

**AGREEMENT OF LEASE**

**Between**

**THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
AMES RESEARCH CENTER**

**AND**

**LB&B ASSOCIATES INC.**

**THIS AGREEMENT OF LEASE** (the "Lease"), dated for reference purposes as of December 1, 2003 (the "Effective Date"), is made on behalf of the United States of America (the "GOVERNMENT") acting by and through the National Aeronautics and Space Administration, Ames Research Center located at Moffett Field, California 94035 ("NASA"), and LB&B Associates Inc, 9891 Broken Land Parkway, Suite 400, Columbia, Maryland 21046 ("LESSEE"). This Lease is made under the authority of section 315 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. §2459j).

**WITNESSETH:**

The GOVERNMENT, acting by and through the U.S. Defense Energy Support Center ("DESC"), and LESSEE are entering, or have entered, into that certain Alongside Aircraft Refueling Services and Ground Fuel Delivery Operations, dated as of April 24, 2003 (Contract No. SP0600-03-D-5311) (hereafter referred to as the "Contract"). Pursuant to the Contract, LESSEE is obligated to design, develop, construct, operate, and maintain a contractor-owned, contractor-operated Automated Fuel Dispensing Facility at Ames Research Center, Moffett Field, California (hereafter referred to as the "Center"). As part of DESC's selection of LESSEE to enter into the Contract, NASA agreed to lease the Premises (as defined in section 1) to LESSEE on the terms and conditions of this Lease.

**THIS LEASE** is granted upon and subject to the following terms and conditions:

**1. LEASED PREMISES**

NASA hereby leases, rents and demises to LESSEE, and LESSEE hereby hires and rents from NASA, on and subject to all of the terms and conditions of this Lease, the following described property (the "Premises"):

All that certain portion of the Center containing approximately 91,750 square feet (or 2.10 acres), more or less, as depicted on Attachment "A" attached hereto and made a part hereof.

## 2. TERM

(a) Subject to the provisions set forth in subsection 2(b), the initial term of this Lease (the "Initial Term") shall be for a period of five (5) years beginning on the Effective Date, and shall expire at 11:59 p.m. (California time) on November 30, 2008. Subject to the provisions set forth in subsection 2(b), and provided that (i) the Contract is concurrently extended, and (ii) LESSEE is not in default under this Lease upon the expiration of the then - current term of this Lease (and no event has occurred which, with the passage of time, the giving of notice, or both, would constitute a default under this Lease), the Initial Term shall be automatically extended for three (3) successive periods of five (5) years each (each, an "Extended Term"), unless either party delivers to the other party at sixty (60) days prior written notice of such party's election not to extend the then - current term of this Lease. As used in this Lease, the word "Term" shall mean the Initial Term as extended for all applicable Extended Terms in accordance with this Section 2.

(b) Notwithstanding any other provision of this Lease to the contrary, the Term shall automatically terminate upon the expiration or earlier termination of the Contract.

(c) If, with NASA's consent, LESSEE holds possession of the Premises after expiration of the Term, LESSEE shall become a tenant from month to month under this Lease. Each party shall have the right to terminate such month to month tenancy by giving at least thirty (30) days prior written notice of termination to the other party at any time, in which event such tenancy shall terminate on the termination date set forth in such termination notice.

## 3. CONTRACT - LEASE RELATIONSHIP

(a) The Lease will be incorporated into the Contract after the Lease has been signed by NASA and the LESSEE. In the event that the terms and conditions of this Lease conflict with the terms and conditions of the Contract, the terms and conditions of the Contract shall prevail. A default under or breach of the Contract shall constitute an Event of Default under this Lease. Unless otherwise specified in this Lease, any and all GOVERNMENT rights and remedies as set forth in the Contract and in this Lease will be available to the GOVERNMENT on a cumulative basis to enforce the provisions of this Lease.

(b) This Lease shall not be terminated by NASA prior to the termination of the Contract, except in accordance with the terms and conditions of this Lease.

## 4. CONSIDERATION

(a) Except as provided in section 4(b) below, LESSEE shall pay NASA, the first business day of each month, a base monthly cash payment as rent for use of the Premises for that month. The base monthly cash payment shall be in the amount of \$8,385.25 (Yearly amount: \$47,916/Acre x 2.10 Acres = \$100,623/Year, NNN (Triple Net)), based on fair market value.

(b) As consideration for approximately the first three and one - half months of the Term, NASA shall accept, in lieu of the monthly base rental payment set forth in section 4(a),

LESSEE's completion of certain construction/electrical work, the cost of which was \$31,966.99. As a result, the amount of monthly base rent for the fourth month of the Term (March 2004) shall be \$1,574.01, which shall be due on or before March 1, 2004 in accordance with section 4(a).

(c) Thereafter, the base monthly rental price will return to the original amount of \$8,385.25.

(d) LESSEE shall pay an annual Infrastructure Shared Pool (ISP) rate of \$12,000 for common services on a cost reimbursement basis (attached hereto as Attachment "B").

(e) The amount of monthly base rent shall be increased on each anniversary of the Effective Date throughout the Term (each, a "CPI Adjustment Date") by the percentage increase in the CPI (as defined below) during the twelve (12) month period immediately preceding each CPI Adjustment Date (each such twelve (12) month period being referred to herein as a "Lease Year"), which increase shall be determined as follows. The base for computing each increase in monthly base rent shall be the CPI published most immediately before the first day of the applicable Lease Year (a "Beginning Index"), and the CPI published most immediately before the last day of the applicable Lease Year (an "Adjustment Index") shall be used in determining the amount of the adjustment. If the Adjustment Index has increased over the Beginning Index since the last CPI Adjustment Date, then the monthly base rent for the next Lease Year shall be increased by multiplying the amount of the last payment of monthly base rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. As used in this Lease, the term "CPI" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, All Items, San Francisco - Oakland - San Jose, California (1982 - 84 equals 100), or if such index is no longer published, a successor or substitute index designated by NASA, published by a governmental agency reflecting changes in consumer prices in the San Francisco Bay Area that is most nearly comparable to the CPI. If the CPI is changed so that the base year differs from that in effect when the Initial Term commences, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would have been obtained if the CPI had not been discontinued or revised.

(f) In addition to the increases in monthly base rent set forth in section 4(e), and provided that the then - current term of this Lease is duly extended in accordance with section 2, monthly base rent shall be adjusted on the first day of each Extended Term as follows. During the one hundred eighty (180) day period immediately preceding the commencement of each Extended Term, NASA shall obtain from either (i) an MAI certified appraiser with at least five (5) years' full-time appraisal experience in Silicon Valley, California or (ii) another Federal agency (e.g. the Army Corps of Engineers or the General Services Administration) a determination of the monthly fair market rental value of the Premises for the first Lease Year of the applicable Extended Term. Such appraiser's determination of the monthly fair market rental value shall be deemed to be the monthly base rent for the first Lease Year of the applicable

Extended Term, absent manifest error. Thereafter, on each CPI Adjustment Date during such Extended Term, the monthly base rent shall be increased in accordance with section 4(e).

(g) The monthly cash payment will be due within five (5) business days after the Effective Date at the beginning of each Lease month. Payments will be made payable to the National Aeronautics and Space Administration and mailed to Financial Management Division, Mail Stop 203-17, Moffett Field, CA 94035-1000.

(h) LESSEE, at its sole expense, shall be responsible for all water, gas, electricity, other power, telephone, telecommunication and data communication services (including, without limitation, installation and/or connection to the Center's telephone and Internet systems), sewer services, janitorial services, waste and refuse collection, building and grounds maintenance, and any other utilities, materials or services furnished directly or indirectly to, for the benefit of, or used by LESSEE on or about the Premises (collectively, "Utility and Demand Services"). LESSEE shall reimburse NASA for the costs incurred by NASA in providing Utility and Demand Services to LESSEE. The current costs of typical Utility and Demand Services are set forth on the Support Agreement (as defined below). LESSEE understands that the costs of Utility and Demand Services may increase in the future, and LESSEE agrees to pay the costs of Utility and Demand Services as determined by NASA from time to time in accordance with this Lease. Cost estimates for ISP Services, as defined below, and Utility and Demand Services, and reimbursement thereof, shall be consistent with applicable laws, as defined below, and NASA policy, including the requirement for payment in advance of the rate at which NASA anticipates incurring costs. NASA will review costs for services periodically to ensure that the rates are based on actual costs to NASA. If any such Utility or Demand Services are jointly metered with the Premises and another part of the Center, NASA shall determine LESSEE's share of the cost of such jointly metered Utility or Demand Services based on NASA's estimate of usage, and LESSEE shall pay as additional rent LESSEE's share of the cost of such jointly metered Utility or Demand Services. NASA shall provide water and electrical connections to the border of the Premises. LESSEE, at its sole cost, shall install an electricity meter to record 's use of electricity at the Premises. LESSEE, at its sole cost, also shall furnish the Premises with telephone service to conduct its business on the Premises. NASA shall not be in default under this Lease or be liable for any damage or loss directly or indirectly resulting from, nor shall the rent be abated or a constructive or other eviction be deemed to have occurred by reason of, any interruption of or failure to supply or delay in supplying any such utilities and services or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any resource or form of energy or other service serving the Premises or the Center, whether such results from mandatory restrictions or voluntary compliance with guidelines. The "Support Agreement" will be set forth on Form DD 1144, which parties will execute promptly after executing this Lease and promptly following the beginning of each fiscal year thereafter.

## 5. USE

(a) LESSEE shall use the Premises solely for the purpose to provide the Automated Fuel Dispensing Facility and other services set forth in the Contract, and for no other purpose without NASA's prior written consent, which consent may be given or withheld in NASA's sole and absolute discretion.

(b) LESSEE shall provide all contracting functions in accordance with contract specifications.

(c) LESSEE, at LESSEE's sole cost and expense, shall comply with all Federal, state and local laws, ordinances, rules, regulations, codes (including NASA AMES regulations, rules, and codes) (collectively, "Applicable Laws") including environmental, health, and safety regulatory requirements concerning compliance and remediation of spilled product.

(d) GOVERNMENT shall, except in cases of emergency or other immediate impact on the safety of Moffett Federal Airfield operations, give LESSEE thirty (30) days prior written notice to correct or remove any violations. The GOVERNMENT reserves the right of ingress and egress over and across said Premises for the purpose of exercising the rights set forth herein.

(e) Without limiting the foregoing, LESSEE shall comply with all NASA guidelines and standards including, without limitation, with respect to construction activities, facility use, land use, historic preservation, airfield operations and communications policies (including, without limitation, use of radios provided or required by NASA's airfield operations office), safety, security and environmental standards (including, without limitation, Applicable Laws). LESSEE shall also ensure that LESSEE, its subcontractors and their respective employees are duly licensed and trained in order to use the Premises for the purposes set forth in subsection 5(a), all as required by Applicable Laws.

(g) During the Term, LESSEE shall have the non - exclusive right, in common with NASA and all other tenants and users of the Center, to use only for their intended purposes the common areas of the Center (including the airfield subject to compliance with Applicable Laws regarding use and operation of the airfield), such as driveways, sidewalks, parking areas, loading areas, access roads, taxiways, runways and ramps that are designated by NASA as common areas and not leased to or allocated for the exclusive use of another tenant or user of the Center. NASA shall have the right from time to time to change the size, location, configuration, character or use of any such common areas, construct additional improvements or facilities in any such common areas, or close any such common areas. LESSEE shall not interfere with the rights of NASA and other tenants or users of the Center to use such common areas.

(h) The use and occupancy of the Premises shall be subject to such rules and regulations as may be prescribed from time to time by the Center Director (or his or her representatives) covering various matters including, but not limited to operations, security, access, communications or other aspects of the mission of the Center.

(i) LESSEE shall not install any signs on the Premises without the prior written consent of Landlord. LESSEE shall, at LESSEE's expense, remove all such signs prior to or upon termination of this Lease, repair any damage caused by the installation or removal of such signs, and restore the Premises to the condition that existed before installation of such signs.

## 6. KEY PERSONNEL - NOTICES

The following personnel are designated as the key officials for their respective Parties. These key officials are the principal points of contact between the Parties in the performance of this Lease. Any notice required to be given under this Lease shall be delivered, in writing, and mailed at any United States Post Office with postage prepaid and correctly addressed to the Party, or personally delivered to the Party, at the address below. Changes to such designation may be made by notice similarly given.

### Key Technical Personnel:

<u>NASA:</u>	NASA-Ames Research Center	<u>LESSEE:</u>	LB&B Associates
Name:	Geary Tiffany	Name:	Thomas J. Scanlon
Title:	Chief, Aviation Management Office	Title:	Division Manager
Address:	NASA Ames Research Center Mail Stop 158 - 1 Moffett Field, CA 94035 - 1000	Address:	9891 Broken Land Parkway, Suite 400 Columbia, MD 21046
Telephone:	(650) 604 - 0685	Telephone:	(301) 596-2440
Facsimile:	(650) 604 - 3144	Facsimile:	(301) 596-7879
E-mail:	<u><a href="mailto:Geary.C.Tiffany@nasa.gov">Geary.C.Tiffany@nasa.gov</a></u>	E-mail:	<u><a href="mailto:Tscanlon@LBBassociates.com">Tscanlon@LBBassociates.com</a></u>

### Key Administrative Personnel:

<u>NASA:</u>		<u>LESSEE:</u>	LB&B Associates
Name:	David J. Fluck	Name:	Thomas J. Scanlon
Title:	Chief, Facilities Planning Office	Title:	Division Manager
Address:	NASA Ames Research Center Mail Stop 19 - 12 Moffett Field, CA 94035 - 1000	Address:	9891 Broken Land Parkway, Suite 400 Columbia, MD 21046
Telephone:	(650) 604 - 6062	Telephone:	(301) 596-2440
Facsimile:	(650) 604 - 3772	Facsimile:	(301) 596-7879
E-mail:	<u><a href="mailto:David.J.Fluck@nasa.gov">David.J.Fluck@nasa.gov</a></u>	E-mail:	<u><a href="mailto:Tscanlon@LBBassociates.com">Tscanlon@LBBassociates.com</a></u>

## 7. ENVIRONMENTAL AND SAFETY

(a) LESSEE shall be responsible for complying with all Applicable Laws, rules, regulations and ordinances (whether Federal, state, or local) that apply to its activities and operations at Moffett Field, including, but not limited to Occupational Safety & Health Administration (OSHA), Nuclear Regulatory Commission (NRC), National Fire Protection Association (NFPA), California Fire Code (CFC), Bay Area Air Quality Management District (BAAQMD). Many of these guidelines are outlined in the *Moffett Federal Airfield Policy Manual* and the *Ames Environmental Handbook*.

(b) LESSEE will further ensure that its contractors, subcontractors, invitees, and visitors also comply with such laws, rules, regulations, and ordinances. Any hazardous wastes generated by LESSEE shall be managed by LESSEE in accordance with Federal, state and local laws and regulations, and shall be properly disposed of as directed by NASA, at LESSEE's expense.

(c) LESSEE agrees to pay all applicable environmental fees, fines, and penalties which may be properly assessed against it by any Federal, state, or local agencies, and will be responsible for representing and defending itself before any such agencies in any proceedings in which LESSEE may become involved to the extent such involvement results from LESSEE's activities and operations at Moffett Field.

(d) LESSEE will be responsible for paying all costs of the restoration or remediation of any release of any pollutant, contaminant or hazardous substance, including petroleum products, to the extent such release results from or was caused by LESSEE, and LESSEE will be responsible for any liability resulting therefrom. NASA will provide LESSEE with an Environmental Baseline Survey (EBS) containing summary information as to the type and amount of any currently known pollutant, contaminant, or hazardous substance, including petroleum products, known at the premises as of the effective date of this Lease.

(e) LESSEE shall not interfere with or impact any environmental remediation efforts on-going on NASA Ames property. LESSEE will be responsible for paying all costs of any damage to environmental remediation or restoration activities caused by its fault, negligence, or failure to comply with this Lease.

(f) Where activities undertaken by LESSEE require preparation of compliance documents pursuant to the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA), LESSEE shall supply all necessary information to NASA and any appropriate Agency in a timely manner. No such activities shall occur until all applicable NEPA and NHPA requirements have been met.

(g) Where requested by NASA, LESSEE shall prepare a Facilities Management and Safety Plan, as well as a Disaster Plan, and provide such plans to NASA for its approval.

(h) LESSEE has the responsibility to manage its operation in a safe and compliant manner, and to timely correct any safety or health hazards. NASA reserves the right to conduct oversight reviews to assure effective coordination of safety issues and adequate protection of LESSEE's employees, NASA employees, and the public. NASA and LESSEE agree to consult and cooperate on matters of mutual interest or responsibility concerning the environment.

## **8. GENERAL MAINTENANCE**

LESSEE, at its own expense, shall use, and maintain the Premises and all improvements installed thereon in accordance with the principles of sound property management.

## 9. UTILITIES AND SERVICE

LESSEE is required to install electric meter(s) at its expense. Pursuant to Paragraph 4(e):

(a) NASA shall provide estimates and identify process for charging LESSEE the fair market value or a negotiated price for utility, communication (telephone & LAN), fire fighting, mobility fuel and other facilities support costs required for operation of the COCO aviation fuel facilities and services.

(b) LESSEE is required to pay for private phone line to conduct company business.

(c) NASA shall establish utility (water and electrical) connections up to the real estate border.

## 10. IMPROVEMENTS AND REMOVALS

(a) LESSEE shall have the right, at its own expense, to maintain improvements of the Premises as shall be necessary or incidental to the use permitted under Paragraph 5, above, and consistent with the limitations of such use; provided, however, that no development, construction, or installation shall be accomplished hereunder except in strict accordance with plans and specifications therefor which have received prior written approval of NASA.

(b) All improvements made by LESSEE pursuant to this Lease shall remain the property of LESSEE during the entire term of this Lease, and LESSEE may remove any item thereof at any time prior to the expiration of this Lease; Provided, however, LESSEE shall in connection with any such removal, at its own expense, restore the portion of the Premises affected to its original condition. Upon prior termination of this Lease by NASA, LESSEE shall by written notice to NASA within sixty (60) days of written notice of such termination, advise NASA of any item which it shall elect to remove, in which event such removal and attendant restoration may be accomplished within such reasonable period of time as NASA shall prescribe. Should LESSEE abandon any improvements upon the expiration or earlier termination of this Lease, they shall become the property of the GOVERNMENT and shall be retained by NASA.

(c) NASA reserves the right, by written notice delivered to LESSEE within thirty (30) days from the expiration or prior termination of this Lease, to require LESSEE, at its own expense and within such reasonable period of time as NASA shall prescribe, to remove any improvement made on the Premises by LESSEE pursuant to this Lease, which LESSEE shall not have elected to remove pursuant to Paragraph (b), above, and to restore the portion of the Premises affected by such removal to its original condition. Should LESSEE abandon any improvements upon the expiration or earlier termination of this Lease, they shall become the property of the GOVERNMENT and shall be retained by NASA.

(d) All property of LESSEE on the Premises not removed in accordance with the rights and requirements of Paragraphs (b) and (c), above, shall be deemed abandoned by LESSEE and may be used or disposed of by NASA in any manner whatsoever without liability to account to

LESSEE therefor, but such abandonment shall in no way reduce any obligation of LESSEE hereunder to restore the Premises (this will be conducted with DESC concurrence).

#### **11. REPRESENTATION**

LESSEE has examined, knows and accepts the conditions and state of the Premises, as is, and the Center of which it forms a part, together with the use made of the Center by the GOVERNMENT, and acknowledges that NASA has made no representation concerning such conditions, state of repair and use, nor any agreement or promise to alter, improve, adapt, repair or keep in repair the same, or any portion thereof, which has not been fully set forth in this Lease which contains all the agreements made and entered into between LESSEE and NASA.

#### **12. RISK OF LOSS AND NON-LIABILITY OF THE GOVERNMENT**

(a) LESSEE covenants that it will save and hold harmless NASA, the Center, and their respective officers, agents and employees, for and from any and all liability or claims for loss or damage to any property, or for the injury to or death of any of the same or any person, as a result of LESSEE's occupancy and use of the Premises under this Lease, except for any willful act of damage by the GOVERNMENT, its officers, agents, or employees.

(b) LESSEE shall be responsible for all costs incurred by the GOVERNMENT for any damage (beyond normal wear and tear reasonably to be expected) to property and equipment located on the Premises, when such damage results from LESSEE's occupancy and use of the Premises under this Lease.

(c) This section 12 shall survive the termination of this Lease with respect to any claim, liability, loss, damage, bodily or personal injury, illness or death occurring prior to such termination.

#### **13. INSURANCE**

(a) LESSEE shall procure and maintain at its own expense commercial general liability insurance in the following minimum amounts: Bodily Injury or Death, \$3,000,000 per person, \$3,000,000 per accident; Property Damage, \$3,000,000. Annually NASA shall have the right to set new limits of liability for the required insurance coverage. It is expressly agreed, however, that maintenance of the required insurance shall effect no limitation of LESSEE's liability under Paragraph 12, above.

(b) Each policy of insurance required to be maintained by LESSEE under Paragraph (a) above, shall name both LESSEE and the United States of America (National Aeronautics and Space Administration) as the insured, shall contain a provision for thirty (30) days written notice to NASA prior to the making of any material change in or cancellation of the policy, and shall otherwise be in such form for such periods of time and with such insurers as NASA shall from time to time require and approve.

(c) LESSEE shall promptly deliver to NASA a certificate of insurance or a certified copy of each policy of insurance required by this Lease and shall also deliver, no later than thirty (30) days prior to expiration of any such policy a certificate of insurance or certified copy of each renewal policy covering the same risks. Endorsements, in a form acceptable to NASA, naming the GOVERNMENT as an additional insured and waiving rights of subrogation are required.

(d) NASA agrees to allow LESSEE's self-insurance to be used to cover the above requirements of this Paragraph 13, subject to LESSEE providing, at the request of NASA, evidence satisfactory to, and approved by, NASA that LESSEE's financial condition is adequate to cover the above requirements of this Paragraph 13.

#### **14. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY**

(a) This Lease is subject to all easements and rights of way whether or not of record.

(b) Further, this Lease is subject to the right of the GOVERNMENT to grant such additional easements and right of way over, across, in and upon the Premises, as it shall determine to be in the public interest; provided, that any such additional easement or right of way shall be conditioned on the assumption by the Grantee thereof of liability to LESSEE for such damages as LESSEE shall suffer for property destroyed or property rendered unusable on account of Grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights of way as are presently outstanding or which may hereafter be granted, to any workers, officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. The holder of any such easements, whether existing or newly granted, shall give prior written notice, within a reasonable time, to LESSEE of the scope and nature of any work they propose to perform, and shall coordinate a work schedule with LESSEE.

#### **15. TERMINATION BY THE GOVERNMENT**

(a) This Lease may be terminated by the mutual agreement of the Parties.

(b) This Lease may also be terminated, in whole or in part, if there has been: (a) a declaration of war by the Congress of the United States; (b) a declaration of a national emergency by the President of the United States; (c) a failure of LESSEE to comply with any term or condition of this Lease; or (d) a determination by the Director, NASA Ames Research Center, the Associate Administrator of Management Systems (NASA Headquarters), or the Director of the Facilities Engineering Division (NASA Headquarters) that the interests of the national space program, national defense or public welfare require termination of the interest granted, and a prior thirty (30) day notice, in writing, to LESSEE that such determination has been made.

(c) In the event early termination of this Lease by the GOVERNMENT under, Paragraph (b) above, the GOVERNMENT shall make a pro rata adjustment of any advance rent paid by LESSEE.

#### 16. SURRENDER OF PREMISES

Subject to its rights and obligations under Paragraph 10, above, relative to removal of structures erected and installations made by it on the Premises, upon the expiration of this Lease or its prior termination, LESSEE shall remove itself in an orderly fashion from the Premises and surrender the possession thereof to the GOVERNMENT. The GOVERNMENT's officers and agents may enter the Premises and cause the removal of all persons and property therefrom.

#### 17. LIENS

LESSEE shall promptly discharge or cause to be discharged any lien, right in rem, claim or demand of any kind, except one in favor of NASA, the Center, or the GOVERNMENT, which at any time may arise or exist with respect to the Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by the LESSEE, NASA may discharge, or cause to be discharged, the same at expense of LESSEE.

#### 18. ACCESS

(a) NASA, the ARC and the GOVERNMENT shall have access to the Premises at all reasonable times for any purposes not inconsistent with the quiet use and enjoyment thereof by LESSEE, including, but not limited to, the purpose of inspection, with notification to the LESSEE.

(b) All locks for all gates and doors in, on, or about the Premises (excluding LESSEE's vaults, safes and similar special security areas designated in writing by LESSEE) shall be keyed to the master system for the Center. NASA shall at all times have a key to unlock all such doors and NASA shall have the right to use any and all means which NASA may deem proper to open such doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by NASA by any of such means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of LESSEE from the Premises or any portion thereof, with notification to LESSEE.

#### 19. TAXES

(a) LESSEE shall pay to the proper authority, when due and payable, all taxes, assessments, and similar charges which, at any time during the term of this Lease may be imposed upon LESSEE with respect to LESSEE's use and occupancy of the Premises.

(b) LESSEE shall have the right at any time before delinquency occurs to contest or object to the amount or validity of any such tax, assessment, or similar charge by appropriate legal proceedings. This right shall not be deemed or construed in any way as relieving, modifying or extending LESSEE's agreement to pay any such tax, assessment, or similar charge

unless LESSEE shall have obtained a stay of such proceedings. It shall be LESSEE's sole responsibility hereunder to apply for and prosecute any exemption from taxation to which LESSEE may be entitled, and NASA or ARC shall be at no expense therefor. NASA or ARC shall not be required to join or assist LESSEE in any such proceedings.

## 20. DISPUTES

(a) Except as otherwise provided in this Lease, any dispute concerning a question of fact arising under this Lease which is not disposed of by this Lease shall be decided by the Director, Ames Research Center, (or his or her designee), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the LESSEE. The decision of the Director, Ames Research Center, (or his or her designee) (with coordination/consultation with the DESC Contracting Officer) shall be final and conclusive unless within thirty (30) days from the receipt of such copy, LESSEE mails or otherwise furnishes to the Administrator, National Aeronautics and Space Administration a written appeal. The decision of the Administrator, National Aeronautics and Space Administration or his or her authorized representative shall be final and conclusive. This provision shall not be pleaded in any suit (lease cannot take away any legal rights of either party) involving a question of fact arising under this Lease as limiting judicial review of any such decision where fraud by such official or his or her representative is alleged; provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, LESSEE shall proceed diligently with the performance of this Lease and in accordance with the decision of the Director, Ames Research Center (or his or her designee).

(b) This DISPUTES clause does not preclude consideration of questions of law in connection with decisions provided for in Paragraph (a), above. Nothing in this Lease, however, shall be construed as making final the decision of any administrative official, representative, or board in a question of law.

## 21. FAILURE TO INSIST ON COMPLIANCE

The failure of NASA to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Lease shall not be construed as a waiver or relinquishment of NASA's, the Center's or the GOVERNMENT's right to require the future performance of any such terms, covenants, or conditions and LESSEE's obligations in respect to such future performance shall continue in full force and effect.

## 22. ASSIGNMENT OR SUBLETTING

LESSEE shall not transfer or assign this Lease or any interest therein nor sublet or otherwise make available to any third party or parties any portion of the Premises or rights therein without the prior written consent of NASA. Any transfer or assignment without such consent shall be void and, at the option of NASA, shall terminate this Lease.

### **23. GOVERNMENT RULES AND REGULATIONS**

LESSEE shall comply with such rules and regulations including, but not limited to, NASA security, ingress, egress, safety, and sanitation as may be prescribed, from time to time, by NASA, the Center, or the GOVERNMENT.

### **24. GOVERNING LAW; TIME IS OF THE ESSENCE**

(a) Except to the extent the same may be in conflict with the laws of the United States, the laws of the State of California shall govern the validity, construction and effect of this Lease. In instances where the laws of the United States refer to the laws of the state applicable to a transaction, such reference shall be made to the laws of the State of California including but not limited to California Civil Code Sections 1542, 1951.2 and 1951.4.

(b) Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

### **25. INTEREST**

Notwithstanding any other provisions of this Lease, unless paid within thirty (30) days, all amounts that become payable by LESSEE to NASA under this Lease shall bear interest thirty (30) days from the date due until paid. The interest rate per annum shall be the interest rate established pursuant to Public Law 95-563, 31 U.S.C. § 3717, 14 CFR § 1261.412, OMB Circular A-94, and any other applicable Federal laws which are applicable for the period in which the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this Lease; (ii) the date of the first written demand for payment, consistent with this Lease, including demand consequent on default; or (iii) the date of transmittal by the NASA to LESSEE of a proposed supplemental agreement to confirm completed negotiations fixing the amount.

### **26. ANTI - DEFICIENCY ACT**

NASA's ability to perform its obligations under this Lease is subject to the availability of appropriated funds. Nothing in this Lease commits the United States Congress to appropriate funds for the purposes stated herein (pursuant to the Anti-Deficiency Act, 31 U.S.C. Section 1341).

### **27. COVENANT AGAINST CONTINGENT FEES**

LESSEE warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by LESSEE for the purpose of securing business. For breach or violation of this warranty, NASA shall have the right to annul this Lease without liability or, in its discretion,

to require LESSEE to pay, in addition to the rent, the full amount of such commission, percentage, brokerage or contingent fee.

**28. HISTORIC PRESERVATION**

LESSEE shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, LESSEE shall immediately notify NASA and protect the site and the material from further disturbance until NASA gives clearance to proceed.

**29. INDEPENDENCE OF CONTRACTS**

Except for the Contract, the Parties agree that this Lease is independent of any other contract between the GOVERNMENT and LESSEE. LESSEE is not released from its obligations under other existing contracts with the GOVERNMENT.

IN WITNESS WHEREOF, each party has caused this Lease to be executed by its duly authorized representative on the date indicated below.

NATIONAL AERONAUTICS  
AND SPACE ADMINISTRATION

L B & B ASSOCIATES, INC.

BY:  (for)  
Name: G. Scott Hubbard  
Title: Center Director

By:   
Name: Thomas Scanlon  
Title: Vice President, Support Services

Date: 3/10/04

Date: 3/11/04  
Approved as to form:  
By: \_\_\_\_\_

ATTACHMENT "A"

SAA2-401668

*Withheld in Full under exemption*

*B-7(e)(f)*



ATTACHMENT "B"

SAA2-401668

COSTS AND RESPONSIBILITIES  
AGREEMENT OF LEASE

BETWEEN

THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
AMES RESEARCH CENTER, MOFFETT FIELD, CALIFORNIA

AND

L B & B ASSOCIATES INC.

**FY 04:ISP and Demand Service Rates for NRP Residents**

**SAA2-401668  
ATTACHMENT "B"**

	<b>Office</b>	<b>Shop/Hangar</b>	<b>Storage</b>
<b>Code CF Guidelines:</b>			
<b>ISP: Cost/sq. ft</b>	\$ 4.53	\$ 3.11	\$ 2.79
<b>Code JF Guidelines:</b>			
<b>Demand Services: Cost/sq. ft</b>			
Maintenance	\$4.59	\$ 3.16	\$ 2.83
Utilities	\$0.83	\$ 0.57	\$ 0.51
Janitorial	\$1.14	\$ 0.79	\$ 0.70
<b>Sub Total</b>	<b>6.57</b>	<b>\$ 4.52</b>	<b>\$ 4.04</b>
<b>Full-up Rate:</b>	<b>\$ 11.10</b>	<b>\$ 7.63</b>	<b>\$ 6.83</b>
	<b>Weighting Factors</b>		
	Office	1.000	\$ 4.53
	Shop/Lab/Hangar	0.687	\$ 4.53
	Storage/Ordance	0.615	\$ 4.53

SAA2-401668  
ATTACHMENT "B"

**ESTIMATED COST FOR THE PERIOD OCTOBER 1, 2003 TO SEPTEMBER 30, 2004  
FISCAL YEAR 2004**

**AVIATION FUELING SERVICES**

<b>CATEGORY</b>	<b>RATE</b>	<b>UNIT (ACRES)</b>	<b>COST</b>
<b>ISP SERVICES (MANDATORY)</b>		2.1	
- Structural Fire			
- Security			
- Environmental Services			
- Grounds/Roads/Landscaping/Infrastructure			
- General & Admin			
<b>DEMAND SERVICES</b>		2.1	
- Utilities			
- Janitorial			
- Maintenance			
<b>TOTAL COST/YEAR ISP &amp; DEMAND SERVICES</b>	<b>\$12,000/YEAR</b>	2.1	

Land Rental Cost \$47,916/Acre X 2.1 Acres = \$100,623/Year NNN (Triple Net)

Electrical services will be billed based on NASA's actual costs incurred.

Participant is responsible for the installation of electric meter(s) at its own expense.

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