

USE PERMIT  
BETWEEN  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,  
AMES RESEARCH CENTER,  
AND  
H211, LLC  
REGARDING TEMPORARY USE OF PROPERTY

The National Aeronautics and Space Administration, an Agency of the United States, acting by and through Ames Research Center ("NASA"), and H211, LLC, a California limited liability company ("Permittee"), enter into this Use Permit (the "Agreement") as of April 11, 2007 (the "Effective Date") under the authority of section 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. §2473(c)(5), (6)).

1. PURPOSE

NASA and Permittee are in the process of negotiating an enhanced use lease (the "Lease") of certain space located in Hangar 211 (the "Building") at NASA Ames Research Center, Moffett Field, California (the "Center"), for the storage, support and servicing of certain aircraft owned by the principal executives of Permittee. Permittee has acquired a spare aircraft engine (the "Engine"), which it would store within the leased premises if the Lease were executed. With the expectation that the Lease will be finalized and executed by the parties, Permittee desires to store temporarily the Engine in the nearby annex portion of the Building more particularly depicted on attached Exhibit A and consisting of approximately seventy (70) square feet of space (the "Storage Space") that is not currently needed for NASA's use. NASA is willing to permit Permittee to use the Storage Space on a temporary basis to store the Engine on the terms and conditions of this Agreement. The parties acknowledge that neither party is obligated to enter into the Lease and that the Lease may not be executed, and neither party shall have any obligation or liability to the other party if the Lease is not executed (provided, however, the foregoing does not limit or obviate Permittee's obligations and liability under this Agreement as set forth herein).

2. RESPONSIBILITIES

2.1 NASA grants to Permittee a non-exclusive permit to use the Storage Space during the term of this Agreement for the purpose of storing the Engine, all on the terms and conditions of this Agreement. The term of this Agreement shall commence on the Effective Date and shall expire on the earlier to occur of the following dates: (a) the commencement date of the Lease; or (b) June 29, 2007. Unless the Lease is executed by the parties, Permittee shall remove the Engine from the Center on or before June 29, 2007.

2.2 This Agreement is not a grant of any possessory, exclusive or other right, title or interest in the Storage Space, the Building or any other NASA real or personal property, nor is it a grant of an estate of any kind, nor is it an abandonment of use and occupancy, but is merely an agreement for the temporary, non-exclusive and non-possessory use of the Storage Space. Accordingly, NASA may enter into similar agreements for the same or similar purpose with other private or public entities. Title to NASA's real property shall be and remain solely with NASA.

1/8

2.3 NASA specifically reserves the following rights: (i) to control ingress to and egress from NASA property, to erect and maintain gates, and to regulate or prevent traffic; (ii) to enter and/or inspect the Storage Space for purposes deemed necessary by NASA, including, but not limited to, safety, environmental, maintenance, emergency or security purposes; and (iii) on behalf of NASA, the United States Environmental Protection Agency, the State of California and other entities and governmental agencies that are involved in the remediation of, or that are responsible to remediate, existing contamination on or about NASA property, the right to have unobstructed access to known or suspected areas of contamination or other areas upon which any containment system, treatment system, monitoring system, or other environmental response action is installed or implemented, or to be installed or implemented, for the purposes of the complying with environmental laws and requirements.

2.4 All operations on NASA property conducted by Permittee or its employees, agents, contractors, subcontractors or invitees shall be compatible with, and shall not interfere with, the operations of NASA or other resident agencies at NASA. Permittee agrees that its operations pursuant to this Agreement shall comply with all applicable federal, state and local laws, ordinances, rules, regulations and codes (including, without limitation, the Uniform Building Code and NFPA Fire safety standards), as well as NASA guidelines and standards including, without limitation, with respect to construction activities, facility use, land use, historic preservation, airfield policy, health and safety, security and environmental standards.

### 3. FINANCIAL OBLIGATIONS

3.1 This Agreement is intended to be the means to transfer funds or other financial remunerations from Permittee to NASA in connection with this Agreement. Permittee will reimburse NASA for costs of services provided by NASA to Permittee as more particularly set forth on a support agreement substantially in the form attached hereto as Exhibit B (the "Support Agreement"). The parties shall execute the Support Agreement concurrently herewith, and such amendments or supplements thereto as is necessary in connection with the parties' obligations under this Agreement.

3.2 Cost estimates for services provided by NASA, and reimbursement thereof, shall be consistent with 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. Upon the expiration or earlier termination of this Agreement, NASA shall promptly refund to Permittee all amounts deposited by Permittee which exceed costs incurred by NASA, without interest.

3.3 All payments referred to in this Agreement shall be made in accordance with the following:

3.3.1 Payment shall be in United States dollars.

3.3.2 Payment shall be payable to the "NASA Ames Research Center." Each payment shall reference the number of this Agreement.

107

3.3.3 Payment shall be made by check sent to NASA Ames Research Center, Financial Management Division, Mail Stop 203-18, Moffett Field, CA 94035-1000, Attn: Collection Agent, or to such other person or location as NASA may designate by written notice to Permittee.

3.3.4 Payment of the amount set forth on the Support Agreement shall be made within five (5) business days after the Support Agreement is executed by the parties. Additional payments, if any, shall be made within five (5) business days after each separate, amended or supplemental Support Agreement is executed by the parties, or at such other times as the parties may agree upon in writing.

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

#### 4. LIABILITY AND RISK OF LOSS

4.1 In consideration of the permit to use the Storage Space granted in this Agreement and the services to be provided by NASA under this Agreement, Permittee waives and agrees not to make any claims against NASA or its employees, agents, contractors or subcontractors for any injury to, or death of, Permittee's employees, agents, contractors, subcontractors or invitees, or for damage to, or loss of, Permittee's property or the property of any of Permittee's employees, agents, contractors, subcontractors or invitees, arising from or related to the use of the Storage Space or any activities conducted under this Agreement, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct of NASA or its employees.

4.2 Permittee agrees to indemnify, defend and hold harmless NASA from any and all claims, liabilities, damages, losses, costs and expenses (including, without limitation, attorneys' fees) arising out of use of the Storage Space or any entry on the Center by Permittee or its employees, agents, contractors, subcontractors or invitees pursuant to this Agreement or caused by Permittee or its employees, agents, contractors, subcontractors or invitees during the term of this Agreement, whether such claim, liability, damage, loss, cost or expense is caused by negligence or otherwise, except in the case of willful misconduct of NASA or its employees.

#### 5. INSURANCE

Permittee agrees to obtain insurance, at no cost to NASA, protecting Permittee and NASA from all claims, liability and damage specified in this Agreement. Permittee acknowledges that NASA does not carry any insurance, including without limitation property damage or fire insurance.

##### 5.1 Commercial General Liability Insurance

At all times during the term of this Agreement and at its sole cost and expense, Permittee shall obtain and keep in force commercial general liability insurance with such limits as may be

108

required by NASA from time to time, but in any event not less than One Million Dollars (\$1,000,000) for each occurrence, including all legal liability of Permittee, including but not limited to injury to third persons or damage to any real or personal property, including damage caused by fire or other peril, arising out of or incident to use of the Storage Space or any entry on the Center, by Permittee or its employees, agents, contractors, subcontractors or invitees, or the negligence of any of them. Commercial general liability insurance shall be written on a form reasonably acceptable to NASA.

## 5.2 Other Required Insurance

5.2.1 To the extent required by law, Permittee shall carry and maintain workers compensation in the form and amounts required by law.

5.2.2 Permittee shall carry and maintain employer's liability insurance with such limits as may be required by NASA from time to time, but in any event not less than Five Hundred Thousand Dollars (\$500,000) per occurrence.

5.2.3 Permittee shall carry and maintain automobile liability insurance covering owned, hired and non-owned vehicles, with separate coverage in an amount not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.

## 5.3 General Insurance Program Requirements

5.3.1 Each policy of insurance required by this Agreement covering bodily injuries or third party property damage shall contain an endorsement reading substantially as follows:

"The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy."

5.3.2 All of the insurance required under this Agreement, and all renewals thereof, shall be issued by one or more companies of recognized responsibility acceptable to NASA, licensed to do business in the State of California with a financial rating of at least A- VII (or its equivalent successor) status, as rated in the most recent edition of Best's Insurance Reports (or its equivalent successor, or, if there is no equivalent successor rating, otherwise acceptable to NASA).

5.3.3 All of the insurance required under this Agreement other than worker's compensation coverage shall name NASA and its directors, officers and employees as additional insureds. Permittee's certificates of insurance shall have attached a copy of the endorsement to each policy naming such persons as additional insureds, such endorsement signed by a duly authorized official of the insurer. Each certificate of insurance shall list the certificate holder as follows:

National Aeronautics and Space Administration  
Ames Research Center  
Attn: Office of the Chief Counsel

Mail Stop 200-12  
Moffett Field, CA 94035-1000

5.3.4 All policies provided for in this Agreement expressly shall be endorsed to state that coverage shall not be canceled, non-renewed, or materially changed except after thirty (30) days prior written notice to NASA.

5.3.5 If NASA at any time believes that the limits or extent of coverage or deductibles with respect to any of the insurance required in this Agreement are either excessive or insufficient, NASA may determine the proper and reasonable limits and extent of coverage and deductibles for such insurance and such insurance shall thereafter be carried with the limits and extent of coverage and deductibles as so determined until further change pursuant to the provisions of this Agreement.

5.3.6 No approval by NASA of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by NASA of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance herein, NASA makes no representation or warranty that coverage or limits will necessarily be adequate to protect Permittee, and such coverage and limits shall not be deemed as a limitation on Permittee's liability under the indemnities granted to NASA in this Agreement.

5.3.7 Failure of NASA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of NASA to identify a deficiency from evidence that is provided shall not be construed as a waiver of Permittee's obligation to maintain such insurance.

## 6. ENVIRONMENTAL AND SAFETY

6.1 Permittee shall not use, store, produce, generate, release, transport or dispose of hazardous materials, substances, wastes, pollutants or other contaminants (including, without limitation, crude oil or any fraction thereof, petroleum products and PCBs) (collectively, "Hazardous Materials") on or about the Center. Permittee understands that there have been releases of Hazardous Materials on, in, under and about the Center, and Permittee acknowledges receipt of copies of the environmental reports listed on Exhibit C attached hereto.

6.2 Permittee will be responsible for paying all costs of the remediation, removal, transportation and disposal of any release of Hazardous Materials to the extent such release results from or was caused by Permittee or its employees, agents, contractors, subcontractors or invitees in exercising rights or responsibilities under this Agreement, and Permittee will be responsible for any liability or damage resulting therefrom.

6.3 Permittee shall not interfere with or adversely affect any environmental remediation efforts at the Center. Permittee will be responsible for paying all costs of any damage to environmental remediation equipment caused by the fault, negligence or failure to comply with this Agreement by Permittee or its employees, agents, contractors, subcontractors or invitees. Further, Permittee expressly agrees to coordinate any actions undertaken by

Permittee in areas scheduled for environmental remediation with NASA and other appropriate Federal, state and local authorities with jurisdiction and obtain all necessary permits and approvals for such actions.

6.4 Where activities undertaken by Permittee require preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA"), Permittee 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 that must be satisfied prior to implementing the work in question have been met.

## 7. DISCLAIMER OF WARRANTY

THE STORAGE SPACE AND ALL SERVICES PROVIDED BY NASA ARE SUPPLIED "AS IS." PERMITTEE AGREES TO USE THE STORAGE SPACE AND SUCH SERVICES AT ITS OWN RISK, AND NASA MAKES NO WARRANTIES TO PERMITTEE OF ANY KIND, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE. NASA SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. CONTINUING OBLIGATIONS

The obligations of the parties set forth in the provisions for "Liability and Risk of Loss" and "Financial Obligations" shall continue to apply after the expiration or termination of this Agreement.

## 9. KEY OFFICIALS

The personnel listed under this section ("POCs") are designated as the key officials for their respective party. These key officials are the principal point of contact between the parties in the performance of this Agreement.

NASA:  
Name: Mr. Christopher C. Kemp  
Address: NASA Ames Research Center  
Mail Stop 200 - 1A  
Moffett Field, CA 94035 - 1000  
Telephone: (650) 604-4822  
Email: chris.c.kemp@nasa.gov

Permittee:  
Name: Mr. Ken Ambrose  
Address: H211, LLC  
505 Hamilton Avenue, #210  
Palo Alto, CA 94301

Telephone: [REDACTED]  
Email: [REDACTED]

B-4  
B-6

## 10. MODIFICATION

The parties may agree to extend this Agreement by written modification. Any modification to this Agreement shall be in writing and signed by an authorized representative of each party. Any modification which creates an additional commitment of NASA resources must be signed by the original NASA signatory authority or successor, or a higher level NASA official possessing original or delegated authority to make such a commitment.

10

## 11. DISPUTE RESOLUTION

The POCs for the parties will attempt in good faith to resolve all issues arising out of this Agreement. If they are unable to agree on any issue within a reasonable time (but in no event more than thirty (30) days) after either party delivers to the other party written notice describing such issue in reasonable detail, then the dispute will be referred to the POCs' respective immediate supervisors for joint resolution. If the parties are still unable to resolve the issue within ten (10) business days after the issue has been referred to such supervisors for resolution, then the Center Director (or his or her designee) will issue a written decision, which shall be a final Agency decision for all purposes, including the exhaustion of administrative remedies. Nothing in this section limits or prevents either party from pursuing any other right or remedy available by law after exhaustion of administrative remedies.

## 12. GOVERNING LAW

United States Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the parties.

## 13. TERMINATION

NASA may terminate this Agreement, in whole or in part, and without cost to the Government, if a determination is made by the Assistant Administrator for Institutional and Corporate Management, the Director of the Facilities Engineering and Real Property Division, or the NASA Director that the interests of the national space program, the national defense or the public welfare require the termination of this Agreement and written notice of such determination is delivered to Permittee at least thirty (30) days before the termination date.

Executed as of the date first set forth above in duplicate originals by the undersigned, who are authorized to bind their respective organizations to the terms hereof.

NASA:

National Aeronautics and Space  
Administration, an Agency of the United States

By:

  
S. Pete Worden  
Director, Ames Research Center

Permittee:

H211, a California limited liability company

By:

  
Ken Ambrose  
Vice President