this Article 15, shall not permit any further assignment or sublease of this Lease, and shall include a provision stating that the provisions of this Article shall survive the termination of any sublease.

(d) VACATING, ABANDONMENT OR SURRENDER

Within thirty (30) days after notice that the Company, an assignee or a sublessee has vacated, abandoned or surrendered the Leased Premises or any portion thereof, the City, at the Company's sole cost and expense, shall cause to be completed a baseline environmental conditions study of the Leased Premises, or that portion of the Leased Premises which has been vacated, abandoned or surrendered. The Company or its



sublessee or assignee shall have fifteen (15) days to review and comment on the completed study.

**Section 15.03 REMEDIATION OF ENVIRONMENTAL CONDITIONS**

In the event any baseline environmental conditions study that is conducted following the vacating, abandonment or surrender of the Leased Premises or any portion thereof by the Company, an assignee or a sublessee identifies an environmental condition that was not identified by a prior baseline environmental conditions study and that requires assessment or remediation, the City shall perform such assessment or remediation at the Company's sole cost and expense, and the Company shall pay or reimburse to the City the reasonable cost of such assessment or remediation promptly upon demand and shall release, indemnify, defend, and hold the City harmless in accordance with Article 8 and shall comply with all other terms of this Lease.

**Section 15.04 ENVIRONMENTAL REPORTS**

The Company promptly shall provide to the Airport Director, on an ongoing basis and as updates are required, copies of all Company environmental permits and reports related to the Leased Premises, as well as any notices, orders, decrees, citations, or inspection reports issued by environmental regulatory authorities.

**Section 15.05 SURVIVAL OF OBLIGATIONS**

The obligations of this Article 15 shall survive the expiration, termination, sublease, or assignment of this Lease or any portion thereof.

END OF ARTICLE

## ARTICLE 16. SUBORDINATION OF LEASE AND RIGHT OF RECAPTURE

### Section 16.01 SUBORDINATION TO AGREEMENTS WITH THE UNITED STATES

This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America regarding operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the receipt and expenditure of federal funds for development of the Airport. Should the effect of such agreement with the United States be the taking of a material portion of a Parcel, or a substantial alteration or destruction of the commercial value of the leasehold interest in a Parcel granted herein, the City shall not be held liable therefor but, in such event, the Company may cancel this Lease with respect to such Parcel upon one-hundred twenty (120) days' written notice to the City. Notwithstanding the foregoing, the City agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, the City shall endeavor in good faith to give the reasonable notice thereof to the Company and make reasonable efforts to minimize the adverse consequences to the Company.

### Section 16.02 SUBORDINATION TO THE CITY'S BOND RESOLUTION

This Lease shall be subject and subordinate to the provisions of the City's Airport Revenue Bond Resolution Number 59-88 (as amended and supplemented) as it is today and as it may be amended from time to time in the future.

### Section 16.03 RECAPTURE FOR AIRPORT DEVELOPMENT

The City shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for the City's development, improvement, or maintenance of the Airport's runways and taxiways, for protection or enhancement of flight operations, or for other development in compliance with any current or future Airport Master Plan. In the event of any such recapture, the Company and the City shall execute a document reflecting a corresponding adjustment to the Leased Premises and Ground Rent.

END OF ARTICLE

## ARTICLE 17. SECURITY

### Section 17.01 **GENERAL**

The Company shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States, the State of Florida, Escambia County and the City of Pensacola as they relate to Airport security requirements. The Company understands that the Airport is required to maintain an Airport Security Plan in compliance with Title 49 CFR Part 1542 and the Company shall comply with the Airport's security plan as it now exists or as it may be amended in the future and as it applies to the Company, its leased premises or its operations or activities on the Airport, and shall take such steps as may be necessary or as directed by the City to ensure that employees, invitees, agents and guests observe these requirements.

### Section 17.02 **AIRPORT ACCESS LICENSE/PERMIT**

The City reserves the right to establish a licensing or permit procedure for vehicles requiring access to the AOA and to levy directly against the Company or its suppliers a reasonable regulatory or administrative charge (to recover the cost of any such program) for issuance of such Airport access license or permit.

### Section 17.03 **INDEMNITY FOR FINES AND PENALTIES**

The Company understands and agrees that it shall fully indemnify, defend, and hold harmless the City, its elected representatives, officers, agents, volunteers, and employees from and against all penalties, fines, or demands of any kind (including, but not limited to, costs of investigation, attorney fees, court costs, and expert fees) arising out of the Company's acts or omissions resulting in alleged violations of any rule, regulation, statute, order, directive or other mandate of the United States, the State of Florida, Escambia County or the City of Pensacola, and also Title 49 CFR Part 1542, "Airport Security," or any successor regulations related to Airport security.

END OF ARTICLE

## ARTICLE 18. EVENTS OF DEFAULT; REMEDIES; TERMINATION

### Section 18.01 COMPANY EVENTS OF DEFAULT

The occurrence of any one or more of the following events (each such event being referred to in this Lease as an "Event of Default") shall constitute a material default and breach of this Lease by the Company:

(a) The Company fails to make any payment of Ground Rent, Additional Rent under Article 7 above, or any other monetary payment required to be made by the Company hereunder, as and when due;

(b) The Company fails to observe or perform any covenant, condition or provision of this Lease to be observed or performed by the Company, other than as described in subparagraph (a) above or subparagraphs (e), (f), or (g) below, and such failure shall continue for a period of thirty (30) days after written notice thereof by the City to the Company; provided, however, that if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, then such 30-day period shall be extended for up to ninety (90) additional days provided that the Company begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 90-day period; or

(c) The Company files a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or an order for relief is entered in an involuntary bankruptcy case filed against the Company; or the Company seeks or consents to or acquiesces in the appointment of any trustee, custodian, receiver or liquidator of itself or of all or any part of its assets or any interest therein; or the Company shall make a general assignment for the benefit of its creditors; or the Company commits any act providing grounds for the entry of an order for relief under any chapter of the federal bankruptcy code; or

(d) A petition or case is filed against the Company seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, custodian, receiver or liquidator of the Company or of all or any part of its assets or any interest therein, and such petition, case or appointment is not dismissed within sixty (60) days after such filing or appointment; or

(e) The Company fails to comply with the Airport's Spill Prevention, Control, and Countermeasure Plan or Storm Water Pollution Prevention Plan and all amendments thereto; or

(f) The Company abandons or ceases the conduct of all or substantially all of its Aircraft MRO business at the Airport, it being agreed that suspension or discontinuance of all or substantially all of Aircraft MRO operations on the Leased Premises for a period of one hundred eighty (180) days shall conclusively be deemed abandonment of the Company's Aircraft MRO business at the Airport; or

(g) The Company, its assignees, sublessees, contractors or subcontractors, employs or contracts with, for work or services performed on or from the Leased Premises, any unauthorized alien as described by Section 274(e) of the federal Immigration and Nationalization Act.

**Section 18.02 REMEDIES.**

Upon the occurrence of any Event of Default, the City may at any time thereafter, with or without notice or demand (except as expressly specified in Section 18.01 above or elsewhere in this Lease):

(a) Terminate the Company's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and the Company shall immediately surrender possession of the Leased Premises to the City. In such event the City shall be entitled to recover from the Company all direct damages incurred by the City by reason of the Company's default, including but not limited to the cost of recovering possession of the Leased Premises; reasonable expenses of re-letting, including necessary repairs, renovation and/or alteration of the Leased Premises that are part of the Company's obligations set forth in Section 12.02 above, reasonable attorney's fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the amount of unpaid rent (including without limitation Ground Rent and any Additional Rent due under Article 7) and other amounts which were due and payable by the Company under the terms of this Lease at the time of termination, (ii) (A) if the Event of Default occurs prior to the end of the eighth full Lease Year of a Parcel, the amount by which the unpaid rent (including without limitation Ground Rent and increases in the annual Ground Rent at the rate of two percent (2%) per Lease Year) for such Parcel and other amounts which would have been due and payable with respect to such Parcel by the Company under the terms of this Lease after the time of termination during the balance of the first ten (10) full Lease Years of such Parcel exceeds the amount of such rental and other loss for the same period that the Company proves could be reasonably avoided, and (B) if the Event of Default occurs on or after the commencement of the eighth full Lease Year of a Parcel, the amount by which the unpaid rent (including without limitation increases in the annual Ground Rent at the rate of two percent (2%) per Lease Year) for such Parcel

and other amounts which would have become due and payable with respect to such Parcel by the Company under the terms of this Lease after the time of termination during the balance of the time period from the occurrence of the Event of Default through the last day of the second full Lease Year thereafter, exceeds the amount of such rental and other loss for the same period that the Company proves could be reasonably avoided; and (iii), if and to the extent not recovered by the City under the preceding clauses, the amount, if any, that would be due and owing by the Company under Article 7 above based solely on the Jobs created and maintained by the Company up to the time of termination, without regard to an time period otherwise allowed under the Non-Triumph Grant Agreement, the Triumph Grant Agreement or Article 7 after the time of termination for the creation or maintenance of Jobs. The worth at the time of award of the sums referred to hereinabove shall be computed by discounting such amount at a reasonable discount rate based on all relevant circumstances existing at the time of the Event of Default. In the event of termination or repossession of the Leased Premises for an Event of Default, the City shall use reasonable efforts to relet the Leased Premises and mitigate its damages.

(b) Without terminating this Lease, enter and repossess the Leased Premises, remove the Company's property and signs therefrom, and re-let the same for such rent and upon such terms as shall be satisfactory to the City without such re-entry and repossession working a forfeiture of the Ground Rent, Additional Rent and other charges to be paid and the covenants to be performed by the Company during the remaining Lease Term. For the purpose of such re-letting, the City shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient, and the City shall be entitled to recover from the Company the cost of such repairs, changes, alterations and additions; the expenses of such re-letting; and the difference in value between the rent which would be payable by Lessee hereunder for the remainder of the Lease Term and the value of the rent to be realized from such re-letting.

As used in this Section 18.02 and Section 18.03 below, "rent" shall include Ground Rent, Additional Rent under Article 7, ad valorem property taxes on the Leased Premises and any other amounts under this Lease that are required to be paid by the Company to the City.

### **Section 18.03 RIGHTS AND REMEDIES OF THE CITY CUMULATIVE**

The rights and remedies set forth in Section 18.02 shall be the City's sole rights and remedies for the recovery of rent due and to become due and owing by the Company by reason of an Event of Default, but otherwise shall not be deemed to limit or exclude any other rights or remedies granted by the express terms of this Lease or any equitable rights or remedies, including without limitation injunctive relief, otherwise existing or arising by reason of any Event of Default. Subject to the foregoing, all rights and remedies of the City herein created or otherwise existing or

arising under this Lease, at law or in equity by reason of any Event of Default are cumulative, and the exercise of one or more rights or remedies shall not operate to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as deemed desirable. Further, failure by the City to take any authorized action upon the occurrence of an Event of Default shall not be construed to be or act as a waiver of said Event of Default or of any subsequent Event of Default. The City's acceptance of Ground Rent or other charges or payments by the Company for any period or periods after the occurrence of an Event of Default shall not be deemed a waiver of such Event of Default or a waiver of or estoppel to enforce any right or remedy on the part of the City arising or existing by reason of such Event of Default.

#### **Section 18.04 TERMINATION BY THE COMPANY WITHOUT CAUSE**

In addition to any other termination rights hereunder and so long as there then exists no Event of Default and no event or state of facts which with the giving of notice or the lapse of time, or both, would constitute an Event of Default, the Company may terminate this Lease with respect to any Parcel without cause and thereby terminate all of its rights and unaccrued obligations (other than the Company's obligations under Article 7 above which shall remain in full force and effect notwithstanding any termination under this Section) under this Lease with respect to such Parcel by giving the City written notice of termination at any time during or after the eighth (8<sup>th</sup>) full Lease Year for such Parcel. Upon the giving of such written notice of termination, this Lease shall terminate with respect to such Parcel as of the termination date specified in such written notice; provided that such termination date shall be not less than two (2) full Lease Years after the date such notice is given and provided further that on or before such termination date the Company shall pay and perform all obligations to be paid or performed by the Company under this Lease up to and including such termination date and all obligations that have accrued under Article 7 or will accrue or become due and payable under Article 7 as a result of such termination. In addition, in the event that the Company terminates this Lease with respect to all Parcels pursuant to this Section, the Company shall pay to the City, at or before such termination as to the final Parcel remaining subject to this Lease, the amount, if any, that would be due and owing by the Company under Article 7 above based solely on the Jobs created and maintained by the Company up to the time of such termination, without regard to an time period otherwise allowed under the Non-Triumph Grant Agreements, the Triumph Grant Agreement or Article 7 after the time of termination for the creation or maintenance of Jobs.

#### **SECTION 18.05 TERMINATION BY THE CITY WITHOUT CAUSE**

In addition to any other termination rights hereunder, the City may terminate this Lease with respect to any Parcel without cause by giving the Company written notice of termination at any time during or after the eighteenth (18<sup>th</sup>) Lease Year for such Parcel. Upon the giving of such written notice of termination, this Lease shall terminate with

*City of Pensacola, Florida*

*VT Mobile Aerospace Engineering, Inc.*

respect to such Parcel as of the termination date specified in such written notice;  
provided that such termination date shall be not less than two (2) full Lease Years after  
the date such notice is given.

END OF ARTICLE



## ARTICLE 19. HOLDING OVER

It is agreed and understood that any holding over by the Company, with the City's consent, after the termination of this Lease with respect to any Parcel, shall not serve to renew and extend same, but shall operate and be construed as a tenancy from month-to-month, subject to all terms and conditions of this Lease, except that monthly rent during such holdover period shall be equal to the sum of the Ground Rent for such Parcel paid for the last month of the Lease Term plus building rent for the building and improvements on such Parcel owned by the City as reasonably determined by the Airport Director.

Should the Company hold over against the City's will, the Company agrees to pay to the City, as monthly rent during such period of holding over, for such Parcel for each month until the Company completely vacates such Parcel, one hundred and fifty percent (150%) of the Ground Rent for such Parcel paid for the last month of the Lease term plus building rent for the building and improvements on such Parcel owned by the City calculated on the rental rate per square foot then being paid by the airlines for terminal building space in the Airport, plus all applicable fees, including, but not limited to, any other fees authorized by this Lease or authorized by ordinance.

The Company shall be liable to the City for all loss or damage resulting from such holding over against the City's will after the termination of this Lease with respect to any Parcel, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by the City, in the event that the Company fails or refuses to surrender possession, shall not serve to grant the Company any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by the City of its right to immediate possession thereafter.

END OF ARTICLE

## ARTICLE 20. ASSIGNMENT AND SUBLEASE

### Section 20.01 LEASE ASSIGNMENT

The Company shall not assign this Lease, in whole or in part, or the Company's interest in or to the Leased Premises, or any part thereof, without first having obtained the City's prior written consent which consent may be given or withheld in the City's sole and absolute discretion; provided, however, that this section is not intended to apply to or prevent the assignment of this Lease, in its entirety, to any corporation or other entity with which the Company may merge (regardless of whether the Company is the surviving entity, so long as the surviving entity assumes and agrees to pay and perform all obligations of the Company under this Lease) or to an Affiliate or Subsidiary. The Company shall promptly notify the City in writing of any merger by or with the Company and any assignment of this Lease to an Affiliate or Subsidiary. Without limiting the foregoing, it is a precondition to City review and approval of a requested assignment of this Lease that there shall then exist no uncured Event of Default nor any event or state of facts which with notice or the lapse of time, or both, would constitute an Event of Default. Further, the City may, in its sole and absolute discretion, condition its consent to any such assignment upon changes in any terms or conditions of this Lease, including but not limited to changes in the employment requirements under Article 7 and changes in the Ground Rent and other charges payable by the lessee hereunder and may also condition its consent to any such assignment upon the Company's payment to the City of an assignment approval fee acceptable to the City in its sole and absolute discretion, determined on the basis of such factors as the City deems relevant in its sole and absolute discretion, which factors may include, without limitation, the City's estimate of the consideration payable to the Company in respect of such assignment.

In the event that the Company requests permission to assign this Lease in whole or in part, the request shall be submitted to the Airport Director not less than sixty (60) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Airport Director: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Lease, a statement of the entire consideration to be received by the Company by reason of such assignment, the type of business to be conducted on the Leased Premises by the assignee, and reasonable financial history and financial information of the Assignee.

#### Section 20.02 LEASED PREMISES SUBLEASE

The Company shall not sublet the Leased Premises or any part thereof without having first obtained the City's prior written consent, which consent may be given or withheld in the City's sole and absolute discretion. Without limiting the generality of the foregoing, it is a precondition to City review and approval of a proposed sublease of the Leased Premises that there shall then exist no uncured Event of Default nor any event or state of facts that with notice or the lapse of time, or both, would constitute an Event of Default. Further, the City may, in its sole and absolute discretion, condition its consent to any such sublease upon changes in any terms or conditions of this Lease, including but not limited to changes in the employment requirements under Article 9 and changes in the Ground Rent and other charges payable by the lessee hereunder and may also condition its consent to any such sublease upon the Company's payment to the City of (i) a portion, acceptable to the City, of the amount of the excess of the rent payable from time to time by the sublessee to the Company over the rent payable from time to time by the Company to the City under this Lease, as determined by the City in its sole and absolute discretion, and (ii) a sublease approval fee acceptable to the City in its sole and absolute discretion, determined on the basis of such factors as the City deems relevant in its sole and absolute discretion, which factors may include, without limitation, the City's estimate of the consideration payable to the Company in respect of such sublease.

In the event that the Company requests permission to sublet the Leased Premises in whole or in part, the request shall be submitted to the Airport Director not less than sixty (60) days prior to the proposed effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto, together with the following information and any other information requested by the Airport Director: the identity and contact information of the sublessee, a description of the part of the Leased Premises to be subleased, a statement of the entire consideration to be received by the Company by reason of such sublease (including but not limited to sublease rent and other charges payable by the sublessee), the type of business to be conducted on subleased premises by the sublessee, and reasonable financial history and financial information of the sublessee.

#### Section 20.03 CONSUMMATION OF ASSIGNMENT OR SUBLEASE

The City's consent for the assignment or sublease for which the City's consent is required and for which such consent has been given shall be by written instrument, in a form reasonably satisfactory to the Airport Director and the City Attorney, and shall be executed by the assignee or sublessee who shall agree, in writing, for the benefit of the City, to be bound by and to perform all the terms, covenants, and conditions of this Lease. Four (4) executed copies of such written instrument shall be delivered to the City. Failure either to obtain the City's prior written consent or to comply with the

provisions of this Lease shall serve to prevent any such transfer, assignment, or sublease from becoming effective.

The Company agrees and acknowledges that it shall remain fully and primarily liable for all obligations of lessee under this Lease, notwithstanding any full or partial assignment of this Lease or any sublease of all or any portion of the Leased Premises.

Receipt by the City of Ground Rent or any other payment from an assignee, sublessee, or occupant of the Leased Premises shall not be deemed a waiver of any covenant in this Lease against assignment and subletting or as acceptance of the assignee, sublessee, or occupant as a tenant or a release of the Company from further observance or performance of the covenants contained in this Lease. No provision of this Lease shall be deemed to have been waived by the City, unless such waiver is in writing, signed by the Airport Director.

By applying for consent to an assignment or sublease, the Company agrees to reimburse the City for its out-of-pocket costs for consultants, attorneys, and experts to evaluate the request, to advise the City with respect thereto and to prepare appropriate documents.

END OF ARTICLE

## ARTICLE 21. DAMAGE OR DESTRUCTION OF LEASED PREMISES; TAKING BY EMINENT DOMAIN

### Section 21.01 LEASED PREMISES -- DAMAGE OR DESTRUCTION

If at any time during the continuance of this Lease, any Parcel shall be so destroyed or so injured by fire or other casualty as to be unfit for full occupancy and use by the Company, and such destruction or injury could reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, then the Company shall not be entitled to surrender possession of such Parcel; provided, however, that the Company's obligation to pay rent (other than Ground Rent) shall be equitably reduced to the extent of the diminution in use to the Company resulting from such destruction or injury until full use and occupancy is restored to the Company. In case of any such destruction or injury which occurs prior to the Date of Beneficial Occupancy for such Parcel, the City shall repair the damage with all reasonable speed and shall complete the construction of the Facilities on such Parcel in accordance with the Development Agreement. In case of any such destruction or injury which occurs after completion of such Facilities, the Company shall repair the damage with all reasonable speed at least to the extent of the value and as nearly as possible to the character and quality of the building and improvements existing immediately prior to such occurrence.

If any Parcel shall be so destroyed or injured by fire or other casualty that such destruction or injury could not reasonably be repaired within one hundred eighty (180) days from the date of such destruction or injury, either Party shall have the option, upon written notice given to the other Party within thirty (30) days from the date of such destruction or injury, to terminate this Lease with respect to such Parcel, and upon giving of such notice this Lease shall be terminated with respect to such Parcel as of the date of such destruction or injury. In the event neither Party elects to terminate this Lease in accordance with the foregoing options, the Company shall repair the damage and restore or rebuild the building and improvements as promptly as reasonably possible.

Notwithstanding the foregoing provisions of this Article, in the event of damage or destruction, as aforesaid, such that fifty percent (50%) or more of the total floor area of the Facilities on such Parcel is rendered unfit for occupancy and use by the Company during the last three (3) years of the Lease Term for such Parcel, then either Party shall have the option, upon written notice given to the other Party within thirty (30) days from the date of such destruction or injury, to terminate this Lease with respect to such Parcel, and upon the giving of such notice this Lease shall be terminated with respect to such Parcel as of the date of such destruction or injury.

**Section 21.02 TAKING BY EMINENT DOMAIN**

In the event that the Leased Premises or any portion thereof shall be taken for public or quasi-public use or condemned under eminent domain, the Company shall not be entitled to claim or have paid to the Company any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest or estate of the Company, and the Company hereby relinquishes and assigns to Lessor any rights to such damages; provided, however, that nothing herein contained shall be construed to prevent the Company from asserting against the condemnor any separate claim for damages to the Company occurring by reason of said condemnation, including without limitation loss or damage to leasehold improvements, personal property, business, fixtures, goodwill, cost of removing fixtures or equipment or loss of future profits.

In the event of any such taking or condemnation referred to in the preceding paragraph, then if and when there is an actual taking, in whole or in part, of physical possession of any Parcel which shall render such Parcel unfit for the use and occupancy by the Company substantially as used and occupied prior to such taking, the Company may terminate this Lease with respect to such Parcel. Such Parcel shall be deemed to be unfit for use by the Company if the area of the portion thereof remaining after such taking is less than sufficient to accommodate the operations carried on by the Company just prior to such taking. If the Company elects to terminate this Lease with respect to such Parcel as provided above, it shall give written notice to the City within thirty (30) days after the later of (a) the entry of the final order of court authorizing the taking or appropriation or the date of settlement, as the case may be, or (b) the taking of physical possession by the condemnor. In the event there is a partial taking of any Parcel, but this Lease is not terminated as herein provided, then this Lease shall continue in full force and effect with respect to such Parcel without abatement or reduction in rent.

END OF ARTICLE

## ARTICLE 22. FEDERAL, STATE, AND LOCAL REGULATIONS

### Section 22.01 RULES AND REGULATIONS

Except as otherwise provided, the Airport Director is charged with administering the provisions of this Lease, and will be authorized from time to time to promulgate and enforce such reasonable Rules and Regulations and policies consistent with the purposes, intent, and express terms of this Lease as the Airport Director deems necessary to implement such purposes, intent, and express terms. All such Rules and Regulations and policies so promulgated shall not be inconsistent with this Lease or any legally authorized rule or regulation of the FAA, or any other federal or State of Florida agency, which is binding in law on the Company, as the same now are or may from time to time be amended or supplemented, nor inconsistent with the reasonable exercise by the Company of any right or privilege granted under this Lease.

It shall be a violation of this section of the Lease for the Company, or any of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers, to violate or to cause another person to violate any rule, regulation or policies promulgated by the Airport Director regarding operation of the Airport.

### Section 22.02 COMPLIANCE WITH LAW

The Company shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Lease, comply with all applicable regulations, ordinances, and laws of the City, the State of Florida and the federal government, and of any governmental agencies that have jurisdiction over the Airport. Without limiting the generality of the foregoing, the Company shall comply with the United States of America, United States Department of Homeland Security, United States Citizenship and Immigration Services E-Verify in order to implement the legal requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended.

### Section 22.03 COMPLIANCE WITH STATUTES, ORDINANCES, AND REGULATIONS

At all times during the Lease Term, the Company shall, in connection with its activities and operations at the Airport:

Comply with and conform to all applicable current and future statutes and ordinances, and regulations promulgated thereunder, of all federal and State of Florida agencies of competent jurisdiction that apply to or affect, either directly or indirectly, the Company or the Company's operations and activities under this Lease. The Company shall comply with all applicable provisions of the Americans with Disabilities

Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated thereunder that may be applicable as a result of activities conducted by the Company.

Subject to the prior written approval of the Airport Director, make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations.

Regarding the City, be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of the Company hereunder.

#### Section 22.04 COMPLIANCE WITH ENVIRONMENTAL LAWS

At all times during the Lease Term, the Company shall not cause, permit or allow any Hazardous Substances to be placed, stored, dumped, dispensed, released, discharged deposited, used, transported or located on any portion of the Premises; provided, however, that quantities of such Hazardous Substances may be used or stored by Company on the Leased Premises in the ordinary course of business on the condition that such quantities and the use thereof are:

- (a) Identified in the Hazardous Substances listing described in Section 15.01,
- (b) Permitted by or are exempt from applicable governmental regulations, and
- (c) Are transported, stored and utilized in accordance with applicable governmental regulations and the best practices of the Company's industry.

To the extent caused by or resulting from the acts of the Company, its agents, servants, employees, or contractors, Company agrees that it shall, to the extent necessary to bring the Leased Premises into compliance with any and all applicable Environmental Laws regarding Hazardous Substances and clean-up thereof, investigate and promptly (but in any event within the time period permitted by applicable Environmental Laws) clean up Hazardous Substances found in, on, under, around, or within any portion of the Leased Premises and, with respect to such matters as described herein for which Company is responsible, to remediate the Leased Premises, and to pay for all reasonable clean-up and remediation costs at no cost to the City. All clean-up and remediation shall be performed to meet pre-existing conditions, and in no instance shall clean-up or remediation or related agreements with state or federal regulators include restrictions placed on the use of the Leased Premises or any part thereof.



Company shall perform Environmental Reporting required under this Section as described in Section 15.03.

**Section 22.05 NONDISCRIMINATION**

As a condition of the use and occupancy of the Airport and its facilities, the Company shall be subject to the following:

(a) In the event that facilities are constructed, maintained, or otherwise operated in or on the space assigned to the Company for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Company shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, CFR, U.S. DOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended from time to time.

(b) No person on the grounds of race, color, national origin, sex, or physical handicap, religion, or ancestry shall be excluded by the Company from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities assigned to the Company.

(c) In the construction of any improvements on, over, or under the space assigned to the Company, and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, or physical handicap shall be excluded by the Company from participating in, denied the benefits of, or otherwise be subject to discrimination.

(d) The Company shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, CFR, U.S. DOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended.

(e) The Company shall insert the substance of the provisions of this Section 22.05 in any lease, agreement, or contract by which the Company grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public on the Company's Leased Premises.

**Section 22.06 BREACH OF NONDISCRIMINATION**

In the event of a breach of any of the nondiscrimination covenants set forth above, the City will have the right to terminate this Lease and the Company's right to use Airport services and facilities and to re-enter and repossess the space and the Facilities thereon that had been assigned to the Company, and hold the same as if such assignment had never been made. This provision regarding termination of the Company's rights to use Airport services and facilities shall not become effective until the procedures of Title 49, CFR, Part 21 are followed and completed, including the expiration of appeal rights, by either the Company or the City.

**Section 22.07 FAIR AND EQUAL FURNISHING OF SERVICES**

As a condition of the use of Airport services and facilities, the Company shall furnish its accommodations or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service. In the event of noncompliance with this section, the City may terminate this Lease and the Company's right to use Airport services and facilities.

**Section 22.08 AFFIRMATIVE ACTION PROGRAM**

As a condition of the use of Airport services and facilities, the Company shall implement an affirmative action program as required by FAA regulations, Title 14, CFR, Part 152, Subpart E, "Nondiscrimination in Airport Aid Program," or as otherwise approved by the FAA, to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, or physical handicap, be excluded from participating in any employment activities covered in such Subpart E. The Company shall not exclude any person on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The Company shall require that its covered suborganizations provide assurances to the Company that they similarly will implement affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, CFR, Part 152, Subpart E to the same effect.

**Section 22.09 MINORITY BUSINESS ENTERPRISE**

As a condition of its use of Airport services and facilities, the Company shall comply with the requirements of Title 49, CFR, Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs" as this Part 23 may be amended from time to time.

**Section 22.10 RIGHTS OF THE FEDERAL GOVERNMENT**

Any use of Airport services and facilities by the Company shall be subject to whatever right the U.S. government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**Section 22.11 SUBORDINATION OF LEASE**

This Lease and the use of Airport services and facilities by the Company, pursuant to this Lease, are subordinated to the City's existing and future obligations or agreements with or to the federal government, provided that the City agrees to attempt in good faith to minimize, to the extent reasonable, the adverse consequences to the Company under said future obligations and agreements.

**Section 22.12 LOCAL BUSINESS LICENSES AND PERMITS**

The Company shall obtain in a timely manner and thereafter maintain during the Lease Term all business licenses, permits and other approvals required by the City or Escambia County, Florida, in order to engage in the Aircraft MRO business on the Leased Premises.

**Section 22.13 NONEXCLUSIVE RIGHTS**

It is understood and agreed that nothing herein contained shall be construed to grant the Company any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, the Company shall have the right to exclusive possession of the Exclusive Use Space leased to the Company under the provisions of this Lease.

END OF ARTICLE

## ARTICLE 23. TAXES

### Section 23.01 PAYMENT OF TAXES

The Company shall pay all taxes that may be levied upon, assessed, or charged the Company or its property located on the Airport by the State of Florida or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law.

### Section 23.02 REAL PROPERTY TAXES

The Company shall be responsible for all real property taxes applicable each Parcel during the Lease Term for such Parcel. If any such taxes paid by the Company shall cover any period of time prior to or after the expiration of the Lease Term with respect to such Parcel, the Company's share of such taxes shall be equitably prorated to cover only the period of time within the tax year during which this Lease shall be in effect with respect to such Parcel, and the City shall reimburse the Company to the extent required. If the Company shall fail to pay any such taxes, the City shall have the right, but not the obligation, to pay the same, in which case the Company shall repay such amount to the City with the Company's next Ground Rent installment, together with interest at the highest rate allowed by law.

### Section 23.03 DEFINITION

As used herein the term "real property tax" shall mean all ad valorem and non-ad valorem taxes and assessments (including interest and penalties thereon) which are imposed against any legal or equitable interest of the City in the Leased Premises or any portion thereof by the City, Escambia County or the State of Florida or by any school, agricultural, lighting, fire, mosquito control, water, drainage or other improvement, benefits or tax district thereof, and which are collected by the Escambia County, Florida, Tax Collector, together with any tax imposed in substitution, partially or totally, of any tax previously included within the definition of "real property tax" and any additional tax the nature of which was previously included within the definition of "real property tax".

### Section 23.04 CONTEST

The Company may contest the legal validity or amount of any taxes, assessment, or charges for which the Company is responsible under this Lease, and may institute such proceedings as the Company considers necessary. If the Company protests any such tax, assessment or charge, the Company may withhold or defer payment or pay under protest but shall indemnify and hold the City and the Leased Premises harmless from and against any claim or lien against the City or the Leased Premises arising out of the Company's failure to pay the contested taxes, assessments or charges.

**Section 23.05 PERSONAL PROPERTY TAXES**

The Company shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of the Company contained in the Leased Premises. When possible, the Company shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the Land and Leased Premises. If any of the Company's said personal property shall be assessed with the Land or Leased Premises, the Company shall pay the taxes attributable to the Company within ten (10) days prior to the delinquency date for payment of such taxes.

**Section 23.06 SALES TAX**

The Company shall pay or reimburse to City all sales and use tax imposed by Florida Statutes Section 212.031 and any future amendments thereto, or other applicable Florida law in effect from time to time, on the Ground Rent due under this Lease and on any other payments required by this Lease to be made by the Company to or for the benefit of the City which is taxable as rent under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Ground Rent or other payment with respect to which such tax is required to be paid.

END OF ARTICLE

## ARTICLE 24. GENERAL PROVISIONS

### Section 24.01 ACKNOWLEDGMENT

The Parties hereto acknowledge that they have thoroughly read this Lease, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of their rights and obligations hereunder. The Parties further acknowledge that this Lease is the result of extensive negotiations between the Parties and shall not be interpreted against the City by reason of the preparation of this Lease by the City.

### Section 24.02 AUTHORITY OF THE AIRPORT DIRECTOR

The Airport Director or his designee may exercise all rights and obligations of the City under this Lease, unless specifically provided otherwise or required by law.

### Section 24.03 CAPACITY TO EXECUTE

The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting hereunder.

### Section 24.04 COMPLIANCE WITH TITLE 14, CFR PART 77.

The Company agrees to comply with the notification and review requirements covered in Title 14, CFR, Part 77, "Objects Affecting Navigable Airspace," in the event that future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any existing or future building or structure situated on the Leased Premises. Further, the Company shall conduct its operations within the Leased Premises in compliance with Title 14, CFR, Part 77.

### Section 24.05 DELIVERY OF NOTICES

Any notices required in this Lease shall be in writing and served personally or sent by registered or certified mail, postage prepaid, or by courier service, such as FedEx or UPS. Any notices mailed pursuant to this section shall be presumed to have been received by the addressee five (5) business days after deposit of said notice in the mail, unless sent by courier service.

Notices to the City shall be addressed to:

Airport Director  
City of Pensacola  
Pensacola International Airport  
2430 Airport Boulevard, Suite 225  
Pensacola, Florida 32504

and

City Administrator  
City of Pensacola  
222 W. Main Street  
Pensacola, Florida 32502

Notices to the Company shall be addressed to:

Mr. Bill Hafner  
President, VT Mobile Aerospace Engineering, Inc.  
2100 Aerospace Drive  
Brookley Aeroplex  
Mobile, AL 36615  
Telephone: 251-438-8888  
Telecopier: 251-438-8892

**Section 24.06 EMPLOYEES OF THE COMPANY**

The Company shall require all of its employees, subcontractors, and independent contractors hired by the Company and working in view of the public to wear clean and neat attire and to display appropriate identification. Company employees shall obtain identification badges from the City. The Company shall be responsible for paying the cost of TSA-required employee background checks and badging.

**Section 24.07 ENTIRE LEASE**

This Lease constitutes the entire agreement between the Parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by the City and the Company. The Company agrees that no representations or grants of rights or privileges shall be binding upon the City unless expressed in writing in this Lease.

**Section 24.08 FAVORED NATIONS**

City agrees not to enter into any lease with any other Aircraft MRO business conducting similar operations at the Airport after the date of this Lease that contain more favorable rents, fees or charges than those provided in this Lease.

**Section 24.09 FORCE MAJEURE**

Neither the City nor the Company shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control (collectively, "Force Majeure"); provided, however, that Force Majeure shall not excuse the Company from making, as and when due, any monetary payment required under this Lease or by the Rules and Regulations, including but not limited to Ground Rent, Additional Rent, Airport rentals, fees, and charges, Taxes under Article 25 and insurance premiums.

**Section 24.10 GENDER**

Words of either gender used in this Lease shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**Section 24.11 GENERAL INTERPRETATION**

Insofar as this Lease grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Airport by the Company, such use or the doing of such act or thing by the Company is to be in connection with the operation of its Aircraft MRO business. Each of the Parties, however, has entered into this Lease solely for its own benefit; and (without limiting the right of either Party to maintain suits, actions, or other proceedings because of breaches of this Lease) this Lease does not grant to any third person (excepting a successor party to the City or the Company) a right to claim damages or bring any suit, action, or other proceeding against either the City or the Company because of any breach hereof, except as otherwise provided in Section 7.02 above.

**Section 24.12 GOVERNING LAW**

The laws of the State of Florida shall govern this Lease and all disputes arising hereunder, with venue in Escambia County, Florida.



**Section 24.13 HEADINGS**

The headings of the articles and sections of this Lease are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Lease and shall not be construed to affect in any manner the terms and provisions of this Lease or its interpretation.

**Section 24.14 INCORPORATION OF EXHIBITS**

All exhibits referred to in this Lease are intended to be and hereby are specifically incorporated and made a part of this Lease.

**Section 24.15 INCORPORATION OF REQUIRED PROVISIONS**

The Parties hereto incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

**Section 24.16 INVALID PROVISIONS**

In the event that any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either the City or the Company in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Lease.

**Section 24.17 LAWS AND ORDINANCES**

The Company agrees to comply promptly with all laws, ordinances, orders, and regulations affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use, and business operations. The Company shall comply with all federal and State of Florida regulations concerning its operation on the Airport and shall indemnify and hold harmless the City, its officers, and employees from any charges, fines, or penalties that may be assessed or levied by any department or agency of the United States or the State of Florida, by reason of the Company's failure to comply with the terms of this section or with any other terms set forth in this Lease.

**Section 24.18 MUNICIPAL SERVICES**

The City, acting in its general governmental capacity, will provide law enforcement, fire protection, and emergency medical services to the Facilities and the Company's employees equal to that of other businesses similarly situated.

**Section 24.19 NONLIABILITY OF INDIVIDUALS**

No director, officer, agent, elected official, or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Lease or because of any breach hereof or because of its or their execution or attempted execution.

**Section 24.20 NONINTERFERENCE WITH AIRPORT OPERATIONS**

The Company, by executing this Lease, expressly agrees for itself, its successors, and assigns that it will not make use of its Leased Premises in any manner that might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event that the aforesaid covenant is breached, on reasonable notice to the Company and opportunity to cure, the City reserves the right to enter the Company's Leased Premises and cause the abatement of such interference at the expense of the Company.

**Section 24.21 NOTICE OR CONSENT**

Any notice or consent required or permitted by this Lease to be given by the City may be given by the Mayor of the City, or the Mayor's designee, and the Mayor or the Mayor's designee shall be entitled to exercise any discretion permitted by this Lease to be exercised by the City. Further, the Mayor or the Mayor's designee may amend, modify or waive any term or provision of this Lease on behalf of the City provided that the amendment, modification or waiver does not materially and adversely affect the rights and obligations of the City under this Lease or is required in order to correct a scrivener's error. Any action taken by the Mayor or the Mayor's designee under the terms of this Section shall bind the City, and the Company shall be entitled to rely thereon.

**Section 24.22 NONWAIVER**

The acceptance of rentals, fees, and charges by the City for any period or periods after a default of any of the terms, covenants, and conditions contained herein to be performed, kept, and observed by the Company shall not be deemed a waiver of any right on the part of the City to terminate this Lease.

**Section 24.23 OPERATION OF THE AIRPORT**

The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules, and regulations of the Federal Aviation Administration or its successor. The City shall exercise its rights hereunder and otherwise operate the Airport with due regard for the operational requirements and long-term interests of the Company, aircraft operators, and the interests of the traveling public, in a manner that is consistent with applicable laws, Federal Aviation Regulations, federal grant assurances, and the City's Bond Resolution.

**Section 24.24 OTHER LAND AND BUILDINGS EXCLUDED**

It is agreed and understood that this Lease and any exhibit hereto is not intended to provide for the lease of any building, land, space, or area or to set any rental rates for any building, land, space, or area other than that specifically described herein.

**Section 24.25 PUBLIC RECORDS LAWS**

The Parties shall each comply with Florida Public Records laws. The Parties hereby contractually agree that each Party shall allow public access to all documents, papers, letters, or other public records as defined in Chapter 119, Florida Statutes, made or received by either Party in conjunction with this Lease, or related thereto, unless a statutory exemption from disclosure exists. Notwithstanding any provision to the contrary, it is expressly agreed that Company's failure to comply with this provision, within seven (7) days of notice from the City, shall constitute an immediate and material breach of this Lease for which the City may, in the City's sole discretion, unilaterally terminate this Lease without prejudice to any right or remedy.

**Section 24.26 RESERVATIONS RE: AIRSPACE AND NOISE**

There is hereby reserved to the City, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises.

The City reserves the right to establish permissible noise levels for the Airport environs area and hours of material noise generating activities.

**Section 24.27 RIGHT TO AUDIT BOOKS AND RECORDS**

The Company agrees to keep true and accurate books and records on its operations at the Airport, and the Airport Director and any other authorized City representative, upon reasonable advance written notice to the Company, shall have the right to inspect and audit such books and records to ensure compliance with the prevailing municipal bond disclosure requirements and to determine that the City has received from the Company and its customers all moneys due the City under the terms

hereof. Likewise, the Company shall have the right to inspect Airport books and records relating to the provisions hereof.

**Section 24.28 RIGHTS RESERVED TO THE CITY**

Nothing contained herein shall unlawfully impair the right of the City to exercise its governmental or legislative functions. This Lease is made subject to the Constitution and laws of the State of Florida and to the provisions of the Airport Improvement Program grants applicable to the Airport and its operation, and the provisions of such Lease, insofar as they are applicable to the terms and provisions of this Lease, shall be considered a part hereof to the same extent as though copied herein at length to the extent, but only to the extent, that the provisions of any such agreements are required generally by the United States at other civil airports receiving federal funds. To the best of the City's knowledge, nothing contained in such laws or agreements conflicts with the express provisions of this Lease.

**Section 24.29 SIGNS**

The installation and operation of identifying signs, posters, and graphics on the Company's Leased Premises are subject to the prior written approval of the Airport Director. Such signs shall be substantially uniform in size, type, and location with those of other tenants, and consistent with the City's graphics standards and the Airport Rules and Regulations, and in compliance with all applicable laws and ordinances.

**Section 24.30 SUCCESSORS AND ASSIGNS**

The provisions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto; provided, however, that this provision shall in no way whatsoever alter the restriction herein regarding assignment and sublease by the Company.

**Section 24.31 NO AUTOMATIC RENEWALS**

This Lease contains no automatic renewals of the Term.

**Section 24.32 TRIAL BY JURY**

The parties to this Lease desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors, heirs and permitted assigns, that they shall and hereby do waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Lease and/or the relationship which arises hereunder. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by all parties, and is in the best interest of all parties.

**Section 24.33 NO PARTNERSHIP**

Nothing in this agreement constitutes a partnership between the Parties. It is the express intention of the Parties to deny any such relationship.

**Section 24.34 THIRD PARTIES**

Nothing in this Lease, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Lease.

**Section 24.35 TIME IS OF THE ESSENCE**

Time is of the essence in this Lease.

**Section 24.36 MEMORANDUM OF LEASE.**

Concurrently with the execution of this Lease, the Parties have executed a short-form memorandum of this Lease in form suitable for recording and in substance sufficient to provide constructive notice to third parties of the material terms and provisions of this Lease. The City shall cause such memorandum to be recorded in the public records of Escambia County, Florida.

**Section 24.37 REPRESENTATIONS AND WARRANTIES OF CITY.**

City hereby represents and warrants to the Company that as of the Effective Date:

- a. The City is the fee simple owner and record title holder of the Leased Premises;
- b. The City has the full right and authority to make and execute this Lease;
- c. To the knowledge of the City, there are no pending or threatened condemnation proceedings or other governmental, municipal, administrative or judicial proceedings affecting the Leased Premises; and
- d. This Lease and the consummation of the transaction contemplated in this Lease are the valid and binding obligations of the City and do not constitute a default (or an event which, with the giving of notice or the passage of time, or both, would constitute a default) under, any contract to which the City is a party or by which it is bound.

**Section 24.38 CITY BREACH.**

(a) The occurrence of the following event (such event being referred to in this Lease as a "City Event of Default") shall constitute a material default and breach of this Lease by the City: The City fails to observe or perform any covenant, condition, or provision of this Lease to be observed or performed by the City and such failure shall continue for a period of thirty (30) days after written notice thereof by the Company to the City; provided, however, if the nature of such failure is such that more than thirty (30) days are reasonably required for its remedy or cure, than such 30-day period shall be extended for up to ninety (90) additional days provided that the City begins such remedy or cure within such 30-day period and thereafter diligently and continuously prosecutes such remedy or cure to completion within such additional 90-day period.

(b) Upon the occurrence of a City Event of Default and the expiration of any applicable cure period, and for so long as such City Event of Default remains uncured, the Company may at its option cure such Event of Default, provided that the Company shall give the City fifteen (15) days prior written notice of its intent to cure such City Event of Default, which notice shall specify the manner in which the Company intends to cure such City Event of Default and the estimated cost of such cure. If the City fails to reimburse the Company, within ten (10) days after written demand, for the reasonable costs and expenses incurred by the Company to cure such City Event of Default, the Company shall be entitled to recover such reasonable costs and expenses from the City in an action at law for damages, but in no event shall the Ground Rent or any other amounts payable by the Company hereunder be abated, nor shall the Company be entitled to deduct or set off any such costs or expenses from or against any payment of Ground Rent or other payments then due or thereafter coming due from the Company pursuant to this Lease.

(c) If, but only if, a City Event of Default constitutes a constructive eviction of the Company from a Parcel under Florida law, the Company shall be entitled to terminate this Lease with respect to such Parcel in accordance with this paragraph. If the Company intends to claim a constructive eviction by reason of a City Event of Default, then after the occurrence of such Event of Default and the expiration of any applicable cure periods, Company shall give the City not less than ninety (90) days prior written notice of the Company's intent to terminate this Lease with respect to a Parcel pursuant to this paragraph. If the City cures the Event of Default during such 90-day period, the Company shall not be entitled to terminate this Lease with respect to such Parcel. Further, if the Company intends to claim a constructive eviction by reason of a City Event of Default, the Company shall abandon such Parcel within a reasonable time after the occurrence of the event giving rise to the City Event of Default, but in any event within thirty (30) days after the expiration of the cure period provided in paragraph (a) above.

(d) The rights and remedies provided to the Company in this Section shall be the sole and exclusive rights and remedies available to the Company upon the occurrence of a City Event of Default.

(e) Upon the occurrence of a City Event of Default, the Company shall use reasonable efforts to mitigate its damages.

END OF ARTICLE

IN WITNESS WHEREOF, the undersigned have duly executed this Lease as of the dates set forth below.

**CITY:**

**COMPANY:**

**CITY OF PENSACOLA**

**VT MOBILE AEROSPACE  
ENGINEERING, INC.,  
an Alabama corporation**

By: \_\_\_\_\_  
Grover C. Robinson, IV, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_ Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Ericka L. Burnett, City Clerk

Approved As To Content:

By: \_\_\_\_\_ a \_\_\_\_\_  
Daniel E. Flynn,  
Interim Airport Director

Approved As To Form

By: \_\_\_\_\_  
Susan A. Woolf,  
City Attorney



Exhibit A

Land

Exhibit A-1  
Hangar 2 Option Site  
Pensacola International Airport



Preliminary Draft Plan  
For Review and Revision  
Not for Publication

Parcel 1

Exhibit A-2  
Project Titan Westside Site  
Pensacola International Airport



Preliminary Draft Plan  
For Review and Revision  
Not for Publication

Parcels 2-5

A-3

Exhibit   
Element 2 Project Titan – MRO Facilities to be Constructed  
Pensacola International Airport



Preliminary Discussion Draft Plan  
Not for Publication

Parcel 1



A-4

Exhibit  
Element 2 Project Titan – MRO Facilities to be Constructed  
Pensacola International Airport



Preliminary Discussion Draft Plan  
Not for Publication

Additional  
Land

Parcel 3

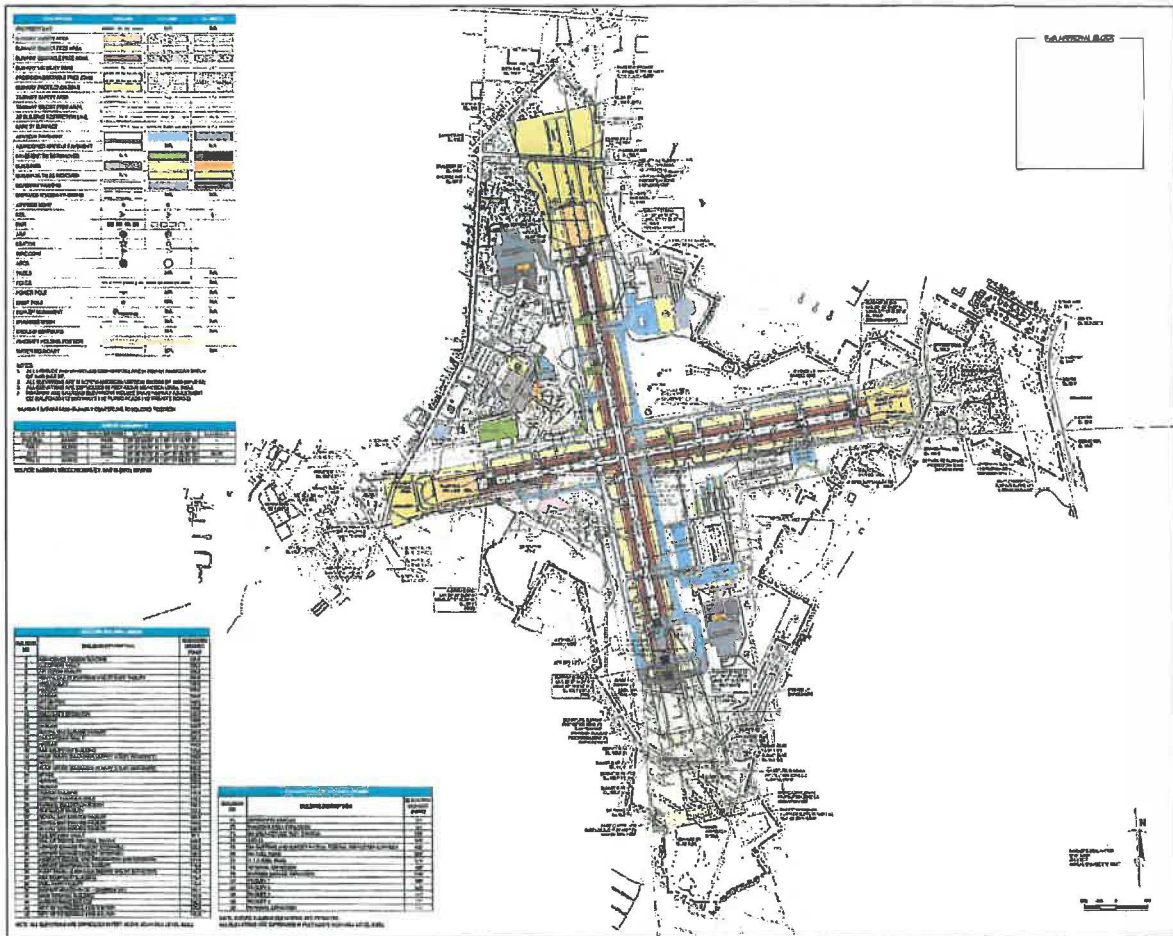
Parcel 2

Parcel 4

Parcel 5

**Exhibit B**

**FAA APPROVED AIRPORT LAYOUT PLAN**



6. AIRPORT BASE

**LEGEND**

Symbol/Color	Description
[Yellow shaded area]	Terminal Building
[Blue shaded area]	Check-in Area
[Red shaded area]	Security Screening
[Green shaded area]	Baggage Claim
[Grey shaded area]	Concessions/Restrooms
[Other symbols]	[Other structural and site markers]

**NOTES**

1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
2. REFER TO THE ARCHITECTURAL SPECIFICATIONS FOR MATERIALS AND FINISHES.
3. CONSULT THE ENGINEERING DRAWINGS FOR STRUCTURAL REQUIREMENTS.
4. VERIFY ALL FIELD CONDITIONS PRIOR TO CONSTRUCTION.
5. MAINTAIN CLEAR ACCESS TO ALL ADJACENT PROPERTIES.

**REVISIONS**

No.	Description	Date
1	ISSUE FOR PERMITTING	01/15/2009
2	REVISIONS FOR OWNER COMMENTS	02/01/2009
3	REVISED PER ARCHITECTURAL SPECIFICATIONS	03/10/2009
4	REVISED PER ENGINEERING DRAWINGS	04/01/2009
5	REVISED PER FIELD CONDITIONS	05/15/2009
6	REVISED PER CITY REQUIREMENTS	06/01/2009
7	REVISED PER AIRPORT AUTHORITY REQUIREMENTS	07/01/2009
8	REVISED PER ENVIRONMENTAL REQUIREMENTS	08/01/2009
9	REVISED PER HISTORIC PRESERVATION REQUIREMENTS	09/01/2009
10	REVISED PER FINAL DESIGN REVIEW	10/01/2009
11	REVISED PER FINAL APPROVAL	11/01/2009
12	REVISED PER FINAL CONTRACT DOCUMENTS	12/01/2009

**RS&H**  
 RISK, INC.  
 14750 International Drive, Suite 600  
 Austin, TX 78748-3301  
 (512) 451-0447 FAX (512) 451-0448  
 www.rsandh.com  
 R. Lee, P.E., Director of Operations  
 RLS@rsandh.com

**PERIODIC INTERNATIONAL AIRPORT**

**PERIODIC INTERNATIONAL AIRPORT**  
 PERIODIC, TX

**AIRPORT LAYOUT PLAN**

**REVISED BY**

NO.	DESCRIPTION	DATE

**DESIGNED BY: PERIODIC/CDD**  
**REVISED BY: PER**  
**DRAWN BY: CDD**  
**CHECKED BY: PER**

**WASH STATE/ARCHITECT**  
 209-400-0001  
 7000 N. W. 40th St.  
 Seattle WA 98148

**AIRPORT LAYOUT PLAN**  
**DRAW NO**  
**(FUTURE/DATE)**

**SHEET NUMBER**

**4 OF 21**

**DRAFT**

Exhibit C

FAA AIRSPACE DETERMINATION LETTER

[TO BE ATTACHED WHEN RECEIVED FROM FAA BY CITY]



*City of Pensacola, Florida*

*VT Mobile Aerospace Engineering, Inc.*

Exhibit D

MRO PERFORMANCE AGREEMENT

**DRAFT 3/15/19**

**PERFORMANCE AGREEMENT**

This Performance Agreement (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2019 by and between Triumph Gulf Coast, Inc., a Florida not-for-profit corporation (“**Triumph**”) and VT Mobile Aerospace Engineering, Inc., an Alabama corporation (“**VT**”).

**RECITALS:**

WHEREAS, Triumph and the City of Pensacola, Florida (the “**City**”) are parties to that certain Grant Award Agreement dated \_\_\_\_\_, 2019 (the “**Grant Agreement**”).

WHEREAS, pursuant to the Grant Agreement, and subject to the terms and conditions therein, Triumph has agreed to make a grant to the City in the maximum amount of \$66,000,000 (the “**Grant**”) to provide partial funding for the planning and construction of an aircraft Maintenance, Repair, Overhaul Aviation Campus (MRO Campus) consisting of following projects (collectively, “**Project Titan**”) at Pensacola International Airport (the “**Airport**”):

- Hangar 2 – 173,000 square feet
- Hangar 3 – 191,000 square feet
- Hangar 4 – 191,000 square feet
- Warehouses/shops/support facilities – 100,000 square feet
- Administrative Offices – 120,000 square feet
- Aircraft taxiways accessing the hangar aprons
- Aircraft aprons at the hangars
- Automobile ingress and egress roadways and auto parking

WHEREAS, VT, as lessee, and the City, as lessor, are entering into a separate lease agreement pursuant to which VT will occupy all or a portion of Project Titan (the “**MRO Lease**”).

WHEREAS, VT and the City are entering into a separate Development Agreement which governs the construction and development of Project Titan (the “**MRO Development Agreement**”).

WHEREAS, Section 8.4 of the Grant Agreement contains certain job creation performance metrics that must be satisfied by VT.

WHEREAS, the Grant Agreement provides that, as a condition to Triumph making the Grant to the City, VT shall enter into this Agreement, pursuant to which, among other things, VT agrees to re-pay to Triumph certain "clawback" amounts in the event the job creation performance metrics are not timely satisfied.

WHEREAS, VT will derive a substantial benefit from the making of the Grant to the City and the completion of Project Titan and has received and thus is receiving good and valuable consideration for entering into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Accuracy of Recitals. Triumph and VT acknowledge and agree that the foregoing Recitals are true and accurate.

2. Performance Metrics. VT hereby covenants and agrees as follows:

(a) VT hereby covenants and agrees that:

(1) (A) **Project Jobs:** Prior to the end of the Job Maintenance Review Period for Project Jobs (as defined below), VT shall (i) create at least one thousand three hundred twenty five (1,325) net new, private sector, full-time equivalent jobs (defined as 2,080 man-hours per year) for Project Titan in Escambia County (but excluding Project Stallion jobs until the number of Project Stallion jobs reaches 400); and (ii) maintain all (or more) of such 1,325 Project Jobs during any seven (7) years (which seven years need not be consecutive) during the period beginning no later than five (5) years after the Date of Beneficial Occupancy of Hangar 4 of Project Titan and ending ten (10) years thereafter. The new jobs required herein are referred to as "Project Jobs." As used herein, "Project Jobs" shall have the meaning set forth in Section 288.106(2)(i), Florida Statutes. In order for a Project Job under this paragraph (A) to have been created and maintained for seven (7) out of ten (10) years in accordance with the terms of this Agreement, it must have been created no later than five (5) years after the Date of Beneficial Occupancy of Hangar 4 of Project Titan, and maintained for at least seven (7) out of ten (10) years thereafter. Such ten (10) year period is herein referred to as the "**Job Maintenance Review Period for Project Jobs.**"

(B) Once 1,325 Project Jobs have been created in Escambia County and maintained in accordance with paragraph (a)(1) (A) above, (i) the jobs creation

requirements of this Agreement shall be considered satisfied; (ii) the Grant Performance Completion Date (hereinafter defined) shall be deemed to have occurred; and (iii) this Agreement shall be deemed terminated without any further action being required by the parties. As a start-up project, Project Titan will not have a “**Base Period**” for the calculation of Project Jobs. No Project Jobs may be transferred by VT from other parts of the State of Florida in fulfillment the jobs creation requirements described herein.

(2) The average annual wage of Project Jobs, to be created and maintained hereunder as specified in Paragraph (a) above will be at least \$44,461, excluding benefits, for each year during the term of this Agreement. Unless otherwise indicated, compliance with this paragraph (2) shall be required in establishing compliance with the requirements for “maintaining” or “maintenance” of Project Jobs hereunder.

(3) The “Grant Performance Completion Date” shall be the later of (a) the date on which the entirety of the Grant has been disbursed as described herein; or (b) the date on which VT shall have established as required herein that it has satisfied each requirement of this Paragraph (a).

(b) VT acknowledges that the Grant Agreement may be terminated by Triumph upon failure of VT to comply with any material term or condition of the MRO Lease and/or the MRO Development Agreement to be performed or complied with by VT that has not been cured within thirty (30) days of VT’s receipt of written notice of default thereof, or a decision by VT not to proceed with Project Titan. Notwithstanding the foregoing, a cure period shall be extended for an appropriate period of time should such default arise beyond the reasonable control of VT, provided that VT is making diligent efforts to cure the default.

(c) VT acknowledges that any termination under Paragraph (b) will result in the City’s loss of eligibility for receipt of the Grant payments previously authorized. In addition, VT will be required to pay to Triumph an amount equal to all amounts of the Grant disbursed as of the date of termination, together with interest thereon at a rate per annum determined as set forth in Paragraph (h) below from the date of termination until the applicable Grant is repaid. VT will be given credit against its payment obligations in the amount of \$49,811.32 [ $\$66,000,000 / 1,325$ ] for each Project Job created and maintained for three years in accordance with the requirements of this Agreement and for any payments that have been previously required.

(d) For any year during the Job Maintenance Review Period for Project Jobs that the average number of Project Jobs falls below 1,060 [80% of 1,325;], then VT shall pay to Triumph an amount equal to one-fifth (1/5) of the Grant, together with interest thereon at a rate per annum determined as set forth in Paragraph (h) below from the date noncompliance is established until the applicable portion of the Grant is repaid.

(e) Intentionally Omitted

(f) If during the Job Maintenance Review Period for Project Jobs VT fails to achieve the creation and maintenance of 1,325 Project Jobs, then VT will submit for approval of Triumph a plan to return to compliance with the jobs creation and maintenance schedule (the "**Compliance Plan**"). Such plan will include dated benchmarks. The benchmarks for the creation and maintenance of Project Jobs set forth in any compliance schedule will be used to determine compliance with the requirements of Paragraph (d) above. In the event VT fails to comply with the benchmarks in the Compliance Plan within one (1) year of its institution, VT shall be required to pay the amounts described in Paragraph (b) above.

(g) If the Grant Performance Completion Date has not occurred by the end of the Job Maintenance Review Period for Project Jobs (or such later date as may be agreed upon in the Compliance Plan described in paragraph (f) above), then VT shall be required to pay the amounts described in Paragraph (c) above

(h) The interest rate per annum shall be determined by the annualized interest rate received by the State on funds in the State's Special Purpose Investment Account in January of the year in which the performance standard was not met by VT. This rate is published online at <http://fltreasury.org>. Additionally, the same interest penalty may be imposed for any period for which the required performance report is overdue, or during which period VT, after being notified in writing of any inadequacies in the performance report and/or the supporting documentation and being provided a 30-day period, or such longer period as contemplated by Paragraph (a) above, to cure any such inadequacies, has failed to correct the specified inadequacies.

(i) The amount of any payment made by VT pursuant to Paragraph (d) above shall be reduced by the amount, if any, of any prior recapture payments made by VT in prior years; provided, however, that (i) in the event the cumulative amount of prior recapture payments exceed the amounts then due pursuant to Paragraph (d) for a given year, Triumph shall not be obligated to refund any such excess prior recapture payments. Furthermore, the amount required to be paid pursuant to this Paragraph shall never exceed the value of the total Grant plus interest as determined in Paragraph (h) above.

(j) Any required undisputed payment, together with interest thereon, is due to Triumph within thirty (30) days of receipt of written notice from Triumph.

(k) Triumph, or its designated agent, may conduct on site visits of Project Titan facilities to verify VT's investment, employment and wage records and VT will provide access to its facility during normal business working hours and to its financial records to accommodate such inspections. Triumph or its designated agent must provide VT notice of at least ten (10) business days before an impending on-site visit.

(l) If during the Job Maintenance Review Period for Project Jobs there occurs one or more Force Majeure Events (as defined below) that materially and adversely affect VT's business and its ability to comply with the Minimum Jobs Level, VT may exercise a one-time election to extend the Job Maintenance Review Period for Project Jobs, by twenty-four (24) months without payment penalty. A "Force Majeure Event" is hereby defined to include each of the following events:

1. A global or United States recession as determined by the National Bureau of Economic Research (NBER);
2. Damages to the facilities from hurricanes and other natural disasters materially and adversely affecting normal operations;
3. Local, State or Federal Government and/or Federal Aviation Administration regulatory actions or policy changes affecting the business;
4. Adverse conditions that prevent air operators from continuing normal air services;
5. Loss of a major key account;
6. Customer actions resulting in early fleet retirement, aircraft storage or part-out; or
7. Tight labor market affecting recruitment of new employees or attracting local candidates for workforce development program.

(m) (A) At any time and from time to time, upon written request by Triumph, VT shall, within ten (10) days of such request, deliver to Triumph such data, reports, payroll records, financial statements and reporting, and other documents, instruments, State of Florida employment reporting forms, and such other information as Triumph requires in order to determine whether VT achieved any or all of the above performance metrics (collectively, "**Back-up Data**"), (B) within thirty (30) days after the end of each calendar quarter VT shall deliver to Triumph a copy of its RT-6 re-employment tax return, and (C) annually within six (6) months after the end of each fiscal year, deliver to Triumph audited financial statements. VT's refusal or failure to timely provide any requested Back-up Data and other information described above shall be deemed a breach of a material obligation of this Agreement.

(n) Triumph shall have the discretion to waive, reduce, extend, or defer any amounts due under the claw back provisions if (i) it determines in its sole and absolute discretion that, based on quantitative evidence, the metrics were not achieved due to negative economic conditions beyond VT's control, including but not limited to VT's inability to hire sufficient qualified workers, (ii) it determines in its sole and absolute discretion that VT made a good faith effort to achieve full performance metrics and its failure to fully achieve the metrics does not substantially frustrate the general purpose of the grant, (iii) it determines in its sole and absolute discretion that, based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected VT's ability to achieve the performance metrics, (iv) it determines in its sole and absolute discretion that regulatory policy changes or VT loss of major customer accounts impede VT's ability to carry on business as usual, or (v) it determines in its sole and absolute discretion that

VT has demonstrated reasonable best efforts to comply with the requirements of the performance metrics.

(o) VT and Triumph acknowledge and agree that any amounts set forth in this Section 2 to be paid by VT are intended as a third-party repayment of Grant funds conditionally disbursed to the City and are due and payable to Triumph as a result of VT's failure to timely satisfy the performance metrics set forth herein. Such amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, VT and Triumph agree that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine and that Triumph would not have a convenient and adequate alternative to the liquidated damages, (iii) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (iv) VT irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive.

3. **Representations and Warranties of VT.** VT hereby makes the following representations and warranties to Triumph:

(a) **Organization; Power and Authority.** VT is a corporation duly organized, validly existing, and in good standing under the laws of the State of Alabama and is duly qualified to do business in and is in good standing in the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.

(b) **Authorization and Binding Obligation.** VT has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of VT. This Agreement has been duly executed and delivered by VT and, assuming the due authorization, execution, and delivery of this Agreement by Triumph, constitutes the legal, valid, and binding obligation of VT, enforceable against VT in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(c) **No Violations.** The execution and delivery by VT of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of VT's articles/certificate of incorporation, certificate of formation, bylaws, or similar corporate document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of VT's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. VT has not been

convicted of a “public entity crime” (as such term is defined in Section 287.133 of the Florida Statutes) nor has VT been placed on the “discriminatory vendor list” (as such term is defined in Section 287.134 of the Florida Statutes). Neither VT nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of VT, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as maintained by the United States Department of the Treasury. Neither VT nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.

(d) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental agency is pending or, to the knowledge of VT, threatened by or against VT or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of the VT, Project Titan, or VT’s ability to perform its obligations under this Agreement. No state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of VT, threatened by or against VT or any of its officers. No permanent injunction, temporary restraining order or similar decree has been issued against VT which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of VT, Project Titan, or VT’s ability to perform its obligations under this Agreement.

#### 4. **Miscellaneous Provisions:**

4.1 **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

4.2 **Non-Assignment.** VT shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Triumph, which consent may be withheld in Triumph's sole and absolute discretion. Triumph shall at all times be entitled to assign or transfer its rights, duties,



or obligations under this Agreement to another person or entity upon giving prior written notice to VT. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*. However, that this section is not intended to apply to or prevent the assignment of this Agreement, in its entirety, to any corporation or other entity with which VT may merge (regardless of whether VT is the surviving entity, so long as the surviving entity assumes and agrees to pay and perform all obligations of VT under this agreement) or to an affiliate or subsidiary. VT shall promptly notify Triumph in writing of any merger by or with VT and any assignment of this Agreement to an affiliate or subsidiary.

**4.3 Construction; Interpretation.** The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term “this Agreement” means this Agreement, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. The use in this Agreement of the term “including” and other words of similar import mean “including, without limitation” and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word “or” is not exclusive and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. Time is of the essence with respect to the performance of all obligations under this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**4.4 Preservation of Remedies; Severability.** No delay or omission to exercise any right, power, or remedy accruing to either party hereto upon breach or default by either party hereto under this Agreement, will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect.

**4.5 Entire Agreement; Amendment; Waiver.** This Agreement embodies the entire agreement of the parties hereto with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the VT and the authorized officer of

Triumph. No waiver by a party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

4.6 **Notices.** All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and shall be sent to the applicable address set forth below, unless another address has been previously specified in writing in accordance with this Section 4.6:

**If to Triumph:**

Triumph Gulf Coast, Inc.  
P.O. Box 12007  
Tallahassee, FL 32317  
Attention: Executive Director

**If to VT:**

VT Mobile Aerospace Engineering, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

4.7 **Attorney's Fees.** In the event litigation arises (at the trial or appellate level) in connection with this Agreement, the prevailing party will be entitled to be reimbursed for all costs incurred in connection with such litigation, including without limitation reasonable attorneys' fees and costs.

4.8 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS

AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**4.9 Governing Law.** The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Escambia. The parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Escambia County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

**4.10 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

**4.11 Aerospace Academy.** As soon as practicable following the execution of the grant agreement with the City, Triumph and VT will develop a Memorandum of Understanding to jointly fund the establishment of an Aerospace Academy to train a qualified workforce for the private sector aerospace and aviation industry in Northwest Florida. The Aerospace Academy will focus on its recruiting effort in three (3) principal areas:

- i) Partnering with local public education institutes to foster an interest in aviation as a career, resulting in enrollment in post-secondary training programs with VT;
- ii) Aligning with Workforce Escarosa to identify and recruit under employed and otherwise disadvantaged (working poor) community members providing a pathway into specialized aviation career training; and
- iii) Recognizing and evaluating local area resident veterans with aviation or similar relevant military training to provide a track to a commercial aviation career.

The Aerospace Academy will commit to provide above training opportunities for up to 50 local resident candidates annually for a period of five (5) years.

4.12 **Future Additional Jobs.** VT will make a good faith effort to locate additional divisions of the VT and or its affiliates or additional jobs to Northwest Florida.

**[signature page follows]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement be executed as of the day and year first above written.

VT:

TRIUMPH:

VT Mobile Aerospace Engineering, Inc., an Alabama corporation

TRIUMPH GULF COAST, INC., a Florida not-for-profit corporation

By: \_\_\_\_\_  
Print Name: Bill Hafner  
Title: President

By: \_\_\_\_\_  
Print Name: c  
Title: Chairman

By: c \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Treasurer

ATTEST:

By: \_\_\_\_\_ c  
Print Name: \_\_\_\_\_  
Title: Secretary