



LEASE AGREEMENT

This LEASE AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature below (the "Effective Date") by and between Space Exploration Technologies Corp., ("Tenant" or "SpaceX"), a privately-held Delaware corporation and the NEW MEXICO SPACEPORT AUTHORITY, an agency of the State of New Mexico (the "State") and its successors and assigns (the "NMSA"), collectively, the "Parties" and individually, a "Party".

1. **Recitals.** NMSA recognizes the value of aerospace research, vehicle development, and prototype flight testing activity to New Mexico and wishes to encourage expansion of such activity at Spaceport America (the "Spaceport"); and Tenant desires to perform a series of test flights (each a "Flight"), including a First Flight and Subsequent Flights; and Tenant wishes to lease from the NMSA and the NMSA wishes to lease to Tenant certain Premises, as defined below, for the Term and any Optional Term (as defined below), at the rental amounts, and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.
2. **Definitions.** The word "Premises" as used in this Agreement shall mean the tracts of land containing the number of acres set forth in and as more particularly described on Exhibit A attached hereto and incorporated herein (the "Land"), together with one single story modular control/office trailer for use as the Tenant Mission Control ("Tenant Facilities") of approximately 663 Gross Square feet and all other improvements to be built or installed by NMSA on the Land generally as depicted on the Tenant Facilities Survey and Floor Plans attached as Exhibit B hereto and incorporated herein (the "Tenant Facilities Documents"). Any interior design and construction of interior improvements including removable fixtures and equipment, will be constructed and installed by Tenant at its expense (such work being hereafter referred to as "Tenant's Finish Work"). Tenant's Finish Work shall be owned by Tenant.
3. **Term.** The term of this Agreement shall be a period of three (3) years commencing on the Effective Date of this Agreement ("Initial Term").

If permitted by applicable law or regulations, in the event Tenant is not in default on the date of expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) additional terms of one (1) year (each an "Optional Term") on substantially the same terms and conditions as herein set forth.

Tenant shall have the option, upon at least two (2) months written notice prior to the expiration of the Initial Term or the first Optional Term, to terminate this Agreement. Initial Term and any Optional Terms exercised shall be herein referred to collectively as the "Term". If Tenant chooses to terminate the Agreement prior to the expiration of the Term, its option to renew the Agreement for any remaining Optional Terms shall also expire. The Initial Term of this Agreement, as that term is used in this Agreement, shall include the entire time between the Effective Date of this Agreement and the final expiration or termination of this Agreement excluding any Optional Term, unless otherwise noted.

4. **Rent.** Tenant shall pay NMSA as rent ("Initial Rent") for the Premises the sum of Three Thousand Six Hundred and Fifty and No/100s Dollars (\$3,650.00) per month, during the Initial Term. Tenant shall pay the first month's rent on the Effective Date, such rent to be applied to rent due to NMSA from Tenant but shall not be refundable if the Tenant does not take possession of the Premises. Initial Rent shall be paid monthly in advance on the date Tenant takes possession of the Premises or begins Tenant's Finish Work or construction of other Tenant improvements on the Premises, whichever is earliest (also the "Initial

Rent Commencement Date”) and on the first day of each month thereafter, without any deduction, offset, prior notice or demand whatsoever (except as expressly provided herein). Beginning with the first exercised Optional Term, Tenant shall pay NMSA such rental fees (“Optional Term Rent”) to be calculated as the Initial Rent, subject to adjustment increase or decrease of those rates at the end of the three (3) year period of the Initial Term starting as of the Initial Rent Commencement Date based on the change in the Consumer Price Index (the “CPI”, for all Urban Consumers, Selected Areas-West Region All Items, 1982-1984=100, issued by the Bureau of Labor Statistics, US Department of Labor) for the latest available three (3) year period. Thereafter, any rental fees during additional Optional Terms shall be subject to annual adjustment based on the percentage change in the CPI, determined by comparing the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year (or from the Initial Term to the first Optional Term) be greater than 3%. At least sixty (60) days before the start of any Optional Term, the NMSA will notify Tenant of the annual CPI adjustment in the Optional Term Rent. Initial Rent and Optional Term Rent shall be herein referred to collectively as the “Rent”. In the event that the Agreement terminates on any day other than the last day of a month when Rent is due, the rental amount for such payment shall be pro-rated based on the number of days during such month.

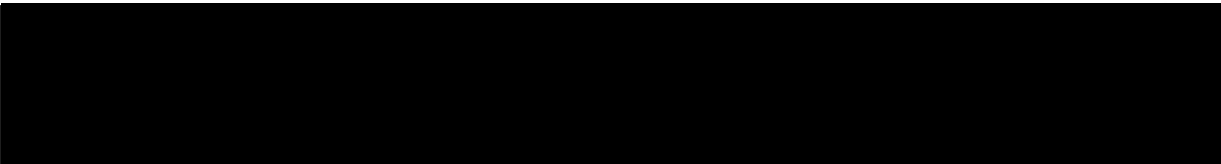
Payments made by Tenant shall be applied against the earliest unpaid charge whether for Rent or other charges. In the event NMSA makes any payment for services or expenses set forth herein as Tenant’s obligations, Tenant’s obligation to pay or reimburse NMSA therefore shall, if so elected by NMSA, be deemed an obligation to pay “Additional Rent,” in the same manner as Rent. Rent, Additional Rent, User Fees (as defined in Section 6) and any other Tenant obligation to pay or reimburse NMSA shall be deemed, for the purposes of this Agreement, a “Tenant Payable.”

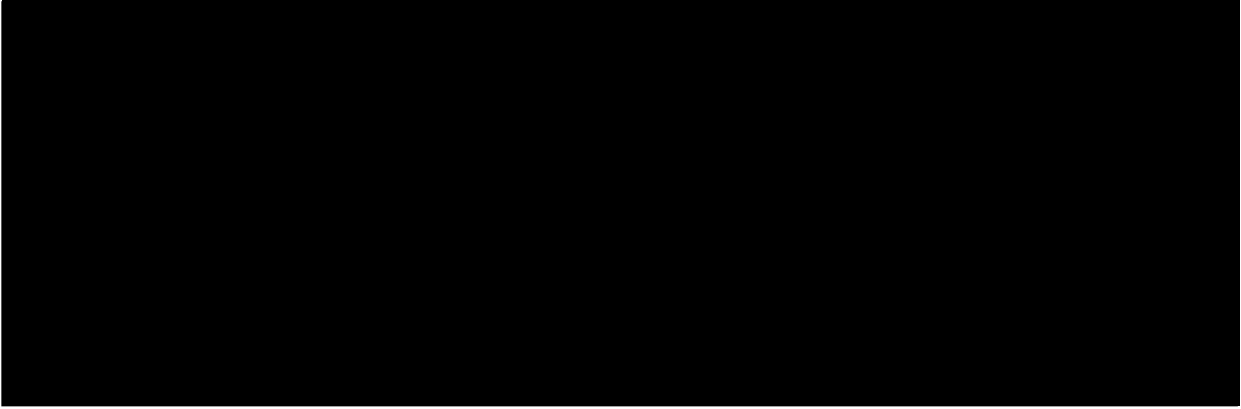
Tenant shall pay all such Tenant Payables in lawful money of the United States of America to NMSA at the Notice Address contained within the Agreement or to such other address as NMSA may designate in writing.

No security deposit shall be collected by NMSA in connection with this Agreement.

If Tenant remains in possession of all or any part of the Premises after the expiration or termination of the Term, with or without the express or implied consent of the NMSA, such tenancy shall be from month to month only, and not a renewal of this Agreement or an extension for any further term, at a rental rate equal to one hundred fifty percent of (150%) the Rent payable immediately prior to the expiration of the Term, and other monetary sums due under this Agreement shall be payable in the amount and at the time specified herein and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein.

5. Use. Subject to the other terms and provisions of this Agreement, the NMSA hereby leases to Tenant for the Term of the Agreement, and Tenant hereby leases from the NMSA for the Term of the Agreement, the Premises. The Tenant and its representatives, employees, contractors, agents, independent producers, suppliers, licensees, sponsors, successors and assigns (collectively, “Representatives”) may use the Premises twenty-four (24) hours/per day, seven (7) days/per week, twelve (12) months/per year for the operation of suborbital Flights and related activities. Usage of the Premises will include all square foot space in the Tenant Facilities and all other related improvements together with the grounds, parking areas and all other facilities comprising the Premises. Tenant’s usage includes, but shall not be limited to:





Tenant shall, at Tenant's expense, comply promptly with all applicable federal, State, and local statutes, ordinances, rules, regulations, orders, and requirements in effect and applicable to Tenant's use of the Premises during the Term. Tenant also agrees to comply with and ensure its guests' and invitees' compliance with all requirements, directions, and recommendations of the NMSA and the NMSA's contractors, including but not limited to its range safety officer, construction manager or security manager, regarding any Flights.

In addition, Tenant shall have access, as necessary, to various portions of the Spaceport's vertical launch infrastructure ("Launch Infrastructure") and all other "Common Facilities" at the Spaceport not designated for exclusive use of the NMSA or any other tenants, as defined in Exhibit C, for the purposes of conducting Tenant's business on the Premises.

NMSA acknowledges that due to Tenant's business requirements, the NMSA will need to grant Tenant exclusive use of Launch Infrastructure at specified blocks of time to launch and retrieve spacecraft (each launch and recovery operation being referred to herein as a "Flight"). Tenant's Flights will include the following rights to be provided or arranged by NMSA: (i) evacuation of any Common Facilities or other Spaceport buildings, roadways, and runways, including those ramps, taxiways and aprons as reasonably determined by Tenant and NMSA to be necessary to ensure safety of the Flight, (ii) adequate control over the airspace above, and in the vicinity of, the Spaceport to permit the take-off and/or landing, as applicable, (iii) adequate access to and use of the fuel storage/fuel supply area and facilities, (iv) adequate access to and use of the water storage area and facilities, (v) use of the Spaceport's air traffic control system and (vi) emergency and fire rescue personnel and equipment prepared and ready to respond.

As a minimum, Tenant will be allotted two (2) blocked periods of time per week, throughout the Term for its Flights (each blocked period referred to herein as a "Flight Period"). Each Flight Period will initially be eight (8) hours but may be shortened upon mutual agreement of Tenant and the NMSA. Multiple Flights may occur during a single Flight Period without incurring additional charges. NMSA, as the manager of the Spaceport operations, will work with Tenant to coordinate these activities with all other agencies and tenants affected by Tenant's Flight Periods to provide Tenant the rights and services described above for each Flight Period.

NMSA's approval for any Flight Period and the reservation of the Launch Infrastructure (so long as Tenant has not exceeded the one (1) Flight Period per day allotment) will not be withheld by NMSA so long as NMSA, exercising its best efforts, is able to arrange the airspace clearance. NMSA will seek to provide 8 hour Flight Periods initially with the airspace controlling entity. Subsequent flight periods may be shortened upon mutual agreement of Tenant and NMSA. If the Flight Periods reserved by Tenant are not needed for any previously scheduled segment for any reason other than Force Majeure events, the acts or omissions of the NMSA, its agents, employees, contractors, officers, board members, licensees or

invitees or the airspace reservation being cancelled by one of the agencies having jurisdiction, Tenant must notify the NMSA within twenty-four (24) hours of Tenant's decision to cancel the reserved Flight Period and allow other tenants or transient customers access to the Launch Infrastructure. Tenant, in agreement and coordination with the NMSA, will provide a detailed schedule of planned Flights for submission to the FAA or other controlling entity with responsibility for the airspace over the Spaceport and surrounding area at least seven (7) days in advance of the projected Flight Period and NMSA will request the airspace reservation as soon as received. NMSA will seek to provide Tenant with confirmation of the reservation within five (5) days of the notification by the FAA or other controlling entity. If Tenant is delayed prior to any Flight Period or after any Flight Period has commenced, Tenant is required to notify the NMSA and the controlling agency for the airspace reservation as soon as is practical. Tenant acknowledges that cancellation of the reservation of the overlying airspace by the FAA or controlling agency may result in postponement of a Flight Period and that the NMSA will not be liable to Tenant for any costs, expenses or damages related to or arising from such cancellation, but the NMSA will use its best efforts to obtain the airspace reservation rights for all requested Flight Periods and will work with the FAA and any controlling agency to avoid any cancellation of any previously granted reservation. In addition, Tenant will be included on a regular basis in discussions with the controlling agencies of the overlying airspace to ensure Tenant's needs are being adequately addressed. Tenant will be entitled to reserve all time not occupied by Flight Periods on a first-come, first-served basis along with all of the other tenants of the Spaceport, using a pre-booking procedure that will be worked out by the NMSA in consultation with the Spaceport Advisory Committee (the "SAC"). Tenant and the NMSA will work cooperatively to ensure the pre-booking procedure addresses the needs of all Spaceport tenants as equitably as possible while not materially and adversely affecting Tenant's operations.

In connection with the use of the Tenant Facilities, Launch Infrastructure and the Common Facilities, Tenant will not:

- Do or permit to be done anything at or about the Spaceport that may interfere with the effectiveness or accessibility of the drainage system; sewage system; electrical system; heating, ventilation and air conditioning system ("HVAC"); fire protection system; or alarm system.
 - Do or permit to be done any act in, on, or about the Spaceport that will invalidate or conflict with any insurance policies applicable to the Spaceport (including, but not limited to, the State's risk pool, liability pool, or pool of excess insurance) or the activities conducted at the Spaceport.
 - Dispose of or permit any disposal of any waste material taken from or products used (whether liquid or solid) with respect to its vehicles into the sanitary sewer, storm sewer, ground or trash at the Spaceport except in accordance with Applicable Laws.
 - Keep or store, during any twenty four (24) hour period, flammable liquids within the enclosed portion of the Tenant Facilities in excess of Tenant's working requirements during said twenty four (24) hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by applicable insurance underwriters and Applicable Laws.
 - Do or permit to be done any act upon the Spaceport that will invalidate or conflict with the SLO Ground Lease or the Ranch Agreements with Bar Cross Ranch, Inc., and Lewis Cain Ranch, Inc.
6. **User Fee.** In full consideration of NMSA entering into this Agreement and granting to Tenant all rights granted hereunder, NMSA shall provide use of Launch Infrastructure and Common Facilities, as defined in Exhibit C, according to the fees outlined in Exhibit D (the "User Fee"), subject to revision based upon changes to the Optional Services required by Tenant and to the list of additional recipients of evacuation fees as the Parties deem necessary. User Fees will be based upon operations and maintenance expenses; capitalized repair, maintenance and equipment costs. User Fees will be charged to and payable by Tenant at the rates set forth in Exhibit D for each of the Flight Periods in the applicable year, subject to annual adjustment increase or decrease of those rates based on the change in the CPI, determined by comparing

the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year be greater than 3%. The minimum annual guarantee for Tenant's share of User Fees (the "Minimum Annual Guarantee") will equal \$15,000.00 per year, regardless of the number of Flights or Flight Periods, payable to NMSA within thirty (30) days of the end of NMSA's Fiscal Year, which runs from July 1 to June 30. Any costs incurred by NMSA pertaining to the use not specifically outlined within the Agreement shall be the responsibility of Tenant.

7. **Utilities.** NMSA shall provide as part of the Tenant Facilities sanitation facilities, telephone and broadband internet, with capacities adequate for the full use of the Premises contemplated hereunder. Other utility services such as electric generator power and trash pick up shall be itemized within the User Fee described within Exhibit D. Tenant agrees to pay all usage charges or other expenses for water, electric generator fuel, telephone, broadband internet and trash pickup and any other utilities used on the Premises. Billing shall be conducted in accordance with a mutually acceptable "Service Level Agreement".

Except to the extent caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees, invitees, or predecessors in interest, in the event of any failures or interruptions of utility services to the Tenant Facilities, including electricity, water, plumbing, sewage, communications and HVAC, that are caused by the negligence of the NMSA, its agents, employees or contractors or the failure of the NMSA, its agents, employees or contractors to properly maintain the facilities providing such services or some other infrastructure or facility necessary for delivery of such services, and which (i) materially, adversely affect Tenant's use of the Tenant Facilities and the Common Facilities, and (ii) continue for 7 or more days (or 7 or more days in any 30 day period) then the Rent will be abated in proportion to the adverse effect on Tenant's operations until the interrupted services are restored so that there is no longer any material, adverse effect on Tenant's business operations (e.g. If 50% of scheduled Flights must be cancelled and cannot be made up in the period promptly following the restoration of services, the abatement would be 50% of the Rent for the period of time the service is interrupted).

8. **Maintenance and Repair.** NMSA, at its own expense, shall keep and maintain the Premises, inclusive of all interior maintenance (excepting Tenant's Finish Work) and exterior maintenance, in good safe and attractive order and condition and repair, and shall suffer no waste with respect thereto, and NMSA shall be solely responsible for maintaining, repairing and/or replacing the entire Tenant Facilities and all improvements on the Premises, including without limitation the roof, foundation, structural walls, storefront, signage, doors, doorways, locks, windows, window casements, glazing, plumbing, pipes, electrical wiring and conduit, restrooms, HVAC, electrical and plumbing systems, lighting, snow removal, dust/sand/windblown debris removal, security cameras, and IT equipment. NMSA, at its own expense, throughout the Initial Term and any Optional Term, shall provide for the repair and maintenance of the HVAC in a manner and on a schedule that conforms to the warranty requirements and manufacturer's recommendations for such systems, and NMSA shall provide Tenant documentation showing the work done on request of Tenant on an annual basis. Any damage to the Premises however caused, except as otherwise provided in this Agreement, shall be immediately repaired, to Tenant's reasonable satisfaction, at the sole cost and expense of NMSA. Tenant is responsible for the costs of its business operations of whatever nature, to be conducted on the Premises during the Term and maintenance and repair of Tenant's Finish Work.

If Tenant fails to surrender the Premises to NMSA upon expiration or earlier termination of this Agreement (excluding Tenant's Finish Work) in good condition, ordinary wear and tear excepted, NMSA shall give Tenant written notice to do such acts as are reasonably required to place the Premises in good order and condition. If Tenant fails to commence the work within twenty (20) days of such notice and

diligently prosecute it to completion, then NMSA shall have the right (but not the obligation) to do such acts and expend such funds as are reasonably required to perform such work satisfactorily. Any amount so expended by NMSA shall be paid by Tenant within twenty (20) days after demand, with interest at the Interest Rate from the date of demand, as Additional Rent.

Tenant finishes, fixtures, alterations and modifications shall be handled in the following manner:

- (a) With the exception of the installation and maintenance of any part of Tenant's Finish Work, Tenant shall not (i) make any alterations, additions or improvements to the Premises costing over \$100,000 in the aggregate during any twelve-month period or (ii) create any openings in the roof of the Tenant Facilities, without, in each case, obtaining the prior written consent of the NMSA, which consent shall not be unreasonably withheld.
- (b) All work done at the Premises by Tenant shall be performed in accordance with applicable statutes, ordinances, rules and regulations of any governmental body or agency having jurisdiction over the Premises. NMSA shall cooperate, as requested, with Tenant in obtaining approvals and permits for such work, without cost or liability to NMSA. Any alterations or additions will be made in a good workmanlike manner without cost to NMSA, and shall be free and clear of mechanics' and materialmen's liens provided that if any such lien is filed, Tenant shall discharge the lien as soon as practicable and it may contest the claim in good faith.
- (c) All fixtures other than Tenant's Finish Work and Tenant's business and trade fixtures located in or upon the Premises, shall at the expiration or earlier termination of this Agreement, become the property of the NMSA and remain upon and be surrendered with the Premises. Personal property and business and trade fixtures, other than those affixed to the Premises so that they cannot be removed without material damage to the Premises (as determined in Tenant's sole discretion), shall remain the property of the Tenant, and may be removed by the Tenant subject to the provisions of this Agreement, at any time during the Term when Tenant is not in default as provided in Section 14 of this Agreement. Fixtures belonging to Tenant ("Tenant Fixtures") may include, without limitation, fencing, satellite dish and/or similar communications equipment, solar equipment and Tenant's exterior imaging, signs, banners, and other displays, including Tenant's fascia, monument and pole signs, if any. Tenant's fixtures will not be deemed to include the following ("Tenant Facilities Components"): the Tenant Facilities and improvements, light fixtures, floor coverings, walls, wall coverings, doors, windows, HVAC equipment, ducts, air handling equipment, thermostats, electrical wiring, circuit breakers or panels, or plumbing fixtures or pipes, utility meters, plants, landscaping materials, or irrigation equipment.

In the event any of the Tenant's Fixtures are subject to a lien or title retention instrument, then during the Initial Term or any Optional Term but not thereafter, the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein and NMSA waives any rights to the contrary, except NMSA reserves the right to require Tenant to restore the Premises to the condition required by this Agreement, after removal.

9. **Right of Entrance.** Subject to compliance with applicable export control laws, NMSA and its agents shall have the right at any time during normal business hours and upon reasonable notice to enter the Premises to inspect the same and undertake maintenance and repair as necessary in accordance with Section 8 hereof and provided Tenant has either arranged for an escort or affirmatively waived the right to provide an escort. NMSA and its agents shall not make any alterations or additions to the Premises without Tenant's prior written approval, and such activity shall be conducted only during normal business hours and upon reasonable notice. In undertaking maintenance and repair work or making alterations or additions to the Premises, NMSA shall use reasonable efforts to avoid and minimize interference with Tenant's business operations. Notwithstanding the foregoing, NMSA shall have the right to use any and

all means that NMSA may deem proper to enter the Tenant Facilities in an emergency that involves fire or police activity.

10. **Damage to the Premises.** In the event of damage causing a partial or total destruction of the Tenant Facilities during the Term, NMSA shall cause the Tenant Facilities to be promptly repaired to a condition existing immediately prior to such damage, or as close thereto as applicable law will allow, with this Agreement to continue in full force and effect, and Rent shall abate hereunder. Tenant will receive a pro rata abatement of the Rent based on the proportion of its business operations that are interrupted as a result of such damage. If applicable, this abatement will be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed to the extent necessary for Tenant to recommence the interrupted operations on a commercially reasonable basis. Thereafter, Tenant Payables will be calculated without regard for the period such Rent was reduced.

In its sole discretion, Tenant may utilize any insurance proceeds available to Tenant to repair damages to the Tenant Finish Work and other property of Tenant; and NMSA's obligation of timely repair shall not be subject to or reduced or limited by receipt of any proceeds from Tenant. Insurance proceeds from NMSA's policies shall be held and disbursed by NMSA's lender or another financial institution approved by both NMSA and Tenant, as insurance trustee for the benefit of such lender (if any), NMSA and Tenant.

Notwithstanding the above provisions, if the damage to Tenant Facilities, Launch Infrastructure or other Common Facilities is caused by willful act, willful misconduct, or wanton or reckless disregard of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees, rent shall not abate hereunder and Tenant will be responsible for either: (i) reimbursing the NMSA promptly for the cost and expense incurred in such repair, rebuilding or construction; or (ii) directly incurring the cost and expense in such repair, rebuilding or construction, with such work to be approved prior to commencement by NMSA's written permission and completed to NMSA's satisfaction. In order to expedite such repair, rebuilding or construction of Facilities so damaged, Tenant will apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 20. If the insurance proceeds available for the Tenant Facilities are not sufficient to pay the entire cost of such repairs, rebuilding or construction, Tenant will be responsible for all excess costs of the reconstruction. In the event the cause of the damage or destruction is by risk that is not covered by insurance of the type required in Section 20, and the damage is caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees or invitees, then Tenant will have the responsibility to provide promptly the funds necessary to pay the cost of the repairs, rebuilding or construction.

In the event of any total or partial destruction to the Tenant Facilities during the last three (3) months of the Term, if Tenant has not exercised any right to renew this Agreement, then notwithstanding the provisions above, NMSA shall have the right, exercisable by written notice to Tenant within 30 days following the event giving rise to the casualty or damage, to elect to retain all the proceeds of its own insurance for damage to the Tenant Facilities or Premises and to terminate this Agreement.

In the event that the Tenant Facilities cannot be repaired as required herein under applicable laws, regulations, codes and restrictions, notwithstanding the availability of insurance proceeds, this Agreement shall terminate effective with the date of the damage occurrence, and NMSA and Tenant shall be entitled to retain all insurance proceeds available under their respective policies.

11. **Tenant's Assignment and Sublease.** Tenant shall have the right to assign or sublease the Premises or any part of the Premises at any time to a subsidiary or affiliate of Tenant that is majority held or controlled by Tenant, or to another qualified tenant with the prior written consent of NMSA. Tenant shall

notify NMSA immediately upon the effective date of any sublease or assignment. All rent payable under a sublease, up to the full amount of the Rent due hereunder for the sublease term, shall be payable directly to NMSA, and Tenant's obligation to pay all or the portion of the Rent payable under the sublease shall cease during the term of such sublease. Upon assignment of this Agreement, the assignee shall succeed to all the rights, interests and obligations of Tenant, as tenant under this Agreement and all references hereunder to Tenant from and after the effective date of such assignment shall be a reference to Tenant's assignee as successor tenant. From and after such assignment, SpaceX shall be released from all obligations as Tenant arising from and after the effective date of such assignment, including but not limited to the obligation to pay Rent.

12. **Superiority.** This Agreement shall be prior and superior to the lien of any mortgages, deeds of trust or any other encumbrance in any amount(s) whatsoever now or hereafter placed by NMSA or any of its agents on or against the Premises or NMSA's leasehold interest in the Premises.
13. **Quiet Enjoyment.** NMSA covenants and agrees with Tenant that upon Tenant paying all Rent and other sums due under this Agreement, performing its covenants and conditions of the Agreement, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term and any Optional Term as against any adverse claim of NMSA or any party claiming under NMSA subject, however, to the terms of the Agreement.
14. **Default, Remedies.** The occurrence of any of the following shall constitute a material default and breach of this Agreement by Tenant:
 - (a) Any failure by Tenant to pay the Rent or any other sums required to be paid hereunder, or any failure by Tenant to provide any required insurance, where any such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant; or
 - (b) A failure by Tenant to observe and perform any other provision of this Agreement to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant. However, if the nature of the default is such that the default cannot be reasonably cured within the ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period of time commence such cure and thereafter diligently prosecute the same to completion.

In the event of any such default or breach by Tenant, NMSA may at any time thereafter, to the extent permitted by law or regulation:

- (a) Obtain any insurance which Tenant has failed to obtain within the required time (in accordance with Section 20, below) at the expense of Tenant and without waiving the default until Tenant reimburses such cost;
- (b) Maintain this Agreement in full force and effect, and recover the Rent and charges as they become due and/or sue for damages due to Tenant's default hereunder, without terminating this Agreement and Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises.

As an agency of the State, NMSA, its board members, executives, employees, contractors, agents and other persons acting for and on behalf of NMSA, without exception, shall not be personally liable for any obligation or liability arising under this Agreement.

Without notice by Tenant, NMSA shall be in default under this Agreement if NMSA fails to perform any obligations required of NMSA in a prompt manner, but in no event later than ten (10) days after the date on which the obligation is required to be performed. However, if the nature of NMSA's obligation is such

that more than ten (10) days are required for performance, (other than maintaining the effectiveness of all insurance coverage required by NMSA under Section 20 hereof), then NMSA shall not be in default if NMSA commences performance within such ten (10) day period and thereafter diligently prosecutes same to completion. Tenant agrees that any such mortgagee or deed of trust holder shall have the right to cure such default on behalf of NMSA within a period of not more than thirty (30) days from the date on which the obligation was required to be performed.

If NMSA shall default or breach in the performance of any of its obligations under this Agreement, Tenant shall be entitled to institute any suit, action or proceeding in the exercise of any right or remedy at law or in equity which Tenant may have by reason of such default or breach, including, but not limited to pursuing damages or other remedies as may be appropriate, including the appointment of a receiver.

15. **License.** NMSA hereby grants to Tenant ("Licensee") and its Representatives the exclusive right to film, photograph, videotape or otherwise make recordings or capture footage ("Recordings") of and at the Spaceport during the Flight operations, pre-Flight activity, or post-Flight activity, within and for the specific purposes of making a Flight highlights reel, referred to herein as the "Production".

NMSA further grants to Licensee and/or its Representatives the non-exclusive, worldwide, royalty-free and perpetual right to use the SPACEPORT AMERICA name and logo as listed in Exhibit E ("Licensed Marks"), and all other various trademarks and/or service marks depicted in any Recordings, within and for the specific purposes of the Production.

NMSA acknowledges and agrees that Licensee and its Representatives shall solely and exclusively own and control all right, title and interest in the Recordings and the Production and all elements and components thereof, including all exploitation thereof, in all media worldwide, in perpetuity. Licensee and its Representatives may exhibit, advertise, broadcast, distribute and promote the Production or any portion thereof, whether or not such uses contain audio and/or visual reproductions with or without visual alteration of the Spaceport so long as the Spaceport's other tenants are not identified, in any and all media which currently exist or which may exist in the future in the universe and in perpetuity. Licensee and its Representatives may copyright all advertisements and/or promotional materials containing representations of the Production, however, submission for review and approval by NMSA of the excerpts of the Production and any advertisement or promotional material containing Licensed Marks shall be required. Captions accompanying Recordings that identify the Spaceport's location must either refer to its location as Spaceport America, New Mexico or mention that Spaceport America is a registered trademark of the State of New Mexico.

Following Licensee's initial public distribution of the Production or any Recordings, NMSA may request, non-exclusive, worldwide, royalty-free and perpetual rights for usage of the Production and/or said Recordings from the Licensee for promotion of and use within its onsite public visitor experience, approval of such requests shall not be unreasonably withheld, conditioned or delayed.

16. **Trademark Use; Ownership; Enforcement; Validity.** Licensee shall use the Licensed Marks at all times only relating to the Production. When using the Licensed Marks under this Agreement, Licensee undertakes to comply substantially with all pertinent laws (United States and foreign) pertaining to service marks and trademarks. This provision includes compliance with marking requirements as set forth within NMSA's brand/identity standards manual, including proper use of the ® symbol and ™ symbol with the Licensed Marks and inclusion of statements that NMSA is the owner of the Licensed Marks. Notwithstanding anything to the contrary herein, the Licensed Marks may not appear on any of Licensee's business documents, such as business cards, invoices, order forms and stationery without the prior written approval of NMSA, except that on such documents Licensee shall be permitted to state that it is an official licensee of the Licensed Marks from NMSA.

The Licensed Marks may not be joined or juxtaposed with any mark or name or logo of the Licensee or any mark or name of any third party (e.g., SpaceX) without written permission from NMSA. The Licensed Marks may be used in association with images (e.g., photographs, drawings, artwork) provided such images are: (1) owned by Licensee; or (2) licensed to Licensee by the owner of such image(s), such as set forth above; and (3) do not constitute a mark or name or logo of either the Licensee or a third party.

The Parties acknowledge NMSA's exclusive right, title and interest in and to the Licensed Marks and any registrations that have issued or may issue thereon, and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair part of such right, title and interest. In connection with the use of the Licensed Marks, Licensee shall not in any manner represent that it has any ownership in the Licensed Marks or registrations thereof, and the Parties acknowledge that all use of the Licensed Marks shall inure to the benefit of NMSA. Licensee will not at any time adopt or use or register without NMSA's prior written consent, any word or mark or symbol which is likely to be considered confusingly similar to the Licensed Marks. On expiration or termination of this Agreement in any manner, Licensee will cease and desist from all use of the Licensed Marks, and will deliver up to NMSA, or its duly authorized representatives, all materials regardless of the medium (e.g., printed, electronic) in or upon which any of the Licensed Marks appears or is incorporated.

NMSA retains the right to sue or take other action against infringers of the Licensed Marks and Licensee will reasonably cooperate with NMSA including, at the request of NMSA, joining in any suit or enforcement action and signing all necessary documents. The expenses of such actions or suits shall be paid in advance by NMSA, and any and all recoveries from any such action, suit or settlement thereof shall belong exclusively to NMSA. At its own cost and expense, Licensee may retain counsel of its own choosing. In the event that NMSA declines to sue or take other action, subject to a written understanding between the Parties, Licensee may sue or take other appropriate action.

Licensee agrees to immediately notify NMSA whenever Licensee is aware or becomes aware of an unlicensed third party infringing or possibly infringing the Licensed Marks.

In the event that Licensee questions or challenges, directly or indirectly, the validity or enforceability of the Licensed Marks or assists any other person in doing so, NMSA shall have the right to terminate this Agreement.

17. **Warranties; Disclaimers.** Licensee acknowledges, represents, and warrants that it has authority to enter into this Agreement, and that the person signing on its behalf is duly authorized to sign.

NMSA represents and warrants that it is the owner of the Licensed Marks, that it is not aware of any adverse claim to the Licensed Marks, that the undersigned has the full right and complete authority to enter into this Agreement and that the consent of no other party is necessary to grant the rights conveyed to Licensee hereunder or to use the Spaceport as described above.

EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, THE LICENSED MARKS ARE LICENSED "AS IS". NMSA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND IN THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THIS AGREEMENT.

Without limiting the preceding disclaimer, NMSA makes no representations or warranties, express or implied, as to the validity or scope of protection of any of the Licensed Marks, or that the Licensed Marks may be used without infringing intellectual property rights of third parties.

18. **Confidentiality**. Tenant has disclosed or will disclose to NMSA information, whether written, graphic, oral, electronic, or in any other form. Certain of that information ("Confidential Information") is proprietary technical information and/or relates to the possible relocation or expansion of a business. When Tenant submits Confidential Information or updates thereto to NMSA, Tenant shall specifically identify to NMSA the information that it considers to be Confidential Information. Confidential Information does not include information that is not specific to Tenant or its business, is publicly available when received by NMSA, is lawfully obtained by NMSA from a source other than Tenant, or is independently developed by NMSA without the use of Confidential Information.

NMSA will hold Confidential Information in strict confidence, will take all reasonable precautions to protect Confidential Information, will not disclose Confidential Information to any persons outside NMSA, will not make use of Confidential Information except for the sole limited purpose of evaluating Confidential Information within NMSA to determine whether to enter into a relationship with Tenant and to perform according to that relationship if it is entered into, and will promptly notify Tenant of any unauthorized disclosure or use of Confidential Information and to take all reasonable steps to remedy it.

The New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et seq. ("IPRA") establishes policy that favors broad disclosure of information provided to or by public agencies, which may be lawfully subject to inspection notwithstanding the existence of this Agreement. Confidential Information is exempt from inspection under IPRA because it contains proprietary technical information or information related to the possible relocation or expansion of a business. If there is a public records request for Confidential Information, NMSA will maintain the confidentiality of Confidential Information and not disclose it.

Confidential Information is and remains Tenant's property. Upon a decision by NMSA or Tenant not to enter into a business relationship or a request by Tenant, NMSA shall cease using Confidential Information and return it to Tenant. Nothing herein requires NMSA or Tenant to enter into any business relationship or to refrain from entering into any relationship with any third parties, even if such relationship relates to subject matter similar or identical to that contemplated by this Agreement.

Tenant's disclosure of Confidential Information to NMSA does not constitute publication of the Confidential Information for patent or copyright purposes or a release of the Confidential Information into the public domain. NMSA will not use Tenant's disclosure of Confidential Information to NMSA to impede or challenge Tenant's application for patent, copyright, or other legal protection. The disclosure of Confidential Information does not grant any right or license to any intellectual property or make any representation or warranty, express or implied, unless specified elsewhere in the Agreement.

Because of the unique nature of the Confidential Information, there is no adequate remedy at law for NMSA's breach of its obligations under this Agreement and any such breach will cause Tenant irreparable harm. NMSA is subject to the protections and limitations of the New Mexico Tort Claims Act, (Section 41-4-1 et seq. NMSA 1978).

19. **Environmental Requirements**. The Parties conduct and operations as related to any operations involving or arising from the Parties use of the Facilities or the Land will at all times be in compliance with all applicable federal, State, or local laws, statutes, regulations or ordinances, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Spaceport ("Environmental Laws"). Without limiting the generality of this requirement, the Parties will at all times handle any material, waste, or substance that is included within the definitions of "Hazardous Substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants," "contaminants," or "solid waste" in or pursuant to any Environmental

Law, or subject to regulation under any Environmental Law ("Hazardous Substances") in a manner consistent with aerospace industry best management practices and Environmental Laws.

Tenant will be solely responsible for the proper removal and disposal of all Hazardous Substances or any storage tank, whether above or below ground, or any pump, waste oil apparatus, or related line (collectively, "Storage Tanks") to be constructed, repaired, modified or removed on or from the Facilities, or otherwise generated by Tenant or resulting or arising from Tenant's activities or operations at the Facilities or the Land, including the ground occupied by the Common Facilities, not just the Tenant Facilities, as well as on adjacent waterways and in groundwater. Such removal and disposal will include, but not be limited to, Tenant's manifesting such Hazardous Substances under Tenant's assigned Environmental Protection Agency Identification Number and ensuring that removal of such Hazardous Substances from the Facilities or the Land is accomplished in accordance with Environmental Laws. Additionally, Tenant will be solely responsible for contamination that impacts the Facilities or the Land as a result of the storage, handling, release, removal or disposal of any substances used by Tenant or Tenant's agents, employees, licensees, invitees, contractors, officers, directors or any other persons acting by or through or on behalf of Tenant. To the extent that the NMSA (or any other tenant of NMSA) generates Hazardous Substances, if at all, the NMSA (or such other tenant of NMSA) will be solely responsible for the proper removal, disposal and/or remediation of said Hazardous Substances.

Tenant shall within thirty (30) Days after any event notify the NMSA and deliver to the NMSA copies of all documentation related to any of the following:

- Any application or other documentation by Tenant or any other Person on behalf of Tenant related to any Environmental Laws affecting or concerning the Facilities or the Land;
- Any event requiring notice under an Environmental Law has occurred, including copies of all such notices;
- Any permit, license, approval or amendment or modification of any permit, license or approval related to any operations involving or arising from the Facilities or the Land;
- Any plan or specification relating to any Storage Tanks;
- Any completed SARA forms required for Tenant's operations, and any amendments or modifications of such SARA forms.

Upon reasonable advance written notice, Tenant will provide to the NMSA any record related to any operations involving or arising from the Facilities or the Land required to be maintained pursuant to any Environmental Law.

If a release or threatened release of a Hazardous Substance or any contamination relating to or arising from Tenant's use or occupancy of the Facilities or the Land occurs, Tenant will immediately notify the NMSA in writing within twenty four (24) hours after the release or threatened release has occurred. Tenant will immediately stabilize the site of the release or threatened release in a manner consistent with best management practices and will notify the NMSA when such stabilization is complete.

Within a reasonable time frame, Tenant and NMSA, in conjunction with a licensed environmental firm, will develop a remediation action plan ("Remediation Plan") that complies with environmental law. Once the Remediation Plan has received approval from Tenant, NMSA and other entities as applicable, Tenant will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to remediate the Facilities at Tenant's sole expense.

If Tenant fails to clean up, properly dispose of, remove, or repair any operation or condition that relates to a Hazardous Substance, Storage Tanks, release, threatened release, or violation of Environmental Law, or

if Tenant fails timely to complete a Remediation Plan, the NMSA may (but is not required to) take all steps it deems necessary to properly clean up, dispose of, remove, repair or remediate that condition or operation. Any such action on the part of the NMSA will be at Tenant's sole cost and expense, and Tenant will indemnify, pay for or reimburse the NMSA for any and all reasonable and documented out-of-pocket costs, including administrative overhead and legal fees, that the NMSA incurs as a result of such action. Tenant hereby acknowledges that the NMSA has a right of entry to the Facilities and the Land and appoints the NMSA as its agent for the purposes described in this Section.

Tenant will not install any Storage Tanks without the prior written consent of the NMSA, which consent will not be unreasonably withheld, conditioned or delayed. Tenant will maintain any approved Storage Tank in good working order, consistent with best management practices and in accordance with Environmental Laws.

In addition to all other remedies available to the NMSA under this Agreement, Tenant will indemnify, defend and save harmless the NMSA, its officers, agents, board members, commissions, employees, successors and assigns from and against any and all environmental claims arising out of the acts or omissions of Tenant or Tenant's agents, employees, contractors, officers, directors, licensees or invitees, except to the extent arising out of the willful act or willful misconduct of the NMSA. This indemnity will survive the expiration or termination of this Agreement.

In addition to any other rights of entry or inspection contained in this Agreement, the NMSA may, upon no less than forty eight (48) hours' advance written notice to Tenant, conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to environmental matters, subject to compliance with applicable export control laws and accompaniment by a representative of Tenant. NMSA will provide to Tenant a copy of the results of any testing that occurs during an inspection.

20. **Insurance.** During the Term, Tenant shall procure and maintain all insurance coverage required by New Mexico law or the Federal Aviation Administration, including without limitation comprehensive liability policies of insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Twenty Million Dollars (\$20,000,000) in the aggregate. Tenant shall also procure and maintain Automobile Liability Insurance for owned, rented or non-owned vehicles used in operations at the Spaceport and Commercial General Liability Insurance with limits of One Million and No/100s Dollars (\$1,000,000.00) per occurrence and no less than Five Million and No/100s Dollars (\$5,000,000.00) in the aggregate single limit liability for bodily injury, including death, and property damage, or the maximum liabilities set out in the New Mexico Tort Claims Act (Section 41-4-1 et seq. NMSA 1978), whichever is greater. Said policies of insurance will include coverage for Tenant's personal property, including Tenant's Finish Work including Tenant's Fixtures and other Tenant improvements on or at the Premises, as required by New Mexico law, as well as coverage for the Premises, operations and Tenant's contractual liability to the NMSA that may arise under this Agreement. Contractual liability coverage will specifically insure all indemnification provisions of this Agreement, and shall name the following as additional insured parties:

New Mexico Spaceport Authority
901 E. University Ave Suite 965L
Las Cruces NM 88001
575-373-6110

State Land Office/Commissioner of Public Lands
P.O. Box 1148
Santa Fe NM 87504-1148
505-827-5760

Sierra County
855 Van Patten Street
Truth or Consequences NM 87901
575-894-6215

Bureau of Land Management
1800 Marquess Street
Las Cruces NM 88005
(575) 525-4300

Doña Ana County
845 N. Motel Blvd
Las Cruces NM 88007
(575) 647-7200

Tenant shall furnish a certificate of insurance for these policies to NMSA, Attn: Business Operations Manager, at the Notice Address contained within the Agreement, prior to the First Flight.

The insurance policies will include coverage for all use of, activities on, or operations with respect to all Facilities, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. If new or changed State or federal laws mandate an increase in insurance coverage limits, Tenant will timely comply with the required limits, and such increases will not be subject to dispute resolution.

NMSA will have no liability for any premiums charged for such coverage, and the inclusion of NMSA as an additional insured is not intended to, and will not make NMSA a partner or joint venturer with Tenant in its operations on the Spaceport. All insurance policies issued pursuant to this Section will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All Tenant property insurance policies will expressly waive all claims or rights of subrogation, in any, against the NMSA or the State.

Tenant and all of Tenant's agents, employees, contractors, officers, directors, licensees or invitees will use due care and diligence in all of its or their activities and operations at the Spaceport.

Tenant will defend, indemnify and hold harmless the NMSA and the NMSA's officers, and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against the NMSA because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from the willful act, willful misconduct of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees arising out of the operations of Tenant under this Agreement, except to the extent arising out of the willful act, willful misconduct of the NMSA or its agents, employees, contractors, officers, board members, licensees or invitees. This indemnity will survive the expiration or termination of this Agreement. Nothing herein will be deemed to override the waiver of claims/waiver of subrogation provision set forth above.

To the extent permitted under their respective insurance policies, NMSA and Tenant waive all rights, against each other, for recovery of damages arising out of any damage to or destruction of the Premises

caused by fire or other perils insured against. Neither this waiver nor any policy limits required under this Agreement shall be deemed to limit the obligation of NMSA to repair and/or replace the Premises as provided herein.

Tenant and its Representatives acknowledge and agree that at all times while on the Premises, Tenant and its Representatives will retain care, custody, and control of their property, and shall be responsible for the acts or omissions of Tenant and its employees, agents, and invitees. Any of said property left unattended at the Spaceport is done so at their own risk and liability. Except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA, Tenant waives all past, present, and future claims against the NMSA, whether known or unknown, regarding damage to Tenant's property while at or en route to or from the Spaceport. Tenant agrees that it will not, at any time in the future, bring any claim, suit, or cause of action against the NMSA or the State arising out of or in any way related to damage to Tenant's property while at or en route to or from the Spaceport, except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA.

21. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of New Mexico without regard to the conflicts of laws or choice of law provisions thereof. Tenant consents to jurisdiction and venue of the State's First Judicial District Court, Santa Fe County for any dispute under this Agreement. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State shall have in personam jurisdiction over each of them and be considered the appropriate venue for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement. Each Party hereby authorizes and accepts service of process sufficient for in personam jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement.
22. **No Waiver.** The waiver of any breach of this Agreement or the failure or delay of either Party to enforce any right under this Agreement shall not constitute, or be construed as, a waiver of any other breach of this Agreement, whether of similar nature or otherwise, nor operate to bar the enforcement of any right under this Agreement.
23. **Independent Relationship.** Nothing herein contained shall be deemed to create an employment, agency, joint venture or partnership relationship between the parties hereto or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.
24. **Entire Agreement; Amendment.** This Agreement, including the Exhibits hereto, which are incorporated herein by reference, sets forth the complete, final and exclusive agreement and supersedes and terminates any prior agreements or understandings between the Parties with respect to the subject matter hereof; provided that in the event of a conflict between this Agreement and either any of the Attachments attached hereto, this Agreement shall govern. Any amendment, waiver or modification to this Agreement is valid and binding unless made in writing and signed by both Parties.

25. **Notice.** Each notice required or permitted to be given or sent under this Agreement shall be given in writing by certified (return receipt requested), first class mail or by courier (signature required), to the Parties at the addresses indicated below.

If to NMSA to: New Mexico Spaceport Authority
Attention: Belinda Lucero
901 E. University Ave., Suite 365L
Las Cruces, New Mexico 88001

Telephone No.: (575) 373-6110
Facsimile No.: (575) 373-6120

With a copy to: Wade Jackson, General Counsel
New Mexico Economic Development Department
1100 St. Francis Drive, Suite 1060
Santa Fe NM 87505

Telephone No.: (505) 827-0241
Facsimile No.: (505) 827-0328

If to Tenant to: _____

Telephone No.: _____
Facsimile No.: _____

With a copy to: _____

Telephone No.: _____
Facsimile No.: _____


Any such notice shall be deemed to have been received, in the case of certified, first class mail, three (3) days after the certified mailing date if the letter is properly addressed and postage prepaid or, in the case of courier, upon actual delivery to the proper place of address. Either Party may change its address by giving the other Party written notice pursuant to this Section.

26. **Force Majeure; Postponement.** Failure of any Party to perform its obligations under this Agreement shall not subject such Party to any liability or place it in breach of any term or condition of this Agreement if such failure is due to Force Majeure or any cause beyond the reasonable control of such nonperforming Party, including without limitation, acts of God, fire, explosion, flood, disease, drought, war, riot, sabotage, embargo, strikes or other labor trouble, interruption of or delay in the national transportation system, a national health emergency or compliance with any order or regulation of any government entity; provided however, that the Party affected shall promptly notify the other Party of the condition constituting force majeure and shall use reasonable efforts to eliminate, cure and overcome any such causes and to resume performance of its obligations with all possible speed. If a condition constituting force majeure as defined herein exists for more than ninety (90) days in the aggregate during the Term, the Parties shall meet to negotiate a mutually satisfactory solution, if practicable.


27. **Severability.** In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of at least one of the Parties. The Parties shall, in such an event, use their best efforts to replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implements the purposes of this Agreement.
28. **Binding Nature of Agreement.** This Agreement shall be binding on all personal representatives, heirs, successors, and assigns of the Parties hereto.
29. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and altogether constitute one and the same Agreement. Electronically communicated signatures shall be considered original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

SPACE EXPLORATION TECHNOLOGIES

By: 
 Steven Davis
 Director, Space Exploration Technologies
 Date: 4/24/13

NEW MEXICO SPACEPORT AUTHORITY

By: 
 Christine Anderson
 Executive Director
 Date: 4/24/13


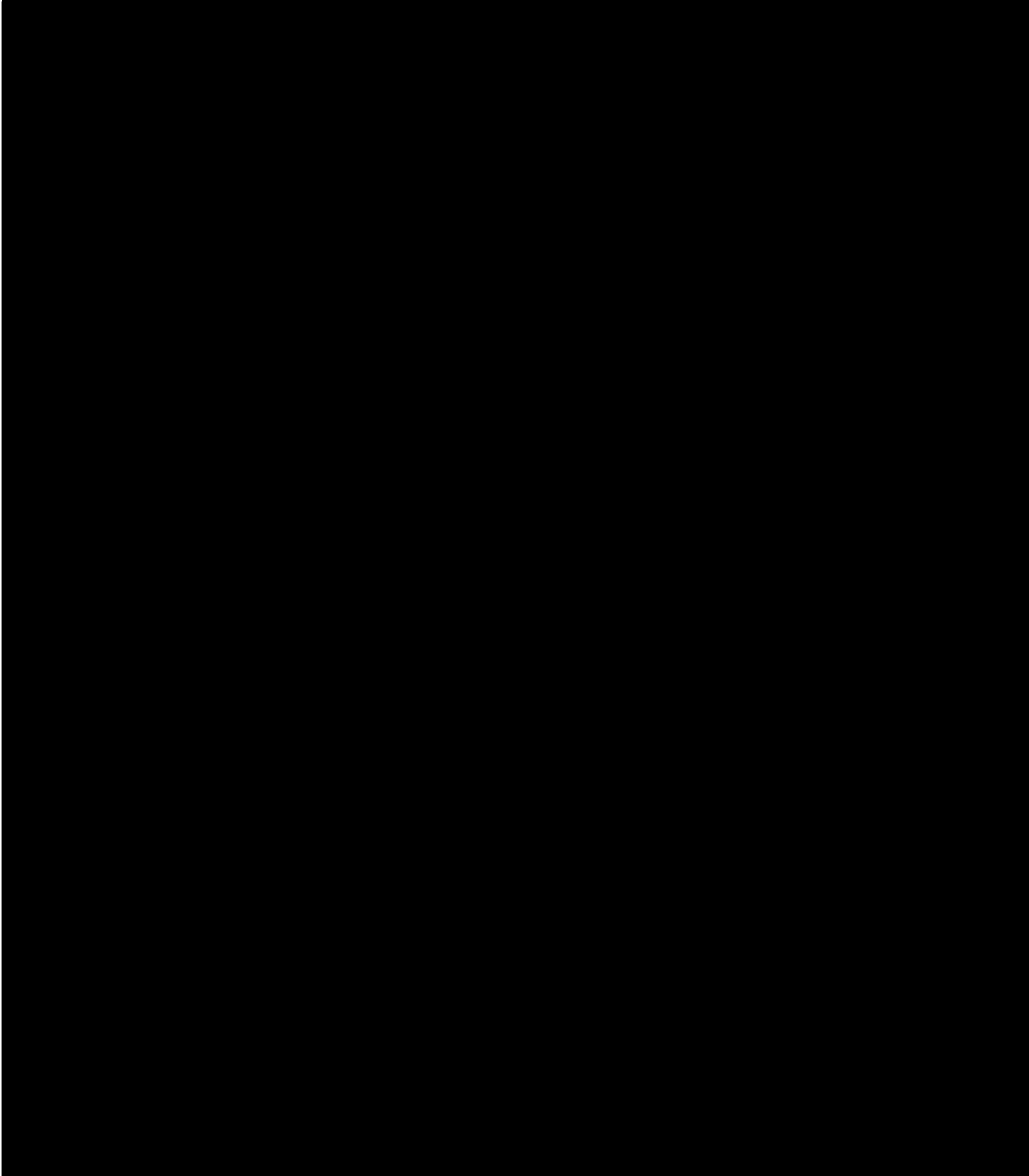
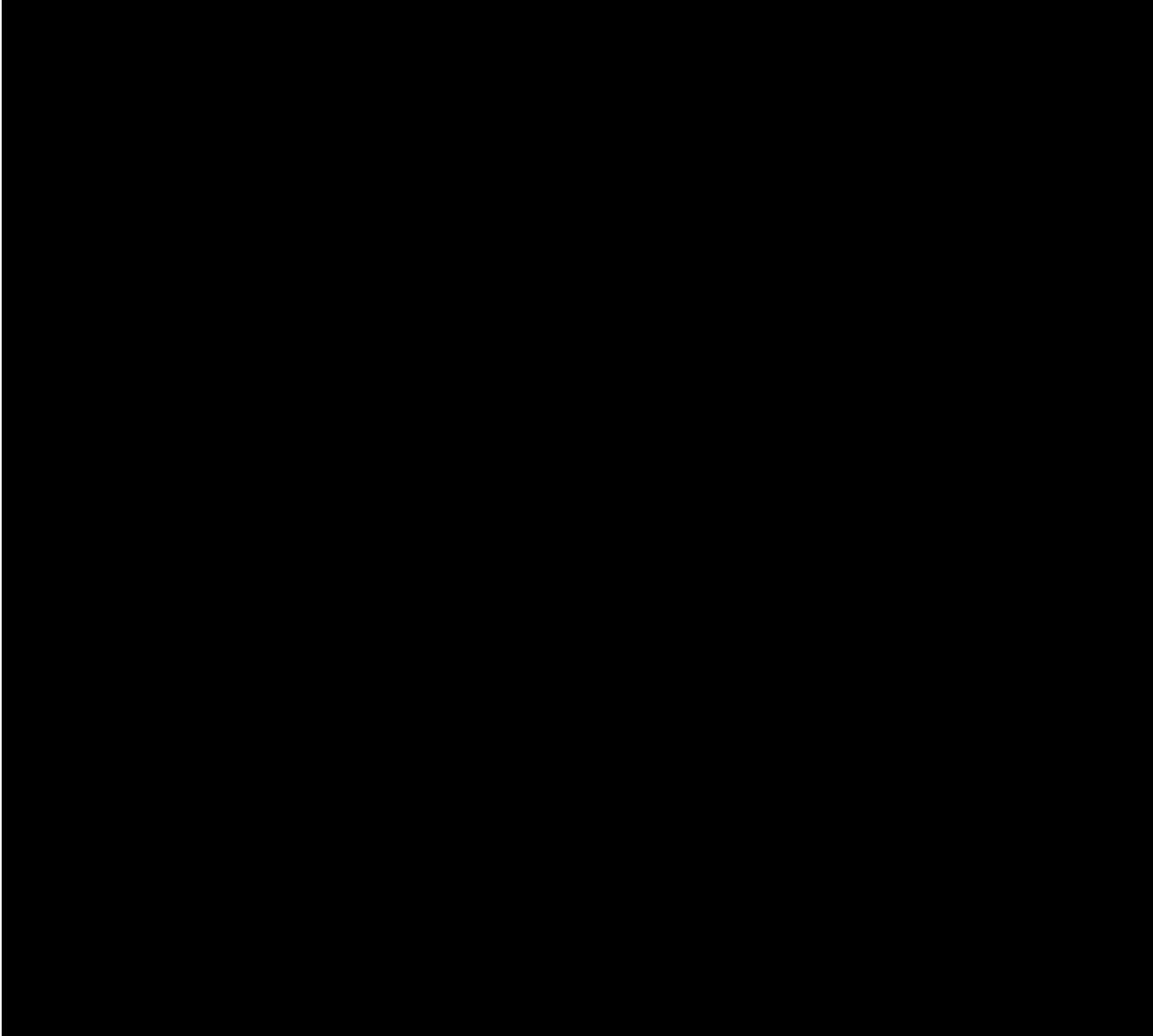
By: 
 Richard Holdridge
 Chairman
 Date: 4/24/13

EXHIBIT A – PREMISES





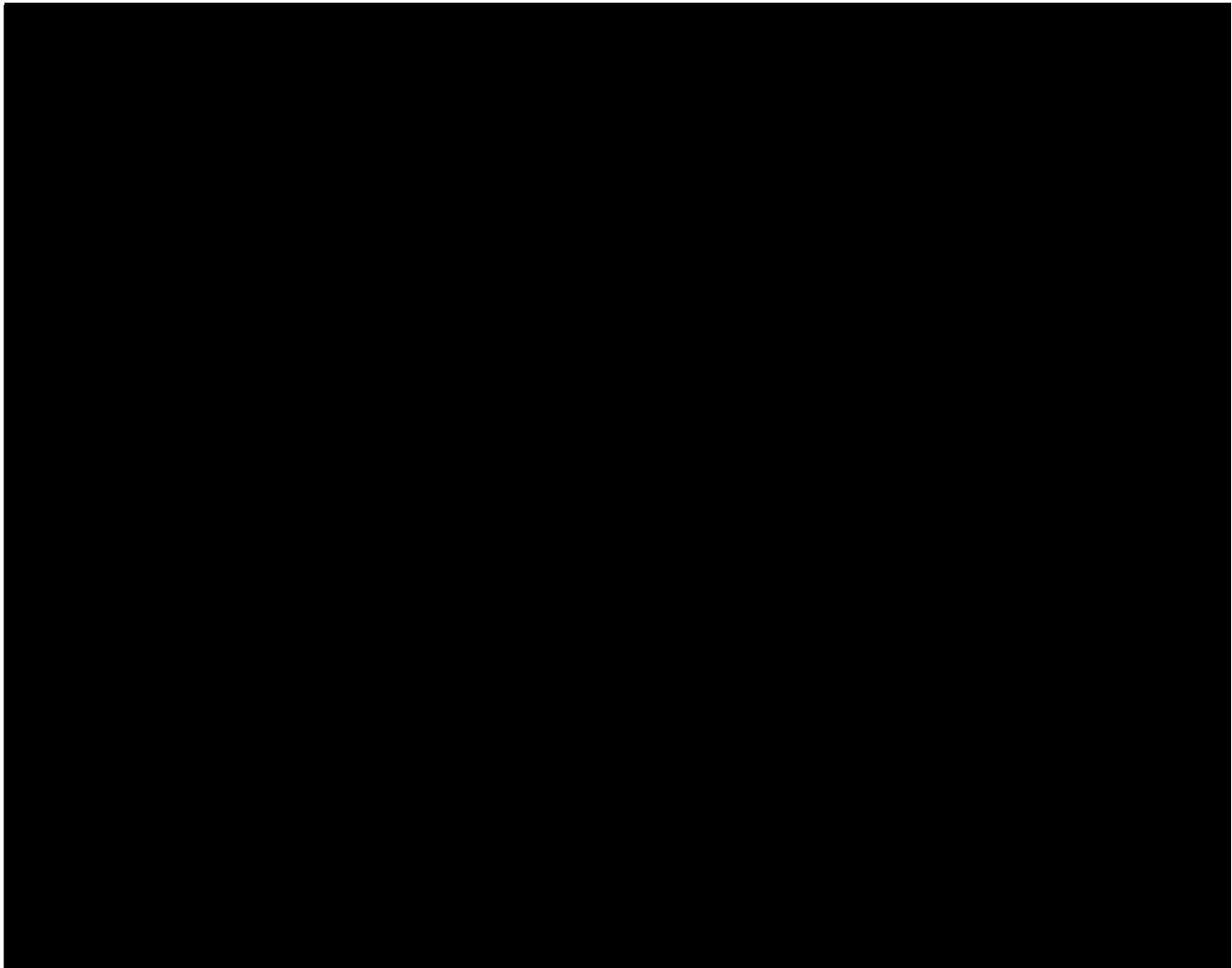


EXHIBIT B – TENANT FACILITIES

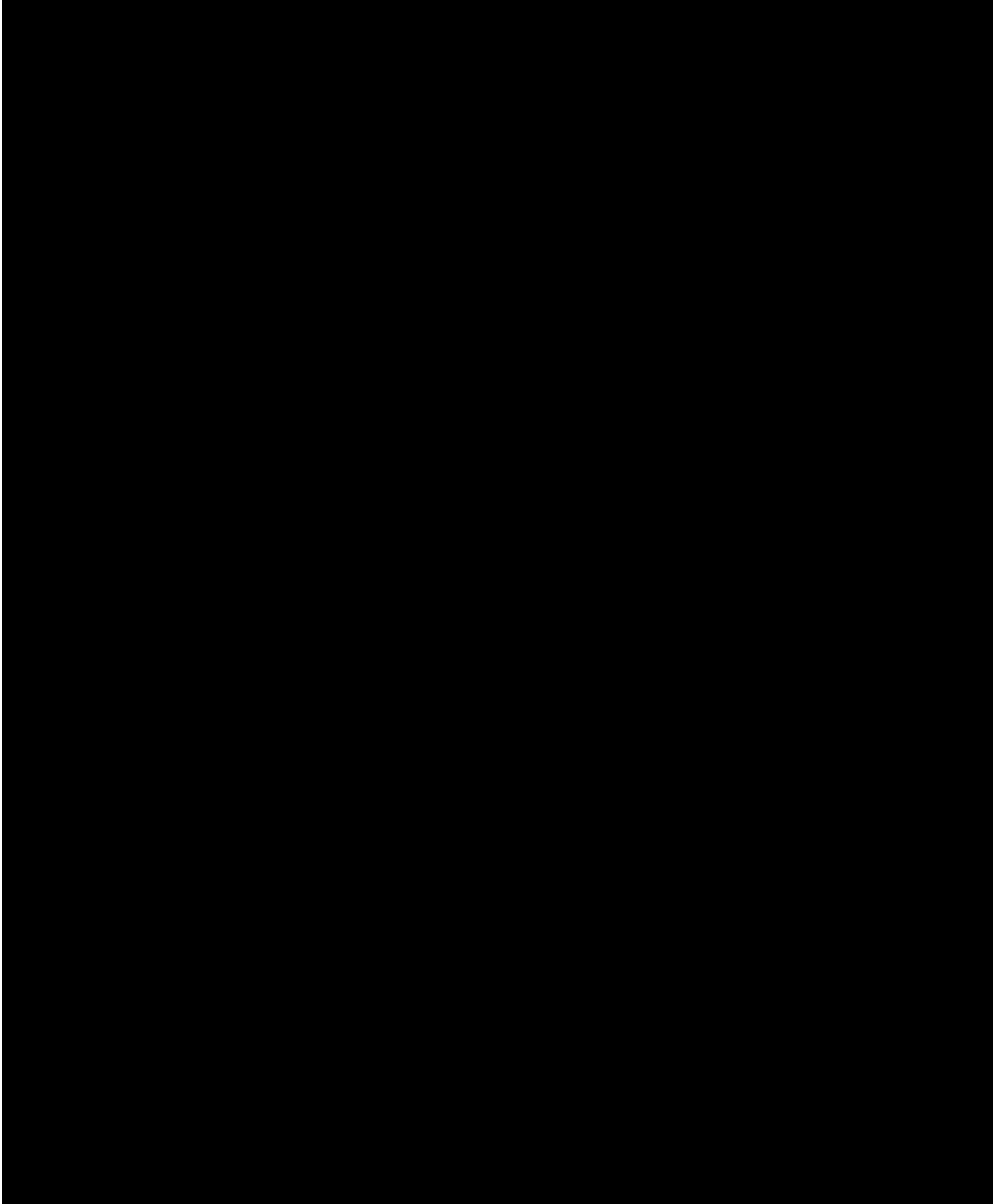


EXHIBIT C – COMMON FACILITIES

EXISTING FACILITIES
Runways
Partial Taxiways
Apron
Helicopter landing area
Roadways sufficient for passage to the Spaceport and Vertical Launch Infrastructure
Site(s) and vehicle(s) for crash, fire and rescue services
Fuel storage area(s)
Water wells and associated infrastructure
Sufficient motor vehicle parking for employees
Spaceport Operations Center mission control and emergency operations center
PLANNED FACILITIES
Vertical Launch Infrastructure, including 40000 ft 2 launch pad, to be completed at NMSA's expense prior to First Flight Period.
Wireless millimeter wave connection to fiber optic network, to be completed at NMSA's expense prior to First Flight Period.
Restaurant / concessions, when activated as part of the visitor experience
Multi-purpose training facilities and conference rooms, when activated as part of the visitor experience
U.S. Postal Services pickup/drop station, when activated as part of the visitor experience

EXHIBIT D – USER FEES

Flight Periods up to, and including:	10	25	50	100	Greater than 100
All Inclusive User Fee	\$25,000	\$20,000	\$16,000	\$13,000	\$10,000
MAX TOTAL USER FEES	\$250,000	\$550,000	\$950,000	\$1,600,000	-

EXHIBIT E - LICENSED TRADEMARKS

SPACEPORT AMERICA – Registration 3,879,182

SPACEPORT AMERICA (Logo)



LEASE AGREEMENT, AMENDMENT NO. 1

This LEASE AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature below (the "Effective Date") by and between Space Exploration Technologies Corp., ("Tenant" or "SpaceX"), a privately-held Delaware corporation and the NEW MEXICO SPACEPORT AUTHORITY (the "NMSA"), an agency of the State of New Mexico (the "State") and its successors and assigns, collectively, the "Parties" and individually, a "Party".

1. **Recitals.** NMSA recognizes the value of aerospace research, vehicle development, and prototype flight testing activity to New Mexico and wishes to encourage expansion of such activity at Spaceport America (the "Spaceport"); and Tenant desires to perform a series of test flights (each a "Flight"), including a First Flight and Subsequent Flights; and Tenant wishes to lease from the NMSA and the NMSA wishes to lease to Tenant certain Premises, as defined below, for the Term and any Optional Term (as defined below), at the rental amounts, and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.
2. **Definitions.** "Essential Services" as used in this agreement includes Spaceport-supplied protective services in support of launch activity, including adequate crash, fire, rescue, safety and security.

The word "Premises" as used in this Agreement shall mean the tracts of land containing the number of acres set forth in and as more particularly described on Exhibit A attached hereto and incorporated herein (the "Land").

"Tenant Fitout" as used in this Agreement includes any improvements to the Premises made by the Tenant at the Tenant's expense that are to be removed by the Tenant at the end of the Term, as defined below, including but not limited to office trailers, fuel tanks, generators and other temporary equipment. Tenant Fitout may also include, business and trade fixtures such as fencing, satellite dish and/or similar communications equipment, solar equipment and Tenant's exterior imaging, signs, banners, fascia, monument and/or other displays.

"Tenant Improvements" as used in this Agreement includes any improvements to the Premises made by the Tenant at the Tenant's expense that are not removed by the Tenant at the end of the Term, as defined below, including but is not limited to launch pads, taxi ways, fuel pads, and other permanent equipment. Tenant Improvements and Tenant Fitout shall be herein referred to collectively as the "Tenant Facilities," and are more particularly described on Exhibit B attached hereto and incorporated herein.

3. **Term.** The term of this Agreement shall be a period of three (3) years commencing on the Effective Date of this Agreement ("Initial Term").

If permitted by applicable law or regulations, in the event Tenant is not in default on the date of expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) additional terms of one (1) year (each an "Optional Term") on substantially the same terms and conditions as herein set forth.

Tenant shall have the option, upon at least two (2) months written notice prior to the expiration of the Initial Term or the first Optional Term, to terminate this Agreement. Initial Term and any Optional Terms exercised shall be herein referred to collectively as the "Term". If Tenant chooses to terminate the Agreement prior to the expiration of the Term, its option to renew the Agreement for any remaining

Optional Terms shall also expire. The Initial Term of this Agreement, as that term is used in this Agreement, shall include the entire time between the Effective Date of this Agreement and the final expiration or termination of this Agreement excluding any Optional Term, unless otherwise noted.

4. **Rent.** Tenant shall pay NMSA as rent ("Initial Rent") for the Premises the sum of Three Thousand Six Hundred and Fifty One and No/100s Dollars (\$3,651.00) per month, during the Initial Term. Tenant shall pay the first month's rent on the Effective Date, such rent to be applied to rent due to NMSA from Tenant but shall not be refundable if the Tenant does not take possession of the Premises. Initial Rent shall be paid monthly in advance on the date Tenant takes possession of the Premises or begins construction of Tenant Improvements on the Premises, whichever is earliest (also the "Initial Rent Commencement Date") and on the first day of each month thereafter, without any deduction, offset, prior notice or demand whatsoever (except as expressly provided herein).

Beginning with the first exercised Optional Term, Tenant shall pay NMSA such rental fees ("Optional Term Rent") to be calculated as the Initial Rent, subject to adjustment increase or decrease of those rates at the end of the three (3) year period of the Initial Term starting as of the Initial Rent Commencement Date based on the change in the Consumer Price Index (the "CPI", for all Urban Consumers, Selected Areas-West Region All Items, 1982-1984=100, issued by the Bureau of Labor Statistics, US Department of Labor) for the latest available three (3) year period. Thereafter, any rental fees during additional Optional Terms shall be subject to annual adjustment based on the percentage change in the CPI, determined by comparing the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year (or from the Initial Term to the first Optional Term) be greater than 3%. At least sixty (60) days before the start of any Optional Term, the NMSA will notify Tenant of the annual CPI adjustment in the Optional Term Rent. Initial Rent and Optional Term Rent shall be herein referred to collectively as the "Rent". In the event that the Agreement terminates on any day other than the last day of a month when Rent is due, the rental amount for such payment shall be pro-rated based on the number of days during such month.

Payments made by Tenant shall be applied against the earliest unpaid charge whether for Rent or other charges. In the event NMSA makes any payment for services or expenses set forth herein as Tenant's obligations, Tenant's obligation to pay or reimburse NMSA therefore shall, if so elected by NMSA, be deemed an obligation to pay "Additional Rent," in the same manner as Rent. Rent, Additional Rent, User Fees (as defined in Section 6) and any other Tenant obligation to pay or reimburse NMSA shall be deemed, for the purposes of this Agreement, a "Tenant Payable."

Tenant shall pay all such Tenant Payables in lawful money of the United States of America to NMSA at the Notice Address contained within the Agreement or to such other address as NMSA may designate in writing.

No security deposit shall be collected by NMSA in connection with this Agreement.

If Tenant remains in possession of all or any part of the Premises after the expiration or termination of the Term, with or without the express or implied consent of the NMSA, such tenancy shall be from month to month only, and not a renewal of this Agreement or an extension for any further term, at a rental rate equal to one hundred fifty percent of (150%) the Rent payable immediately prior to the expiration of the Term, and other monetary sums due under this Agreement shall be payable in the amount and at the time specified herein and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein.

5. Use. Subject to the other terms and provisions of this Agreement, the NMSA hereby leases to Tenant for the Term of the Agreement, and Tenant hereby leases from the NMSA for the Term of the Agreement, the Premises. The Tenant and its representatives, employees, contractors, agents, independent producers, suppliers, licensees, sponsors, successors and assigns (collectively, "Representatives") may use the Premises and Tenant Facilities twenty-four (24) hours/per day, seven (7) days/per week, twelve (12) months/per year for the operation of suborbital Flights and related activities. Tenant's usage includes, but shall not be limited to:

- Operating a fixed launch site facility including activities associated with assembling, testing, fueling, launching, and recovering space vehicles and developmental space vehicles;
- Operating sleeping quarters for Tenant personnel;
- Operating services for guests and invitees;
- Performing mission control operations;
- Providing office space for Tenant personnel;
- Housing Tenant's operating base;
- Rehearsing, photographing, filming and otherwise recording certain scenes of Flight operations, pre-Flight activity, or post-Flight activity, including without limitation photographing the Spaceport and reproducing the Spaceport elsewhere for the purpose of photographing the same by means of film, tape, videotape or any other medium;
- As an equipment and materials storage site;
- Conducting all activities reasonably associated with the foregoing and any other uses that are compatible with the growth of commercial space activities, as long as such uses do not materially and adversely affect the operations of other tenants or users of the Spaceport.

Tenant shall, at Tenant's expense, comply promptly with all applicable federal, State, and local statutes, ordinances, rules, regulations, orders, and requirements in effect and applicable to Tenant's use of the Premises and Tenant Facilities during the Term. Tenant also agrees to comply with and ensure its guests' and invitees' compliance with all requirements, directions, and recommendations of the NMSA and the NMSA's contractors, including but not limited to its range safety officer, construction manager or security manager, regarding any Flights.

In addition, Tenant shall have access, as necessary, to various portions of the Spaceport's vertical launch infrastructure ("Launch Infrastructure") and all other "Common Facilities" at the Spaceport not designated for exclusive use of the NMSA or any other tenants, as defined in Exhibit C, for the purposes of conducting Tenant's business on the Premises. Tenant Facilities and Common Facilities shall be herein referred to collectively as the "Facilities".

NMSA acknowledges that due to Tenant's business requirements, the NMSA will need to grant Tenant exclusive use of Launch Infrastructure at specified blocks of time to launch and retrieve spacecraft (each launch and recovery operation being referred to herein as a "Flight"). Tenant's Flights will include the following rights to be provided or arranged by NMSA: (i) evacuation of any Common Facilities or other Spaceport buildings, roadways, and runways, including those ramps, taxiways and aprons as reasonably determined by Tenant and NMSA to be necessary to ensure safety of the Flight, (ii) adequate control over the airspace above, and in the vicinity of, the Spaceport to permit the take-off and/or landing, as applicable, (iii) adequate access to and use of the fuel storage/fuel supply area and facilities, (iv) adequate access to and use of the water storage area and facilities, (v) use of the Spaceport's air traffic control system and (vi) emergency and fire rescue personnel and equipment prepared and ready to respond.

As a minimum, Tenant will be allotted two (2) blocked periods of time per week, throughout the Term for its Flights (each blocked period referred to herein as a "Flight Period"). Each Flight Period will initially

be eight (8) hours but subsequent Flight Periods may be shortened upon mutual agreement of Tenant and the NMSA. Multiple Flights may occur during a single Flight Period without incurring additional charges. NMSA, as the manager of the Spaceport operations, will work with Tenant to coordinate these activities with all other agencies and tenants affected by Tenant's Flight Periods to provide Tenant the rights and services described above for each Flight Period.

NMSA's approval for any Flight Period and the reservation of the Launch Infrastructure (so long as Tenant has not exceeded the one (1) Flight Period per day allotment) will not be withheld by NMSA so long as NMSA, exercising its best efforts, is able to arrange the airspace clearance. NMSA will seek to provide 8 hour Flight Periods initially with the airspace controlling entity. Subsequent flight periods may be shortened upon mutual agreement of Tenant and NMSA. If the Flight Periods reserved by Tenant are not needed for any previously scheduled segment for any reason other than Force Majeure events, the acts or omissions of the NMSA, its agents, employees, contractors, officers, board members, licensees or invitees or the airspace reservation being cancelled by one of the agencies having jurisdiction, Tenant must notify the NMSA within twenty-four (24) hours of Tenant's decision to cancel the reserved Flight Period and allow other tenants or transient customers access to the Launch Infrastructure. Tenant, in agreement and coordination with the NMSA, will provide a detailed schedule of planned Flights for submission to the FAA or other controlling entity with responsibility for the airspace over the Spaceport and surrounding area at least seven (7) days in advance of the projected Flight Period and NMSA will request the airspace reservation as soon as received. NMSA will seek to provide Tenant with confirmation of the reservation within five (5) days of the notification by the FAA or other controlling entity. If Tenant is delayed prior to any Flight Period or after any Flight Period has commenced, Tenant is required to notify the NMSA and the controlling agency for the airspace reservation as soon as is practical. Tenant acknowledges that cancellation of the reservation of the overlying airspace by the FAA or controlling agency may result in postponement of a Flight Period and that the NMSA will not be liable to Tenant for any costs, expenses or damages related to or arising from such cancellation, but the NMSA will use its best efforts to obtain the airspace reservation rights for all requested Flight Periods and will work with the FAA and any controlling agency to avoid any cancellation of any previously granted reservation. In addition, Tenant will be included on a regular basis in discussions with the controlling agencies of the overlying airspace to ensure Tenant's needs are being adequately addressed. Tenant will be entitled to reserve all time not occupied by Flight Periods on a first-come, first-served basis along with all of the other tenants of the Spaceport, using a pre-booking procedure that will be worked out by the NMSA in consultation with the Spaceport Advisory Committee (the "SAC"). Tenant and the NMSA will work cooperatively to ensure the pre-booking procedure addresses the needs of all Spaceport tenants as equitably as possible while not materially and adversely affecting Tenant's operations.

In connection with the use of the Premises, Tenant Facilities and the Common Facilities, Tenant will not:

- Do or permit to be done anything at or about the Spaceport that may interfere with the effectiveness or accessibility of the drainage system; sewage system; electrical system; heating, ventilation and air conditioning system ("HVAC"); fire protection system; or alarm system.
- Do or permit to be done any act in, on, or about the Spaceport that will invalidate or conflict with any insurance policies applicable to the Spaceport (including, but not limited to, the State's risk pool, liability pool, or pool of excess insurance) or the activities conducted at the Spaceport.
- Dispose of or permit any disposal of any waste material taken from or products used (whether liquid or solid) with respect to its vehicles into the sanitary sewer, storm sewer, ground or trash at the Spaceport except in accordance with Applicable Laws.
- Keep or store, during any twenty four (24) hour period, flammable liquids within any enclosed portion of the Tenant Facilities in excess of Tenant's working requirements during said twenty

four (24) hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by applicable insurance underwriters and Applicable Laws.

- Do or permit to be done any act upon the Spaceport that will invalidate or conflict with the SLO Ground Lease or the Ranch Agreements with Bar Cross Ranch, Inc., and Lewis Cain Ranch, Inc.

6. **User Fee.** In full consideration of NMSA entering into this Agreement and granting to Tenant all rights granted hereunder, NMSA shall provide use of Common Facilities, including Launch Infrastructure, as defined in Exhibit C, according to the fees outlined in Exhibit D (the "User Fee"), subject to revision based upon any additional, optional services required by Tenant and to the list of additional recipients of evacuation fees as the Parties deem necessary. Also set forth within Exhibit D are one-time, upfront fees to cover NMSA time and materials in preparing Common Facilities for Tenant use. Such one-time fees shall be payable to NMSA on the Initial Rent Commencement Date.

User Fees will be based upon operations and maintenance expenses; capitalized repair, maintenance and equipment costs. User Fees will be charged to and payable by Tenant at the rates set forth in Exhibit D for each of the Flight Periods in the applicable year, subject to annual adjustment increase or decrease of those rates based on the change in the CPI, determined by comparing the CPI most recently published as of January 1 of the year in question to the CPI most recently published as of January 1 of the previous year, but in no event will the increase or decrease in any year be greater than 3%.

The minimum annual guarantee for Tenant's share of User Fees (the "Minimum Annual Guarantee") will equal \$15,000.00 per year, regardless of the number of Flights or Flight Periods, payable to NMSA within thirty (30) days of the end of NMSA's Fiscal Year, which runs from July 1 to June 30. Any costs incurred by NMSA pertaining to the use not specifically outlined within the Agreement shall be the responsibility of Tenant.

If rents, fees, and charges required by this Agreement are not received by the NMSA on or before the date specified in this Agreement, Tenant will pay an interest charge to the Authority of one and one-quarter of one percent (1 1/4 %) per month on all amounts due and unpaid, including without limitation, interest, for each month or partial month that any payment due is not received. Notwithstanding the foregoing, the NMSA must provide Tenant notice and 10 business days' right to cure any such late payments on two (2) occasions in a calendar year before the interest charge due hereunder will become due with respect to any additional late payments in such calendar year.

7. **Utilities.** NMSA shall provide access to the Spaceport's main distribution facility environment for housing and connection to the site's fiber backbone. NMSA shall facilitate connection between the fiber backbone and Tenant-furnished fiber optic cable terminated in the Spaceport's main distribution facility. Tenant agrees to pay all usage charges or other expenses for water, electric generators and/or associated fuel, telephone, communications infrastructure housing, janitorial and domestic trash pickup and any other utilities provided by NMSA on the Premises. Billing shall be conducted in accordance with a mutually acceptable "Service Level Agreement".

Except to the extent caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees, invitees, or predecessors in interest, in the event of any failures or interruptions of NMSA-provided utility services to the Facilities, including electricity, water and IT communications, that are caused by the negligence of the NMSA, its agents, employees or contractors or the failure of the NMSA, its agents, employees or contractors to properly maintain the facilities providing such services or some other infrastructure or facility necessary for delivery of such services, and which (i) materially, adversely affect Tenant's use of the Facilities, and (ii) continue for 7 or more days (or 7 or more days in any 30 day period) then the Rent will be abated in proportion to the adverse effect on Tenant's operations until the interrupted services are restored so that

there is no longer any material, adverse effect on Tenant's business operations (e.g. If 50% of scheduled Flights must be cancelled and cannot be made up in the period promptly following the restoration of services, the abatement would be 50% of the Rent for the period of time the service is interrupted).

8. **Maintenance and Repair.** NMSA, at its own expense, shall keep and maintain access to the Premises in good safe and attractive order and condition and repair, and shall suffer no waste with respect thereto, NMSA shall be solely responsible for snow removal and dust/sand/windblown debris removal as required to maintain such access. Tenant is responsible for the costs of its business operations of whatever nature, to be conducted on the Premises during the Term and maintenance and repair of Tenant's Facilities.

If Tenant fails to surrender the Premises to NMSA upon expiration or earlier termination of this Agreement (excluding Tenant Fitout) in good condition, ordinary wear and tear excepted, NMSA shall give Tenant written notice to do such acts as are reasonably required to place the Premises in good order and condition. If Tenant fails to commence the work within twenty (20) days of such notice and diligently prosecute it to completion, then NMSA shall have the right (but not the obligation) to do such acts and expend such funds as are reasonably required to perform such work satisfactorily. Any amount so expended by NMSA shall be paid by Tenant within twenty (20) days after demand, with interest at the Interest Rate from the date of demand, as Additional Rent.

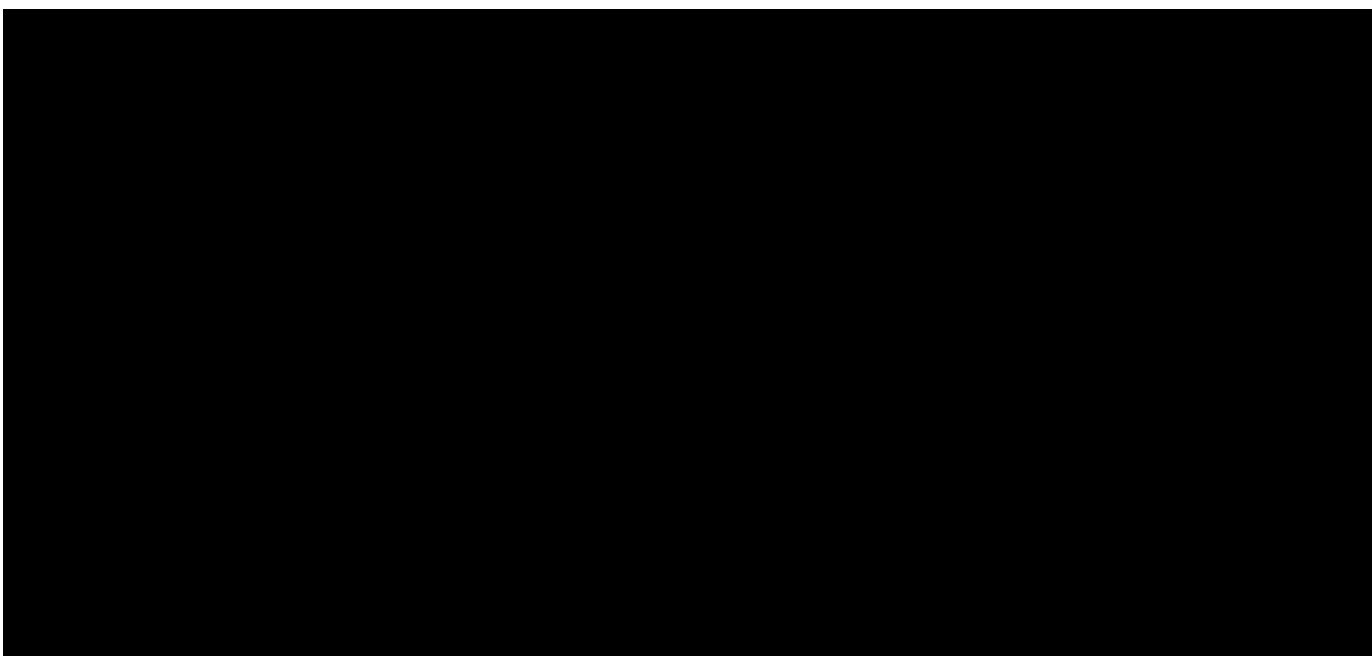
Tenant Facilities shall be handled in the following manner:

- (a) Tenant shall not make any Tenant Improvements or install any Tenant Fitout on the Premises without, in each case, obtaining the prior written consent of the NMSA, which consent shall not be unreasonably withheld.
- (b) All work done at the Premises by Tenant shall be performed in accordance with applicable statutes, ordinances, rules and regulations of any governmental body or agency having jurisdiction over the Premises. NMSA shall cooperate, as requested, with Tenant in obtaining approvals and permits for such work, without cost or liability to NMSA. Any alterations or additions will be made in a good workmanlike manner without cost to NMSA, and shall be free and clear of mechanics' and materialmen's liens provided that if any such lien is filed, Tenant shall discharge the lien as soon as practicable and it may contest the claim in good faith.
- (c) All Tenant Improvements, shall at the expiration or earlier termination of this Agreement, become the property of the NMSA and remain upon and be surrendered with the Premises. All Tenant Fitout, such as personal property and business and trade fixtures, other than those affixed to the Premises so that they cannot be removed without material damage to the Premises (as determined in Tenant's sole discretion), shall remain the property of the Tenant, and may be removed by the Tenant subject to the provisions of this Agreement, at any time during the Term when Tenant is not in default as provided in Section 15 of this Agreement.

In the event any of the Tenant Fitout are subject to a lien or title retention instrument, then during the Initial Term or any Optional Term but not thereafter, the holder of any such lien or title retention instrument shall have the right and be able to enforce the same as stated therein and NMSA waives any rights to the contrary, except NMSA reserves the right to require Tenant to restore the Premises to the condition required by this Agreement, after removal.

9. **Security and Essential Services.** In leasing the Premises and the Common Facilities to Tenant, the NMSA will provide to Tenant all of the Essential Services as part of the User Fees noted in Exhibit D.

[REDACTED]



10. Right of Entrance. Subject to compliance with applicable export control laws, NMSA and its agents shall have the right at any time during normal business hours and upon reasonable notice to enter the Premises and/or Tenant Facilities to provide utility services and undertake maintenance and repair as necessary in accordance with Section 7 and Section 8 hereof and provided Tenant has either arranged for an escort or affirmatively waived the right to provide an escort. NMSA and its agents shall not make any alterations or additions to the Premises or Tenant Facilities without Tenant's prior written approval, and such activity shall be conducted only during normal business hours and upon reasonable notice. In undertaking maintenance and repair work or making alterations or additions to the Premises, NMSA shall use reasonable efforts to avoid and minimize interference with Tenant's business operations. Notwithstanding the foregoing, NMSA shall have the right to use any and all means that NMSA may deem proper to enter the Premises or Tenant Facilities in an emergency that involves fire or police activity.

Tenant has the right to control the movement of visitors to the Premises and Tenant Facilities. At the request of the NMSA and in accordance with Spaceport security policies, Tenant agrees to reasonably accommodate requests, but will not be obligated to do so, for visitors to see the Premises and Tenant Facilities provided that Tenant will have the right to require a Tenant representative be present to escort all such visitors. Non-Tenant personnel will coordinate the visitation with Tenant management to assure that no areas are accessed that would result in disruption of Tenant work schedules or would compromise confidential Tenant activities and that a Tenant representative is available to escort such visitors. The NMSA may elect to have an NMSA representative and/or Spaceport Security personnel escort any such visitors, along with the Tenant representative.

11. Damage to the Premises. Tenant is solely responsible for addressing damage occurring to any Tenant Facilities. In the event of damage causing a partial or total destruction of the Tenant Facilities during the Term, Tenant may cause the Tenant Facilities to be promptly repaired to a condition existing immediately prior to such damage, or as close thereto as applicable law will allow, with this Agreement to continue in full force and effect.

Notwithstanding the above provisions, if the damage to Tenant Facilities is caused by willful act, willful misconduct, or wanton or reckless disregard of NMSA or its agents, employees, contractors, officers, directors, licensees or invitees, rent shall abate hereunder and NMSA will be responsible for either: (i) reimbursing the Tenant promptly for the cost and expense incurred in such repair, rebuilding or construction; or (ii) directly incurring the cost and expense in such repair, rebuilding or construction, with such work to be approved prior to commencement by Tenant's written permission and completed to Tenant's satisfaction. Tenant will receive a pro rata abatement of the Rent based on the proportion of its business operations that are interrupted as a result of such damage. If applicable, this abatement will be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed to the extent necessary for Tenant to recommence the interrupted operations on a commercially reasonable basis. Thereafter, Tenant Payables will be calculated without regard for the period such Rent was reduced.

In its sole discretion, Tenant may utilize any insurance proceeds available to Tenant to repair damages to the Tenant Facilities and other property of Tenant; and NMSA's obligation of timely repair shall not be subject to or reduced or limited by receipt of any proceeds from Tenant. Insurance proceeds from NMSA's policies shall be held and disbursed by NMSA's lender or another financial institution approved by both NMSA and Tenant, as insurance trustee for the benefit of such lender (if any), NMSA and Tenant.

Damage to any Common Facilities that impedes Tenant business operations however caused, except as otherwise provided in this Agreement, shall be immediately repaired, to Tenant's reasonable satisfaction, at the sole cost and expense of NMSA.

Notwithstanding the above provisions, if the damage to Common Facilities is caused by willful act, willful misconduct, or wanton or reckless disregard of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees, rent shall not abate hereunder and Tenant will be responsible for either: (i) reimbursing the NMSA promptly for the cost and expense incurred in such repair, rebuilding or construction; or (ii) directly incurring the cost and expense in such repair, rebuilding or construction, with such work to be approved prior to commencement by NMSA's written permission and completed to NMSA's satisfaction. In order to expedite such repair, rebuilding or construction of Common Facilities so damaged, NMSA may apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 21. If the insurance proceeds available for the Common Facilities are not sufficient to pay the entire cost of such repairs, rebuilding or construction, Tenant will be responsible for all excess costs of the reconstruction. In the event the cause of the damage or destruction is by risk that is not covered by insurance of the type required in Section 21, and the damage is caused by the willful act, willful misconduct, or wanton or reckless disregard of Tenant, its agents, employees, contractors, officers, directors, licensees or invitees, then Tenant will have the responsibility to provide promptly the funds necessary to pay the cost of the repairs, rebuilding or construction.

In the event of any total or partial destruction to the Common Facilities during the last three (3) months of the Term, if Tenant has not exercised any right to renew this Agreement, then notwithstanding the provisions above, NMSA shall have the right, exercisable by written notice to Tenant within 30 days following the event giving rise to the casualty or damage, to elect to retain all the proceeds of its own insurance for damage to the Common Facilities or Premises and to terminate this Agreement.

In the event that the damaged Facilities cannot be repaired as required herein under applicable laws, regulations, codes and restrictions, notwithstanding the availability of insurance proceeds, this Agreement shall terminate effective with the date of the damage occurrence, and NMSA and Tenant shall be entitled to retain all insurance proceeds available under their respective policies.

- 12. Tenant's Assignment and Sublease.** Tenant shall have the right to assign or sublease the Premises or any part of the Premises at any time to a subsidiary or affiliate of Tenant that is majority held or controlled by Tenant, or to another qualified tenant with the prior written consent of NMSA. Tenant shall notify NMSA immediately upon the effective date of any sublease or assignment. All rent payable under a sublease, up to the full amount of the Rent due hereunder for the sublease term, shall be payable directly to NMSA, and Tenant's obligation to pay all or the portion of the Rent payable under the sublease shall cease during the term of such sublease. Upon assignment of this Agreement, the assignee shall succeed to all the rights, interests and obligations of Tenant, as tenant under this Agreement and all references hereunder to Tenant from and after the effective date of such assignment shall be a reference to Tenant's assignee as successor tenant. From and after such assignment, SpaceX shall be released from all obligations as Tenant arising from and after the effective date of such assignment, including but not limited to the obligation to pay Rent.
- 13. Superiority.** This Agreement shall be prior and superior to the lien of any mortgages, deeds of trust or any other encumbrance in any amount(s) whatsoever now or hereafter placed by NMSA or any of its agents on or against the Premises or NMSA's leasehold interest in the Premises.
- 14. Quiet Enjoyment.** NMSA covenants and agrees with Tenant that upon Tenant paying all Rent and other sums due under this Agreement, performing its covenants and conditions of the Agreement, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term and any Optional Term as against any adverse claim of NMSA or any party claiming under NMSA subject, however, to the terms of the Agreement.
- 15. Default, Remedies.** The occurrence of any of the following shall constitute a material default and breach of this Agreement by Tenant:
- (a) Any failure by Tenant to pay the Rent or any other sums required to be paid hereunder, or any failure by Tenant to provide any required insurance, where any such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant; or
 - (b) A failure by Tenant to observe and perform any other provision of this Agreement to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof by the NMSA to the Tenant. However, if the nature of the default is such that the default cannot be reasonably cured within the ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period of time commence such cure and thereafter diligently prosecute the same to completion.

In the event of any such default or breach by Tenant, NMSA may at any time thereafter, to the extent permitted by law or regulation:

- (a) Obtain any insurance which Tenant has failed to obtain within the required time (in accordance with Section 21, below) at the expense of Tenant and without waiving the default until Tenant reimburses such cost;
- (b) Maintain this Agreement in full force and effect, and recover the Rent and charges as they become due and/or sue for damages due to Tenant's default hereunder, without terminating this Agreement and Tenant's right to possession, irrespective of whether Tenant shall have abandoned the Premises.

As an agency of the State, NMSA, its board members, executives, employees, contractors, agents and other persons acting for and on behalf of NMSA, without exception, shall not be personally liable for any obligation or liability arising under this Agreement.

Without notice by Tenant, NMSA shall be in default under this Agreement if NMSA fails to perform any obligations required of NMSA in a prompt manner, but in no event later than ten (10) days after the date on which the obligation is required to be performed. However, if the nature of NMSA's obligation is such that more than ten (10) days are required for performance, (other than maintaining the effectiveness of all insurance coverage required by NMSA under Section 21 hereof), then NMSA shall not be in default if NMSA commences performance within such ten (10) day period and thereafter diligently prosecutes same to completion. Tenant agrees that any such mortgagee or deed of trust holder shall have the right to cure such default on behalf of NMSA within a period of not more than thirty (30) days from the date on which the obligation was required to be performed.

If NMSA shall default or breach in the performance of any of its obligations under this Agreement, Tenant shall be entitled to institute any suit, action or proceeding in the exercise of any right or remedy at law or in equity which Tenant may have by reason of such default or breach, including, but not limited to pursuing damages or other remedies as may be appropriate, including the appointment of a receiver.

- 16. License.** NMSA hereby grants to Tenant ("Licensee") and its Representatives the exclusive right to film, photograph, videotape or otherwise make recordings or capture footage ("Recordings") of and at the Spaceport during the Flight operations, pre-Flight activity, or post-Flight activity, within and for the specific purposes of making a Flight highlights reel, referred to herein as the "Production".

NMSA further grants to Licensee and/or its Representatives the non-exclusive, worldwide, royalty-free and perpetual right to use the SPACEPORT AMERICA name and logo as listed in Exhibit E ("Licensed Marks"), and all other various trademarks and/or service marks depicted in any Recordings, within and for the specific purposes of the Production.

NMSA acknowledges and agrees that Licensee and its Representatives shall solely and exclusively own and control all right, title and interest in the Recordings and the Production and all elements and components thereof, including all exploitation thereof, in all media worldwide, in perpetuity. Licensee and its Representatives may exhibit, advertise, broadcast, distribute and promote the Production or any portion thereof, whether or not such uses contain audio and/or visual reproductions with or without visual alteration of the Spaceport so long as the Spaceport's other tenants are not identified, in any and all media which currently exist or which may exist in the future in the universe and in perpetuity. Licensee and its Representatives may copyright all advertisements and/or promotional materials containing representations of the Production, however, submission for review and approval by NMSA of the excerpts of the Production and any advertisement or promotional material containing Licensed Marks shall be required. Captions accompanying Recordings that identify the Spaceport's location must either refer to its location as Spaceport America, New Mexico or mention that Spaceport America is a registered trademark of the State of New Mexico.

Following Licensee's initial public distribution of the Production or any Recordings, NMSA may request, non-exclusive, worldwide, royalty-free and perpetual rights for usage of the Production and/or said Recordings from the Licensee for promotion of and use within its onsite public visitor experience, approval of such requests shall not be unreasonably withheld, conditioned or delayed.

- 17. Trademark Use; Ownership; Enforcement; Validity.** Licensee shall use the Licensed Marks at all times only relating to the Production. When using the Licensed Marks under this Agreement, Licensee undertakes to comply substantially with all pertinent laws (United States and foreign) pertaining to service marks and trademarks. This provision includes compliance with marking requirements as set forth within NMSA's brand/identity standards manual, including proper use of the ® symbol and ™ symbol with the Licensed Marks and inclusion of statements that NMSA is the owner of the Licensed Marks. Notwithstanding anything to the contrary herein, the Licensed Marks may not appear on any of

Licensee's business documents, such as business cards, invoices, order forms and stationery without the prior written approval of NMSA, except that on such documents Licensee shall be permitted to state that it is an official licensee of the Licensed Marks from NMSA.

The Licensed Marks may not be joined or juxtaposed with any mark or name or logo of the Licensee or any mark or name of any third party (e.g., Virgin Galactic) without written permission from NMSA. The Licensed Marks may be used in association with images (e.g., photographs, drawings, artwork) provided such images are: (1) owned by Licensee; or (2) licensed to Licensee by the owner of such image(s), such as set forth above; and (3) do not constitute a mark or name or logo of either the Licensee or a third party.

The Parties acknowledge NMSA's exclusive right, title and interest in and to the Licensed Marks and any registrations that have issued or may issue thereon, and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair part of such right, title and interest. In connection with the use of the Licensed Marks, Licensee shall not in any manner represent that it has any ownership in the Licensed Marks or registrations thereof, and the Parties acknowledge that all use of the Licensed Marks shall inure to the benefit of NMSA. Licensee will not at any time adopt or use or register without NMSA's prior written consent, any word or mark or symbol which is likely to be considered confusingly similar to the Licensed Marks. On expiration or termination of this Agreement in any manner, Licensee will cease and desist from all use of the Licensed Marks, and will deliver up to NMSA, or its duly authorized representatives, all materials regardless of the medium (e.g., printed, electronic) in or upon which any of the Licensed Marks appears or is incorporated.

NMSA retains the right to sue or take other action against infringers of the Licensed Marks and Licensee will reasonably cooperate with NMSA including, at the request of NMSA, joining in any suit or enforcement action and signing all necessary documents. The expenses of such actions or suits shall be paid in advance by NMSA, and any and all recoveries from any such action, suit or settlement thereof shall belong exclusively to NMSA. At its own cost and expense, Licensee may retain counsel of its own choosing. In the event that NMSA declines to sue or take other action, subject to a written understanding between the Parties, Licensee may sue or take other appropriate action.

Licensee agrees to immediately notify NMSA whenever Licensee is aware or becomes aware of an unlicensed third party infringing or possibly infringing the Licensed Marks.

In the event that Licensee questions or challenges, directly or indirectly, the validity or enforceability of the Licensed Marks or assists any other person in doing so, NMSA shall have the right to terminate this Agreement.

- 18. Warranties; Disclaimers.** Licensee acknowledges, represents, and warrants that it has authority to enter into this Agreement, and that the person signing on its behalf is duly authorized to sign.

NMSA represents and warrants that it is the owner of the Licensed Marks, that it is not aware of any adverse claim to the Licensed Marks, that the undersigned has the full right and complete authority to enter into this Agreement and that the consent of no other party is necessary to grant the rights conveyed to Licensee hereunder or to use the Spaceport as described above.

EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, THE LICENSED MARKS ARE LICENSED "AS IS". NMSA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND IN THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THIS AGREEMENT.

Without limiting the preceding disclaimer, NMSA makes no representations or warranties, express or implied, as to the validity or scope of protection of any of the Licensed Marks, or that the Licensed Marks may be used without infringing intellectual property rights of third parties.

19. **Confidentiality.** Tenant has disclosed or will disclose to NMSA information, whether written, graphic, oral, electronic, or in any other form. Certain of that information ("Confidential Information") is proprietary technical information and/or relates to the possible relocation or expansion of a business. When Tenant submits Confidential Information or updates thereto to NMSA, Tenant shall specifically identify to NMSA the information that it considers to be Confidential Information. Confidential Information does not include information that is not specific to Tenant or its business, is publicly available when received by NMSA, is lawfully obtained by NMSA from a source other than Tenant, or is independently developed by NMSA without the use of Confidential Information.

NMSA will hold Confidential Information in strict confidence, will take all reasonable precautions to protect Confidential Information, will not disclose Confidential Information to any persons outside NMSA, will not make use of Confidential Information except for the sole limited purpose of evaluating Confidential Information within NMSA to determine whether to enter into a relationship with Tenant and to perform according to that relationship if it is entered into, and will promptly notify Tenant of any unauthorized disclosure or use of Confidential Information and to take all reasonable steps to remedy it.

The New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et seq. ("IPRA") establishes policy that favors broad disclosure of information provided to or by public agencies, which may be lawfully subject to inspection notwithstanding the existence this Agreement. Confidential Information is exempt from inspection under IPRA because it contains proprietary technical information or information related to the possible relocation or expansion of a business. If there is a public records request for Confidential Information, NMSA will maintain the confidentiality of Confidential Information and not disclose it.

Confidential Information is and remains Tenant's property. Upon a decision by NMSA or Tenant not to enter into a business relationship or a request by Tenant, NMSA shall cease using Confidential Information and return it to Tenant. Nothing herein requires NMSA or Tenant to enter into any business relationship or to refrain from entering into any relationship with any third parties, even if such relationship relates to subject matter similar or identical to that contemplated by this Agreement.

Tenant's disclosure of Confidential Information to NMSA does not constitute publication of the Confidential Information for patent or copyright purposes or a release of the Confidential Information into the public domain. NMSA will not use Tenant's disclosure of Confidential Information to NMSA to impede or challenge Tenant's application for patent, copyright, or other legal protection. The disclosure of Confidential Information does not grant any right or license to any intellectual property or make any representation or warranty, express or implied, unless specified elsewhere in the Agreement.

Because of the unique nature of the Confidential Information, there is no adequate remedy at law for NMSA's breach of its obligations under this Agreement and any such breach will cause Tenant irreparable harm. NMSA is subject to the protections and limitations of the New Mexico Tort Claims Act, (Section 41-4-1 et seq. NMSA 1978).

20. **Environmental Requirements.** The Parties conduct and operations as related to any operations involving or arising from the Parties use of the Facilities or the Land will at all times be in compliance with all applicable federal, State, or local laws, statutes, regulations or ordinances, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Spaceport ("Environmental Laws"). Without limiting the

generality of this requirement, the Parties will at all times handle any material, waste, or substance that is included within the definitions of "Hazardous Substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants," "contaminants," or "solid waste" in or pursuant to any Environmental Law, or subject to regulation under any Environmental Law ("Hazardous Substances") in a manner consistent with aerospace industry best management practices and Environmental Laws.

Tenant will be solely responsible for the proper removal and disposal of all Hazardous Substances or any storage tank, whether above or below ground, or any pump, waste oil apparatus, or related line (collectively, "Storage Tanks") to be constructed, repaired, modified or removed on or from the Facilities, or otherwise generated by Tenant or resulting or arising from Tenant's activities or operations at the Facilities or the Land, including the ground occupied by the Common Facilities, not just the Tenant Facilities, as well as on adjacent waterways and in groundwater. Such removal and disposal will include, but not be limited to, Tenant's manifesting such Hazardous Substances under Tenant's assigned Environmental Protection Agency Identification Number and ensuring that removal of such Hazardous Substances from the Facilities or the Land is accomplished in accordance with Environmental Laws. Additionally, Tenant will be solely responsible for contamination that impacts the Facilities or the Land as a result of the storage, handling, release, removal or disposal of any substances used by Tenant or Tenant's agents, employees, licensees, invitees, contractors, officers, directors or any other persons acting by or through or on behalf of Tenant. To the extent that the NMSA (or any other tenant of NMSA) generates Hazardous Substances, if at all, the NMSA (or such other tenant of NMSA) will be solely responsible for the proper removal, disposal and/or remediation of said Hazardous Substances.

Tenant shall within thirty (30) Days after any event notify the NMSA and deliver to the NMSA copies of all documentation related to any of the following:

- Any application or other documentation by Tenant or any other Person on behalf of Tenant related to any Environmental Laws affecting or concerning the Facilities or the Land;
- Any event requiring notice under an Environmental Law has occurred, including copies of all such notices;
- Any permit, license, approval or amendment or modification of any permit, license or approval related to any operations involving or arising from the Facilities or the Land;
- Any plan or specification relating to any Storage Tanks;
- Any completed SARA forms required for Tenant's operations, and any amendments or modifications of such SARA forms.

Upon reasonable advance written notice, Tenant will provide to the NMSA any record related to any operations involving or arising from the Facilities or the Land required to be maintained pursuant to any Environmental Law.

If a release or threatened release of a Hazardous Substance or any contamination relating to or arising from Tenant's use or occupancy of the Facilities or the Land occurs, Tenant will immediately notify the NMSA in writing within twenty four (24) hours after the release or threatened release has occurred. Tenant will immediately stabilize the site of the release or threatened release in a manner consistent with best management practices and will notify the NMSA when such stabilization is complete.

Within a reasonable time frame, Tenant and NMSA, in conjunction with a licensed environmental firm, will develop a remediation action plan ("Remediation Plan") that complies with environmental law. Once the Remediation Plan has received approval from Tenant, NMSA and other entities as applicable, Tenant will execute the Remediation Plan as soon as reasonably possible and will work expeditiously to remediate the Facilities at Tenant's sole expense.

If Tenant fails to clean up, properly dispose of, remove, or repair any operation or condition that relates to a Hazardous Substance, Storage Tanks, release, threatened release, or violation of Environmental Law, or if Tenant fails timely to complete a Remediation Plan, the NMSA may (but is not required to) take all steps it deems necessary to properly clean up, dispose of, remove, repair or remediate that condition or operation. Any such action on the part of the NMSA will be at Tenant's sole cost and expense, and Tenant will indemnify, pay for or reimburse the NMSA for any and all reasonable and documented out-of-pocket costs, including administrative overhead and legal fees, that the NMSA incurs as a result of such action. Tenant hereby acknowledges that the NMSA has a right of entry to the Facilities and the Land and appoints the NMSA as its agent for the purposes described in this Section.

Tenant will not install any Storage Tanks without the prior written consent of the NMSA, which consent will not be unreasonably withheld, conditioned or delayed. Tenant will maintain any approved Storage Tank in good working order, consistent with best management practices and in accordance with Environmental Laws.

In addition to all other remedies available to the NMSA under this Agreement, Tenant will indemnify, defend and save harmless the NMSA, its officers, agents, board members, commissions, employees, successors and assigns from and against any and all environmental claims arising out of the acts or omissions of Tenant or Tenant's agents, employees, contractors, officers, directors, licensees or invitees, except to the extent arising out of the willful act or willful misconduct of the NMSA. This indemnity will survive the expiration or termination of this Agreement.

In addition to any other rights of entry or inspection contained in this Agreement, the NMSA may, upon no less than forty eight (48) hours' advance written notice to Tenant, conduct reasonable inspections, tests, samplings, split samples or other investigations pertaining to environmental matters, subject to compliance with applicable export control laws and accompaniment by a representative of Tenant. NMSA will provide to Tenant a copy of the results of any testing that occurs during an inspection.

- 21. Insurance.** During the Term, Tenant shall procure and maintain all insurance coverage required by New Mexico law or the Federal Aviation Administration, including without limitation comprehensive liability policies of insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate. Tenant shall also procure and maintain Automobile Liability Insurance for owned, rented or non-owned vehicles used in operations at the Spaceport and Commercial General Liability Insurance with limits of One Million and No/100s Dollars (\$1,000,000.00) per occurrence and no less than Five Million and No/100s Dollars (\$5,000,000.00) in the aggregate single limit liability for bodily injury, including death, and property damage, or the maximum liabilities set out in the New Mexico Tort Claims Act (Section 41-4-1 et seq. NMSA 1978), whichever is greater. Said policies of insurance will include coverage for Tenant's personal property, including Tenant Fitout and other Tenant Improvements on or at the Premises, as required by New Mexico law, as well as coverage for the Premises, operations and Tenant's contractual liability to the NMSA that may arise under this Agreement. Contractual liability coverage will specifically insure all indemnification provisions of this Agreement, and shall name the following as additional insured parties:

New Mexico Spaceport Authority
901 E. University Ave Suite 965L
Las Cruces NM 88001
575-373-6110

State Land Office/Commissioner of Public Lands
P.O. Box 1148

Santa Fe NM 87504-1148
505-827-5760

Sierra County
855 Van Patten Street
Truth or Consequences NM 87901
575-894-6215

Bureau of Land Management
1800 Marquess Street
Las Cruces NM 88005
(575) 525-4300

Dofia Ana County
845 N. Motel Blvd
Las Cruces NM 88007
(575) 647-7200

Tenant shall furnish a certificate of insurance for these policies to NMSA, Attn: Business Operations Manager, at the Notice Address contained within the Agreement, prior to the First Flight.

The insurance policies will include coverage for all use of, activities on, or operations with respect to all Facilities, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work. If new or changed State or federal laws mandate an increase in insurance coverage limits, Tenant will timely comply with the required limits, and such increases will not be subject to dispute resolution.

NMSA will have no liability for any premiums charged for such coverage, and the inclusion of NMSA as an additional insured is not intended to, and will not make NMSA a partner or joint venturer with Tenant in its operations on the Spaceport. All insurance policies issued pursuant to this Section will be written as primary policies that may not be interpreted as contributing policies or as excess coverage. All Tenant property insurance policies will expressly waive all claims or rights of subrogation, if any, against the NMSA or the State.

Tenant and all of Tenant's agents, employees, contractors, officers, directors, licensees or invitees will use due care and diligence in all of its or their activities and operations at the Spaceport.

Tenant will defend, indemnify and hold harmless the NMSA and the NMSA's officers, and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against the NMSA because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from the willful act, willful misconduct of Tenant or its agents, employees, contractors, officers, directors, licensees or invitees arising out of the operations of Tenant under this Agreement, except to the extent arising out of the willful act, willful misconduct of the NMSA or its agents, employees, contractors, officers, board members, licensees or invitees. This indemnity will survive the expiration or termination of this Agreement. Nothing herein will be deemed to override the waiver of claims/waiver of subrogation provision set forth above.

To the extent permitted under their respective insurance policies, NMSA and Tenant waive all rights, against each other, for recovery of damages arising out of any damage to or destruction of the Premises caused by fire or other perils insured against. Neither this waiver nor any policy limits required under this Agreement shall be deemed to limit the obligation of NMSA to repair and/or replace the Premises as provided herein.

Tenant and its Representatives acknowledge and agree that at all times while on the Premises, Tenant and its Representatives will retain care, custody, and control of their property, and shall be responsible for the acts or omissions of Tenant and its employees, agents, and invitees. Any of said property left unattended at the Spaceport is done so at their own risk and liability. Except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA, Tenant waives all past, present, and future claims against the NMSA, whether known or unknown, regarding damage to Tenant's property while at or en route to or from the Spaceport. Tenant agrees that it will not, at any time in the future, bring any claim, suit, or cause of action against the NMSA or the State arising out of or in any way related to damage to Tenant's property while at or en route to or from the Spaceport, except in instances of willful act, willful misconduct, or wanton or reckless disregard by NMSA.

22. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of New Mexico without regard to the conflicts of laws or choice of law provisions thereof. Tenant consents to jurisdiction and venue of the State's First Judicial District Court, Santa Fe County for any dispute under this Agreement. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State shall have in personam jurisdiction over each of them and be considered the appropriate venue for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this agreement. Each Party hereby authorizes and accepts service of process sufficient for in personam jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement.
23. **No Waiver.** The waiver of any breach of this Agreement or the failure or delay of either Party to enforce any right under this Agreement shall not constitute, or be construed as, a waiver of any other breach of this Agreement, whether of similar nature or otherwise, nor operate to bar the enforcement of any right under this Agreement.
24. **Independent Relationship.** Nothing herein contained shall be deemed to create an employment, agency, joint venture or partnership relationship between the parties hereto or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.
25. **Entire Agreement; Amendment.** This Agreement, including the Exhibits hereto, which are incorporated herein by reference, sets forth the complete, final and exclusive agreement and supersedes and terminates any prior agreements or understandings between the Parties with respect to the subject matter hereof; provided that in the event of a conflict between this Agreement and either any of the Attachments attached hereto, this Agreement shall govern. Any amendment, waiver or modification to this Agreement is not valid and binding unless made in writing and signed by both Parties.

26. Notice. Each notice required or permitted to be given or sent under this Agreement shall be given in writing by certified (return receipt requested), first class mail or by courier (signature required), to the Parties at the addresses indicated below.

If to NMSA to: New Mexico Spaceport Authority
 Attention: Christine Anderson
 901 E. University Ave., Suite 365L
 Las Cruces, New Mexico 88001
 Telephone No.: (575) 373-6110
 Facsimile No.: (575) 373-6120

With a copy to: Wade Jackson, General Counsel
 New Mexico Economic Development Department
 1100 St. Francis Drive, Suite 1060
 Santa Fe NM 87505
 Telephone No.: (505) 827-0241
 Facsimile No.: (505) 827-0328

If to Tenant to: SpaceX DC Operations
 Attention: Steve Davis
 1030 15th Street NW, Suite 220E
 Washington, DC 20005
 Telephone No.: (202) 649-2715

With a copy to: Tim Hughes, General Counsel
 1030 15th Street NW, Suite 220E
 Washington, DC 20005
 Telephone No.: (202) 649-2700

Any such notice shall be deemed to have been received, in the case of certified, first class mail, three (3) days after the certified mailing date if the letter is properly addressed and postage prepaid or, in the case of courier, upon actual delivery to the proper place of address. Either Party may change its address by giving the other Party written notice pursuant to this Section.

27. Force Majeure; Postponement. Failure of any Party to perform its obligations under this Agreement shall not subject such Party to any liability or place it in breach of any term or condition of this Agreement if such failure is due to Force Majeure or any cause beyond the reasonable control of such nonperforming Party, including without limitation, acts of God, fire, explosion, flood, disease, drought, war, riot, sabotage, embargo, strikes or other labor trouble, interruption of or delay in the national transportation system, a national health emergency or compliance with any order or regulation of any government entity; provided however, that the Party affected shall promptly notify the other Party of the condition constituting force majeure and shall use reasonable efforts to eliminate, cure and overcome any such causes and to resume performance of its obligations with all possible speed. If a condition constituting force majeure as defined herein exists for more than ninety (90) days in the aggregate during the Term, the Parties shall meet to negotiate a mutually satisfactory solution, if practicable.


28. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of at least one of the Parties. The Parties shall, in such an event, use their best efforts to replace the invalid, illegal or unenforceable provision(s)

with valid, legal and enforceable provision(s) which, insofar as practical, implements the purposes of this Agreement.

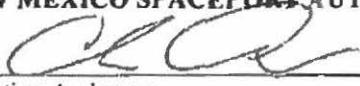
29. **Binding Nature of Agreement.** This Agreement shall be binding on all personal representatives, heirs, successors, and assigns of the Parties hereto.
30. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and altogether constitute one and the same Agreement. Electronically communicated signatures shall be considered original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

SPACE EXPLORATION TECHNOLOGIES CORP

By: 
Steven Davis
Director
Date: 10/7/13

NEW MEXICO SPACEPORT AUTHORITY

By: 
Christine Anderson
Executive Director
Date: Oct 2 2013

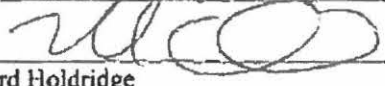
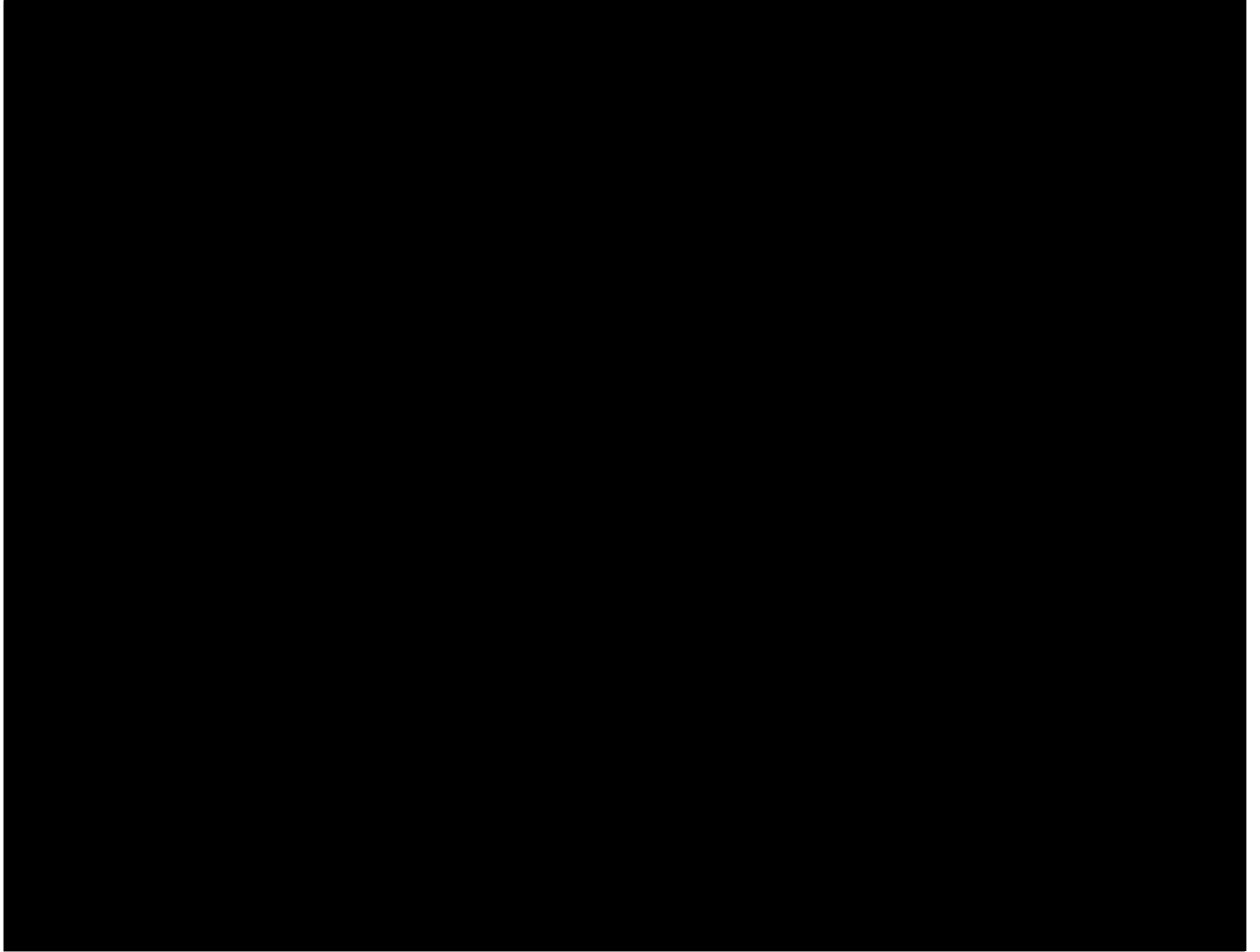
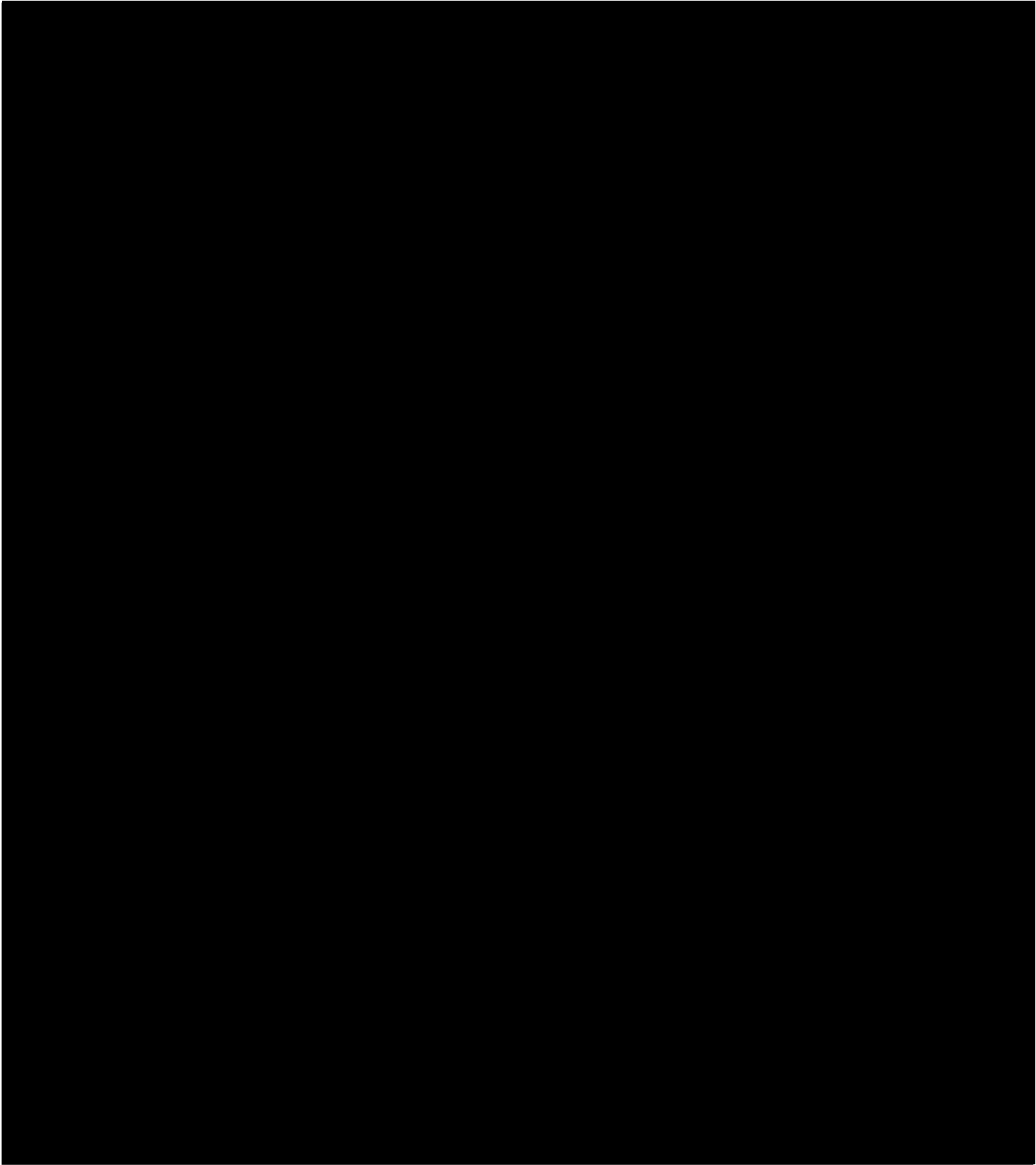
By: 
Richard Holdridge
Chairman
Date: 4 Oct 13

Exhibit A – Premises





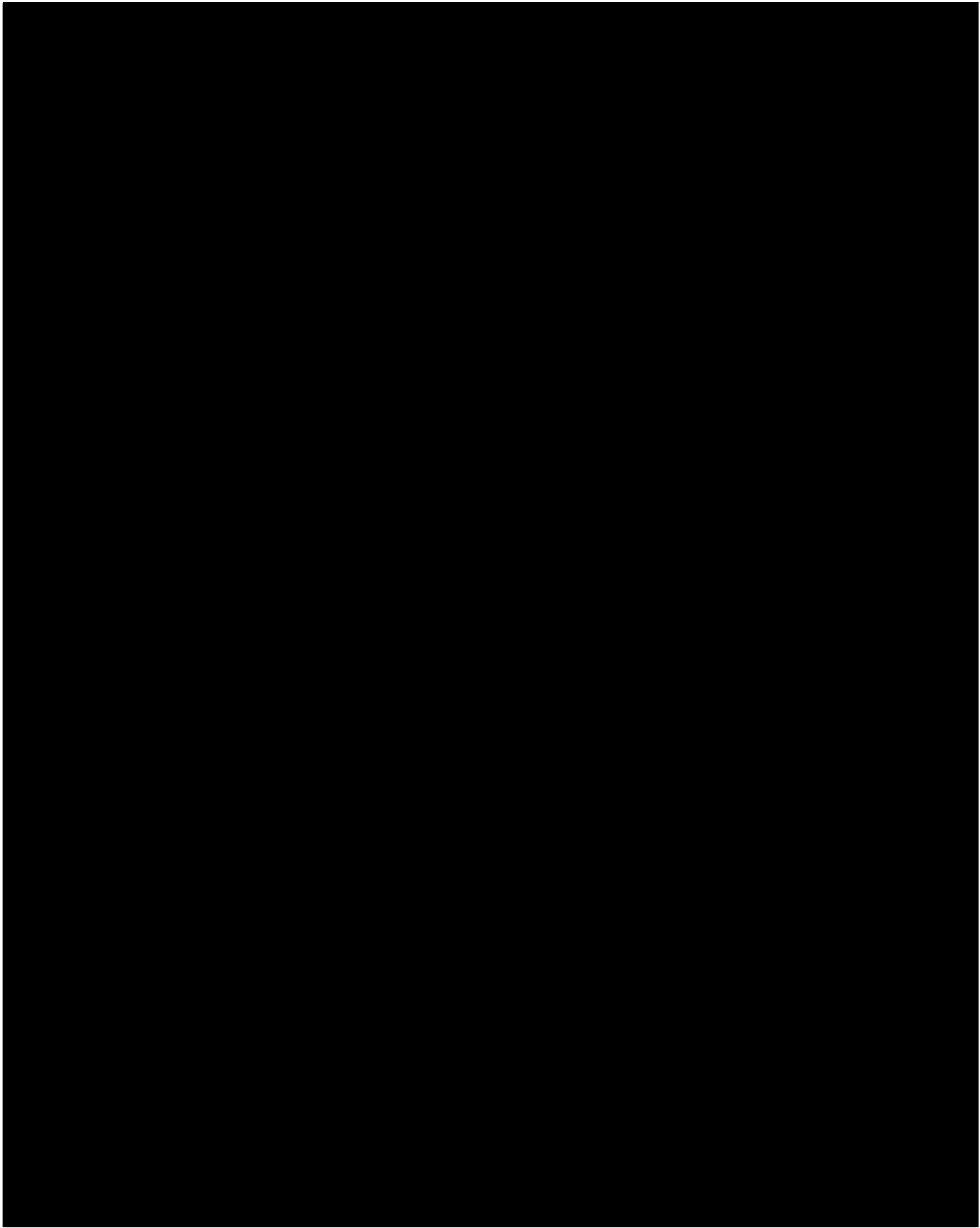
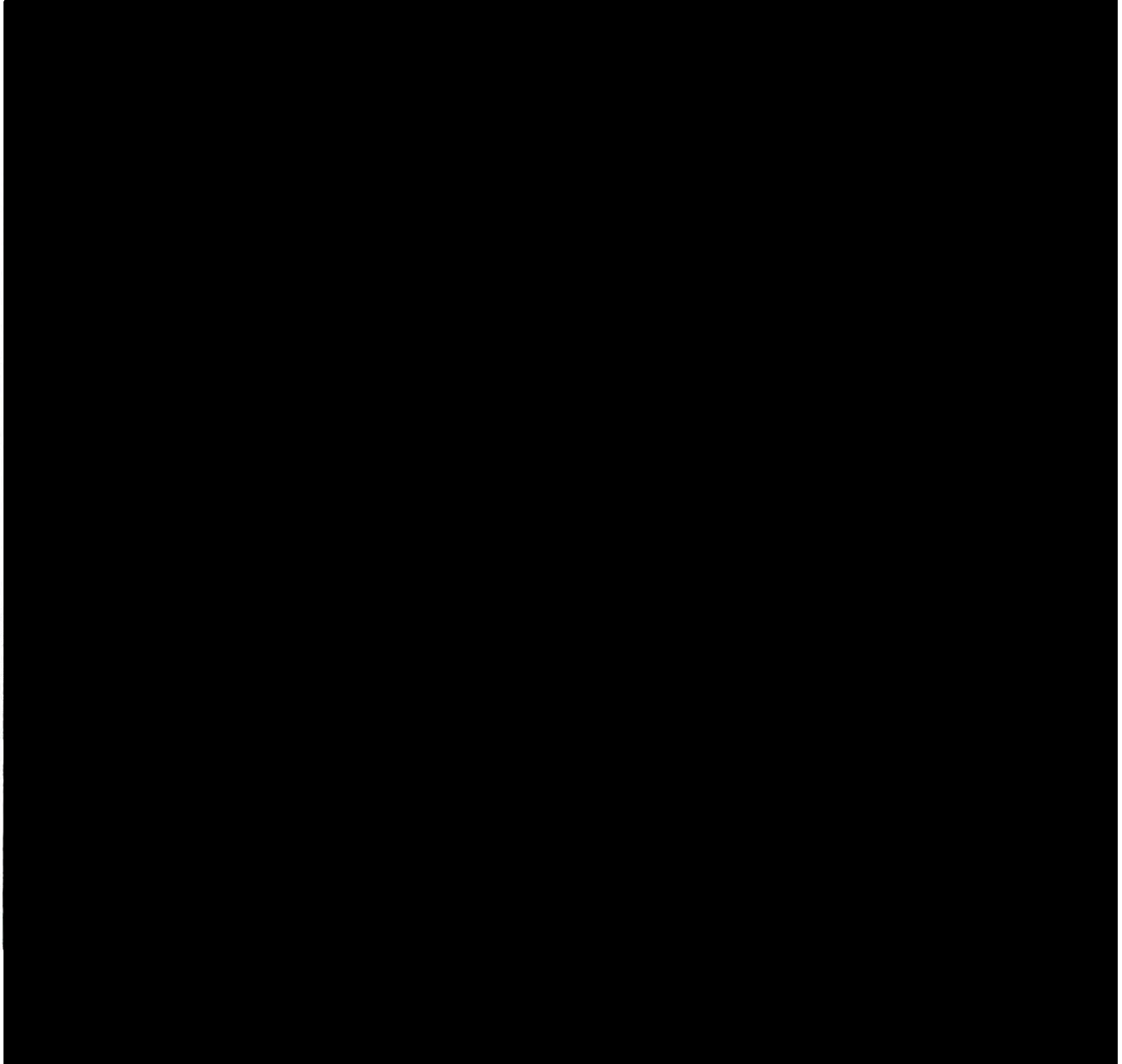
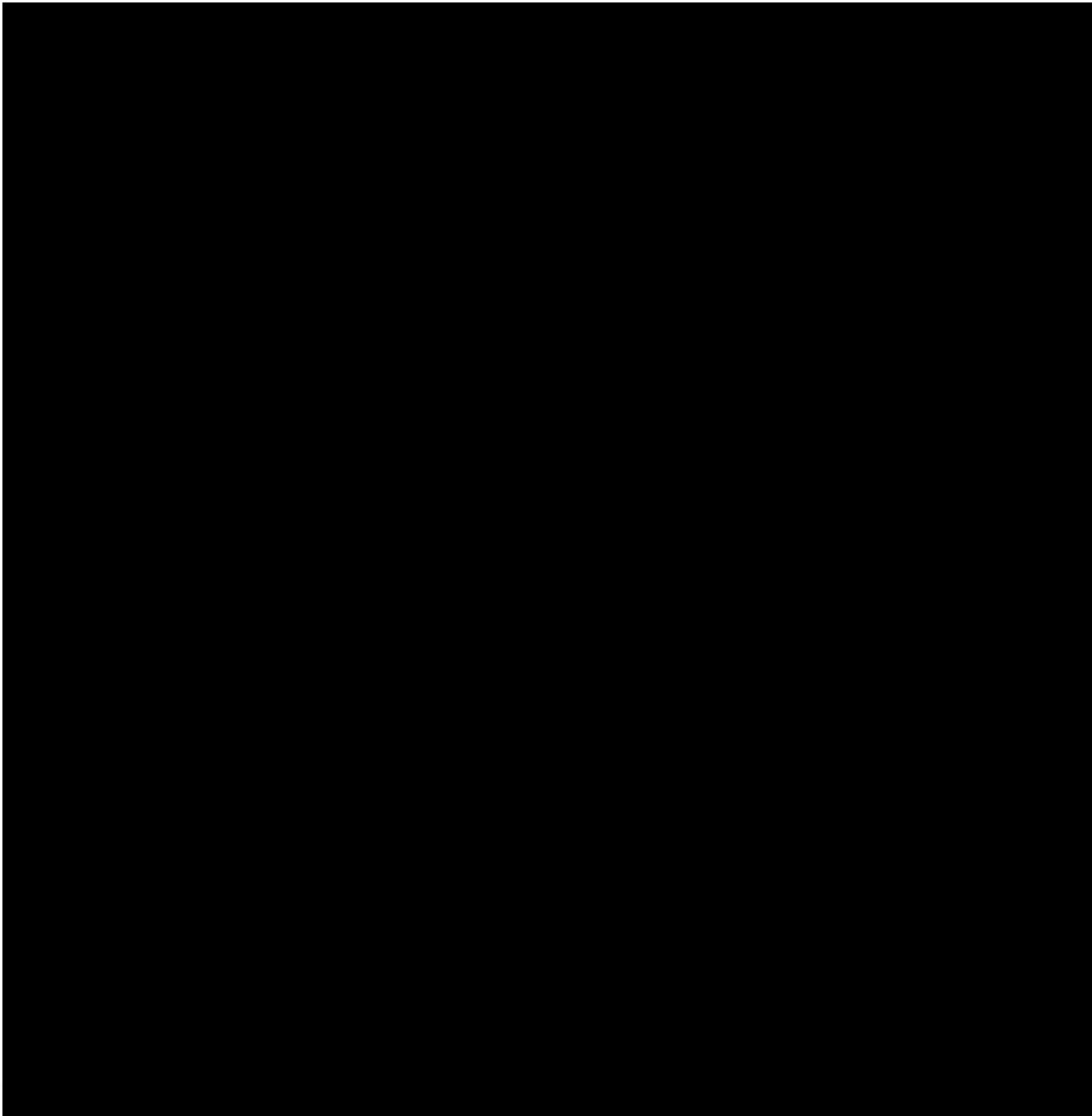


Exhibit B – Tenant Facilities





Business Proprietary and Confidential Information

Exhibit C – Common Facilities

EXISTING FACILITIES
Runways
Partial Taxiways
Apron
Helicopter landing area
Roadways sufficient for passage to the Spaceport, the Premises and Vertical Launch Infrastructure
Site(s) and vehicle(s) for crash, fire and rescue services
Fuel storage area(s)
Water wells and associated infrastructure
Sufficient motor vehicle parking for employees
Spaceport Operations Center mission control and emergency operations center
Communications infrastructure and fiber optic network, including a wireless millimeter wave connection to fiber optic network
Vertical Launch Infrastructure, including 40000 ft 2 launch pad
PLANNED FACILITIES
Restaurant / concessions, when activated as part of the visitor experience
Multi-purpose training facilities and conference rooms, when activated as part of the visitor experience
U.S. Postal Services pickup/drop station, when activated as part of the visitor experience

Exhibit D – User Fees

Flight Periods up to, and including:	10	25	50	100	Greater than 100
All Inclusive User Fee	\$25,000	\$20,000	\$16,000	\$13,000	\$10,000
MAX TOTAL USER FEES	\$250,000	\$550,000	\$950,000	\$1,600,000	-

One-time, upfront fees to cover NMSA time and materials in preparing Common Facilities for Tenant use shall amount to \$1,500.

Exhibit E – Licensed Trademarks

SPACEPORT AMERICA – Registration 3,879,182

SPACEPORT AMERICA (Logo)



NEW MEXICO SPACEPORT AUTHORITY – SPACE EXPLORATION TECHNOLOGIES CORP

AMENDMENT NO. 2 TO LEASE AGREEMENT,

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE REFERENCED LEASE AGREEMENT ARE AMENDED AS FOLLOWS:

- 4. Rent.** Tenant shall pay NMSA as rent (“Initial Rent”) for the Premises the sum of Three Thousand Six Hundred and Fifty One and No/100s Dollars (\$3,651.00) per month, during the Initial Term. Tenant shall pay the first month’s rent on the Effective Date, such rent to be applied to rent due to NMSA from Tenant but shall not be refundable if the Tenant does not take possession of the Premises. Initial Rent shall be paid monthly in advance on the date Tenant takes possession of the Premises or begins construction of Tenant Improvements on the Premises, whichever is earliest (also the “Initial Rent Commencement Date”) and on the first day of each month thereafter, without any deduction, offset, prior notice or demand whatsoever (except as expressly provided herein).

Upon execution of the LEASE AGREEMENT, AMENDMENT NO. 2, which shall be effective as of the date of the last signature to the LEASE AGREEMENT, AMENDMENT NO. 2, the Initial Rent shall increase to Three Thousand Nine Hundred and Eighty Six and No/100s Dollars (\$3,986.00) per month, during the Initial Term, in consideration for the addition of Area 3 and Area 4 to the Premises and for other effects of the LEASE AGREEMENT, AMENDMENT NO. 2.

All other paragraphs of this section remain the same. Capitalized terms used in this LEASE AGREEMENT, AMENDMENT NO. 2 and not defined herein shall have the meanings ascribed to such terms in the original LEASE AGREEMENT amended hereby

- 7. Utilities.** NMSA shall provide access to the Spaceport’s main distribution facility environment for housing and connection of Tenant Improvements to the site’s fiber backbone. NMSA shall facilitate connection between the fiber backbone and Tenant-furnished fiber optic cable terminated in the Spaceport’s main distribution facility.

NMSA shall provide access to the Spaceport’s electrical distribution infrastructure to enable Tenant to install Tenant Improvements to connect permanent power to Tenant and Common Facilities on the Premises. Tenant shall install meters at each point of connection to the electrical distribution infrastructure in accordance with NMSA specifications, and Tenant shall also install junction boxes to facilitate maintenance and future expansion as reflected in Exhibit A. Meters shall be installed as reflected in Exhibit A, i.e. a meter at the Waste Water Treatment Plant and by the mission control trailers in Area 3 and Area 4, respectively. These Tenant Improvements connecting utility services to Tenant and Common Facilities are collectively designated the “Utility Corridor.”

Tenant agrees to pay all usage charges or other expenses for water, electric generators and/or associated fuel, electricity, telephone, communications infrastructure housing, janitorial and domestic trash pickup and any other utilities provided by NMSA on the Premises. Billing shall be conducted in accordance with a mutually acceptable “Service Level Agreement”.

NMSA reserves the right to connect additional infrastructure to junction boxes on the Utility Corridor for the use of NMSA or its designees. However, Tenant shall, at a minimum, have the right to exclusive use of the Utility Corridor infrastructure and services provided through the Utility Corridor during Flight Periods and during the 3 day period prior to and following a Flight Period unless Tenant otherwise grants permission for non-exclusive use during these periods. In no event shall NMSA's installation of additional infrastructure to, or use of services from, the Utility Corridor interfere with Tenant's activities. For the avoidance of doubt, should NMSA cause such interference then the abatement provisions of this section shall apply. NMSA shall at its own cost independently meter its use of utility services at the junction boxes (see Exhibit A) and shall bear all costs of its own use of utility services from the Utility Corridor. NMSA shall be responsible for any damage, repair, maintenance, or operational costs incurred by NMSA's installation of additional infrastructure to, or use of services from, the Utility Corridor in accordance with the provisions of Section 11 of this Agreement.

All other paragraphs of this section remain the same.

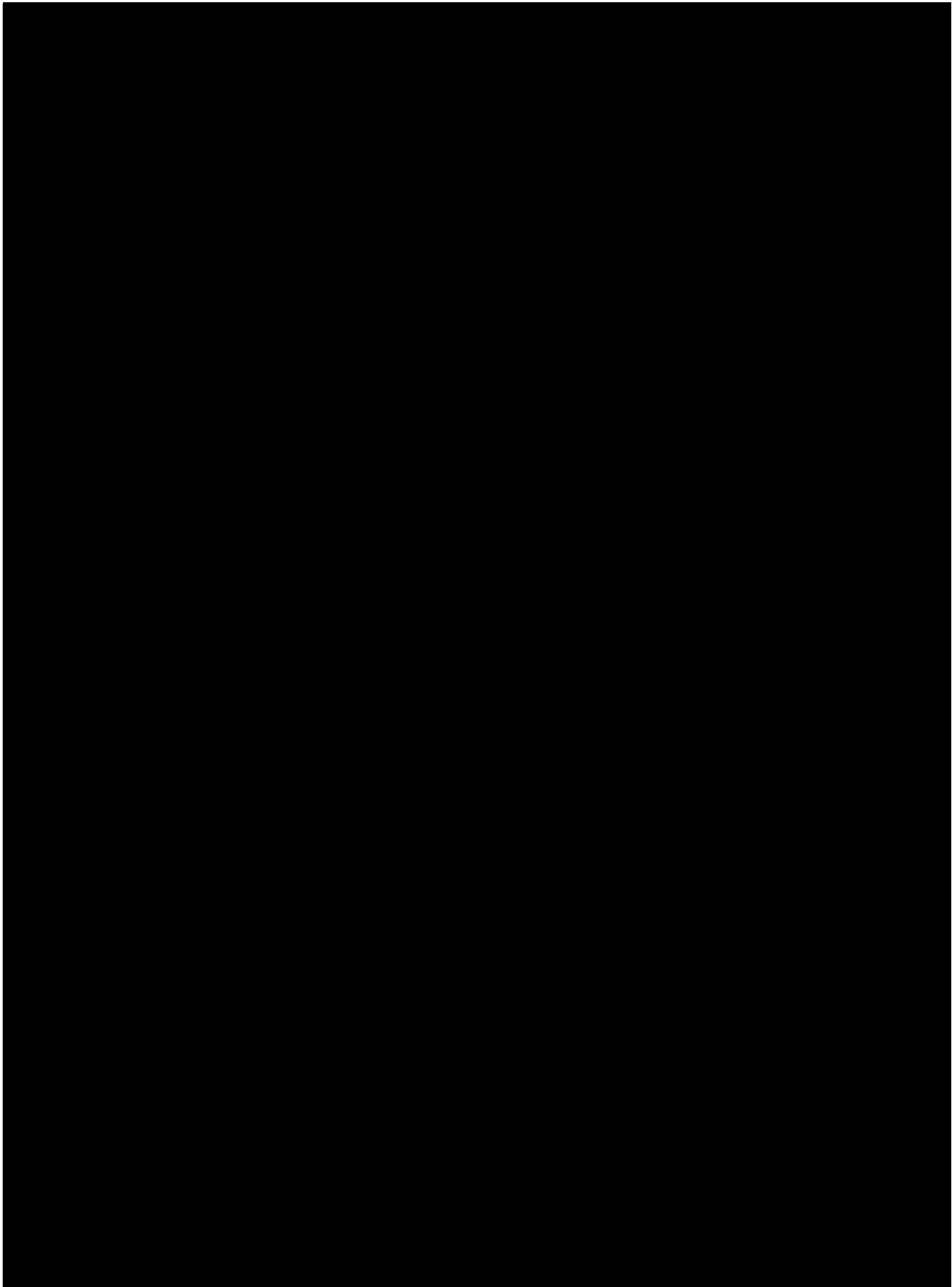
- 10. Right of Entrance.** Subject to compliance with applicable export control laws, NMSA and its agents shall have the right at any time during normal business hours and upon reasonable notice to enter the Premises and/or Tenant Facilities to provide utility services and undertake maintenance and repair as necessary in accordance with Section 7 and Section 8 hereof and provided Tenant has either arranged for an escort or affirmatively waived the right to provide an escort. NMSA and its agents shall not make any alterations or additions to the Premises or Tenant Facilities without Tenant's prior written approval, and such activity shall be conducted only during normal business hours and upon reasonable notice. In undertaking maintenance and repair work or making alterations or additions to the Premises, NMSA shall use reasonable efforts to avoid and minimize interference with Tenant's business operations. Notwithstanding the foregoing, NMSA shall have the right to use any and all means that NMSA may deem proper to enter the Premises or Tenant Facilities in an emergency that involves fire or police activity.

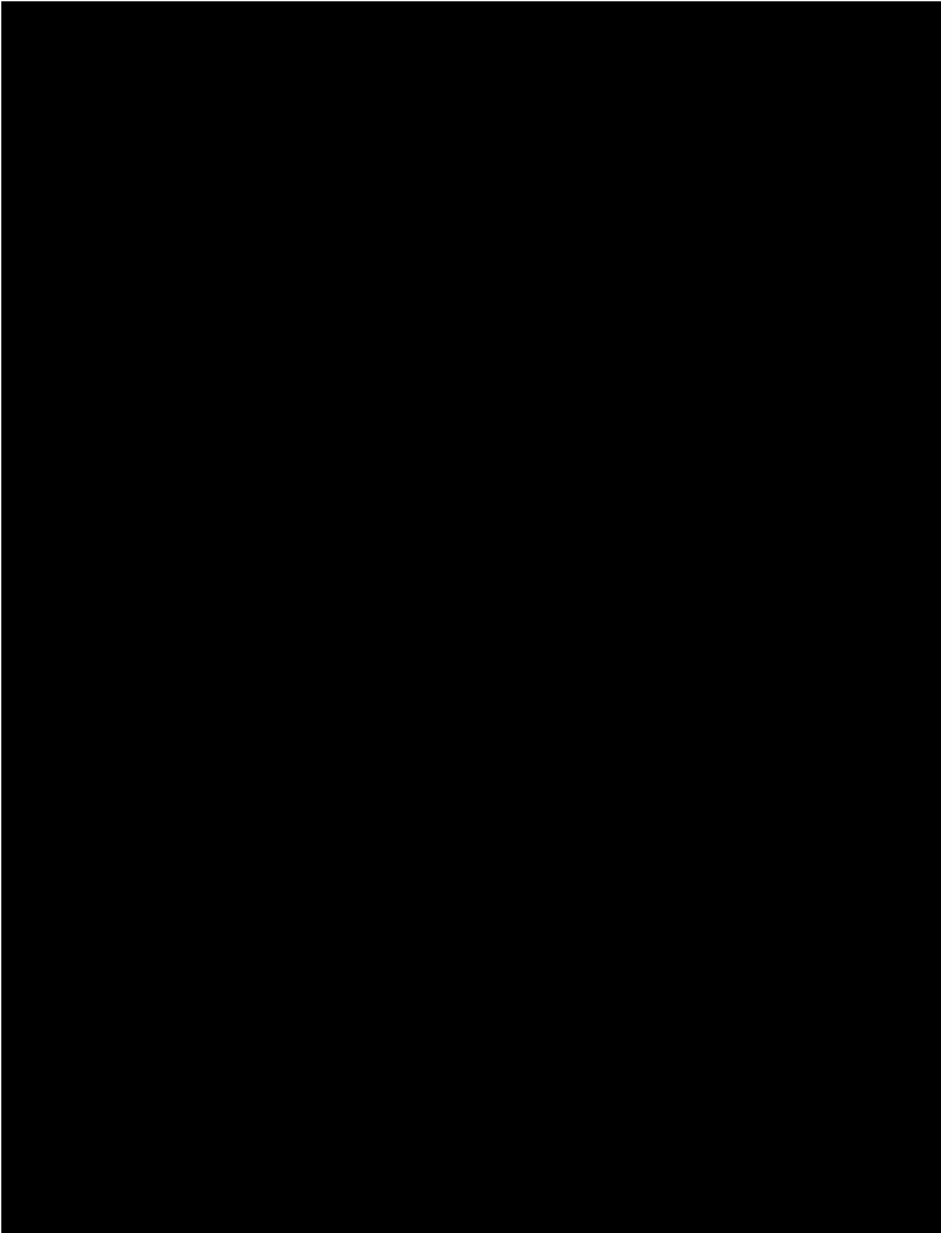
NMSA and its designee(s) reserve the right to enter at will for passage across Area 3 and Area 4 within the Premises (see Exhibit A) and across all underground portions of the Utility Corridor. Where the public has a present right to passage across spaceport property, such as county roads, this Agreement is subject to the public's right of passage. However, nothing in this section shall be construed to limit Tenant's rights to exclusivity during Flight Periods.

All other paragraphs of this section remain the same.

Exhibit A - Premises.

(appended to the end of the section)





IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

SPACE EXPLORATION TECHNOLOGIES CORP


By: 

Steven Davis

Director

Date: 2/10/14

NEW MEXICO SPACEPORT AUTHORITY

By: 

Christine Anderson

Executive Director

Date: 2/10/14

By: 

Richard Holdridge

Chairman

Date: 2/10/14

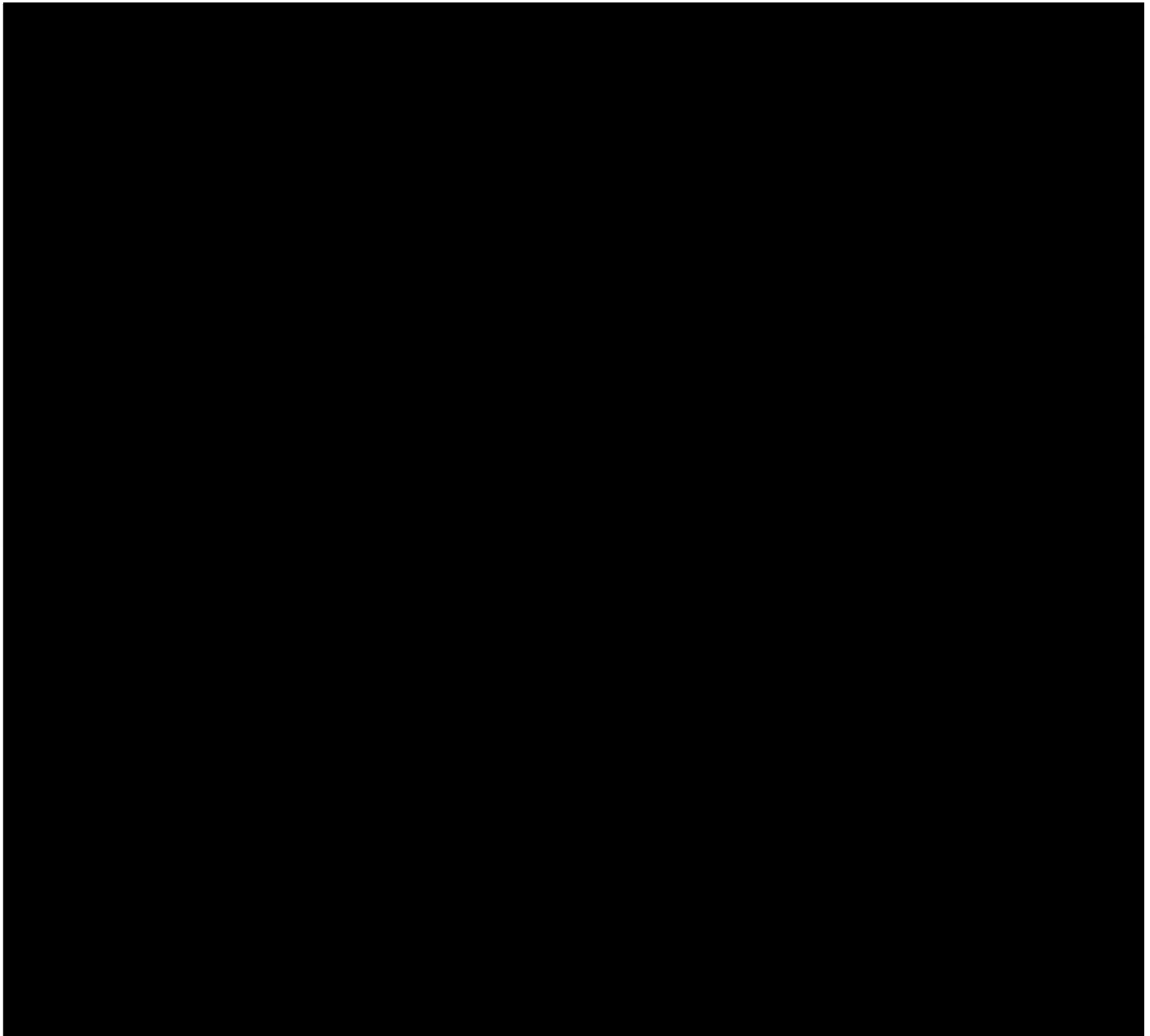
NEW MEXICO SPACEPORT AUTHORITY – SPACE EXPLORATION TECHNOLOGIES CORP

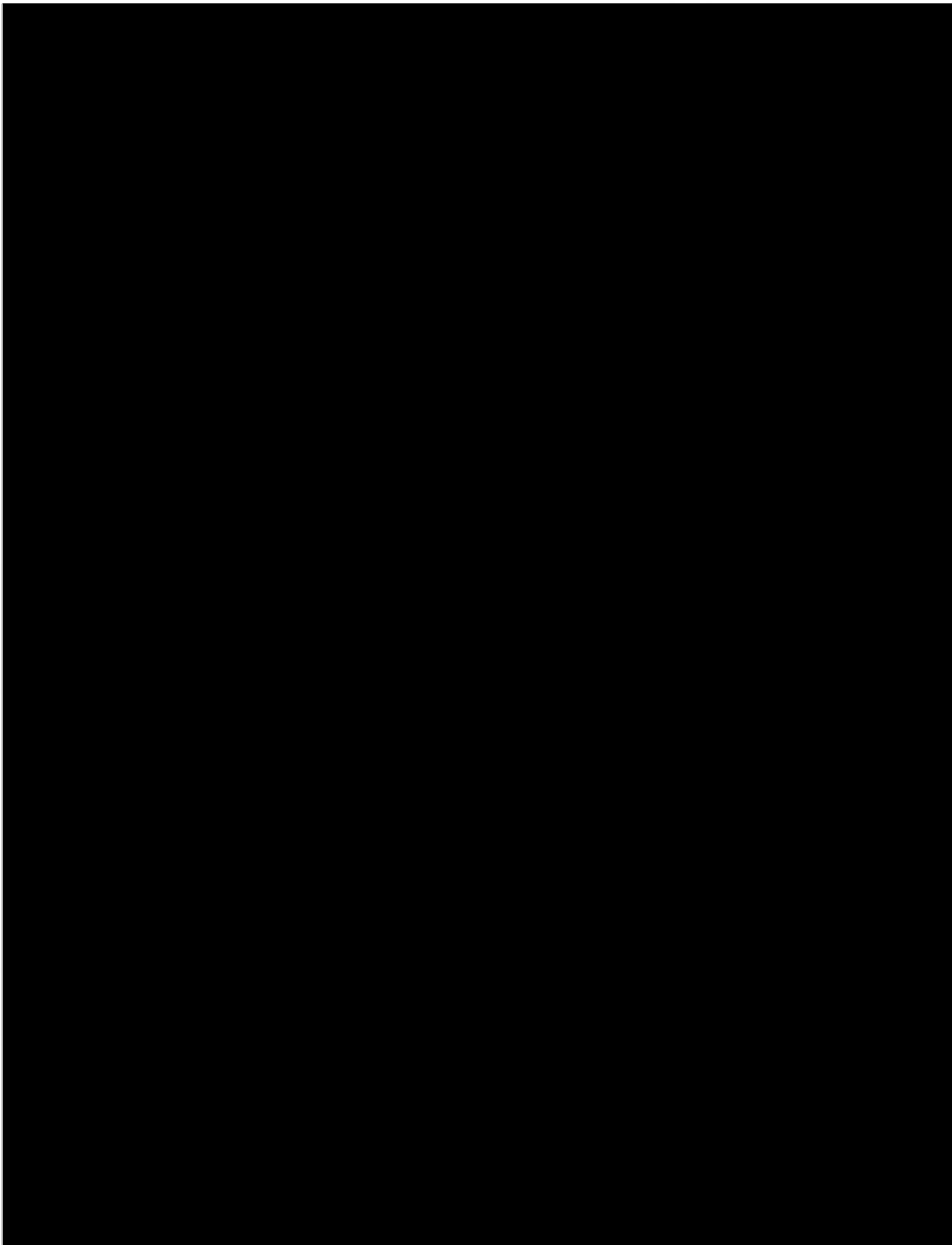
AMENDMENT NO. 3 TO LEASE AGREEMENT,

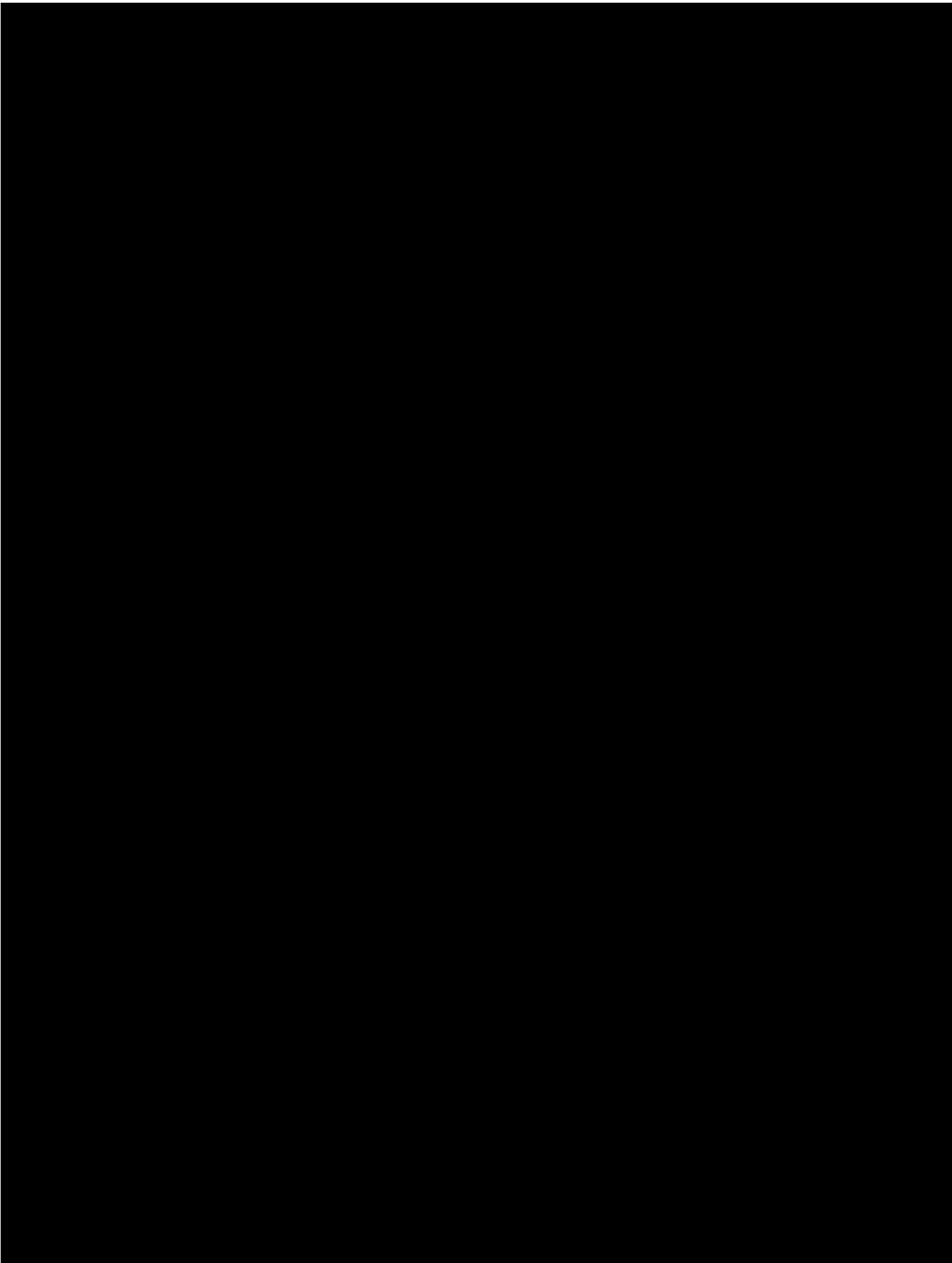
Capitalized terms used in this LEASE AGREEMENT, AMENDMENT NO. 3 and not defined herein shall have the meanings ascribed to such terms in the original LEASE AGREEMENT amended hereby.

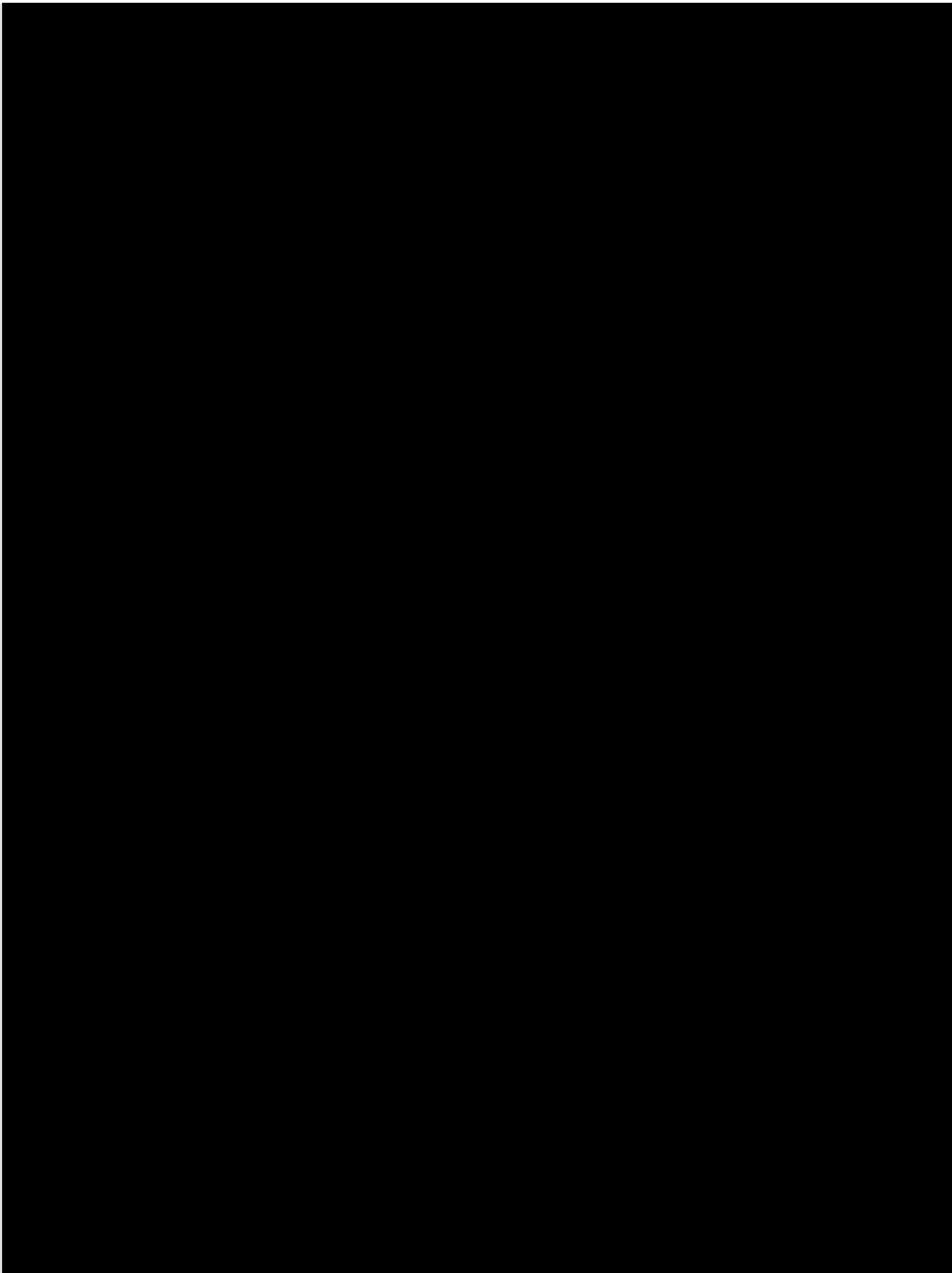
IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE REFERENCED LEASE AGREEMENT ARE AMENDED AS FOLLOWS:

Exhibit A - Premises









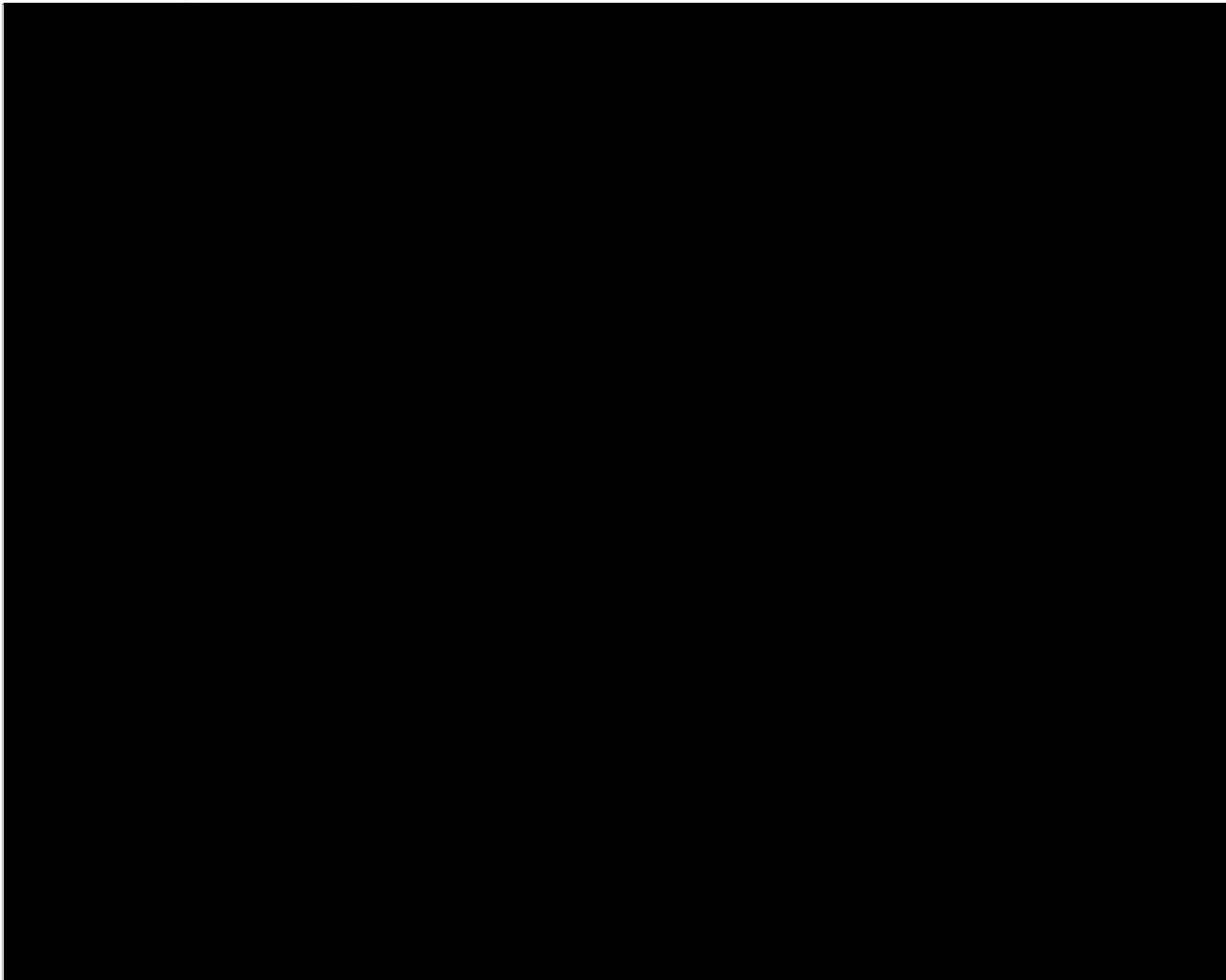
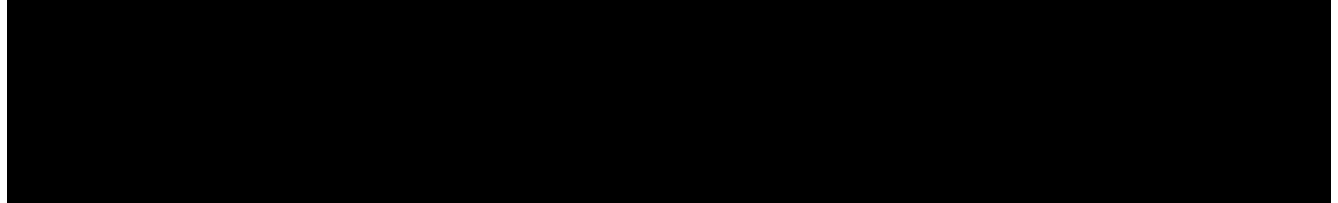
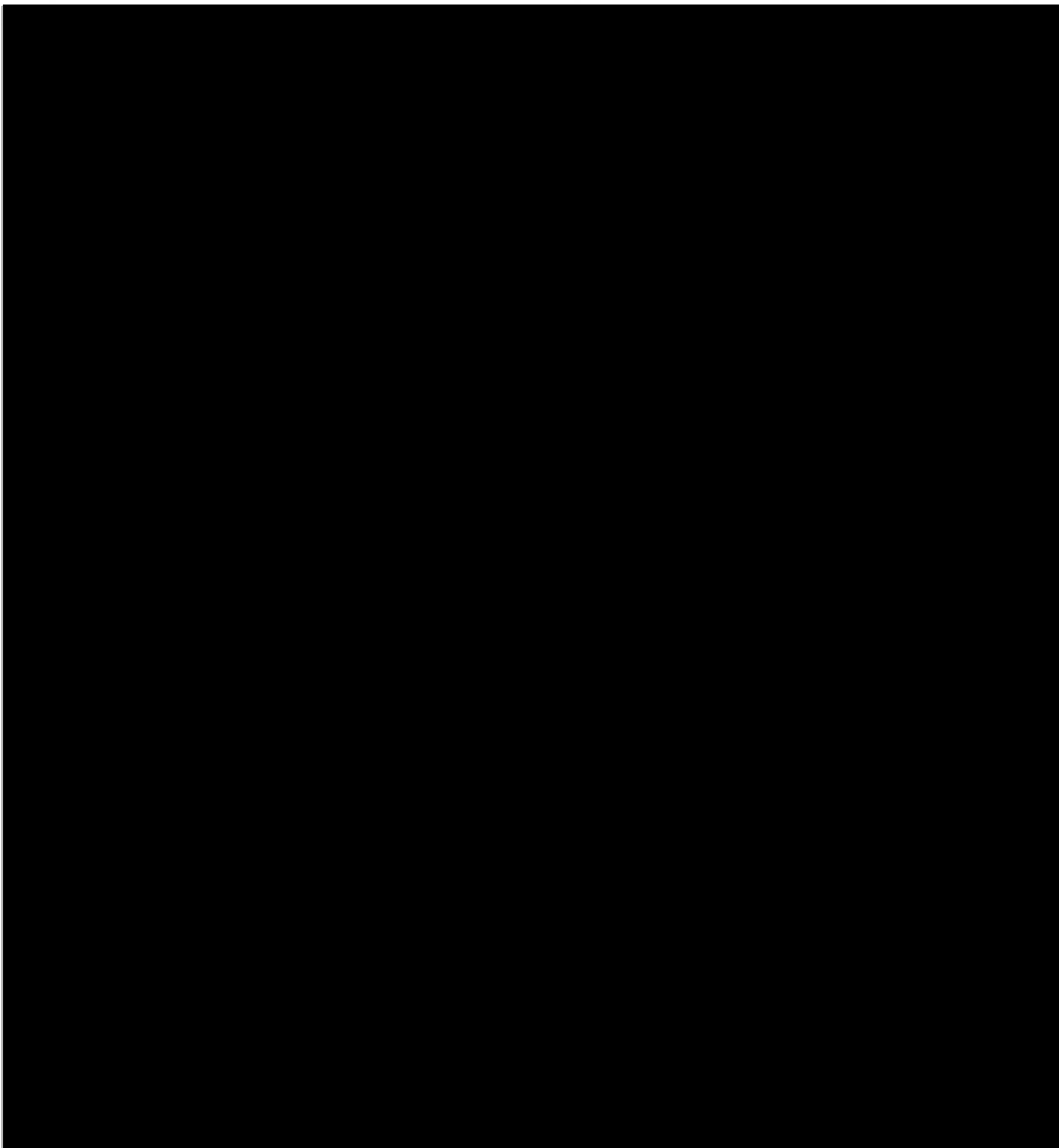
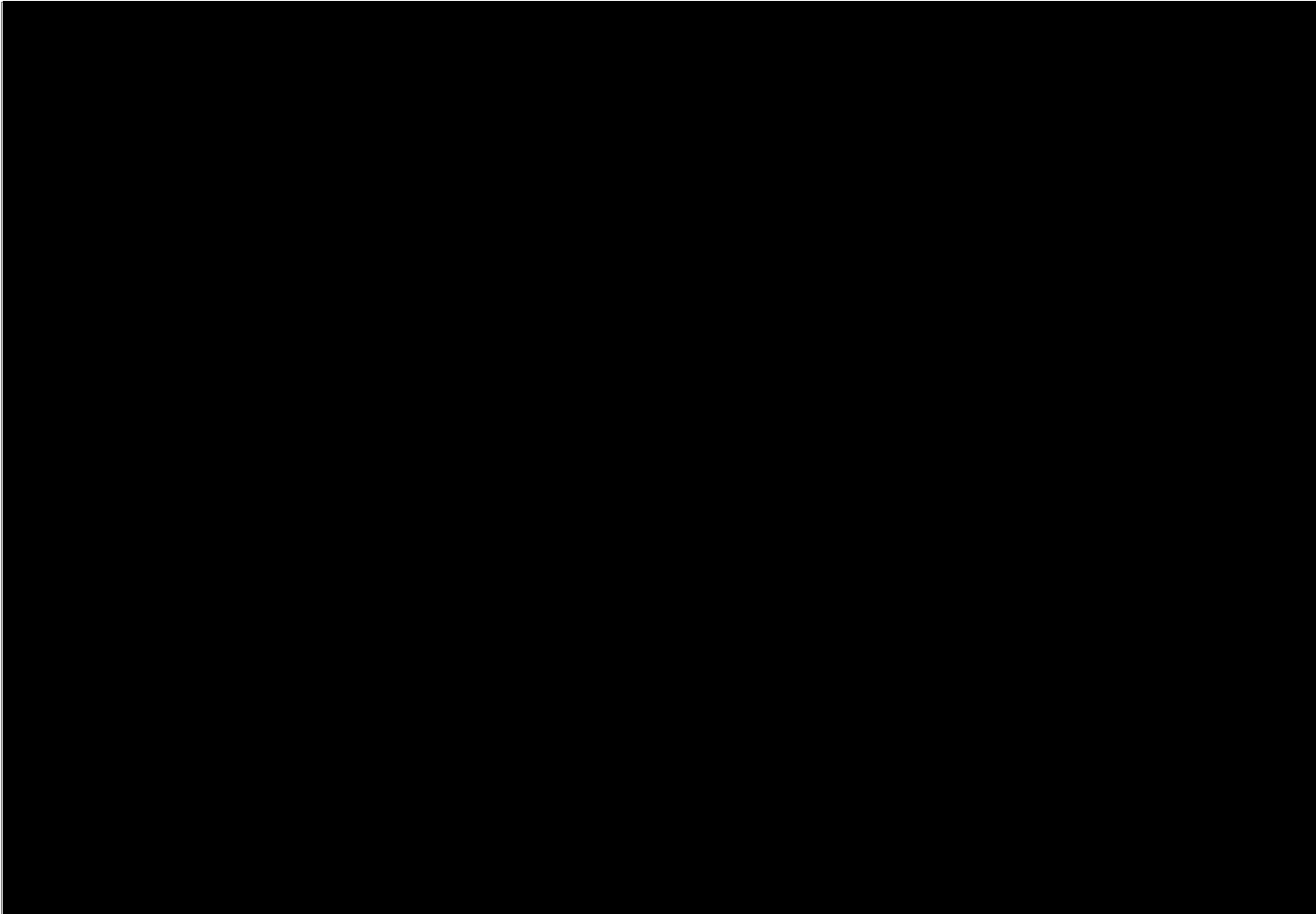


Exhibit B - Tenant Facilities.







Business Proprietary and Confidential Information

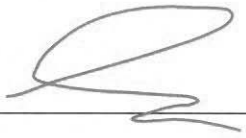
All other paragraphs of this section remain the same.

All other sections of this Agreement remain the same.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth below.

SPACE EXPLORATION TECHNOLOGIES CORP

NEW MEXICO SPACEPORT AUTHORITY

By:  _____

Steven Davis

Director

Date: 3/2/2015 _____

By:  _____

Christine Anderson

Executive Director

Date: 3/2/2015 _____

By: _____

Richard Holdridge

Board Chair

Date: _____

NEW MEXICO SPACEPORT AUTHORITY – SPACE EXPLORATION TECHNOLOGIES CORP

AMENDMENT NO. 4 TO LEASE AGREEMENT,

Capitalized terms used in this LEASE AGREEMENT, AMENDMENT NO. 4 (the “Amendment”) and not defined herein shall have the meanings ascribed to such terms in the original LEASE AGREEMENT amended hereby.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE REFERENCED LEASE AGREEMENT ARE AMENDED AS FOLLOWS:

By this Amendment, the Parties mutually agree to amend the Lease Agreement between SpaceX and NMSA, with an effective date of October 7, 2013, as subsequently amended (the “Lease Agreement”).

Once this Amendment is signed by both Parties, the additional terms set forth in this Amendment shall form part of the Lease Agreement. The terms of the Lease Agreement shall remain the same, except as modified herein.

The Parties hereby agree that, in accordance with Section 3 of the Lease Agreement, at the conclusion of the Initial Term (on October 7, 2016), SpaceX shall renew the Lease Agreement for a one-year Optional Term commencing on October 8, 2016 at an Optional Term Rent rate of one thousand dollars (\$1,000) per month.

In the event SpaceX renews the Lease Agreement for the second Optional Term (in accordance with the terms and conditions of the Lease Agreement), the Optional Term Rent rate shall be subject to the CPI adjuster (in accordance with Section 4 of the Lease Agreement) based on the new Optional Term Rent rate of one thousand dollars (\$1,000) per month.


In consideration for NMSA reducing the Optional Term Rent rate, SpaceX hereby authorizes NMSA to concurrently lease the Premises to one (1) additional NMSA tenant on a non-interference basis (meaning that such additional tenant will vacate the Premises as requested by SpaceX and NMSA on not less than seven (7) days prior notice and not more than twelve (12) such requests to vacate during an Optional Term).

All capitalized terms used in this Amendment and not otherwise defined herein, shall have the meanings ascribed to them in the Lease Agreement. This Amendment shall be subject to terms of the Lease Agreement, including the governing law and venue requirements set forth in Section 22 of the Lease Agreement.

If the proposed terms are acceptable, please sign and date in the appropriate spaces below to indicate your agreement and return a copy to SpaceX. Once signed, this Amendment shall supersede all prior communications, transactions, and understandings, whether oral or written, with respect to the subject matter hereof and, together with the Lease Agreement (as amended) constitute the sole and entire agreement between the Parties pertaining to the subject matter hereof.


Sincerely,

Space Exploration Technologies Corp.

By: 
Name: Steve Davis
Title: Director
Date: 8/15/2016

Acknowledged and agreed:

New Mexico Spaceport Authority

By: 
Name: Rick Holdridge
Title: Chair, NMSA Board
Date: 8/15/16