

Salem Municipal Airport Ground Lease

(For New Construction)

This Airport Ground Lease ("Lease") is between the City of Salem, an Oregon municipal corporation ("Landlord") and BSL Transport LLC, an Oregon limited liability company ("Tenant").

Recitals

- A.** Landlord owns and operates the Salem Municipal Airport ("Airport").
- B.** Tenant is desirous of entering into a ground lease with Landlord for certain real property located at the Airport, as more particularly described in this Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

Article 1. Description and Use of Premises

- 1.1 Premises Description.** Landlord leases to Tenant, subject to the terms and conditions of this Lease, the land located at the Airport described in "Exhibit A", which is attached hereto and incorporated herein by reference ("Premises"). The Premises consist of approximately 22,750 square feet. The final location and dimensions of the Premises shall be adjusted by Landlord and Tenant, if necessary, to account for the final location of Tenant's above ground fuel tank on the Premises, as approved by the City of Salem Planning Department and Landlord. The address of the Premises is to be determined located on Airway Drive SE, Salem, OR 97302.
- 1.2 Use of Premises.** Tenant shall construct a building and related improvements on the Premises to be used solely for aviation-related use. Tenant's primary use of the Premises shall be for the storage of aircraft and other activities incidental thereto, or other permitted aviation related use. Secondary, non-aviation related uses, may be conducted on the Premises only upon Landlord's prior written consent. Tenant's use of the Premises shall be conducted in compliance with federal, state, and local laws and regulations, as they may be amended from time to time. Such laws and regulations include, but are not limited to, Salem Revised Code Chapter 9 (or any successor ordinance) and Salem Airport Rules and Regulations.
- 1.3 Use of Common Areas.** Tenant shall, during the term of this Lease and any renewal hereof, have the right to use in common with others such public Airport facilities, public improvements, runways and taxiways, and public roads, ways and areas at the Airport that are necessary for ingress and egress to and from the Premises (collectively, "the Common Areas"), subject to all other terms and conditions of this Lease. Nothing in this section shall prohibit or otherwise limit Landlord from banning from the Airport any person or entity that fails to comply with applicable federal, state and local laws, rules and regulations.

- 1.3.1** Tenant shall not leave or store anything in the Common Areas or cause or permit its employees, agents, invitees, contractors or suppliers to leave or store anything in the Common Areas, without the prior written consent of Landlord.
- 1.3.2** In addition to any other rights provided by law or this Lease, Landlord reserves the following specific rights with respect to the Common Areas:
 - 1.3.2.1** To establish and/or amend from time to time rules and regulations for the use of the Common Areas, including fees for the use thereof.
 - 1.3.2.2** To use or permit the use of the Common Areas by others.
 - 1.3.2.3** To close all or any portion of the Common Areas to make repairs or changes to the Common Areas.
 - 1.3.2.4** To prevent the accrual of any rights by any person or entity in the Common Areas.
 - 1.3.2.5** To eliminate unpermitted use of the Common Areas.
 - 1.3.2.6** To construct additional buildings or other improvements or to alter or remove buildings or other improvements in the Common Areas, to change the layout of the Common Areas, or to add to or subtract from the shape and size or to change the location of the Common Areas.

1.4 No Limitation on Authority of Landlord. Nothing in this Lease shall, or shall be construed to, limit in any way the right and authority of Landlord to exercise its proprietary or governmental powers in any way over the Airport, the Common Areas, the Premises, or any other area of the Airport under the jurisdiction of Landlord, including, but not limited to the right and authority to:

- 1.4.1** Take any action necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to, preventing Tenant from erecting, or permitting to be erected, any building or other structures on the Premises which, in the opinion of Landlord, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 1.4.2** Develop or improve the Airport as Landlord, in Landlord's sole discretion, sees fit.
- 1.4.3** Determine, in Landlord's sole discretion, the level, methods and schedules for maintenance of improvements at the Airport.
- 1.4.4** Close the Airport or limit operations of the Airport, whenever Landlord deems it necessary for reasons of public safety or convenience.

1.5 Access to Premises. Landlord shall have the right to enter upon the Premises and Improvements thereon during regular business hours for the purposes of: (i) inspecting the same; (ii) confirming the performance by Tenant of its obligations under this Lease; (iii) doing any other act which

Landlord may be obligated or have the right to perform under this Lease, or that is reasonably related thereto; and (iv) for any other lawful purpose. Such entry shall be made only on forty-eight (48) hour advance notice except in cases of emergency, when only such notice is required as is practicable under the circumstances. Notwithstanding section 9.9 of this Lease, notice under this section shall be sufficient if provided forty-eight (48) hours prior to the inspection by; (i) personal delivery; (ii) prominently posted on the primary building on the Premises, or; (iii) by certified first class mail with proof of receipt at least forty-eight (48) hours in advance of the inspection.

Article 2. Term

- 2.1 Term.** The term of this Lease is for a period of approximately thirty (30) years, commencing upon the earlier of commencement of construction of improvements on the Premises by Tenant or December 31, 2017 (the "Commencement Date") and ending December 31, 2047 ("Expiration Date"). The date used as the anniversary date for payment of Rent and for adjustments to the Rent shall be July 1.

Article 3. Rent

- 3.1 Rent.** Tenant shall pay to Landlord "Base Rent" in the amount of \$7,735.00. The Base Rent is established as follows:

Square footage of the Premises (22,750) x Rental Rate of \$0.34 = Base Rent

The Base Rent shall be adjusted for the final square footage of the Premises as adjusted for the final approved location of the planned fuel tank as provided in Section 1.1 of this Lease or as provided in Section 3.2 of this Lease. All sums other than Base Rent which Tenant must pay Landlord pursuant to this Lease shall be considered Additional Rent. As used in this Lease, "Rent" means the sum of the Base Rent and any Additional Rent.

3.2 Rent Adjustment.

- 3.2.1** Every July 1st, the Base Rent shall be increased by two and one half percent (2.5%), except in those years ending in five (5) or zero (0), when the rent shall be adjusted to fair market value as provided in Section 3.2.2.
- 3.2.2 Uniform Rental Structure.** In addition to the annual rent adjustment provided for in Paragraph 3.2.1, the Base Rent shall be adjusted on July 1 of every calendar year ending in five (5) or zero (0) to conform to the Landlord's Uniform Rental Structure. Landlord, at Landlord's cost, shall obtain an appraisal establishing the rental rate for Airport land sharing similar characteristics and amenities to the Premises. In establishing the rental rate the appraisal may consider the following factors:

3.2.2.1 The Landlord's costs for operations of the Airport; the "fair market rental value" of the Premises, as defined in Subparagraph 3.2.2.2 of this Lease; and the demand for ground space at the Airport.

3.2.2.2 The term "fair market rental value" means the most probable lease rate in terms of money which the Premises, including only those improvements thereon owned by Landlord, would bring if exposed for lease on the open market, with a reasonable time allowed to find a tenant, leased with full knowledge of the highest and best use for which the Premises could be put to use consistent with the then most current Salem Airport Master Plan, applicable provisions of Salem Revised Code, and Federal Aviation Administration ("FAA") regulations.

3.2.2.3 The appraiser shall be instructed to assume an appropriate market rate of return, but not less than seven percent (7%), in order to yield the appropriate annual ground rental rate. The rental rate shall be derived by multiplying the appraiser's concluded land value by the stated rate of return._

3.3 Time and Place of Payment of Rent and Demonstration of Compliance with Other Obligations.

3.3.1 Initial Year. At the time this Lease is executed by Tenant, Tenant shall (i) pay the Base Rent for the first installment (**year**) of the term; (ii) provide a certificate of insurance demonstrating compliance with Section 6 of this Lease; and (iii) for any lease that provides for new construction, pay a one-time Site Development Fee in the amount set by resolution of City Council.

3.3.2 Subsequent Years. Tenant shall pay Base Rent annually on or before **July 1** (Due Date), plus any Additional Rent. Landlord is not required to invoice Tenant, or to provide any notice to Tenant that Rent is due and payable. Rent shall be delinquent if not paid on the Due Date. Payment of Rent shall be made without offset, abatement or deduction to Landlord, at the following address or such other place as Landlord may designate, in writing:

City of Salem, Finance Department
555 Liberty St SE, Room 230
Salem, OR 97301

Rent that is not paid by Tenant within ten days of the Due Date shall be subject to a delinquency charge equal to ten percent (10%) of the unpaid Rent, or one hundred dollars (\$100.00), whichever is greater. The delinquency charge is subject to periodic change by Landlord. In addition to the payment of Rent, Tenant shall annually provide proof that property taxes have been paid, a certificate of insurance demonstrating compliance with Article 6 of the Lease, and a list of sublessees together with their addresses and contact information, at the following address or such other place as Landlord may designate, in writing:

City of Salem, Airport
2990 25th Street SE
Salem, OR 97302

- 3.4 Acceptance of Late Rent.** Landlord shall be entitled, in Landlord's sole and complete discretion, to either accept or reject a tender of payment of Rent which is not paid when due. If Landlord accepts tender of late payment of Rent, such waiver shall be effective for that payment only, shall not otherwise affect Tenant's continuing obligation to pay Rent when due, and shall not result in the waiver of any other right or remedy afforded Landlord under this Lease.
- 3.5 Airport User Charges.** It is expressly understood that Landlord may from time-to-time establish various generally applicable charges for use of Landlord's facilities at the Airport, including, but not limited to, conference rooms, or Landlord owned buildings. Such user charges shall be payable by Tenant, but shall not be considered Additional Rent.

Article 4. Tenant's Obligations

- 4.1 Improvements.** Tenant shall obtain all necessary federal, state, and local permits and approvals before commencement of construction of any improvements on the Premises.
- 4.1.1.** Tenant, at Tenant's sole expense, shall be responsible for any of the following improvements as may be required to support Tenant's construction of any improvements on the Premises:
- 4.1.1.1** All appurtenances, taxi lanes, roadways, gates and fences and all improvements to utilities and infrastructure to serve the proposed development.
 - 4.1.1.2** Fire hydrants required to maintain adequate fire protection for Tenant's development. Should relocation of any existing fire hydrant be necessary due to development, Tenant will be reimbursed in the form of a rent credit for the following fiscal year, and subsequent years if necessary, upon completion of said work and upon Landlord's receipt of all applicable invoices for said work.
 - 4.1.1.3** A storm drainage system for the Premises.
 - 4.1.1.4** Landscaping, irrigation and exterior lighting for the Premises.
- 4.1.2** All improvements shall be built in compliance with all applicable federal, state and local laws, rules and regulations, including, but not limited to, Salem Revised Code Chapter 9 (or any successor ordinance), Salem Airport Rules and Regulations, FAA specifications for taxiway and ramp improvements, and Landlord's standards and specifications for utility infrastructure. Tenant shall obtain Landlord's approval, in writing, for all final site plans and the construction schedule prior to commencement of construction. Construction shall be complete within one year of the Commencement Date.
- 4.2 Registration of Aircraft.** Any aircraft owned or operated by Tenant shall be registered with the State of Oregon, in compliance with state law. Tenant shall notify Landlord of any changes to the listing of tail numbers of aircraft stored on the Premises, whether or not operated by Tenant, within sixty (60) days of the change.

- 4.3 Compliance with Laws.** Tenant shall use the Airport in compliance with all federal, state, and local laws, rules and regulations.
- 4.4 Maintenance.** Tenant shall maintain the Premises and all Improvements thereon, in good condition, including, but not limited to, maintaining the exteriors thereof and making all necessary repairs and alterations thereto. Tenant shall maintain landscaped areas on the Premises in good condition, shall keep the Premises free and clear of rubbish, debris, and litter at all times, and shall provide proper containers for trash and garbage. No machinery, equipment, or personal property of any kind shall be stored or kept outside of the covered structure on the Premises, including but not limited to, wrecked, permanently disabled or otherwise inoperable aircraft.
- 4.5 Utilities.** Tenant may contract for and make reasonable connections to public utility services as are available. Landlord, when necessary, will grant licenses or easements in reasonable locations, as determined by the Landlord, for such connections. Tenant shall be solely responsible for costs and charges incurred to make any such connections.
- 4.6 Liens.** Tenant shall pay, when due, all costs for any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished to or for Tenant in, upon, or about the Premises, and shall cause any materialman's or other lien to be fully discharged before the time the performance of any obligation secured by such lien becomes delinquent. Landlord may require Tenant to procure a bond in the amount of any lien that the tenant contests, which bond shall be in place until the dispute has been finally resolved.
- 4.7 Taxes and Assessments.** Tenant shall pay, when due, all taxes and assessments on the Premises and any Improvements thereon resulting from, or arising out of, or in any way connected to, this Lease, whether levied by the state, county, city or any other taxing body. If the term of this Lease or any extension thereof, ends after June 30 of any year, Tenant shall be responsible for payment of any taxes and assessments for the entire tax year without proration.
- 4.8 Safety.**
- 4.8.1** Tenant shall conduct all activities on the Premises in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws, rules and regulations. Tenant shall require compliance with all applicable federal, state and local laws, rules, and regulations by Tenant's employees, agents, invitees, contractors, subcontractors and all other persons transacting business by or for Tenant on or about the Premises.
- 4.8.2** Tenant shall exercise reasonable care to prevent fire on the Premises and to prevent the spread of fire on the Premises and from the Premises onto other property, and shall provide and maintain such fire suppression and protection equipment on the Premises as may be required by applicable federal, state and local laws, rules, and regulations.
- 4.9 Hazardous Substances, Spills and Releases.**
- 4.9.1** As used in this Lease, "Hazardous Substances" means any substances, materials, wastes, pollutants, or contaminants that, because of their quantity, concentration, or physical,

chemical, of infectious characteristics, may cause or threaten cause hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or leased. Hazardous Substances includes, but is not limited to, any and all substances, materials, wastes, pollutants, or contaminants, defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any Environmental Laws, and shall specifically include, but not be limited to, asbestos and asbestos-containing materials, petroleum or petroleum products, including crude oil or any fraction thereof, and urea formaldehyde. As used in this Lease, "Environmental Laws" means all federal, state, and local laws and regulations in effect upon the commencement date or hereafter adopted, and all amendments thereto, governing Hazardous Substances or relating to the protection of human health or the environment, including, but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901, *et seq.*); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, *et seq.*); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257, *et seq.*); the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*); Superfund Amendment and Reauthorization Act of 1986 (SAREA) (P.L. 99-499, October 17, 1986); the Safe Drinking Water Act (42 U.S.C. §300, *et seq.*); the Solid Waste Disposal Act (42 U.S.C. §3251, *et seq.*); the Clean Water Act (33 U.S.C. §1251, *et seq.*); The Clean Air Act (42 U.S.C. §7401, *et seq.*); the Formal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §12, *et seq.*); the Oregon Revised Statutes Relating to community information on hazardous waste reduction (ORS 465.003, *et seq.*); toxic use reduction and hazardous waste reduction (ORS 465.003, *et seq.*); treatment, storage and disposal of hazardous waste and PCBs (ORS 466.005, *et seq.*); underground storage tanks (ORS 466.706, *et seq.*); penalties for noncompliance (ORS 468B.300, *et seq.*) Ground water (ORS 466.706, *et seq.*); oil or hazardous material spillage (ORS 468.875, *et seq.*); asbestos abatement projects (ORS 468A.700, *et seq.*); water pollution control (ORS 468.691, *et seq.*); oil spills (ORS 468.780, *et seq.*); asbestos abatement (ORS 468.875, *et seq.*); any similar or equivalent laws; and any implementing rules and regulations

4.9.2 Use on the Premises. Tenant will not cause or permit any Hazardous Substance to be brought on, kept, or used in or about the Premises, unless authorized in writing by Landlord. Hazardous Substances that are permitted by Landlord must be used, kept, stored, and disposed of in the manner that complies with federal, state and local laws relating to the use, storage, and disposition of Hazardous Substances.

4.9.3 Tenant Liability. If Tenant breaches the obligations stated above, or if the presence of any Hazardous Substance on the Premises caused or permitted by Tenant results in any illegal contamination of the Premises, or any other private or public property, including without limitation sewers or streets, or contamination of the Premises by a Hazardous Substance otherwise occurs for which Tenant is legally liable to Landlord or to any third party for damages resulting therefrom, then Tenant will indemnify, defend, and hold Landlord harmless from and against any and all claims, judgements, damages, penalties, fines, costs, expenses, liabilities, or losses (including without limitation diminution in value of the Premises, damages for the loss or restriction on use of the Premises, and sum paid in settlement of claims, attorney fees, consulting fees, and expert fees) that arise during or after the term of this Lease as a result of or in connection with such contamination.

- 4.9.4 Release of Hazardous Substance.** Tenant shall immediately notify Landlord upon becoming aware of: (i) any leak, spill, release or disposal of a Hazardous Substance, on, under, or adjacent to the Premises or the threat of or reasonable suspicion of any of the same; and/or (ii) any notice or communication from a governmental agency or any other person directed to Tenant or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.
- 4.9.5** If a leak, spill, or release of a Hazardous Substance occurs on the Premises or if there is the threat of or reasonable suspicion of a leak, spill, or release, Tenant shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance, and shall undertake, within a reasonable time, all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. Except in the case of an emergency, Landlord shall have the right to approve all investigatory, remedial, and removal procedures and the company or individual conducting such action. Landlord's approval shall not be unreasonably withheld, conditioned or delayed. Within 30 days following completion of such investigatory, remedial and/or removal action, Tenant shall provide Landlord with a certificate acceptable to Landlord that all such contamination has been eliminated as required by federal, state, or local law or regulations.
- 4.9.6** By the execution of this Lease, Tenant hereby grants to Landlord the right to inspect the Premises to ensure Tenant's proper management and disposal of Hazardous Substances on the Premises upon providing forty-eight (48) hours notice, as set forth in Section 1.5. If Landlord has reason to believe that Tenant is managing or disposing of Hazardous Substances in a manner that could result in contamination of the Premises or any other property, Landlord may inspect the Premises at any time with or without notice to Tenant, and may require Tenant to furnish to Landlord, at Tenant's sole expense, an environmental audit or an environmental assessment with respect to the matters identified by Landlord. Landlord shall have the right to approve the company or individual conducting any such environmental audit or assessment and the procedures to be used, and shall be given a certified true copy of the results of any such audit or assessment. Landlord may request and receive information with respect to use of the Hazardous Substances on the Premises from any sublessees or persons having access to the Premises. Tenant shall cooperate with all such requests.
- 4.9.7 Remedial Action.** The foregoing indemnification of Landlord by Tenant includes without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required or recommended by any federal, state, or local governmental agency or political subdivision because of Hazardous Substances present in the soil or groundwater or on or under the Premises. Tenant will promptly take any and all actions, at Tenant's sole cost and expense, as are necessary or appropriate to return the Premises and any other private or public property or facilities to the condition existing before the introduction of any Hazardous Substance to the premises; as long as the Landlord's approval of such actions will first be obtained, which approval will not be unreasonably withheld, conditioned, or delayed if the actions would not potentially have any material adverse long-term or short-term effect on the Premises or any other private or public property or facilities. All contractors, laboratories, and

engineering firms (collectively, the “Consultants”) that Tenant chooses to undertake any remedial action that may be necessary or appropriate on or about the Premises or any other private or public property or facilities must be approved by Landlord before their employment by Tenant, which approval will not be unreasonably withheld, conditioned, or delayed. If Landlord disapproves of Tenant’s choice of Consultants, Landlord may select its own Consultants and employ them at Tenant’s expense. Duplicate copies of all reports and findings made by Consultants with regard to the condition of the Premises or any other private or public property or facilities will be delivered to Landlord simultaneously with delivery to Tenant. Tenant will have the work done by the Consultants at Tenant’s sole risk and will indemnify and hold Landlord harmless from and against any and all loss, cost, liability, damage, and expense relating to or arising from any damage or injury to Landlord, the Consultants, or the agents of either of them, or any liability incurred by any of them or any claim by Landlord or any Landlord Party by reason of the work conducted by the Consultants. Tenant will not be responsible for and will have no obligations under this Section for any Hazardous Substance located on or under the Premises at the time of this Lease or existing on or under the Premises as of the Commencement Date. Landlord represents and warrants that to the best of its knowledge, the Property and existing improvements (if any) are not currently contaminated with any Hazardous Substance in any actionable quantity other than asbestos-containing materials in the existing structures on the Premises at the time of this Lease, which Landlord covenants and warrants will be removed and disposed of in conformance with Legal Requirements before demolition of the existing structures in preparation of the Premises for the Work.

- 4.10 Signage.** Tenant may install signs on the Premises that comply with the federal, state and local laws, rules, and regulations, including, but not limited to, the City of Salem sign code, and Salem Airport Rules and Regulations.
- 4.11 Environmental Inspection.** Tenant, at Tenant’s option and sole expense, may conduct an Environmental Assessment of the Premises prior to executing this Lease. Landlord shall have no duty to ascertain, or any liability for, any environmental condition of the Premises.

Article 5. Landlord Obligations and Warranties

- 5.1 Landlord's Warranties.** Landlord warrants that Landlord is the owner of the Premises, and has the right to lease the Premises, subject to any encumbrances of record, any federal, state, or local laws, rules, and regulations, and to Tenant's compliance with the terms and conditions of this Lease, Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the Lease Term.
- 5.2 Condition of Premises.** Except as provided in Section 5.1, Landlord makes no warranties, representations, or guarantees of any nature whatsoever regarding the Premises, including, but not limited to, the physical condition of the property, the suitability of the Premises for Tenant's intended purposes, or the condition, zoning or square footage of the Premises. Tenant has inspected the Premises and accepts the Premises "as is". Tenant agrees that Landlord shall not be responsible or liable for any loss, damage or costs incurred by Tenant as a result of Tenant's acceptance of, or any condition on, the Premises.

- 5.3** The Landlord shall review any improvements proposed by Tenant for compliance with the Salem Revised Code Chapter 9 (or any successor ordinance) and Salem Airport Rules and Regulations and other applicable rules prior to commencement of construction, and if the improvements comply with the applicable regulations approve the construction of the improvements. The Landlord's approval shall not be unreasonably withheld.
- 5.4** **Landlord's Maintenance Responsibility.** Landlord shall have no responsibility for any repair or maintenance of the Premises.

Article 6. Liability, Indemnity, Insurance, and Damage and Destruction

- 6.1** **Indemnification.** Tenant shall indemnify, hold harmless and defend Landlord from any claim, loss or liability and against all Costs which, in whole or in part, arise out of or are related to any activity on the Premises caused or contributed to in whole or in part by the negligent, or intentional acts or omissions of Tenant, Tenant's officers, employees, agents (both actual and apparent), sublessees and invitees. As used in this Section 6.1, "Costs" include, but are not limited to: (i) all judgments awarded to, or orders or decrees to pay, third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to Landlord of any injunctive relief, including preliminary or temporary injunctive relief, applicable to Landlord or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) and any and all expenses or obligations incurred at, before, at trial and on appeal or in any administrative proceeding or appeal, whether or not taxable as costs, and including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and, (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state agency.
- 6.2** **Tenant to Defend Landlord.** Tenant shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Section 6.1 of this Lease, to which Landlord is or is made a party, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against Landlord in any such action or proceeding, to the extent Tenant is found or determined to be liable under the terms of this Lease.
- 6.3** **Nonliability of Landlord.** Landlord shall not be liable for any injury or damage to any person or property happening on, in, or about the Premises, or the improvements thereon caused by Tenant, or Tenant's officers, employees, agents and invitees, and other Airport tenants of Landlord, or members of the public who are using the Airport.
- 6.4** **Insurance.**
- 6.4.1** Tenant shall keep all improvements and betterments on the Premises continuously insured with an insurance underwriter or underwriters authorized to business in the State of Oregon, with a Best's rating of "A" or better, and satisfactory to Landlord. The policy or policies shall be written on an "all-risk" special form and shall be on a replacement cost basis, to the full insurable value of the Tenant's property on the Premises.

- 6.4.2** Tenant shall obtain, and continue to maintain in good standing during the Lease term, an occurrence form liability insurance policy or policies, including, but not limited to, airport premises, aircraft and commercial general for the protection of Tenant and Landlord, and their respective officers, employees, and agents, insuring Tenant and Landlord, against liability for personal injury, bodily injury, death, or damage to property, including loss of use, and all risks arising directly or indirectly out of Tenant's activities on, or any condition occurring on, or in any way related to, the Premises. The liability insurance policy shall provide premises and aircraft liability coverage as required by Salem Revised Code Chapter 9.115 (and as may be amended) or under any successor statute. The insurance shall name Landlord, officers, employees and agents as additional insureds, and shall include the stipulation that this insurance, as to the interest of Landlord, shall not be invalidated by any act or neglect or breach of contract by Tenant. The insurance provided by Tenant shall be primary and shall not require any contribution from any insurance or self-insurance carried by Landlord.
- 6.4.3** If Tenant has one or more employees, Tenant shall maintain in force Workers Compensation insurance, including coverage for Employer's Liability.
- 6.4.4** For each policy of insurance, Tenant shall furnish to Landlord an acceptable certificate evidencing the date, amount, and type of insurance that has been procured. All policies shall provide for not less than thirty days written notice to the Landlord before such policies are revised, not renewed, or canceled. Upon request, Tenant shall provide Landlord with a copy or copies of any policy required by this Lease.
- 6.4.5** Landlord shall have the right to review the types and limits of required insurance. In the event Landlord determines that types or limits should be added, modified, increased or lowered, Landlord will provide notice to Tenant of its determination and Tenant shall modify its coverage to comply with the new requirements and provide Landlord with an updated certificate. Additions, modifications or increases shall be limited to those that are typical and standard within the general aviation industry and/or required by applicable federal, state, or local government laws, rules, or regulations.

6.5 Damage and Destruction.

- 6.5.1** Notwithstanding Section 4.4 of this Lease, if improvements on the Premises are substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would exceed sixty (60) percent of its replacement cost using new materials and conforming to current building codes, Tenant may terminate this Lease upon giving Landlord sixty (60) days written notice. If Tenant elects not to terminate the Lease as provided in this subsection, Tenant shall repair, rebuild or restore the improvements to substantially the same condition existing prior to the damage or destruction within one hundred and eighty (180) days of the damage or destruction.
- 6.5.2** If improvements on the Premises are substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the building or structure would not exceed sixty (60) percent of its replacement cost using new materials and conforming to current building codes, Tenant shall repair, rebuild or restore the improvements to

substantially the same condition existing prior to the damage or destruction within one hundred and eighty (180) days of the damage or destruction.

6.5.3 Notwithstanding subsection 6.5.1 and 6.5.2, if less than five (5) years remain on the term of the Lease from the date of the damage or destruction, Tenant may elect by written notice to Landlord to not repair, rebuild or restore the improvements. However, Tenant will still be responsible for remaining lease payments and obligations. Upon Tenant's written election under this subsection, Tenant shall at the discretion of Landlord; (i) remove the improvements and restore the Premises to shovel ready condition, or; (ii) take all reasonable measures to avoid further damage to the Premises and improvements.

6.6 No Duty By Landlord for Fire and Other Casualty Protection. Protection against loss by fire or other casualty to the Premises or the contents thereof shall not be, nor considered to be, an obligation of Landlord.

6.7 Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other, or their successors or assigns, for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Article 7. Default

7.1 Events of Default. The following shall be events of default:

7.1.1 Default in Rent and Other Charges. Failure by Tenant to pay any Rent or other amount required to be paid by Tenant to Landlord under this Lease within 10 days after the giving of written notice of such nonpayment by Landlord to Tenant.

7.1.2 Default in Other Covenants.

7.1.2.1. Failure by Tenant to secure or maintain any insurance or provide evidence of insurance as required by this Lease and the continuation of such failure for more than ten (10) days after notice by Landlord.

7.1.2.2. Failure of Tenant to comply with any term or condition or fulfill any obligation of this Lease, other than for the payment of Rent or other charges covered by the preceding paragraph, within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity.

7.1.2.3. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision will be complied with if Tenant begins correction of the

default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy and effects the remedy within 180 days after Landlord's notice, inclusive of the period for delay allowed in the force majeure provisions of this Lease.

7.1.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within thirty days after filing; the attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within ten days.

7.1.4 Abandonment. Failure of Tenant to occupy the Premises for thirty days or more, unless Landlord has received prior notification and approved Tenant's absence.

7.1.5 Assignment, Sublease or Other Encumbrance Without Landlord's Permission. The assignment, sublease, or other encumbrance of the Premises, or the granting permission to use the Premises by a third party, without the prior written consent of Landlord.

7.1.6 Default in Development. Failure of Tenant to develop the Premises in accordance with this Lease, including, but not limited to, failure to proceed with the proposed development in the manner provided in the final site plans as approved by Landlord; failure to commence the proposed development within three hundred sixty (360) days of the Commencement Date; or failure to obtain a certificate of occupancy upon completion of the development.

7.2 Remedies on Default.

7.2.1 Tenant shall have ten (10) days to cure a default in the payment of rent, and shall have thirty (30) days from the date of written notice from Landlord to cure any other default. Ten (10) days prior written notice with the right to cure is required to terminate this Lease if the event of default is the non-payment of rent; in all other cases, thirty days written notice is required for termination of this Lease. If the event of default is not cured within the time period set forth in this Subsection 7.2.1, Landlord may terminate the Lease by providing notice to Tenant. The notice of termination shall be affixed to the Premises and mailed to the address contained in this Lease, or to such other address provided by Tenant in writing to the Landlord.

7.2.2 In addition to termination of this Lease, Landlord may exercise any other remedies available to Landlord in law or equity, including, but not limited to an action for the recovery of Rent, for the recovery of possession of the Premises, or for specific performance to compel compliance with any term or condition of this Lease. Nothing in this Lease shall be deemed to require Landlord to wait until the date on which this Lease expires to bring such action. Landlord's remedies are cumulative and the exercise of any one remedy shall not preclude the simultaneous or later exercise by Landlord of any other remedies.

Article 8. Termination

8.1 Duties Regarding Structures and Improvements at Time of Termination.

In accordance with SRC Chapter 9, improvements constructed or installed on the leased premises by the Tenant shall remain the property of the Tenant until the expiration of the Lease and any renewals thereof, or termination, whichever is earlier. Upon expiration or termination, Tenant shall either:

1. Remove, at Tenant's sole expense, all improvements and structures within ninety (90) days after termination. If improvements are not removed after ninety (90) days, the City has the right to remove the improvements and assess Tenant for cost of removal and site restoration.
2. With the City's consent, abandon one or more structures or improvements on the leased Premises. If the City does not agree to allow structures or improvements to remain, Tenant shall remove all improvements and restore the leased Premises to good and satisfactory condition. If the City agrees to allow structures or improvements to remain, then such structures or improvements shall become the property of the City without compensation to the Tenant.
3. At the expiration of any lease, upon request of the Tenant, the City may offer a new lease to the existing Tenant. A new lease will only be offered if the City determines, in its sole discretion that a new lease is in the City's best interests. The length of term of any new lease will be determined at the time of the lease expiration, based primarily on the Airport's current and future development and business plans.

8.2 Holding Over. If Landlord allows Tenant to hold over after the termination of this Lease or any extension hereof, and Landlord and Tenant have not agreed, in writing, to a new lease, Tenant may be deemed by Landlord in Landlord's sole discretion, either a "month-to-month holdover tenant" or a "tenant at sufferance." If Landlord deems Tenant a month-to-month holdover tenant, Tenant shall remain bound by all terms, covenants, and conditions of this Lease, except that: (i) the tenancy shall be one from month-to-month, with all payment of rent due on or before the first day of each month such month-to-month tenancy exists, the monthly rent being one-twelfth (1/12th) of one hundred fifty percent (150%) of the annual rent payable by Tenant at the time of termination, (ii) title to improvements shall be deemed to have vested in Landlord pursuant to Section 8.1 of this Lease; and (iii) the month-to-month tenancy may be terminated at any time by thirty-days written notice from Landlord to Tenant. If Landlord deems Tenant a tenant at sufferance, Landlord shall have all rights of a landlord regarding such tenancy, and may set such rent as Landlord, in Landlord's sole discretion, determines is appropriate. In the event of holdover beyond June 30 of any year, Tenant shall pay, when due and for the entire tax year and without proration, all taxes and assessments on the Premises and any Improvements thereon resulting from, or arising out of, or in any way connected to, Tenant's tenancy under this Lease, whether levied by the state, county, city or any other taxing body.

Article 9. General Provisions

- 9.1 Assignment, Subleases, Encumbrances of Tenant's Interest.** Tenant shall not assign, sublet, transfer, pledge, surrender or otherwise encumber, convey or dispose (collectively "Assignment") of Tenant's interest, or any portion hereof, in the Premises under this Lease, including transfers by operation of law, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Tenant shall not permit any other person or persons, entity, company or corporation to occupy all or any portion of the Premises, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Any such attempt at Assignment or permission without the prior written consent of Landlord shall be void. A single or cumulative transfer during the term of this Lease of majority of the voting stock of Tenant, if any, including any change in the shares of voting stock outstanding and issued, except in changes which maintain the proportion of ownership percentages existing upon the Commencement Date, shall be deemed an Assignment requiring the Landlord's prior written consent.
- 9.1.1** Each and every request by Tenant for consent to an Assignment during the Lease term shall be accompanied by a non-refundable administrative processing fee, and no permission shall be deemed given unless and until Tenant has paid the fee.
- 9.1.2** Consent to an Assignment in one instance shall not, and shall not be deemed to, be consent in any subsequent instance.
- 9.1.3** Termination of the Lease shall result in the simultaneous termination of all subleases on the Premises, if any exist.
- 9.2 Eminent Domain.** If either party receives notice of an intended exercise of eminent domain that affects the Premises, any service of process relating to institution of eminent domain proceedings that include the Premises, or any other notification relating to the exercise of eminent domain that would affect the Premises, that party shall promptly give the other party notice of such receipt. Landlord, Tenant and any leasehold mortgagee shall have the right to represent their respective interests such proceeding and in negotiations to make full proof of its claims. No sale, transfer, agreement or settlement with the authority exercising eminent domain shall be made without the consent of Landlord and Tenant. For purposes of this Lease, sale to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be deemed the exercise or institution of eminent domain proceedings. If authority exercising eminent domain takes all of the Premises, or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, this Lease shall terminate as of the date that title vests in the authority exercising eminent domain authority.
- 9.3 Nonwaiver.** No waiver of any default or breach of any term or condition of this Lease by either party hereunder shall be implied from the failure by the other party to take action on account of such default or breach. If such default or breach persists or is repeated, and no express waiver shall affect any default or breach other than the default or breach specified in the waiver and the

waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

- 9.4 Governing Law.** This Lease shall be governed by the law of the State of Oregon.
- 9.5 Compliance with Laws.** Tenant shall comply with all applicable federal, state, and local laws, rules, and regulations relating to this Lease.
- 9.6 Time of Essence.** It is mutually agreed that time is of the essence in the performance of all covenants and conditions of this Lease.
- 9.7 Headings.** The headings in this Lease are for convenience in reference only and shall be no be construed to define or limit the scope of any provision of this Lease.
- 9.8 Consent of Landlord.** Whenever consent, approval or direction by Landlord is required under this Lease, the consent, approval or direction from Landlord shall be in writing to be binding on Landlord.
- 9.9 Notices.** All notices required to be given under this Lease shall be deemed to be properly given if delivered personally, or mailed to the address set forth in this Section 9.9, or to such other address is furnished, in writing, to the other party. Until changed, all notices shall be shall be sent to:

Tenant:
BSL Transport LLC
3425 Boone Road SE
Salem, OR 97317
503-566-5715
Attn: Tom Whitaker
TWhitaker@livebsl.com

With a copy to:
Bonaventure Senior Living
Attn: General Counsel
3425 Boone Road SE
Salem, OR 97317

Landlord:
City of Salem
Urban Development Department
Attn: Real Property Services Division
350 Commercial Street NE
Salem, OR 97301

With a copy to:
City of Salem
City Attorney's Office
555 Liberty Street NE, Room 205
Salem, OR 97301

Notice shall be deemed effective on the date of personal delivery or, if mailed, the date the notice is deposited in the U.S. mail. Where, in this Lease, posted notice is required or permitted, such notice shall be deemed given on the date of posting on the Premises, provided Landlord has mailed a copy of the notice to the address provided in this section, no later than the date of posting.

9.10 Modification. No modification of this Lease shall be effective unless made in writing and signed by both parties.

9.11 Aviation Easement.

9.11.1 Tenant's right to use property under this Lease shall be secondary and subordinate to the operation of the Airport. Landlord specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in the airspace such noise as may be inherent in the present or future operation of Airport.

9.11.2 Tenant shall not construct any improvement at a height in feet above the ground, or take any other action, that, in the opinion of Landlord, will interfere with the navigational aids or flight operations at or near the Airport.

9.12 Security. Tenant recognizes its obligations to comply with Federal Airport Security Regulations. Tenant shall reimburse Landlord in full for any fines or penalties levied against Landlord for security violations, or any violation occurring at any field access point under the control of Tenant, resulting from the actions or omissions of Tenant, or Tenant's officers, employees, agents, sublessees, or invitees.

9.13 Noise Abatement. Landlord and Tenant recognize the importance and joint responsibility of compatibility between the Airport and the surrounding community. Therefore, Tenant agrees to actively participate with Landlord in developing and implementing mutually acceptable noise abatement procedures, policies and programs.

9.14 Sponsor's Assurance Subordination. This Lease shall be subordinate to the provisions of any existing or future agreement between Landlord and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

9.15 Nondiscrimination. Tenant agrees that Tenant will undertake an affirmative action program, as required by 14 CFR Part 152, Subpart E and 49 CFR Part 21, to ensure that no person shall, on

the grounds of race, creed, color, national origin, or sex be excluded from: (i) participating in any employment activities covered in 14 CFR Part 152, Subpart E; or (ii) the use of the Premises or delivery of services. Tenant agrees that no person will be excluded on these grounds from activity covered by this 14 CFR Part 152, Subpart E and 49 CFR Part 21. Tenant's duties under this Section 9.16 include, but are not limited to, observation of, and compliance with, Salem Revised Code Chapter 9 (or any successor ordinance), and, where applicable, Title VI of the Civil Rights Act of 1964.

- 9.16 Rules and Regulations.** Without limiting the generality of Article 9.5 of this Lease, Tenant and Tenant's officers, employees, agents, sublessees and invitees shall comply with rules and regulations adopted by Landlord with respect to the use of, entry on, access to, or possession of Landlord's property at the Airport or contiguous property owned by Landlord, as such rules and regulations exist at the time of the execution of this Lease, and as they may be changed from time-to-time.
- 9.17 No Benefit to Third Parties.** Landlord and Tenant are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives, or shall be construed to give, any benefit, direct, indirect or otherwise to third parties, unless such third persons are expressly and specifically identified in this Lease as third-party beneficiaries.
- 9.18 Entire Agreement.** This Lease is the entire agreement between Landlord and Tenant with respect to the Lease of the Premises. Tenant acknowledges that Landlord has made no representations or promises with respect to this Lease except as expressly set forth in this Lease, and that no claim or liability or cause for termination shall be asserted by Tenant against Landlord for, and Landlord shall not be liable to Tenant or any other person or entity, by reason of, for any representations or promises not expressly stated in this Lease, any other written or oral agreement with Landlord being expressly waived by Tenant. It is further agreed that this Lease replaces any previous leases for the Premises agreed to by the parties whether partially or fully executed.
- 9.19 Authority.**
- 9.19.1** The person executing this Lease as, or on behalf of, Tenant warrants that he or she has full authority to execute this Lease.
- 9.19.2** This Lease may require prior approval by the Salem City Council. This Lease shall not be effective until signed by the City Manager. Any work performed by the Tenant on the Premises before this Lease has been signed by the City Manager is performed at the sole risk of the Tenant and is not authorized by the City of Salem.
- 9.20 Survey.** If a survey of the Premises is required, the Tenant shall be responsible for all costs associated with the survey.
- 9.21 No Construction Against Drafter.** Both parties acknowledge and affirm they are each represented by or have sought the advice of legal counsel in connection with this Lease, have read this Lease, and have a full and complete understanding of the contents of this Lease, the legal consequences thereof, and that by the parties signatures hereon, acknowledge and affirm that the terms of this Lease shall not be construed against either party as a drafter hereof.

LANDLORD:

CITY OF SALEM

an Oregon municipal corporation

By: _____

Title: _____

Date: _____

TENANT:

BSL TRANSPORT LLC

an Oregon limited liability company

By: Mountain West Retirement Corporation,
Manager

By: _____

Title: _____

Date: _____

LIST OF EXHIBITS

Exhibit A – Map or Survey of Premises

Exhibit B – Site Plan & Intended Design of Building, if applicable

Exhibit A



[illegible]