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Fullerton Municipal Airport Fixed Base Operator Lease

THIS FIXED BASE OPERATOR LEASE (“Lease” or “Agreement”) is made this _____ day of _____ 2025, (the “Effective Date”) by and between the City of Fullerton, a California municipal corporation, (“Lessor”), and Unique Educational Experiences, DBA Flight Test Prep Academy, a California corporation (“Tenant”).

1. DEFINITIONS

For the purposes of the Agreement, the following words and phrases shall be construed to have the meanings set forth below, unless otherwise specifically stated to the contrary or it is apparent from the context that a different meaning is intended:

“Aircraft” means any technology intended for aerial travel including fixed wing aircraft, vertical take-off and landing aircraft, helicopter, lighter than air airships, drones, unmanned aerial vehicles, and any other technology or item regulated by the FAA and approved, in his or her sole discretion, by the Airport Manager for the purpose of this Agreement.

“Airport” means Fullerton Municipal Airport, located at 4011 West Commonwealth Avenue, Fullerton, California.

“Airport Manager” means the Manager of the Fullerton Municipal Airport or his designee.

“City” means the City of Fullerton.

“City Council” means the City Council of the City of Fullerton.

“City Manager” means the City Manager of the City of Fullerton.

“FAA” means the Federal Aviation Administration.

2. LEASED PREMISES

Lessor hereby agrees to lease to Tenant that certain property located at 4119 W. Commonwealth Avenue hereinafter referred to as Leased Premises and more particularly described in Exhibit “A” shown on Exhibit “B,” and Exhibit “C” attached hereto and incorporated herein by this reference. Exhibit “C” delineates the specific areas covered by this lease agreement.

3. PERMITTED SERVICES AND USES

Tenant's use of the Leased Premises shall be for that of a Fixed Base Operator (FBO) engaged in the commercial activities specified below, and in accordance with all applicable federal, state, and local laws and regulations.

1. Authorized Services and Uses of the Leased Premises

Tenant shall be allowed to use the Leased Premises for the following permitted activities within or from the Leased Premises, subject to the terms set forth herein:

- 1) Flight Training.
- 2) Aircraft support services including storage, aircraft fueling, servicing, maintenance, repair, washing and waxing, research and development, or other related services subject to approval of the use and related equipment by Airport Manager.
- 3) Flight Simulation.
- 4) Pilot supply store.
- 5) Offices for aviation related uses, subject to the prior approval of Airport Manager.
- 6) Storage of aviation-related items. Storage of non-aviation related items is subject to the prior approval of Airport Manager.
- 7) Subject to approval by Airport Manager in his or her sole and absolute discretion, small events or gatherings in support of and in relation to Tenant's operations at and use of the Leased Premises.

2. Non-Permitted Uses of Leased Premises

Tenant agrees not to use the Leased Premises for unauthorized services or uses or allow any unpermitted activity within or from the Leased Premises. Tenant agrees not to conduct or permit to be conducted, any public or private nuisance in, on or from the Leased Premises.

3. Common Areas

Control over common areas such as patio, classroom, and restrooms is ultimately held by Lessor. Tenant is entitled to utilize common areas for business related activities when not in use by Lessor. At no time will these areas be used for outside flight instruction unless approved by both Tenant and Lessor.

4. TERM

The term of this Lease shall be for a period of ten years, commencing on the first day of the full calendar month following the Effective Date of this Lease. No less than ninety days prior to the expiration of the term, Tenant may request one extension of ten additional years. Tenant's request must be made in writing and Lessor may accept or reject the request at Lessor's sole discretion.

5. RENT, FEES AND CHARGES

A. Initial Rent

Commencing on the Effective Date of this Lease, Tenant shall pay as Initial Rent for the Leased Premises the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) per month, payable in advance on the first day of each month, and such payment shall be delinquent if not received by Lessor by the twentieth (20th) of each month. Tenant shall pay this Initial Rent for the first twelve months of this Lease, or until the date of Tenant's certificate of occupancy for the Leased Premises, whichever is earlier. Thereafter, for the remainder of the initial ten-year term, Tenant shall pay the Base Rent set forth below, subject to the Rent Adjustment set forth in Section 6 of this Lease.

B. Base Rent

Tenant agrees to pay as Base Rent for the Leased Premises the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) per month ("Base Rent"), payable monthly in advance on the first day of each month, and such payment shall be delinquent if not received by Lessor by the twentieth (20th) of each month.

If the Parties mutually agree to extend the term of this Lease beyond ten years, a lease rate appraisal study will be conducted at Lessor's expense to establish an updated market rate monthly base rent effective for the extended term of the lease.

C. Proration

In the event the rental payment obligations commences on some date other than the first day of the month, or terminates on some date other than the last day of the month, the rent shall be prorated based on a thirty (30) day month.

6. RENT ADJUSTMENT

The Base Rent set forth above shall be subject to automatic annual adjustments of three percent. The automatic adjustment shall be calculated by means of the following formula:

$$A = B \times C$$

A = Adjusted Rent.

B = Base Rent as originally set forth in Paragraph 6 entitled "RENT, FEES AND CHARGES."

C = Three percent (3%) annual escalator.

7. RENT PAYMENT PROCEDURE

Rent payments shall be delivered to the City of Fullerton, Administrative Services, 303 West Commonwealth Avenue, Fullerton, California, 92832. The designated place of payment may be changed at any time by Lessor, upon written notice to Tenant. Rent payments may be made by check payable to the City. Tenant assumes all risk of loss if payments are made by mail. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by Tenant or receipt by Lessor of a lesser amount than the payment due, nor any endorsement or statement on any check of any letter accompanying any check or payment, shall be deemed an accord and satisfaction, and Lessor shall accept such check or payment without prejudice to Lessor's right to recover the balance of the amount due or pursue any other remedy, to which Lessor is legally entitled.

8. CHARGE FOR LATE PAYMENT

Tenant hereby acknowledges that the late payment of rent or any other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, costs of administrative processing of delinquent notices, increased accounting costs, etc.

Accordingly, if any payment of rent, or any other sum due Lessor, is not timely received by Lessor, a late charge of six percent (6%) of the payment due and unpaid shall be added to the payment, and the total sum shall become immediately due and payable to Lessor. An additional charge of six percent (6%) of said payment, excluding late charges, shall be added for each additional month or portion thereof that said payment remains unpaid.

Tenant and Lessor hereby agree that such late charges represent a fair and reasonable estimate of the costs that Lessor will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by Lessor shall in no event constitute a waiver of Tenant's default with respect to such overdue payment, or prevent Lessor from exercising any of the other rights and remedies granted hereunder or to which Lessor is legally entitled.

9. SECURITY DEPOSIT

A. Upon execution of this Lease, Tenant shall provide Lessor with a security deposit in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) in the form of

a cashier's check to guarantee Tenant's full and faithful performance of all the terms, covenants, and conditions of this Lease. Airport Manager shall have the right to adjust the amount of security deposit to reflect changes in operations or changes in rents and fees established by Lessor. Within thirty (30) days after notification of any change in required security deposit amount from Airport Manager, Tenant shall submit to Airport Manager any additional security deposit as may be required. The security deposit or any portion thereof shall be available unconditionally to Airport Manager for correcting any default or breach of this Lease by Tenant, its successors or assigns, or for payment of expenses incurred by Lessor as a result of the failure of Tenant, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

B. In the event Airport Manager withdraws any or all of the security deposit as provided herein, Tenant shall, within ten (10) days of any withdrawal by Airport Manager, replenish the security deposit to maintain it at the amounts herein required. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

C. The security deposit shall be returned to Tenant or any successor or assign, following termination of the Lease, provided that Tenant has fully and faithfully performed each and every term, covenant and condition of this Lease. The authorized refund of any security deposit by the Administrative Services Director, made upon the direction of Airport Manager, after deduction of all amounts due Lessor under this Lease shall be made sixty (60) days after the effective date of said Lease termination.

10. CONSTRUCTION BY TENANT

A. Construction and Timing

Tenant shall cause to be designed, constructed, and installed within the Leased Premises, at Tenant's sole cost, appropriate improvements to adequately accommodate Tenant's services and uses as allowed by this Lease.

The schematic plans prepared by Tenant and approved by the Airport Manager, in his or her sole discretion, shall be a master plan for development of the Leased Premises, and the working drawings prepared by Tenant and approved by Airport Manager, in his or her sole discretion, shall be the plans, specifications, and time schedule for constructing improvements. Development proposed by Tenant in said master plan may be scheduled in increments approved by Airport Manager.

Should Tenant choose to develop the Leased Premises in approved increments, all parking and landscaping required to fulfill Tenant's ultimate development plan shall be constructed or installed during the initial construction increment, subject to modification approved in writing by Airport Manager. Adequate provisions, acceptable to Airport Manager, shall be made for maintenance of undeveloped portions of the Leased Premises.

B. Development Plan and Construction Standards

Development of the Leased Premises shall be conducted in a good and workmanlike manner. All design and construction shall meet all other requirements contained in this Lease.

C. Permits and Development Fees

Tenant shall obtain, at its sole cost and expense, all necessary permits and pay for all fees and costs regularly assessed City and by any State and/or Federal requirements associated with development and construction of any improvement on the Leased Premises.

D. Lessor's Consent

No structures, improvements, or facilities shall be constructed, erected, altered, or made on or within the Leased Premises without prior written consent of Airport Manager, in his or her sole discretion. Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by the Airport Manager as a condition to granting such consent, shall be conditions hereof as though originally stated herein. Tenant may, at any time and at its sole expense, install and place business fixtures, and equipment within any building constructed by Tenant.

E. Strict Compliance with Plans and Specifications

All improvements constructed by Tenant within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by Airport Manager and City of Fullerton Community Development Department.

11. TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities, or any phase thereof, within the Leased Premises by Tenant, Tenant shall furnish to Lessor evidence that assures Lessor that sufficient monies will be available to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- A. Completion Bond issued to Lessor as obligee.
- B. Irrevocable letter of credit issued to Lessor from a financial institution to be in effect until Lessor acknowledges satisfactory completion of construction.
- C. Cash.
- D. Any combination or alternative of the above, subject to the City Attorney's approval.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Airport Manager. All bonds and letters of credit shall be in a form acceptable to Airport Manager and shall ensure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Leased Premises.

12. MECHANICS LIENS OR STOP NOTICES

Tenant shall at all times indemnify and save Lessor harmless from all claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities, within the Leased Premises, and from the cost of defending against such claims, including attorneys' fees and costs. In the event a lien or stop notice is imposed upon the Leased Premises or the Tenant's leasehold estate as a result of such construction, repair, alteration, or installation, Tenant shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should Tenant fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop notice, the Lease shall be in default and shall be subject to immediate termination.

13. "AS-BUILT" PLANS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any substantial improvement within the Leased Premises, Tenant shall furnish Airport Manager a complete set of reproducible plans and two sets of prints of "As-Built" plans. In addition, Tenant shall furnish Airport Manager an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by Tenant or his responsible agent under penalty of perjury. Tenant must obtain Airport Manager's approval of "As-Built" plans, and the form and content of the itemized statement.

14. OWNERSHIP OF IMPROVEMENTS

All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by Tenant must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at Lessor's option shall be the property of Lessor at the expiration of this Lease. Lessor retains the right to require Tenant, at Tenant's cost, to remove all Tenant improvements located on the Leased Premises at the expiration of this Lease.

15. UTILITIES

Tenant shall be responsible for and pay, prior to the delinquency date, all charges for electrical service.

Lessor will pay water/sanitation fees and trash collection services. An annual review of utility charges may be conducted by either party and if necessary, a lease addendum may be created to capture excessive utility charges.

16. MAINTENANCE

A. Lessor's Obligation

Lessor shall maintain or cause to be maintained, including repair and replacement as necessary, the public parking lots, roadways, and other public facilities within the Airport. Lessor will maintain major systems within the leased premises including roof, heating and ventilation systems, plumbing system to grade level, sewer lines, utility lines, windows, building exterior, windows, and landscaping. Lessor to provided janitorial/cleaning services for airport administration offices D and E, and common areas.

B. Tenant's Obligation

Tenant, at its expense, shall keep and maintain the Leased Premises including, but not limited to, interior surfaces, interior walls, above grade plumbing fixtures, and all improvements of any kind, which may be erected, installed or made thereon, in good condition and in substantial repair. It shall be Tenant's sole responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair. Tenant to provide janitorial/cleaning services for leased offices A, B, C, and Maintenance Hanger, including Office F, breakroom and bathroom.

C. Lessor's Right to Repair

If Tenant fails to maintain or make repairs or replacements as required herein, Airport Manager may notify Tenant in writing of said failure. Should Tenant fail to correct the situation within a reasonable time thereafter, Airport Manager may make the necessary correction and the cost thereof, including, but not limited to, the cost of labor, materials, equipment and administration, shall be paid by Tenant within ten (10) days of receipt of a statement of said cost from Lessor. Lessor may, at its option, choose other remedies available herein, or by law.

17. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

A. In the event of damage to or destruction of Tenant-constructed buildings, facilities, or improvements located within the Leased Premises or in the event Tenant-

constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease.

B. Repair, replacement, or reconstruction of improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by Airport Manager. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify Tenant's obligation under this section. With respect to damage or destruction to be repaired by Lessor or which Lessor elects to repair, Tenant waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

18. INSURANCE

TENANT shall procure and maintain throughout the duration of this agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the TENANT's operations and occupation and use of the leased premises. TENANT shall provide current evidence of the required insurance in a form acceptable to the CITY and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless requirements contained in in this Agreement or the extent to which TENANT may be held responsible for payments of damages to persons or property.

Notwithstanding the following, the City of Fullerton reserves the right to modify or amend the following provisions at any time at the sole and absolute discretion of the City's Risk Manager as dictated by prevailing conditions.

A. Minimum Scope and Limits of Insurance

1. Airport Liability Insurance. TENANT shall maintain airport liability insurance with a minimum limit of \$1,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit. Such insurance shall include coverage for products and completed operations, contractual liability and personal injury.
2. Aircraft Liability Insurance. TENANT shall maintain aircraft liability insurance with a limit of not less than \$1,000,000 each accident with no per passenger sublimits. Upon approval by CITY and annual submission of certification by a qualified aviation insurance broker that such limits are not available to TENANT, TENANT may comply with this provision by maintaining this coverage with limits of not less than \$1,000,000 each accident and per

passenger sublimits of not less than \$100,000. Such insurance shall include coverage for owned and non-owned aircraft.

3. Hangarkeeper's Liability Insurance. TENANT shall maintain hangarkeeper's liability insurance with a minimum per occurrence limit equal to the greatest value of any aircraft in TENANT's care, custody or control at any one time. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit. Such insurance shall have a deductible of no more than \$1000.
4. Business Automobile Liability Insurance. TENANT shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
5. Workers' Compensation and Employers' Liability Insurance. TENANT shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.
6. All Risk Property Insurance. TENANT shall maintain all risk property insurance including coverage for tenant improvements or betterments with a minimum limit equal to full replacement cost as approved by the CITY of the leased premises and with no coinsurance penalty provision.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY.

C. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

1. Airport, Aircraft, Hangarkeepers' Liability, and Business Automobile Liability,

The CITY, its elected or appointed officials, officers, employees and volunteers are to be covered as insureds with respect to liability arising out of TENANT's operation or the ownership, occupancy, maintenance or use of the leased premises; or with respect to liability arising out of aircraft or automobiles owned, leased, hired or borrowed by or on behalf of the TENANT. The coverage shall contain no special limitations on the scope of its protection afforded to the CITY, its officials, officers, employees and volunteers.

2. Airport, Aircraft, Hangarkeepers' Liability, and Business Automobile Liability

This insurance shall be primary insurance as respects the CITY, its officers, employees and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the CITY, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.

3. All Risk Property.

CITY shall be named as a loss payee.

4. Workers' Compensation and Employers' Liability Insurance and All Risk Property Insurance.

5. Insurer shall waive their right of subrogation against CITY, its officers, employees and volunteers for work done on behalf of the CITY.

6. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice. LESEE will provide a special endorsement from the insurance carrier(s).

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to the CITY with current BEST'S ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the CITY, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if TENANT evidences the requisite need to the sole satisfaction of the CITY.

E. Verification of Coverage

TENANT shall furnish the CITY with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, TENANT shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by CITY before TENANT occupies premises. The CITY reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

ASSIGNING, SUBLETTING, AND ENCUMBERING

A. Any mortgage, pledge, hypothecation, encumbrance, transfer, merger, sublease, or assignment (hereinafter in this clause referred to collectively as "Encumbrance") or Tenant's interest in the Leased Premises, or any part or portion thereof, shall first be approved in writing by Lessor. Failure to obtain Lessor's required written approval of an Encumbrance will render such Encumbrance void. Occupancy of the Leased Premises by a prospective transferee, subtenant, or assignees before approval of the transfer, sublease, merger, or assignment by Lessor shall constitute a breach of this Lease. All subleases shall be between Tenant and subtenant; the entry into sub-subleases is prohibited and shall constitute a breach of the Lease.

B. Should Lessor consent to any Encumbrances, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as Lessor's consent to any further Encumbrance. Such terms, covenants, or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, merge, hypothecate, encumber, transfer, sublet, or assign the Leased Premises or any part thereof shall not be inconsistent with the provisions of this Lease, and in the event of any such inconsistency, the provision of this Lease shall control.

19. HAZARDOUS MATERIALS

A. Contamination Subsequent to the Effective Date

As used herein the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including without limitation, Lessor acting in its governmental capacity, the State of California, or the United States Government.

Tenant shall not cause or permit any Hazardous Materials other than generally accepted aviation fuels and engine lubricants to be brought upon, kept or used in or about the Leased Premises. If Tenant breaches the obligations stated herein, or if contamination of the Leased Premises by Hazardous Materials otherwise occurs for which Tenant is legally liable to Lessor for damage resulting therefrom, then Tenant shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Leased Premises, damages for the loss or restriction on use of rentable or usable space or any amenity of the Leased Premises, damages arising from any adverse impact on marketing of space in the Leased Premises or portion of any building of which the Leased Premises is a part, and sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees) which arise during or after the lease term as a result of such contamination.

This indemnification includes without limitation, costs incurred by Lessor in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of Hazardous Materials being present in the soil or ground water or under the Leased

Premises. Tenant shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the Leased Premises to its condition prior to the introduction of such Hazardous Materials by Tenant, provided Tenant shall first have obtained Lessor's approval and the approval of any necessary governmental entities.

Tenant acknowledges that Lessor may become legally liable for the costs of complying with laws relating to Hazardous Materials which are not the responsibility of Lessor hereunder, including the following:

- 1) Hazardous Materials present in the soil or ground water on the Leased Premises of which Lessor has no knowledge or means of ascertaining the existence of as of the Effective Date;
- 2) A change in laws, statutes, ordinances and other governmental regulations which relate to Hazardous Materials which could cause any material now or hereinafter located on the Leased Premises to be deemed hazardous, whether known or unknown to Lessor, or a violation of any such laws;
- 3) Hazardous Materials present on or under the Leased Premises because of any discharge, dumping or spilling (whether accidental or otherwise) on the Leased Premises by Tenants or their agents, employees, contractors or invitees, or by others.

Lessor and Tenant agree that the cost of complying with such laws, statutes, ordinances or governmental regulations relating to such matters for which the Lessor is or may become legally liable shall be paid by Tenant to Lessor, within ten (10) days following the receipt by Tenant of a written demand from Lessor to do so. In the event Lessor subsequently recovers or is reimbursed from a third party of all or any portion of the sums paid by Tenant, Lessor shall reimburse Tenant to the extent of any such recovery or reimbursement.

B. Pre-Existing Contamination

Tenant shall not be held liable, nor shall Tenant be required to indemnify Lessor for any loss or damage sustained as a result of pre-existing Hazardous Materials located on or near the Leased Premises.

Lessor hereby agrees to indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, known or unknown, arising from any pre-existing soil contamination or other pre-existence of any Hazardous Materials on the Leased Premises prior to the Effective Date of this Lease, including, but not limited to, any sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees which arise during or after the lease term and arising solely from such pre-existing contamination, if any.

20. CONDEMNATION

A. Total Taking

If the entire Leased Premises are taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, the Lease shall terminate as of the date that possession of the Leased Premises is taken by the public authority or Tenant is deprived of its practical use of the Leased Premises, whichever date is earlier. The net proceeds of the award shall be distributed in the following order of priority:

- 1) Lessor shall receive that portion of the award which shall constitute compensation for the value of its fee interest in the Leased Premises as encumbered by this Lease; and
- 2) Tenant shall be compensated for its interest in the Leased Premises, including the value of any fixtures and equipment taken and the loss of the economic benefit of Tenant's leasehold estate.

B. Partial Taking

1) If any portion of the Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the taking or purchase does not, in Tenant's reasonable judgment, substantially impair the fixed based operation on the Leased Premises, then:

(a) The Lease shall continue in full force and effect, except that the Base Rent shall be reduced in the same proportion as the land area of the Leased Premises taken bears to the total area of the Leased Premises immediately prior to such taking; and

(b) The net proceeds of the award shall be allocated in the following order of priority:

- i. To payment of the costs of restoring the Improvements located on the Leased Premises to substantially the same character and condition as prior to such taking, to the extent physically possible;
- ii. Compensation to Lessor for the value of its fee interest in the portion of the Leased Premises taken as encumbered by this Lease;
- iii. Compensation to Tenant for its interest in the portion of the Leased Premises taken, including the value of removal and reinstallation of any fixtures and equipment taken and the loss of the economic benefit of the portion of Tenant's leasehold estate taken; and

iv. The remainder of the award shall be paid to Lessor.

2) If any portion of the Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the taking or purchase, in Tenant's reasonable judgment, renders it impractical to operate the remainder of the Leased Premises, or substantially impairs the operation of Tenant's business thereon, Tenant shall have the option of terminating the Lease without further liability hereunder. If Tenant so elects to terminate, it shall do so by written notice to Lessor no later than sixty (60) days after the date when possession of (a portion of) the Leased Premises shall be taken by the condemnor or Tenant is deprived of its practical use thereof, which notice shall specify the effective date of such termination (which shall not be earlier than sixty (60) days after the date of said notice). If Tenant elects to so terminate, the division of the award shall be made on the basis set forth above for a partial taking. If Tenant does not timely elect to terminate the Lease, it shall conclusively be deemed to have waived its right to terminate this Lease for such cause.

21. USE OF PUBLIC AIRPORT FACILITIES

Tenant is granted the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, aprons, navigation aids, and facilities relating thereto for purposes of landings, takeoffs, and taxiing of Tenant's and Tenant's Tenant aircraft. Lessor agrees, during the term of this Lease, to operate and maintain the Airport and its public airport facilities as a public airport consistent with, and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.

22. RULES AND REGULATIONS

Tenant agrees to comply with all rules and regulations adopted or as may be amended by Lessor. Tenant shall be fully responsible to Lessor for the observance and obedience of, and compliance with, any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, country, or city, lawfully exercising authority over Airport or activities thereon, including compliance with FAA and Airport security rules, regulations and plans. Tenant shall be fully liable to Lessor for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon Lessor, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicles onto Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the Tenant, its employees, agents, customers, visitors, suppliers, or invitees.

Lessor shall not be liable to Tenant for any diminution or deprivation of possession or of its rights hereunder, on account of the exercise of such right or authority as provided in this section, nor shall Tenant be entitled to terminate the whole or any portion of the leasehold estate herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with Tenant's use and occupancy of the leasehold estate

herein created so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

23. AIRPORT PROMOTIONAL ACTIVITIES

Tenant agrees to participate in Airport sponsored events such as "Airport Day," fly-ins and other activities as agreed upon with Airport Manager, and to cooperate with the Lessor in the promotion thereof.

24. NOTICES

All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested to the following addresses indicated below:

If to City: Fullerton Municipal Airport
Attn: Airport Manager
4011 West Commonwealth Avenue
Fullerton, CA 92833

With a copy to: City of Fullerton
Attn: City Clerk
303 W. Commonwealth Avenue
Fullerton, CA 92832

If to Tenant: Unique Educational Experiences dba
Flight Test Prep Academy
Attn: Tom Sutfin
4119 W Commonwealth Avenue
Fullerton, CA 92833

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

Either party may change its address by giving notice in writing to the other party.

25. REPRESENTATIVES

The Airport Manager or his designee shall be the representative of Lessor for purposes of this Lease and may issue all consents, approvals, directives and agreements on behalf of the Lessor, called for by this Lease, except as otherwise expressly provided in this Lease.

Thomas Sutfin shall be the representative of Tenant for purposes of this Lease and may issue all consents, approvals, directives and agreements on behalf of Tenant, called for by this Lease, except as otherwise expressly provided in this Lease.

26. TIME

Time is of the essence of this Lease.

27. SIGNS

Tenant agrees not to construct, maintain, or allow any sign upon the Leased Premises except as approved by the Airport Manager and in accordance with all applicable laws and regulations. Unapproved signs, banners, flags, etc. shall be removed by Tenant upon written notice by Airport Manager.

28. PERMITS AND LICENSES

Tenant shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operations of the Leased Premises as set out herein. No permit approval or consent given hereunder by Lessor in its governmental capacity shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by Lessor, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

29. CONTROL OF HOURS AND PROCEDURES

Tenant shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation on or from the Airport. Tenant shall furnish Airport Manager a copy of said schedules and procedures and any revisions thereto. Tenant agrees that it will operate and manage the services and facilities offered in accordance with such scheduled and procedures and in a competent and efficient manner.

Tenant shall require its employees to be properly dressed, clean, courteous, efficient, and neat in appearance. Tenant shall not employ any person(s) in or about the Airport who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

30. HEADINGS

The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

31. AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

32. UNLAWFUL USE

Tenant agrees no improvements shall be erected, placed upon, operated, nor maintained within the Leased Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

33. INSPECTION

Lessor or its authorized representative shall have the right at all reasonable times to inspect the Leased Premises to determine if Tenant is in compliance with the provisions of this Lease and all applicable law and regulation.

34. INDEMNIFY AND HOLD HARMLESS

Tenant hereby waives all claims and recourse against Lessor including the right of contribution for loss or damage of persons or property rising from, growing out of or in any way connected with or related to this Agreement except claims arising from the concurrent, active or sole negligence of Lessor, its officers, agents, and employees.

Tenant hereby agrees to indemnify, hold harmless and defend Lessor, its officers, agents, employees and volunteers, from all losses, costs, and expenses, including attorneys' fees and court costs, arising out of any liability, or claim of liability, for personal injury, bodily injury to persons, contractual liability, or damage to property sustained or claimed to have been sustained by, arising out of, or in connection with Tenant's activities and operations and those of Tenant's vendors, contractors and employees as described herein, whether such activity or operation is authorized by the Lease or not and whether or not Tenant is specifically named. Further, Tenant shall pay for any and all damage to the property of the Lessor arising from said operation or activities and shall waive all rights of subrogation against the Lessor. The provisions of this Lease do not apply to any damage or loss caused solely by the negligence of the Lessor, or any of its agents or employees.

35. TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Leased Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of the Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

36. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

37. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, any delay in the timely payment of any rental or other charge required of Tenant due to such circumstances will be subject to the approval of the Airport Manager and City Manager. The Airport Manager and City Manager may approve a repayment plan in the event of such payment delay.

38. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

39. WAIVER OF RIGHTS

The failure of Lessor or Tenant to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that Lessor or Tenant may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of this Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of the Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

40. DEFAULT, TERMINATION AND REMEDIES

A. The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

- 1) The abandonment or vacation of the Leased Premises by Tenant.
- 2) The failure by Tenant to make any payment of rent or any other sum payable hereunder by Tenant, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Tenant;

provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under the unlawful detainer statutes, California Code of Civil Procedure section 1161 *et seq.*

- 3) The failure or inability by Tenant to observe or perform any of the provisions of this Lease, other than those specified in subsections 1) and 2) above, where such failure shall continue for a period of five (5) days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of; and not in addition to, any notice required under the unlawful detainer statutes, California Code of Civil Procedure section 1161 *et seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than five (5) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said five (5) days, and thereafter diligently prosecutes such cure to completion.
- 4) In case of anticipation of bankruptcy, insolvency or financial difficulties:
 - a) Tenant or any guarantor of Tenant's obligations hereunder shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefits of creditors;
 - b) A case is commenced by or against Tenant under Chapter 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within sixty (60) days.
 - c) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or
 - d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts.

In the event of any such default, neither this Lease nor any interests of Tenant in and to the Leased Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the Lessor hereunder or by law; provided, it shall be lawful for the Lessor to declare the term hereof ended and to re-enter the Leased Premises and take possession thereof and remove all persons therefrom, and Tenant and its creditors (other than Lessor) shall have no further claim thereon or hereunder.

B. In the event of any default by Tenant, in addition to any other remedies available to Lessor at law or in equity, Lessor may exercise the following remedies:

1. Lessor may terminate this Lease and all rights of Tenant hereunder by giving written notice of such termination to Tenant. In the event that Lessor shall so elect to terminate this Lease, then Lessor may recover from Tenant, pursuant to Civil Code section 1951.2:
 - a) The worth, at the time of award, computed by allowing interest at the maximum rate permitted by law, of the unpaid rent and other charges which had been earned as of the date of the termination hereof;
 - b) The worth, at the time of award, computed by allowing interest at the maximum rate permitted by law, of the amount by which the unpaid rent and other charges, which would have been earned after the date of the termination hereof until the time of award, exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - c) The worth, at the time of award, of the amount by which the unpaid rent and other charges, for the balance of the term hereof after the time of award, exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - d) Any other amount necessary to compensate Lessor for all of the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Leased Premises, expenses of re-letting, including necessary repair, renovation and alteration of the Leased Premises, reasonable attorney's fees, expert witness costs, and any other reasonable costs; and
 - e) Any other amount, which Lessor may by law, be permitted to recover from Tenant to compensate Lessor for the detriment caused by Tenant's default.
 2. Continue this Lease in effect without terminating Tenant's right to possession even though Tenant has breached this Lease and abandoned the Leased Premises and to enforce all of Lessor's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided however, that Lessor may at anytime thereafter elect to terminate this Lease for such previous breach by notifying Tenant in writing that Tenant's right to possession of the Leased Premises has been terminated.
- C. Nothing in this section shall be deemed to affect Tenant's indemnity of Lessor for liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage pursuant to the terms of this Lease.

No delay or omission or Lessor to exercise any right or remedy shall be construed as a waiver of such right or remedy of any default by Tenant hereunder. The acceptance by Lessor of rent or any other sums hereunder shall not be:

1. A waiver of any proceeding breach or default by Tenant of any provision thereof, other than the failure of Tenant to pay the particular rent or sum accepted, regardless of Lessor's knowledge of such proceeding breach or default at the time of acceptance of such rent or sum, or
2. A waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by Lessor or Lessor's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

D. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant, then in addition to any other remedies provided herein, Lessor may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or may provide any such insurance on Tenant's behalf, however, Lessor's actions, if any, hereunder, shall not give rise to any responsibility of Lessor to continue making the same or similar payments or performing the same or similar acts. All costs, expenses and other sums incurred or paid by Lessor in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by Lessor shall be deemed to be additional rent hereunder and shall be paid by Tenant with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

41. ATTORNEYS' FEES

In the event of a dispute between Lessor and Tenant concerning claims arising out of this Lease, the prevailing party in said dispute shall be entitled to recover attorneys' fees and costs from the opposing party in an amount as may be fixed by the Court or the arbitrator.

42. RESERVATION TO LESSOR/RIGHT OF ENTRY

The Leased Premises are accepted as-is and, thereby, Tenant is subject to any and all existing easements and encumbrances. Lessor reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water, sewers, pipelines,

manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the Leased Premises or any part thereof, and to enter the Leased Premises for any and all such purposes. Lessor also reserves the right to grant franchises, easements, rights-of-way, and permits in, over, upon, through, across, under, and along any and all portions of the Leased Premises. No right reserved by Lessor in this section shall be so exercised as to interfere unreasonably with Tenant's operations hereunder or to impair the security of any secured creditor of Tenant.

Lessor agrees that rights granted to third parties under this section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. Lessor further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by Tenant, the rental rate shall be reduced in proportion to the interference with Tenant's use of the Leased Premises.

43. HOLDING OVER

In the event Tenant shall continue in possession of the Leased Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease, but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease or provided by law.

44. CONDITION OF LEASED PREMISES UPON TERMINATION

Upon termination of this Lease, Tenant shall re-deliver possession of said Leased Premises to Lessor in substantially the same condition that existed immediately prior to Tenant's entry thereon, subject to Tenant's improvements, with the exception of reasonable wear and tear, flood, earthquakes, war, and any act of war. References to the termination of the Lease herein shall include termination by reason of the expiration of the Lease term.

45. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If Tenant abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Tenant and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of such property without liability therefore to Tenant or to any person claiming under Tenant, and shall have no need to account therefor.

46. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including, but not limited to, termination by default, Tenant shall execute, acknowledge, and deliver to Lessor, within five (5) days of written demand from Lessor, a quitclaim deed of Tenant's interest in and to the Leased Premises. Lessor may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination if the Lease and of all right of Tenant or those claiming under Tenant in and to the Leased Premises.

47. LESSOR'S RIGHT TO RE-ENTER

Tenant agrees to yield and peaceably deliver possession of the Leased Premises to Lessor on the date of termination of this Lease, whatsoever the reason for such termination. Upon giving written notice of termination to Tenant, Lessor shall have the right to re-enter and take possession of the Leased Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of this Lease and re-entry of the Leased Premises by Lessor shall in no way alter or diminish any obligation of Tenant under the Lease terms and shall not constitute an acceptance or surrender.

Tenant waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event Lessor re-enters and takes possession of the Leased Premises in a lawful manner.

48. AUTHORITY OF TENANT

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation and that this Lease is binding upon said corporation.

49. PUBLIC RECORDS

Any and all written information submitted to and/or obtained by Lessor from Tenant or any other person or entity having to do with or related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, at the option of Lessor, may be treated as a public record open to inspection by the public pursuant to the California Public Records Act (Government Code section 6250 *et seq.*) as now in force or hereafter amended, or any law in substitution thereof, or otherwise made available to the public. Tenant hereby waives, for itself, its agents, employees, subtenants and any person claiming by, through, or under Tenant, any right or claim that such information is not a public record or that the same is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

50. RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of Lessor and Tenant, and it is expressly understood and agreed that Lessor does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, are a joint venture with Tenant, and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

51. FAA GRANT AGREEMENT ASSURANCES

This Lease includes the FAA Grant Agreement Assurances relating to the Airport, which are attached hereto as Exhibit "C" and incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have executed this license the day and year first above written.

LESSOR:

CITY OF FULLERTON
Fullerton Municipal Airport

Fred Jung, Mayor

TENANT:

Unique Educational Experiences dba
Flight Test Prep Academy

By: _____
(Name)

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

ATTEST:

Lucinda Williams, City Clerk