



NYE COUNTY BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM REQUEST FORM

<b>Department:</b> Planning/Code Compliance	<b>Meeting Date:</b>
<b>Category:</b> Timed Agenda Item - 10:00 a.m.	September 4, 2024
<b>Prepared by:</b> Steve Osborne	<b>Phone:</b> (775) 751-4246
<b>Presented by:</b> Brett Waggoner	<b>Phone:</b> (775) 751-4244
<b>Action requested:</b> (Include what, with whom, when, where, why, and terms)  Public Hearing, discussion and deliberation to adopt, amend and adopt, or reject Nye County Bill No. 2024-07: A Bill proposing to approve a Development Agreement between Nye County and Longshot Space Technology Corporation, for the construction, improvement, operation and maintenance of a high tech hypersonic/supersonic aerospace test facility; and providing for the severability, constitutionality, and effective date thereof; and other matters properly relating thereto.	
<b>Complete description of requested action:</b> (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)  Longshot Space Technology Corporation desires to enter into a development agreement with Nye County for a proposed hypersonic/supersonic aerospace test facility.	
Nye County is the owner of the Tonopah Airport Property, which includes the Tonopah Airport, a general aviation airport, and approximately 2,000 surrounding acres of land.	
Longshot desires to lease a portion of the Airport for the purpose of building and testing a hypersonic accelerator.	
<b>Recommendation:</b>	

<b>Financial Impact</b>		
Cost:	Fund Name:	Fund #:
Budgeted: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	FY:	<input type="checkbox"/> One-Time <input type="checkbox"/> Recurring
Comments:		

<b>Review &amp; Approval</b>		
Legal Review Required: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Legal Approval Received: <input checked="" type="checkbox"/>	Date: 7/16/24
Financial Review Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Submitted to Finance: <input type="checkbox"/>	Date:
Administrative Manager Review: <input checked="" type="checkbox"/>	Place on Agenda: <input checked="" type="checkbox"/>	Initials: ST

Item # 9

NYE COUNTY ORDINANCE NO. \_\_\_\_\_

**SUMMARY:** A Bill proposing to approve a Development Agreement between Nye County and Longshot Space Technology Corporation, for the construction, improvement, operation and maintenance of a high tech hypersonic/supersonic aerospace test facility; and providing for the Severability, Constitutionality and Effective Date Thereof; and other matters properly relating thereto.

**TITLE:** A BILL PROPOSING TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN NYE COUNTY AND LONGSHOT SPACE TECHNOLOGY CORPORATION, FOR THE CONSTRUCTION, IMPROVEMENT, OPERATION AND MAINTENANCE OF A HIGH TECH HYPERSONIC/SUPersonic AEROSPACE TEST FACILITY; AND PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY AND EFFECTIVE DATE THEREOF; AND OTHER MATTERS PROPERLY RELATING THERETO.

**WHEREAS**, pursuant to Section 278.0203 of the Nevada Revised Statutes and Chapter 16.32 of the Nye County Code, the Board of County Commissioners (Board) may enter into an agreement concerning the development of land; and

**WHEREAS**, a development agreement is an appropriate mechanism to implement the development of the project; and

**WHEREAS**, the Board finds that the development agreement is consistent with the objectives, policies, general land uses and programs specified in the applicable master/comprehensive plan(s); and

**WHEREAS**, the Board finds that the development agreement will not be detrimental to the public health, safety and general welfare;

**NOW, THEREFORE**, the Board of County Commissioners of the County of Nye, State of Nevada, does hereby adopt Bill 2024-07 approving the Development Agreement between Nye County and Longshot Space Technology Corporation.

**SEVERABILITY.** If any provision of this ordinance or amendments thereto, or the application there to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

**CONSTITUTIONALITY.** If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

**EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 30<sup>th</sup> day of September, 2024.

Proposed on the 6<sup>th</sup> day of August, 2024

Proposed by: Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2024

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: \_\_\_\_\_

Debra Strickland, Chair  
Nye County Board of  
County Commissioners

ATTEST: \_\_\_\_\_

Cori Freidhof  
Clerk and Ex-Officio  
Clerk of the Board

**A DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**NYE COUNTY, STATE OF NEVADA**

**AND**

**LONGSHOT SPACE TECHNOLOGY CORPORATION**

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This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the County of Nye, State of Nevada (hereinafter "County") and Longshot Space Technology Corporation, a Delaware Corporation authorized to do business in the State of Nevada, (hereinafter "Developer"), as the Developer of certain real property located at the Tonopah Airport, as commonly known as "See Exhibit A" and more particularly described as County Assessor's Parcel Numbers 012-471-03 (the "Property").

## **RECITAL OF PREMISES, PURPOSE AND INTENT**

A. Developer is leasing that certain real property described and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property") containing approximately 12 acres of land, which is the subject of this Agreement.

B. The County has authority, pursuant to NRS Chapter 278.0201 to 278.0207 and Nye County Nye County Code, Chapter 16.32, to enter into development agreements with persons having a legal or equitable interest in real property to establish long-range plans for the development of such property.

C. All preliminary processing with regard to this Agreement has been duly completed in conformance with all applicable laws, rules and regulations. The Nye County Board of County Commissioners (hereinafter "BoCC"), having given notice as required by law, held a public hearing on Developer's application seeking approval of the form of this Agreement and the execution hereof by the BoCC. At that hearing, the BoCC found that this Agreement is consistent with the County's plans, policies and regulations, including the 1994 Nye County Comprehensive Plan (the "Master Plan"), and that the execution of this Agreement on behalf of the County is in the public interest and is lawful in all respects.

D. On the \_\_\_\_\_ day of \_\_\_\_\_, 2024 the BoCC adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the \_\_\_\_\_ day of \_\_\_\_\_, 20. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

E. The County desires to enter into this Agreement in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law and this Agreement, to provide for public services, as limited to and further defined

within specific exhibits attached hereafter, to further the goals and values of the County's Master Plan, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, and to otherwise achieve the goals and purposes for which the laws governing development agreements were enacted. The conditions stated in this Agreement will reasonably mitigate the impacts that the development of the Property will have on the citizens of the Town of Tonopah. The County finds and determines that the conditions of this Agreement were not an inducement for any other land use decision relating to the Property.

The County finds and determines, and the Developer agrees, that the conditions established in this Agreement are unique to the Proposed Development (as defined in this Agreement) and were negotiated at arms length between the County and the Developer, and that the conditions of this Agreement have no binding or precedential effect with regard to future development agreements in the County, and cannot be relied upon by the parties to this Agreement, or future applicants for rezoning, subdivision plat, or other land use approvals in other Development Agreements.

This Agreement is consistent with and will implement the goals and objectives of the County Code, Title 16, and the Master Plan.

NOW THEREFORE, for and in consideration of the foregoing recitals and of the mutual covenants and promises set forth herein, the parties do hereby agree as follows:

## **SECTION 1. DEFINITIONS.**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

"Affiliate" means an entity, partnership or corporation which Developer controls, or in which Developer has a controlling interest or which controls Developer.

"Agreement" has the meaning assigned to it in the first paragraph hereof, and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

"Applicable Rules" means and refers to:

1. The following provisions of the Nye County Code.

Nye County Code, Title 15, Chapters 15.12 (Flood Damage Prevention), 15.16 (Uniform Construction Codes) and 15.20 (Board of Building and Safety Appeals as may be amended at any time during the effective date of this Agreement by building codes that apply uniformly throughout the County, and

Title 16, and

2. This Agreement.

The term "Applicable Rules" does not include:

1. Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than the County;
2. Any fee or monetary payment not governed by this Agreement and prescribed by County ordinance which is uniformly applied to all development and construction subject to the County's jurisdiction, including any increase of fees or monetary payments that are cost based and uniformly applied to all development and construction within the County or a designated service area. This Definition does not preclude the County obtaining full cost recovery for any cost based services or infrastructure that are based on variables such as inflation, construction and consumer price indexing to the extent permitted by Nevada or federal law; or
3. Any applicable state or federal law or regulation.

"BoCC" means the Board of County Commissioners.

"Code" means the Nye County Code, as amended by Nye County Ordinances and Resolutions adopted by the BoCC, and including all rules, regulations, standards, criteria, manuals and other references adopted therein.

"County" means the County of Nye, State of Nevada, together with its successors and assigns.

"Developer" means Longshot Space Technology Corporation the Developer of the land constituting the Property and its successors and assigns, if any, as permitted under the terms of Section 12.1 of this Agreement.

"District" means Nye County School District.

"Discretionary Approval" means an approval that involves the exercise of significant and extensive factual or legal judgment by the County. Without limiting the generality of this definition, the following types of approvals are considered "discretionary approvals": zone changes, conditional use permits, Master Plan amendments, planned unit developments, special exceptions, waivers, variances, site plans or site development plans, and tentative maps.

"Effective Date" means the effective date of an ordinance adopted by the BoCC that approves the execution of this Agreement.

"Engineering Standards" means those standards adopted by the County for the design of roads, drainage, and other infrastructure, as may be amended from time to time. The Engineering Standards are currently set forth in the "Guidelines for Design and Review of Development Engineering Submissions," pursuant to Nye County Resolution 2005-02.

"HOA" means any homeowners' association established within the Proposed Development properly formed and operated in accordance with the provisions of NRS Chapter 116.

"Impact Fee" means a charge or fee imposed by the County with respect to new development to finance the costs of a capital improvement or facility expansion necessitated by and attributable to new development. The term does not include expenses required to complete any capital improvements identified and subsequently approved by the Director of Public Works in any studies that are required of the Developer by the County or under this Agreement.

"Improvement District " means an entity (other than a township, city or county) organized under Nevada law in which tracts are assessed fees, taxes, special assessments, rates, tolls, charges (including, but not limited to, service charges, standby service charges, charges for the availability of service, annexation charges, or minimum charges) for the construction or maintenance of public improvements. An "improvement district" includes any local improvement district or general improvement district organized or reorganized under NRS Chapters 271, 309, or 318, or any district for the maintenance of roads created organized pursuant to NRS Chapter 320.

"Land Use Application" means any application seeking any approval authorized or required by Title 16 of the Code.

"Master Plan" means the 1994 Nye County Comprehensive Plan dated May 3, 1994 , as may be amended from time to time.

"Merchant Builder" means a commercial developer, or other owner of real property within the Proposed Development that is designated by the Developer, in writing, as authorized to submit Land Use Applications to the County.

"NRS" means the Nevada Revised Statutes.

"Nye County School Board" means the board of trustees for the Nye County School District, as established by NRS chapter 386.

"Pahrump Town Board" means the agency established and charged with various legislative powers governing the Town of Pahrump pursuant to NRS Chapter 269, and in particular NRS § 269.155.

"Proposed Development" means all property and development within the boundaries of the \_\_\_\_\_ map, as shown on Exhibit \_\_\_\_.

"Planning Department" means the Planning and Development Department of the County.

"Planning Director" means the Director of the County's Planning and Development Department or his designee(s).

"Project Transportation Improvements" means street improvements, within the boundaries of the Proposed Development and adjacent to the boundaries of the Proposed Development that are identified in the Master Traffic Impact Analysis as necessary to provide egress and ingress to and from the Proposed Development to existing public roads and to mitigate the traffic impacts of the Proposed Development.

"Property" means that certain real property as described on Exhibit "A".

"Public Works Director" or "Director of Public Works" means the Director of the County's Department of Public Works or their designee(s).

"Technical Drainage Study" means a study prepared in conformance with this

agreement, as amended or conditioned and approved by the Director of Public Works.

"Township" shall mean the unincorporated Township of Pahrump and its successors and assigns as a separate political subdivision within the County.

"Uniform" means applicable throughout the County.

"Development Fee" means a voluntary contribution by the Developer and its successors or assigns per designated increment of development, designed to mitigate the impacts of the development. A Development fee based on square foot area of development, or some other measurable method may be applied as provided in this Agreement. If this Agreement is silent about the application of a Development fee, the Development fee may be applied in any manner chosen by the Nye County Commission in its sole discretion.

## **SECTION 2. GENERAL PURPOSE AND INTENT.**

This Agreement is predicated upon the following facts and findings:

### **2.1 *County Intent.***

The County desires to enter into this Agreement in conformity with the requirements of NRS 278.0201 and as otherwise permitted by law and this Agreement to provide for public services, public uses and urban infrastructure, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Proposed Development and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, to reasonably mitigate the impacts that the development of the Property will have on the citizens and lands of Nye County, and otherwise achieve the goals and purposes for which the laws authorizing development agreements were enacted.

### **2.2 *Developer Intent.***

In accordance with the legislative intent evidenced by NRS Chapter 278, Developer wishes to obtain reasonable assurances that Developer may develop the Proposed Development in accordance with the conditions established in this Agreement. Developer acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time, and in order to develop the Proposed Development, Developer is willing to

enter into this Agreement in order to provide certain public services, facilities and infrastructure in the area of the Proposed Development. Based upon the nature of the Proposed Development, the type and extent of the public improvements and infrastructure to the Proposed Development to be provided by Developer, and the type and extent of the public and private improvements to be provided within the Proposed Development, the Developer's decision to commence development of the Proposed Development is based on expectations of proceeding and the right to proceed with the Proposed Development in accordance with this Agreement and the Applicable Rules. Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the BoCC and that the Developer agrees without protest to the requirements, limitations, or conditions imposed by this Agreement.

### **2.3 *Incorporation of Recitals.***

The foregoing recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

## **SECTION 3. GENERAL PROVISIONS.**

### **3.1 *Binding Agreement.***

This Agreement shall run with the land described in Exhibit A of this Agreement and shall be binding on and inure to the benefit of the parties hereto and their successors and assigns, including any future and subsequent purchasers.

### **3.2 *Reliance on the Applicable Rules.***

The County and Developer agree that Developer will be permitted to carry out and complete the entire Proposed Development in accordance with this Agreement and the Applicable Rules.

### **3.3 *Modification of Applicable Rules.***

County and Developer acknowledge and agree that this Agreement is specific to the Proposed Development and may not be amended, modified or changed with respect to the Proposed Development without the express written consent of Developer and County, except as otherwise explicitly provided in this Agreement. In the event the County adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not apply to Developer or development of the Proposed Development for the duration of this Agreement except in those limited circumstances provided below.

### **3.4 Application of Subsequently Enacted Rules.**

Except as provided below, no standard, policy, resolution or regulation regarding subdivision, land use, zoning, growth management, timing and phasing of construction, or construction methods shall be imposed by the County upon the Proposed Development, except those in effect at the time of this Agreement. County may hereafter, during the term of this Agreement, apply to the Proposed Development only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after this Effective Date that:

- (a) are not in conflict with the Applicable Rules, or
- (b) that are permitted by subsection 3.5, below.

### **3.5 Imposition of New Fees or Standards.**

Notwithstanding the terms of Section 3.3, above:

- (a) The Proposed Development is subject to all of the following regulations, fees, or other requirements in effect now or in the future:
  - (1) uniform cost-based fees subject to any credits or offsets required by the fee ordinances or Nevada law; and
  - (2) all regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County; and
  - (3) uniform processing fees and charges of every kind and nature imposed by the County to cover the estimated actual costs to the County of processing applications for Permits or for monitoring compliance with any Permits granted or issued; and
  - (4) uniform estimated costs for completing required public improvements that are used to calculate costs for subdivision improvement agreements, maintenance or warranty guarantees, bonds, or other guarantees or assurances to complete the public improvements that are required for the Proposed Development; and

- (5) uniform procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied throughout the County to all substantially similar types of development projects and properties; and
- (6) the Engineering Standards; and
- (7) uniform laws and regulations that are reasonably necessary to protect the public health, safety or welfare; and
- (8) new or changed County ordinances, regulations, plans or policies specifically mandated and required by changes in state or federal laws or regulations. In such event, the provisions of Section 3.5 through 3.6 of this Agreement are applicable.

(b) Notwithstanding the foregoing, should the County adopt or amend new ordinances, rules, regulations or policies that exceed the limitations of the foregoing Section 3.2, County may provide written notice to Developer within thirty (30) days of adoption or amendment of the same to allow Developer sufficient time to conduct due diligence. If the County provides the above stated notice, Developer may accept or not accept such new or amended matters by giving written notice. If the Developer fails to give such written notice within thirty (30) days of receipt of notice by the County, such ordinances, rules, regulations or policies are deemed accepted by the Developer. County and Developer may execute an amendment to this Agreement evidencing Developer's acceptance of any new or amended ordinance, rule, regulation or policy.

### **3.6 Conflicting Federal or State Rules.**

In the event that any conflicting federal or state laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, this Agreement shall remain in full force and effect as to those provisions not affected.

### **3.7 Cooperation in Performance.**

The parties hereto agree to cooperate with each other in good faith and to

take such additional actions, including the execution and delivery of documents and instruments, as may be necessary or appropriate, to fully effectuate and carry out the terms, provisions, purposes and intent of this Agreement. Notwithstanding the foregoing, the Developer shall not have a right to obtain any Discretionary Approval from the County, however it shall not be unreasonably withheld from the Developer.

### **3.8 Assignment.**

- (a) Except as an Affiliate, the Developer shall not sell, transfer, ground lease or assign the Subject Property or this Agreement in whole or in part to any person, affiliate, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") without the written consent of the County.
- (b) The Assignee shall assume in writing all obligations of Developer hereunder, and provide substitute security in a form and an amount acceptable to the County for any security previously provided by Developer in compliance with the Code, if any.
- (c) The Assignee shall assume all duties and obligations of Developer
- (d) County reserves the right to require documentation of the financial stability of any Assignee prior to the closing of the transaction. The County has the right to approve, approve with conditions, or disapprove such transfer in order to ensure that the Transferee has the same ability to fulfill the obligations of this Agreement as the Developer.
- (e) Except as expressly provided herein, no assignment or transfer of any portion of the Proposed Development shall relieve Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement. The County may, in its sole discretion, release the Developer of one or more of such obligations in a writing agreed to and executed by the County.
- (f) This subsection shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.
- (g) Subject to subsection (a) through (f) above, Developer has full discretion and authority to transfer, assign or encumber the Proposed Development or portions thereof, in connection with

financing transactions that are related to the Subject Property, without the permission of or notice to County. All such financing transactions shall be subject to the terms and conditions of this Agreement.

### **3.9 Amendment of Agreement.**

Except as otherwise permitted by NRS Chapter 278 and this Agreement, this Agreement may be amended from time to time, but only upon the mutual written consent of the parties hereto. All proposed amendments shall be considered solely by the BoCC for adoption or rejection, provided however that the BoCC reserves the right to require the Developer to consult with the Town Boards and/or the Nye County School Board if a proposed amendment would, in the BoCC's opinion affect either of those entities.

### **3.10 Indemnity; Hold Harmless.**

Except as expressly provided in this Agreement, Developer shall hold County, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct operations of Developer or those of its agents, employees, which relate to the development of the Proposed Development. Developer agrees to and shall defend County and its officers, agents, employees, and representatives from actions for damages caused by reason of Developer's activities in connection with the development of the Proposed Development. Developer agrees to indemnify, hold harmless, and provide and pay all costs, attorneys fees, and damages related to a defense for County in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of County, its officers, agent, employees, or representatives.

### **3.11 Binding Effect of Agreement.**

The burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties' respective successors in interest and the Property which is the subject of this Agreement.

### **3.12 Relationship of Parties.**

It is understood that the contractual relationship between County and Developer is such that Developer is not an agent of County for any purpose and County is not an agent of Developer for any purpose.

### **3.13 Entire Agreement.**

This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all of any part of the subject matter hereof.

### **3.14 Waivers.**

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of County and/or Developer, as the case may be.

### **3.15 Recording; Amendments.**

Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Nye County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of County and Developer in a form suitable for recordation in the Official Records of Nye County, Nevada. Upon completion of the performance of this Agreement, or its earlier revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the County and Developer and shall be recorded in the Official Records of Nye County, Nevada.

The Clerk of the Nye County Commission must record any agreement with a federal, state or local agency that is executed in full or partial fulfillment of any requirement of this Agreement, within a reasonable time after approval of the agreement, with the County Recorder. The applicant shall provide a true, signed original agreement to the Clerk of the Nye County Commission for this purpose.

### **3.16 Headings; Exhibits; Cross References.**

The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

### **3.17 Sales and Use Tax**

To the extent allowed under applicable laws, Developer shall accept, and shall require Merchant Builders to accept, delivery of all construction and related

materials within the boundaries of the Proposed Development. Notwithstanding the above, Developer shall pay a use tax in accordance with NAC 372.055 for any construction and related materials for which Developer cannot through reasonable diligence accept delivery at the proposed Development, or such delivery would result in an unreasonable delay to the construction of the Facility.

## **SECTION 4. PLANNING, DEVELOPMENT AND MAINTENANCE OF THE PROPOSED DEVELOPMENT.**

### **4.1 Permitted Uses, Height and Size of Structures.**

Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the Proposed Development, the density of uses and the permitted uses of the land.

- (a) The permitted use of the Property shall be restricted to the purpose of building and testing a hypersonic accelerator as described in Exhibit "B" "Lease Agreement".
- (b) The Facility shall only be used for the construction, improvement, operation and maintenance of a high tech hypersonic/supersonic aerospace test facility as described in Exhibit "B" "Lease Agreement".
- (c) Developer shall not be used for any other purpose other than the approved purposes as described in Exhibit "B" "Lease Agreement" and for no other purposes except as may be approved in writing by CDR.
- (d) The Proposed Development shall comply with the Site Plan and specifications (the "Plans") attached in Exhibit "C" hereto. Notwithstanding the above, all buildings constructed on the site shall utilize only earth tone colors to emulate the natural colors found in the surrounding area (a color palette of browns, tans, etc.).
- (e) The parties agree that the intent of the design and landscaping specification set forth in the Plans is to mitigate the visual impact of the Facility from the public view. Accordingly, there shall be a landscaped earthen berm along the North and along the South side of the testing slab \_\_\_\_\_ as shown on the Exhibit "C".

- (f) All exterior lighting for the Facility shall be directed downward on the site to assure that the light source is shielded from public view. The maximum height of a light pole, measured from the finished grade to the top of the pole, shall be 35 feet. Except as specified above, all other requirements of § 17.04.750 of the Code will continue to apply.
- (g) The Proposed Development must comply with any other requirements, limitations, or conditions imposed by this Agreement. Any future expansions of the Proposed Development are subject to the approval of the parties.
- (h) All roof-mounted equipment on the Facility shall be screened from public view by roof forms and painted the color of the roof.

#### **4.2 Effect of Amendments.**

County acknowledges that Developer is anticipating that the entire Property will be developed in accordance with this Agreement with any future amendments thereto, provided however, that the Proposed Development shall be developed in accordance with the Applicable Rules as set forth herein.

#### **4.3 Modifications to the Proposed Development.**

Developer shall have the right to have nonmaterial modifications to the Proposed Development reviewed and acted upon administratively by the Planning Director.

- (a) A nonmaterial modification is a modification requested by the Developer that:
  - (1) meets or exceeds the requirements of the development standards; and
  - (2) does not increase the amount of land area covered by this Agreement; and
  - (3) does not involve a relocation of land use classifications (e.g., residential, commercial, industrial); and
- (b) A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within thirty (30) days. If Developer is aggrieved by the Director's decisions, Developer may appeal that decision in accordance with § 16.36.080.E of the Code.

- (c) A material modification includes any modification that does not qualify as a nonmaterial modification, and shall be processed as an amendment to this Agreement.

#### **4.4 Maintenance of Public and Common Areas.**

- (a) County hereby agrees that, except for any sidewalks, landscaped areas, landscape appurtenances, and street lights located inside the public right-of-way, all of the dedicated public roadways and curbs which are within or adjacent to the Proposed Development will be maintained by the County as required by law. All landscaping and street lighting within the public rights-of-way within or adjacent to the Proposed Development shall be privately maintained by the Developer. Appropriate encroachment agreements shall be entered for all such landscaping.
- (b) Developer shall maintain, in good repair and condition, all privately maintained on-site improvements.

#### **4.5 Additional Property.**

Developer may not include property outside the boundaries of the Proposed Development within the terms of this Agreement without the prior approval of the BoCC. Said approval shall be solely in the discretion of the BoCC. If Developer requests additional property to be included, the BoCC must reconsider additional impacts of the proposed additional development and must ensure that all impacts are appropriately mitigated through Developer contributions, impact fees, and any other allowable revenue source. Furthermore, the BoCC reserves the right to adjust the terms of this Agreement as a condition for allowing the addition of property.

## **SECTION 5 REVIEW AND DEFAULT**

### **5.1 Frequency of Reviews; Biennial Review.**

Pursuant to NRS Chapter 278.0205.1 and Section 16.32.110 of the Code, the BoCC may request, pursuant to written notice to Developer, to review the development at least once every twenty-four (24) months during the term of this Agreement. In the event the BoCC provides such notice, Developer shall have thirty (30) days to provide a written report to BoCC containing information regarding the progress of development within the Proposed Development. In the event Developer fails to submit such a report, Developer shall be in default of this Agreement. If at the time of review an issue not previously identified in

writing is required to be addressed, the review at the request of either party shall be continued to afford reasonable time for response.

## **5.2 Opportunity to be Heard.**

The report required by this Section 5 shall be considered solely by the BoCC in accordance with the rules and procedures of Section 16.32 of the Nye County Code. County and Developer shall each be permitted an opportunity to be heard orally and in writing before the BoCC regarding performance of the parties under this Agreement.

## **5.3 General Provisions-Default.**

In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing not less than thirty (30) days notice of default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner and period of time in which it may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. Such period shall not be less than the thirty (30) days. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses.

- (a) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend to terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the BoCC.
- (b) Amendment or Termination by County. Following consideration of the evidence presented before the BoCC and a finding that a default has occurred by Developer and remains uncorrected, County may amend or terminate this Agreement. In the event of default by Developer, County shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of Developer's obligations hereunder under the procedures set forth in this Section and Section 5.5. County also reserves the right to terminate this Agreement and pursue collection and/or performance of any of Developer's obligations that were required by this Agreement up to the point of termination. Termination shall not in any manner rescind, modify, or terminate any vested right in

favor of Developer, as determined under the Applicable Rules and Nevada Law, existing or received as of the date of the termination and to the extent that Developer has performed its obligations under this Agreement. Developer shall have sixty (60) days after receipt of written notice of termination to institute legal action pursuant to Section 5.5 hereof.

- (c) Termination by Developer. In the event County substantially defaults under this Agreement, Developer shall have the right to terminate this Agreement after the hearing set forth in this Section. Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of County's obligations hereunder under the procedures set forth in this Section and Section 5.5.
- (d) Waiver. Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

#### **5.4 Unavoidable Delay, Extension of Time.**

Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than County) to perform acts or deeds necessary to the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties. In addition, nonperformance of a party hereunder shall be excused as a result of the failure of the other party to perform under this Agreement which failure of the other party actually causes such nonperformance. If written notice of any such delay is given to County within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by County within thirty (30) days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between County and Developer. Any such extensions of time shall have no effect upon the timing of and the conclusions reached in the reviews to be conducted pursuant to Section 5.1 above.

## **5.5 Legal Action.**

County and Developer agree that they would not have entered into this Agreement if either were to be liable for damages under or with respect to this Agreement that would be greater than without this Agreement. Accordingly, County and Developer may pursue any course of action or equity available for breach, except that neither party shall be liable to the other or to any other person for any monetary damages for a breach of this Agreement that are greater than such damages or liability would have been without this Agreement pursuant to the Applicable Rules. Prior to the institution of any legal action, the party seeking legal action must give thirty (30) day notice of default as set forth in Section 5.3. Following such notice, and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, a public hearing must be held by the BoCC where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court, and the decision of the BoCC shall be overturned or overruled if its decision is clearly arbitrary and capricious. Judicial review of the decision of the BoCC shall be limited to the evidence presented to the BoCC at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall reside exclusively with the Fifth Judicial District Court, State of Nevada- Department 2 (Pahrump).

## **5.6 Notices.**

All notices required by this Section shall be sent in accordance with Section 9.

## **5.7 Applicable Laws; Attorneys' Fees.**

This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

# **SECTION 6. MONETARY CONTRIBUTIONS AND INFRASTRUCTURE OBLIGATIONS.**

## **6.1 Generally**

- (a) Developer shall provide the infrastructure and monetary Contributions described in this Section.
- (b) All bonds, including performance bonds, that are required to

provide financial assurance for the provision or maintenance of infrastructure pursuant to this Agreement or the Applicable Rules must be issued by an entity that has at least an AAA rating with A.M. Best obtained by Developer to cover One Hundred and Fifteen percent (115%) of the estimated cost of infrastructure identified by any Master Studies or the County Engineer. For purposes of this subsection, "AAA rating" means a rating or "AAA" or the highest rating of financial stability that is available under the A.M. Best rating system.

- (c) Developer shall make a good faith effort to purchase a reasonable amount of goods related to operation of the Facility from Nye County vendors; provided such goods are comparable in price, quality and availability to goods otherwise available for purchase by Developer and such goods are not subject to an exclusive purchasing contract. During the first 5 years, Developer shall conduct annual vendor information sessions to educate the Nye County vendors regarding Developer's procurement process.

## **6.2 Police Services, Fire Protection and Ambulance Services, and Landfill Fees**

- (a) Developer must provide the County a facility emergency plan which contains written agreements with appropriate state and local authorities that provide for notification and requests for assistance in the event of incidents that may have an adverse impact on the community.

## **6.3. Water.**

The parties acknowledge that the Developer shall show that it has adequate certificated water rights for the Property without interfering with vested water rights and evidence of said rights shall be provided prior to issuance of a flood or dust permit. The Developer shall provide an analysis of project water needs, local water resources, and impact of the proposed development on those resources upon application of a site development review and the County currently has no role in the allocation of water.

Developer shall provide water system facilities as needed. County is not obligated to pay any financial costs associated with the construction or maintenance of water facilities or the acquisition of rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required in this Section.

## **6.5. Sanitary Sewer.**

Developer shall provide sanitary sewer system facilities as needed. County is not obligated to pay any financial costs, associated with the construction or maintenance of sanitary sewer facilities or the acquisition of rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required in this Section.

## **6.6 Transportation.**

- (a) Definitions.
  - (1) "Roadway Off-Site Improvements" shall mean improvements to roadways located outside of the Proposed Development, as identified in subsection (c), below.
  - (2) "On-Site Improvements" shall mean mitigation measures and improvements to intersections and roadways located within each Phase of Development of the Proposed Development.
  - (3) "Access Roads" shall mean gravel access roads having a minimum of two (2) through lanes with a minimum width of twenty-four (24) feet, necessary to provide ingress and egress for each Phase of Development, as identified in subsection (e), below.
- (b) Off-Site Improvements. Developer agrees to provide off-site improvements including a Type 2 gravel road minimum six (6) inches in depth at a width of twenty-four (24) feet with roadside ditches for stormwater conveyance for approximately two-thousand and eighty (2,080) linear feet on Racetrack Road from Highway 6 to project area. County and Developer agree and acknowledge that Developer's sole responsibility with regards to Off-Site improvements, shall be limited to those Off-Site Improvements set forth in this Agreement.
- (c) On-Site Improvements. Developer acknowledges it shall be responsible for all internal public and private roadway costs and expenses, as identified in the approved Master Traffic Impact Analysis and set forth in this Agreement.

- (d) Access Roads. County agrees that Developers obligations, as they relate to Access Roads, shall be limited to the maintenance of Racetrack Road from Highway 6 to project area. Developer acknowledges it shall be responsible for all Access Roads that may be identified in this Agreement. If Developer needs to improve to a paved road section, Developer shall submit engineered plans to County for review and approval. The Developer shall submit an engineer's estimate data sheet with the engineered plans and pay the appropriate inspection fees for the project and agree to maintain the improved access road.
- (e) Future Performance Bonds. As required by law Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to roadways set forth and identified in this Agreement,. Specific bond amounts will be identified in the engineers estimate data sheet.
- (g) Impact Fees. Developer shall be subject to impact fees for streets and highways and shall pay said impact fees at the rate adopted by County in compliance with all local, state and federal laws, and any future adjustments thereto. Developer shall be credited for any overpayment of impact fees or shall pay the balance of any under payment of impact fees. In assessing such impact fees, the Developer shall be given credits for any transportation improvements it provides under the terms of the Agreement that are a part of County's capital improvement plan as adopted. Developer remains subject, however, to impact fees for streets and highways that are adopted by County at the time any building permit is requested by Developer in connection with the Proposed Development.
- (h) Access/Egress Plan. 30 days prior to the start of any construction, Developer shall establish and submit to the Director of Public Works for approval an access/egress plan for construction related traffic. County reserves its right to require the Developer to modify or make changes to its plan if at any time, in the opinion of the County, any proposed temporary routes have not best served the needs of the residents. The Developer agrees to adhere to the approved plan and any modification of the plan approved by the Director of Public Works thereafter, and ensure that the same plan is adhered to by all merchant builders, contractors and subcontractors.

## **6.7 Assurance for Completion and Maintenance of Improvements.**

- (a) Developer shall provide performance bonds or irrevocable commercial letters of credit for all Off-Site and On-Site improvements as provided that are identified in this Agreement. Such bond amounts or letters of credit shall reflect 115% of the total estimated cost for the work as determined or approved by the Director of Public Works, and shall be adjusted no less frequently than every two years, for inflation and escalation in construction cost using published and generally accepted cost index. If the financial institution will not approve an automatic inflationary increase, the adjusted amount shall be in the form of a bond replacement or an amended letter of credit payable to Nye County.
- (b) As required by law Developer shall provide a maintenance bond, or an irrevocable commercial letter of credit for Off-Site and On-Site Improvements which relate to utilities which are identified in the Agreement and/or Master Traffic Impact Analysis and/or Technical Drainage Study.

## **SECTION 7. EMPLOYMENT**

The parties agree that the provision of employment opportunities for local and County residents will assist in mitigating the impacts of the Facility, and acknowledge that the Developer has a significant incentive to hire local or County residents. Accordingly, Developer agrees that a significant majority of the personnel employed and assigned to the Facility will be full time employees, and that part time employees will be used only for employment positions that only require part time services.

## **SECTION 8. NOTICES.**

All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To County:

County of Nye,  
A political subdivision  
2140 E. Calvada Blvd. N.  
Pahrump, Nevada 89048  
Attention: Planning Director

To Developer:

Longshot Space Technology  
Corporation  
3425 Ettie Street  
Oakland, CA 94501

With Copy to:

Either party may change its address and/or contact persons by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

## **SECTION 10. SEVERABILITY OF TERMS.**

If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.

## **SECTION 11. DURATION OF AGREEMENT.**

11.1 This Agreement shall expire five (5) years after the Effective Date.

11.2 The BoCC may, in its sole discretion, extend the term of this Agreement upon the following conditions:

- (a) Developer provides written notice of such extension to County prior to the expiration of the original term of this Agreement; and
- (b) Developer is not in default of this Agreement.

11.3 If approved by the BoCC, the extension shall be granted in writing after:

- (a) notice of intention to amend the Agreement has been published as provided in NRS 278.0205; and

(b) the BoCC has approved an ordinance approving the extension that includes:

- (1) a statement of the justification for the extension; and
- (2) the duration of the extension; and
- (3) any further conditions agreed to by the BoCC and the applicant, which conditions may be incorporated by reference in the ordinance.

In Witness Whereof, this Agreement has been executed by the parties on the day and year first above written.

COUNTY:

Board of County Commissioners  
Chair Debra Strickland

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

DEVELOPER:

Longshot Space Technology  
Corporation

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

Approved as to Form:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

County Clerk

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

SUBSCRIBED AND SWORN TO before  
me  
on this \_\_\_\_\_ day of \_\_\_\_\_,  
2024.

Notary Public in and for said County  
and State

EXHIBIT A

[Legal Description of Property Subject To Agreement]

EXHIBIT B

[Airport Lease Agreement]

EXHIBIT C

[Civil Site Plan]

## Exhibit A

### Lease Area

Being that certain lot situate within the Northwest quarter of Section 5, Township 2 North, Range 44 East, the Northeast quarter of Section 6, Township 2 North, Range 44 East and the South half of Section 31, Township 3 North, Range 44 East, all Mount Diablo Meridian, Nye County, State of Nevada, more particularly described as follows, illustrated in Exhibit B attached and incorporated herein by this reference:

Commencing at the **POINT OF BEGINNING**, from which the Southwest corner of said Section 31, Township 3 North, Range 44 East, Mount Diablo Meridian bears S 40° 06' 02" W, 2210.46 feet distant; thence N 35° 20' 20" E, 247.58 feet to a point 20.00 feet southwesterly of the boundary between Parcels 1 and 2 as shown on that Informational Plat Only recorded in the official documents of said Nye County as Document No. 257267 on March 15, 1990; thence S 54° 39' 40" E parallel with said boundary between Parcels 1 and 2, 5009.40 feet; thence departing from said boundary, S 35° 20' 20" W, 100.00 feet; thence N 54° 39' 40" W, 4861.82 feet; thence S 35° 20' 20" W, 147.58 feet; thence N 54° 39' 40" W, 147.58 feet to the **POINT OF BEGINNING**, containing 12.00 acres of land, more or less;

together with a 40 foot wide non-exclusive access easement, 20 feet on either side of the following described centerline: beginning at a point N 35°20'20" E, 110.00 feet from the most westerly corner of the above-described property (the **POINT OF BEGINNING**); thence N 54°39'40" W, 358.49 feet; thence along a curve to the right with Radius 600.00 feet, through an angle of 50°37'44", for an arc length of 530.19 feet; thence N 04° 01' 55" W, 941.45 feet, more or less, to the terminus point in the south right of way of US Highway No. 6, the sidelines being lengthened or shortened to end on the boundaries at which the centerline terminates;

the Basis of Bearings for the above description is NAD 83/94 Nevada State Plane Coordinate System, Central Zone, US Survey feet; all distances are ground.

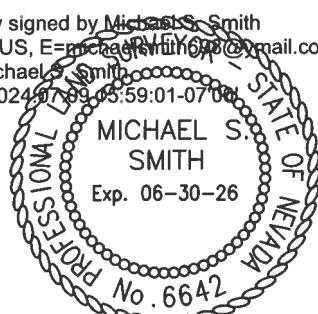
End of Description

Michael S. Smith

Prepared by: \_\_\_\_\_  
Michael S Smith, PE, PLS 6642

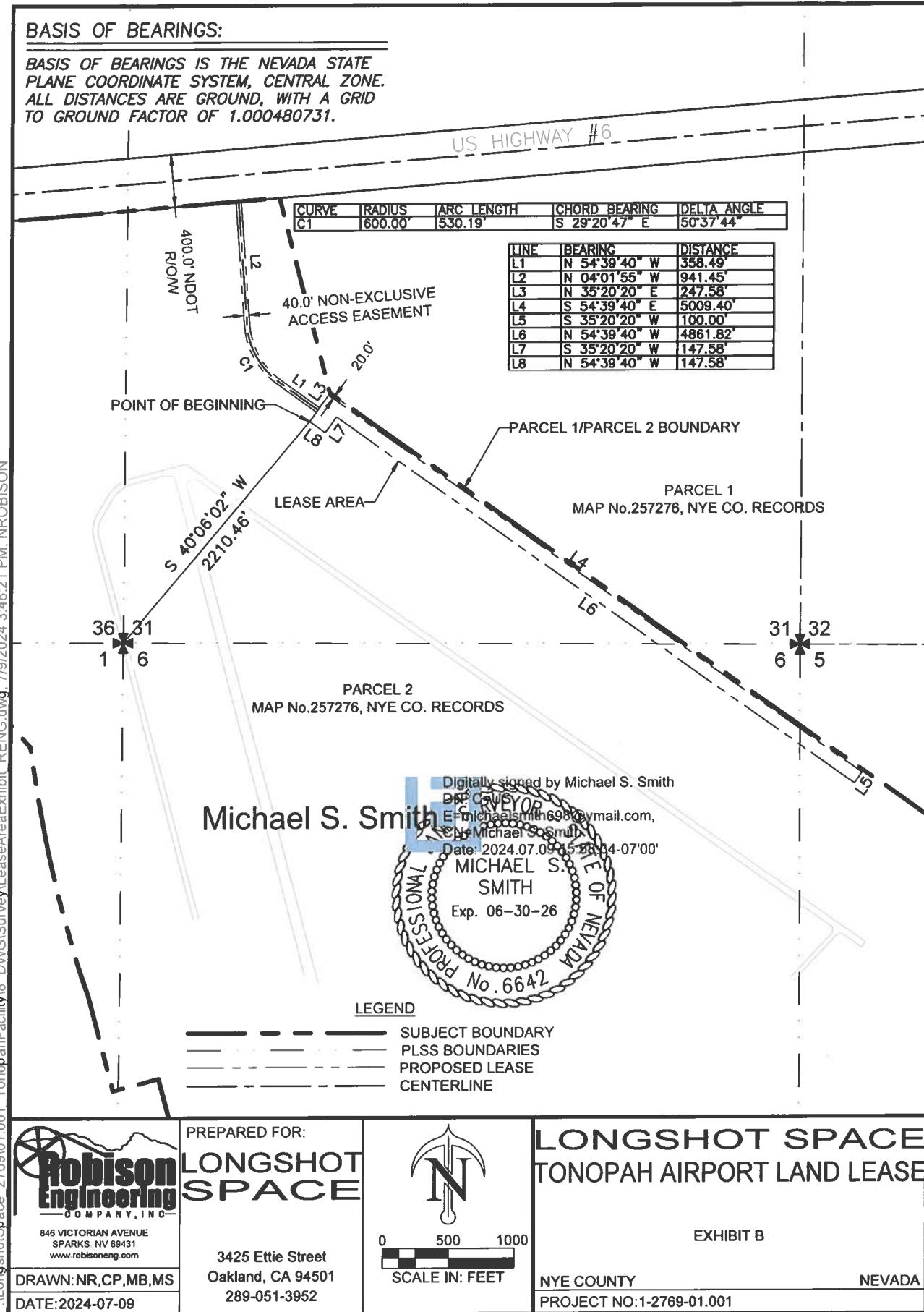
Refer this description to  
your title company before  
incorporating into any  
document.

Digitally signed by Michael S. Smith  
DN: C=US, E=msmith1970@gmail.com,  
CN=Michael S. Smith  
Date: 2024/07/09 05:59:01-07'00



**BASIS OF BEARINGS:**

**BASIS OF BEARINGS IS THE NEVADA STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE. ALL DISTANCES ARE GROUND, WITH A GRID TO GROUND FACTOR OF 1.000480731.**



## LEASE AGREEMENT

THIS LEASE AGREEMENT, hereinafter referred to as "Agreement," is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the COUNTY OF NYE, a political subdivision of the State of Nevada, authorized to do business in the State of Nevada, hereinafter referred to as "County," and **Longshot Space Technology Corporation**, a Delaware Corporation authorized to do business in the State of Nevada, hereinafter referred to as "Company;"

### WITNESSETH:

WHEREAS, County is the owner of the Tonopah Airport Property, which includes the Tonopah Airport, a general aviation airport, and approximately 2,000 surrounding acres of land, all hereinafter referred to as "Airport;" and

WHEREAS, Company desires to lease that portion of the Airport hereinafter described as the "Property," for the purpose of building and testing a hypersonic accelerator; and

WHEREAS, pursuant to NRS 244.2815, County has the authority to enter into this Agreement with Company, without public auction, because it is for the purpose of economic development to establish a new commercial enterprise or facility within the county; and

NOW, THEREFORE, for and in consideration of the agreements, covenants and conditions herein, County and Company agree as follows:

## ARTICLE I

### 1.1 DEFINITIONS

When and wherever used herein, the following terms shall have the following meanings:

- 1.1.1 "Airport": The Tonopah Airport Property, and all property and Improvements contained within its general environs at the Approval Date of this Agreement or at any other future date during the term of this Agreement.
- 1.1.2 "Approval Date": The date the Agreement is approved by official action of the Board of County Commissioners.

- 1.1.3 “Company”: **Longshot Space Technology Corporation**, a Delaware Corporation, entering this Agreement as a lessee, tenant, and developer of a portion of the Airport property.
- 1.1.4 “Commence Construction”: Commencing construction of the Improvements on the Property by Company; causing its construction contractor to have access to and have occupancy and control of the area; and to begin actual site development and construction of the Improvements of the Property thereon.
- 1.1.5 “Construction Completion Date”: The date construction has been completed for the Improvements on the Property, as identified in Section 1.3 of this Agreement or as evidenced by a valid Certificate of Occupancy or Temporary Certificate of Occupancy, whichever event occurs first. Company shall notify County in writing of its receipt of such permanent or Temporary Certificate of Occupancy and provide a copy to County within thirty (30) days of its issuance.
- 1.1.6 “County”: Nye County, Nevada, as represented by the Nye County Board of County Commissioners and where this Agreement speaks of “approval by County,” such approval means action by the Nye County Board of County Commissioners.
- 1.1.7 “County’s Designated Representative (CDR)": The Nye County Manager, or designee acting on behalf of the County. County will notify Company of any changes in the CDR, in writing.
- 1.1.8 “Effective Date”: The date that the Agreement becomes effective and the date on which the Company has the right to possess the Property, together with the obligation to comply with the required and applicable provisions of this Agreement, and on that date all applicable terms and conditions of this Agreement will be in full force and effect
- 1.1.9 “Emergency”: Any situation, health or safety concern, incident, or action that is determined at the CDR’s sole discretion, may cause or has caused structural hazardous or other similar catastrophic damage to the Property or surrounding areas.
- 1.1.10 “Environmental Laws”: Any one or all of the laws and/or regulations of the Environmental Protection Agency or any other federal, state, or local agencies, including, but not limited to, the regulations listed below, as the same are amended from time to time. The term “Hazardous Material, whenever used herein, means the definitions of hazardous substance, hazardous materials, toxic substance, regulated substance or solid waste as defined in the applicable regulations, including, but not limited to, the regulations listed below, as the same may be amended from time to time:

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. Section 9601 et seq.)

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. Section 6941 et seq.)

TOXIC SUBSTANCES CONTROL ACT (15 U.S.C. Section 2601 et seq.)

SAFE DRINKING WATER ACT (42 U.S.C. Section 300h et seq.)

CLEAN WATER ACT (33 U.S.C. Section 1251 et seq.)

CLEAN AIR ACT (U.S.C. Section 7401 et seq.)

SANITATION (Nevada Revised Statutes, Chapter 444 and Nevada Administrative Code, Chapter 444)

NEVADA WATER POLLUTION CONTROL LAW (Nevada Revised Statutes 445.131 through 445.399)

HAZARDOUS MATERIALS, INCLUDING UNDERGROUND STORAGE TANK REGULATIONS (Nevada Revised Statutes, Chapter 459)

HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. Section 1801 et seq.)

and all present or future regulations promulgated thereto.

DEPARTMENT OF TRANSPORTATION TABLE (49 C.F.R. Section 172.101) and amendments thereto.

ENVIRONMENTAL PROTECTION AGENCY (40 C.F.R. Part 302 and amendments thereto)

TRANSPORTATION OF HAZARDOUS MATERIALS BY MOTOR VEHICLE (Nevada Revised Statutes 459.700 through 459.780)

and all present or future regulations promulgated thereto.

All substances, materials and wastes that are, or that become, regulated under, or that are, or that become classified as hazardous or toxic under any environmental law, whether such laws are Federal, State or local; and regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the Federal, State or local government) now in effect or hereafter enacted that deal with the regulation or protection of the environment, (including, but not limited to, ambient air procedures and records detailing chlorofluorocarbons [CFC]), ambient air, ground water, surface water and land use, including sub-strata land.

- 1.1.11 “Improvements”: The construction and installation of all real property and personal property Improvements commonly considered to be Improvements, including, but not limited to, structures, grading, fencing, paving, lighting, roadways, parking lots, drainage, as required by Company for the operation of its business under this Agreement. Notwithstanding the assumption of any of these responsibilities by a sublessee, Company shall remain responsible to ensure all Improvements are completed in accordance with this Agreement.
- 1.1.12 “Property”: That real property, hereinafter described in Section 1.3, owned by the County and the subject of this Agreement.
- 1.1.13 “Public Utility”: Any plant or equipment, or any part of a plant or equipment, within the State of Nevada, for the production, delivery or furnishing for or to other persons, power in any form or by any agency.
- 1.1.14 “Release”: Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any hazardous material as defined hereinabove, in violation of the Environmental Laws.

## 1.2 TERM

- 1.2.1 The Effective Date of this Agreement will be **April 2, 2024**, and will continue for a period of Five (5) years, through **April 1, 2029**, unless otherwise terminated as provided in Section 1.2.2, Section 2.16, or Section 2.17 of this Agreement.
- 1.2.2 This Agreement may be renewed, at the sole discretion of the County, for a period of Five (5) years, through April 1, 2034, upon expiration of the initial term, provided that all terms, covenants, and conditions of the initial lease term have been met and fulfilled. Written notice of Company’s desire to renew this Agreement must be given to County in writing at least 180 calendar days prior to expiration of the Agreement. All provisions of this

Agreement will carry over to the renewed Agreement, subject to negotiated changes in terms at the time of renewal.

### **1.3 PROPERTY**

- 1.3.1 County will demise and let unto Company and Company does hereby take from County that certain real property, as depicted on Exhibit "B," attached hereto and by reference made a part hereof, as follows:  
comprised of approximately 12 acres.
- 1.3.2 Company accepts the Property in its present condition and acknowledges that it has inspected the same and is fully cognizant of the present conditions, including, but not limited to, structural requirements, environmental conditions and utilities.
- 1.3.3 Company acknowledges and accepts the Property "AS IS," including, but not limited to, grades, soil conditions, environmental conditions and drainage with no further responsibility to Company by County for any present or further Improvements, soil remediation, environmental remediation or other maintenance thereof, including the existence of any utilities and public roadways and the potential need to cap off or otherwise abandon such utilities and/or roadways.
- 1.3.4 In the event that either the Construction Commencement Date or the Construction Completion Date of the Improvements has not occurred within the time frame established above and further referenced in Section 1.13 of this Agreement, due to circumstances beyond the control of Company, CDR may extend the Construction Completion Date for the Improvements for a period not-to-exceed six (6) months. In no event, however, will the extension period be longer than the commensurate time affected by the circumstances beyond the control of Company. It is expressly understood that the actions of Company and/or its tenants, sublessees, contractors, subcontractors, or other related parties are deemed to be within the control of Company.
- 1.3.5 Company shall record this Agreement and any subsequent amended Agreements with the Nye County Recorder.

### **1.4 USE OF PROPERTY**

Upon performance of the agreements, provisions and conditions contained in this Agreement, Company will have the exclusive use of the Property for the purposes described hereinafter and for activities incidental or related thereto, which will include the following, and for no other purposes except as may be approved in

writing by CDR. Improvements will be solely for such purposes, and must be approved, in writing, in advance, by CDR. The CDR, however, retains the sole right to determine if a use is compatible with Airport operations.

- 1.4.1 The intended use of the Property is for the construction, improvement, operation and maintenance of a high tech hypersonic/supersonic aerospace test facility.
- 1.4.2 Company shall obtain prior written approval from the CDR to start up or otherwise provide any services that are not specifically included and authorized under this Section of this Agreement.
- 1.4.3 Company has the nonexclusive right of reasonable ingress and egress from its Property over Airport System roadways, including common-use roadways, subject to any rules or security regulations which may have been established or shall be established in the future by the County, the FAA, TSA, and/or the State of Nevada. Such right of reasonable ingress and egress shall apply to the Company's employees, sublessees, tenants, guests, patrons, invitees, suppliers, or other authorized individuals. The right of ingress and egress likewise applies to the transport of equipment, material, machinery and other property related to Company's authorized business under this Agreement. Company will have the nonexclusive right, in common with other Airport tenants and the general public, for ingress and egress to the Airport.
- 1.4.4 Any violation of this Section 1.4 by Company may be cause for termination of this Agreement, by County, at CDR's discretion after all notice and a right to cure as provided in Section 2.16.3 of this Agreement. Upon the occurrence of such an event, Company will not hold County liable for any costs, which may be incurred, or any claims associated with the termination by the County pursuant to this subsection.
- 1.4.5 Any uses of the Property as set forth herein are permitted uses as defined by Nye County Code Section 14.04.040 and no use authorized by the terms of this agreement shall be deemed by the County to be a violation of said Code provision.

## 1.5 RENTS AND FEES PAYABLE TO COUNTY

- 1.5.1 **Monthly Rental:** Company agrees to pay to County as rental for the Property, as defined herein, monthly in advance, Two hundred Fifty (\$250.00) Dollars per acre per month; Three Thousand (\$3,000.00) Dollars per month. The amount of the monthly rental will increase Three percent (3%) at the beginning of each subsequent year of the term of this Agreement.

- 1.5.2 **Redetermination of Rent:** County reserves the right to redetermine all of the rentals and fees contained in this Section 1.5 at any time after the three (3) year anniversary from the Rental Commencement under Section 1.5.1 of this Agreement. Further, County reserves the right to redetermine all of the rentals and fees contained herein at any time after three (3) years have passed since the most recent adjustment. All such adjustments shall be subject to ninety (90) days prior written notice to Company from the CDR. Due to the fact that similarly situated tenants have different anniversary or other rental adjustment dates, County does not warrant that the rentals and fees will be exactly the same at all times for all similarly situated tenants. If Company does not agree with such redetermined rental and fees, it has the right to cancel this Agreement as provided for in Section 2.17, TERMINATION BY COMPANY, of this Agreement.
- 1.5.3 **Proration of Rentals:** In the event such possession, use, and occupancy of the Property or any portion thereof should commence or terminate on a date other than the first day of a calendar month, then the rental for the Property will be prorated to reflect the actual number of days during which the Company will have enjoyed the possession, use, and occupancy of said Property.
- 1.5.4 **Other Payments:** Company agrees to pay County within fifteen (15) days of receipt of invoice for charges that become due to County under this Section 1.5 or as provided elsewhere in this Agreement.
- 1.5.5 **Late Payment:** In the event any required payment is not made by Company as required and remains unpaid for a period of thirty (30) days or more, County will be entitled to, and Company will pay to County, interest at the rate of eighteen percent (18%) per annum on all amounts unpaid and which have remained unpaid thirty (30) days past the due date. However, the County will not be prevented from terminating this Agreement pursuant to the provisions hereof for default of payments of rentals and fees or charges or from enforcing any other provisions contained herein or implied by law.
- 1.5.6 In the event any additional acres shall be added to the Property, the monthly installment owed hereunder shall be increased in the amount of the per acre rent then in effect, from the date of possession forward, and will be prorated based on the actual number of days during which the Company will have enjoyed the possession, use and occupancy of the added acres if such possession should commence on a date other than the first (1st) day of a calendar month.

## 1.6 UTILITIES

1.6.1. Company shall be responsible for and agrees to pay all recurring and nonrecurring costs for utilities (whether for installation, service, connections or maintenance thereof) used by Company at or upon the Property with no responsibility or expense incurred by County therefore. Such payment, by Company, will be made directly to the utility supplier, except that if any such utilities should be supplied by the County, then in this event, Company shall pay those costs to the County within fifteen (15) days of receipt of invoices therefore. County agrees that any such costs invoiced to Company will be at the rates charged to County by the utility supplier.

1.6.2. The rents and fees provided for in Section 1.5 above do not include the provision of water or other utilities associated with the site. Company may choose to negotiate with the Tonopah Public Utility for delivery of water and/or may choose to develop existing, County-owned water rights (by installing a new water supply well and associated distribution system for its facility), with an approved water rights lease agreement with the County. Such a water rights lease agreement must be separately negotiated and executed.

## **1.7 METHOD OF PAYMENT AND REPORTS**

1.7.1 Company will make all payments by check made payable to Nye County and deliver or mail said payments to:

Nye County Administration  
P.O. Box 153  
101 Radar Road  
Tonopah, NV, 89049

or to such other place as County may direct Company in writing.

1.7.2 Any amounts due County from Company whether for utility or maintenance or other charges as provided herein, will be paid by Company within fifteen (15) days of the date of the invoice therefore.

1.7.3 Company will submit any other information reasonably requested by County through its Designated Representative pertaining to Company's operations permitted hereunder.

## **1.8 RECORDS AND AUDIT**

Company agrees to make available and keep at a location within Nye County for at least a three (3) year period following the end of each annual period of this Agreement, accurate books, records, and accounts from Company's business to County, as applicable, under this Agreement. Company further agrees to make such books, records, and accounts available upon thirty (30) days prior written notice to Company, Monday through Friday, 9:00 AM to 5:00 PM for the inspection

of the Nye County Manager or designee, or such agents, employees, or accountants as CDR may designate. The CDR will at any time have the right to cause an audit of the business of Company to be made by a Certified Public Accountant of the CDR's selection, and if the business activity reports previously made to County by the Company are found to be intentionally understated in any respect or to be understated (either intentionally or unintentionally) by a greater margin than one percent (1%) of Company's actual activity for the period of review, as shown by such audit, the Company will immediately pay to the County the costs of such audit, as well as the additional payments shown to be payable to the County by the Company, otherwise the cost of such audit will be paid by the County. If such audit discloses any willful or intentional inaccuracies, this Agreement, at the option of the CDR and as a cumulative remedy, may be thereupon canceled or terminated.

## **1.9 OPERATING RIGHTS, DUTIES AND OBLIGATIONS**

Company will have the following operating rights, duties, and obligations, and be subject to the following restrictions:

- 1.9.1 Company, its affiliated entities, employees, agents, representatives, contractors, subcontractors, tenants, and/or sublessees will not transact or otherwise engage in any other activities, business, and/or services, except as described in Section 1.4 of this Agreement, at or on the Airport, unless such is provided for by a separate written agreement or amendment to this Agreement with the County.
- 1.9.2 Company will have joint use, in common with others, of roads and driveways necessary for the conduct, operation and maintenance of the Property.
- 1.9.3 Company will develop and cause to be constructed Improvements in accordance with plans and specifications prepared by Company and approved by the CDR in order to provide a world-class aviation facility.
- 1.9.4 Company may enter into a standard form sublease, which has been approved by CDR, with tenants and sublessees.
  - A. In the event there are any substantive changes or exceptions to the standard form of sublease arrangements; the Company must obtain the written approval of the CDR.
  - B. All subleases must be for those permitted in Section 1.4 entitled USE OF PROPERTY above, and must incorporate and make reference to all applicable provisions of this Agreement to ensure every sublessee's operations and conduct are in compliance with such applicable provisions of this Agreement.

## **1.10 METHOD OF OPERATION**

- 1.10.1 Company will provide County with a copy of any rules, regulations, or other standards of operation developed by Company and distributed to sublessees and tenants.
- 1.10.2 Company will furnish services and facilities on a fair, reasonable, and nondiscriminatory basis.
- 1.10.3 Company will occupy, maintain the Property, and operate its business in a manner consistent with industry standards and keep its Property in a safe, clean, orderly condition at all times.

## **1.11 FACILITIES, MAINTENANCE AND REPAIR TO BE PROVIDED BY COUNTY**

County has no responsibility or obligation for any maintenance, repair, or replacement of any of the Property or Improvements. In the event that any repair is required by reason of the negligence or abuse of Company or its employees, agents, invitee or any other person using the Property with Company's consent, express or implied, County may make such repair and bill Company at cost and add fifteen percent (15%) for administration for such repairs.

## **1.12 FACILITIES, MAINTENANCE AND REPAIR BY COMPANY**

In the operation of Company's activities within the Property, Company will provide and maintain at Company's expense:

- 1.12.1 All leasehold Improvements, as defined in Section 1.1.12 of this Agreement, decorations, equipment and furnishings, including, but not limited to, grading, fencing, paving, lighting, parking lots, roadways and drainage within the Property, parking lots, drainage, necessary finishes, electrical, telephone, communication conduit and accessories piping, duct work, equipment and fixtures as required by Company in the conduct of business as authorized under Section 1.4 entitled USE OF PROPERTY hereof.
- 1.12.2 Connections of all utilities, including, but not limited to, utility lines and connections from the Improvements as desired within the leased Property. Company's expense will include connection fees and all other fees.
- 1.12.3 All janitorial service and requirements, landscaping, and daily routine Property clean-up to keep the Property in good and tenantable condition throughout the term of this Agreement.

- 1.12.4 All Improvements or alterations to the Property by Company. During the term of this Agreement, Company may, with prior written approval of the CDR, add to or alter initially constructed Improvements at any time subject to all of the conditions set forth in Section 1.12.1 above. Any such addition or alteration will be performed in a workmanlike manner in accordance with all applicable governmental regulations and requirements and will not weaken or impair the structural strength or reduce the value of the Property or any of the Improvements thereon.
- 1.12.5 Immediately upon the completion of any initial or additional construction or installation during the term hereof, Company will provide as-built drawings, bearing the seal of the registered Nevada Professional Engineer responsible for preparation of the plans on each sheet, and containing any and all revisions to the previously approved construction plans, and accompanied by a completion certification letter from the Engineer. The completion certification letter shall accompany the as-built plans and shall include a statement that the site and adjacent properties (as affected by work performed) are stable with respect to settlement and subsidence, shallow and deep sloughing of cut and fill slopes, and the as-built improvement (public improvements, site grading and paving) meet or exceed the minimum design life. If the project was designed on a CAD system, the County also shall receive a copy of all related drawings and documents (such as point files) in AutoCAD format dxf or dwg. on disk.
- 1.12.6 Company will be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the leased Property or out of its operation. Such removal will conform with all governmental requirements and regulations as more fully described hereinafter in Section 3.22 entitled ENVIRONMENTAL POLICY. Such removal and disposal of garbage, debris, contaminants, or other waste material is understood to include routine, daily clean-up of the surrounding areas.
- 1.12.7 Should Company fail to perform its maintenance and repair responsibilities, County may, but is not obligated to, provide maintenance and make repairs thereon and thereto which it determines to be necessary, charging the same to the expense of the Company upon one (1) month's prior written notice of its intent to do so; except in case of emergency for which no notice is necessary, plus a fifteen percent (15%) administrative fee.

## **1.13 IMPROVEMENTS TO BE COMPLETED BY COMPANY**

- 1.13.1 It is understood and agreed by the parties that this Agreement is contingent on the Company's commitment to develop the Property. Therefore, Company and County have agreed to a development schedule which is and shall be deemed material to this Agreement.

1.13.2 Company shall Commence Construction ~~on or before~~ \_\_\_\_\_, 2024 upon execution of a [Development Agreement](#), and the Construction Completion Date is \_\_\_\_\_, [March 31](#), 2027.

1.13.3 If Company has not Commenced and Completed Construction within the time frames established above, it will be a material breach of this Agreement and County will have the right of termination, as further outlined in Section 2.16 of this Agreement.

1.13.4 If construction of Improvements is not completed at the end of any extended term as defined in Section 1.3.6 of this Agreement the County may, at its sole discretion, terminate this Agreement as defined in Section 2.16, TERMINATION BY COUNTY. Company forfeits any and all rights to lease and develop the Property without further claim by Company to County for any infrastructure or other related costs that may be associated with the uncompleted Improvements. Upon thirty (30) days written notice to Company of its intent, County will have the right to enter and occupy the Property.

#### **1.14 CONSTRUCTION STANDARDS, RULES AND REGULATIONS**

1.14.1 All Improvements by Company will be subject to all applicable governmental rules and regulations and building codes, as determined by the CDR. Immediately upon completion of any initial or additional construction, Improvements, or alterations during the term hereof, Company will provide a complete set of as-built drawings of same to the CDR along with a certification of construction costs for all permanent Improvements.

1.14.2 Design and construction specifications and documents must be reviewed and approved by the County's Public Works Department prior to commencement of construction of Improvements. Further, design and construction specifications and documents must be reviewed by the County Planning Department, as may be applicable, prior to the issuance of a building permit and will be subject to any statute, ordinance, rule or regulation of any other applicable governmental agency, department or authority whether Federal, State or local, including, but not limited to, Nevada Revised Statutes Chapter 338.

1.14.3 During the term or any extension of this Agreement, Company may, with the prior written approval of the CDR, add to or alter the newly constructed Improvements at any time subject to all conditions set forth herein above. Any such addition or alteration will be performed in a workmanlike manner in accordance with all applicable governmental regulations and requirements and will not weaken or impair the structural strength or reduce

the value of the Property or Improvements thereon.

1.14.4 Should Company or any subtenant cause any Improvements to the Property, Company shall cause any contract with any contractor, designer, or other person providing work, labor, or materials to the Property to include the following clause:

“Contractor agrees on behalf of itself, its subcontractors, suppliers, and consultants and their employees that there is no legal right to file a lien upon County-owned property and will not file a mechanic’s lien or otherwise assert any claim against County’s real estate on account of any work done, labor performed, or materials furnished under this contract. Contractor agrees to indemnify, defend and hold County harmless from any liens filed upon the County’s property and shall promptly take all necessary legal action to ensure that removal of any such lien at Contractor’s sole cost.”

## **ARTICLE II**

### **2.1 ASSIGNMENT**

2.1.1 Company will not assign its rights or duties hereunder, or any estate created hereunder, in whole or in part, except (i) to an affiliate of Company, or (ii) with the prior written consent of County. Any such assignment will be specifically subject to all provisions of this Agreement. Any assignment without County’s consent is void, which consent will not be withheld unreasonably or delayed, but will be given if the assignee presented has the financial resources sufficient in County’s reasonable business judgment to be financially secure to perform the obligations hereunder, unless the County determines that the assignment otherwise is contrary to the public good. If the County rejects a proposed assignment, it will notice the Company of its rejection and the reasons for that rejection within thirty (30) days of receipt of all requested information about the proposed assignee.

2.1.1.1 Any voluntary transfer of fifty percent (50%) or more of Company’s membership interests will be deemed an assignment.

2.1.1.2 Before any assignment will become effective, the assignee will, by written instrument, assume and agree to be bound by the terms and conditions of this Agreement during the remainder of the term thereafter. When seeking consent to an assignment hereunder, Company will submit a copy of the document or instrument of assignment to County.

2.1.1.3 Any transfers of partners of Company or shareholders or partners of partners of Company for estate purposes will not be considered an assignment hereunder.

2.1.2        No Release of Company

2.1.2.1 Regardless of the County's consent, no subletting or assignment will release Company of Company's obligation or alter the primary liability of Company to pay the rent and to perform all other obligations to be performed by Company hereunder.

2.1.2.2 The acceptance of rent by County from any other person will not be deemed to be a waiver by County of any provision hereof.

2.1.2.3 Consent to one assignment or subletting will not be deemed consent to any subsequent assignment or subletting. Prior written consent of the County will be required for any sublease executed by the Company of any part of the Property and all such subleases will be subject to the terms and provisions of this Agreement.

2.1.3        In no case may the activities, uses, privileges and obligations authorized herein or the Property or any portion thereof be assigned, for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Company.

2.1.4        The County reserves the right to deny any assignment or subletting by Company for any reason it deems in the best interest of the County, which shall not be unreasonably withheld. Any purported assignment or sublease in violation hereof shall be void.

2.1.5        In the event of default by an assignee of Company or any successor of Company, in the performance of any of the terms hereof, County may proceed directly against Company without the necessity of exhausting remedies against said designee.

2.1.6        Every sublease must be in the form of a legal written instrument and must be specifically for the purposes and uses of the Property authorized by and subject to all of the provisions of this Agreement. Company will submit a hard copy of such writing at the time of requesting the CDR's consent. Agreements for services, such as the maintenance of buildings and landscaping, are not covered by this section.

**2.2        SUBLEASING**

Company will not sublease, rent, or permit any persons, firms or corporations to occupy any part of the Property without having first received consent therefore as follows:

- 2.2.1 Any arrangements must be in the form of a written instrument and must be specifically for purposes and uses of the Property as authorized under this Agreement and shall be subject to the provisions of this Agreement. Company will submit a copy of such writing at the time of requesting consent of CDR therefore.
  - 2.2.1.1 All subleases that comply with the standard form agreement as approved in accordance with Section 1.4 of this Agreement will be reviewed for compliance by the CDR.
  - 2.2.1.2 Any arrangements for the leasing of space that are not in conformance with the standard form agreement as approved in accordance with Section 1.4 of this Agreement, must receive the prior written approval of the CDR.
- 2.2.2 Company hereby agrees that it shall incorporate language acceptable to CDR into all of its future sublease agreements and, any similar restrictions which Company may create in relation to the use of the Property by its affiliated entities, contractors, subcontractors, sublessees, and/or tenants. Company shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time.
- 2.2.3 Consent to one assignment or subletting will not be deemed consent to any subsequent assignment or subletting. Prior written consent of the County will be required for any sublease executed by the Company.

### **2.3 ATTORNMENT**

- 2.3.1 All subleases of Company will be subject to all terms and conditions of this Agreement. In the event Company ceases to be a party to this Agreement and perform its obligations hereunder to County, other than by a transfer of interest and novation approved in writing by County, all sublessees will recognize County as the successor to the Company, be bound by the terms and conditions of this Agreement and render performance hereunder to County as if the Agreement were executed directly between County and the sublessees; provided, however, County agrees that so long as sublessees are not in default, County agrees to provide quiet enjoyment to the sublessees and County agrees to be bound by all of the terms and conditions of each sublease. In such event, County shall be entitled to the full benefit of Company's position under the sublease.

2.3.2 In the event this Agreement is terminated for any reason, all sublessees will be liable to County for the payment of their prorata share of the rentals and fees required under Section 1.5, RENTS AND FEES PAYABLE TO COUNTY, of this Agreement. Payment of rentals and fees under this paragraph will entitle the sublessee to quiet enjoyment of the Property pursuant to Section 4.3, QUIET ENJOYMENT, of this Agreement.

#### **2.4 SUCCESSORS AND ASSIGNS**

All covenants and conditions of this Agreement will extend to and bind the legal representatives, successors and assigns of the respective parties hereto and all agreements with assignees or Sublessees will include all provisions contained in this Agreement.

#### **2.5 CONTROL OF PERSONNEL**

Company will employ a sufficient number of personnel to handle the operations and respond to customer inquiries and needs of the business herein authorized. Company will, in and about the Property and elsewhere upon the Airport, exercise reasonable control over the conduct, demeanor and appearance of its employees, invitees, agents, representatives, contractors, subcontractors and suppliers, and their conduct shall be in an orderly and proper manner so as not to annoy, disturb or be offensive to others.

#### **2.6 SIGNS**

2.6.1 Company will not erect, install, operate, nor cause or permit to be erected, installed, or operated outside the Property, elsewhere upon Airport property, any signs or other similar advertising devices for its own business.

2.6.2 Any identifying signs erected, installed, operated or attached to the Property will require the prior written approval of the CDR, which will not be unreasonably withheld. Such approval may consider and provide conditions concerning factors including, but not limited to, size, type, content, and method of installation.

2.6.3 Company's use of the Property shall not include the ability to erect or to grant to a third party the ability to erect commercial billboards on the Property. All such rights are reserved herein for the County.

#### **2.7 ENTRY AND INSPECTION OF PROPERTY**

2.7.1 County, its authorized officers, employees, agents, contractors, subcontractors or other representatives will have the right to enter upon the Property for the following reasons by providing at least two (2) business

days prior written notice and while accompanied by a representative of Company, except in an emergency, in which case County will provide concurrent or reasonable subsequent notice specifying the nature of the emergency and the need for immediate entry.

- 2.7.2 To inspect at reasonable intervals during regular business hours (or any time in case of emergency) to determine whether Company has complied and is complying with the terms and conditions of this Agreement.
- 2.7.3 For the purpose of inspecting the Property and for fulfilling County's obligations hereunder, provided however, that such entry will be at such times and in such manner as to not unreasonably interfere with the operations of Company or its Sublessees. County may, however, enter at any time for emergency repairs or maintenance without responsibility to Company for loss of business.
- 2.7.4 No such entry by or on behalf of County upon the Property will cause or constitute a termination of this Agreement nor be deemed to constitute an interference with the possession thereof nor constitute a revocation of or interference with any of Company's rights in respect thereof for exclusive use of the Property.
- 2.7.5 The inspections contemplated by the parties to this Agreement, pursuant to this Section, are for the sole benefit of the parties. No benefit to any third party is contemplated nor intended.

## **2.8 INTENTION OF PARTIES**

- 2.8.1 This Agreement is intended solely for the benefit of County and Company and is not intended to benefit, either directly or indirectly, any other persons or member(s) of the public at large. Any work done or inspection of the Property by County is solely for the benefit of County and Company.
- 2.8.2 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the County and the Company.

## **2.9 LIENS**

Company shall take or cause to be taken all steps that are required or permitted by

law in order to avoid the imposition of any lien upon the Property or any improvements thereon.

Should Company cause any improvements to the Property, Company shall cause any contract with any contractor, designer or other person providing work, labor or materials to the Property to include the following clause: "Contractor agrees on behalf of itself, its subcontractors, suppliers and consultants and their employees, that there is no legal right to file a lien upon County-owned property, and will not file a mechanic's lien or otherwise assert any claim against County's real estate on account of any work done, labor performed or materials furnished under this contract. Contractor agrees to indemnify, defend and hold County harmless from any liens filed upon County's property and shall promptly take all necessary legal action to ensure the removal of any such lien at Contractor's sole cost."

However, should any lien be placed on the Property or any improvements thereon, Company will cause to be removed any and all liens of any nature including, but not limited to, tax liens and liens arising out of or because of any construction or installation performed by or on behalf of Company or any of its contractors or subcontractors upon Company's Property or arising out of or because of the performance of any work or labor to it or them at said Property or the furnishing of any materials to it or them for use at said Property. Should any such lien be made or filed, Company will bond against or discharge the same within thirty (30) days after written request by CDR.

## **2.10 TAXES, LICENSES AND PERMITS**

Company will promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation and lease of the Property hereunder, including but not limited to those possessory and beneficial use taxes due pursuant to NRS 361.157. Company may elect, however, at its own cost and expense to contest any such tax, excise, levy or assessment. Company will keep current Federal, State or local licenses or permits required for the conduct of its business.

## **2.11 INDEMNITY**

Company agrees to indemnify, defend and hold County, its officers, agents and employees forever harmless from and against all claims, demands, lawsuits, liability, loss, judgments or other expense (including, but not limited to, defense costs, expenses and reasonable attorney fees) made or imposed upon County arising out of any injuries to or death of natural persons (including wrongful death) and/or damages to property related to Company's use or occupancy of Airport property or the Property in violation of the terms of this Agreement or any wrongful or intentional actions or non-actions, or any negligent actions or non-actions, of Company, its officers, employees, agents, or other representatives, or invitees, including movement of aircraft or vehicles, provided, however, that such indemnity

will not apply to the extent of any negligent act or omission of County, its employees, agents, or representatives.

## **2.13 INSURANCE AND CONSTRUCTION BONDS**

Company will ensure that all insurance and bonds as required herein are provided and maintained by the Company, its tenants, sublessees, contractors, subcontractors, or other parties who develop and/or occupy any portion of the Property. As used in this Section, any reference to Company shall be deemed to include Company, its tenants, sublessees, contractors, subcontractors, or other parties involved in the development and/or potential lease or occupancy of the Property, whenever applicable.

**2.13.1 Bonds for Construction/Improvements:** Prior to the commencement of any construction contract, Company will require its contractor to furnish Contract Bonds to the CDR as follows:

2.13.1.1 Labor and Material Payment Bond in the amount of one hundred percent (115%) of the contract price.

2.13.1.2 Payment and Performance Bond in the amount of one hundred percent (115%) of the contract price.

2.13.1.3 Guaranty Bond in the amount of one hundred percent (115%) of the contract price. The Guarantee Bond will go into effect when the Notice of Completion is approved in accordance with Section 1.14 entitled CONSTRUCTION STANDARDS, RULE AND REGULATIONS, of this Agreement.

2.13.1.4 CDR, in the exercise of his sole discretion may waive the requirements of this Section 2.13.1 upon written request by Company.

2.13.1.5 The Bonds referred to herein above will be written on the Payment and Performance Bond and Labor and Material Payment Bond and Guaranty Bond forms approved by the CDR.

2.13.1.6 Bonds may be secured through the contractor's usual sources provided the Surety is authorized and licensed to do business in the State of Nevada.

2.13.1.7 Company will require its contractor to require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of his power of attorney.

2.13.1.8 Any Labor and Material Payment Bond, Payment and Performance Bond, or Guaranty Bond prepared by a licensed nonresident agent must be countersigned by a resident agent as per the provisions of N.R.S. 680A.300.

2.13.2 **Insurance Requirements:** Upon Company's execution of this Agreement and prior to the commencement of any improvement or equipment installation on or about the Property, Company will provide and agrees to maintain acceptable insurance in accordance with specifications contained in this Section 2.13.2. Company shall also require and provide to CDR that its construction contractor, tenants, and sublessees procure and maintain insurance for such construction and installation and/or occupancy of any portion of the Property, protecting both Company and County as well as the construction contractor, tenant, and/or sublessee during the term of the construction and/or the term of this Agreement, as applicable. Such insurance will provide coverage and limits as are determined customary in the industry by CDR and Company. Such insurance will include, as applicable, but is not limited to the following:

- A. Commercial General Liability on an "occurrence" basis
- B. Aircraft Liability
- C. Hangar Keepers Liability
- D. Automobile Liability
- E. Worker's Compensation Insurance
- F. Property Insurance Coverage – Full Insurable Replacement Value of Property and Personal Property
- G. Builder's Risk equal to the maximum possible loss covering the project and all materials and equipment (during construction and/or Improvements activities).

2.13.2.1 Company's (or its Contractor's, tenants, and sublessees) insurance shall be primary as respects to County and Company, their officers, employees and volunteers acting as agents of the County, hereinafter "volunteers." Any other coverage available to County, its officers, employees, and volunteers will be in excess over the insurance required by the contract and shall not contribute with it.

2.13.2.2 **Worker's Compensation Insurance:** Company will maintain worker's compensation in the amounts and form as required by the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act. Certificates evidencing the valid, effective insurance policies will be provided to and kept on file with CDR.

2.13.2.3 **Property Insurance Coverage:** Company will keep insured with responsible insurance underwriters any and all Improvements constructed by it upon and within the Property, including all

personal property contained therein, to the extent of not less than one hundred percent (100%) of such Improvements and property full insurable replacement value using the all risk form of protection as acceptable to the CDR. Company will be responsible for insuring against any rental protection resulting in loss of income, personal property or extra expense to Company.

2.13.2.4 **Commercial General Liability Insurance:** Company will obtain and keep in full force and effect commercial general liability insurance coverage for injury to property and person, products, liability, and such other coverage as may be necessary to protect County herein from such claims and actions. Said insurance shall have limits of not less than One Million Dollars (\$1,000,000) per occurrence limit of liability, Two Million Dollars (\$2,000,000) general aggregate limit of liability and products-completed operations limit of liability.

2.13.2.5 **Hangar Keepers Liability Insurance:** Company will obtain and keep in full force and effect hangar keepers liability insurance coverage for injury to aircraft in the care, custody, control of the insured, and such other coverage as may be necessary to protect County herein from such claims and actions. Said insurance shall have limits of not less than One Million (\$1,000,000) Dollars per occurrence limit of liability, general aggregate limit of liability.

2.13.2.6 **Automobile Liability Insurance:** Company will furnish Automobile Liability coverage for claims for damage because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned. Company will maintain limits of no less than Five Hundred Thousand (\$500,000) Dollars combined single limit "per accident" for bodily injury and property damage.

2.13.2.7 **Aircraft Liability Insurance:** Company will obtain and keep in full force and effect aircraft general liability insurance coverage for injury to property and person, products, liability, and such other coverage as may be necessary to protect County herein from such claims and actions. Said insurance shall have limits of not less than Ten Million (\$10,000,000) Dollars per occurrence limit of liability, personal and advertising injury, general aggregate limit of liability and products-completed operations limit of liability.

2.13.2.8 **Builder's Risk:** Coverage will insure any Improvements constructed by it upon and within the Property to the extent of not

less than one hundred percent (100%) of such Improvements full insurable value using the all risk form of protection as acceptable to the County. Company will be responsible for insuring against any business interruption resulting in loss of income or extra expense to Company. Company shall obtain and maintain flood insurance required hereunder in such amounts and forms as are available, from time to time, under the National Flood Insurance Program.

- 2.13.3 All required insurance coverage as stated in Section 2.13.2 will be evidenced by a current Certificate(s) of Insurance.
- 2.13.4 All Certificates for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada.
- 2.13.5 Each insurance company's rating as shown in the latest Best's Key Rating Guide will be fully disclosed and entered on the required Certificates of Insurance. If the insurance company providing the coverage has a Best rating of less than A+VIII the adequacy of the insurance supplied by Company (or its contractor), including the rating and financial health of each insurance company providing coverage, is subject to the approval by the CDR. Such approval will not be unreasonably withheld.
- 2.13.6 Company (or its contractor) will furnish renewal Certificates, prior to the expiration of the current Certificates of Insurance, for the required insurance during the period of coverage required by this Agreement. Company (or its contractor) will furnish renewal Certificates, prior to the expiration of the current Certificates of Insurance, for the same minimum coverages as required in this Agreement. If such certificate(s) are not provided in a timely manner, the CDR may declare the Company in default of its obligation under this paragraph, subject to Section 2.16 (subsection 2.16.3 Cure) entitled TERMINATION BY COUNTY.
- 2.13.7 Company agrees to cause its insurance company to issue a policy endorsement expressly naming Nye County, its officers, employees and volunteers as an additional insured with respect to liability arising out of the activities by or on behalf of the named insured in connection with this Agreement. All property insurance policies will contain a waiver of subrogation clause in favor of Nye County.
- 2.13.8 Each insurance policy supplied by the Company (or its contractor) must be endorsed to provide that the amount of coverage afforded to the County by the terms of this Agreement will not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days prior written notice by mail.

- 2.13.9 Any deductible, as it relates to coverage provided under this Agreement, will be fully disclosed on the Certificates of Insurance. Any deductible provided will be reasonable and customary for this type of risk.
- 2.13.10 All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. Company's insurer must notify the CDR of any erosion of the aggregate limits. The "per occurrence" limits of insurance required herein must be maintained in full, irrespective of any erosion of aggregate. A modification of the aggregation limitation may be permitted if it is deemed necessary and approved by the CDR and Company.
- 2.13.11 If the Company fails to maintain any of the insurance coverages required herein, then the County will have the option to declare the Company in breach subject to Section 2.16 entitled TERMINATION BY COUNTY (subsection 2.16.3 Cure) or the CDR may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. The Company is responsible for any expenses paid by the County, plus fifteen percent (15%) administrative fees, to maintain such insurance and County may collect the same from the Company.
- 2.13.12 The insurance requirements specified herein do not relieve the Company of its responsibility or limit the amount of its liability to the County or other persons and the Company is encouraged to purchase such additional insurance as it deems necessary.
- 2.13.13 Company is responsible for and must remedy all damage or loss to any property, including property of County, caused in whole or in part by the Company or its contractor, any subcontractor or anyone employed, directed or supervised by the Company. Company is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement.
- 2.13.14 County retains the right to adjust insurance requirement limits, as may be necessary to insure against the risk for a specific activity requested under a sublease or sales agreements with company and submitted to County for approval. Such limits shall not exceed those limits established for similar activities at the Airport. Company shall require that all policies meet the requirements as set forth in this Section 2.13 of this Agreement.
  - A. Company is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement. Company shall keep in proper functioning order all fire fighting equipment, excluding the Department of Aviation's automated sprinkler system. From time to time as often as

reasonably required by County, Company shall conduct appropriate tests of any fire extinguishing apparatus located on the Property.

- B. Certificates of Insurance: Company shall provide County evidence of the required minimum insurance coverages and endorsements, per the sample certificate provided by County, within fifteen (15) calendar days from the date of written approval by the County.
- C. 30 Day Notice: Certificates of Insurance will provide a thirty (30) day written notice provision for cancellation or coverage reduction to any policy.
- D. Deductible / Self Insured Retention: All deductibles and self-insured retention shall be fully disclosed within the Certificates of Insurance. No deductible or self-insured retention may exceed Ten Thousand and 00/100 (\$10,000.00) Dollars unless CDR gives prior written consent.

## **2.14 FIRE PROTECTION**

From time to time and as often as reasonably required by County, Company will conduct appropriate tests of any fire extinguishing apparatus located on the Property. Company or Sublessees will keep in proper functioning order all fire fighting equipment located on the Property.

## **2.15 DAMAGE AND DESTRUCTION**

- 2.15.1 In the event of damage, destruction, or loss from any cause of Improvements constructed upon the Property that is not capable of being repaired within sixty (60) days, Company will have the option to terminate this Agreement by written notice to County within ten (10) days after the occurrence of such event. In the event Company elects to terminate this Agreement based upon such damage, destruction, or substantial loss and Company or its employees or agents cause such damage, destruction or substantial loss to occur, Company will be liable for and will pay for all cleanup or demolition of the Property and make such repairs, replacements or restorations required, including the removal and/or replacement of personal property, vehicles not otherwise covered by insurance. In the event Company does not exercise such termination option, or in the event said damage, destruction or loss is capable of being repaired within sixty (60) days, then Company will promptly repair, replace, restore or rebuild said Improvements.
- 2.15.2 Company will be entitled to an abatement of rentals upon the date of notice from Company to County of its intent to terminate or to repair damage to

the Improvements. Rental will recommence upon substantial repair of Improvements, which are sufficient to allow Company to recommence business operations. In no event, however, will the abatement be longer than six (6) months.

## **2.16 TERMINATION BY COMPANY**

### **2.16.1 Default by Company.**

Company will be considered in default as lessee under this Agreement in the event of any one or more of the following occurrences:

- 2.16.1.1 Company becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws, or under any other law or statute of the United States or of any State thereof, or consents to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property.
- 2.16.1.2 A petition or the liquidation under federal bankruptcy statutes, or action under any present or future insolvency law or statute is filed against Company and is not dismissed within sixty (60) days after the filing thereof or which causes the discontinuance of the fulfillment of any required provision of this Agreement by Company.
- 2.16.1.3 Company fails to pay the rental charges or other money payments required by this Agreement when the same are due and the continuance of such failure for a period of ten (10) days after written notice thereof from the CDR to Company.
- 2.16.1.4 Company voluntarily abandons any of the Property leased or assigned to it or discontinues the conduct and operation of any businesses at the Property or ceases to provide any or all of the services as required under this Agreement.
- 2.16.1.5 Violation of Company or its tenants, sublessees, contractors, and/or subcontractors of the terms and conditions of this Agreement, as determined by the CDR at its sole discretion. If such default is not cured, as provided for in Section 2.16.3 of the Agreement, CDR may, at its sole discretion, suspend or terminate this Agreement

- 2.16.1.6 If Company shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Nevada, or Nye County.
- 2.16.1.7 If Company shall fail to take possession of the Property.
- 2.16.1.8 Company fails to provide the required certificates of insurance as stated in Section 2.13 of this Agreement.

2.16.2 General Provisions.

- 2.16.2.1 All rights and remedies of the County herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed advisable.
- 2.16.2.2 Any amount paid or expense or liability incurred by the County for the account of Company may be deemed to be additional charges and the same may, at the option of the County, be added to any commissions then due or thereafter falling due hereunder.
- 2.16.2.3 The Company agrees to keep all insurance policies in effect, as required under Section 2.13 of this Agreement, until the time it surrenders its Property.

2.16.3 Cure.

Company will be considered in default of this Agreement if Company fails to fulfill any of the terms, covenants, or conditions set forth in this Agreement if such failure continues for a period of more than thirty (30) days (except for failure to pay rental charges as described in 2.16.1.4 herein above) after delivery by the CDR of a written notice of such breach or default, except if the fulfillment of its obligation requires activity over a period of time, and Company will have commenced in good faith to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control.

2.16.4 Termination for Default by Company.

In addition to all other remedies available, if default is made by Company as described in Section 2.16.1 herein above, and such default is not cured

as provided in Section 2.16.3, County may elect to terminate this Agreement with thirty (30) days written notice to Company.

- 2.16.4.1 If County elects to terminate this Agreement, it will in no way prejudice the right of action for rental arrearages owed by Company.
- 2.16.4.2 In the event of any termination for default by Company, County will have the right to enter upon the Property and take possession of same. Redelivery and disposal of improvements will be as described in Section 2.19, REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION, of this Agreement.

## **2.17 TERMINATION BY COMPANY**

### **2.17.1 Default By County.**

County will be considered in default as lessor of this Agreement if County fails to fulfill any of the terms, covenants or conditions set forth in this Agreement if such failure shall continue for a period of more than thirty (30) days after delivery by Company of a written notice of such breach or default.

### **2.17.2 Cancellation.**

As the sole remedy available to Company, this Agreement shall be subject to cancellation by the Company should any one or more of the following conditions of default occur:

- 2.17.2.1 The abandonment of the Airport, or any portion thereof, for longer than six (6) months. It shall not be implied to be default if any action taken by the federal, state, or local government suspends operations and/or closes the Airport.
- 2.17.2.2 The assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport or any portion thereof, and its facilities in such a manner as to substantially restrict the Company from installing and maintaining its Property and associated operations, if such restriction be continued for a period of three (3) months or more.

### **2.17.3 Cure.**

County will not, however, be considered in breach of this Agreement if the fulfillment of its obligation requires activity over a period of time and County has commenced in good faith to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption except for causes beyond its control.

**2.17.4 Termination For Default By County.**

If default is made by County as described in Section 2.17.1 herein above, Company may elect to terminate this Agreement with thirty (30) days' written notice to County.

- 2.17.5 In the event of the termination under either 2.17.1 or 2.17.2 by County, redelivery and disposal of improvements will be as described in Section 2.19, entitled REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION, of this Agreement.
- 2.17.6 In the event of any termination for default by County, it will in no way prejudice the right of action for rental arrearages owed by Company.

**2.18 WAIVERS AND ACCEPTANCE OF FEES**

- 2.18.1 No waiver of default by either party hereto of any of the terms, covenants or conditions hereof to be performed, kept or observed will be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, conditions herein contained to be performed, kept and observed.
- 2.18.2 No acceptance of fees or other money payments in whole or in part for any period or periods during or after default of any of the terms, conditions or covenants to be performed, kept or observed by Company will be deemed a waiver on the part of Company of its right to terminate this Agreement on account of such default.

**2.19 REDELIVERY AND DISPOSAL OF IMPROVEMENTS AT TERMINATION**

- 2.19.1 Company covenants that at the termination of this Agreement, howsoever caused, it will quit and surrender the Property in good repair and condition, except reasonable wear and tear, acts of God, the public enemy or the action of the elements.
- 2.19.2 Upon termination of this Agreement, howsoever caused, County will require Company to remove from the Property, within thirty (30) days of termination, all equipment, trade fixtures and personal property belonging to Company or its Sublessees. For purposes of this Subsection 2.19.2, the

words “equipment, trade fixtures and personal property” will include, but not be limited to, signs (electrical or otherwise) used to advertise or identify Company’s business, all equipment used in connection with the conduct of its business whether or not such equipment is bolted or otherwise attached to the Property; any other mechanical device; and all other miscellaneous equipment, furnishings and fixtures installed on or placed on or about the leased Property and used in connection with Company’s business thereon.

2.19.3 Except when County recovered the Property pursuant to Section 2.22 below, upon termination of this Agreement, howsoever caused, County may require either of the following by giving written notice prior to the date of termination:

2.19.3.1 Company will, commencing within thirty (30) days following the termination date, remove all or part (as determined by County) of the permanent Improvements made to or placed upon the Property by Company or otherwise dispose of its interest in the Property. Such disposal shall have the County’s prior written approval. Company agrees that it will use due diligence in completing the removal as may be required herein.

2.19.3.2 Company will leave in place all or part, as determined by County, of the permanent Improvements whereupon title and ownership will vest in County without any further consideration required from County. Company agrees that it will immediately provide any transfers of title to County as may be required.

2.19.3.3 If no written notice is received by Company from County prior to termination of this Agreement pursuant to this Section 2.19.3, Section 2.19.3.2 will apply.

2.19.4 For purposes of this Section 2.19.3 the words “permanent Improvements” will include, but not be limited to, paving, buildings, structures and related appurtenances, wall coverings, carpeting, draperies and light fixtures.

## **2.20 SUSPENSION AND ABATEMENT**

In the event that Company’s operation from the Property should be restricted substantially by action of the Federal government or agency thereof or the actions of any other governmental entity or agency thereof or by any judicial or legislative body, then Company will have the right, upon written notice to County, to a suspension of this Agreement and an abatement of an equitable proportion of the payments to become due hereunder, from the time of such notice until such restrictions will have been remedied and normal operations restored.

## **2.21 FINANCING**

- 2.21.1 Notwithstanding anything to the contrary contained in this Agreement, Company will have the right at any time during the term hereof to execute and deliver to any or all of its lenders any documents which will operate as collateral security for any loan or loans made for the construction of Improvements to the Property, even if such document(s) results in a form or type of conveyance of assignment of the leasehold interest demised hereunder. It is hereby agreed that Company or any such lender(s) will have the right to immediately record such document(s) with appropriate public official(s). Company agrees that copies of all such documents of conveyance or assignment as contained in this Section 2.21 will be provided to County forthwith. Conveyances and assignments in connection with other than initial financing will first receive approval of County. Any lender, which will succeed to Company's interest hereunder, will so succeed subject to all the terms and conditions of this Agreement.
- 2.21.2 County will deliver to any such lender written notice of any default of Company under the terms of this Agreement and said notice will specify the nature of the default. Before terminating this Agreement, County will allow such lender to cure or commence to cure any default of Company in accordance with Section 2.16.3 of this Agreement. The time period to cure any default of Company will commence when said notice is delivered to lender.
- 2.21.3 Any default by Company in the payment of money as required under the terms of this Agreement may be cured by the lender in accordance with the terms of Section 2.16.3 of this Agreement, and County will accept any such payment or cure from such lender during the term of the lender's loan to Company.
  - 2.21.3.1 Should the Company default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money and the default does not affect the security or safety of the Property, County will accept payments of rent from such lender and this Agreement will not terminate, but will remain in full force and effect, pending lender's cure of such default or resort to foreclosure or sale proceedings under its deed of trust or other security instruments.
  - 2.21.3.2 Should the Company default under the terms of this Agreement and should the default be such that it cannot be cured by the payment of money and the default affects the security or safety of the Property, upon notice such lender

will have the obligation to cure immediately may cure or commence to cure the default in accordance with Section 2.16.3 of this Agreement. If, however, the lender petitions and County elects to cure the default, County will present for payment to Company and lender a detailed and itemized invoice of County's reasonable expenses incurred in curing the default. This Agreement will not terminate sooner than one (1) year from the date of County's notice of default to Company and lender, pending such lender's resort to any foreclosure or sale proceedings under its deed of trust or other security instrument unless Company or lender fails to pay County within thirty (30) days from receipt the amount of the invoice.

- 2.21.4 County agrees that completion of any foreclosure proceedings or sale under the deed of trust or other security securing the loan, the lender or purchaser at such sale or any heir, successor, or assign of lender subsequent to such sale, will be recognized by County as the lessee under the terms of this Agreement for all purposes (provided County has consented to the list of potential transferees, or any purchaser, heir, successor or assign of lender, as fit and proper to hold the Agreement and financially capable of performing and such consent will not be unreasonably withheld) for the remaining term hereof and the leasehold interest of the lender or such purchaser will not be adversely affected or terminated by reason of any nonmonetary default occurring prior to the completion of such proceedings or sale.
- 2.21.5 Such lender will not become personally liable under the terms and obligations of this Agreement unless and until it assumes the obligations and is recognized by County as lessee under this Agreement and will be liable only so long as such lender maintains ownership of the leasehold interest or estate.

## **2.22 RECOVERY OF PROPERTY**

County may, in its unlimited discretion, at any time during the term of this Agreement or any extensions thereof, recover all or any part of the Property for other Airport or public uses, or for any other reason. Prior to the exercise of this power of recovery, County agrees to give Company one hundred twenty (120) days prior written notice of its intention to exercise this power. In the event of such taking, County will pay to Company a sum equal to the depreciated value of the fixed Improvements made to the Property by Company on that portion of the Property so recovered by County. For purposes of this Agreement and the determination of the unamortized value, the parties agree that said fixed Improvements will be amortized on a straight-line method over the full term (excluding any option periods) of this Agreement. In the event the recovery is for

a portion of the Property, then this Agreement will continue except that the leased area will be recalculated to reflect the new square footage upon which rental payments will continue.

## **ARTICLE III**

### **3.1 MAINTENANCE AND OPERATION NONDISCRIMINATION COMPLIANCE**

Company, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Property for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Company will maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulation may be amended.

### **3.2 NONDISCRIMINATION IN PARTICIPATION, CONSTRUCTION AND USE OF PROPERTY**

Company, for itself, its personal representatives, successors in interest and assigns and as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

- 3.2.1 No person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 3.2.2 In the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin will be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.
- 3.2.3 Company will use the Property in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.

### **3.3 TERMINATION RIGHTS FOR BREACH OF SECTIONS 3.1 OR 3.2**

In the event of breach of any of the nondiscrimination covenants described in Sections 3.1 or 3.2 above, County will have the right to terminate this Agreement and to reenter and repossess the Property and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision, however, does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights. Promptly upon the receipt of any complaint or other notice alleging violation of the covenants in Sections 3.1 and 3.2, County will notify Company and will provide Company the opportunity to defend the same.

### **3.4 NONDISCRIMINATION IN FURNISHING ACCOMMODATIONS AND/OR SERVICES**

Company will furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it will charge fair, reasonable and not unjustly discriminatory prices for each unit or service provided that Company may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

### **3.5 RIGHTS FOR NONCOMPLIANCE WITH SECTION 3.4**

Noncompliance with Section 3.4 above will constitute a material breach of this Agreement and in the event of such noncompliance, County will have the right to terminate this Agreement and the estate hereby created without liability therefore or at the election of County or the United States of America either or both said Governments will have the right to judicially enforce the provision.

### **3.6 COMPANY'S OBLIGATION 49 CFR PART 23, SUBPART F**

- 3.6.1 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. Company agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any agreement covered by 49 CFR Part 23, Subpart F.
- 3.6.2 Company agrees to include the above statements in any subsequent sublease, professional services and/or construction agreements that it enters and cause those businesses to similarly include the statements in further agreements.

### **3.7 SUBAGREEMENT NONDISCRIMINATION COMPLIANCE**

Company hereby assures it will include the above Article III clauses in all subleases and cause Sublessees to similarly include clauses in further subleases.

### **3.8 COMPANY OBLIGATION**

Company hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise be discriminated against, in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex.

### **3.9 APPENDIX 9, GENERAL CIVIL RIGHTS PROVISION**

Company assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Company or its transferee for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or Improvements thereon. In these cases, this Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

### **3.10 AFFIRMATIVE ACTION EMPLOYMENT PROGRAMS**

3.10.1 Company assures that it will undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Company assures that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Company assures that it will require that its covered suborganizations provide assurances to Company that they similarly will undertake Affirmative Action Programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E to the same effect.

3.10.2 Company agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any Federal, State, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Company agrees that State or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR, Subpart 152.409.

Company agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

3.10.3 In the event Company employs fifty (50) or more employees on the Airport, it agrees to prepare and keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with standards in 14 CFR, Subpart 152.409. Such program will be updated on an annual basis. Should Company employ less than fifty (50) employees on the Airport, it will annually send written correspondence confirming the exemption.

### **3.11 AIRPORT MAINTENANCE, REPAIR, DEVELOPMENT AND EXPANSION**

County reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment, regardless of the desires or view of Company and without interference or hindrance by Company. Further, County retains the absolute right to maintain, repair, develop and expand the terminal building, any other Airport facility, Airport improvement or Airport property free from any and all liability to Company for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development or expansion.

### **3.12 MAINTENANCE, REPAIR, DIRECTION AND CONTROL**

County reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Company in this regard. These areas will include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that County will not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants whether such area serves aeronautical users or otherwise.

### **3.13 AGREEMENTS WITH THE UNITED STATES OF AMERICA**

This Agreement will be subject and subordinate to the provisions and requirements of any existing or future agreement between County and the United States of America relative to the development, operation or maintenance of the Airport.

### **3.14 OPERATION OF AIRPORT BY THE UNITED STATES OF AMERICA**

This Agreement and all the provisions hereof will be subject to whatever right the United States of America now has or in the future may have or acquire, affecting

the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

### **3.15 PART 77 OF FEDERAL AVIATION REGULATIONS**

Company agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Property, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Property.

### **3.16 NONEXCLUSIVE**

It is understood and agreed that nothing herein contained will be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958. (49 U.S.C. 1349a)

### **3.17 AIRSPACE**

There is hereby reserved to County, 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 Property herein leased. This public right of flight will include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of County will result from the exercise of this right.

### **3.18 AIRPORT OBSTRUCTIONS**

Company by accepting this Agreement expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder which will exceed such maximum height as may be stipulated by County. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions will govern the maximum height to be stipulated by County. In the event the aforesaid covenants are breached, County reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut down the offending tree, all of which will be at the expense of Company and without liability to County.

### **3.19 AIRPORT HAZARDS**

Company by accepting this Agreement agrees for itself, its successors and assigns, that it will not make use of the Property in any manner which might interfere with

the landing and taking off of aircraft from Airport or otherwise constitute a hazard or obstruction. In the event the aforesaid covenant is breached, County reserves the right to enter upon the Property and cause the abatement of such interference at the expense of Company and without liability of any kind.

### **3.20 AIRPORT RULES AND REGULATIONS AND AIRPORT OPERATING DIRECTIVES**

County, through CDR, will have the right to adopt, amend and enforce reasonable rules and regulations with respect to use of and the conduct and operation of the Airport, its terminal buildings or any Improvements within the present or future boundaries of the Airport which Company agrees to observe and obey.

### **3.21 COMPLIANCE WITH PUBLIC AUTHORITIES**

3.21.1 Company will not use or permit the use of the demised Property or any other portion of the Airport for any purpose or use other than authorized by this Agreement or as may be authorized by other, separate, written agreement with County.

3.21.2 Company, its employees, representatives or agents will comply with all present or future laws, rules and regulations and amendments or supplements thereto governing or related to the use of the Airport or the demised Property as may from time to time be promulgated by Federal, State or local governments and their authorized agencies.

### **3.22 ENVIRONMENTAL POLICY**

#### **3.22.1 VIOLATION OF ENVIRONMENTAL LAWS**

Company will not cause or permit any hazardous material to be used, generated, manufactured, produced, stored, brought upon, or released on, under or about the Property, or transported to and from the Property, by Company, its tenants, sublessees, their agents, employees, contractors, invitees or a third party in violation of the Environmental Laws as defined in Section 1.1, entitled DEFINITIONS, of this Agreement.

3.22.1.1 CDR will have access to the Property to inspect same to insure that Company is using the Property in accordance with environmental requirements. Except in an emergency, CDR will give 24 hours oral or written notice of his or her intention to inspect.

3.22.1.2 Upon request of CDR, Company will conduct such testing and analysis as necessary to ascertain whether Company is using the Property in compliance with environmental

requirements. Any such tests will be conducted by qualified independent experts chosen by Company and subject to CDR's reasonable approval. Copies of such reports from any such testing will be provided to CDR.

3.22.1.3 Company will provide copies of all notices, reports, claims, demands or actions concerning any environmental concern or release or threatened release of hazardous materials or special wastes to the environment.

### 3.22.2 CONTAMINATION OF PROPERTY

If the presence of any Hazardous Materials on, under or about the Property caused or permitted by Company results in any contamination of the Property in violation of an Environmental Law, Company will promptly take any and all actions, at its sole cost and expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Property. Company will take any and all steps necessary to remedy and remove any such hazardous materials and special wastes and any other environmental contamination as is presently or subsequently discovered on or under the Property as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Property into compliance with all environmental requirements. Such procedures are subject to:

3.22.2.1 Prior approval of CDR, which approval will not be unreasonably withheld. Company will submit to CDR a written plan for completing all remediation work. CDR retains the right to review and inspect all such work at any time using consultants and/or representatives of his/her choice.

3.22.2.2 Such actions of remediation by Company will not potentially have any material adverse long-term effect on the Property in the sole judgment of CDR.

### 3.22.3 COMPLIANCE WITH ALL GOVERNMENTAL AUTHORITIES

Company will promptly make all submission to, provide all information to, and comply with all requirements of the appropriate governmental authority under all Environmental Laws as defined in Section 1.1, entitled DEFINITIONS, of this Agreement.

3.22.3.1 Should the Government with jurisdiction over the Property require the filing of air quality permits, the Company will

file with that Government all required air quality permits and employ emission reduction activities.

3.22.3.2 Should the Government with jurisdiction over the Property determine that a site characterization, site assessment, and/or cleanup plan be prepared or that a cleanup should be undertaken because of any spills or discharges of hazardous materials at the Property which occur during the term of this Agreement then Company shall (at its own expense) prepare and submit required plans and financial assurances, and carry out the approved plans. At no cost or expense to County, Company will promptly provide all information requested by CDR to determine the applicability of the Environmental Laws to the Property, or to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

3.22.3.3 Company's obligations and liabilities under this provision will continue so long as County bears any responsibility under the Environmental Laws for any action that occurred on the Property during the term of this Agreement.

3.22.3.4 This indemnification of County by Company includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Federal, State or local governmental agency or political subdivision because of hazardous material located on the Property or present in the soil or ground water on, under or about the Property.

3.22.3.5 The parties agree that County's right to enforce Company's promise to indemnify is not an adequate remedy at law for Company's violation of any provision of this Agreement. County will also have the rights set forth in Section 3.22.4, entitled COUNTY'S TERMINATION RIGHTS FOR VIOLATION OF ENVIRONMENTAL LAWS, or Section 2.16, entitled TERMINATION BY COUNTY, of this Agreement in addition to all other rights and remedies provided by law or otherwise provided in this Agreement.

#### **3.22.4 COUNTY'S TERMINATION RIGHTS FOR VIOLATION OF ENVIRONMENTAL LAWS**

3.22.4.1 Company's failure or its tenants, sublessees, their agents, employees, contractors or invitees or the failure of a third party to comply with any of the requirements and obligations of this Agreement or applicable Environmental Laws will constitute a material default of this Agreement and will permit County to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Agreement, to which County may resort cumulatively, or singularly, in the alternative.

3.22.4.1.1 County may, at County's election, keep this Agreement in effect and enforce all of its rights and remedies under this Agreement, including (i) the right to recover rent and other sums as they become due by the appropriate legal action and/or (ii) the right, upon ten (10) days' written notice to Company, to make payments required of Company or perform Company's obligations and be reimbursed by Company for the cost thereof, unless such payment is made or obligation performed by Company within such ten (10) day period.

3.22.4.1.2 County may, at County's election, terminate this Agreement upon written notice to Company as provided in Section 2.16, entitled TERMINATION BY COUNTY, of this Agreement. If this Agreement is terminated under this provision, Company waives all rights against County, including, but not limited to, breach of contract, costs of design, installation or construction of Improvements and/or interruption of business.

3.22.4.1.3 Notwithstanding any other provision in this Agreement to the contrary, County will have the right of "self-help" or similar remedy including access to the Property in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of environmental law on, under, or about the Property.

3.22.5 The provisions of this Section 3.22 entitled ENVIRONMENTAL POLICY shall survive the expiration or earlier termination of this Agreement.

### **3.23 AMERICANS WITH DISABILITIES ACT**

Company will throughout the term of this Agreement be in compliance with all applicable provisions of the Americans With Disabilities Act, Public Law 101.336.

## **ARTICLE IV**

### **4.1 FORCE MAJEURE**

Neither County nor Company will be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of governmental authority, unusual weather conditions, floods, riots, rebellion or sabotage. However, the provisions of this Section will not apply to failure by Company to pay rents, fees or any other money payments required under other provisions, covenants or agreements contained in this Agreement.

### **4.2 NONLIABILITY OF INDIVIDUALS**

No officer, agent, or employee of either party to this Agreement will be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

### **4.3 QUIET ENJOYMENT**

County agrees that, on payment of the rentals and fees and performance of the covenants, conditions and agreements on the part of Company to be performed hereunder, Company and Sublessees will have the right to peaceably occupy and enjoy the Property.

### **4.4 NOTICES**

All notices, requests, consents, and approvals under this Agreement will be served or given only by certified or registered mail, except in cases of emergency, in which case they will be confirmed by certified or registered mail.

Notices intended for County will be addressed to:

Nye County, Nevada  
P.O. Box 153

Tonopah, Nevada 89049

or to such other address as may be designated by County by written notice to Company.

Notices intended for Company will be addressed to:

Longshot Space Technology Corporation  
**Attn: Joseph Michael Grace, Chief Executive Officer**  
3425 Ettie Street  
Oakland, CA 94608

Phone: (408) 643-3001

or to such other address as may be designated by Company by written notice to County.

#### **4.5 HEADINGS, TITLES OR CAPTIONS**

Article, section or paragraph headings, titles or captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or extent of any provision of this Agreement.

#### **4.6 INVALID PROVISIONS**

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision will in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either County or Company in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

#### **4.7 STATE OF NEVADA LAW**

This Agreement will be interpreted under and governed by the Law of the State of Nevada.

#### **4.8 INDEPENDENT CONTRACTOR**

Company is deemed to be an independent contractor for all purposes regarding its operations at the Airport and no agency, expressed or implied, exists.

#### **4.9 FULL AUTHORITY**

In the event that the Federal Aviation Administration or its successors required modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Company agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required. Any expenses resulting from such amendments, modifications, revisions, supplements, or deletions shall be born solely by the Company.

#### **4.10 ADVERSE TENANCY**

Any unauthorized holding over by the Company after the termination of this Agreement or the expiration of its terms without the written consent of the County, except for the period authorized for the removal of Company's property upon the expiration or termination hereof, shall entitle the County to collect from the Company as liquidated damages for such holding over, double the total of all rents and fees in effect immediately prior to the commencing of such holding over. The Department of Aviation may perfect a lien on the property of Company as security for the payment of any damages or unpaid commissions and shall be entitled to collect the same by foreclosure of such lien and sale of such property.

#### **4.11 DISPUTES**

Any and all disputes arising under this Agreement, which cannot be administratively resolved, shall be determined according to the laws of the State of Nevada, and the Company agrees that the venue of any such dispute, either administratively or judicial, shall be in the State of Nevada. Company agrees as a condition of this Agreement that notwithstanding the existence of any dispute between the parties, insofar as possible under the terms of this Agreement, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

#### **4.12 AGENT FOR SERVICE OF PROCESS**

The parties hereto expressly understand and agree that if the Company is not a resident of the state of Nevada, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, and then in any such event the Company does designate its State of Nevada registered agent as its agent for the purpose of service of process in any court action between it and the County arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Nevada by serving also the Company's registered agent. The parties hereto expressly agree, covenant, and stipulate that Company shall also personally be served with such process out of this State by the registered mailing of such complaint and process to the Company at the address set forth herein. Any such service out of this State shall constitute valid service upon

the Company as of the date of receipt thereof. The parties hereto further expressly agree that the Company is amenable to and hereby agrees to the process so served, submits to the jurisdiction, waives any and all obligations and protests thereto, any laws to the contrary notwithstanding.

#### **4.13 GENDER**

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

#### **4.14 ENTIRE AGREEMENT**

- 4.14.1 This document represents the entire agreement between the parties hereto and will not be modified or canceled by mutual agreement or in any manner except by instrument in writing, executed by the parties or their respective successors in interest. The parties further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability for cause for termination shall be asserted by either party against the other, and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other party being expressly waived.
- 4.14.2 The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.
- 4.14.3 The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

#### **4.15 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, or assigns, as the case may be.

IN WITNESS WHEREOF, County and Company have executed these presents the day and year first above written.

COUNTY OF NYE	TENANT\LONGSHOT SPACE TECHNOLOGY CORPORATION
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BY: Chairperson, Nye County Board of Commissioners	BY: Jospeh Michael Grace, Chief Executive Officer
DATE:	DATE:

**EXHIBIT C**

