

**UPDATED**

**SPECIAL MEETING OF THE  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
FRIDAY, SEPTEMBER 18, 2020 – 12:00 P.M.  
VIA ELECTRONIC MEANS PURSUANT TO MINNESOTA STATUTES  
SECTION 13D.021  
AGENDA**

Please take notice that the Duluth Economic Development Authority will hold a public hearing by other electronic means pursuant to Minnesota Statutes Section 13D.021 on Friday, September 18, 2020, at 12:00 p.m. All persons interested may monitor and participate in the hearing by visiting: <http://dulutheda.org/live-meeting> promptly at 12:00 p.m. on Friday, September 18, 2020, and written comments may be submitted to DEDA in advance of the meeting via the DEDA's web site at <http://dulutheda.org/contact-us/> or via email at [cfleege@duluthmn.gov](mailto:cfleege@duluthmn.gov), and DEDA will decide if the conveyance is advisable.

The regular meeting place of DEDA is the Duluth City Council Chambers at City Hall, 411 West First Street, in Duluth, Minnesota. At this time board members of DEDA do not intend to attend the meeting in person; due to continually evolving restrictions and guidance from state and federal officials and agencies, the board members of DEDA will attend the meeting remotely via telephone or other electronic means pursuant to Minnesota Statutes Section 13D.021.

**CALL TO ORDER**

**PUBLIC TO ADDRESS THE COMMISSION**

**PUBLIC HEARINGS**

**NEW BUSINESS**

**RESOLUTIONS FOR APPROVAL**

- 1. RESOLUTION 20D-59- RESOLUTION AUTHORIZING SHORT TERM LEASE AGREEMENT WITH BORSIGHT, INC. FOR USE OF THE MRO FACILITY.**

**DISCUSSION**

**DIRECTOR'S REPORT**

## RESOLUTION 20D-59

### RESOLUTION AUTHORIZING SHORT TERM LEASE AGREEMENT WITH BORSIGHT, INC. FOR USE OF THE MRO FACILITY.

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a short term Lease Agreement (DEDA Contract No. 20 866 \_\_\_\_), substantially in the form of that attached hereto, with Borsight, Inc., leasing the MRO facility to Borsight for it to use for providing maintenance service for F-16 aircraft to the USAF, subject to their being awarded a contract by USAF to provide such services and subject to DEDA's existing lease on a portion of the MRO with Cirrus Design Corp, d/b/a Cirrus Aircraft, at a lease the rate of \$126,825 per month, payable to Fund 866.

Approved by the Duluth Economic Development Authority this 18th day of September, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the execution of a short term lease with Borsight, Inc. for their use of the MRO facility to perform maintenance work on F-16 aircraft, subject to their being successful in their proposal to the USAF to perform the work.

Borsight is a company in the business of performing aircraft maintenance which is in need of a larger facility to support their bid on the project. If their bid is successful, which will probably not be known until January to March of next year, they would potentially have up to sixteen docks operational at one time. Because of the vagaries of the federal process they will not know until after bid award how much work will be included in the award. And until the bid is awarded, they will not know whether they need the leased space or not. But they are required, as part of their proposal, to have in hand a commitment that they have will have the physical facilities to fulfill the contract.

Therefore this lease offers to lease them the whole facility but makes the lease effective only if they give DEDA notice by March 31, 2021 of their exercise of it which they would only do if awarded the bid. From the date of exercise, the lease term would be one year.

Because of the vagaries of the process, they will not know how many planes they will get how fast and so their need for the entire facility will be in a “ramp up” mode at first. Because of the uncertainty that is inherent in the process, DEDA staff has committed to work with them to amend the Lease as is reasonable and appropriate for both parties to make adjustments to the Lease based on the progression of their federal contract.

Borsight has also indicated that there is a possibility that, depending on the progression of the federal contract and the way the work progresses In Duluth, this Lease could serve as the basis for a longer term relationship.

The timing of the federal contract process will also allow DEDA and Borsight to work around DEDA’s commitment to Cirrus.

## LEASE AGREEMENT

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

NWA MRO FACILITY

BORSIGHT, INC.

THIS LEASE AGREEMENT, entered on the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and BORSIGHT, INC., a corporation created and existing under the laws of the State of Utah, hereinafter referred to as "Lessee".

WHEREAS, DEDA is the owner of a heavy aircraft maintenance facility located on the hereinafter-described "Property" at the Duluth International Airport ("DIAP"); and

WHEREAS, said facility consists of 189,000 square feet of hangar space, office space, shop space and support space; and

WHEREAS, Lessee is in need of a building and space at DIAP suitable for the operation of a maintenance, repair and overhaul facility for aircraft; and

WHEREAS, the design and location of the Building is suitable for Lessee's purposes; and

WHEREAS, approximately 36,000 square feet of said facility is temporarily occupied by Cirrus Design Corporation d/b/a Cirrus Aircraft for a period of no later than June 30, 2021 and Lessee is willing to share the use of said facility to the extent of said 36,000 square feet until Cirrus' temporary use terminates; and

WHEREAS, both DEDA and Lessee believe that it will be in the best interests of DEDA, of Lessee and of the Duluth Airport Authority as operator of

the DIAP and of the DIAP itself as well as the rest of the community for DEDA to lease some or all of the Building and the Property to Lessee for the purposes set forth above, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

ARTICLE I  
DEFINITIONS

For the purposes of this Lease Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context;

- A. Buildings: shall mean the Main Building and the fire suppression building located to the east thereof on the Leased Property.
- B. City: shall mean the City of Duluth, Minnesota.
- C. DEDA: shall mean the Duluth Economic Development Authority.
- D. DEDA Equipment: shall mean that equipment located in the Building or on the Leased Premises identified and described on Exhibit B attached hereto and made a part hereof which is accepted for use by Lessee as provided for in Paragraph C of Article II below.
- E. DIAP: shall mean the Duluth International Airport.
- F. Director: shall mean the Executive Director of DEDA or the person designated to act on behalf of him/her with regard to this Lease Agreement.
- G. GAAP: shall mean generally accepted accounting principals.
- H. Ground Lease: shall mean the Ground Lease dated December 21, 1994 between the City and the DAA and DEDA.
- I. Improvements: shall mean the construction or installation of any modifications or improvements to the Leased Property or the Leased Premises which require a building permit or other construction permit from any government jurisdiction having authority

to issue a permit therefore, including but not limited to the Re-commissioning Improvements and Leasehold Improvements.

- J. Leased Premises: shall mean that portion of the Buildings leased to Lessee pursuant to Article II below together with all other improvements located on the Leased Property.
- K. Leased Property: shall mean that property located in St. Louis County, Minnesota legally described on Exhibit A attached hereto and made a part hereof.
- L. Leasehold Improvements: shall mean improvements, modifications or additions made to the Leased Premises by Lessee installed or constructed on the Leased Premises and which become part of the leased Premises including equipment installed on and becoming part of the Leased Premises but not including Re-commissioning Improvements or Building Systems Improvements.
- M. Main Building: shall mean the building located on the Leased Property, being north of Runway 09-27 and west of Runway 03-21 on the DIAP consisting of 189,000 square feet, more or less, of hangar space, office space, shop space and support space.

## ARTICLE II

### LEASED PROPERTY & PREMISES

#### A. Generally

Subject to the terms and conditions hereinafter set forth, DEDA hereby grants and leases to Lessee the Leased Property and the Leased Premises as hereinafter described in this Paragraph A and as modified as hereinafter provided for in this Article II, for operation of a maintenance, repair and overhaul facility for aircraft, and for other uses related to its business, all in the ordinary course of its business conforming in all way to applicable laws, rules and regulations. During the Term of this Lease Agreement as hereinafter set forth, Lessee shall have use of the Leased Property and the Leased Premises for the purposes herein set forth, subject to the terms and conditions of this Lease Agreement and, unless authorized by this Lease Agreement, DEDA will take no action which will prevent Lessee from the quiet and peaceable possession thereof. By entering into this Lease Agreement, DEDA is making no warranty or

representation, either expressed or implied, as to the merchantability or fitness for any particular use of the Leased Property or the Leased Premises or other representation or warranty, express or implied, with respect to the condition of the Leased Property or the Leased Premises except as explicitly set forth herein. As of the effective date of this Lease Agreement, the Leased Premises shall consist of the following:

1. 189,000 square feet, more or less, of the Main Building, constituting the entirety of the ground level of said Main Building.
2. The parking lots, sidewalks, driveways, apron and aircraft parking ramp adjacent to the Main Building.
3. The fire suppression facilities located to the east of the Main Building including the building housing the fire suppression pump and related equipment, the pump and related equipment, the fire suppression water supply ponds and all equipment and utility lines related thereto.

B. DEDA Equipment

The parties hereby acknowledge that DEDA is the owner of that equipment listed on the attached Exhibit B. DEDA hereby agrees that Lessee shall have the right to use said equipment or any portion thereof in conjunction with the permitted uses of the Leased Premises by providing to the Executive Director, within Ninety (90) days of the signing of this Lease Agreement, written notification of its desire to so use such equipment; the equipment listed in said notice shall hereinafter be referred to as the "DEDA Equipment". DEDA hereby agrees that the DEDA Equipment shall be in fully functional and working condition within tolerances contained with the manufacturer's original specifications but otherwise makes no warranties of any kind whatsoever including warranties of fitness for use or fitness for any particular purpose and agrees that the indemnification and insurance provisions of Articles IX and X below shall apply to Lessee's use of the DEDA Equipment. Lessee agrees that Lessee will continue to allow any DEDA Equipment presently stored at the Main Building which is not used by Lessee to be stored at the Main Building at no cost to DEDA and further agrees that it will be responsible for any damage or destruction thereof or for

any injury to or death of any person or persons or damage to or destruction of property arising out of the use or storage of the DEDA Equipment at the Main Building in the same manner as provided for in Article IX below.

C. Access to Airport Facilities

In addition to the foregoing, DEDA grants to Lessee the non-exclusive use of that access taxiway and ramp to the Southeast of Building, which taxiway and ramp are shown on Exhibit A attached hereto and made a part hereof.

### ARTICLE III

#### LEASE PAYMENTS

A. Rent

As rent for the use of the Leased Premises and Leased Property as the same are defined and leased to Lessee as of the effective date of this Lease Agreement, on the first day of each month during the term of this Lease Agreement, Lessee shall pay to DEDA Rent in the amount of \$126,825 per month for the term of this Lease. Such rent shall be “net” of all costs, charges or other amounts owed by Lessee to DEDA and shall not be subject to any delay, reduction, deduction, credit or set-off of any kind whatsoever except as hereinafter specifically authorized.

B. Ground Lease

In addition to the obligations of Lessee to DEDA under this Lease Agreement, Lessee shall be bound to perform all obligations of DEDA under the Ground Lease when and in the same manner as DEDA is obligated to perform them except to the extent that by their nature Lessee is unable to perform any of them, in which case Lessee shall be obligated to provide all possible assistance to DEDA in the performance of the same by DEDA. Provided that the obligations of this Paragraph shall not apply to any obligation of DEDA to pay rent.



C. Miscellaneous Payments and Services

1. Maintenance Services

a.) By Lessee

Except as provided for in Sub-subparagraphs b.) and c.) below, Lessee hereby agrees to maintain the Leased Premises and the Leased Property in a neat, clean, orderly and, where applicable, sanitary. Lessee shall be responsible for all general maintenance of the Buildings including routine repair of floors, walls, ceilings and glass replacement. Lessee shall further be responsible for keeping all grass, weeds and other similar vegetative materials mowed or otherwise controlled and shall be responsible for the removal or treatment of all snow or ice on sidewalks, driveways, parking lots and aprons located on the Leased Property. In the event that Lessee fails to so maintain the Leased Premises and/or the Leased Property, DEDA may itself maintain or cause to be maintained, repaired or replaced, as the Executive Director shall determine in the exercise of his or her discretion, those portions of the Leased Premises, the Leased Property, or both not so kept, and Lessee agrees to reimburse DEDA for the direct and indirect costs incurred by DEDA for the performance of said work immediately on being billed therefore by DEDA.

b.) By DEDA

Except as provided for in Paragraph A of Article VI below, DEDA shall be responsible for all costs of maintenance, repair and, if necessary, replacement of the roofs on the Buildings as determined necessary by the Executive Director. In addition, DEDA shall be responsible for ensuring the removal or treatment of ice and snow on Stebner Road and on airport public use facilities such as runways and taxiways.

2. DEDA Equipment-Maintenance and Replacement

Pursuant to Paragraph C of Article II above, DEDA has granted to Lessee the

right to use the DEDA Equipment in conjunction with its use of the Leased Premises and the Leased Property. DEDA hereby represents to Lessee that, as of the date of occupancy of the Leased Premises and the Leased Property by Lessee, the DEDA Equipment is in good condition and working order, subject to normal wear and tear. Lessee hereby agrees to maintain and repair all of the DEDA Equipment and keep it in good condition and working order and to provide all parts and labor necessary for such maintenance and repair at no cost to DEDA. In the event that any piece of the DEDA Equipment is damaged, destroyed or worn so as to make such maintenance or repair unreasonable or impractical, Lessee may request written authorization from the Executive Director to abandon or replace said piece of DEDA Equipment with a piece of equipment of similar or better type, character and quality which is either new or is used but in a condition similar to that of the equipment at the commencement of this Lease Agreement. Upon receipt of such written authority, Lessee shall purchase with its own funds the piece of replacement equipment and may dispose of the piece of equipment, to be replaced. Upon such acquisition, said replacement piece of equipment shall become and thereafter be DEDA Property and shall be governed by the terms and conditions of this Lease Agreement. Lessee shall provide to the Executive Director in writing a description of the replacement equipment including the company of manufacture, the name of the equipment the model of the equipment, the model number of the equipment and the serial number of the equipment.

3. Refuse and Garbage

Lessee shall have all responsibility for the disposal of refuse and garbage generated by its operations on the Leased Premises and the Leased Property and agrees to absorb all costs related thereto.

4. Utilities

Lessee shall pay any and all charges for utilities furnished to the Leased Premises or the Leased Property, including but not limited to new or additional

hook-up charges and assessments related to all utilities past-due, including but not limited to fuel oil, heat, air conditioning, if any, water, sewer, gas, telephone, cable TV and electrical power.

D. Assessment Fees and Charges

Lessee shall pay or cause to be paid when due or payable all fees, charges and rentals for utilities, service or extensions for the Leased Property or of the Leased Premises and all charges lawfully made by any governmental body for public improvements; provided that nothing shall prevent Lessee from contesting in good faith, any such payment requirement except as such contest would negatively affect the DEDA's rights under this Lease Agreement or result in a lien being placed on the Leased Property, the Leased Premises or both. Lessee shall also be entitled to avail itself of the most advantageous terms of payment, in Lessee's judgement, made available by the assessing authority to pay any such assessment.

E. Other Costs of Building or of the Leased Premises

In addition to the foregoing costs and charges set forth above, Lessee shall bear, and promptly pay, on or before the date due, all other costs, fees and charges of any kind whatsoever, arising out of the occupancy of the Leased Property or of the Leased Premises; provided that nothing shall prevent Lessee from contesting in good faith, any such payment requirement except as such contest would negatively affect the DEDA's rights under this Lease Agreement.

F. Payment by DEDA

Should Lessee fail to pay any such costs, fees or charges set forth above or otherwise necessary to the preservation and use of the Leased Property or of the Leased Premises or to Lessee's business thereon, DEDA may, at its sole discretion and upon ten (10) days prior, written notice to Lessee, pay such costs, fees and charges and thereupon, Lessee shall promptly reimburse DEDA for the same and DEDA may collect the same as it deems appropriate including exercising the remedies authorized under Article XI of this Lease Agreement.

G. Payment Obligations Unconditional

The obligations of Lessee to pay any amounts due to DEDA under this Lease Agreement in accordance with the terms hereof shall be absolute and unconditional, irrespective of any defense or rights of set off, recoupment or counterclaim which may at any time be available against DEDA. Such payments shall be due without notice or demand therefore except as specifically provided for herein. Provided however, that in the event that the Building is so damaged or destroyed by any cause arising out of events not resulting from the intentional or grossly negligent acts or omissions of Lessee or its officers, agents, servants or employees and the damage is so extensive that Lessee is unable to substantially carry on its business in the Building, Lessee shall be relieved of paying any rent to DEDA during the time required to repair or rebuild the Building to the point where Lessee can resume conduct of its business in the Building.

H. Time for Payment and Manner of Payment

All Rent payments and Rent for Additional Space shall be due and payable on the first day of the month to which they are attributable. All other payments and reimbursements to DEDA called for by this Lease Agreement shall be due and payable thirty (30) days from the date of DEDA's invoice to Lessee for said payments and reimbursements.

## ARTICLE IV

### TERM

The Term of this Lease Agreement shall be for a term of Twelve (12) months. Subject to the following, said Term shall commence upon the date that Lessee gives DEDA notice, as provided for in Article XVII below, that Lessee is exercising its right to render this Lease Agreement effective; provided that if Lessee fails to give DEDA such notice by March 31, 2021, this Lease Agreement shall be null and void and shall be deemed to never have been effective or binding on the parties.

ARTICLE V  
CONSTRUCTION OR ALTERATION

Subject to Paragraph A below, Lessee shall not make, construct or cause to be made or constructed any improvements to the Leased Property or to the Leased Premises without the prior written consent of the Executive Director. The process for requesting and receiving such consent is that set forth in this Article.

A. Plans, Specifications and Elevations

1. Initial Plans:

No less than thirty (30) days prior to the commencement of construction of any such proposed Improvements, Lessee shall submit working drawings, specifications and architectural elevations if relevant for modification or alteration together with detailed site, grading, utility and landscaping plans and elevations, as the Executive Director reasonably deems necessary, to the Executive Director for approval. All such plans, specifications and elevations shall be in conformity with this Lease Agreement, and with all applicable laws, ordinances, rules, regulations and requirements of the City, State of Minnesota and United States of America Authorities. The Executive Director shall accept or reject said plans within ten (10) days of receipt thereof. If the Executive Director rejects such plans, specifications and elevation in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Lessee of said rejection together with the reason or reasons therefore, Lessee shall submit new or corrected plans, specifications and elevations meeting said objections within thirty (30) days of said notice. The provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans hereinabove provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved by the Executive Director. The Executive Director's acceptance of Lessee's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other

developmental duties imposed in the future upon Lessee by law. Lessee expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specification and elevations and any revisions thereto.

2. Changes After Initial Approval

Any changes made to plans by Lessee after initial approval of the Executive Director reasonably deemed to him or her to be material or substantial shall be submitted to him or her for acceptance in the same manner provided for in Paragraph A above.

B. Construction Documents

Prior to the commencement of any construction under this Article, Lessee shall furnish to the Executive Director a construction contract with one or more contractors licensed to do business in the State of Minnesota and competent to construct the work shown in the Plans approved pursuant to Paragraph A above, which plans shall be for the construction of all of the improvements or modifications shown in said Plans. All such contracts and bonds shall be approved in writing by the Executive Director prior to the commencement of such construction.

C. Construction of Improvements

Upon approval of the plans and specifications as provided for in Paragraphs A and B above, Lessee shall promptly commence construction of the Improvements in conformance with the plans as so approved and shall complete construction thereof as expeditiously as is practical.

D. Lessee to Bear All Costs

Subject to the terms and conditions of this Lease Agreement, Lessee specifically guarantees and agrees to bear all costs related to the construction and installation of said Improvements.

E. Progress Reports

Until construction of the Improvements has been completed, Lessee shall make reports in such detail and at such times as may reasonably be requested by DEDA as

to the actual progress of such construction.

F. Certificate of Completion

Promptly upon completion by Lessee, in accordance with this Lease Agreement, of the construction of any such Improvements, DEDA shall furnish to Lessee an appropriate certificate so certifying. No such certification shall be issued until all elements of the construction have been completed. Such certification by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Lessee undertaken pursuant to this Lease Agreement.

ARTICLE VI

SURRENDER OF POSSESSION

A. General

Upon the expiration or other termination of this Lease Agreement, Lessee's rights to use the Leased Property and the Leased Premises, facilities and equipment herein granted shall cease and Lessee shall, upon expiration or termination, promptly and in good condition surrender the same to DEDA. In the event that Lessee has in any way changed, altered or modified the Leased Property or the Leased Premises demised herein, other than those improvements approved as herein provided for, Lessee covenants to return the same to the condition they were in at the time of the signing of this Lease Agreement or, in the alternative, to pay DEDA for the cost of returning them to said condition unless waived by the Executive Director in writing. Upon termination, any Leasehold Improvements which have become part of the realty shall become part of the Leased Premises of DEDA, and the same, together with the Leased Property and the Leased Premises, shall be immediately returned to the control of DEDA. Any Leasehold Improvements not part of the realty shall be removed therefrom within fifteen (15) days after the termination of this Lease Agreement or the same shall be deemed to have been abandoned to DEDA and the right of the Lessee to possession thereof shall cease. Upon termination of this Lease Agreement, Lessee will waive any and all rights, if any, to relocation benefits under the Uniform Acquisition

Assistance and Relocation Act of 1974, as amended, and any laws or regulations promulgated with regard thereto which might arise out of this Lease Agreement.

B. Environmental Conditions

Upon termination of this Lease Agreement for any reason whatsoever, Lessee shall restore the Leased Property and the Leased Premises to good an environmental condition and state and shall pay all costs associated therewith including costs of clean-up if any, costs of environmental testing of any kind, costs of the preparation of any reports required as part of any such process and the costs, if any, associated with reviews and approvals required by any governmental agency having jurisdiction to conduct such reviews, along with any other costs associated therewith. Provided, however, that nothing herein shall require Lessee to perform clean-up with regard to conditions on or in the Leased Property or the Leased Premises which (i.) Lessee establishes existed thereon upon the commencement of this Lease Agreement, (ii.) which arise out of the acts or omissions of DEDA or its officers, agents, employees or contractors or (iii.) which have their source in the acts or omissions of a third party arising on or from property other than the Leased Property or the Leased Premises and which have migrated onto the Leased Premises by virtue of run-off, percolation or other natural means.

## ARTICLE VII

### PROVISION AGAINST LIENS

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, the Lessee shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Leased Property, the Leased Property or any part thereof which would materially or adversely affect the DEDA's interest in this Lease Agreement during the term of this Lease Agreement, provided that if Lessee shall first notify DEDA of its intention to do so, Lessee may, in



good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Lease Agreement to be subject to foreclosure by reason of such context.

B. Provision Against Assignments, Transfers or Change in Identity of Lessee

The parties hereto acknowledge that DEDA is relying upon the qualifications and identify of Lessee to operate the Leased Property and the Leased Premises. Therefore, except for the purposes of obtaining financing as hereinafter described or otherwise approved by this Lease Agreement, Lessee represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Leased Property, the Leased Premises, the Lessee, this Lease Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for mortgaging approved in writing by the Executive Director, Lessee will not make or create or suffer to be made any such transfer of Lessee's rights hereunder without the prior approval of DEDA.

ARTICLE VIII

INDEMNIFICATION

A. Generally by Lessee

Lessee will to the fullest extent permitted by law, protect, indemnify and save DEDA and its officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from any injury to or death of any person or from any damage to the Leased Property, the DEDA Equipment or the Leased Premises in or upon the Leased Property, the DEDA Equipment or the Leased Premises, or growing out of or in connection with the use or

non-use, condition or occupancy of the Leased Property, the DEDA Equipment or the Leased Premises or any part thereof and also, without limitation, any and all acts or operations related to the construction or installation of the Project on any portion of the Leased Property, the DEDA Equipment or the Leased Premises. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Lessee, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts. Provided that the indemnification provided for in this Paragraph shall not extend to any such liability covered by insurance provided by or for Lessee's benefit under the terms of this Lease Agreement subject to the limits of such insurance.

B. Environmental Indemnification.

In addition to the generality of the foregoing, Lessee hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and its officers, agents, servants and employees and any person who controls the DEDA within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Leased Property, the DEDA Equipment or the Leased Premises arising out of Lessee's use and occupancy of the Leased Premises or the Leased Property, the DEDA Equipment or both and that indemnification granted hereby shall include all costs of required clean-up, remediation, together with the costs incurred in proceedings before any court of law or administrative agency, including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans, as defined by the foregoing agencies, as may be necessary to meet the requirements of said agencies and any other costs and expenses of any kind whatsoever arising out of conditions existing on the Leased Property, the DEDA

Equipment or the Leased Premises

C. Generally by Lessor

Notwithstanding the foregoing, DEDA will to the fullest extent permitted by law, protect, indemnify and save Lessee and its officers, agents, servants, employees and any person who controls Lessee within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from any injury to or death of any person or damage to property in or upon the Leased Property or the Leased Premises arising out of and to the extent of the intentional or negligent acts or omissions of DEDA and its officers, agents, employees and contractors and for environmental conditions identified in the Environmental Report or established by Lessee as existing on the Leased Premises as of the commencement of this Lease Agreement.

D. Indemnification Procedures

Promptly after receipt by the indemnitee of notice of the commencement of any action with respect to which the indemnitor is required to indemnify such person under this Article, indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

ARTICLE IX

INSURANCE

Except for the permanent property insurance provided for in Subparagraph 1 of

Paragraph B below, Lessee shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to the Leased Property or the Leased Premises arising in any way out of or as a result of Lessee's occupancy of or use of the Leased Property or Leased Premises, carried in the names of the Lessee, any subtenant and the DEDA as their respective interests may appear, as follows:

A. Insurance During Construction

Lessee, prior to entering on the Leased Property for any construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain insurance of the type and in the amounts determined by the Executive Director to be appropriate to the construction work to be performed by Lessee and adequate to protect DEDA, Lessee and the Building, the Leased Property and the Leased Premises from liability arising therefrom:

1. Property Insurance

Lessee shall provide property insurance meeting the requirements set forth above.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than Five Million and 00/100ths (\$5,000,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

B. Permanent Insurance

1. Property Insurance

During the entire Term of the Lease Agreement, the Leased Premises, including all fixtures, equipment and machinery which are or become a part of the Leased Premises and the DEDA Equipment, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, by DEDA. Lessee agrees to reimburse DEDA for its costs of securing such insurance and that such reimbursement is included in the Rent as provided for in Paragraph A. of Article III above. DEDA agrees that all rights of subrogation are waived against Lessee and its officers, agents, servants and employees with regard thereto.

2. Liability Insurance

The Lessee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Two Million and No/100s (\$2,000,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of Two Million and No/100s (\$2,000,000.00) Dollars for Leased Premises damage liability. If person limits are specified, they shall be for not less than Two Million and No/100 (\$2,000,000.00) Dollars per person

and be for the same coverages. The DEDA shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability, including premises and operations coverage.
- b. Independent contractors--protective contingent liability.
- c. Personal injury.
- d. Owned, non-owned and hired vehicles.
- e. Contractual liability covering the indemnity obligations set forth herein.
- f. Products--completed operations.
- g. Property of Others.

3. Workers' Compensation

Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees liability insurance shall be carried in limits of One Hundred Thousand and No/100 (\$100,000.00) Dollars per employee.

C. Excess Coverage

In addition to the foregoing, Lessee shall secure and provide an "umbrella" insurance policy in the amount of not less than Five Million Dollars (\$5 Million) providing coverage in excess of that provided for in Paragraphs A and B above

D. Requirements for All Insurance

All insurance required in this Article X shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

E. Policies

The Lessee shall be required to supply to the DEDA certificates of insurance evidencing that Lessee has insurance meeting the requirements of this Lease Agreement. Lessee agrees to use its best efforts to supply such certificates in a form which will require the insurer to give the DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance.

## ARTICLE X

### LESSEE DEFAULTS AND REMEDIES THEREFORE

#### A. General Defaults and Remedies

##### 1. General Events of Default

The following shall be deemed to be general events of default by Lessee under the terms and conditions of this Lease Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable.

- a. Lessee shall fail to pay, after receiving written notice, any payment due to DEDA under Article III above within ten (10) days of the date said payment is due.
- b. Lessee shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of Lessee pursuant to this Lease Agreement and such failure shall continue for a period of thirty (30) calendar days after DEDA has, pursuant to the provisions of this Lease Agreement, given written notice to Lessee of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- c. Except as otherwise specifically permitted herein, Lessee shall permit any liens on the Leased Property or the Leased Premises with the exception of assignments approved pursuant to the terms of this Lease Agreement or liens contested in accordance with Article VIII above.
- d. Lessee makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Lessee or its business; or Lessee files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any

present or future bankruptcy or insolvency statute, law or regulation; or Lessee files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Lessee's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of Lessee of any trustee, receiver or liquidator of any material part of Lessee's properties.

2. General Remedies

Except as otherwise set forth in this Lease Agreement, DEDA shall have the following remedies in the event of a default by Lessee:

- a. Terminate this Lease Agreement and, at its discretion, retake the Leased Property and the Leased Premises from Lessee, subject to rights conferred on Lessee by applicable State Statute.
- b. Seek and be entitled to monetary damages from Lessee for damages incurred by DEDA as a result of Lessee's default.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Lessee's violation of the terms and conditions of this Lease Agreement or to compel Lessee's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. Non-Waiver

The waiver by DEDA of any default on the part of Lessee or the failure of DEDA to declare default on the part of Lessee of any of its obligations pursuant to this Lease Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Lessee of the same or of any other obligation of Lessee hereunder. And, to be effective, any waiver of any default by Lessee hereunder shall be in writing by



DEDA.

C. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Lease Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

D. Attorneys' Fees

In the event that either party is in default of any of the terms and conditions of this Lease Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XI

FORCE MAJEURE

Under the terms of this Lease Agreement, neither the DEDA nor Lessee shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations under this Lease Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of contractors or subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Lease Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XII

REPRESENTATIONS BY DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted municipal corporation under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and that it has full power and authority to enter into this Lease Agreement and perform its obligations hereunder.
- B. There are no actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any Leased Premises of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or Leased Premises of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA has investigated and has no knowledge that a DEDA Council Member or other member, official, or employee of DEDA is directly or indirectly financially interested in this Lease Agreement or in any transactions concluded in connection with this Lease Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Lease Agreement or otherwise delivered to any third parties under this Lease Agreement to be true, correct and complete in all material respects.

### ARTICLE XIII

#### LESSEE'S REPRESENTATIONS AND WARRANTIES

Lessee represents and warrants that as of the date hereof:

- A. It is a lawfully constituted corporation under the laws of the State of Utah, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Lease Agreement and to perform its obligations hereunder.
- B. That it is fully competent to lease the Leased Property and the Leased Premises under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State and Federal laws,

wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.

- C. That there are no actions, suits or proceedings pending or, to the knowledge of Lessee, threatened against Lessee or any leased premises in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Lessee, could have a material adverse affect upon Lessee or any Leased Property or Leased Premises, and that Lessee is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- E. Lessee shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Lease Agreement delivered to any third party under this Lease Agreement to be true, correct and complete in all material and respects. If necessary Lessee agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

#### ARTICLE XIV

##### RUNS WITH THE LAND

This Lease Agreement shall be deemed to run with the land and shall enure to the benefit of the parties hereto and to their successors and assigns.

#### ARTICLE XV

##### SALE OF DEDA EQUIPMENT

Notwithstanding anything in the foregoing to the contrary, the Executive Director may, at any time and in the exercise of his or her discretion, determine to sell any or all of the DEDA equipment as he or she deems it to be in the best interest of DEDA. If the DEDA Equipment

is not being used by Lessee in the course of its aircraft maintenance, repair and overhaul business, the Executive Director's decision may be at the request of Lessee or may be of his or her own initiation. If Lessee is using any such DEDA equipment in the course of business, the Executive Director may sell said DEDA Equipment only with the prior written approval of Lessee. The manner and method of such sale shall be determined by the Executive Director and shall be intended to produce the highest return to DEDA. If the Executive Director requests Lessee's assistance in selling any such equipment, Lessee shall be entitled to compensation in an amount commensurate with the market value of the services provided by Lessee

## ARTICLE XVI

### NOTICES

Any notice, demand or other communication under this Lease Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA:

DEDA of Duluth  
Room 418 City Hall  
411 West First Street  
Duluth, MN 55802

In the case of Lessee:

Borsight Inc.  
2535 Airport Road  
Ogden, UT 84450

ARTICLE XVII  
ELECTRONIC SIGNATURES

The parties agree that this Agreement may be executed electronically by the parties and that the Agreement electronically executed shall be binding on the parties as provided for in Minnesota Statutes Chapter 325 L.

ARTICLE XVIII  
APPLICABLE LAW

This Lease Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY, an economic  
development authority

BORSIGHT, INC., a Utah  
Corporation

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its President  
"Lessee"

Attest:

By \_\_\_\_\_  
Secretary

Approved:

---

Assistant City Attorney

Countersigned:

---

City Auditor

This Lease Drafted by:

Robert E. Asleson  
Attorney for DEDA  
Room 440 City Hall  
Duluth, MN 55802  
(218) 730-5490