

REFINITIV

DELTA REPORT

10-Q

SKYH - SKY HARBOUR GROUP CORP

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

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TOTAL DELTAS 4602

 CHANGES 156

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **September 30, 2023** **March 31, 2024**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO
Commission File Number: 001-39648

Sky Harbour Group Corporation
(Exact name of registrant as specified in its Charter)

Delaware

85-2732947

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

136 Tower Road, Suite 205

Westchester County Airport

White Plains, NY

10604

(Address of principal executive offices)

(Zip Code)

(212) 554-5990

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of Class	Trading Symbols	Name of Exchange on Which Registered
Class A common stock, par value \$0.0001 per share	SKYH	NYSE American LLC
Warrants, each whole warrant exercisable for one share of Class A common stock at an exercise price of \$11.50 per share	SKYH WS	NYSE American LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (\$232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. (See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act).

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of **November 3, 2023** **May 6, 2024**, **21,848,410** **24,638,948** shares of Class A common stock, par value \$0.0001 per share, and 42,046,356 shares of Class B common stock, par value \$0.0001 per share, were issued and outstanding, respectively.

SKY HARBOUR GROUP CORPORATION

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ITEM 1. FINANCIAL STATEMENTS

SKY HARBOUR GROUP CORPORATION AND SUBSIDIARIES CONSOLIDATED BALANCE SHEETS (in thousands, except share data)

	September 30, 2023		December 31, 2022		March 31, 2024		December 31, 2023	
	(unaudited)	(audited)	(unaudited)	(audited)	(unaudited)	(audited)	(unaudited)	(audited)
Assets								
Cash	\$ 2,471	\$ 2,174	\$ 2,556	\$ 60,257				
Restricted cash	34,289	39,222	99,453	12,009				
Investments	16,832	24,895	36,990	11,866				
Restricted investments	80,183	114,648	20,213	88,213				
Prepaid expenses and other assets	3,835	4,448	8,157	6,003				

Cost of construction	48,153	48,242	71,695	64,212
Constructed assets, net	78,110	39,709	76,835	77,283
Right-of-use assets	56,829	56,716	116,651	70,527
Long-lived assets, net	12,075	1,150	11,839	11,829
Total assets	\$ 332,777	\$ 331,204	\$ 444,389	\$ 402,199
 Liabilities and equity				
Accounts payable, accrued expenses and other liabilities	\$ 13,903	\$ 14,184	\$ 13,816	\$ 16,740
Operating lease liabilities	55,027	53,531	116,357	69,437
Loans payable and finance lease liabilities	10,561	-	8,865	9,311
Bonds payable, net of debt issuance costs and premiums	162,368	162,210	162,471	162,420
Warrants liability	2,904	2,904	27,820	12,045
Total liabilities	244,763	232,829	329,329	269,953
 Commitments and contingencies (Note 14)				
Commitments and contingencies (Note 15)				
 Stockholders' equity				
Preferred stock; \$0.0001 par value; 10,000,000 shares authorized as of September 30, 2023; none issued and outstanding	-	-	-	-
Class A common stock, \$0.0001 par value; 200,000,000 shares authorized; 15,252,574 and 14,962,831 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	1	1		
Class B common stock, \$0.0001 par value; 50,000,000 shares authorized; 42,046,356 and 42,192,250 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	4	4		
Preferred stock; \$0.0001 par value; 10,000,000 shares authorized as of March 31, 2024; none issued and outstanding	-	-	-	-
Class A common stock, \$0.0001 par value; 200,000,000 shares authorized; 24,537,559 and 24,165,523 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively			2	2
Class B common stock, \$0.0001 par value; 50,000,000 shares authorized; 42,046,356 and 42,046,356 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively			4	4
Additional paid-in capital	31,139	29,560	91,788	88,198
Accumulated deficit	(8,791)	(3,184)	(38,301)	(19,361)
Accumulated other comprehensive income (loss)	298	(102)		
Accumulated other comprehensive income			690	312
Total Sky Harbour Group Corporation stockholders' equity	22,651	26,279	54,183	69,155
 Non-controlling interests	65,363	72,096	60,877	63,091
Total equity	88,014	98,375	115,060	132,246
 Total liabilities and equity	\$ 332,777	\$ 331,204	\$ 444,389	\$ 402,199

See accompanying Notes to Unaudited Consolidated Financial Statements

SKY HARBOUR GROUP CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)
(Unaudited)

Three Months Ended	Nine months ended	Three Months Ended
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	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022	March 31, 2024	March 31, 2023
Revenue:						
Rental revenue	\$ 2,502	\$ 431	\$ 5,337	\$ 1,236	\$ 2,404	\$ 1,107
Total revenue	<u>2,502</u>	<u>431</u>	<u>5,337</u>	<u>1,236</u>	<u>2,404</u>	<u>1,107</u>
Expenses:						
Operating	1,675	1,228	5,179	3,652	2,083	1,792
Depreciation	670	148	1,650	447	629	450
Loss on impairment of long-lived assets	-	-	-	248		
General and administrative	3,556	3,599	10,838	12,136	4,916	3,549
Total expenses	<u>5,901</u>	<u>4,975</u>	<u>17,667</u>	<u>16,483</u>	<u>7,628</u>	<u>5,791</u>
Operating loss	(3,399)	(4,544)	(12,330)	(15,247)	(5,224)	(4,684)
Other (income) expense:						
Interest expense	234	-	316	-	194	-
Unrealized gain on warrants	(1,597)	(1,452)	-	(2,904)		
Unrealized loss on warrants					16,188	4,210
Other income	(37)	-	(252)	-	(407)	(133)
Total other (income) expense	<u>(1,400)</u>	<u>(1,452)</u>	<u>64</u>	<u>(2,904)</u>	<u>15,975</u>	<u>4,077</u>
Net loss	(1,999)	(3,092)	(12,394)	(12,343)	(21,199)	(8,761)
Net loss attributable to non-controlling interests	(1,810)	(2,479)	(6,788)	(8,632)	(2,259)	(2,565)
Net loss attributable to Sky Harbour Group Corporation shareholders	\$ (189)	\$ (613)	\$ (5,606)	\$ (3,711)	\$ (18,940)	\$ (6,196)
Loss per share						
Basic	\$ (0.01)	\$ (0.04)	\$ (0.37)	\$ (0.27)	\$ (0.78)	\$ (0.41)
Diluted	\$ (0.01)	\$ (0.04)	\$ (0.37)	\$ (0.27)	\$ (0.78)	\$ (0.41)
Weighted average shares						
Basic	15,245	14,949	15,132	13,628	24,274	14,983
Diluted	<u>15,245</u>	<u>14,949</u>	<u>15,132</u>	<u>13,628</u>	<u>24,274</u>	<u>14,983</u>

See accompanying Notes to Unaudited Consolidated Financial Statements

SKY HARBOUR GROUP CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(in thousands)
(Unaudited)

	Three Months Ended		Nine Months Ended		Three Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022	March 31, 2024	
					March 31, 2023	March 31, 2023
Net loss	\$ (1,999)	\$ (3,092)	\$ (12,394)	\$ (12,343)	\$ (21,199)	\$ (8,761)
Other comprehensive income (loss), before related income taxes:						
Unrealized gain (loss) on available-for-sale securities	204	(147)	521	(231)	395	223

Total comprehensive loss	\$ (1,795)	\$ (3,239)	\$ (11,873)	\$ (12,574)	\$ (20,804)	\$ (8,538)
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See accompanying Notes to Unaudited Consolidated Financial Statements

SKY HARBOUR GROUP CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(in thousands, except share data)

(Unaudited)

	Redeemable Sky Series B		Class A		Class B		Additional		Accumulated Other		Total		Non- Controlling Interest		Class A	
	Preferred Units		Common Stock		Common Stock		Paid-in Capital	Accumulated Deficit	Comprehensive Income (Loss)	Stockholders' Equity	Members Equity	Controlling Interests	Total Equity	Common Stock	Common Stock	Common Stock
		Shares	Amount	Shares	Amount	Shares	Amount							Shares	Amount	
Balance at December 31, 2022	-	\$ -	14,962,831	\$ 1	42,192,250	\$ 4	\$ 29,560	\$ (3,184)	\$ (102)	\$ 26,279	\$ -	\$ 72,096	\$ 98,375			
Balance at December 31, 2023	-	\$ -												24,165,523	\$ 2	
Share-based compensation	-	-	-	-	-	-	-	393	-	-	393	-	85	478	-	-
Exchange of Class B Common Stock	-	-	145,894	-	(145,894)	-	184	-	-	184	-	(184)	-			
Vesting of restricted stock units	-	-												176,166		
Shares withheld for payment of employee taxes	-	-												(57,833)		
Exercise of warrants	-	-												253,703		
Payment of equity issuance costs	-	-														
Other comprehensive income	-	-	-	-	-	-	-	-	177	177	-	-	177	-	-	-
Net loss	-	-	-	-	-	-	-	(6,196)	-	(6,196)	-	(2,565)	(8,761)	-	-	-
Balance at March 31, 2023	-	\$ -	15,108,725	\$ 1	42,046,356	\$ 4	\$ 30,137	\$ (9,380)	\$ 75	\$ 20,837	\$ -	\$ 69,432	\$ 90,269			
Share-based compensation	-	-	-	-	-	-	-	499	-	-	499	-	81	580		
Vesting of restricted stock units	-	-	124,261	-	-	-	-	-	-	-	-	-	-			
Exercise of warrants	-	-	225	-	-	-	-	3	-	-	3	-	-	3		
Other comprehensive income	-	-	-	-	-	-	-	-	38	38	-	-	38	-	-	-

Net income (loss)	-	-	-	-	-	-	-	778	-	-	778	-	-	(2,412)	(1,634)
Balance at	-	\$	-	15,233,211	\$	1	42,046,356	\$	4	\$	30,639	\$	(8,602)	\$	113
June 30, 2023	-		-												\$ 67,101
Share-based compensation	-	-	-	-	-	-	-	500	-	-	-	-	500	-	72
Vesting of restricted stock units	-	-	-	19,363	-	-	-	-	-	-	-	-	-	-	-
Other comprehensive income	-	-	-	-	-	-	-	-	-	185	185	-	-	-	185
Net loss	-	-	-	-	-	-	-	(189)	-	-	(189)	-	-	(1,810)	(1,999)
Balance at	-	\$	-	15,252,574	\$	1	42,046,356	\$	4	\$	31,139	\$	(8,791)	\$	298
September 30, 2023	-		-												\$ 65,363
Balance at	-	\$	-	-	-	-	-	-	-	-	-	-	-	24,537,559	\$ 2,4
March 31, 2024	-		-	-	-	-	-	-	-	-	-	-	-	-	-

	Redeemable Series								Accumulated							
	B		Class A		Class B		Additional		Other		Total		Non-		Total	
	Preferred Units		Common Stock		Common Stock		Paid-in Capital		Accumulated Deficit		Comprehensive Loss		Stockholders' Equity	Members Equity	Controlling Interests	(Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount	Capital		Deficit		Loss					
Balance at																
December 31, 2021	-	\$ 54,029	-	\$ -	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 16,931	\$ -	\$ 16,931	
Sky incentive compensation prior to recapitalization	-	-	-	-	-	-	-	-	-	-	-	-	23	-	23	
Net income (loss) prior to recapitalization	-	-	-	-	-	-	-	-	-	-	-	-	(1,247)	-	(1,247)	
Yellowstone Transaction and recapitalization	-	(54,029)	14,937,581	1	42,192,250	4	28,681	-	-	-	-	28,686	(15,763)	81,024	94,003	
Sky incentive compensation following recapitalization	-	-	-	-	-	-	-	-	-	-	-	-	63	-	63	
Net loss following recapitalization	-	-	-	-	-	-	-	-	(15,763)	-	-	(15,763)	-	(2,504)	(18,267)	
Balance at																
March 31, 2022	-	\$ -	14,937,581	\$ 1	42,192,250	\$ 4	\$ 28,681	\$ (15,763)	\$ -	\$ 12,923	\$ -	\$ 78,583	\$ 91,506			
Share-based compensation	-	-	-	-	-	-	160	-	-	-	160	-	-	85	245	
Other comprehensive income (loss)	-	-	-	-	-	-	-	-	(84)	-	(84)	-	-	-	(84)	
Net income (loss)	-	-	-	-	-	-	12,665	-	-	12,665	-	-	(2,402)	-	10,263	

Balance	at																									
June	30,																									
2022		-\$	\$	14,937,581	\$	1	\$	42,192,250	\$	4	\$	28,841	\$	(3,098)	\$	(84)	\$	25,664	\$	-\$	\$	76,266	\$	101,930		
Share-based																										
compensation															298							298		85	383	
Issuance of initial																										
commitment																										
shares								25,000							112							112		-	-	112
Exercise	of																									
warrants								250							3							3		-	-	3
Other																										
comprehensive																										
income (loss)																										
Net loss																(613)						(147)		(147)		(147)
Balance	at																									
September	30,																									
2022		-\$	\$	14,962,831	\$	1	\$	42,192,250	\$	4	\$	29,254	\$	(3,711)	\$	(231)	\$	25,317	\$	-\$	\$	73,872	\$	99,189		

	Accumulated										
	Class A		Class B		Additional		Other		Total	Non-	Total
	Common Stock		Common Stock		Paid-in	Accumulated	Comprehensive	Stockholders'	Controlling	Equity	
	Shares	Amount	Shares	Amount	Capital	Deficit	Income (Loss)	Equity	Interests	(Deficit)	
Balance at December 31, 2022	14,962,831	\$ 1	42,192,250	\$ 4	\$ 29,560	\$ (3,184)	\$ (102)	26,279	\$ 72,096	\$ 98,375	
Share-based compensation	-	-	-	-	393	-	-	393	85	478	
Exchange of Class B Common Stock	145,894	-	(145,894)	-	184	-	-	184	(184)	-	
Other comprehensive income	-	-	-	-	-	-	-	177	177	-	177
Net loss	-	-	-	-	-	(6,196)	-	(6,196)	(2,565)	(8,761)	
Balance at March 31, 2023	15,108,725	\$ 1	42,046,356	\$ 4	\$ 30,137	\$ (9,380)	\$ 75	\$ 20,837	\$ 69,432	\$ 90,269	

See accompanying Notes to Unaudited Consolidated Financial Statements

SKY HARBOUR GROUP CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(Unaudited)

	Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	March	March
			31, 2024	31, 2023
Cash flows from operating activities:				
Net loss	\$ (12,394)	\$ (12,343)	\$ (21,199)	\$ (8,761)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	1,650	447	629	450
Straight-line rent adjustments, net	(188)	14	(19)	(25)
Equity-based compensation	1,630	826	1,032	478
Loss on impairment of long-lived assets	-	248		
Non-cash operating lease expense	1,409	1,451	799	485

Unrealized loss (gain) on warrants	-	(2,904)	
Unrealized loss on warrants		16,188	4,210
Changes in operating assets and liabilities:			
Prepaid expenses and other assets	674	(1,768)	(703)
Right-of-use asset initial direct costs	(26)	(9,555)	(3)
Accounts payable, accrued expenses and other liabilities	982	(1,698)	(1,154)
Net cash used in operating activities	(6,263)	(25,282)	(4,430)
Cash flows from investing activities:			
Purchases of long-lived assets	(597)	(645)	(326)
Payments for cost of construction	(40,043)	(35,597)	(9,068)
Investment in notes receivable, net	(2,040)	(1,955)	-
Net cash provided by acquisition of business	1,793	-	
Purchases of available for sale investments	(5,427)	(29,996)	(95,790)
Purchases of held-to-maturity investments	(103,994)	(193,822)	
Proceeds from available for sale investments	14,011	-	71,061
Proceeds from held-to-maturity investments	138,434	48,466	67,997
Net cash provided by (used in) investing activities	2,137	(213,549)	40,044
Net cash provided by investing activities			33,874
Cash flows from financing activities:			
Proceeds from issuance of BOC PIPE	-	45,000	
Proceeds from Yellowstone trust	-	15,691	
Proceeds from exercise of warrants	3	3	1,474
Principal payments for loans payable and finance leases	(513)	-	(446)
Refund of debt issuance costs	-	1,249	
Payments for equity issuance costs	-	(9,153)	(43)
Net cash (used in) provided by financing activities	(510)	52,790	
Payments of employee taxes related to vested equity awards		(686)	-
Net cash provided by financing activities		299	
Net decrease in cash and restricted cash	(4,636)	(186,041)	
Net increase in cash and restricted cash		29,743	31,760
Cash and restricted cash, beginning of year	41,396	203,935	72,266
Cash and restricted cash, end of period	\$ 36,760	\$ 17,894	\$ 102,009
			\$ 73,156

See accompanying Notes to Unaudited Consolidated Financial Statements

SKY HARBOUR GROUP CORPORATION AND SUBSIDIARIES

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

SEPTEMBER 30, 2023 MARCH 31, 2024

(in thousands, except share data)

1. Organization and Business Operations

Sky Harbour Group Corporation ("SHG") is a holding company organized under the laws of the State of Delaware and, through its main operating subsidiary, Sky Harbour LLC and its subsidiaries (collectively, "Sky"), is an aviation infrastructure development company that develops, leases and manages general aviation hangars for business aircraft across the United States. Sky Harbour Group Corporation and its consolidated subsidiaries are collectively referred to as the "Company."

The Company is organized as an umbrella partnership-C corporation, or "Up-C", structure in which substantially all of the operating assets of the Company are held by Sky and SHG's only substantive assets are its equity interests in Sky (the "Sky Common Units"). As of **September 30, 2023** **March 31, 2024**, SHG owned approximately **26.2%** **36.9%** of the Sky Common Units and the prior holders of Sky Common Units (the "LLC Interests") owned approximately **73.8%** **63.1%** of the Sky Common Units and control the Company through their ownership of the Company's Class B Common Stock, \$0.0001 par value ("Class B Common Stock").

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited consolidated financial statements and the related notes (the "Financial Statements") have been prepared in conformity with the U.S. Securities and Exchange Commission (the "SEC") requirements for quarterly reports on Form 10-Q, and consequently exclude certain disclosures normally included in audited consolidated financial statements prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). These Financial Statements include the accounts of the Company and its consolidated subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. The Financial Statements should be read in conjunction with the audited consolidated financial statements and the notes contained in the Company's Annual Report on Form 10-K for the year ended December 31, **2022, 2023**, which includes additional disclosures and a summary of the Company's significant accounting policies. In the Company's opinion, these Financial Statements include all adjustments, consisting of normal recurring items, considered necessary by management to fairly state the Company's results of operation, financial position, and cash flows.

Certain historical amounts have been reclassified to conform to the current year's presentation.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Such estimates include assumptions used within impairment analyses, estimated useful lives of depreciable assets and amortizable costs, estimates of inputs utilized in determining the fair value of financial instruments such as warrants, estimates and assumptions related to right-of-use assets and operating lease liabilities, and estimates and assumptions used in the determination of the fair value of assets acquired and liabilities assumed in the business combination. Actual results could differ materially from those estimates.

Risks and Uncertainties

The Company's operations have been limited to-date. For most of its history, the Company has been engaged in securing access to land through ground leases and developing and constructing aviation hangars. The major risks faced by the Company is its future ability to obtain additional tenants for the facilities that it constructs, and to contract with such tenants for rental income in an amount that is sufficient to meet the Company's financial obligations, including increasing construction costs due to inflation and increased borrowing costs to the extent that the Company incurs additional indebtedness.

Liquidity and Capital Resources

As a result of ongoing construction projects and business development activities, including the development of aircraft hangars and the leasing of available hangar space, the Company has incurred recurring losses and negative cash flows from operating activities since its inception. The Company expects to continue to invest in such activities and generate operating losses in the near future.

The Company obtained long-term financing through bond and equity offerings to fund its construction, lease, and operational commitments, and believes its liquidity is sufficient to allow continued operations for more than one year after the date these financial statements are issued.

Significant Accounting Policies

Basis of Consolidation

SHG is deemed to have a controlling interest of Sky through its appointment as the Managing Member of Sky, in which SHG has control over the affairs and decision-making of Sky. The interests in Sky not owned by the Company are presented as non-controlling interests. Sky's ownership percentage in each of its consolidated subsidiaries is 100%, unless otherwise disclosed. **There are no unconsolidated variable interest entities ("VIEs") in which Sky is considered to be the primary beneficiary.**

Cost of Construction

Cost of construction on the consolidated balance sheets is carried at cost. The cost of acquiring an asset includes the costs necessary to bring a capital project to the condition necessary for its intended use. Costs are capitalized once the construction of a specific capital project is probable. Construction labor and other direct costs of construction are capitalized. Professional fees for engineering, procurement, consulting, and other soft costs that are directly identifiable with the project and are considered an incremental direct cost are capitalized. Activities associated with internally manufactured hangar buildings, including materials, direct manufacturing labor, and manufacturing overhead directly identifiable with such activities are allocated to our construction projects and capitalized. The Company allocates a portion of its internal salaries to both capitalized cost of construction and to general and administrative expense based on the percentage of time certain employees worked in the related areas. Interest, net of the amortization of debt issuance costs and premiums, and net of interest income earned on bond proceeds, is also capitalized until the capital project is completed.

Once a capital project is complete, the Company begins to depreciate the constructed asset on a straight-line basis over the lesser of the life of the asset or the remaining term of the related ground lease, including expected renewal terms.

Leases

The Company accounts for leases under Accounting Standards Codification ("ASC") Topic 842, Leases. The Company determines whether a contract contains a lease at the inception of the contract. ASC Topic 842 requires lessees to recognize lease liabilities and right-of-use ("ROU") assets for all operating leases with terms of more than 12 months on the consolidated balance sheets. The Company has made an accounting policy election to not recognize leases with an initial term of 12 months or less on the Company's consolidated balance sheets and will result in recognizing those lease payments in the consolidated statements of operations on a straight-line basis over the lease term. When management determines that it is reasonably certain that the Company will exercise its options to renew the leases, the renewal terms are included in the lease term and the resulting ROU asset and lease liability balances.

The Company has lease agreements with lease and non-lease components; the Company has elected the accounting policy to not separate lease and non-lease components for all underlying asset classes. The Company has not elected to capitalize any interest cost that is implicit within its operating leases into cost of construction on the consolidated balance sheet, but instead, expenses its ground lease cost as a component of operating expenses in the consolidated statements of operations.

Warrants liability

On January 25, 2022 (the "Closing Date") we completed the transactions (the "Yellowstone Transaction") contemplated by the Equity Purchase Agreement, dated as of August 1, 2021 (the "Equity Purchase Agreement"), between SHG's legal predecessor, Yellowstone Acquisition Company ("Yellowstone"), and Sky. The Company accounts for the warrants assumed its Warrants (as defined in the Yellowstone Transaction (see Note 9.10 — Warrants) in accordance with the guidance contained in ASC Topic 815, "Derivatives and Hedging" ("ASC 815"), under which warrants that do not meet the criteria for equity classification and must be recorded as derivative liabilities. Accordingly, the Company classifies the warrants Warrants as liabilities carried at their fair value and adjusts the warrants to fair value at each reporting period. This liability is subject to re-measurement at each balance sheet date until the warrants are exercised or expire, and any change in fair value is recognized in the consolidated statement of operations.

Revenue recognition

The Company leases the hangar facilities that it constructs to third parties. The lease agreements are either on a month-to-month basis or have a defined term and may have options to extend the term. Some of the leases contain options to terminate the lease by either party with given notice. There are no options given to the lessee to purchase the underlying assets. Rental revenue is recognized in accordance with ASC Topic 842, Leases (see Note 7.8 — Leases) and includes fixed payments of cash rents, which represents revenue each tenant pays in accordance with the terms of its respective lease and is recognized on a straight-line basis over the term of the lease. Rental revenue and the corresponding rent and other receivables are recorded net of any concessions and uncollectible tenant receivables for all periods presented. The Company evaluates the collectability of tenant receivables for payments required under the lease agreements. If the Company determines that collectability is not probable, the Company recognizes any difference between revenue amounts recognized to date under ASC 842 and payments that have been collected from the lessee, including any additional rent or lease termination fees, as a current period adjustment to rental revenue.

Variable lease payments consist of tenant reimbursements for common area maintenance, utilities, and operating expenses of the property, and various other fees, including fees associated with the delivery of aircraft fuel, late fees, and lease termination fees. Variable lease payments are charged based on the terms and conditions included in the respective tenant leases and are recognized in the same period as the expenses are incurred. For the three and months ended nine March 31, 2024, rental revenue includes \$379 of variable lease payments. For the three months ended September 30, March 31, 2023, rental revenue includes \$920 and \$1,224 \$117 of variable lease payments, respectively. Variable lease revenue recognized during the three and nine months ended September 30, 2023 included a negotiated lease termination fee received from a tenant of two hangars at OPF (as defined in Note 4 — Cost of Construction and Constructed Assets) whereby the Company agreed to release the tenant from its lease obligations in exchange for

approximately 8.5 months of additional rent. For the three and nine months ended September 30, 2022, rental revenue includes \$28 and \$96 of variable lease payments, respectively. payments.

As of September 30, 2023 March 31, 2024 and December 31, 2022 2023, the deferred rent receivable included in prepaid expenses and other assets was \$304 \$403 and \$83, \$367, respectively. Rent received in advance represents tenant payments received prior to the contractual due date, and is included in accounts payable, accrued expenses, and other liabilities. Rent received in advance consisted of \$175 \$359 and \$95 \$241 as of September 30, 2023 March 31, 2024 and December 31, 2022 2023, respectively.

For the three and nine months ended September 30, 2023 there were two tenants that individually accounted for more than 10% March 31, 2024 of the Company's revenue. The Company derived approximately 46% and 38% 10% of its revenue from two tenants for the three and nine months ended September 30, 2023, respectively. one tenant. For the three and nine months ended September 30, 2022, March 31, 2023 the Company derived approximately 82% and 87% 45% of its revenue from two three tenants, respectively, including 20% from a single tenant.

Income Taxes

SHG is classified as a corporation for Federal income tax purposes and is subject to U.S. Federal and state income taxes. SHG includes in income, for U.S. Federal income tax purposes, its allocable portion of income from the "pass-through" entities in which it holds an interest, including Sky. The "pass-through" entities, are not subject to U.S. Federal and certain state income taxes at the entity level, and instead, the tax liabilities with respect to taxable income are passed through to the members, including SHG. As a result, prior to the Yellowstone Transaction, Sky was not subject to U.S. Federal and certain state income taxes at the entity level.

The Company follows the asset and liability method of accounting for income taxes. This method gives consideration to the future tax consequences associated with the differences between the financial accounting and tax basis of the assets and liabilities as well as the ultimate realization of any deferred tax asset resulting from such differences, as well as from net operating losses and other tax-basis carryforwards. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized. When a valuation allowance is increased or decreased, a corresponding tax expense or benefit is recorded.

The Company recorded income tax expense of \$0 and the effective tax rate was 0.0% for the three and nine months ended September 30, 2023 March 31, 2024 and 2022 2023. The effective income tax rate for the three and nine months ended September 30, 2023 March 31, 2024 and 2022 2023 differs from the federal statutory rate of 21% primarily due to a full valuation allowance against net deferred tax assets as it is more likely than not that the deferred tax assets will not be realized due to the cumulative losses sustained by the Company to date.

Recently Adopted Issued Accounting Pronouncements

Credit Losses Segment Reporting (Topic 326 280)

In June 2016, November 2023, the FASB issued ASU No.2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which is intended to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. The disclosure requirements included in ASU No.2023-07 are required for all public entities, including entities with a single reportable segment. ASU No.2023-07 is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, and early adoption is permitted. The guidance is required to be applied on a retrospective basis. The Company is currently evaluating the impact of the standard on our consolidated financial statement disclosures.

Income Taxes (Topic 740)

In December 2023, the FASB issued ASU No. 2016-2023-13-09, *Financial Instruments - Credit Losses Income Taxes (Topic 326) 740: Measurement of Credit Losses Improvements to Income Tax Disclosures*. The amendments in this update apply to all entities that are subject to Topic 740, Income Taxes. The standard requires disaggregated information about a reporting entity's effective tax rate reconciliation as well as information on Financial Instruments ("ASU" income taxes paid. The amendments in this update are effective for annual periods beginning after 2016 December 15, 2024. -13"). Subsequent The guidance will be applied on a prospective basis with the option to apply the issuance of ASU 2016-13, the FASB clarified the guidance through several ASUs, standard retrospectively. Early adoption is permitted. The collective new guidance (ASC 326) generally requires that credit losses be reported using an expected losses model rather than the incurred losses model that Company is currently used and establishes additional evaluating the impact of this updated standard on its disclosures related to credit risks. The Company adopted this guidance using the modified retrospective method in the first quarter of fiscal year 2023. The adoption did not have a material impact on the Company's condensed consolidated financial statements.

3. Investments and Restricted Investments Rapidbuilt Acquisition

Investments of the Company's cash in various U.S. Treasury securities have been classified as available-for-sale and are carried at estimated fair value utilizing Level 1 inputs as determined based upon quoted market prices.

Pursuant to provisions within the Master Indenture of the Series 2021 Bonds, as defined in Note 8 — *Bonds payable, loans payable, and interest*, the Company invests the funds held in the restricted trust bank accounts in various U.S. Treasury securities. Therefore, such investments are reported as "Restricted investments" in the accompanying consolidated balance sheets. Unrealized losses on certain of the Company's investments and restricted investments are primarily attributable to changes in interest rates. The

Company does not believe the unrealized losses represent impairments because the unrealized losses are due to general market factors. The Company has not recognized an allowance for expected credit losses related to its investments or restricted investments as the Company has not identified any unrealized losses attributable to credit factors during the three and nine months ended September 30, 2023. The held-to-maturity restricted investments are carried on the consolidated balance sheet at amortized cost. As of September 30, 2023, the Company has the ability and intent to hold these restricted investments until maturity, and as a result, the Company would not expect the value of these investments to decline significantly due to a sudden change in market interest rates. The fair value of the Company's restricted investments is estimated utilizing Level 1 inputs including prices for U.S. Treasury securities with comparable maturities on active markets.

The following tables are summaries of the amortized cost, unrealized gains, unrealized losses, and fair value by investment type as of September 30, 2023 and December 31, 2022:

	September 30, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Investments, available for sale:				
U.S. Treasuries	\$ 16,534	\$ 298	\$ -	\$ 16,832
Total investments	\$ 16,534	\$ 298	\$ -	\$ 16,832
Restricted investments, held-to-maturity:				
U.S. Treasuries	80,183	599	(1,114)	79,668
Total restricted investments	\$ 80,183	\$ 599	\$ (1,114)	\$ 79,668
	December 31, 2022			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Investments, available for sale:				
U.S. Treasuries	\$ 24,997	\$ 65	\$ (167)	\$ 24,895
Total investments	\$ 24,997	\$ 65	\$ (167)	\$ 24,895
Restricted investments, held-to-maturity:				
U.S. Treasuries	114,648	299	(1,991)	112,956
Total restricted investments	\$ 114,648	\$ 299	\$ (1,991)	\$ 112,956

The following table sets forth the maturity profile of the Company's investments and restricted investments as of September 30, 2023:

	Investments	Restricted Investments
Due within one year	\$ 16,832	\$ 63,432
Due one year through five years	-	16,751
Total	\$ 16,832	\$ 80,183

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4. Cost of Construction and Constructed Assets

The Company's portfolio as of September 30, 2023 includes the following completed and in-development projects:

- Sugar Land Regional Airport ("SGR"), Sugar Land, TX (Houston area);
- Miami-Opa Locka Executive Airport ("OPF"), Opa-Locka, FL (Miami area);
- Nashville International Airport ("BNA"), Nashville, TN;
- Centennial Airport ("APA"), Englewood, CO (Denver area);
- Phoenix Deer Valley Airport ("DVT"), Phoenix, AZ; and
- Addison Airport ("ADS"), Addison, TX (Dallas area).

Constructed assets, net, and cost of construction, consists of the following:

	September 30, 2023	December 31, 2022
Constructed assets, net of accumulated depreciation:		
Buildings, SGR, BNA, and OPF (Phase I)	\$ 80,611	\$ 40,921
Accumulated depreciation	(2,501)	(1,212)
Cost of construction:		
	\$ 78,110	\$ 39,709

OPF (Phase II), APA (Phase I), DVT (Phase I), and ADS (Phase I & II)	\$ 48,153	\$ 48,242
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Depreciation expense for the three months ended September 30, 2023 and 2022 totaled \$449 and \$135, respectively. Depreciation expense for the nine months ended September 30, 2023 and 2022 totaled \$1,289 and \$409, respectively.

5. Long-lived Assets

Long-lived assets, net, consists of the following:

	September 30, 2023	December 31, 2020
Ground support equipment	\$ 1,034	\$
Machinery and equipment	3,710	
Buildings	5,380	
Land	1,620	
Other equipment and fixtures	531	
Purchase deposits and construction in progress	435	
	12,710	
Accumulated depreciation	(635)	
	\$ 12,075	\$

Depreciation expense for the three months ended September 30, 2023 and 2022 totaled \$221 and \$13, respectively. Depreciation expense for the nine months ended September 30, 2023 and 2022 totaled \$361 and \$38 respectively. Capitalized depreciation of long-lived assets included in cost of construction totaled \$59 and \$178 for the three and nine months ended September 30, 2023, respectively. As of September 30, 2023 and December 31, 2022, long-lived assets included approximately \$435 and \$650, respectively, of purchase deposits towards long-lived assets which are not being depreciated as the assets have not been placed into service.

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6. Supplemental Balance Sheet and Cash Flow Information

Rapidbuilt Acquisition

On May 12, 2023 (the "Option Exercise Date"), Sky exercised its option to acquire a 51% equity interest in Overflow Ltd., a Texas limited partnership ("Overflow"), and its wholly-owned operating subsidiary, Rapidbuilt, Inc., a Texas corporation ("Rapidbuilt"), for nominal consideration (the "Rapidbuilt Acquisition"). As a result of the Rapidbuilt Acquisition, Weatherford Steel Buildings Holdings LLC, a Delaware limited liability company and wholly-owned subsidiary of Sky ("WSBH"), owns a 50% limited partnership interest in Overflow, and Weatherford Steel Buildings GP LLC, a Delaware limited liability company and wholly-owned subsidiary of Sky ("WSB GP"), owns a 1% general partnership interest in Overflow.

Rapidbuilt is a manufacturer of pre-engineered steel buildings that previously entered into a supplier arrangement with Sky. Rapidbuilt and Sky's strategic partnership has resulted in a standard set of proprietary prototype hangar designs, which are intended to deliver high-quality business aviation facilities, lower construction costs, minimize development risk, expedite permit issuance, and facilitate the implementation of refinements across Sky's portfolio. The Company had pre-existing relationships with Rapidbuilt through a vendor agreement entered into in July 2022 to acquire construction materials related to the Company's development projects (the "Rapidbuilt Vendor Agreement") and a revolving line of credit loan and security agreement (the "Rapidbuilt Loan Agreement") to fund the working capital requirement of Rapidbuilt. These pre-existing relationships were effectively settled in the acquisition and the net receivable balance of \$44 is included within the consideration transferred. No gain or loss was recognized in the effective settlement of the Rapidbuilt Vendor Agreement and the Rapidbuilt Loan Agreement.

The total cash purchase consideration was nominal. The Company accounted for the acquisition using the acquisition method of accounting, whereby the total purchase price was allocated to assets acquired and liabilities assumed based on respective estimated fair values. The estimated fair values of the acquired assets and assume liabilities are based on preliminary calculations and subject to further refinement and may require adjustments to arrive at the final purchase price accounting. The Company expects the final purchase price allocation to be completed in a period of time that will not exceed one year from the Option Exercise Date. There can be no assurance that such finalization will not result in material changes from the preliminary purchase price allocation.

The following tables summarize the preliminary allocation of the purchase price to the fair value of the assets acquired and liabilities assumed for the Rapidbuilt Acquisition:

	May 12, 2023	May 12, 2023
Cash	\$ 293	\$ 293
Restricted Cash	1,500	1,500
Long-lived assets	10,821	10,752
Total assets	12,614	12,545
Accounts payable, accrued expenses and other liabilities	1,496	1,427

Loans payable and finance lease liabilities	11,074	11,074
Total liabilities	12,570	12,501
Total fair value of net assets acquired	44	44
Effective settlement of net receivable from Rapidbuilt	44	44
Total consideration transferred	\$ 44	\$ 44

Substantially Following the Rapidbuilt Acquisition, substantially all of Overflow and Rapidbuilt's activities relate to the manufacturing of pre-engineering hangar structures for Sky's hangar development projects. As such, the pro-forma effect of this acquisition on revenues and earnings was not material.

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4. Investments and Restricted Investments

Investments of the Company's cash in various U.S. Treasury securities have been classified as available-for-sale and are carried at estimated fair value utilizing Level 1 inputs as determined based upon quoted market prices.

Pursuant to provisions within the Master Indenture of the Series 2021 Bonds, as defined in Note 9 — *Bonds payable, loans payable, and interest*, the Company invests the funds held in the restricted trust bank accounts in various U.S. Treasury securities. Therefore, such investments are reported as "Restricted investments" in the accompanying consolidated balance sheets. Unrealized losses on certain of the Company's investments and restricted investments are primarily attributable to changes in interest rates. The transaction costs associated Company does not believe the unrealized losses represent impairments because the unrealized losses are due to general market factors. The Company has not recognized an allowance for expected credit losses related to its investments or restricted investments as the Company has not identified any unrealized losses attributable to credit factors during the three months ended March 31, 2024. The held-to-maturity restricted investments are carried on the consolidated balance sheet at amortized cost. As of March 31, 2024, the Company has the ability and intent to hold these restricted investments until maturity, and as a result, the Company would not expect the value of these investments to decline significantly due to a sudden change in market interest rates. The fair value of the Company's restricted investments is estimated utilizing Level 1 inputs including prices for U.S. Treasury securities with comparable maturities on active markets.

The following tables are summaries of the **acquisition were immaterial** amortized cost, unrealized gains, unrealized losses, and fair value by investment type as of March 31, 2024 and December 31, 2023:

	March 31, 2024			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Investments, available for sale:				
U.S. Treasuries	\$ 36,300	\$ 690	\$ -	\$ 36,990
Total investments	\$ 36,300	\$ 690	\$ -	\$ 36,990
Restricted investments, held-to-maturity:				
U.S. Treasuries	20,213	88	(722)	19,579
Total restricted investments	\$ 20,213	\$ 88	\$ (722)	\$ 19,579
	December 31, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Investments, available for sale:				
U.S. Treasuries	\$ 11,554	\$ 312	\$ -	\$ 11,866
Total investments	\$ 11,554	\$ 312	\$ -	\$ 11,866
Restricted investments, held-to-maturity:				
U.S. Treasuries	88,213	105	(694)	87,624
Total restricted investments	\$ 88,213	\$ 105	\$ (694)	\$ 87,624

The following table sets forth the maturity profile of the Company's investments and restricted investments as of March 31, 2024:

	Investments	Restricted Investments
Due within one year	\$ 36,990	\$ 6,392
Due one year through five years	-	13,821
Total	\$ 36,990	\$ 20,213

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5. Cost of Construction and Constructed Assets

The Company's portfolio as of March 31, 2024 includes the following completed and in-development projects:

- Addison Airport ("ADS"), Addison, TX (Dallas area);
- Bradley International Airport ("BDL"), Windsor Locks, CT (Hartford area);
- Centennial Airport ("APA"), Englewood, CO (Denver area);
- Chicago Executive Airport ("PWK"), Wheeling, IL (Chicago area);
- Hudson Valley Regional Airport ("POU"), Wappingers Falls, NY (New York area);
- Miami-Opa Locka Executive Airport ("OPF"), Opa Locka, FL (Miami area);
- Nashville International Airport ("BNA"), Nashville, TN;
- Orlando Executive Airport ("ORL"), Orlando, FL;
- Phoenix Deer Valley Airport ("DVT"), Phoenix, AZ;
- San José Mineta International Airport ("SJC"), San Jose, CA; and
- Sugar Land Regional Airport ("SGR"), Sugar Land, TX (Houston area).

Constructed assets, net, and cost of construction, consists of the following:

	March 31, 2024	December 31, 2023
Constructed assets, net of accumulated depreciation:		
Buildings, SGR, BNA, and OPF (Phase I)	\$ 80,232	\$ 80,232
Accumulated depreciation	(3,397)	(2,945)
	<u>\$ 76,835</u>	<u>\$ 77,285</u>
Cost of construction:		
OPF (Phase II), APA (Phase I), DVT (Phase I), and ADS (Phase I & II)	\$ 71,695	\$ 64,212

Depreciation expense for the three months ended March 31, 2024 and nine 2023 totaled \$448 and \$392, respectively.

6. Long-lived Assets

Long-lived assets, net, consists of the following:

	March 31, 2024	December
Ground support equipment	\$ 1,057	\$
Machinery and equipment	3,783	
Buildings	5,380	
Land	1,620	
Other equipment and fixtures	614	
Purchase deposits and construction in progress	665	
	<u>13,119</u>	
Accumulated depreciation	(1,280)	
	<u>\$ 11,839</u>	<u>\$</u>

Depreciation expense for the three months ended September 30, 2023, March 31, 2024 and 2023 totaled \$181 and \$58, respectively. Capitalized depreciation of long-lived assets included in cost of construction totaled \$136 and \$0 for the three months ended March 31, 2024 and 2023, respectively. As of March 31, 2024 and December 31, 2023, long-lived assets included approximately \$665 and \$362, respectively, of purchase deposits towards long-lived assets which are not being depreciated as the assets have not been placed into service.

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7. Supplemental Balance Sheet and Cash Flow Information

Accounts payable, accrued expenses and other liabilities

Accounts payable, accrued expenses and other liabilities, consists of the following:

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Costs of construction	\$ 6,317	\$ 6,098	\$ 6,987	\$ 7,022
Employee compensation and benefits	1,530	2,047	929	2,438

Interest	1,739	3,470	1,739	3,474
Professional Fees	1,698	1,621		
Professional fees			1,303	1,154
Tenant security deposits			748	614
Other	2,619	948	2,110	2,038
	<u>\$ 13,903</u>	<u>\$ 14,184</u>	<u>\$ 13,816</u>	<u>\$ 16,740</u>

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Supplemental Cash Flow Information

The following table summarizes non-cash investing and financing activities:

	Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	March	March
			31, 2024	31, 2023
Accrued costs of construction, including capitalized interest	\$ 8,593	\$ 10,121	\$ 5,769	\$ 5,542
Accrued costs of long-lived assets	47	-	-	29
Accrued equity issuance costs	-	1,500		
Proceeds receivable from exercise of Warrants			1,444	-
Debt issuance costs and premium amortized to cost of construction	158	228	51	53

The following table summarizes non-cash activities associated with the Company's operating leases:

	Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	March	March
			31, 2024	31, 2023
Right-of-use assets obtained in exchange for operating lease liabilities	\$ 1,368	\$ 2,876	\$ 46,422	\$ 168
Net decrease in right-of-use assets and operating lease liabilities due to lease remeasurement	\$ (206)	\$ (12,189)		
Net increase in right-of-use assets and operating lease liabilities due to lease remeasurement			\$ 70	\$ -

The following table summarizes interest paid:

	Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	March	March
			31, 2024	31, 2023
Interest paid	\$ 7,256	\$ 5,533		
Interest paid	\$ 3,664	\$ 3,470		

The following table provides a reconciliation of cash and restricted cash reported within the consolidated balance sheets to the total shown within the consolidated statements of cash flows:

	Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	March	March
			31, 2024	31, 2023

Cash, beginning of year	\$ 2,174	\$ 6,805	\$ 60,257	\$ 2,174
Restricted cash, beginning of year	39,222	197,130	12,009	39,222
Cash and restricted cash, beginning of year	<u>\$ 41,396</u>	<u>\$ 203,935</u>	<u>\$ 72,266</u>	<u>\$ 41,396</u>
 Cash, end of period	 \$ 2,471	 \$ 3,796	 \$ 2,556	 \$ 2,853
Restricted cash, end of period	34,289	38,392	99,453	70,303
Cash and restricted cash, end of period	<u>\$ 36,760</u>	<u>\$ 42,188</u>	<u>\$ 102,009</u>	<u>\$ 73,156</u>

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7.8. Leases

Lessee

All The table below summarizes operating lease expense for the three months ended March 31, 2024 and March 31, 2023 recorded in the captions within our consolidated statement of the operations:

	Three months ended	
	March 31, 2024	March 31, 2023
Operating expenses	\$ 1,275	\$ 27
General and administrative expenses		
Total operating lease expense	<u>\$ 1,302</u>	<u>\$</u>

The Company's ground leases at airports are classified as operating leases under ASC Topic 842. Management has determined that it is reasonably certain that the Company will exercise its options to renew the leases, and therefore the renewal options are included in the lease term and the resulting ROU asset and operating lease liability balances. As the Company's lease agreements do not provide a readily determinable implicit rate, nor is the rate available to the Company from its lessors, the Company uses its incremental borrowing rate to determine the present value of the lease payments. In addition to the Company's ground leases, the company has operating leases for office space and ground support vehicles, and finance leases for vehicles supporting operations at Rapidbuilt.

The Company's lease population does not include any residual value guarantees. The Company has operating leases that contain variable payments, most commonly in the form of common area maintenance and operating expense charges, which are based on actual costs incurred. These variable payments were excluded from the calculation of the ROU asset and operating lease liability balances since they are not fixed or in-substance fixed payments. These variable payments were not material in amount for the three and ninemonth periods ended September 30, 2023 March 31, 2024 and 2022 2023. Some of the leases contain covenants that require the Company to construct the hangar facilities on the leased grounds within a certain period and spend a set minimum dollar amount. For one of the leases, the shortfall (if any) must be paid to the lessor. See Note 14 15 — Commitments and Contingencies.

The Company's ground leases have remaining terms ranging between 25 16 to 73 years, including options for the Company to extend the terms. These leases expire between 2049 2040 and 2097, which include all lease extension options available to the Company. Certain of the Company's ground leases contain options to lease additional parcels of land at the Company's option within a specified period of time.

In On January March 23, 2024, 2023, the Company, executed through a wholly-owned subsidiary of the Company, entered into a ground lease amendment agreement (the "SJC Lease") at SJC with the Town City of Addison, Texas, San Jose. The SJC Lease covers approximately 7 acres of property that contains an approximately 38,000 square foot hangar, approximately 19,000 square feet of office space, and approximately 108,000 square feet of apron and ramp space. The property at SJC includes additional land on which the Company intends to add two develop approximately 28,000 square feet of additional parcels of land (the "ADS Expansion Parcels") to the existing lease at ADS (the "ADS Lease"). The land associated with the ADS Expansion Parcels became available for possession in June 2023 for one parcel, and is expected to become available for possession in July 2024 for the other. The lease term for the ADS Expansion Parcels will be 40 years from the completion of construction for each respective parcel, and will effectively extend the initial term of the existing ADS SJC Lease will be 20 years from May 1, 2024, and contains a mutual option to be co-terminus extend the SJC Lease an additional 5 years following the expiration of the initial term.

On March 27, 2024, the Company, through a wholly-owned subsidiary of the Company, entered into a ground lease agreement (the "ORL Lease") at ORL with the ADS Expansion Parcels, Greater Orlando Aviation Authority ("GOAA"). The ADS ORL Lease and covers a parcel containing approximately 20 acres of land at ORL. The initial term of the ADS Expansion Parcels contain no additional extension ORL Lease will be 30 years from expiration of construction period, with lease payments commencing contemporaneously with the term. The ORL Lease contains options as the lease term is the maximum allowable term permitted exercisable by the Town of Addison. Company to extend the ORL Lease an additional 20 years based on the Company's total expenditures in subsequent phases at ORL.

In addition to the Company's ground leases, the company has operating leases for office space and ground support vehicles, and finance leases for vehicles supporting operations at Rapidbuilt.

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Supplemental consolidated cash flow information related to the Company's leases was as follows:

	Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	March 31, 2024	March 31, 2023
Cash paid for amounts included in measurement of lease liabilities:				
Operating cash flows from operating leases			\$ 482	\$ 466
Operating cash flows from finance leases			1	-
Operating cash flows from operating leases as lessee	\$ 1,504	\$ 1,384	7	-

Supplemental consolidated balance sheet information related to the Company's leases was as follows:

		September 30, 2023	December 31, 2023
Weighted Average Remaining Lease Term			
Operating leases as lessee (in years)		54.3	
Weighted Average Discount Rate			
Operating leases as lessee		4.65 %	
Weighted Average Remaining Lease Term (in years)			
Operating leases		42.7	
Finance leases		2.5	
Weighted Average Discount Rate			
Operating leases		5.16 %	
Finance leases		4.99 %	

The Company's future minimum lease payments required under leases as of **September 30, 2023** **March 31, 2024** were as follows:

Year Ending December 31,	Operating Leases		Finance Leases		Operating Leases	Finance Leases
	\$	482	\$	8		
2023 (remainder of year)						
2024		2,137		29		
2024 (remainder of year)					\$ 3,705	\$ 21
2025		2,379		23	5,342	24
2026		2,431		17	6,545	17
2027		2,494		2	7,075	2
2028					6,997	-
Thereafter		199,870		-	339,478	-
Total lease payments		209,793		79	369,142	64
Less imputed interest		(154,766)		(5)	(252,785)	(4)
Total	\$	55,027	\$	74	\$ 116,357	\$ 60

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Lessor

The Company leases the hangar facilities that it constructs to third-party tenants. These leases have been classified as operating leases. The Company does not have any leases classified as sales-type or direct financing leases. Lease agreements with tenants are either on a month-to-month basis or have a defined term with an option to extend the term. The defined term leases vary in length from one to ten years with options to renew for additional term(s) given to the lessee. There are no options given to the lessee to purchase the underlying assets.

The leases may contain variable fees, most commonly in the form of tenant reimbursements, which are recoveries of the common area maintenance and operating expenses of the property and are recognized as income in the same period as the expenses are incurred. The leases did not have any initial direct costs. The leases do not contain any restrictions or covenants to incur additional financial obligations by the lessee.

Tenant leases to which the Company is the lessor require the following non-cancelable future minimum lease payments from tenants as of **September 30, 2023** **March 31, 2024**:

Year Ending December 31,	Operating Leases	Operating Leases
2023 (remainder of year)	\$ 1,639	
2024	6,133	
2024 (remainder of year)		\$ 8,092
2025	5,474	9,864
2026	3,352	7,479
2027	2,478	5,144
2028		3,500
Thereafter	3,294	2,775
Total lease payments	22,370	36,854
Less rent concessions to be applied at Company's discretion	(214)	(214)
Total	\$ 22,156	\$ 36,640

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8.9. Bonds payable, loans payable, and interest

Bonds payable

On May 20, 2021, Sky formed a new wholly-owned subsidiary, Sky Harbour Capital LLC ("SHC"), as a parent corporation to its wholly-owned subsidiaries that operate each of the aircraft hangar development sites under its ground leases. SHC and these subsidiaries form an Obligated Group (the "Obligated Group" or the "Borrowers") under a series of bonds that were issued in September 2021 with a principal amount of \$166.3 million (the "Series 2021 Bonds"). The members of the Obligated Group are jointly and severally liable under the Series 2021 Bonds. SHG and its other subsidiaries are not members of the Obligated Group and have no obligation to repay the bonds.

The Series 2021 Bonds are payable pursuant to a loan agreement dated September 1, 2021 between the Public Finance Authority (of Wisconsin) and the Borrowers. The payments by the Borrowers under the loan agreement are secured by a Senior Master Indenture Promissory Note, Series 2021-1 issued by the Obligated Group under an indenture (the "Master Indenture"). The obligations of the Borrowers are collateralized by certain leasehold and subleasehold deeds of trust or mortgages on the Borrowers' interests in the development sites and facilities being constructed at each airport where the Borrowers hold ground leases. In addition, the Borrowers have assigned, pledged and granted a first priority security interest in all funds held under the Master Indenture and all right, title and interest in the gross revenues of the Borrowers. Furthermore, Sky, Sky Harbour Holdings LLC and SHC have each pledged as collateral its respective ownership interest in any of the Borrowers.

The Series 2021 Bonds have principal amounts, interest rates, and maturity dates as follow: \$21.1 million bearing interest at 4.00%, due July 1, 2036; \$30.4 million bearing interest at 4.00%, due July 1, 2041; and \$114.8 million bearing interest at 4.25%, due July 1, 2054. The Series 2021 Bond that has a maturity date of July 1, 2036 was issued at a premium, and the Company received bond proceeds that were \$0.2 million above its face value. The bond premium is being amortized as a reduction of interest expense over the life of the bond. Interest is payable on each January 1 and July 1, commencing January 1, 2022. Principal repayments due under the Series 2021 Bonds are paid annually, commencing July 1, 2032.

On March 22, 2023, SHC elected to modify the scope of the Series 2021 Bonds pursuant to the terms of the Master Indenture, in order to reallocate a portion of the proceeds of the Series 2021 Bonds to its project site located at ADS (the "ADS Project"). In connection with the election to modify the scope of the Series 2021 PABs to include the ADS Project, (i) Addison Hangars LLC ("Sky Harbour Addison") and OPF Hangars Landlord LLC ("OPF Hangars") joined as members of the Obligated Group, (ii) Sky Harbour Holdings LLC contributed its membership interest in OPF Hangars to SHC, (iii) SHC pledged its equity interest in each of Sky Harbour Addison and OPF Hangars to the Master Trustee as

security for the obligations under the Series 2021 Bonds, (iv) Sky Harbour Addison granted to the Master Trustee a mortgage on its leasehold interest in the real property comprising the ADS Project, (v) OPF Hangars granted the Master Trustee a mortgage on its leasehold interest in the real estate comprising the project located in Opa Locka, Florida, and (vi) Sky Harbour Services LLC, a wholly-owned subsidiary of the Company, has agreed to waive all management fees and development fees during the construction period of the projects associated with the Series 2021 Bonds.

As of **September 30, 2023** **March 31, 2024** and December 31, **2022**, 2023, the fair value of the Company's Series 2021-1 Bonds was approximately **\$117.3 million** **\$125.9 million** and **\$119.5 million** **\$116.5 million**, respectively. As of **September 30, 2023** **March 31, 2024** and December 31, **2022**, 2023, the fair value of the Company's bonds is estimated utilizing Level 2 inputs including prices for the bonds on inactive markets.

The following table summarizes the Company's Bonds payable as of **September 30, 2023** **March 31, 2024** and December 31, **2022** 2023:

	September 30, 2023	December 31, 2022
Bonds payable:		
Series 2021 Bonds Principal	\$ 166,340	\$ 166,340
Premium on bonds	249	249
Bond proceeds	166,589	166,589
Debt issuance costs	(4,753)	(4,753)
Accumulated amortization of debt issuance costs and accretion of bond premium	532	374
Total Bonds payable, net	\$ 162,368	\$ 162,210

Rapidbuilt Loan and Guaranty Agreement

In connection with the Rapidbuilt Acquisition, Sky and Vista Bank (the "Lender") entered into a consent, waiver, and second amendment (the "Loan Amendment") and a guaranty agreement (the "Guaranty Agreement") associated with the senior loan agreement between Overflow and Rapidbuilt (collectively, the "Rapidbuilt Borrowers"), and the Lender (the "Rapidbuilt Loan"). Pursuant to the Loan Amendment, (i) the Lender consented to the change in control with respect to the Rapidbuilt Borrowers; (ii) the Lender waived any pre-existing events of default on the part of the Rapidbuilt Borrowers; (iii) the Lender agreed to release certain borrowed funds held in reserve, subject to specified terms and conditions; and (iv) the Rapidbuilt Borrowers agreed to certain reserve enhancement obligations, including the ability to repay principal early at the sole discretion of the Rapidbuilt Borrowers. Pursuant to the Guaranty Agreement, all of the Rapidbuilt Borrowers' obligations under the Rapidbuilt Loan will be guaranteed by Sky.

The Rapidbuilt Loan was originated in December 2020 between the Borrowers and the Lender and had approximately \$10.3 million outstanding as of the Option Exercise Date. The Rapidbuilt Loan accrues interest at a per annum rate equal to 3.00% above the three-month secured overnight financing rate published for first day of each calendar quarter by the Federal Reserve Bank of New York. The weighted-average interest rate was 8.53% and 8.44% for the three and nine months ended September 30, 2023, respectively. Interest is payable on a monthly basis, and the Rapidbuilt Borrowers agreed to make certain reserve enhancement payments on January 1, April 1, July 1, and October 1 of each calendar year. The maturity date of the Rapidbuilt Loan is December 1, 2025. The Rapidbuilt Loan is secured by the accounts, intellectual property, equipment, inventory, vehicles, and property of the Rapidbuilt Borrowers, and contains customary affirmative and negative covenants.

	March 31, 2024	December 31, 2023
Bonds payable:		
Series 2021 Bonds Principal	\$ 166,340	\$ 166,340
Premium on bonds	249	249
Bond proceeds	166,589	166,589
Debt issuance costs	(4,753)	(4,753)
Accumulated amortization of debt issuance costs and accretion of bond premium	635	584
Total Bonds payable, net	\$ 162,471	\$ 162,420

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Loans Payable and Finance Leases

The following table summarizes the Company's loans payable and finance lease liabilities as of March 31, 2024 and December 31, 2023:

	Maturity Dates	March 31, 2024		December 31, 2023	
		Weighted-Average Interest Rates	Balance	Weighted-Average Interest Rates	Balance
Vista Loan	December 2025	8.65 %	\$ 8,383	8.53 %	\$ 8,383
Equipment loans	August 2026 - September 2028	8.03 %	422	8.09 %	422
Finance leases	September 2024 - July 2027	4.99 %	60	5.00 %	60

Total Loans payable and finance leases	8.59 %	\$ 8,865	8.47 %	\$
<i>Interest</i>				

The following table sets forth the details of interest expense:

	Three months ended		Nine months ended		Three months ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022	March 31, 2024	March 31, 2023
	\$ 1,969	\$ 1,735	\$ 5,522	\$ 5,205	\$ 1,929	\$ 1,735
Interest	52	75	158	228	51	53
Accretion of bond premium and amortization of debt issuance costs	2,021	1,810	5,680	5,433	1,980	1,788
Total interest incurred	(1,787)	(1,810)	(5,364)	(5,433)	(1,786)	(1,788)
Less: capitalized interest						
Interest expense	\$ 234	\$ -	\$ 316	\$ -	\$ 194	\$ -

9.10. Warrants

SHG's legal predecessor, Yellowstone Acquisition Company ("YAC"), issued to third-party investors 6,799,439 warrants which entitled the holder to purchase one share of Class A Common Stock at an exercise price of \$11.50 per share (the "Public Warrants") as part of Yellowstone's initial public offering. Yellowstone sold 7,719,779 private placement warrants (the "Private Placement Warrants", and together with the Public Warrants, the "Warrants") were sold to BOC Yellowstone LLC (the "Sponsor"). Each Private Warrant allows the Sponsor to purchase one share of Class A Common Stock at an exercise price of \$11.50 per share. The Public Warrants and Private Warrants remain outstanding under the same terms and conditions to purchase shares of the Company's Class A Common Stock. As of September 30, 2023, 6,798,964 and 7,719,779 Public and Private Warrants remain outstanding, respectively.

The terms of the Private Warrants are identical to those of the Public Warrants, except for that so long as the Private Warrants are held by the Sponsor or its permitted transferees, they may be exercised on a cashless basis.

In connection with the Securities Purchase Agreement (the "Private Placement Purchase Agreement") entered into on November 1, 2023 with certain investors, the Company issued to third-party investors 1,541,600 PIPE Warrants (together with the Public Warrants and the Private Warrants, the "Warrants"). The PIPE Warrants are similar in form and substance to the Company's Public Warrants.

The Warrants contain an exercise price of \$11.50 per share and expire on January 25, 2027. The Company determined the fair value of its Public Warrants and PIPE Warrants based on the publicly listed trading price as of the valuation date. Accordingly, the Public Warrants these warrants are classified as Level 1 financial instruments. As the terms of the Private Warrants are identical to those of the Public Warrants, the Company determined the fair value of its Private Warrants based on the publicly listed trading price of the Public Warrants as of the valuation date and have classified the Private Warrants as Level 2 financial instruments.

During the three months ended March 31, 2024, 253,703 Warrants were exercised, resulting in approximately \$2.9 million of proceeds, of which approximately \$1.4 million was receivable by the Company as of March 31, 2024. As of March 31, 2024, 15,806,640 Warrants remain outstanding.

The closing price of the Public Warrants was \$0.20 \$1.76 and \$0.20 \$0.75 per warrant on September 30, 2023 March 31, 2024 and December 31, 2022, 2023, respectively. The aggregate fair value of the outstanding Warrants was approximately \$2.9 million \$27.8 million and \$2.9 million \$12.0 million as of September 30, 2023 March 31, 2024 and December 31, 2022, 2023, respectively. The Company recognized unrealized gains of approximately \$1.6 million and \$1.5 million during During the three months ended September 30, March 31, 2024 and March 31, 2023, and 2022, respectively. The the Company did not recognize an recorded unrealized gain or loss during the nine months ended September 30, 2023. The Company recognized an unrealized gain losses of approximately \$2.9 million during the nine months ended September 30, 2022. \$16.2 million and \$4.2 million, respectively.

10.11. Equity and Redeemable Equity

Common Equity

As of September 30, 2023 March 31, 2024, there were 15,252,574 24,537,559 and 42,046,356 shares of Class A Common Stock and Class B Common Stock outstanding, respectively. Holders of Class A Common Stock and Class B Common Stock vote together as a single class on all matters submitted to the stockholders for their vote or approval,

except as required by applicable law. Holders of Class A Common Stock and Class B Common Stock are entitled to one vote per share on all matters submitted to the stockholders for their vote or approval.

The holders of Class A Common Stock are entitled to receive dividends, as and if declared by the Company's Board of Directors out of legally available funds. With respect to stock dividends, holders of Class A Common Stock must receive Class A Common Stock. The holders of Class B Common Stock do not have any right to receive dividends other than stock dividends consisting of shares of Class B Common Stock, as applicable, in each case paid proportionally with respect to each outstanding share of Class B Common Stock.

Common Stock Purchase Agreement At-the-Market Facility

On August 18, 2022, March 27, 2024, the Company entered into an At Market Issuance Sales Agreement (the "ATM Agreement") with B. Riley Securities, Inc. ("B. Riley") with respect to an "at the market" offering program (the "ATM Facility"), under which the Company may, from time to time, at its sole discretion, issue and sell through B. Riley, acting as sales agent, up to \$100 million of shares of Class A Common Stock. Pursuant to the ATM Agreement, the Company may sell the shares through B. Riley by any method permitted that is deemed an "at the market" offering as defined in Rule 415 under the Securities Act of 1933, as amended. B. Riley will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon instructions from the Company, including any price or size limits or other customary parameters or conditions the Company may impose. The Company will pay B. Riley a commission of 3.0% of the gross sales price per share sold under the ATM Agreement, subject to certain reductions. The Company has made no sales to date under the ATM Facility.

The Company is not obligated to sell any shares under the ATM Agreement. The offering of shares pursuant to the ATM Agreement will terminate upon the earlier to occur of (i) the issuance and sale, through B. Riley, of all of the shares subject to the ATM Agreement and (ii) termination of the ATM Agreement in accordance with its terms.

In connection with entering into the ATM Agreement, on March 27, 2024, the Company and B. Riley terminated (the "B. Riley Termination") the Common Stock Purchase Agreement (the "B. Riley Stock Purchase Agreement") with B. Riley Principal Capital II, LLC ("B. Riley"). Pursuant to the B. Riley Stock Purchase Agreement, subject to the conditions and limitations set forth therein, the Company has the right, but dated not August 18, 2022, the obligation, from time to time at the Company's sole discretion over As a 36-month term result of the B. Riley Stock Purchase Agreement, to direct B. Riley to purchase up to 10 million shares of the Company's Class A Common Stock in the aggregate.

Under the B. Riley Stock Purchase Agreement, on any trading day selected by Termination, the Company recognized approximately \$0.1 million of expense associated with the write-off of deferred equity issuance costs. From August 18, 2022 through March 27, 2024, the Company has the right, in its sole discretion, to present B. Riley with a purchase notice (each, a "VWAP Purchase Notice"), directly B. Riley (as principal) to purchase a specified amount of shares not to exceed the lesser of (i) one million shares of Common Stock and (ii) 20% of the total aggregate number (or volume) of shares of Class A Common Stock traded on the NYSE American at a price(the "VWAP Purchase Price") equal to the product of 0.97 and the VWAP of the Company's Class A Common Stock on the applicable date for each VWAP Purchase Notice, subject to certain limitations contained in the B. Riley Stock Purchase Agreement. Sales of Class A Common Stock pursuant to the Stock Purchase Agreement, and the timing of any such sales, are solely at the discretion of the Company, and the Company is under no obligation to sell any securities to B. Riley under the B. Riley Stock Purchase Agreement.

In consideration for entering into the B. Riley Stock Purchase Agreement and concurrently with the execution of the B. Riley Stock Purchase Agreement, the Company issued to B. Riley 25,000 shares of Class A Common Stock as initial commitment shares and will issue up to an aggregate of 75,000 shares of its Class A Common Stock as additional commitment shares if certain conditions and milestones are met. As of September 30,2023, the Company has had not directed B. Riley to purchase any Class A Common Stock pursuant to the B. Riley Stock Purchase Agreement.

Non-controlling interests

The LLC Interests' ownership in Sky is presented as non-controlling interests within the Equity section of the consolidated balance sheet as of September 30, 2023 March 31, 2024 and represents the Sky Common Units held by holders other than SHG. The holders of LLC Interests may exchange Sky Common Units along with an equal number of Class B Common Shares, for Class A Common Shares on the Company. The LLC Interests do not have the option to redeem their Sky Common Units for cash or a variable number of Class A Common Shares, nor does SHG have the option to settle a redemption in such a manner. As of September 30, 2023 March 31, 2024, the LLC interests owned approximately 73.8% 63.1% of the Sky Common Units outstanding.

The former majority shareholder's ownership in Overflow is presented as a non-controlling interest within the Equity section of the consolidated balance sheet. As of September 30, 2023, March 31, 2024, the former majority shareholder owned approximately 49% of the partnership interests in Overflow.

11.12. Equity Compensation

Restricted Stock Units ("RSUs")

In February 2023, 2024, the Company granted time-based RSUs to certain employees under the Company's 2022 Incentive Award Plan. 545,522 430,002 of time-based awards were granted at a grant date fair value of \$5.75, \$12.33, which will vest ratably over a four-year period beginning on the first anniversary of the grant date and ending on February 13, 2027, 15, 2028.

During the three and nine months ended September 30, 2023, March 31, 2024, the Company recognized stock compensation expense of approximately \$0.5 million and \$1.4 million, respectively \$0.9 million associated with all RSU awards, which is recorded within General and Administrative Expenses within the statement of operations. During the three and nine months ended September 30, 2022, March 31, 2023, the Company recognized stock compensation expense of \$0.3 million and \$0.5 million, respectively \$0.4 million. As of September 30, 2023, March 31 2024, there are approximately 956,869 1,189,636 non-vested RSUs outstanding with a weighted average grant date fair value of \$6.53 \$9.78. The unrecognized compensation costs associated with all unvested RSUs at September 30, 2023 March 31, 2024 was approximately \$5.8 \$9.4 million that is expected to be recognized over a weighted-average future period of 3.0 3.2 years.

Non-qualified Stock Options ("NSOs")

In February 2024, the Company granted to certain employees options to purchase 438,781 shares of Class A Common Stock at an exercise price of \$11.63 under the Company's 2022 Incentive Award Plan. The NSOs vest ratably over a four-year period beginning on the sixth anniversary of the grant date and have a term of 10 years. The options were valued at \$7.32 using a Black -Scholes pricing model. During the three months ended March 31, 2024, the Company recognized stock compensation expense of \$0.1 million associated with all NSO awards. The unrecognized compensation costs associated with all unvested NSOs at March 31, 2024 was approximately \$3.2 million that is expected to be recognized over a weighted-average future period of 8.9 years.

Sky Incentive Units

The Company recognized equity-based compensation expense relating to awarded equity units of Sky (the "Sky Incentive Units") of \$72 \$45 and \$238 \$85 for the three and nine months ended September 30, 2023 March 31, 2024, respectively, and \$85 and \$256 for the three and nine months ended September 30, 2022, March 31, 2023 respectively, which is recorded within General and Administrative Expenses within the statement of operations, and as a component of the non-controlling interest in the consolidated statement of changes in stockholders' equity. As of September 30, 2023 March 31, 2024, there was \$0.5 million \$0.2 million of total unrecognized compensation expense that is expected to be recognized over a weighted-average future period of 1.6 1.2 years.

12, 13. Earnings (loss) per Share

Basic earnings (loss) per share of Class A Common Stock is computed by dividing net income (loss) attributable to SHG by the weighted-average number of shares of Class A Common Stock outstanding during the period. Diluted net income (loss) per share of Class A Common Stock is computed by dividing net income (loss) attributable to SHG, adjusted for the assumed exchange of all potentially dilutive securities, by the weighted-average number of shares of Class A Common Stock outstanding adjusted to give effect to potentially dilutive shares using the treasury stock or if-converted method as appropriate. Shares of the Company's Class B Common Stock do not participate in the earnings or losses of the Company and are therefore not participating securities. As such, separate presentation of basic and diluted earnings per share of Class B Common Stock under the two-class method has not been presented.

	Three Months Ended		Nine Months Ended		Three Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022	March 31, 2024	March 31, 2023
Numerator:						
Net loss	\$ (1,999)	\$ (3,092)	\$ (12,394)	\$ (12,343)	\$ (21,199)	\$ (8,761)
Less: Net loss attributable to non-controlling interests	(1,810)	(2,479)	(6,788)	(8,632)	(2,259)	(2,565)
Basic and diluted net loss attributable to Sky Harbour Group Corporation shareholders	(189)	(613)	(5,606)	(3,711)	(18,940)	(6,196)
Denominator:						
Based and diluted weighted average shares of Class A Common Stock outstanding	15,245	14,949	15,132	13,628	24,274	14,983
Loss per share of Class A Common Stock – Basic and diluted	\$ (0.01)	\$ (0.04)	\$ (0.37)	\$ (0.27)	\$ (0.78)	\$ (0.41)

Potentially dilutive shares excluded from the weighted-average shares used to calculate the diluted net loss per common share due to the Company's net loss position were as follows (in thousands):

	Three Months Ended		Nine Months Ended		Three Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022	March 31, 2024	March 31, 2023
Shares subject to unvested restricted stock units	957	631	957	631	1,130	1,183
Shares subject to unvested stock options					439	-
Shares issuable upon the exercise of Warrants	14,519	14,519	14,519	14,519	15,807	14,519
Shares issuable upon the exchange of Class B Common Stock	42,046	42,192	42,046	42,192	42,046	42,046
Shares issuable upon the exercise and exchange of Sky Incentive Units	2,808	2,808	2,808	2,808	2,808	2,808

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13, 14. Related Party Transactions

Accumulated Other Comprehensive Income

On September 20, 2021, The following table summarizes the Company entered into a non-exclusive agreement with Echo Echo, LLC, a related party to the Founder and CEO, for the use components of a Beechcraft Baron G58 aircraft. The effective date of the agreement was September 8, 2021 and the agreement automatically renews annually. The agreement can be terminated without penalty if either party provides 35 days written notice, or if the aircraft is sold or otherwise disposed of. The Company is charged per flight hour of use along with all direct operating costs. Additionally, the Company will also incur the pro rata share of maintenance, overhead and insurance costs of the aircraft. For the three and nine months ended September 30, 2023, the Company recognized \$41 and \$157 of expense, respectively, within General and administrative expense under the terms of this agreement. For the three and nine months ended September 30, 2022, the Company recognized \$50 and \$134 of expense, respectively, associated with this agreement. The related liability is included in Accounts payable, accrued expenses and Accumulated other liabilities on the consolidated balance sheet as of September 30, 2023, comprehensive income:

	Unrealized gain on Available-for-sale Securities		Total
Balance as of December 31, 2023	\$ 312	\$ 312	
Other comprehensive income before reclassifications	395	395	
Amounts reclassified to other (income) expense	(17)	(17)	
Balance as of March 31, 2024	\$ 690	\$ 690	

For the three and nine months ended September 30, 2023, the Company recognized \$3 and \$98 of expense, respectively, for consulting services, to a company that employed the chief financial officer until prior to July 1, 2021. The Company recognized \$40 and \$85 of expense during the three and nine months ended September 30, 2022 to the same company.

	Unrealized gain on Available-for-sale Securities		Total
Balance as of December 31, 2022	\$ (102)	\$ (102)	
Other comprehensive income before reclassifications	223	223	
Amounts reclassified to other (income) expense	(46)	(46)	
Balance as of March 31, 2023	\$ 75	\$ 75	

14, 15. Commitments and Contingencies

In addition to the lease payment commitments discussed in Note 78 — Leases, the ground leases to which the Company is a party contain covenants that require the Company to conduct construction of hangar facilities on the leased grounds within a certain period and in some cases, to spend a minimum dollar amount.

The APA Lease requires the Company to improve the property in accordance with a development plan included in the lease and to complete such improvements within 24-months of the issuance of permitting documents. Construction began on the APA Phase I project in October 2022.

The DVT Lease requires approximately \$15.3 million and \$14.6 million of improvements to be made for Phase I and for Phase II, if such option is exercised, respectively, within 12-months after receiving permitting documents for each Phase, but in no event later than May 2026. Construction began on the DVT Phase I project in December 2022.

The Company has committed to spend \$10.0 million in capital improvements on the ADS construction project. If this amount is not expended, the Company is subject to a reduction of the term of the lease.

The PWK Lease contains a requirement that the Company must commence construction within six months of the issuance of permits and must complete construction within 18 months of construction commencement. If the Company is unable to adhere to the prescribed timeline and unable to receive an extension from PWK, the PWK Lease is subject to termination.

The SJC Lease contains customary milestones by which the Company must complete additional construction.

The ORL Lease requires that the Company construct \$30 million of improvements in its initial phase of construction within 24 months of the effective date of the lease. The ORL Lease contains other customary milestones by which the Company must commence and complete subsequent phases of construction.

The Company has contracts for construction of the APA Phase I, DVT Phase I, and DVT ADS Phase I projects. The Company may terminate any of the contracts or suspend construction without cause. There are no termination penalties under the APA Phase I or DVT Phase I construction contracts.

15. Accumulated Other Comprehensive Income (Loss)

The following table summarizes In addition to the components matters described in this note, the Company is involved in various legal proceedings and claims in the ordinary course of Accumulated its business. Although the Company cannot predict with certainty the ultimate resolution of these matters, which involve judgements that are inherently subjective, the Company does not expect that the ultimate disposition of such other comprehensive income (loss) contingencies or matters will materially affect its financial condition, results of operations or cash flows.

	Unrealized gain (loss) on Available-for-sale Securities			Total
Balance as of December 31, 2022	\$	(102)	\$	(102)
Other comprehensive income before reclassifications		521		521
Amounts reclassified to other (income) expense		(121)		(121)
Balance as of September 30, 2023	\$	298	\$	298

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16. Subsequent Events Related Party Transactions

PWK Ground Lease

On October 11, 2023, September 20, 2021, the Company entered into a ground lease non-exclusive agreement (the "PWK Lease") with Chicago Executive Airport ("PWK"). Echo Echo, LLC, a related party to the Founder and CEO, for the use of a Beechcraft Baron G58 aircraft. The PWK Lease effective date of the agreement was September 8, 2021 and the agreement automatically renews annually. The agreement can be terminated without penalty if either party provides 35 days written notice, or if the aircraft is divided into two parcels, sold or otherwise disposed of. The Company is charged per flight hour of use along with all direct operating costs. Additionally, the Company will also incur the pro rata share of maintenance, overhead and insurance costs of the aircraft. For the first three parcel containing approximately 15 acres months ended March 31, 2024, the Company recognized \$69 of land ("PWK Phase I"). Under expense within General and administrative expense under the terms of this agreement. For the PWK Lease, it is the intent of PWK to grant the Company a second three parcel containing approximately 10 acres of land ("PWK Phase II"). The grant of the PWK Phase II land is at the sole discretion of PWK following the Company's completion of its development project at PWK Phase I. The term of the PWK Lease will be 50 years from the acceptance of the PWK Phase I parcel following customary due diligence and completion of a land survey, with lease payments commencing following the completion of construction. The PWK Lease contains months ended no additional extension options exercisable by the Company or PWK.

PWK is jointly owned by the Village of Wheeling and City of Prospect Heights, Illinois, and acts as a primary reliever and general aviation airport within the Chicago metropolitan area. The FAA reported nearly 100,000 total airport operations at PWK in 2021 and 2022, with steady growth forecasted each year thereafter.

SGR Phase II Lease Termination

The Company was subject to requirements in its ground lease at SGR with respect to the Company's contemplated SGR Phase II project that defined (i) a minimum improvement amount of \$2.0 million and (ii) that related construction commence by October 2023, unless otherwise waived or amended. In October March 31, 2023, the Company allowed the ground lease recognized \$62 of expense associated with this agreement. The related liability is included in Accounts payable, accrued expenses and other liabilities on the parcels designated for the SGR Phase II project to automatically terminate. The Company did consolidate balance sheet as of not March 31, 2024 incur any lease termination penalties, nor had it capitalized any historical costs associated with the contemplated SGR Phase II project.

Private Placement and Securities Purchase Agreement

On November 1, 2023, the Company entered into a Securities Purchase Agreement (the "Private Placement Purchase Agreement") with certain investors (collectively, the "Investors"), pursuant to which the Company (i) agreed to sell and issue to the Investors at an initial closing an aggregate of 6,586,154 shares (the "PIPE Shares") of the Company's Class A Common Stock and accompanying warrants to purchase up to 1,141,600 shares of Class A Common Stock (the "PIPE Warrants"), for an aggregate purchase price of \$42.8 million (the "Initial Financing"), and (ii) agreed to sell and issue to the Investors at the second closing, if any, up to an aggregate of 2,307,692 PIPE Shares (the "Additional PIPE Shares") and accompanying PIPE Warrants to purchase up to an aggregate of 400,000 shares of Class A Common Stock (the "Additional PIPE Warrants") for an aggregate purchase price of up to \$15.0 million (the "Additional Financing" and, together with the Initial Financing, the "Financing").

For the three months ended March 31, 2024, the Company recognized \$0 of expense for consulting services, to a company that employed the chief financial officer until prior to July 1, 2021. The closing Company recognized \$88 of expense during the Initial Financing occurred on November 2, 2023 (three the "Initial Closing Date"). The amount of Additional PIPE Shares and Additional PIPE Warrants, if any, to be issued in connection with the Additional Financing will be determined by Altai Capital Falcon LP (the "Lead Investor") in its sole discretion, and the closing of the Additional Financing will occur, if at all, at the sole discretion of the Lead Investor, on or before months ended November 30, March 31, 2023 subject to customary closing conditions.

The PIPE Warrants are similar in form and substance to the Company's public warrants to purchase Class A Common Stock. The PIPE Warrants are exercisable at an exercise price of \$11.50 per share, subject to adjustment as set forth therein. The PIPE Warrants are fully exercisable and expire on January 25, 2027. For further information regarding the terms of the PIPE Warrants, see the section entitled "Warrants" in Exhibit 4.4 (Description of Securities) to our Form 10-K for the fiscal year ended December 31, 2022, filed with the Securities and Exchange Commission (the "SEC") on March 24, 2023.

The Private Placement Purchase Agreement includes certain covenants, including a limitation on the Company's use of the net proceeds from the Financing, certain customary standstill restrictions for a period of 90 days following the Initial Closing Date and a restriction on paying any extraordinary dividend to the extent it would result in the issuance of a number of shares of Class A Common Stock upon exercise of the PIPE Warrants (without regard to any limitations on exercise of the PIPE Warrants) in excess of the number of shares of Class A Common Stock permissible by the NYSE American LLC to be issued without stockholder approval. In addition, pursuant to the Private Placement Purchase Agreement, the Company granted to the Lead Investor certain participation rights with respect to certain future equity and debt offerings by the Company until the eighteen-month anniversary of the Initial Closing Date. In addition, the Investors entered into a six month customary lock-up agreement beginning on the Initial Closing Date.

Registration Rights Agreement

On November 1, 2023, in connection with the execution of the Private Placement Purchase Agreement, the Company entered into a Registration Rights Agreement (the "Registration Rights Agreement") with the Investors. Pursuant to the Registration Rights Agreement, certain holders of the Company's securities are entitled to certain customary registration rights, and the Company is required to prepare and file a resale registration statement (the "Registration Statement") with the SEC to register the resale of the PIPE Shares, the PIPE Warrants and 130% of the shares of Class A Common Stock issuable upon exercise of the PIPE Warrants (collectively, the "PIPE Securities"), and to use its best efforts to cause the Registration Statement to be declared effective by the SEC by the earlier of (i) 180 days following the Initial Closing Date and (ii) the fifth business day after the date the Company is notified by the SEC that the Registration Statement will not be "reviewed" or will not be subject to further review. same company.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and the notes included elsewhere in this Quarterly Report on Form 10-Q (this "Form 10-Q"), as well as the information contained in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, filed with the Securities Exchange Commission (the "SEC") on March 24, 2023 March 27, 2024 (the "Form 10-K"), which is accessible on the SEC's website at www.sec.gov.

Cautionary Note Regarding Forward-Looking Statements

This Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements can be identified by the use of forward-looking terminology, including the words "believes," "estimates," "anticipates," "expects," "intends," "plans," "may," "might," "will," "potential," "projects," "predicts," "continue," or "should," or, in each case, their negative or other variations or comparable terminology. There can be no assurance that actual results will not materially differ from expectations. These statements are based on management's current expectations, but actual results may differ materially due to various factors, including, but not limited to:

- expectations regarding the Company's strategies and future financial performance, including the Company's future business plans or objectives, prospective performance and commercial opportunities and competitors, services, pricing, marketing plans, operating expenses, market trends, revenues, liquidity, cash flows and uses of cash, capital expenditures, and the Company's ability to invest in growth initiatives;
- the effects of general economic conditions, including inflation, rising interest rates, and availability of construction materials and labor for our development projects;

- our limited operating history makes it difficult to predict future revenues and operating results;
- our ability to implement our construction costs mitigation strategies;
- changes in applicable laws or regulations;
- the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; and
- our financial performance.

The forward-looking statements contained in this Form 10-Q are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading "Risk Factors" in the Form 10-K. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described in the Form 10-K may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this prospectus. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this prospectus, those results or developments may not be indicative of results or developments in subsequent periods.

Overview and Background

We are an aviation infrastructure development company building the first nationwide network of **home basing** hangar campuses for business aircraft. We develop, lease, and manage general aviation hangars across the United States, targeting airfields in markets with significant aircraft populations and high hangar demand. Our **home basing** hangar campuses feature exclusive private hangars and a full suite of dedicated services specifically optimized for home-based, versus transient, aircraft.

The physical footprint of the U.S. business aviation fleet grew by almost 28 million square feet in the ten years preceding the beginning of the COVID-19 pandemic, with hangar supply lagging dramatically, especially in key growth markets. As the fleet of private jets in the United States continues to grow, with recent new aircraft deliveries exceeding retirements, demand for hangar space is at a premium in part because new jets require more square footage of hangar space and the pace of new hangar construction has lagged behind the demand. The cumulative square footage of the business aircraft fleet in the United States increased 50% between 2010 and 2021. Moreover, over that same period, there was an 81% increase in the square footage of larger private jets – those with greater than a 24-foot tail height. A recent study conducted by a business aircraft manufacturer forecasted that business aircraft will only continue to grow in the next ten years, with up to 8,500 new business jet deliveries worth **approximately \$278 billion** over **\$275 billion** expected to be delivered between 2024 and 2033, **with larger private jet deliveries expected to increase approximately 15% in 2024.** These projections are further supported by data from the major business aviation manufacturers that suggest the current order backlog for new business aviation aircraft is **almost \$47 billion** over **\$49 billion.**

These larger footprint aircraft do not fit in much of the existing hangar infrastructure and impose stacking challenges and constraints in the traditional shared or community hangars operated by FBOs. The addition of winglets (the vertical extensions on aircraft wingtips) on most modern business jets inhibits wing-over-wing storage. Aircraft hangars are in high demand and short supply, with some airports compiling waiting lists that can exceed several years.

We believe our scalable, real estate-centric business model is uniquely optimized to capture this market opportunity and address the increased imbalance between the supply and demand for private jet storage. We intend to capitalize on the existing hangar supply constraints at major U.S. airports by targeting high-end tenants in markets where there is a shortage of private and FBO hangar space, or where such hangars are or are becoming obsolete.

We **expect to** realize economies of scale in construction through a **proprietary** prototype hangar design replicated at our hangar campuses across the United States. This allows for centralized procurement, straightforward permitting processes, efficient development processes, and the best hangar in business aviation. Unlike a service company, our revenues are mostly derived from long-term rental agreements, offering stability and forward visibility of revenues and cash flows. This allows the Company to fund its development through the public bond market, providing capital efficiency and mitigating refinance risk.

With six airport We seek to develop our home basing hangar campuses either in development or ongoing operations, on long-term ground leases (or sub-leases thereof) at airports with suitable infrastructure serving metropolitan centers across the company is targeting fourteen additional airfields in the current growth phase, and an additional 30 in the next United States. We lease each of our properties under long-term ground leases.

The table below presents certain information with respect to our portfolio as of **September 30, 2023** **March 31, 2024**.

- Addison Airport ("ADS"), Addison, TX (Dallas area);
- Bradley International Airport ("BDL"), Windsor Locks, CT (Hartford area);
- Centennial Airport ("APA"), Englewood, CO (Denver area);
- Chicago Executive Airport ("PKW"), Wheeling, IL (Chicago area);
- Hudson Valley Regional Airport ("POU"), Wappingers Falls, NY (New York area);
- Miami-Opa Locka Executive Airport ("OPF"), Opa Locka, FL (Miami area);
- Nashville International Airport ("BNA"), Nashville, TN;
- Orlando Executive Airport ("ORL"), Orlando, FL;
- Phoenix Deer Valley Airport ("DVT"), Phoenix, AZ;
- San José Mineta International Airport ("SJC"), San Jose, CA; and
- Sugar Land Regional Airport ("SGR"), Sugar Land, TX (Houston area);
- Miami-Opa Locka Executive Airport ("OPF"), Opa-Locka, FL (Miami area);
- Nashville International Airport ("BNA"), Nashville, TN;
- Centennial Airport ("APA"), Englewood, CO (Denver area);
- Phoenix Deer Valley Airport ("DVT"), Phoenix, AZ; and
- Addison Airport ("ADS"), Addison, TX (Dallas area).

PROPERTIES IN OPERATION

Facility	Completion Date	Hangars	Rentable Square Footage	% of Total Rentable Square Footage	Occupancy at September 30, 2023	Completion Date	Hangars	Rentable Square Footage	% of Total Rentable Square Footage	Occupancy at March 31, 2024	
SGR	December 2020	7	66,080	17.6%	93.9%	SGR	December 2020	7	66,080	17.6%	93.9%
BNA	November 2022	10	149,069	39.7%	63.7%	BNA	November 2022	10	149,069	39.7%	95.5%
OPF Phase I	February 2023	12	160,092	42.7%	70.8%	OPF Phase I	February 2023	12	160,092	42.7%	91.7%
Total/Weighted Average		29	375,241	100.0%	72.1%	Total/Weighted Average		29	375,241	100.0%	93.6%

PROPERTIES IN DEVELOPMENT

Facility	Status	Start	Completion Date	Scheduled			Estimated Total Construction Cost			Projected			Estimated Total Construction Cost		
				Construction	Scheduled	Rentable	Construction	Completion	Rentable	Construction	Completion	Rentable	Hangars	Square Footage	
OPF Phase II	In Development	December 2023	February 2025	28.1 - 32.7	5	107,966									
ADS Phase I							In Construction	Q4 2023	Q1 2025	32.9 - 34.9	6	115,506			

ADS Phase II							Predevelopment	Q1 2025	Q1 2026	31.8 - 35.8	4	106,627
APA Phase I	In Construction	November 2022	April 2024	37.2 - 43.2	9	130,550	In Construction	Q4 2022	Q4 2024	44.8 - 50.8	9	130,550
APA Phase II	Predevelopment	April 2024	February 2025	28.6 - 33.2	5	109,189	Predevelopment	Q2 2025	Q3 2026	34.3 - 38.3	3	107,135
BDL Phase I							Predevelopment	Q2 2025	Q3 2026	33.2 - 37.2	3	109,317
DVT Phase I	In Construction	December 2022	March 2024	32.5 - 37.8	8	134,270	In Construction	Q4 2022	Q1 2025	48.3 - 53.6	8	134,270
DVT Phase II	Predevelopment	April 2024	February 2025	28.2 - 32.8	6	125,556	Predevelopment	Q3 2026	Q4 2027	34.6 - 38.6	6	123,646
ADS Phase I	In Development	October 2023	November 2024	25.4 - 27.4	6	115,506						
ADS Phase II	Predevelopment	March 2024	June 2025	6.8 - 9.8	1	33,600						
ADS Phase III	Predevelopment	January 2025	March 2026	16.5 - 19.5	2	63,273						
OPF Phase II							In Development	Q1 2025	Q2 2026	35.8 - 39.8	3	109,394
ORL Phase I (2)							Predevelopment			TBD		
POU Phase I							Predevelopment	Q2 2025	Q3 2026	33.2 - 37.2	3	109,317
PWK Phase I							Predevelopment	Q2 2025	Q3 2026	52.9 - 56.9	4	145,025
SJC Renovation							In Development	Q2 2024	Q3 2024	4.5 - 5.8	1	9,260
SJC Phase II (2)							Predevelopment			TBD		
Total				\$203.3 - 236.4	42	819,910				\$386.3 - 428.9	50	1,200,047

(1) Our projections associated with the commencement and completion of construction, estimated total construction cost, hangars, and rentable square footage of our properties in development are inherently subjective and require judgement to estimate. We believe that our estimates of construction costs and timelines are subject to variability based on various factors including, but not limited to, changes in anticipated site plans, hangar mix, hangar specifications, executed guaranteed maximum price construction contracts, and general market conditions.

(2) Our ground leases at SJC and ORL were executed in March 2024, and we have not yet formed preliminary estimates regarding the projected construction timeline, total construction costs, or hangar mix associated with our ORL Phase I and SJC Phase II development projects.

Recent Developments

On October 11, 2023 March 23, 2024, we entered into a ground lease agreement (the "PWK Lease") the SJC Lease at SJC with Chicago Executive Airport ("PWK"), the City of San Jose. The SJC Lease covers approximately 7 acres of property that contains an approximately 38,000 square foot hangar, approximately 19,000 square feet of office space, and approximately 108,000 square feet of apron and ramp space. The property at SJC includes additional land on which we intend to develop approximately 28,000 square feet of additional hangar space. The initial term of the PWK SJC Lease will be 50 20 years from May 1, 2024, and is divided contains a mutual option to extend the SJC Lease an additional 5 years following the expiration of the initial term.

On March 27, 2024, we entered into two parcels, allowing for the development of ORL Lease at ORL with GOAA. The ORL Lease covers a hangar campus on up to 25 parcel containing approximately 20 acres of land at PWK.

On November 1, 2023, the Company entered into a Securities Purchase Agreement (the "Private Placement Purchase Agreement") with certain investors (collectively, the "Investors"), pursuant to which the Company agreed to sell and issue to the Investors at an ORL. The initial closing an aggregate of 6,586,154 shares (the "PIPE Shares") term of the Company's Class A Common Stock and accompanying warrants ORL Lease will be 30 years from expiration of the construction period, with lease payments commencing contemporaneously with the term. The ORL Lease contains options exercisable by us to purchase up to 1,141,600 shares of Class A Common Stock (the "PIPE Warrants"), for extend the ORL Lease an aggregate purchase price of \$42.8 million (the "Initial Financing"). additional 20 years based on our total expenditures in subsequent phases at ORL.

Revenues

Our revenues are derived from rents we earn pursuant to the lease agreements we enter into with our tenants. Our ability to expand through new ground leases and tenant leases at airports is integral to our long-term business strategy and requires that we identify and consummate suitable new ground leases or investment opportunities in real estate properties for our portfolio that meet our investment criteria and are compatible with our growth strategy. Our ability to enter into new ground leases and tenant leases on favorable terms, or at all, may be adversely affected by a number of factors. We believe that the business environment of the industry segments in which our tenants operate is generally positive for tenants. However, our existing and potential tenants are subject to economic, regulatory and market conditions that may affect their level of operations and demand for hangar space, which could impact our results of operations. For example, during the **three months** **year** ended **September 30, 2023** **December 31, 2023**, a tenant renting two hangars at OPF made the determination that it was necessary to change its business plans in the greater Miami market, which ultimately resulted in the negotiated settlement of the tenant's lease with the **Company** **us** and their exit from our OPF hangar campus. Accordingly, we actively monitor certain key factors, including changes in those factors (fuel prices, new aircraft deliveries, hangar rental rates) that we believe may provide early indications of conditions that may affect the level of demand for new leases and our lease portfolio. See "—Risks Related to our Business and Operations" within the Form 10-K for more information about the risks related to our tenants and our lease payments.

Ground Lease Expense

One of our largest expenses is the lease payments under our ground leases. For the **nine** **three** months ended **September 30, 2023** **March 31, 2024** and **2022** **2023**, our operating lease expense for ground leases was **\$2.8 million** **\$1.2 million** and **\$2.8 million** **\$0.9 million**, respectively. As we enter into new ground leases at new airport sites, our payments to airport landlords will continue to increase into the future. If airport landlords increase the per acre cost of the ground lease of our target campuses, the operating margins at potential target developments may be impacted negatively.

Interest Expense

Economic conditions and actions by policymaking bodies are contributing to rising interest rates, which, along with increases in our borrowing levels, could increase our future borrowing costs. We expect to issue additional debt to finance future site developments and higher interest rates would impact our overall economic performance. In addition, we are subject to credit spreads demanded by fixed income investors. As a non-rated issuer, increases in general of credit spreads in the market, or for us, may result in a higher cost of borrowing in the future. We intend to access the bond market on an opportunistic basis. In addition, we may hedge against rising benchmark interest rates by entering into hedging strategies with high quality counterparties.

General and Administrative Expenses

The general and administrative expenses reflected in our statement of operations are reflective of the professional, legal and consulting fees, payroll costs, and other general and administrative expenses, including those necessary to support our business as a public company such as expenses associated with corporate governance, SEC reporting, and other compliance matters. While we expect that our general and administrative expenses will rise in some measure as our portfolio of campuses grows, we expect that such expenses as a percentage of our portfolio will decrease over time due to efficiencies, economies of scale, insourcing of job functions, and cost control measures.

Construction Material Costs and Labor

When constructing our **home basing** hangar campuses, we use various materials, assemblies, and **labor** components. We contract for **certain** of our materials and labor with **various** general contractors under guaranteed maximum price (GMP) contracts upon receipt of building permits. This allows us to mitigate certain of the **risks** **inflationary pressures** associated with increases in certain building materials and labor costs between the time construction begins **on** **at** a hangar campus and the time it is completed. Typically, the materials and most of the components used to construct our hangar campuses are readily available in the United States. We continue to monitor the supply markets **and ensure** **robust competition** to achieve the best prices available. Typically, the price changes that most significantly influence our operations are price increases in steel, concrete, and labor. We believe that recent inflationary pressures and market conditions will lead to continued increases in construction costs **as well as** **and** market rental rates for hangars within our **hangar campus** development projects. However, there can be no assurance that we will be able to increase the lease rates for the hangars within our hangar campuses to absorb these increased costs and/or delays, if at all.

In May 2023, we acquired a controlling interest in Rapidbuilt, a metal building and hangar door manufacturer, that we expect will ultimately result in **an increase in quality and** **a reduction in the overall cost of the metal building and hangar door components at** **all** **future** **hangar campus** **development projects**. We expect that over time this vertical integration will enable us to deliver metal buildings to **each** **most of our** **development site** **sites** in shorter **timeframes**, **which** **times** **as compared to the anticipated lead times associated with** **conventional metal building fabricators**. We believe **internal building fabrication** **will provide us opportunities to aggressively target continued schedule compression at** **most of our** **development projects in the future**. In December 2023, we **believe** **will** **reduce** **engaged** **several structural engineering firms to perform an independent peer review of the** **overall** **hangar buildings** **designed for our DVT Phase I and APA Phase I development projects**. The independent peer reviews determined a significant design defect existed within our prototype hangar building designs that requires retrofitting to both meet and exceed our standards and the respective local building codes. The anticipated retrofitting efforts are

also expected to be applied to ADS Phase I, and we project that the aggregate additional cost of such retrofits could total between \$26 to \$28 million and require an additional three to five months of construction duration for each development project.

We intend to continue to aggressively take action to mitigate these inflationary pressures, reduce construction costs, and shorten development schedules, both in project impacted. Given the near term planned design enhancements at our APA Phase I, DVT Phase I, and ADS Phase I development projects, we anticipate that our total construction costs for these projects to each be greater than our original estimates, and outside of the scope of the guaranteed maximum price construction contracts. In March 2024, we funded the increase in estimated costs by contributing \$27 million of our corporate cash holdings to SHC, thereby restricting the long term at use of such cash to the project scope of the Series 2021 Bonds.

Our projections associated with the commencement and completion of construction, estimated total construction cost, hangars, and rentable square footage of our properties in development are inherently subjective and require judgement to estimate. We believe that our estimates of construction costs and timelines are subject to variability based on various factors including, but not limited to, changes in anticipated site plans, hangar mix, hangar specifications, executed guaranteed maximum price construction contracts, and general market conditions. In May 2024, we updated many of our preliminary estimates based on our intention to begin incorporating a larger hangar prototype into our home basing hangar campuses, which is intended to provide an increase in rentable square footage of hangar, office, and lounge space upon completion. This larger hangar prototype requires an increase in construction materials and components, and we expect its incorporation into multiple future projects. development projects will ultimately result in cost savings through the realization of economies of scale. Our updated estimates of total construction costs do not include projections of potential cost reductions due to such efficiencies. We intend to continue to aggressively mitigate inflationary pressures, reduce construction costs to the greatest extent possible, and pursue compressed development schedules. We currently structure our guaranteed maximum price construction contracts with shared savings clauses to incentivize the general contractors to reduce construction costs. At our SGR and BNA development projects, our total construction costs were lower than both our original pricing estimate and the project's contracted guaranteed maximum price. No assurance can be given that our cost mitigation strategies will be successful, the costs of our ongoing and future projects will not exceed budgets or the guaranteed maximum price for such projects, or that the completion will not be delayed beyond the projected completion dates.

Current Capital Requirements and Future Expenditures for Expansion

We previously funded SHC with over \$200 million to fund the two phases at each of our initial five ground leased airport locations. These construction funds and reserves are held at the bondholder trustee.

We maintain the ability to include up to \$50 million in new projects outside the original five locations to be funded with a portion of the existing proceeds held by the trustee as long as certain approvals and supplemental consultant reports are provided showing that such new project would result in better coverage of debt service than previously contemplated projects. We exercised this ability utilizing approximately \$26 million of the \$50 million available and received the requisite approvals and reports in March 2023 with respect to our ADS Phase I development project.

We previously raised equity capital, along with potential future debt and further equity issuances, including the Private Placement Purchase Agreement entered into on November 1, 2023, see [Note 16 Liquidity and Capital Resources — Private Placement and Securities Purchase Agreement](#) [Subsequent Events in the Notes to Consolidated Financial Statements](#), below, to begin to fund additional airport campuses and reach up to 20 airport campuses over the next several years. We also have the ability to access the capital markets through our ATM Facility and through our effective shelf registration statement on Form S-3. On average, each future campus is anticipated to be composed of an average of 10-20 hangars at least 100,000 rentable square feet and is expected to cost approximately \$55 million per campus, with 60% or more to be funded with additional private activity bonds, bonds or other indebtedness. All these future hangar campus projects are discretionary and require us to identify the appropriate airports with the target hangar demand economics, secure required ground leases and permits, and complete future construction at such sites.

The cumulative 20 airport site business plan is estimated to cost approximately \$1.2 billion, with approximately 65% to 75% anticipated from long-term private activity bonds and the balance with equity or equity linked financing. Our ability to raise additional equity and/or debt financing will be subject to a number of risks, including our ability to obtain financing upon reasonable terms, if at all, costs of construction, delays in constructing new facilities, operating results, and other risk factors. In the event that we are unable to obtain additional financing, we may be required to raise additional equity capital, creating additional dilution to existing stockholders. There can be no assurance that we would be successful in raising such additional equity capital on favorable terms, if at all. Even if we can obtain such additional equity financing if needed, there can be no assurance that we would be successful in raising such additional financing on favorable terms, if at all.

Critical Accounting Policies and Estimates

The preparation of financial statements and related disclosures in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and expenses during the periods reported. Actual results could materially differ from those estimates. We have identified the following as our critical accounting policies:

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during

the reporting periods. Such estimates include assumptions used within impairment analyses, estimated useful lives of depreciable assets and amortizable costs, estimates of inputs utilized in determining the fair value of financial instruments such as warrants, estimates and assumptions related to right-of-use assets and operating lease liabilities, and estimates and assumptions used in the determination of the fair value of assets acquired and liabilities assumed in the business combination. Actual results could differ materially from those estimates.

Cost of Construction

Cost of construction on the consolidated balance sheets is carried at cost. The cost of acquiring an asset includes the costs necessary to bring a capital project to the condition necessary for its intended use. Costs are capitalized once the construction of a specific capital project is probable. Construction labor and other direct costs of construction are capitalized. Professional fees for engineering, procurement, consulting, and other soft costs that are directly identifiable with the project and are considered an incremental direct cost are capitalized. We allocate a portion of our internal salaries to both capitalized cost of construction and to general and administrative expense based on the percentage of time certain employees worked in the related areas. Interest costs on the loans and bonds used to fund the capital projects are also capitalized until the capital project is completed. Once a capital project is complete, the cost of the capital project is reclassified to Constructed Assets on the accompanying balance sheet and we begin to depreciate the constructed asset on a straight-line basis over the lesser of the life of the asset or the remaining term of the related ground lease, including expected renewal terms.

Leases

We account for leases under Accounting Standards Codification ("ASC") Topic 842, Leases. We determine whether a contract contains a lease at the inception of the contract. ASC Topic 842 requires lessees to recognize operating lease liabilities and right-of-use ("ROU") assets for all leases with terms of more than 12 months on the consolidated balance sheets. We have made an accounting policy election that will keep leases with an initial term of 12 months or less off our consolidated balance sheets and will result in recognizing those lease payments in the consolidated statements of operations on a straight-line basis over the lease term. When management determines that it is reasonably certain that we will exercise our options to renew the leases, the renewal terms are included in the lease term and the resulting ROU asset and operating lease liability balances. We have elected to not capitalize any interest cost that is implicit within our operating leases into cost of construction on the consolidated balance sheet, but instead, we expense our ground lease cost in the consolidated statements of operations.

We have lease agreements with lease and non-lease components; we have elected the accounting policy to not separate lease and non-lease components for all underlying asset classes.

Revenue Recognition

We lease hangar facilities that we construct to third parties. The lease agreements are either on a month-to-month basis or have a defined term and may have options to extend the term. Some of the leases contain options to terminate the lease by either party with given notice. There are no options given to the lessee to purchase the underlying assets. Rental revenue is recognized in accordance with ASC Topic 842, Leases, and includes (i) fixed payments of cash rents, which represents revenue each tenant pays in accordance with the terms of its respective lease and is recognized on a straight-line basis over the term of the lease and (ii) variable payments of tenant reimbursements, which are recoveries of all or a portion of the common area maintenance and operating expenses of the property and are recognized in the same period as the expenses are incurred.

The Company evaluates the collectability of tenant receivables for payments required under the lease agreements. If the Company determines that collectability is not probable, the Company recognizes any difference between revenue amounts recognized to date under ASC 842 and payments that have been collected from the lessee, including any additional rent or lease termination fees, as a current period adjustment to rental revenue.

Recent Accounting Pronouncements

See Note 2 — *Basis of Presentation and Significant Accounting Policies* in the Notes to Consolidated Financial Statements for a full description of recent accounting pronouncements including the expected dates of adoption and effects on results of operations and financial condition.

Results of Operations

Three Months Ended September 30, 2023 March 31, 2024 Compared to the Three Months Ended September 30, 2022 March 31, 2023

The following table sets forth a summary of our consolidated results of operations for the periods indicated below and the changes between the periods (in thousands).

Three months ended	Three months ended
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	September 30, 2023	September 30, 2022	Change	March 31, 2024	March 31, 2023	Change
Revenue:						
Rental revenue	\$ 2,502	\$ 431	\$ 2,071	\$ 2,404	\$ 1,107	\$ 1,297
Total revenue	2,502	431	2,071	2,404	1,107	1,297
Expenses:						
Operating	1,675	1,228	447	2,083	1,792	291
Depreciation	670	148	522	629	450	179
Loss on impairment of long-lived assets	-	-	-	-	-	-
General and administrative	3,556	3,599	(43)	4,916	3,549	1,367
Total expenses	5,901	4,975	926	7,628	5,791	1,837
Operating loss	(3,399)	(4,544)	1,145	(5,224)	(4,684)	(540)
Other (income) expense:						
Interest expense	234	-	234	194	-	194
Unrealized gain on warrants	(1,597)	(1,452)	(145)	16,188	4,210	11,978
Other income	(37)	-	(37)	(407)	(133)	(274)
Total other (income) expense	(1,400)	(1,452)	52	15,975	4,077	11,898
Net income (loss)	\$ (1,999)	\$ (3,092)	\$ 1,093			
Net loss				\$ (21,199)	\$ (8,761)	\$ (12,438)

Revenues

Revenues for the three months ended September 30, 2023 March 31, 2024 were approximately \$2.5 million, \$2.4 million, compared to approximately \$0.4 million \$1.1 million for the three months ended September 30, 2022 March 31, 2023. The \$2.1 million, \$1.3 million, or 481%117%, increase was primarily the result of the cumulative impact of certain additional tenant leases in place at our SGR, BNA and OPF hangar campuses as compared to the three months ended September 30, 2022, additional tenant leases commencing March 31, 2023. The increase in occupancy at our OPF and BNA hangar campuses during for the three months ended September 30, 2023, and March 31, 2024 as compared to March 31, 2023 resulted in increased fixed rental revenues of approximately \$0.4 million \$1.1 million. Revenue associated with our delivery of net non-recurring adjustments to revenue recognized during aircraft fuel increased approximately \$0.2 million for the three months ended September 30, 2023 March 31, 2024 compared to the three months ended March 31, 2023.

Operating Expenses

Operating expenses increased approximately \$0.4 million \$0.3 million, or 36% 16%, for the three months ended September 30, 2023 March 31, 2024, as compared to the three months ended September 30, 2022 March 31, 2023. The increase reflects higher operating costs associated with operated expense is primarily reflective of increased ground lease expense, which increased approximately \$0.3 million for the commencement of operations three months ended March 31, 2024, as compared to the three months ended March 31, 2023. The increase in ground lease expense was driven by new ground leases signed at our BNA PWK, BDL, and OPF hangar campuses POU during the three months ended December 31, 2022 December 31, 2023, and March 31, 2023, respectively, at SJC and ORL during the three months ended March 31, 2024. Salaries, wages, and benefits associated with our campus personnel increased by approximately \$0.1 million, primarily driven by a headcount increases increase associated with the anticipated commencement of operations at our BNA and OPF SJC hangar campuses campus. Other operating expenses increased decreased by approximately \$0.3 million \$0.1 million, primarily driven by increased insurance, property taxes, and utilities decreased utility expenses associated with operations at our OPF and BNA and SGR hangar campuses, campuses due to higher occupancy levels.

Depreciation Expense

Depreciation increased approximately \$0.5 \$0.2 million, or 352%40%, for the three months ended September 30, 2023 March 31, 2024, as compared to the three months ended September 30, 2022 March 31, 2023. The increase reflects a full quarter of depreciation associated with our OPF and BNA hangar campuses, campus, which opened during the three months ended March 31, 2023, and the three months ended December 31, 2022, respectively. The increase was also partially driven by the placement of additional ground support equipment into service throughout 2022 and 2023 and 2024 and a full quarter of depreciation related to Rapidbuilt, which was acquired during the three months ended June 30, 2023.

General and Administrative Expenses

For the three months ended **September 30, 2023**, **March 31, 2024**, and **2022**, general and administrative expenses were approximately **\$3.6 million**, **\$4.9 million** and **\$3.6 million** **\$3.5 million**, respectively. The approximately 1% decrease **\$1.4 million**, or 38%, increase was primarily due to a decrease of approximately **\$0.4 million** related to other administrative expenses, largely driven by decreased corporate insurance premiums and an approximately **\$0.3 million** decrease in professional fees, which was primarily driven by decreased in legal and accounting related costs and our efforts to internalize job functions. These decreases were offset by an approximately **\$0.7 million** **\$1.3 million** increase in salaries, wages, and other benefits, driven by an increase in corporate headcount and expense recognized associated with our equity compensation program. Headcount and compensation expenses increased approximately **\$0.7 million**, non-cash equity compensation expense increased approximately **\$0.6 million**, and professional fees increased approximately **\$0.1 million** for the three months ended **March 31, 2024** as compared to the three months ended **March 31, 2023**. This increase in professional fees was partially attributable to the recognition of approximately **\$0.1 million** of expense associated with the B. Riley Termination.

Other (Income) Expense

Other income decreased expense increased from approximately **\$1.5 million** **\$4.1 million** to approximately **\$1.4 million** **\$16.0 million** for the three months ended **September 30, 2023**, **March 31, 2024** as compared to the three months ended **September 30, 2022**, **March 31, 2023**. This decrease increase was primarily due to an approximately **\$0.2 million** increase in interest expense due to the Rapidbuilt acquisition, offset by a **\$0.1 million** **\$12.0 million** difference in the mark-to-market adjustment of the outstanding warrants at **September 30, 2023**, **March 31, 2024** as compared to **September 30, 2022**.

Results of Operations

Nine Months Ended September 30, 2023 Compared to the Nine Months Ended September 30, 2022

The following table sets forth a summary of our consolidated results of operations for the periods indicated below and the changes between the periods (in thousands).

	Nine months ended		
	September 30, 2023	September 30, 2022	Change
Revenue:			
Rental revenue	\$ 5,337	\$ 1,236	\$ 4,101
Total revenue	5,337	1,236	4,101
Expenses:			
Operating	5,179	3,652	1,527
Depreciation	1,650	447	1,203
Loss on impairment of long-lived assets	-	248	(248)
General and administrative	10,838	12,136	(1,298)
Total expenses	17,667	16,483	1,184
Operating loss	(12,330)	(15,247)	2,917
Other (income) expense:			
Interest expense	316	-	316
Unrealized gain on warrants	-	(2,904)	2,904
Other income	(252)	-	(252)
Total other (income) expense	64	(2,904)	2,968
Net loss	\$ (12,394)	\$ (12,343)	\$ (51)

Revenues

Revenues for the nine months ended **September 30, 2023** were approximately **\$5.3 million**, compared to approximately **\$1.2 million** for the nine months ended **September 30, 2022**. The **\$4.1 million**, or 332%, increase was primarily the result of tenant leases commencing at our OPF and BNA hangar campuses during the nine months ended **September 30, 2023**, as well as the cumulative impact of certain additional tenant leases in place at our SGR and BNA hangar campuses as compared to the nine months ended **September 30, 2022**.

Operating Expenses

Operating expenses increased approximately **\$1.5 million**, or 42%, for the nine months ended **September 30, 2023**, as compared to the nine months ended **September 30, 2022**. The increase reflects higher operating costs associated with the commencement of operations at our BNA and OPF hangar campuses, which opened during the three months ended December 31, 2022 and March 31, 2023, respectively. Salaries, wages, and benefits associated with our campus personnel increased by approximately **\$0.6 million**, primarily

driven by headcount increases at our BNA and OPF hangar campuses. Other operating expenses increased approximately \$0.9 million, primarily driven by increased insurance, property taxes, and utilities associated with operations at our OPF, BNA, and SGR hangar campuses.

Depreciation Expense

Depreciation increased approximately \$1.2 million, or 269%, for the nine months ended September 30, 2023, as compared to the nine months ended September 30, 2022. The increase reflects the opening of our OPF hangar campus during the three months ended March 31, 2023, the opening of our BNA hangar campus during the three months ended December 31, 2022 and the placement of additional ground support equipment into service throughout 2022 and 2023.

General and Administrative Expenses

For the nine months ended September 30, 2023, and 2022, general and administrative expenses were approximately \$10.8 million and \$12.1 million, respectively. The approximately \$1.3 million decrease was primarily due to an approximately \$1.6 million decrease in professional fees, which was primarily driven by decreased in legal and accounting related costs due non-recurring transaction costs incurred during the nine months ended September 30, 2022, and our efforts to internalize job functions. Other administrative expenses decreased approximately \$0.6 million primarily due to decreased corporate insurance premiums. These decreases were offset by an approximately \$0.9 million increase in salaries, wages, and other benefits, primarily driven by an increase in expense recognized associated with our equity compensation program.

Other (Income) Expense

Other (income) expenses decreased from approximately \$2.9 million of income to less than \$0.1 million of expense for the nine months ended September 30, 2023 as compared to the nine months ended September 30, 2022. This decrease was primarily due to a \$2.9 million difference in the mark-to-market adjustment of the outstanding warrants at September 30, 2023 as compared to September 30, 2022.

Liquidity and Capital Resources

Overview

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund the construction of new assets, fund working capital and other general business needs. Our primary sources of cash include the potential issuance of equity and debt securities and rental payments from tenants. Our long-term liquidity requirements include lease payments under our ground leases with airport authorities, repaying principal and interest on outstanding borrowings, funding the construction costs of our hangar campus development projects (see “— Construction Material Costs and Labor”), funding for operations, and paying accrued expenses.

We believe that we have access to multiple sources of capital to fund our long-term liquidity requirements, including the incurrence of additional private activity bonds and other debt and the issuance of additional equity securities. We also have the ability to utilize our \$100 ATM Facility or otherwise utilize our registration statement on Form S-3 to access the capital markets. However, as we have recently become a publicly-traded company, we cannot assure you that we will have access to these sources of capital or that, even if such sources of capital are available, that these sources of capital will be available on favorable terms. Our ability to incur additional debt will depend on multiple factors, including our degree of leverage, the value of our unencumbered assets and borrowing restrictions that are or may be imposed by future lenders. Our ability to access the equity and debt capital markets will depend on multiple factors as well, including general market conditions for real estate companies, our degree of leverage, the trading price of our common stock and debt and market perceptions about our Company.

Our cash deposits may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and the majority are maintained with a major financial institution with reputable credit. Our restricted cash is held in trust at a major financial institution pursuant to the Series 2021 Bonds indenture. We monitor the relative credit standing of financial institutions with whom we transact and limit the amount of credit exposure with any one entity. Our portfolio of investments and restricted investments is composed entirely of U.S. Treasury securities as of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023** (in thousands):

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Cash and cash equivalents	\$ 2,471	\$ 2,174	\$ 2,556	\$ 60,257
Restricted cash	34,289	39,222	99,453	12,009
Investments	16,832	24,895	36,990	11,866
Restricted investments	80,183	114,648	20,213	88,213
Total cash, restricted cash, investments, and restricted investments	\$ 133,775	\$ 180,939	\$ 159,212	\$ 172,345

Private Placement and Securities Purchase Agreement

On November 1, 2023, the Company we entered into the Private a Securities Purchase Agreement (the "Private Placement Purchase Agreement") with certain Investors, investors (collectively, the "Investors"), pursuant to which the Company we (i) agreed to sell sold and issue issued to the Investors at an initial closing on November 2, 2023 an aggregate of 6,586,154 shares (the "Initial PIPE Shares") of the Company's our Class A Common Stock and accompanying warrants to purchase up to 1,141,600 shares of Class A Common Stock (the "Initial PIPE Warrants"), for an aggregate purchase price of \$42.8 million (the "Initial Financing" "Initial Financing"), and (ii) agreed to sell sold and issue issued to the Investors at the second closing, if any, up to on November 29, 2023 an aggregate of 2,307,692 shares of our Class A Common Stock (the "Additional PIPE Shares" and, together with the Initial PIPE Shares, (the "Additional PIPE Shares" the "PIPE Shares") and accompanying PIPE Warrants warrants to purchase up to an aggregate of 400,000 shares of Class A Common Stock (the "Additional PIPE Warrants" "Warrants" and, together with the Initial PIPE Warrants, the "PIPE Warrants") for an aggregate purchase price of up to \$15.0 million (the "Additional Financing" and, together. Together with the Initial Financing, the "Financing") aggregate PIPE financing through the Private Placement Purchase Agreement totaled approximately \$57.8 million.

B. Riley Stock Purchase Agreement At-the-Market Facility

On August 18, 2022 March 27, 2024, we entered into a Common Stock Purchase an At Market Issuance Sales Agreement and a Registration Rights Agreement (collectively referred to as the "B. Riley Stock Purchase (the "ATM Agreement") with B. Riley Principal Capital, LLC Securities, Inc. ("B. Riley"). Pursuant with respect to an "at the B. Riley Stock Purchase Agreement, market" offering program (the "ATM Facility"), under which we have the right, in may, from time to time, at our sole discretion, to issue and sell to through B. Riley, acting as sales agent, up to 10 million \$100 million of shares of our Class A Common Stock at 97% of the volume weighted average price of our Class A Common Stock calculated in accordance with the B. Riley Stock Purchase Agreement, over a period of 36 months subject to certain limitations and conditions contained in the B. Riley Stock Purchase Agreement. Sales and timing of any sales of Class A Common Stock Stock. Pursuant to the ATM Agreement, we may sell the shares through B. Riley by any method permitted that is deemed an "at the market" offering as defined in Rule 415 under the Securities Act. B. Riley will use commercially reasonable efforts consistent with its normal trading and sales practices to sell the shares from time to time, based upon instructions from us, including any price or size limits or other customary parameters or conditions we may impose. We will pay B. Riley a commission of 3.0% of the gross sales price per share sold under the ATM Agreement.

We are solely at our election, and we are under no obligation not obligated to sell any securities shares under the ATM Agreement. The offering of shares pursuant to the ATM Agreement will terminate upon the earlier to occur of (i) the issuance and sale, through B. Riley, of all of the shares subject to the ATM Agreement and (ii) termination of the ATM Agreement in accordance with its terms. We have made no sales under the B. Riley Stock Purchase Agreement. As consideration for B. Riley's commitment ATM Facility to purchase shares date and will only do so when our stock price is at prices our board of our Class A Common Stock, we have issued 25,000 shares of our Class A Common Stock to B. Riley as initial commitment shares and may issue up to an aggregate of 75,000 shares of our Class A Common Stock to B. Riley as additional commitment shares if certain conditions are met.

Equity Financing

On January 25, 2022 (the "Closing Date") we completed the transactions (the "Yellowstone Transaction") contemplated by the Equity Purchase Agreement, dated as of August 1, 2021 (the "Equity Purchase Agreement"), between Yellowstone and Sky. On the Closing Date, Yellowstone changed its name to Sky Harbour Group Corporation, and Sky restructured its capitalization, issuing its Sky Common Units to the Company. As a result of the Yellowstone Transaction, the Sky Common Units that Sky issued to BOC YAC in respect of its Series B Preferred Units were converted into 5,500,000 shares of the Company's Class A Common Stock and holders of Sky Common Units received one share of the Company's Class B Common Stock for each Common Unit. As consideration for the issuance of Sky Common Units to the Company, Yellowstone contributed approximately \$48 million of net proceeds to us, consisting primarily of the BOC PIPE, and the amount held in the Yellowstone trust account, net of redemptions and transaction costs. directors deems appropriate.

Private Activity Bonds

On September 14, 2021, SHC completed an issuance through the Public Finance Authority (Wisconsin) of \$166.3 million of Senior Special Facility Revenue Bonds (Aviation Facilities Project), Series 2021 (the "PABs"). The PABs are comprised of three maturities: \$21.1 million bearing interest at 4.00%, due July 1, 2036; \$30.4 million bearing interest at 4.00%, due July 1, 2041; and \$114.8 million bearing interest at 4.25%, due July 1, 2054. The Series 2021 Bond that has a maturity date of July 1, 2036 was issued at a premium, and Sky received bond proceeds that were \$0.2 million above its face value. The net proceeds from the issuance of the PABs proceeds are being used to (a) finance or refinance the construction of various aviation facilities consisting of general aviation aircraft hangars and storage facilities located and to be located on the SGR site, the OPF site, the BNA site, the APA site, and the DVT site; (b) fund debt service and other operating expenses such as ground lease expense during the initial construction period; (c) fund deposits to the Debt Service Reserve Fund; and (d) pay certain costs of issuance related to the PABs.

Debt Covenants

The PABs contain financial and non-financial covenants, including a debt service coverage ratio, a restricted payments test and limitations on the sale, lease, or distribution of assets. To the extent that SHC does not comply with these covenants, an event of default or cross-default may occur under one or more agreements, and we or our subsidiaries may be restricted in our ability to pay dividends, issue new debt or access our leased facilities. The PABs are collateralized on a joint and several basis with the property and revenues of all SHC subsidiaries and their assets financed or to be financed from the proceeds of the PABs.

Covenants in the PABs require SHC to maintain a debt service coverage ratio (as defined in the relevant documents) of at least 1.25 for each applicable test period, commencing with the quarter ending December 31, 2024. The PABs are subject to a Continuing Disclosure Agreement whereby SHC is obligated to provide electronic copies of (i) monthly construction reports, (ii) quarterly reports containing quarterly financial information of SHC and (iii) annual reports containing audited consolidated financial statements of SHC to the Municipal Securities Rulemaking Board. As of **September 30, 2023** **March 31, 2024**, we were in compliance with all debt covenants.

Lease Commitments

The table below sets forth certain information with respect to our future minimum lease payments required under leases as of **September 30, 2023** **March 31, 2024** (in thousands):

Year Ending December 31,	Operating Leases	Finance Leases	Operating Leases	Finance Leases
2023 (remainder of year)	\$ 482	\$ 8		
2024	2,137	29		
2024 (remainder of year)			\$ 3,705	\$ 21
2025	2,379	23	5,342	24
2026	2,431	17	6,545	17
2027	2,494	2	7,075	2
2028			6,997	-
Thereafter	199,870	-	339,478	-
Total lease payments	209,793	79	369,142	64
Less imputed interest	(154,766)	(5)	(252,784)	(4)
Total	\$ 55,027	\$ 74	\$ 116,358	\$ 60

Contractual Obligations

The following table sets forth our contractual obligations as of **September 30, 2023** **March 31, 2024** (in thousands):

	2023					2024				
	(remainder					(remainder				
	of year)	2024-2025	2026-2027	Thereafter	Total	of year)	2025-2026	2027-2028	Thereafter	Total
Principal payments on bonds payable	\$ -	\$ -	\$ -	\$ 166,340	\$ 166,340	\$ -	\$ -	\$ -	\$ 166,340	\$ 166,340
Interest payments on bonds payable	-	13,881	13,881	126,010	153,772	3,470	13,881	13,881	114,968	146,200
Contractual payments on other long-term indebtedness	1,447	10,395	131	34	12,007	1,836	7,981	95	-	9,912
Lease commitments	978	4,569	4,945	199,870	210,362	3,726	11,928	14,074	339,478	369,206
Total	\$ 2,425	\$ 28,845	\$ 18,957	\$ 492,254	\$ 542,481	\$ 9,032	\$ 33,790	\$ 28,050	\$ 620,786	\$ 691,658

Funds to meet interest payments for the next three years on the Series 2021 PABs are held in reserve as restricted cash and restricted investments.

Off-Balance Sheet Arrangements

We do not maintain any off-balance sheet arrangements.

Cash Flows

The following table summarizes our sources and uses of cash for the **nine** three months ended **September 30, 2023** **March 31, 2024** and **2022** **2023** (in thousands):

Nine months ended	Three months ended
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	September 30, 2023	September 30, 2022	March 31, 2024	March 31, 2023
Cash and restricted cash at beginning of period	\$ 41,396	\$ 203,935	\$ 72,266	\$ 41,396
Net cash used in operating activities	(6,263)	(25,282)	(4,430)	(4,553)
Cash provided by (used in) investing activities	2,137	(213,549)		
Net cash (used in) provided by financing activities	(510)	52,790		
Net cash provided by investing activities			33,874	36,313
Net cash provided by financing activities			299	-
Cash and restricted cash at end of period	\$ 36,760	\$ 17,894	\$ 102,009	\$ 73,156

Operating Activities

Cash provided by operating activities is significantly influenced by the amount of cash we invest in personnel and infrastructure to support the anticipated growth of our business. Included in net cash used in operating activities are certain non-recurring legal, accounting, and consulting costs incurred for up to four quarters as a result of becoming a public company. Our working capital consists primarily of cash, receivables from tenants, prepaid expenses, accounts payable, accrued compensation, accrued other expenses, and lease liabilities. The timing of collection of our tenant receivables, and the timing of spending commitments and payments of our accounts payable, accrued expenses, accrued payroll and related benefits, all affect these account balances.

Net cash used in operating activities was approximately **\$6.3 million** **\$4.4 million** for the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, as compared to cash used in operating activities of approximately **\$25.3 million** **\$4.6 million** for the same period in **2022**, **2023**. The **\$19.0 million** **\$0.1 million** decrease in cash used in operating activities was primarily attributable to a **\$14.6 million** favorable change in the Company's working capital position, which was primarily driven by **\$9.6 million** of initial direct costs associated with the purchase of our former landlord's leasehold interest at our OPF campus during the nine months ended September 30, 2022. The decrease was also partially attributable to a reduction in corporate insurance premiums paid during the nine months ended September 30, 2023 as compared to the nine months ended September 30, 2022. The decrease was also partially attributable to a **\$4.4 million** an approximately **\$0.6 million** decrease in net loss, net of non-cash adjustments. The decrease in net loss, net of non-cash adjustments was primarily driven by an increase in revenue and a rental revenue. The decrease in non-recurring general and administrative expenses incurred was offset by an approximately **\$0.5 million** unfavorable change in the expansion Company's working capital position, which was primarily driven by the timing of our business, including transaction-related expenses incurred during the nine months ended September 30, 2023, vendor payments and tenant receipts.

Investing Activities

Our primary investing activities have consisted of payments related to the cost of construction at our various hangar campus development projects and investment in U.S. Treasury Securities. As our business expands, we expect to continue to invest in our current and anticipated future portfolio of hangar campus development projects.

Cash Net cash provided by investing activities was approximately **\$2.1 million** **\$33.9 million** for the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, as compared to cash used in provided by investing activities of approximately **\$213.5 million** **\$36.3 million** for the same period in **2022**, **2023**. The decrease of approximately **\$215.7 million** in **\$2.4 million** of cash used in provided by investing activities was driven primarily by an increase of approximately **\$90.0 million** **\$95.8 million** of available for sale U.S. Treasury purchases, offset by increases of approximately **\$64.3 million** and **\$14.0 increases** **\$27.9 million** in proceeds received from the Company's held-to-maturity and available for sale and held-to-maturity investments, respectively, during the nine months ended September 30, 2023 as compared to the nine months ended September 30, 2023, respectively. The decrease was also attributable to a decreases of approximately **\$90.0 million** and **\$24.6 million** in held-to-maturity and available-for-sale U.S. Treasury purchases, respectively. The impact of our U.S. Treasury investment activities was offset further driven by an approximately **\$4.4 million** **\$0.1 million** increase in capital expenditures.

Financing Activities

Our primary financing activities have consisted of capital raised to fund the growth of our business and proceeds from debt obligations incurred to finance our hangar campus development projects. We expect to raise additional equity capital and issue additional indebtedness as our business grows.

Net cash used in provided by financing activities was approximately **\$0.5 million** **\$0.3 million** for the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, as compared to net cash provided by financing activities of approximately **\$52.8 million** **\$0** for the same period in **2022**, **2023**. The approximately **\$53.3 million** decrease **\$0.3 million** increase in net cash provided by financing activities was primarily driven by **\$45.0 million** **\$1.5 million** of proceeds received from the issuance exercise of the BOC PIPE and approximately **\$6.9 million** of net proceeds from the Yellowstone trust account, both occurring Warrants during the **nine** **three** months ended **September 30, 2022** **March 31, 2024**, offset by approximately **\$0.7 million** and **not recurring** during the nine months ended September 30, 2023, **\$0.4 million** of payments associated with vested equity awards and loan principal payments, respectively.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable to The Company is a smaller reporting companies, company as defined by Rule 12b-2 of the Exchange Act and is not required to provide the information under this item.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in company reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

In connection with the preparation of this form Form 10-Q, as required by Rules 13(a)-15(e) 13a-15 and 15(d)-15(e) 15d-15 under the Exchange Act, our Chief Executive Officer and Chief Financial Officer carried out evaluations an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2023 March 31, 2024. Based on that evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective as of September 30, 2023 due to ensure that information required to be disclosed by us in reports that we file or submit under the material weakness in internal control over financial reporting described below.

Material Weakness in Internal Control over Financial Reporting

A material weakness Exchange Act is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Management previously identified a material weakness in our internal control over financial reporting that prevented us from identifying a misclassification recorded, processed, summarized and reported within the statement of cash flows time periods specified in the SEC's rules and gave rise forms, and is accumulated and communicated to the necessity our management, including our CEO and CFO, to file a Form 10-Q/A for the three and six months ended June 30, 2023. Specifically, the Company's internal control structure did not have an appropriate control to review the evaluation of the identification and classification of certain manual cash flow adjustments in accordance with applicable accounting guidance at each reporting period.

Remediation Plan

With oversight from the Audit Committee and input from management, the Company has begun designing and implementing changes in processes and controls to remediate the material weakness described above and to enhance our internal control over financial reporting, including a control to review non-standard manual adjustments to the statement of cash flows in accordance with applicable accounting guidance, and the contemporaneous preparation and review of the statement of cash flows at greater levels of disaggregation, including lower-level reporting units. allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

Other than described above, there There have been no changes in our internal control over financial reporting during the quarter three months ended September 30, 2023 March 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

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PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is not currently a party to any material legal proceedings.

ITEM 1A. RISK FACTORS

Except as stated below, there There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 December 31, 2023.

We identified material a weakness in our internal control over financial reporting, and we may identify additional material weaknesses in the future that may cause us to fail to meet our reporting obligations or result in material misstatements of our financial statements. If we fail to remediate any material weaknesses or if we otherwise fail to establish and maintain effective control over financial reporting, our ability to accurately and timely report our financial results could be adversely affected.

As discussed elsewhere in this Form 10-Q, we identified a material weakness in our internal control over financial reporting as of September 30, 2023 related to the classification of certain cash transactions made during the six months ended June 30, 2023 associated with the payment of construction retainage liabilities incurred during the

years ended December 31, 2021 and December 31, 2022.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented, or detected and corrected on a timely basis. Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. With oversight from the Audit Committee and input from management, in order to remediate the material weakness in internal control over financial reporting related to the ineffective operation of controls related to manual adjustments to the statement of cash flows, the Company has begun designing and implementing changes in processes and controls to remediate the material weakness described above and to enhance our internal control over financial reporting, including a control to review non-standard manual adjustments to the statement of cash flows in accordance with applicable accounting guidance.

As a result of the material weakness described above and other related matters that may arise in future periods, we face potential for adverse regulatory consequences, including investigations, penalties or suspensions by the SEC or NYSE American, litigation or other disputes which may include, among others, claims invoking the federal and state securities laws, contractual claims or other claims arising from the restatement and material weakness in our internal control over financial reporting and the preparation of our consolidated financial statements. As of the date of this filing, we have no knowledge of any such regulatory consequences, litigation, claim or dispute. However, we can provide no assurance that such regulatory consequences, litigation, claim or dispute will not arise in the future. Any such regulatory consequences, litigation, claim or dispute, whether successful or not, could subject us to additional costs, divert the attention of our management, or impair our reputation. Each of these consequences could have a material adverse effect on our business, results of operations and financial condition.

We may identify future material weaknesses in our internal controls over financial reporting or fail to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act, and we may be unable to accurately report our financial results, or report them within the timeframes required by law or stock exchange regulations. We cannot assure that our existing material weakness will be remediated or that additional material weaknesses will not exist or otherwise be discovered, any of which could adversely affect our reputation, financial condition, and results of operations.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

During the three months ended **September 30, 2023, March 31, 2024**, no director or officer of the Company adopted or terminated a "Rule **10b5-1**" trading arrangement" or a "non-Rule **10b5-1**" trading arrangement," as each term is defined in Item **408(a)** of Regulation S-K

ITEM 6. EXHIBITS

(a) See accompanying Exhibit Index included before the signature page of this report for a list of exhibits filed or furnished with this report.

Exhibit Number	Description	Incorporated by Reference				Incorporated by Reference				
		Schedule/Form	File No.	Exhibit	Filing Date	Description	Schedule/Form	File No.	Exhibit	Filing Date

3.1	<u>Second Amended and Restated Certificate of Incorporation of Yellowstone Acquisition Company.</u>	8-K 001-39648	3.1	January 31, 2022	<u>Second Amended and Restated Certificate of Incorporation of Yellowstone Acquisition Company.</u>	8-K 001-39648	3.1	January 31, 2022
3.2	<u>Bylaws of Sky Harbour Group Corporation.</u>	8-K 001-39648	3.2	January 31, 2022	<u>Bylaws of Sky Harbour Group Corporation.</u>	8-K 001-39648	3.2	January 31, 2022
10.1 (#) (+)					<u>Lease and SASO Operating Agreement between the City of San Jose and SJC Hangars LLC.</u>			
10.2 (#) (+)					<u>Lease Agreement between Orlando Executive Airport and SHOLA, LLC.</u>			
31.1 (#)	<u>Certification of the Chief Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a).</u>							
31.2 (#)	<u>Certification of the Chief Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a).</u>							
32.1 (##)	<u>Certification of the Chief Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350.</u>							
32.2 (##)	<u>Certification of the Chief Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350.</u>							
101.INS (#)	Inline XBRL Instance Document.							
101.SCH (#)	Inline XBRL Taxonomy Extension Schema Document.							
101.CAL (#)	Inline XBRL Taxonomy Extension Calculation Linkbase Document.							
101.DEF (#)	Inline XBRL Taxonomy Extension Definition.							

101.LAB (#) Inline XBRL Taxonomy Extension Label Linkbase Document.

101.PRE (#) Inline XBRL Taxonomy Presentation Linkbase Document.

104 (#) Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

(#) Filed herewith.

(##) The certifications attached as Exhibits 32.1 and 32.2 that accompany this Report, are not deemed filed with the SEC and are not to be incorporated by reference into any filing of Sky Harbour Group Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Report irrespective of any general incorporation language contained in such filing.

(+) Certain schedules and exhibits to this Exhibit have been omitted pursuant to Item 601(a)(5) or Item 601(b)(10)(iv), as applicable, of Regulation S-K. The Registrant agrees to furnish supplemental copies of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SKY HARBOUR GROUP CORPORATION
(Registrant)

By: /s/ Tal Keinan

Tal Keinan

Chief Executive Officer (Principal Executive Officer)

November 9, 2023 May 14, 2024

By: /s/ Francisco Gonzalez

Francisco Gonzalez

Chief Financial Officer (Principal Financial Officer)

November 9, 2023 May 14, 2024

By: /s/ Michael W. Schmitt

Michael W. Schmitt

Chief Accounting Officer

(Principal (Principal Accounting Officer))

November 9, 2023 May 14, 2024

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Exhibit 10.1

LEASE AND SASO OPERATING
AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND

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CERTIFICATE OF LLC AUTHORITY

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LEASE AND SASO
OPERATING AGREEMENT
BETWEEN THE CITY OF
SAN JOSE AND
SJC HANGARS LLC

This Lease and SASO Operating Agreement ("Lease") is dated for convenience this day of , 20, and is by and between the City of San José, a chartered municipal corporation of the State of California ("City"), and SJC Hangars LLC, a Delaware limited liability company authorized to do business in the State of California ("Tenant"). All capitalized terms in this Lease shall have the meanings set forth in **Section 1, "Definitions and Summary of Lease Terms"**, unless otherwise specifically defined in this Lease.

RECITALS:

- A. City is the owner and operator of San José Mineta International Airport ("Airport") and has available for lease certain Premises at the Airport.
- B. City is empowered to grant the right and privilege to operate a Specialized Aviation Service Operator at the Airport; and
- C. Tenant desires to lease the Premises subject to the terms, conditions, covenants and provisions of this Lease.
- D. City has solicited proposals from all persons, firms, organizations, or other legal entities known by the Director to be potentially interested in submitting a proposal for this Lease. Under the authorization contained in Section 25.08.1300 of the San José Municipal Code, the Director of Aviation ("Director") has determined that: (1) adequate space is available to accommodate Tenant's activities under this Lease consistent with the space requirements of other Airport uses; (2) Tenant's activities under this Lease are appropriate for operation of the Airport; and (3) the proposed lease of space conforms to the most recent Airport layout plan for the Airport.
- E. On December 12, 2023, City Council awarded this Lease to Tenant to conduct Authorized Activities in the Premises, pursuant to Resolution No. RES2023-445.

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NOW THEREFORE, in consideration of the terms, conditions, covenants and provisions contained in this Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1 DEFINITIONS AND SUMMARY OF LEASE TERMS

Each reference in the body of this Lease to specific terms or phrases set forth in this Section shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this Section and any more specific provision of this Lease, such more specific provision shall control.

"**Activity Fee(s)**"means any fees or charges imposed by City on any and all classes of persons, firms, or organizations, for the privilege of using the Airport Operating Area (e.g. landing fees), or of entering upon the Airport to conduct business thereon, (e.g. use fees), which fees and charges are imposed on a nondiscriminatory basis for the privilege of using or entering upon the Airport. The term "Activity Fees" shall for purposes of this Lease, be the fees and charges set forth in **Section 5.5 "Payment of Rent, Activity Fees and Charges"**. Tenant's payment of Activity Fees shall not affect Tenant's obligation to pay the Ground Rental and other charges as provided in this Lease.

"**Airport**"means the San José Mineta International Airport, located in the County of Santa Clara, as shown on **Exhibit A**, together with any appurtenant properties and/or facilities associated therewith, as the same may from time to time be enlarged, diminished or otherwise modified.

"**Airport Living Wage Ordinance**"means Chapter 25.11 of the Municipal Code, as amended from time to time.

"**Airport Minimum Standards**"means the Airport Minimum Standards, dated September 2023, as amended from time to time.

"**Airport Operations Area**"means those airfield, airside areas inside of the permitter secure boundary of the Airport utilized for runways, taxiways, ramps, aprons, and movement of aircraft, as said areas may now exist or is as they may be modified.

"**Authorized Activities**" (**§3 PREMISES AND AUTHORIZED USE**) shall mean use of the Premises further described in **Exhibit E**.

"**Certificate of Occupancy**"means any temporary or final certificate of occupancy issued by City which allows the full occupancy and use of a building for its intended purpose.

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"**CEQA**"means California Environmental Quality Act.

"**City Council**"means the San José City Council.

"**Commencement Date**" (**§TERM §5 RENT AND REVENUE SHARE**) means May 1, 2024.

"**Construction Contract**" means any general contract between Tenant and any general contractor to perform work at the Premises.

"**Days**"unless otherwise specified, means calendar days.

"**Director**"means the person designated Director of Aviation by City, or such other person, division, department, bureau or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation. The term also includes any person expressly designated by the Director of Aviation to exercise rights and/or obligations empowered in the "Director" under this Lease.

"**Effective Date**" (**§2 TERM**) means the date upon which this Lease is executed by the City.

"**Environmental Laws**" (**§ 4 STANDARDS OF OPERATION**) means and includes all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

"**Event of Default**" or "**Events of Default**"have the meanings ascribed to them in **Section 12.1**.

"**Expiration Date**" (**§2 TERM**) means 20 years from the Commencement Date subject to earlier termination as provided for under the terms of the Lease and in **Section 2.2**, and extension provisions in **Section 2.3**.

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"FAA" (§26 GRANT AGREEMENT COVENANTS; §27 MODIFICATIONS FOR****

GRANTING FAA FUNDS)

 means the Federal Aviation Administration, created by the United States Government under the Federal Aviation Act of 1958, as amended, or such other successor agency or agencies of the United States Government.

"**Fiscal Year**"means the period of 365 days that begins on July 1 and ends on June 30.

"**Force Majeure Event**"means any event or occurrence described in Section 33.5

"**Fuel Flowage Fee(s)**" means any fee(s) or charge(s) imposed by City, pursuant to a permit issued by City separate from this Lease, for the privilege of engaging in retailing or delivery of fuel petroleum products (both aviation and non-aviation type), lubricants, and propellants on the Premises or an authorized locations on the Airport. Any such Fuel Flowage Fee(s) will be established and revised from time to time by City, Tenant's payment of any such Fuel Flowage Fee(s) shall not affect or be offset against any Ground Rental or other fees and charges otherwise due pursuant to this Lease. Tenant may not fuel outside of its Leased Premises.

"**Hazardous Materials**" (**§4 STANDARDS OF OPERATION, §29 HAZARDOUS MATERIALS – PROHIBITIONS & RESTRICTIONS**) means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

"**Laws**"means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities including without limitation city, state, municipal, county, federal agencies or the federal government and the Federal Aviation Administration ("FAA"), and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi- official entity or body.

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"**Lease**"means this Lease between City and Tenant.

"**Leased Premises**"has the meaning ascribed to it in **Section 3**, "**PREMISES**"and **Section 4 "Uses, Privileges and Obligations**"and as further shown on **Exhibit A**.

"**Leasehold Improvements**" means the SASO Improvements to be constructed by Tenant on the Premises pursuant to **Section 7** of this Lease and as further described in **Exhibit G "Leasehold Improvements"** and **Exhibit L "Tenant's Proposal"**.

"**Master Plan**"means the San José International Airport Master Plan Update, dated April 2020 and any Master Plan updates adopted subsequent to April 2020.

"**Municipal Code**"means the San José Municipal Code, as amended from time to time.

"**NEPA**" means National Environmental Protection Act.

"**Noise and Safety Program**"means the program for cost recovery per Aircraft as established by City according to Airport's Rate Resolution No. 79269, as may be revised from time to time.

"Non-disturbance Agreement" means that certain Non-disturbance, Consent, Estoppel and Subordination Agreement among City, Lessee and Sublessee of even date herewith with respect to the Sublease and the Sublessee Improvements

"Person" means an individual, a corporation, a partnership, a joint venture or any other form of business association.

"Plans and Specifications" Plans and Specifications means the approved concept and construction drawings of the initial Leasehold Improvements described in **Section 7.2** "Design of Leasehold Improvements".

"Premises" has the meaning ascribed to it in **Section 3, "PREMISES"**

"Ramp Area" shall have the meaning ascribed to it in **Section 3, "PREMISES"** and **Section 4, "Uses, Privileges and Obligations"**.

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"Rents, fees, and charges" (**§5 –RENT, FEES AND CHARGES**) means the following amounts to be charged to and paid by Tenant in accordance with **Section 5** of this Lease:

(a) Rent: 283,188 square feet of total office, storage, hangar, ramp, landscape and parking space.	\$2,865,000 annually
(b) Revenue Share:	50% of revenue Tenant's hangar rates above \$53.00 per square foot ("Revenue Share Threshold" effective upon Certificate of Occupancy for the Additional Hangar Space.

The amounts of all such rent, fees and charges are subject to adjustment as provided in **Section 5**.

"Security Deposit" means the initial amount of \$716,250 which may be adjusted from time to time pursuant to **Section 5.3**.

"Specialized Aviation Service Operator" (SASO) is defined in the Airport's Minimum Standards and as revised on September 2023.

"Tax" means and includes any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

"Tenant" means SJC Hangars LLC, a Delaware limited liability company authorized to do business in the State of California.

"Tenant Address" (**§37 NOTICES**) means the following information for notices to Tenant:

Name:	Alison Squicciarino
Title:	In House Counsel
Mail Address:	c/o Sky Harbour 136 Tower Rd., Suite 205 White Plains, NY 10604
Street Address: (If different)	Same as above
Telephone:	914-261-8382
E-mail Address: (email Notices can be used in lieu of Notice Required under Section 37 of this Lease)	Asquicciarino@skyharbour.group
With Copy To:	Eric Stolzman c/o Sky Harbour 3851 NW 145th St. Opa-locka, FL 33054 estolzman@skyharbour.group

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City Address for Payments (§5 RENT, FEES AND CHARGES**):**

Payment Processing –
Airport Finance Department
City of San José
200 East Santa Clara Street, 14th Floor
San José, CA 95113-1905

City Address for Notices (§37- NOTICES**):**

San José Mineta International Airport
Director of Aviation
1701 Airport Blvd., Suite B-1130
San José, CA 95110

"Tenant's Proposal" means the Proposal submitted by Tenant in response to the City's "REQUEST FOR PROPOSALS FOR GENERAL AVIATION AERONAUTICAL SERVICES REBID AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT SJC232433", and attached as **EXHIBIT L** to this Lease.

"Term" (**§2 TERM**) has the meaning ascribed to it in **Section 2** below.

2 TERM

2.1 Term

The term of this Lease shall commence on the Commencement Date and shall continue through the Expiration Date, unless sooner expired pursuant to **Section 2.2**, or unless extended pursuant to **Section 2.3**, or otherwise sooner terminated in accordance with the terms of this Lease.

2.2 Commencement of Transitional/Ramp Up Operations and Possession of Premises

From the Effective Date Tenant shall take possession of the Premises. From the Effective Date Tenant and subtenants shall be permitted to begin transitional/ramp up operations.

2.3 Parties seeking an Amendment to the Agreement

Parties enter this lease in good faith understanding that Airport shall endeavor to seek approval from San Jose City Council for an amendment to the lease terms within six (6) months of the Commencement Date. Such amendment would seek to change terms to state if, for reasons beyond Tenant's reasonable control, Tenant does not receive the necessary NEPA, CEQA, or amendment(s) to the Airport's Master Plan as determined by the City, to construct the Leasehold Improvements for the Additional Hangar Space within four (4) years of the Commencement Date, Tenant shall have the option to reduce the Expiration Date to ten (10) years from the Commencement Date. Tenant shall provide written notice to the Director of Tenant's election to exercise its option to reduce the Expiration Date, no later than ninety (90) days prior to the fourth (4th) anniversary of the Commencement Date. Tenant's exercise of its option to reduce the Expiration Date pursuant to this Section does not preclude Tenant's eligibility for the five-year Term extension described in **Section 2.3**. Additionally the amendment would seek to allow for a rent reduction if for reasons beyond Tenant's reasonable control, Tenant does not receive NEPA, CEQA and completion of Amendment to Airport Master Plan, as required for the Leasehold Improvements, within twenty four (24) months from the Commencement Date, the Rent shall be reduced by thirty-three percent (33%) until the earlier of either (i) receipt of NEPA, CEQA and completion of Amendment to Airport Master Plan as required for the Leasehold Improvements; or (ii) another twenty four (24) months after the first 24 months after the Commencement Date. Beginning the first day of the month following receipt of necessary approvals or after the second 24-month period has lapsed (four years after the Commencement Date), and Tenant chooses not to reduce the Lease term to 10 years, the 33% reduced Rent will no longer be in effect and Tenant will resume paying Rent pursuant to **Section 5.1.1.a**. If Tenant chooses to exercise its reduced term option, effective on the 4-year Percentage Increase Adjustment Date (as defined below), the Adjusted Rent will be reduced to \$2,200,000 plus the cumulative total of CPI percentage increases for years 1 through 4, and Tenant would be released from its obligation to expend Capital Expenditure.

2.4 Mutual Extension of Term

Upon mutual agreement by parties, the Lease may be extended for five (5) years. This is the option to extend is only offered one-time and must be completely executed no-later than 18-months prior to the then current Expiration Date. The offer to extend will only be offered by the Airport provided the Tenant is in good standing with the Airport as determined solely by the Airport.

2.5 Holdover

It is not the intent of this Lease to create any tenancy by Tenant beyond the expiration or termination date hereinabove set forth. Any holding over after the expiration or earlier termination of the term of this Lease shall be conditioned upon terms and conditions approved by the Director. Tenant shall comply with all terms and conditions of this lease during any holdover period.

3 PREMISES

City leases to Tenant, and Tenant leases from City, those "Existing Hangar" and Leasehold Improvements described on **Exhibit A**, attached hereto and incorporated herein by this reference (collectively, the "Leased Premises" or "Premises") to be used solely by Tenant for the Authorized Activities as described in **Section 4**. The Leased Premises includes any all improvements made by the Tenant during the term of the Lease. Neither Tenant, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Lease.

3.1 Asphalt ramp space or concrete ramp space, for use in parking, maneuvering and maintaining Tenant's vehicles and temporary storage of equipment and other items subject to the approval of the Director is referred to as ("the Ramp Area"). The Ramp Area, if any, and the Leased Premises shall collectively be referred to as the Premises. The Premises includes gated asphalt, which is for auto parking only, unless express written authorization from the Director has been granted for other uses. All maintenance activity and related equipment parking is limited to the Leasehold Premises, as designated in **Exhibit A**. The Lessee intends to convert some of the ramp space to build out the Leasehold Improvements and at which time the amount of ramp space shall be modified.

Tenant shall not conduct the activities authorized by this Section at any location on the Airport other than the location referred to herein in **Exhibit A**, unless authorized under another written agreement between City and Tenant.

3.2 **"As-Is" Condition.** Tenant has carefully examined the Premises and is satisfied with the current condition, subject to any improvements to be constructed by Tenant pursuant to this Lease. The Premises shall be leased to Tenant in an "as is" physical condition. Tenant acknowledges that no representation or warranty has been made by City concerning the Premises' nature, quality or suitability for the Authorized Uses, or for any other purpose. Tenant accepts the Premises "as is", and as being in good, safe and sanitary condition satisfactory for Tenant's use. Subject to the provisions of Sections 3.3 and 8 herein, Tenant assumes all risk and costs related to the development of its Leasehold Improvements and its Authorized Uses and Tenant represents that it has made sufficient investigation with regard to the construction of its improvements and any other matters relating to the Authorized Uses, Leasehold Improvements, and the Premises to satisfy itself of all matters related thereto. No rights, easements or licenses, implied or otherwise, are or shall be acquired by Tenant hereunder except as expressly set forth in this Lease. Without limiting the foregoing, Tenant acknowledges that City has made no representation or warranty regarding the existence of any Hazardous Materials in, on, upon, under or about the Premises or the Airport.

3.3 **Environmental Site Assessment Report.** Tenant acknowledges that it has reviewed and accepted the Phase I Environmental Site Assessment Report, dated September 2021, on the Premises, as prepared by Aptim Environmental & Infrastructure, LLC and attached hereto as **Exhibit K** and made part of this Lease. City agrees that the Premises shall be delivered to the Tenant in the same environmental condition as reflected in the Phase I Environmental Site Assessment Report as attached in **Exhibit K.**

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3.4 **Release.** Subject to the provisions of Section 3.3 and 8, Tenant hereby waives, releases, remises, acquires and forever discharges City, its elected officials, employees, and agents, successors and assigns, of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Tenant shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of: (i) City's use, maintenance, ownership and operation of the Premises prior to the Effective Date; or (ii) the condition, status, quality, nature, contamination or environmental state of the Premises. It is the intention of this Lease that any and all responsibilities and obligations of City, and any and all rights or claims of Tenant against City, its successors and assigns and affiliated entities, arising by virtue of the physical or environmental condition of the Premises are by this release provision declared null and void and of no present or future effect as to such parties. Tenant agrees as to the matters released to waive the benefits of Section 1542 of the Civil Code of the State of California, which provides as follows: "1542. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

4 **Uses, Privileges and Obligations**

Neither Tenant, nor any of its employees, subtenants, or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Lease. Tenant, as a designated SASO, shall enjoy the uses and privileges, and shall incur the obligations in connection with its use of the Premises, as described herein and in accordance with the Airport's Minimum Standards. City shall and does have the right, at the date of this Lease and at any time during the Lease term, to deal and contract with any other person(s) or entity(ies) for the leasing of other premises for SASO or similar or like uses, or any other approved activity at the Airport. Tenant shall have the right to obtain, and purchase materials, supplies, equipment and services in connection with its operations on the Airport from any person or company of Tenant's choice, whether on or off the Airport; provided, that City shall retain the sole and exclusive right to license and regulate all persons and companies doing business on the Airport and provided, further, that City shall retain the sole and exclusive right to impose nondiscriminatory fees and charges on persons and companies supplying products or providing and performing services on the Airport for the privilege of conducting such business; and provided, further, that City shall retain the sole and exclusive right to require Tenant, after written notice thereof, to terminate its use of any supplier or provider if that supplier or provider fails to conform to any applicable Law or with Airport Rules and Regulations.

The Premises shall not be used, and Tenant shall not permit the Premises to be used, for any purpose(s) other than the Permitted Activities as set forth in the Airport Minimum Standards and **Exhibit E** "Authorized Activities" without the prior written consent of Director, which consent may be withheld in the reasonable discretion of the Director.

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Tenant shall not conduct the activities authorized by this Section at any location on the Airport other than within its Premises as referred to herein in **Exhibit A.**

4.1 **Exercise of Rights and Obligations**

Tenant shall at all times comply with the Airport's Minimum Standards https://www.flysanjose.com/sites/default/files/Minimum_Standards.pdf, as applicable, and as amended from time to time. Conditions and restrictions that affect Tenant's operations include, but are not limited to, the following:

4.1.1 **Permitted Activities**

While engaging in any of the Permitted Activities at the Premises, Tenant shall comply with the standards set forth in the Airport Minimum Standards. Tenant is authorized to provide aircraft hangar storage, Tenant-based aircraft fueling, and two more additional aeronautical services. Tenant shall provide written notification to the City of any changes to the Permitted Activities. All of Tenant's Permitted Activity changes must be in accordance with the activities permitted in the Airport's Minimum Standards and approved by the Director.

4.1.2 **Hours of Activity**

Tenant must be open for business during normal business hours, five (5) days per week. The Director may allow variations to the business hours as well as require the Tenant to provide additional hours of service, up to and including twenty-four (24) hour operations, as demand or circumstances at the Airport may warrant. The Tenant shall have management personnel available on an on-call basis at all times outside of the Tenant's regular scheduled business hours in order to respond to requests from the Airport and government agencies, including emergency response, with Tenant's response time not to exceed sixty (60) minutes.

4.1.3 No Scheduled Air Carrier Activity

Tenant shall not engage in scheduled air carrier activity (as defined in FAA regulations) for carriage of passengers, baggage, cargo, freight, mail, or express.

4.1.4 No Interference with Other Airport Services

Tenant shall not do or permit to be done anything on or about the Premises or the Airport which may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, public announcement system, access control system, HVAC system, fire hydrants and hoses, if any, installed or located on, within or about the Premises or the Airport.

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4.1.5 Inspections

Tenant shall ensure that its employees and agents make regular inspections of the Premises for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the Premises required under this Lease.

4.1.6 No Interference with Use and Operation of Airport

Tenant shall conduct its operations at the Airport and on the Premises in such manner as will reasonably control the emanation from the Premises of dust, noise, vibration, movement of air fumes and odors so as not to unreasonably interfere with the use and operations of others at the Airport.

4.1.7 No Conflict with Insurance

Tenant shall not knowingly do anything, or permit anything to be done, in or about the Premises that might: (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Premises, the Airport or any property located thereon; (ii) result in a refusal by casualty insurance companies to insure the Premises, the Airport or any other property located thereon in amounts and on terms and conditions required by City; (iii) subject City to any liability or responsibility for injury or damages to any Person or property by reason of any activity, use, business operation or other practice conducted on the Premises; or (iv) cause any increase in any insurance rates applicable to the Airport taken as whole or any other property located thereon.

4.1.8 Hazardous Materials

Tenant shall comply with all requirements of **EXHIBIT C** in connection with the existence, storage, use, release, and/or disposal of Hazardous Materials on the Premises. The provisions of **EXHIBIT C** shall be in addition to all other obligations or requirements under any Environmental Laws relating to the Premises. In the event of any conflict between the provisions of **EXHIBIT C** and the provisions of any applicable Environmental Law, the stricter provision shall prevail.

4.1.9 No Waste or Nuisance

Tenant shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will unreasonably increase the risk of fire or explosion on Airport property; or create a nuisance; or in any way obstruct or unreasonably interfere with the rights of others on Airport property, injure or unreasonably annoy them; or allow any sale by auction on the Premises; or commit or suffer to be committed any waste upon the Premises; or use or allow the Premises to be used for any unlawful purposes or to be operated in such a way as to interfere with Airport operations or safety; or do or permit to be done anything in any way tending materially to injure the reputation or appearance of the Premises.

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4.1.10 Noise Controls

On February 7, 1974, City adopted Resolution No. 57211 implementing Airport's Noise Control Program. On October 21, 2003, City adopted Resolution No. 71797 and the Airport, with the FAA's approval, revised the curfew portion of its noise control program from a weight-based curfew to a noise-based curfew, including enforcement provisions where operators can be fined \$2,500 for curfew intrusions. Tenant shall, at all times adhere to and abide by the Airport Noise Control Program, as said Program may be modified, altered, or amended from time to time by City. Tenant shall adhere to said Program and all other noise control restrictions as stated in **Exhibit J** "Schedule of Authorized Aircraft" which may be subsequently adopted by the City Council and/or promulgated by the Director and/or any other governmental entity or agency having jurisdiction over the Airport or Tenant.

4.1.11 Prohibited Activities

Tenant shall not use or knowingly allow the use of the Premises for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any controlled substance specified in Division 10 of the California Health and Safety Code. Spray painting and/or welding are prohibited on the Premises, unless prior authorization is obtained from the Director and all applicable fire and safety codes are met.

4.2 Access

4.2.1 General

All means of access provided by City pursuant to this Section shall, without exception, be in common with such other Persons as City may authorize or permit, and all such users of access shall be subject to and comply with all applicable Laws.

4.2.2 City's Right to Close or Alter Access

City shall have the right at any time to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Tenant's use pursuant to this Lease, or otherwise, either temporarily or permanently, provided that reasonable advance written notice shall be provided to Tenant and a reasonably convenient and adequate means of ingress and egress (for pedestrians, vehicles and aircraft) shall exist at all times or be provided in lieu thereof at City's expense. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Tenant's obligations under this Lease.

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4.2.3 Access: No Interference with Access Rights

Tenant shall possess the right of ingress to and egress from the Premises over Airport roads, taxiways and/or other routes as may be necessary in its operations and/or in fulfillment of the terms of this Lease, subject to Airport Rules and Regulations, including without limitation those pertaining to badge, permitting, and other security requirements. Tenant agrees that in its exercise of such right of ingress and egress to and from the Premises that it (a) shall not impede or interfere with the operation of the Airport by City, its Tenants, or other authorized occupants; and (b) may be suspended or revoked by the Director in the event of an emergency or a threat to the Airport. The Director shall have the right to modify such access at the Director's sole discretion so long as it does not preclude Tenant's access to the Premises. Tenant shall be responsible for any damage caused to the Airport's roads, taxiway and/or other routes as a result of the Tenant's use of such areas.

4.2.4 No Personal Property Outside of Premises

Tenant shall have no right to place any personal property or equipment on, or conduct any operations in, any areas outside the Premises. Truck routes shall be as designated from time to time by the Director. Said rights of ingress, egress, and roadway use shall likewise apply to Tenant's suppliers, including without limitation the right of transport of equipment, material, cargo, machinery, and other property; provided that such right of ingress and egress shall not alter or affect whatever contractual arrangements may now or hereafter exist between City and the suppliers or furnishers of service to Tenant.

4.2.5 Signs

Tenant shall not install erect, affix, paint or place any sign, lettering or other advertising device or media in or upon any portion of the Airport or the Premises without the prior written consent of Director which shall not be unreasonably delayed, conditioned or withheld. Any and all signs, lettering or other advertising device or media, or any replacement thereof, which may be approved by Director shall be subject to, and comply with, present and future Airport signing standards and applicable City ordinances. Any and all such advertising device or media shall be removed by Tenant at its sole cost and expense upon termination or expiration of this Lease, without injury or damage to or defacement of any part of the Premises or of the Airport. Tenant will promptly restore to their original condition those portions of the Premises or Airport from which such advertising device or media have been so removed.

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4.3 Disposal, Use and Storage of Hazardous Materials.

Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

Tenant may store and use Hazardous Materials on the Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Lease. Tenant shall provide Director with a copy of any application for a permit for use or storage of Hazardous Materials on the Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also provide a copy of any permit received from such agency; and

5 RENT, FEES AND CHARGES

In addition to any other fees, general charges or other amounts set forth elsewhere in this Lease, Tenant shall pay when due the following fees and amounts for the privilege of occupying the Premises:

5.1 Rent and Revenue Share

5.1.1 Rent

- a. Commencing on the Commencement Date, Tenant shall pay Rent as set forth in **Section 1**. Rent shall be due and payable in advance in twelve equal monthly payments on the first (1st) day of every month in accordance with the provisions of **Section 5.5** herein and is subject to adjustment as required by **Section 5.2**.
- b. For the period between April 1, 2024 and the Commencement Date, Tenant shall pay rent of \$119,375. Rent shall be due and payable in advance on the first (1st) day of the month in accordance with the provisions of **Section 5.5** herein.
- c. Effective the first day of the month following receipt of Certificate of Occupancy for the Leasehold Improvements as stated in **Exhibit G**, Tenant's Rent shall be the greater of **\$3,122,661** or the current year's Adjusted Rent. The Rent shall at no time fall below the previous year's Rent. Rent shall be due and payable in advance in twelve equal monthly payments on the first (1st) day of every month in accordance with the provisions of **Section 5.5** herein and is subject to adjustment annually as required by **Section 5.2**.

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5.1.2 Revenue Share

Commencing upon the receipt Certificate of Occupancy for the Leasehold Improvements set forth in **Exhibit G**, Tenant shall pay the City a fifty percent (50%) revenue share for hangar rental rates within the Leasehold Premises that exceed fifty-three dollars (\$53.00) per square foot ("Revenue Share Threshold"). For purposes of illustration, Tenant enters into a sublease for the hangar or a portion of the hangar at the rent of \$76 per square foot, then the revenue share would be calculated as \$11.50 per square foot $((\$76-53=23)/2=\$11.50)$. Revenue Share shall be reported monthly in accordance with **Section 5.5** and payable in accordance with the provisions of **Section 5.5**. The Revenue Share Threshold shall increase in accordance with the Rent as set forth in **Section 5.2**.

5.2 Percentage Increase Adjustment

5.2.1 Annual Adjustment to Rent and Revenue Share Threshold

The Rent and Revenue Share Threshold shall be subject to adjustment ("Adjusted Rent") on each anniversary of the Commencement Date ("Percentage Increase Adjustment Date" and "Adjusted Revenue Share Threshold") and thereafter by an amount equivalent to the percentage change in the Consumer Price Index ("CPI"). The Adjusted Interim Base Rent will be calculated according to the following:

The Base Figure for computing the Adjusted Rent shall be the CPI for All Urban Consumers, All Items, for the San Francisco-Oakland- Hayward (1982-84 = 100), as published by the Bureau of Labor Statistics of the U. S. Department of Labor for the month one year prior to the Percentage Increase Adjustment Date. In the event that the CPI is not published for the applicable month, the Base Figure shall be the next succeeding CPI published.

The Index Figure for computing the Adjusted Rent shall be the CPI for All Urban Consumers, All Items, for the San Francisco-Oakland- Hayward (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor as of the Percentage Increase Adjustment Date. In the event that the CPI is not published for the applicable month, the Index Figure shall be the next succeeding CPI published.

For each Percentage Increase Adjustment Date, if the Index Figure has increased over the Base Figure, the Adjusted Interim Base Rent payable shall be determined by calculating the percentage increase of the Index Figure over the Base Figure. For example, assuming the Base Figure is 110 and the Index Figure is 121, the percentage increase is $121/110 = 1.10 = 110\%$. That percentage shall be applied to the Rent last in effect to calculate the Adjusted Rent for the annual period beginning on the Percentage Increase Adjustment Date.

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Regardless of any year-to-year or cumulative decrease in the CPI during the Term of this Lease, in no event shall any subsequent Adjusted Rent or Adjusted Revenue Share Threshold effective for any Percentage Increase Adjustment Date be less than the Rent or Revenue Share Threshold as of the immediately preceding Rent Date (or Percentage Increase Adjustment Date, as applicable);

In the event that (i) a year-to-year or cumulative decrease occurs in the CPI during the Term of this Lease; and (ii) the application of the formula above would result in an Adjusted Rent or Adjusted Revenue Share Threshold that is less than the Rent as or Revenue Share Threshold of the immediately preceding Rent Date (or Percentage Increase Adjustment Date, as applicable); then (iii) the then- current Interim Base Rent or Revenue Share Threshold shall remain in effect until the next Percentage Increase Adjustment Date.

Alternative Index: The index for the Percentage Increase Adjustment Date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base different from the base period (1982-84=100) used for the base figure above, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau. If the above-described Department of Labor index is no longer published, another index generally recognized as authoritative shall be substituted by the Director at the Director's sole discretion.

5.3 Security Deposit

Tenant shall deposit and maintain with City upon execution of this Lease a security deposit in an amount, equal to three (3) months' Rent and any years Adjusted Rent or any other amount as determined by the Director. The initial deposit shall be in the amount as specified in **Section 1**, against which the City may deduct any delinquent or unpaid fees, costs or charges (including but not limited to rent and badging fees and any late payment fees and the charges stated in this Lease) resulting from Tenant's operations at the Airport, to ensure prompt payment of required rent, fees and charges. The Security Deposit shall be in the form of an irrevocable letter of credit or any other surety form as approved by the Director. The letter of credit shall be an irrevocable letter of credit, substantially in the form attached to this Lease as **Exhibit F**. The Director may adjust such deposit amount requirement from time to time upon a determination that the revised deposit satisfies the lease requirements and provides adequate protection to the City and the Airport.

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All banking charges with respect to the letter of credit shall be at the sole expense of Tenant. No later than thirty (30) days after each Percentage Increase Adjustment date, Tenant shall increase the Security Deposit to equal six months of the then-applicable Adjusted Rent.

If the Director adjusts the amount of the Security Deposit or deducts any delinquent or unpaid rent, fees, costs or charges (including late payments) from the Security Deposit, Tenant shall promptly replenish the deposit to the full amount required by the Director, within thirty (30) days of a written demand by Director. Tenant's failure to so replenish the Security Deposit shall constitute an Event of Default, which entitles the City to terminate this Lease as provided in **Section 12** of this Lease. The City shall not be required to keep the Security Deposit separate from its funds, and Tenant shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid rent, fees, costs, or charges as specified above) at the expiration or earlier termination of this Lease (as it may be extended or renewed) shall be returned to Tenant, without interest, after a determination by the Director that all amounts owed to City under this Lease have either been paid in full or have been deducted from the Security Deposit.

5.4 Activity Fees

If, at any time during the Term, Tenant should use the Premises, or any portion thereof, or (with permission of the Director) any other land or facilities of the Airport for any purpose, use or activity for which Persons using any land or facilities thereof are or shall then be required by City to pay Activity Fees, then in that event Tenant shall pay to City, in addition to the Rent and Revenue Share, charges or other fees for the privilege of using the Lease Premises or other Airport land or facilities for such purpose, such Activity Fees as may at such time be charged by City for the use of any Airport land or facilities for such other purpose, use or activity. The term Activity Fee(s) shall, for purposes of this Lease, be deemed to include landing fees for any charter operations conducted by Tenant, (if applicable) but shall not otherwise be deemed to include fees or charges imposed upon Tenant's activities which Tenant is authorized to conduct on the Leased Premises pursuant to this Lease; except that Tenant may be required to pay Fuel Flowage Fees to City. City agrees that any and all such Activity Fees shall be applied on a non-discriminatory basis to all such users of the Airport.

5.4.1 Fuel Flowage Fees

In addition to any other Activity Fees which Tenant is required to pay to City pursuant to Section 5.5 above, City may assess Fuel Flowage Fees for any retailing or delivery of fuel petroleum products by Tenant pursuant to the Minimum Standards and Tenant's fueling permit, and as provided for in the Airport General Fee Resolution #76438 (adopted September 18, 2012), and as may be amended.

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5.4.2 Noise and Safety Program Fees

City has established a Noise and Safety Program for all general aviation Tenants and licensees at the Airport. The costs of the Program are allocable to aircraft users of the Airport which are based on Airport land which City leases to general aviation Tenants (e.g. fixed based operators and corporate flight departments) and shall be allocated on a per aircraft basis for all aircraft based on the Tenant's premises. Tenant shall pay to City, for each aircraft based on the Premises, the following fee for the Noise and Safety Program: Twenty-Two dollars and seventy cents (\$22.70) per year or \$1.90 per month or such other rate as approved by the City Council which may be adjusted from time to time. Tenant will provide a monthly report in form and content acceptable to the Director, no later than the fifth (5th) day of each month listing aircraft (i) owned by Tenant and based at the Premises, and (ii) those not owned by Tenant, which are based at the Premises. A delinquent report fee of twenty-five dollars (\$25.00) per day or such other amount as may be established by City Council resolution will be assessed if the report is not received by City after the fifth (5th) calendar day of the month.

5.4.3 Monthly Activity and Revenue Share Report

On or before the fifteenth (15th) day of each month following commencement of normal business operations at the Premises, Tenant shall provide to the Director a monthly activity report for all Activity Fees, in such form and detail as the Director may require. For Fuel Flowage Fees, the Monthly Activity Report shall set forth at a minimum, the total amount of gallons of fuel purchased at wholesale and date of purchase, and the retail price of fuel at time of retail sale or delivery, for the past monthly period.

On or before the fifteenth (15th) day of each month following the Certificate of Occupancy of the Leasehold Improvements for the buildout of the additional hangar, Tenant shall provide to the Director a monthly separate written report ("Revenue Share Report") that includes the amount of square feet of hangar space leased for the month prior and amount charged per square foot. City shall have the right to rely on said Revenue Share Report in determining Revenue Share charges due hereunder. Tenant shall have full responsibility for the accuracy of said reports.

If the monthly activity and Revenue Share Report is not provided on or before the fifteenth (15th) day of each month as required herein, Tenant shall pay as a delinquency fee for administrative expenses incurred by City for delays and invoices, an amount (established by City Council resolution) per day that the report is late until such date as the monthly activity report is submitted to the Director. City's assessment of the delinquency fee shall be in addition to any other remedies that City may have in law or in equity, including termination and revocation of this Lease and all rights and privileges granted to Tenant.

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5.5 Payment of Rent, Activity Fees and Charges

Description	Amount	Due Date	Late Fee
Rent	See Section 1	Due on or before the first day of the month	Late payment fee assessed at 12% per annum, 15 days after due date
Noise & Safety Fee	\$1.90/MO per aircraft	Activity Report due by the 15th day of the month following. Fees due within 30 days of date of City Invoice.	\$25.00 per day for delinquent report fee; Late payment fee assessed at 12% per annum after 30 days from date of City's invoice
Revenue Share	See Section 5.1.2	Revenue Share Report due on the 15th day of the month following. Fees due within 30 days of date of City Invoice.	\$25.00 per day for delinquent report fee; Late payment fee assessed at 12% per annum after 30 days from date of City's invoice
Fuel Flowage Fee	\$0.20 per gallon	Activity Report due by the 15th day of the month following. Fees due within 30 days of date of City Invoice.	\$25.00 per day for delinquent report fee; Late payment fee assessed at 12% per annum after 30 days from date of City's invoice
Other Activity Fees	Based Upon Activity	Activity Report due by the 15th day of the month following. Fees due within 30 days of date of City Invoice.	\$25.00 per day for delinquent report fee; Late payment fee assessed at 12% per annum after 30 days from date of City's invoice
Miscellaneous and One Time Charges		Due and payable within 30 days of Tenant's receipt of City's invoice	Late payment fee assessed at 12% per annum after 30 days from the date of City's invoice

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5.5.1 Rent, Fees and Charges Payable in Advance

Except as set forth herein to the contrary, Rent and any and all other fees and charges that are payable in advance shall be paid on or before the first day of each month ("Due Date"), without any requirement of notice from City, deduction, credit or offset. Such Rent, fees and charges shall be deemed delinquent if not received by City on or before fifteen (15) days from the Due Date. Tenant shall be required to pay a late payment fee (as established by City Council resolution), calculated from the first day, for each day, or portion thereof, in each month that payment is not timely received by City, until payment is received by City. City reserves the right to require that any late

payments be made only in a reasonable form to be specified by the Director, and City further reserves the right to reject any late payment that is not in such form approved by the Director. Notwithstanding anything to the contrary contained herein, if any date on which a payment of Rent, fees and/or charges becomes due and payable is not a Business Day, then such payment shall not be due on such scheduled date but shall be due on the next succeeding Business Day with the same force and effect as if due on such scheduled date and (to the extent any such payment of Rent, fee and/or charge is made on such next succeeding Business Day) no interest shall accrue on the amount of such payment of Rent, fee or other charge from and after such scheduled date to such next succeeding Business Day.

5.5.2 Fees and Charges Payable in Arrears

Any fees and charges from City which are paid in arrears for the preceding month's activity, except as otherwise expressly provided, are due and payable on or before the thirtieth (30th) day from the date of City's invoice, and shall be deemed delinquent if not received by City on or before thirty (30) days from such date. Tenant shall include a monthly activity report, as set forth above, for all fees and charges due with each monthly payment. Tenant shall be required to pay a late payment fee (as established by City Council resolution) calculated from the first day, for each day, or portion thereof, in each month that payment is not timely received by City. City reserves the right to require that any late payments be made only in a reasonable form as specified by the Director and City further reserves the right to reject any late payment that is not in a form approved by the Director. City reserves the right to audit any monthly activity reports and payments based upon such reports, and acceptance of any payments hereunder shall not operate as a waiver of City's right to collect monies determined to be due and owing.

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5.5.3 Location and Form of Payment

All rent, fees, charges shall be paid by check made payable to the "City of San José" and delivered or mailed to the address listed in Section 1 "DEFINITIONS AND SUMMARY OF LEASE TERMS", or to such other

address as the Director may notify Tenant in accordance with Section 37 "NOTICES". All such rent, fees, charges and other amounts payable by Tenant shall be in lawful money of the United States of America and in same day funds as of the due date.

5.5.4 Late Payment Fee Not Sole Remedy

City's assessment of the late payment fee shall be in addition to any other remedies City may have at law or in equity, including termination and revocation of this Lease and all rights and privileges granted herein.

5.6 No Offset or Deduction

All rent, fees, charges and other amounts due by Tenant under this Lease shall be paid without deduction, credit or offset of any kind and exclusive of any amounts which City may now or hereafter owe to Tenant.

5.7 Other Financial and Statistical Reports

No later than thirty (30) days after receipt of a request from the Director, Tenant shall furnish the City with such other financial or statistical reports or records as the Director, from time to time, may reasonably require, including but not limited to the purpose of determining the accuracy of gross revenues, labor compliance and FAA requirements (as applicable). Unless Tenant has requested additional time to produce any such reports and Director has approved any such request, a Delinquent Report Fee in the amount of \$25.00, as may be amended from time to time by Resolution approved by the City Council, will be assessed for each day any such additional records and reports are not timely received by the City.

5.8 Record Maintenance

Tenant shall at all times maintain and keep records reflecting the charges of the Revenue Share Report. Such records shall be retained by Tenant for a period of four (4) years and upon prior written notice to Tenant shall be made available, at no cost to City for audit and/or examination by City or its duly authorized representative during all normal business hours. Tenant shall produce such books and records within thirty (30) calendar days of City's notice to do so.

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5.9 If the Expiration Date or earlier termination date occurs on other than the last day of a month, Rent, Fees and Charges for the last month of the Term will not be prorated.

6 MAINTENANCE OF PREMISES

Tenant will maintain the Premises consistent with the Maintenance Plan in **Exhibit H** and the Maintenance Responsibilities in **Exhibit I** for the Premises provided in **Exhibit A**. Such maintenance responsibilities may be amended by written notification to the Tenant from the Director, subject to the Director's approval of the amended maintenance plan.

6.1 Maintenance

6.1.1 Tenant shall be obligated at all times throughout the term of this Lease, without cost to City, to maintain the Premises in good appearance, repair, and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director. Tenant shall maintain all improvements on the Premises whether installed by Tenant or City. Tenant shall be responsible, also without cost to City, for the repainting of the interior of any space occupied hereunder, replacing of light fixtures (including bulbs, tubes, ballasts and transformers), miscellaneous hardware, window glass and floor coverings. All maintenance shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, and all work shall be subject to the prior written approval of Director. When used in this Lease, the term "maintenance" shall include all repairs, alterations, maintenance and/or removals deemed necessary by Director. Notwithstanding the foregoing and consistent with Exhibit I, the City shall be responsible for the maintenance of the following with respect to the Existing Hangar: base building structure(s), roofing, gutters and downspouts, and building foundation(s).

6.1.2 City's employees and agents may, during normal business hours, enter upon the Premises to determine if satisfactory maintenance is being performed. If Tenant fails to perform the maintenance or the maintenance is not being performed in a satisfactory manner, Director will notify Tenant in writing. If the maintenance is not so performed by Tenant within fifteen (15) calendar days after receipt of written notice, City shall have the right (but not the obligation) to enter upon the Premises and perform the necessary maintenance and upon receipt of the notice of maintenance cost, Tenant agrees to promptly reimburse City for the maintenance cost incurred, plus an additional amount equal to ten (10%) percent thereof for administrative overhead. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Tenant.

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6.1.3 Any Leasehold Improvements including but not limited to new structures constructed by the Tenant, and improvements and modifications to the base building shall be Tenant's sole responsibility to manage and maintain. The Airport shall not be responsible for roof, structure, or any part of the Maintenance of the Leasehold Improvements.

6.2 Trash and Refuse

Tenant, at its sole cost and expense, shall keep and maintain the areas occupied by Tenant clean and free of rubbish, dirt, garbage, and other waste matter at all times and shall provide and pay for regular janitorial and other service reasonably necessary for the proper maintenance of the Premises in a clean and sanitary manner. Tenant, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage and other waste matter to be removed daily from the Premises and deposited in suitable containers for regular removal from the Airport.

6.3 Waste or Nuisance

Tenant shall not commit, cause, maintain, permit, suffer, or allow to be committed, caused, maintained or permitted, any legal waste upon the Premises or the Airport, or any public or private nuisance, or injury, or any improper or unlawful use on the Premises or surrounding areas of the Airport, or any other act or thing, or omission to act, which may in any way disturb the quiet enjoyment of or obstruct or interfere with the rights of any other tenant, concessionaire, licensee, invitee or occupant of the Airport, or any portion thereof. Tenant shall maintain in safe, good and clean condition all areas of the Airport where Tenant conducts its operations.

6.4 Landscaping

The Tenant shall maintain all landscaping of the Premises.

7 Leasehold Improvements

7.1 General Conditions for Construction/Minimum Capital Investment

7.1.1 Construction of Leasehold Improvements

Construction of the Leasehold Improvements shall be subject to the provisions of this section and shall be at Tenant's (or subtenant's, as applicable) sole cost and expense, without any reimbursement from City whatsoever under any circumstance. Tenant will occupy the Premises in its 'as is' condition, and no Leasehold Improvements installed and paid for by Tenant (or subtenant, as applicable) will be subject to subsequent buyout by City under any circumstances. No part of the Leasehold Improvements shall be constructed, installed, expanded, modified or removed nor shall material modifications be made to the Leasehold Improvements without the prior written consent of the Director, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding sentence or anything else in this Lease to the contrary, any construction, installation, expansion, modification or removal of interior tenant improvements or modifications that do not alter the square footage, exterior appearance, structural elements of a building or disruption of public utilities servicing the building shall not require the approval of the Director.

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7.1.2 Minimum Capital Investment

It is expressly agreed and understood that Tenant is leasing the Premises with the intention of developing and constructing the Leasehold Improvements on the Premises in accordance with Plans and Specifications as specified in this **Section 7**. It is expressly agreed and understood that the Leasehold Improvements to be constructed by Tenant shall, at a minimum, include those structures and improvements as described as Tenant's initial Leasehold Improvements on **EXHIBIT G** attached hereto, and that Tenant shall expend no less than an amount equal to **Eight Million One Hundred Sixteen Thousand Three Hundred Ninety Two Dollars (\$8,116,392)** (the "Minimum Capital Investment") to develop such Leasehold Improvements at Tenant's and/or its subtenant(s) sole cost and expense. As used herein, "Minimum Capital Investment" shall mean and include the following Leasehold Improvements costs and expenditures made by Tenant and/or its subtenant(s): (a) predevelopment costs (survey, title insurance, real estate broker fees, environmental assessment and remediation), planning and design fees, legal and accounting costs, permits, and soft construction costs, which combined shall not exceed 15% of the Minimum Capital Investment; and (b) hard construction costs (including demolition, excavation, grading and construction on the Premises and general contractor overhead and profit), which combined shall not be less than 85% of the Minimum Capital Investment. The Minimum Capital Improvement expenditure shall be expended on the approved Improvements constructed by Tenant. If the stated minimum is not expended, Tenant shall pay to City an amount equal to 150% of the difference, if any, between the Minimum Capital Improvement Expenditure and its actual investment upon the first day of the sixteenth (16th) year of the Lease. Tenant shall only be responsible for Minimum Capital Improvements and the Minimum Capital Improvement Expenditure if Tenant receives all necessary approvals from all authorities having jurisdiction to construct the Leasehold Improvements and actually constructs the Leasehold Improvements.

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7.1.3 Documentation of Minimum Capital Investment

Within ninety (90) days after the issuance of a Certificate of Occupancy for the Leasehold Improvements, Tenant shall provide to the Director documentation, in such form and detail as the Director may reasonably require, sufficient to establish that Tenant and/or its subtenant(s) has expended the Minimum Capital Investment on the Leasehold Improvements. The Director may, in his discretion, extend the time for submitting said documentation by written notice to Tenant, and may require submittal of

additional documentation. In the event that the Director determines that Tenant and/or its subtenant(s) have failed to either: (a) expend the total Minimum Capital Investment for the Leasehold Improvements; or (b) meet the required 85/15 percent allocation between hard construction costs and predevelopment costs for the Leasehold Improvements, the Director shall notify Tenant of any such deficiency promptly following Director's receipt of the documentation supporting such costs from Tenant. If the Director notifies Tenant that there was a deficiency in the costs expended in the construction of the Leasehold Improvements, Tenant shall have through the 16th year from the Commencement Date to expend (and/or cause its subtenant(s) to expend) the amount of any such deficiency on additional improvements, additions, or betterments to the Leasehold Improvements, subject to all of the provisions of this Section 7. Tenant shall, within thirty (30) days after the expiration of said sixteenth (16) year from the Commencement Date, provide further documentation to the Director sufficient to establish that Tenant and/or its subtenant(s) have expended the amount of any such deficiency on additional improvements, additions, or betterments to the Leasehold Improvements. If the Director determines, after such further documentation has been provided, that Tenant has failed to expend (and/or cause its subtenant(s) to expend) the Minimum Capital Investment on additional improvements, additions or betterments to the Leasehold Improvements, then the Director shall promptly provide written notice to Tenant of the amount of such continuing deficiency, and Tenant shall have thirty (30) days from the date of such notice to pay to City an amount equal to the difference between the Minimum Capital Investment and the actual sum expended. Payment of said sum as required herein shall be deemed to be additional Base Rent due and payable within said thirty (30) day period, and shall be subject to the payment provisions of Section 5 of this Lease.

7.2 Design of Leasehold Improvements

7.2.1 Construction Guidelines

Tenant shall develop the initial design for the Leasehold Improvements as referenced in **Exhibit G** and the construction drawings for such Leasehold Improvements (collectively, the "Plans and Specifications"), which Plans and Specifications are subject to City's review and approval. During the course of the planning, final detailed design and construction of the initial Leasehold Improvements, Tenant shall cooperate with City's officers, employees, representative and agents and follow the Airport's Tenant Design and Construction standards as applicable to this location. Tenant acknowledges and agrees that City's representatives, acting in their sole discretion, reserve the right to request modifications to final working drawings and final design concept.

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7.2.2 Tenant Responsible for Design and Construction

Tenant shall be solely responsible for the proper design and construction of Tenant's Leasehold Improvements and for the workmanship performed and materials used therein and shall be liable to City for any damage or loss to any portion of the Airport and Premises, which results from the negligent design or construction of the Leasehold Improvements.

7.2.3 Modifications to the Premises

Prior to the commencement of any work for the construction, installation, repair, replacement, expansion, alteration, modification or removal of the Leasehold Improvements on the Premises, but specifically excluding the construction, installation, repair, replacement, alteration, modification or removal of any interior, non-structural, tenant improvements and/or trade fixtures at the Leasehold Improvements that do not alter the square footage, the exterior appearance, or the structural elements of a building (the "Work"), Tenant shall follow the Airports project review process. Airport staff shall provide a copy of the guidelines upon request.

7.2.4 Intentionally Deleted.

7.2.5 Tenant Responsible for Compliance with Laws

Approval of the Plans and Specifications by the City and the Airport shall not constitute a representation or warranty by City that the Plans and Specifications are in conformity with applicable Laws. Tenant shall be solely responsible for compliance of the Plans and Specifications and the Leasehold Improvements as built or as subsequently modified with all applicable Laws.

7.2.6 Inspection/ "As Installed Plans" and Specifications

At the request of the Director, Tenant shall inspect the Leasehold Improvements jointly with representatives of the City and/or the Department of Aviation to verify the as-built drawings, which are incorporated in the Plans and Specifications. Upon completion of the Leasehold Improvements, Tenant shall promptly deliver to the Director copies of complete warranty specifications and one complete set of "as installed" detailed Plans and Specifications of the Work as completed in a format approved by the Director, showing all of the Leasehold Improvements in place, including all necessary mechanical and electrical systems.

7.3 Contract Requirements/Bonds

7.3.1 Construction Contract Requirements

Tenant shall incorporate into any Construction Contract, and shall require its contractor to incorporate into any subcontracts, or contracts for material or equipment: (i) the Prevailing Wage requirements set forth by the City's Office of Equality Assurance <https://www.sanjoseca.gov/your-government/departments-offices/public-works/labor-compliance/prevailing-wage> D; (ii) requirements related to prevention and mitigation of Hazardous Materials releases in conformity with **EXHIBIT C**; and (iii) Section 7, "Legal Relations and Responsibility", of the General Provisions, and applicable Technical Provisions of the City of San Jose Department of Public Works Standard Specifications, dated July 1992 ("City Standard Specifications"). In the event of any conflict between the provisions of this Lease and the provisions of the City Standard Specifications, the provisions of this Lease shall apply. Tenant also shall ensure the compliance of all contractors and subcontractors with the provisions described above.

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7.3.2 Payment Bond

Prior to the commencement of any construction, alteration or repair hereunder which exceeds Twenty-Five Thousand Dollars (\$25,000) in cost, Tenant shall furnish or cause Tenant's general contractor or Tenant's subtenant to furnish to City and file with the City Clerk, at no cost to City, a payment bond. In addition to the specific

requirements set forth below, the bond shall be issued by a surety, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Premises and/or improvements, be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. Immediately upon completion of any improvement, Tenant shall record in the Official Records of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 9204.

The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 9100, and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. The payment bond shall name Tenant as owner, obligee or principal and Tenant's contractor or contractors as principals.

7.4 Construction and Completion of Leasehold Improvements

7.4.1 Notice to Proceed

Tenant shall commence construction of any construction project only after the Director has issued a notice to proceed.

7.4.2 Progress of Work (Initial Leasehold Improvements)

Promptly after Tenant's receipt of all required construction permits for the Leasehold Improvements, Tenant shall present adequate documentation as outlined by the department of Aviation to allow the Director to issue its notice to proceed in accordance with **Section 7.4.1** and the requirements of this Lease and to ensure timely completion of the initial Leasehold Improvements in accordance with the approved Plans and Specifications. Tenant shall diligently proceed to complete the Leasehold Improvements at the earliest reasonable date, but in any event Tenant shall complete the Leasehold Improvements as shown in the Plans and Specifications not later than four (4) years from the Commencement Date. An extension of this time may be granted at the Director's sole discretion provided Tenant provides for reasonable explanation of such delays. The Airport will grant extension requests to such delays based on any NEPA, CEQA, or Airport Master Plan approvals that may be required to complete the improvements, specifically to the expansion of the hangar. For these purposes, completion of the initial Leasehold Improvements as shown in the Plans and Specifications shall mean the issuance by City of a Certificate of Occupancy for the initial Leasehold Improvements. Tenant's failure either to: (a) present adequate documentation to allow the Director to issue its notice to proceed in accordance with the requirements of this Lease within twelve (12) months from any and all required CEQA, NEPA and Master Plan approvals as applicable; or (b) complete the initial Leasehold Improvements as described in the Plans and Specifications not later than four(4) years from the Commencement Date shall entitle City to exercise its rights as set out in Section 7.9 of this Lease.

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Tenant shall construct and complete any Leasehold Improvements in a good and workmanlike manner in accordance with all applicable Laws, and shall carry such insurance as provided for in Exhibit B of this Lease or as modified from time to time by the City's Risk Department. Construction of the initial Leasehold Improvements shall commence prior to (i) the expiration of any required site development or conditional use permit or other licenses or permits which may be issued by City and (ii) the expiration of any other required discretionary approvals, consents or permits which may be issued by any governmental body. During the Work, Tenant shall have the right and obligation to supervise the construction in the field.

7.4.3 Failure to Comply with City Requirements or Applicable Laws

If Tenant, for any reason, fails to comply with any of City's requirements or any other applicable Law concerning Tenant's construction of the Leasehold Improvements, City shall give Tenant written notice of such failure and shall have the right to require Tenant, at Tenant's sole expense, to alter, repair, or replace any non-compliant portion of the Leasehold Improvements within thirty (30) days of such notice, or such additional time as may be reasonably necessary provided Tenant commences the correction of such failure within thirty (30) days of receiving such notice and thereafter diligently pursues correction of such failure to completion. In the event that Tenant fails to perform any such replacements, alterations or repairs after notice and demand from City and the passage of such cure period, City may, in its sole discretion, thereafter cure such failure and cause such replacements, alterations, or repairs to be made or perform any other required action as shall bring the Leasehold Improvements into compliance with any applicable Laws. Tenant agrees to promptly reimburse City for such costs, plus ten percent (10%) thereof for administrative overhead as such percentage is approved and established from time to time by the City Council. In the event that after giving such notice to Tenant and the passage of such cure period City declines to cure such failure and cause the required replacements, alterations or repairs to be performed, City may, in its sole discretion, declare this Lease in default, terminate this Lease pursuant to the termination for default provisions in Section 12 of this Lease. Tenant's obligation to reimburse City for such expenditures shall survive the termination of this Lease.

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7.5 General Approvals

Tenant, at its own cost and expense, shall procure all permits and insurance necessary for all Work (including but not limited to any required environmental permits or clearance and approvals from any governmental agency or entity, including City departments other than the Airport). Tenant shall require in any Construction Contract for the construction of the Leasehold Improvements that its contractor comply with all applicable Laws.

All work required in the construction of Leasehold Improvements, including any site preparation work, landscaping work, utility installation work as well as actual construction work on the Premises, shall be performed only by competent contractors duly licensed under the laws of the State of California and shall be performed pursuant to written contracts with such contractors.

The Director's approval of the Plans and Specifications shall not be deemed to include the approval of City's Director of Planning, Building and Code Enforcement, or any other City department or governmental or public entity which Tenant may be required to obtain.

7.6 Liens

Tenant shall keep the Premises and the Airport free of any liens arising out of the Work performed, materials furnished, or obligations incurred by Tenant in the performance of any construction or installation of the Leasehold Improvements. Tenant shall notify City at least ten (10) Business Days prior to the commencement of any Work to be performed or materials to be furnished on the Premises or the Airport which could give rise to any such lien, and City shall have the right to post and keep on the Premises of the Airport any notices that may be required by law or which City may deem proper for the protection of City, the Premises or the Airport from such liens. Notwithstanding the foregoing, if a lien is filed against the Premises or the Airport, Tenant shall not be in default of this Section 7.6 if Tenant is in compliance with the provisions of Section 7.11.

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7.7 Airport Obstructions

City reserves the right to take any action it considers necessary, without liability to Tenant for any damage caused thereby, to protect the aerial approaches of the Airport against obstruction or hazard, together with the right to prevent Tenant from erecting, or permitting to be erected, or to require the removal of any building or other structure on the Premises or the Airport which, in the reasonable opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

7.8 City Not Responsible for Work

City shall not be responsible to Tenant or any other party for the performance of the contractor or contractors under any Construction Contract. City shall not be required to pay or provide any moneys for the Work. Failure of the contractor or contractors to complete the construction, and installation of the Leasehold Improvements in accordance with any Construction Contract shall in no way affect the obligations of Tenant under this Lease.

7.9 Tenant's Failure to Diligently Pursue Construction

In the event of Tenant's failure to (i) provide the Director with the documentation necessary for the Director to issue a Notice to Proceed or (ii) complete construction of the Leasehold Improvements as provided in Section 7.4.2 above (other than a Force Majeure Event) and such failure is the result of matters within the reasonable control of the Tenant, the Director shall notify the Tenant in writing of such failure and the Tenant shall have thirty (30) days to remedy such delay. If Tenant fails to remedy such failure within thirty (30) days after written notice from the Director, such failure shall be considered an Event of Default hereunder, and, in addition to any remedy under Section 12.2 hereof, City shall have the right, upon seven (7) days written notice to Tenant, to take over the management, at Tenant's sole cost and expense, of Tenant's construction of the Leasehold Improvements.

If after commencing any Work on the Leasehold Improvements, Tenant (without the Director's prior written consent) ceases such Work for thirty (30) continuous days (other than cessation of Work due to a Force Majeure Event), such cessation of Work shall be an Event of Default hereunder, and, in addition to any remedy under Section 12.2 hereof, City shall have the right, upon seven (7) days written notice to the Tenant, to take over the management, at Tenant's sole cost and expense, of Tenant's construction of the Leasehold Improvements.

7.10 Alterations/Refurbishments to Leasehold Improvements

After issuance of the Certificate of Occupancy for the Leasehold Improvements, Tenant may, subject to compliance with all applicable permitting and reasonable approval requirements of City and any other regulatory agency having jurisdiction over the Premises, at its own cost and expense (except as otherwise provided herein); install any fixture or tenant improvement or do or make alterations or do any remodeling, repair, construction or modification to the Leasehold Improvements, collectively "Modifications". For the avoidance of doubt, however, Tenant shall only be required to obtain the prior written consent of the Director for any Modifications that increase the square footage, alter the exterior appearance, or structural elements of the Leasehold Improvements, disrupt public utilities servicing the Premises, or any such construction, installation, replacement, alteration or modification that would require the issuance of a building permit by the City. Any such Modifications shall be made in conformance with the construction provisions in this Section 7. Promptly following the completion of any Modifications, Tenant shall furnish the Director the complete sets of "as installed" detailed Plans and Specifications of the Work as completed in a format as directed by the Director.

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7.11 Claims by Mechanics or Material Suppliers

In the event any of the persons or entities entitled to make claims pursuant to California Civil Code Sections 3181 or 3248(b) record a claim of lien (whether valid or invalid) in the official records of the County of Santa Clara County, California, then Tenant shall, at its election and at its sole cost and expense, and within fifteen (15) days of receiving written notice of such recorded lien, (i) cause the same to be removed; or (ii) pay the same in full or, (iii) commence an action to contest such lien and deliver a bond in the amount of such lien to City. The obligation of Tenant contained in the preceding sentence shall exist notwithstanding the fact that the general contractor or a subcontractor may have been paid for such work.

7.12 Existing Premises Construction and Improvement Guidelines

7.12.1 Premises Improvements

Any improvements that alter the square footage, exterior appearance, structural elements of the Premises, disrupt public utilities servicing the Premises, or any such construction, installation, replacement, alteration or modification that would require the issuance of a building permit by the City, shall require the approval of the Director. Any internal improvements that are deemed cosmetic including but not limited to paint, furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises shall not require the approval of the Director. Any improvement, alteration or construction of improvements on the Premises, other than with respect to any furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises, shall be performed to the satisfaction of Director. Prior to the commencement of any improvement, alteration or construction upon the Premises, Tenant at its sole cost and expense shall obtain all necessary permits and

approvals from all appropriate Departments of City and/or from any other governmental entity, as required by law. Tenant shall be responsible for the payment of all engineering, inspection and review fees required by City or any other governmental entity.

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7.13 Title to Improvements, Alterations and Repair

All improvements, alterations or construction of improvements made to the Premises by Tenant (other than furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises) and additions, alterations and Leasehold Improvements thereto made upon the Premises shall be and remain the property of Tenant until the termination of this Lease, at which time the improvements may, at the option of Director in accordance with Section 25, become the property of City. Tenant shall execute any documents which Director feels necessary to further evidence the transfer of title to improvements from Tenant to City, including a quitclaim deed and/or bill of sale. Any failure by Tenant to execute any such transfer documents, however, shall not limit or preclude the transfer of title from Tenant to City provided in this Section.

7.14 Remediation of Asbestos-Containing Materials

7.14.1 If, in the construction of any improvements to or upon the Premises, Tenant causes disturbance to or damage of any asbestos and/or asbestos-containing materials within the existing hangar, City shall be responsible for the costs of remedying the disturbance or damage, including, without limitation, the removal of any asbestos and asbestos- containing materials. Any area that is found to have asbestos but is not disturbed by improvements must be left undisturbed and encapsulated at Tenant cost. If the Tenant disturbs such areas outside of the leasehold improvements, Tenant shall be responsible for removing any disturbed asbestos in accordance with an approved asbestos removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health and Safety Code §§25915-25919.7.

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8 ACCEPTANCE OF PREMISES

8.1 Tenant has carefully examined the Premises and is satisfied with the current condition, subject to any improvements to be constructed by Tenant in accordance with Section 7. Tenant acknowledges that no representation or warranty has been made by City concerning the nature, quality or suitability of the Premises or the Airport for Tenant's business, or the existence of any Hazardous Materials in, on, upon, under or about the Premises or the airport, and Tenant acknowledges that it shall have no rights against City by reason of such matters or any claimed deficiencies therein. Tenant accepts the Premises "as is", and as being in good, safe and sanitary condition satisfactory for Tenant's use.

8.2 Tenant acknowledges that City has made no representations or warranties with respect to the Premises, the Airport or this Lease except as expressly set forth in this Lease, and no rights, easements or licenses, implied or otherwise, are or shall be acquired by Tenant unless expressly set forth in this Lease.

8.3 Tenant hereby waives, releases, premises, acquires and forever discharges City, its elected officials, employees, and agents, successors and assigns, of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Tenant shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of: (i) City's use, maintenance, ownership and operation of the Premises prior to the Effective Date; or (ii) the condition, status, quality, nature, contamination or environmental state of the Premises. Notwithstanding the foregoing, the Parties agree and acknowledge that Tenant shall not be responsible to the City or any third-party for any conditions existing, or events occurring, or any Hazardous Materials existing or generated at, in, on or under or in connection with the Premises prior to the Effective Date of this Lease and nothing herein is intended to release the City for any claims by third parties for conditions that existed on the Premises prior to the Effective Date. It is the intention of this Lease that any and all responsibilities and obligations of City, and any and all rights or claims of Tenant against City, its successors and assigns and affiliated entities, arising by virtue of the physical or environmental condition of the Premises are by this release provision declared null and void and of no present or future effect as to such parties. Tenant agrees as to the matters released to waive the benefits of Section 1542 of the Civil Code of the State of California, which provides as follows: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

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8.4 The City agrees to reimburse Tenant for all reasonable costs and expenses to remediate the soil conditions (i) necessitated for the development of the hangar Leasehold Improvements as described in Section 7 and Exhibit G; and (ii) required by an authority having jurisdiction. By way of example, should soil be required to be removed from the site for the purposes of construction, and such soil is deemed contaminated, Tenant would be entitled to reimbursement from City for the incremental cost associated with hauling due to environmental remediation. Tenant assumes all other risk and costs related to the development of the Premises and Tenant represents that it has made sufficient investigation with regard to the construction of its Leasehold Improvements and any other matters relating to the Authorized Uses and the Premises to satisfy itself of all matters related thereto. No rights, easements, or licenses, implied or otherwise, are or shall be acquired by Tenant hereunder except as expressly set forth in this Lease. Without limiting the foregoing, Tenant acknowledges that City has made no representation or warranty regarding the existence of any Hazardous Materials in, on, upon, under or about the Premises or the Airport.

9 UTILITIES SERVICES

9.1 Tenant has inspected and accepts the utility hookups in the Premises. Unless and except to the extent otherwise specifically provided by other provisions of this Lease, Tenant shall secure any electrical, gas, water, sewer and telephone services to the Premises utilized by the Tenant as it may require, upon prior approval of Director which shall not be unreasonably delayed, conditioned or withheld. Any additional utility connections beyond those in the Premises at the time of Tenant's inspection are Tenant's responsibility. Installation of such additional utility connections shall be at Tenant's sole cost and expense and are subject to the provisions of Section 7 regarding Tenant improvements. Any utilities provided by City shall be paid by Tenant on a pro-rated basis as established by City. The location, relocation and coordination of all utilities and telephone facilities to service the Premises shall be subject to the prior written approval of the Director. Tenant shall, upon request by the Director, cap off all utility connections installed by Tenant and restore the affected areas to their original condition upon expiration or earlier termination of this Lease. Notwithstanding the foregoing, the pro-rata payment provisions of this paragraph shall not apply in the event Tenant directly pays utility providers for utility services.

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9.2 Tenant agrees that it shall take reasonable steps and any such other action which it deems necessary to protect Tenant's personal property from any damage that may be caused to such property in the event of any deficiency, impairment and/or interruption of utility services. As more fully set forth in **Section 14**, Tenant waives any and all claims and/or causes of action against City for any such damages.

10 SECURITY MEASURES

10.1 Tenant agrees to abide by all provisions of the Airport's Security Plan (including all amendments or revisions to the Security Plan during the term of this Lease) approved by the FAA and/or the TSA, and agrees to institute and carry out all security measures as provided in said plan. Any requirements that the Tenant must abide by will be provided to Tenant as needed. Any violations of the security plan which result in fines to City by the FAA and/or TSA, and which are caused by Tenant, its officers, agents or employees or invitees, will be assessed to Tenant by City and will be deemed to be additional rental fees payable by Tenant to City following invoice thereof by City to Tenant pursuant to **Section 5** of this Lease. Additionally, Tenant in recognition of the nature of the Premises and the damage that could occur as a result of vandalism on the Premises, shall institute a plan, approved by Director, to deter vandals and to limit access to the Premises to authorized persons.

10.2 Tenant shall be solely responsible for instituting and carrying out specific security measures required by the Airport's Security Plan in the areas where it is authorized to operate to prevent vandalism or damage to persons or property. City shall be responsible only for providing general security throughout the Airport; however, City shall provide no security at the Premises and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Tenant's operation.

10.3 Tenant understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Airport. In such event, Tenant waives all rights against City for such limitation, and City shall not be liable to Tenant for any amount, including compensation, in the form of reduction of any rent or fees.

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10.4 Tenant shall enter into a Security Plan if required by TSA and/or the Airport.

10.5 Tenant must determine whether to use its own external security system to access the AOA (Airport Operations Area) or integrate with the Airport's security system on internal doors. All exterior doors with access to the airfield must be able to integrate with the Airport's security system. All exterior security systems require Airport and TSA review and approval before activation or change to the Security Plan at any time during the term of the Lease.

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11 ASSIGNMENT OR TRANSFERS

11.1 Consent

Except as provided in this Section 11, Tenant shall not assign, sublease (other than those subleases entered into in the ordinary course of its business), convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Lease, the Premises or any part thereof, or any rights of Tenant hereunder, whether voluntarily or by operation of law, without the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed. A transfer within the meaning of this Section shall include, but is not limited to, the following: (i) the incorporation of an individual Tenant and the transfer of Tenant's rights hereunder to the corporation which is not wholly owned by Tenant; (ii) in the event that Tenant is a partnership, incorporation of Tenant and transfer of Tenant's rights hereunder to the corporation, or the withdrawal or addition of any partner to Tenant's partnership; (iii) in the event that Tenant consists of co-tenants, the incorporation of Tenant and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of his, her or its rights hereunder to his, her or its co-tenant or to a third person; (iv) in the event that Tenant is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Tenant; and (v) in the event that Tenant is an unincorporated association, the incorporation of Tenant and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

11.2 Factors for City to Consider

In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Airport; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer.

Reasonable grounds for denying consent shall include any of the following: (i) the proposed transferee's intended use of the Premises is not for an aviation-related purpose or will materially and adversely affect the City's interests at the Airport; (ii) the proposed transferee's financial condition is or may be inadequate to support its obligations under

the Lease; (iii) the proposed transferee has failed to meet any legal or contractual obligations to the City or is adverse to the City in any pending litigation; (iv) the proposed use of the Premises is not consistent with the with the Authorized Activities contemplated herein; or (v) the proposed Transferee has failed to meet the minimum qualifications set forth in City's RFP SJC232431.

In addition, City's consent to any proposed transfer under this Lease may be conditioned upon, among other things, the express written assumption by the proposed transferee of Tenant's obligations under this Lease and/or performance of required or necessary repairs or maintenance to the Premises.

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11.3 Processing Fee

City may require payment by Tenant of any processing fee established by City pursuant to a resolution or ordinance for reviewing the proposed transfer and preparing any documents in connection therewith. Tenant's failure to provide City with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for City to deny consent to, or to refuse to review, the proposed transfer.

11.4 Consent Does not Constitute Waiver

The consent of City to any transfer described in this Section shall not relieve Tenant of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default.

11.5 Assignment to Affiliate

Tenant shall have the right to assign this Lease, or sublet the Premises or any portion thereof, without the consent of the City, to any entity which is a parent or subsidiary of Tenant ("Affiliate"). Tenant shall give the City written notice of such assignment of this Lease to an Affiliate within thirty (30) days of the assignment or sublease.

11.6 Subleasing

City acknowledges and consents to the Tenant's subletting of the Premises or a portion of the Premises for the purpose of renting hangars for aircraft storage (including ancillary office space and maintenance space), provided that each sublease is in writing and is subordinate to the terms of this Lease. Tenant shall provide copies of all subleases. Any such sublease shall not be subject to processing fees by the City.

11.7 Mortgage of Leasehold Estate

- (a) With the prior consent of the City, and subject to the terms and conditions of this Lease, Tenant may convey, pledge or encumber, by deed of trust, mortgage or similar instrument (the "Approved Leasehold Mortgage"), its leasehold interest in and to the Premises in favor of a lender (the "Approved Leasehold Mortgagee"), and Tenant may assign this Lease as collateral security for such Approved Leasehold Mortgage. Any such Approved Leasehold Mortgage, and all rights under or relating thereto, shall be subject to each of the covenants, conditions and restrictions set forth herein, and to all rights of the City hereunder and will always be subordinate to the rights of the City under this Lease and the Premises. Notwithstanding the foregoing, the Approved Leasehold Mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until the Approved Leasehold Mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said Approved Leasehold Mortgagee shall remain liable for such obligations only so long as such Approved Leasehold Mortgagee remains the owner of the leasehold estate. Tenant shall be responsible for payment of all of the City's costs and expenses, including reasonable attorneys' fees and expenses, incurred in reviewing any proposed Approved Leasehold Mortgage hereunder.

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- (b) If an Approved Leasehold Mortgagee shall give the City notice of such Approved Leasehold Mortgagee's interest in the Premises and such notice shall contain the address to which notices to such Approved Leasehold Mortgagee are to be sent, the City will thereafter send to such Approved Leasehold Mortgagee, at the address so given, and in the manner set forth in this Lease, a copy of any notice of default which the City may thereafter deliver or send to Tenant. Within the time permitted for the curing or commencing the curing of any default under this Lease, such Approved Leasehold Mortgagee, at its option, may pay any amount due or do any other act or thing required of Tenant by the terms of this Lease, and all amounts so paid or other acts so done by such Approved Leasehold Mortgagee shall be as effective to cure such default as the same would have been if paid or done by Tenant.
- (c) An Approved Leasehold Mortgagee shall not become liable for Tenant's obligations under this Lease unless and until such Approved Leasehold Mortgagee becomes the owner of the leasehold estate established hereby by foreclosure, assignment in lieu of foreclosure or otherwise, or if such Approved Leasehold Mortgagee gives notice to The City that such Approved Leasehold Mortgagee will assume Tenant's obligations under this Lease. An Approved Leasehold Mortgagee shall remain liable for the obligations of Tenant under this Lease only for so long as it remains the owner of the leasehold estate established hereby.
- (d) If any default or event of default occurs under an Approved Leasehold Mortgage, the Approved Leasehold Mortgagee and Tenant shall immediately notify The City of the same in writing.

(e) If a non-monetary default by Tenant under this Lease is susceptible of being cured by an Approved Leasehold Mortgagee only after such Approved Leasehold Mortgagee has obtained possession of the Premises, then an Approved Leasehold Mortgagee shall have an additional period not to exceed thirty (30) days to cure a non-monetary default after obtaining possession of the Premises; provided, however, that (i) such Approved Leasehold Mortgagee initiated all necessary actions to obtain possession of the Premises, including the initiation of foreclosure proceedings under its Approved Leasehold Mortgage, within thirty (30) days after the earlier of the date on which such Approved Leasehold Mortgagee became aware of such non-monetary default or the date on which such Approved Leasehold Mortgagee received notice from the City of such non-monetary default; (ii) such Approved Leasehold Mortgagee shall have pursued such actions with reasonable diligence; (iii) such Approved Leasehold Mortgagee, within any applicable cure period provided in this Lease, shall have paid all Rent and other sums then due to The City under this Lease; and (iv) such Approved Leasehold Mortgagee shall have cured any other defaults by Tenant under this Lease that are susceptible of being cured by such Approved Leasehold Mortgagee without obtaining possession of the Premises. Notwithstanding the foregoing, the rights granted to an Approved Leasehold Mortgagee in this Article shall not impair any right granted to the City in this Lease (a) to perform any obligations under this Lease that Tenant is required, but fails, to perform, and (b) to obtain reimbursement from Tenant of the City's costs and expenses incurred in so performing and, subject to rights granted to an Approved Leasehold Mortgagee, to declare an Event of Default if Tenant fails so to reimburse within any applicable cure period.

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(f) Tenant shall be permitted to finance the design, construction and operation of the Tenant Improvements through a Private Activity Bond ("PAB"). The City shall provide customary consents and all related approvals required in connection with a PAB issuance and leasehold mortgage as part of the PAB financing program, which will be provided at Tenant's sole cost and expense. Any lien created to secure such financing or any other debt undertaken by Tenant shall be secured by Tenant's leasehold interest in the Lease and the Tenant Improvements and shall not be secured by the fee interest in the Premises. IT IS UNDERSTOOD AND AGREED THAT TENANT'S FINANCING OF THE TENANT IMPROVEMENTS THROUGH PAB IS SOLELY THE DEBT OF TENANT AND SHALL NOT RESULT IN ANY FINANCIAL BURDEN OR OBLIGATION OF THE CITY IN ANY MANNER, INCLUDING ANY COST OR EXPENSE ASSOCIATED WITH THE TEFRA HEARING OR ANY OTHER CONSENT OR APPROVAL REQUIRED TO BE PROVIDED BY THE CITY. Lienholders through PAB financing described herein shall be included within the definition of Approved Leasehold Mortgagee.

(g) If this Lease is terminated for Tenant's breach before the end of the Term, for any reason other than a default that has not been cured by Tenant or Approved Leasehold Mortgagee within the period specified, including, without limitation, as a result of a rejection or disaffirmation of the Lease in a bankruptcy, insolvency or other proceeding affecting creditor's rights then City shall provide a copy of the termination notice to the Approved Leasehold Mortgagee. Upon the written request of Approved Leasehold Mortgagee made any time within thirty (30) days after the receipt of such notice from City, City shall agree to enter into a new lease of the Premises with Approved Leasehold Mortgagee for the remainder of the Term of the Lease upon the same covenants, conditions, limitations and agreements contained in the Lease, except for such provisions which must be modified to reflect any such termination, rejection or disaffirmance and the passage of time, provided, that, in the event of any such termination, rejection or disaffirmance, Approved Leasehold Mortgagee (or such successor or assign) (A) shall pay to The City, simultaneously with the delivery of such new lease, all unpaid amounts due under the Lease up to and including the date of the commencement of the term of such new lease and all reasonable and substantiated expenses incurred by City to prepare such new lease, and (B) otherwise shall cure all other defaults under the Lease promptly and with due diligence after the delivery of such new lease. If The City does not enter into a new lease with the Approved Leasehold Mortgagee, then the Approved Leasehold Mortgagee shall immediately remove all trade fixtures and other personal property from the Premises and repair to The City's reasonable satisfaction, any damage caused to the Premises by the removal. The Approved Leasehold Mortgagee shall not remove or tamper with any Leasehold Improvement on the Premises.

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(h) Tenant's present and future Approved Leasehold Mortgagee and any present and future mortgagees or similar beneficiaries are intended third party beneficiaries to this section. As third-party beneficiaries, they are entitled to the applicable rights under and may enforce the provisions of this section of the Lease as if they were parties thereto.

(i) Nothing contained herein shall release Tenant from any of its obligations under this Lease that may not have been discharged or fully performed by an Approved Leasehold Mortgagee.

12 BREACH OF LEASE

12.1 Events of Default

An Event of Default shall occur under this Lease upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- A. Tenant shall have failed to pay when due any rent, fee, charge or obligation of Tenant requiring the payment of money under the terms of this Lease beyond the applicable grace period and following ten (10) days written notice; or
- B. Tenant shall have violated the provisions of **Section 4.1.10**, which violation shall continue following ten (10) days written notice; or

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- C. Tenant shall have failed to maintain any insurance required under **Section 15** which failure is not cured within ten (10) days written notice; or
- D. Tenant shall have failed to perform any term, covenant, or condition of this Lease to be performed by Tenant, except those referred to in the immediately preceding three subparagraphs, and Tenant shall have failed to cure same within thirty (30) days after written notice from City; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director; or

- E. Any representation or warranty made by Tenant hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- F. Tenant shall have made a general assignment of its assets for the benefit of its creditors;
- G. Tenant shall have assigned or otherwise transferred its interest in this Lease in violation of the provisions contained in this Lease whether voluntarily or by operation of law; or
- H. Tenant shall have failed to occupy the Premises or to maintain continuous operations at the Airport, in each case, for any thirty (30) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Premises; or
- I. A court shall have made or entered any decree or order: (i) adjudging Tenant to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Tenant or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Tenant in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or (v) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- J. The sequestration or attachment of or execution or other levy on Tenant's interest in this Lease or the Premises or any improvements located thereon shall have occurred and Tenant shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or

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- K. The occurrence of any act or omission on the part of Tenant which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Tenant to lawfully conduct the operations which Tenant is required or permitted to conduct on the Premises or on the Airport; or
- L. Any lien shall be filed against the Premises because of any act or omission of Tenant, and shall not be discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by City.

12.2 Remedies

Upon an "Event of Default", City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Lease, to which City may resort cumulatively, or in the alternative:

- A. City may, at any time with notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Tenant, and without a waiver of such breach, perform any act which if performed by Tenant would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, Tenant covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the rate of one percent (1%) per month plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's demand therefor. The demand for any payment by City shall be *prima facie* evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Tenant.
- B. City may, at its election, terminate this Lease upon written notice of termination in which event this Lease shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve Tenant from the payment of any sums then due to City or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions by City, in the absence of a written election by City to terminate this Lease, constitute a termination of this Lease:

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- (i) Appointment of a receiver or keeper in order to protect City's interest hereunder; or
- (ii) Any other action by City or its agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of Tenant and in the name of Tenant.
- C. This Lease shall not terminate following an Event of Default and an abandonment of the Premises unless City gives Tenant written notice of its election to terminate this Lease. No act by or on behalf of City intended to mitigate the adverse effect of such breach, including those described by the immediately preceding subparagraphs (i) and (ii), shall constitute a termination of Tenant's right to possession unless City gives Tenant written notice of termination.
- D. In the event City terminates this Lease, City shall be entitled to damages in the following sums:
 - (i) The worth at the time of award of all unpaid rental fees and other fees which have been earned at the time of termination;
 - (ii) The worth at the time of award of the amount by which the unpaid rental fees and other fees which would have been earned after termination until the time of award exceeds the amount of such rental fee or other fee loss that Tenant proves could have been reasonably avoided;

(iii) Any other amount necessary to compensate City for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following: (a) reasonable expenses for cleaning, repairing or restoring the Premises; (b) reasonable expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to tenant, or otherwise); (c) reasonable costs of carrying the Premises such as insurance premiums thereon, utilities and security precautions; (d) reasonable expenses in retaking possession of the property; and (e) late payment fees and court costs.

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(iv) The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate of twelve percent (12%) per annum. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

E. No payment by Tenant, or receipt by City, of a lesser amount than any rent, fee, charge or other amount due by Tenant hereunder shall be deemed to be other than on account of the earliest rent, fee, charge or other amount due, nor shall any endorsement or statement on any check from Tenant, or letter accompanying any check or payment, be deemed an accord and satisfaction. City may accept any such check or payment without prejudice to City's right to recover the balance of such rent, fee, charge or other amount or to pursue any other right or remedy available to City.

F. No option, right, power, remedy or privilege of City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

13 WAIVER OF BREACH

The waiver by City of any breach of any term, covenant, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Tenant requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Tenant. The subsequent acceptance of any fee, rent or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rent, fee or charge so accepted, regardless of City's knowledge of such preceding breach at the time of the accepting of such rent, fee or charge. No waiver, consent or approval by City shall be effective unless made by a duly authorized representative of City.

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14 INDEMNITY AND WAIVER OF CLAIM

14.1 Indemnification

Tenant, for and on behalf of its directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Airport facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Tenant, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Premises or any part thereof, or which arises from Tenant's Authorized Activities or which arises from Tenant's failure to do anything required under this Lease, except as may arise from the sole active negligence or the willful misconduct of City, its officers, employees or agents. City's right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on City pursuant to statutes, ordinances, regulations or other Laws. All of Tenant's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Lease. In an action or claim against City in which Tenant is defending City, City shall have the right to approve legal counsel providing City's defense. The provisions of **Section 31** regarding the Americans with Disabilities Act of 1990 ("ADA") shall not limit Tenant's indemnification under this provision.

The indemnification obligations of Tenant shall include the obligation of Tenant to defend, indemnify, protect and hold harmless City, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the ADA, which arise from Tenant's activities under this Lease.

14.2 Assumption of Risk

Tenant agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Tenant, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Premises or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of City, its officers, employees or agents.

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14.3 Waiver of Claim

Tenant, as a material part of the consideration to be rendered to City under this Lease, hereby waives all claims or causes of action against City, its officers, agents, contractors or employees which it may now or hereafter have for damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the Premises, and for injuries or death to persons on or about the Premises, from any cause or causes arising at any time, except as may arise from the sole active negligence or willful misconduct of City, its officers, agents or employees.

By way of example and not limitation, save and except as arises out of the sole active negligence or the willful misconduct of City, its officers, agents, contractors or employees, Tenant hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service

or system serving any portion of the Airport; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other tenant, subtenant, contractor, airline or occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of City; (c) from the flight of any aircraft of any kind and all kinds in, through, across or about any portion of the airspace above the Airport; (d) from noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during the flight of any aircraft or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up and take-off of such aircraft, and the approach and departure of aircraft to or from the Airport; and (e) for any loss or damage to the property of, or injury or damage to Tenant, its officers, agents, employees, contractors, subtenants or any other person whomsoever, from any cause or causes arising at any time because of Tenant's use or occupancy of the Premises or use of the Airport, or its operations thereon.

15 INSURANCE

15.1 Required Insurance Coverage

Prior to commencing any work or operations under this Lease, Tenant at its sole cost and expense and for the full term of this Lease and all extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Tenant and its agents, representatives, employees and subcontractors, meeting at least the minimum insurance requirements set forth in **Exhibit B** on terms and conditions and in amounts as required by the City's Risk Manager ("Risk Manager"). City shall not be obligated to take out insurance on Tenant's property. Tenant shall provide City with certificates of insurance and such endorsements as may be required by City's Risk Manager. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

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From time to time, at the request of the Risk Manager, Tenant shall provide a written statement of the replacement cost of the Tenant Improvements, with a copy to the Director.

15.2 Failure to Provide

In the event Tenant fails to procure or maintain any insurance required under this Lease: (a) City shall have the right, but not the obligation after providing at least ten (10) days prior written notice to Tenant, without limiting or waiving any other rights or remedies it may have at law or in equity, to procure such insurance and at City's sole option charge Tenant for the cost of maintaining and procuring such insurance or to offset the cost thereof against any amount that may be due or subsequently become due to Tenant; and (b) in the event a loss occurs which would have been covered by the insurance required by this Lease had such insurance been maintained, Tenant shall pay all amounts that would have been paid by such coverage, minus such amounts actually received by City under a policy procured by City pursuant to this Section.

15.3 Waiver of Subrogation

City and Tenant hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this Lease shall include a waiver of subrogation against the other party hereto, provided that such waiver of subrogation applies only to subsequent loss.

16 BAILEE DISCLAIMER

It is hereby understood and agreed that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Tenant, Tenant's contractors, agents, employees and invitees.

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17 RIGHT TO ENTER

City reserves and shall have the right by its officers, employees, agents and contractors to enter into and upon the Premises upon two (2) business days' notice scheduled in advance with Tenant (and in emergencies at all times without notice):

- A. To make any inspection Director may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Lease;
- B. To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Premises;
- C. To otherwise maintain the Premises, the building in which the Premises is located and the Airport, or to do any other repair, maintenance, alteration or removal under the conditions set forth herein; or
- D. To post notices of nonresponsibility for improvements, alterations or repairs if and when City shall desire to do so;

When reasonably necessary, City may temporarily close entrances, doors, corridors, elevators or other facilities in connection with the foregoing. City shall use reasonable efforts not to cause any interruption of Tenant's operation. Any action taken by City under this Section shall be without abatement of rent or payment of damages or other amounts to Tenant for any loss of occupancy or quiet enjoyment of the Premises, Leasehold Improvements or the buildings, betterments and improvements, without liability on the part of City for loss or damage that may be sustained by Tenant thereby, and without such action by City being construed as an eviction of Tenant or a release of Tenant from the duty of observing and performing any of the provisions of this Lease; provided, however, that such action shall be conducted and undertaken at times and in a manner so as not to unreasonably interfere with the normal operations and business of Tenant, and its subtenant's and users, whenever reasonably possible.

18 TAXES AND ASSESSMENTS

18.1 Payment by Tenant

Tenant shall pay before delinquency, and without notice or demand, any and all taxes, (including without limitation any gross receipts, income tax or excise tax) assessments, licenses, fees, possessory interest taxes and other public charges or penalties which shall be levied, imposed, or assessed upon any of Tenant's leasehold interest, upon Tenant's business, or upon Tenant for the privilege of conducting business within the Premises, or upon any other property of Tenant within the Airport.

Payment of any and all taxes, assessments, licenses, fees or other public charges shall not reduce the amount of rentals, charges or any other fee that is required to be paid by Tenant to City under the provisions of this Lease.

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18.2 Possessory Interest Taxes

Tenant recognizes and understands that this Lease may create a real property possessory interest that may be subject to real property taxation, and that possessory interest may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the land comprising the Premises, the Leasehold Improvements and/or Tenant's estate created by this Lease, Tenant shall pay such tax before delinquency. City shall have no obligation to pay any possessory interest tax. No such possessory interest tax, or any other tax by any governmental entity, shall in any way reduce or substitute for the rent, charges or fees required to be paid as a condition of this Lease or as otherwise required by City.

18.3 No Liens or Encumbrances

Tenant shall not permit or suffer any liens or encumbrances to be imposed upon the Premises, the Airport or any building or structure thereon, as a result of its activities without promptly discharging the same; provided, however, that Tenant may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Tenant shall provide a bond in an amount and in a form acceptable to City immediately following request therefor by City.

18.4 Indemnity for Tenant's Failure to Comply

Tenant shall protect, defend, indemnify and hold City, including the Airport, and any Leasehold improvements now or hereafter on the Premises, free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Lease to be paid by Tenant and from all interests, penalties, and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments, or other charges.

18.5 Payment by City

If Tenant fails to pay any tax or charge required by this Section to be paid by Tenant, City may, but is not obligated to, on five (5) days' prior written notice to Tenant, pay, discharge, or adjust such tax or charge for Tenant's benefit. In such event, Tenant, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging or adjusting such tax or charge together with interest thereon from its due date at the rate of one percent (1%) per month until paid, plus pay any penalties.

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18.6 Contest of Tax or Charge

18.6.1 Notice of Contest

In the event that Tenant desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Tenant, at least ten (10) days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give City written notice of its intention to contest such tax or charge.

18.6.2 Procedure for Contest

Tenant may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Lease has expired or terminated) without delay at Tenant's sole cost and expense.

18.6.3 Payment upon Final Determination

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Tenant shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Lease has then expired or terminated).

18.6.4 Failure to Pay Constitutes Event of Default

The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Lease.

19 QUIET ENJOYMENT

Subject to the provisions of this Lease, City covenants that Tenant, on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

20 DAMAGE OR DESTRUCTION

20.1 Tenant's Obligation to Repair

In the event the Premises, the Leasehold Improvements or any portion thereof, are damaged or destroyed in whole or in part by fire or other casualty, the proceeds of insurance required hereunder with respect thereto shall be available to Tenant, and Tenant, subject to such reasonable terms and conditions as may be imposed by City, including but not limited to the provisions of this Lease regarding construction (Section 7), shall forthwith repair, reconstruct and restore (subject to unavoidable delays and force majeure) the damaged or destroyed Premises and/or Leasehold Improvements to (i) substantially the same condition, character and utility value as existed prior to the event causing such damage or destruction; or (ii) such other condition, character and value as may be agreed upon by City and Tenant.

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20.2 Insufficient Insurance Proceeds

If Tenant has complied with all the insurance requirements of this Lease and the net proceeds of insurance on account of such damage or destruction (together with the deductible under such policy) are insufficient to restore or replace the Premises, Tenant at its option may provide such additional funds and complete repairs.

20.3 Option to Terminate Lease

20.3.1 If Tenant fails to expeditiously commence to repair, or if Tenant fails diligently to pursue any repair to completion and to restore Tenant's SASO operations at the Premises, in addition to any other remedies City may have, on thirty (30) days' notice City may elect to terminate this Lease.

20.3.2 Notwithstanding anything herein to the contrary, if during the last five (5) years of the Lease Term, the Premises or the Leasehold Improvements are materially damaged, Tenant may in its discretion elect to either terminate this Lease or rebuild or repair in accordance with **Section 20.1**. In the event Tenant elects to so terminate this Lease, Tenant shall be responsible for delivering the Premises in the condition required under **Section 25** of this Lease, with the understanding that while City may require Tenant to remove any remaining improvements, Tenant shall not be required to rebuild any damaged improvements. If the Lease is so terminated, Tenant shall be entitled to retain all proceeds from insurance on the Leasehold Improvements. However, City shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Premises pursuant to the terms of this Lease.

20.4 Restoration of Premises.

If City elects pursuant to the default rights granted herein to terminate this Lease following a damage or destruction and Tenant's failure to restore as set forth herein, then at its sole cost Tenant shall remove all damaged and destroyed portions of the Premises and otherwise shall return the Premises to City in accordance with **Section 25** below, with the understanding that while City may require Tenant to remove any remaining improvements, Tenant shall not be required to rebuild any damaged improvements. If City terminates the Lease hereunder, Tenant shall be entitled to retain all proceeds from insurance on the Leasehold Improvements. However, City shall be entitled to any rent loss insurance proceeds otherwise payable upon damage or destruction of the Premises pursuant to the terms of this Lease.

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21 COMPLIANCE WITH LAWS

21.1 This Lease is issued by City subject and subordinate to all existing and future agreements between the City and the United States of America, and Tenant shall act in compliance therewith. Tenant shall, at its sole cost and expense, comply with and conform to all Laws applicable to or affecting, directly or indirectly, Tenant, the Premises, or Tenant's operations and activities under this Lease. Further, Tenant shall not do anything in, on or about the Premises, or the Airport, or bring anything that is prohibited by a standard form of fire insurance policy or that in any way would increase or affect the then existing rate of fire or other insurance required to be carried upon the Premises, the Airport or any part thereof, or any of their contents, or that will cause a cancellation of any insurance policy covering the Premises, the Airport, or any part thereof, or any of their contents. Tenant agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of Airport property, the Premises and related facilities.

The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceedings against Tenant, whether City be a party thereto or not, that Tenant has violated any such law, statute, ordinance, rule, regulation, order or requirement in the use of the Premises, or the Airport shall be conclusive of that fact as between City and Tenant.

In connection with its operations in or about the Airport, Tenant shall pay to City all amounts, fees, charges and taxes due City under any ordinance, resolution or other applicable law governing activities in or about the Airport.

21.2 Without limitation of the foregoing, Tenant shall conduct its operations in accordance with all applicable United States Department of Transportation authorizations and FAA Operating Certificates. Tenant shall obtain any and all permits and licenses required by City or other governmental entity as are necessary to conduct the activities authorized under this Lease.

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21.3 Workers' Compensation Insurance

At all times during the term of this Lease, Tenant shall subscribe to and comply with the Workers' Compensation Laws of the State of California and pay such premiums as may be required thereunder and save City harmless from any and all liability arising from or under said act.

21.4 Status of Tenant as Independent Contractor

Status of Tenant shall be and remain an independent contractor with respect to all installations, construction, and services performed hereunder and agrees to and hereby accepts full and exclusive liability for the payment of any and all contributions, or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Tenant on the work performed under the terms of this Lease, and further agree to obey all rules and regulations which are now, or hereafter may be, issued or promulgated under Laws by any duly authorized state or federal officials; and Tenant shall indemnify and save harmless City from any such contributions or taxes or liability therefor.

22 AGREEMENTS WITH UNITED STATES

This Lease shall be subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which Federal agreement has been or may now or hereafter be required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations. Tenant agrees that to the extent that any such Federal agreement shall affect Tenant and its use of the Premises and the Airport, Tenant shall act in compliance therewith.

Without limiting the City's ability to enter into such agreements with the Federal government, if any such agreement detrimentally affects this Lease or Tenant's use of the Premises, Tenant may deem such agreement a "taking" as set forth in Section 51.

23 GRANT AGREEMENT COVENANTS

Tenant acknowledges that City is subject to Federal grant agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to, and agrees to be bound by, the following covenants provided by the FAA as they may apply to Tenant:

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- 23.1 Tenant for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- 23.2 Tenant for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (ii) that in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.
- 23.3 That in the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this Lease, and to re-enter and repossess the Premises, and hold the same as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulations Part 21 are followed and completed including expiration of appeal rights.
- 23.4 Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- 23.5 Without limiting the generality of any other terms or provisions of this Lease, noncompliance with **Section 23.4** above shall constitute a material breach thereof and in the event of such noncompliance City (through Director) shall have the right to terminate this Lease and the estate hereby created without liability therefor or, at the election of City or the United States, either or both said governments shall have the right to judicially enforce **Sections 23.1, 23.2, 23.3 and 23.4** of this **Section 23**.

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- 23.6 Tenant agrees that it shall insert the above five (5) provisions in any agreement by which Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises or at the Airport.
- 23.7 Tenant assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This **Section 23.7** obligates Tenant or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this **Section 23.7** obligates Tenant or transferee for the longer of the following periods: (i) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (ii) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, this **Section 23.7** binds the contractors from the bid solicitation period through the completion of the contract.
- 23.8 City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Tenant, and without interference or hindrance.
- 23.9 City reserves the right, but shall not be obligated to Tenant, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Tenant in this regard.
- 23.10 This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.

There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

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- 23.11 Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations ("FAR") in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.

23.12 Tenant, by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Tenant and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Tenant.

23.13 Tenant, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Norman Y. Mineta San José International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Tenant.

23.14 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103.

23.15 This Lease and its provisions shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency.

24 MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Lease, Tenant agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirement of this Lease as may be reasonably required to enable City to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Tenant hereunder. A failure by Tenant to so consent shall constitute a breach of this Lease.

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25 SURRENDER OF PREMISES

25.1 On the last day, or sooner termination of this Lease, Tenant shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Premises and all alterations, additions, improvements and betterments which may have been made in or to the Premises, except: (i) movable and unattached furniture and trade fixtures installed at the expense of Tenant; and (ii) such other property, if any, which Tenant is expressly authorized in writing by Director to remove from the Premises.

25.2 Tenant shall ascertain in writing from Director not less than ninety (90) days prior to the end of the term of this Lease whether Director desires to have Tenant remove any construction, betterment, alterations or additions which may have been made by Tenant upon the Premises and to restore the Premises to the condition they were in when received (reasonable use and wear thereof excepted). If Director should so desire, then Tenant shall remove any such construction, betterment, alterations or additions and restore the Premises at its sole cost and expense. Any failure by Tenant to so notify Director shall not relieve Tenant of its obligations under this subparagraph. Tenant shall conduct a Structural Engineering Study on the Premises at the end of the Lease Term to identify any deficiencies. To the extent that Tenant has constructed Additional Hangar Space and provided that the Additional Hangar Space is in good condition and repair as determined per the process outlined above, Tenant shall not be obligated to remove the Additional Hangar Space and title to the Additional Hangar Space shall transfer to Landlord on the Expiration Date.

25.3 Tenant shall, on or before the end of the term of this Lease, remove all personal property owned by it (except such as it may be required to surrender under the provisions of the two immediately preceding paragraphs) from the Premises. All such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Premises shall be deemed, at the option of Director, to have been abandoned by Tenant. City may, at the option of Director, retain any such property so abandoned by Tenant or remove and/or dispose of such property. Tenant shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City.

26 STATEMENTS, RECORDS AND INFORMATION

Tenant represents and warrants to City that all statements, records, reports, certifications and other information submitted by Tenant to City have been true and accurate and covenants that all future statements, records, reports, certifications and other information submitted by Tenant to City will be true and accurate in all respects.

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27 GIFTS

Tenant is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Tenant agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Lease by Tenant. In addition to any other remedies City may have at law or in equity, City may terminate this Lease for such breach as provided in **Section 12** of this Lease.

28 HEIRS, SUCCESSORS AND ASSIGNS

All of the covenants, agreements, conditions and undertakings herein contained shall apply to and bind the representatives, heirs, executors, administrators, successors and/or assigns of all the parties hereto.

29 REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to and covenants with City respect to this Lease as follows:

29.1 Lease Properly Authorized

That Tenant has the power and authority to enter into this Lease with City, that the directors, officers and members of Tenant have approved such power and authority to enter into this Lease and bind Tenant, that this Lease shall be executed, delivered and performed pursuant to the power and authority conferred by the members and be

binding upon Tenant, and that the individual executing this Lease is duly authorized to do so.

29.2 No Unresolved Claims or Disputes

That there are no unresolved claims or disputes between Tenant and City that Tenant is aware of.

29.3 Statements, Records and Reports

That Tenant shall furnish true and accurate records, reports, resolutions, certifications, and other information as may be requested of Tenant by City from time to time during the term of this Lease that related to an obligations of Tenant under this Lease that are reasonably necessary for City to verify compliance by Tenant of the terms of this Lease.

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29.4 Compliance with Laws.

That to the best of Tenant's knowledge, Tenant is in compliance with all Laws related to Tenant's operations in the United States and the State of California.

30 AMERICANS WITH DISABILITIES ACT

30.1 Disability Access Disclosure. Pursuant to California Civil Code Section 1938, City states that, as of the Effective Date, the Premises has not undergone inspection by a Certified Access Specialist to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code section 55.53. A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the City may not prohibit the Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the Tenant if requested by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection. The parties mutually agree that Tenant shall be responsible for the payment of any fees for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

30.2 ADA Provisions for Office Space. Tenant shall be solely and fully responsible for complying with the ADA in connection with: (i) the Premises or any portion thereof and its operations thereon; (ii) removing physical barriers on the Premises; (iii) providing auxiliary aids and services for use of the Premises, where necessary or required; and (iv) modifying its policies, practices and procedures to comply with the ADA. Tenant shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Tenant shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Tenant's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Tenant agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Tenant's failure to comply with the ADA. Nothing herein shall relieve Tenant from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to Section 7 "Improvements" hereof.

30.3 ADA PROVISION FOR HANGAR BUILDINGS

City makes no representation that the Premises or the building covered by this Lease are suitable for use as a public accommodation as defined in the ADA nor that, for any particular use, it is accessible to individuals with disabilities. Tenant takes full responsibility for determining that its use of the Premises and the activities it conducts thereon are in compliance with the ADA, and for making appropriate alterations. City shall not be responsible for making alterations to the building or the Premises to make the building or Premises accessible for Tenant's intended use or activities. Tenant shall be fully liable for any violation of this provision, without limitation of any other obligation of Tenant under this Lease.

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Furthermore, Tenant shall be solely and fully responsible for complying with the ADA in connection with: (i) the Premises or any portion thereof and its operations thereon; (ii) removing physical barriers on the Premises; (iii) providing auxiliary aids and services, where necessary or required and (iv) modifying its policies, practices and procedures to comply with the ADA. Tenant shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Tenant shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Tenant's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Tenant agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Tenant's failure to comply with the ADA.

Nothing herein shall relieve Tenant from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to Section 7 hereof.

30.4 Additional Hangar Space ADA. Tenant shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (ADA), as amended from time to time. Tenant shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Tenant shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Tenant's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Tenant agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Tenant's failure to comply with the ADA as it applies to operations at the Airport.

31 INTENTIONALLY OMITTED

32 TENANT'S PROPOSAL

Tenant's Proposal, attached to this Lease as **Exhibit L**, is hereby incorporated into this Lease by reference. In the event of any conflict between this Lease (or any portion thereof) and Tenant's Proposal, the terms of this Lease shall prevail and apply.

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33 MISCELLANEOUS

33.1 Consent

Unless expressly stated otherwise, whenever in this Lease the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

33.2 Controlling Law

Except as federal law may apply, the parties agree that this Lease shall be governed and construed by and according to the laws of the State of California.

33.3 Entire Agreement

This instrument contains all of the terms and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

33.4 Exhibits and Addenda

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Lease as if set forth fully herein.

33.5 Force Majeure

If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by: strikes; trade embargoes or sanctions; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials or reasonable substitutes for those items; government actions or inactions; civil commotions; terrorism; riots; war; enemy or hostile governmental action; judicial orders; fire or other casualty; delay, failure, or interruption of any utility service; or other causes beyond the reasonable control of the party obligated to perform, any such performance made impossible for a period equal to the period of that prevention, delay or stoppage shall not constitute a default under this Lease. However, Tenant's obligation to pay Rent or any other fees and charges payable pursuant to this Lease is not excused by this Section.

33.6 Headings

The headings of the several paragraphs and sections of this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

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33.7 Hold Harmless

Tenant shall defend, indemnify and hold City harmless from and against claims for any broker's commissions, finder's fee or other commission or fee relating to the leasing of the Premises by anyone claiming by or through Tenant.

33.8 Joint and Several

If there be more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant shall be joint and several; and the term Tenant as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

33.9 Material Considerations

Each and every term, condition, covenant and provision of this Lease is and shall be deemed to be a material part of the consideration for City's entry into this Lease, and any breach hereof by Tenant shall be deemed to be a material breach. Each term and provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition.

33.10 Modification of Lease

This Lease shall not be modified, unless the parties first agree to and approve of such modification in writing.

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33.11 No Assumption

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Tenant or persons claiming under Tenant, shall have any rights hereunder resulting therefrom or otherwise.

33.12 Number and Gender

Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and words of any gender used herein shall include each other gender, where appropriate.

33.13 Resolutions

Tenant shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Tenant or which authorizes Tenant to enter into this Lease.

33.14 Severability

If a court of competent jurisdiction finds or rules that any provision of this Lease is void or unenforceable, the remaining provisions of this Lease shall remain in effect.

33.15 Successors and Assigns

The provisions of this Lease shall, subject to the provisions concerning transfer, apply to and bind the successors and assigns of the parties hereto.

33.16 Tenant not an Agent of City

Tenant is not an agent, contractor or employee of City and nothing in this Lease nor any action of Tenant shall be construed in any way to constitute Tenant as an agent, contractor or employee of City for any purpose.

33.17 Time of Essence

Time is of the essence of this Lease and each of its provisions, and failure to comply with this provision shall be a material breach of this Lease.

33.18 Venue

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.

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33.19 Counterparts

This Lease may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

33.20 Use of electronic signatures

Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

34 NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed to the respective party's address set forth in **Section 1**, or to such other place as Director or Tenant, respectively, may notify the other in writing. All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers indicated herein for either party. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as may be amended or modified.

35 GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If the Contractor transfers its obligations to another, the transferee is obligated in the same manner as Contractor. The above provision obligates the Contractor and the airport remains obligated to the Federal Aviation Administration.

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36 TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Lease, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- Nondiscrimination:** The Contractor, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Lease covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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- Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this Lease, the City will impose such Lease sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- Withholding payments to the Contractor under the Lease until the Contractor complies; and/or

b. Cancelling, terminating, or suspending the Lease, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

37 **TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

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38 **TITLE VI CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to Lease, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

39 **TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this Lease, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

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- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)].

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq.).

40 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

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The Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

41 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

42 LABOR PEACE ASSURANCE AND EMPLOYEE WORK ENVIRONMENT REPORT

Pursuant to San José Municipal Code Chapter 25.11, "Tenant's Labor Peace Assurances and Employee Work Environment Report" are attached hereto as **EXHIBIT D**. Tenant shall require each of its Subtenant's to provide it with assurances as to how the Subtenant will prevent service disruptions at the Airport due to labor disputes.

43 LIVING AND PREVAILING WAGE REQUIREMENTS

Tenant acknowledges and agrees that the work performed pursuant to the Lease is subject to all applicable provisions of those wage requirements as listed in the "Airport Living Wage Regulations" and the "Airport Living Wage Determination 7/1/2023 through 6/30/24," both as available on <http://www.flysanjose.com/living-wage>.

44 INTENTIONALLY OMITTED

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45 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

Tenant shall perform its obligations under this Lease in conformance with City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy." Tenant shall procure environmentally preferable products and services that meet environmental product standards established by governmental or other widely recognized authorities. Examples include the Green Seal 37 standard for janitorial products (www.greenseal.org), EPEAT for IT equipment, and GreenGuard for furniture.

46 MEMORANDUM OF LEASE

Upon the request of Tenant or City, City and Tenant will execute, acknowledge and record in the real property records of Santa Clara County a short-form memorandum of this Lease, in form and content reasonably acceptable to the parties.

47 NO THIRD PARTY BENEFICIARY

The review, approval, inspection, examination or consent of City or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality of suitability of such items for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Tenant or persons claiming under Tenant, will have any rights hereunder resulting therefrom or otherwise.

48 SURRENDER/MERGER

On the last day or sooner termination of the Term, Tenant shall quit and surrender the Premises subject to the provisions of **this Lease** and in accordance with the provisions of this **Section 48**. If Tenant has made a Transfer in accordance with the provisions of this Lease and if Tenant's rights hereunder shall be terminated prior to the expiration of the Term, City may elect either (i) to terminate all or any existing subleases, subtenancies or other rights created by the Transfer (notwithstanding any prior consent of City; or (ii) to continue the rights created by the Transfer, in which event all rights of Tenant with regard to the Transfer shall be deemed assigned to City as of the date of Tenant's rights are terminated.

49 NO PERSONAL LIABILITY

No elected official, director, officer, agent or employee of either party shall be personally liable by or to the other party pursuant to any term or provision of this Lease or because of any breach thereof or because of its or their execution or attempted execution of this Lease.

50 SURVIVAL OF INDEMNITIES

Expiration or termination of this Lease shall not affect the right of either party to enforce any and all indemnities given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitee from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee.

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51 EMINENT DOMAIN

51.1 Definitions

51.1.1 Eminent Domain

"Eminent domain" is the right of any governmental or other permitted authority to take property for public use. As used in this Section, the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by City or Tenant to the condemnor under threat of a taking under the power of eminent domain in lieu of or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section.

51.1.2 Total Condemnation/Total Taking

As used in this Section, the terms "total condemnation" and "total taking" mean the taking of the fee title to the entire Premises and all Leasehold Improvements on the Premises under the power of eminent domain.

51.1.3 Substantial Condemnation

As used in this Section, the terms "substantial condemnation" and "substantial taking" mean the taking of so much of the Premises or Leasehold Improvements, or both, under such power as to prevent or substantially impair the conduct of Lessee's business thereon.

51.1.4 Partial Condemnation/Partial Taking

As used in this Section, the term "partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total or substantial taking as defined in subparagraph 0 and 0 of this Section.

51.2 Notice to Other Party

The party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- a. Notice of intended taking;
- b. Service of any legal process relating to condemnation of the Premises or Leasehold Improvements;
- c. Notice in connection with any proceedings or negotiations with respect to such a condemnation; or
- d. Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

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51.3 Termination of Leasehold on Total Condemnation

In the event that there shall be a total taking of the Premises during the Lease term under the power of eminent domain as in this Section defined, Tenant's obligation to pay rent and the leasehold estate hereby created shall cease and terminate as of the date title to the property is taken by the person who will put it to public use or at the time the condemnor is authorized to take possession of the property as stated in an order for possession, whichever is earlier.

51.4 Termination of Leasehold on Substantial Condemnation

In the event that there shall be a substantial taking of the Premises during the Lease term under the power of eminent domain as in this Section defined, this Lease shall terminate as to the portion of the Premises so taken on the date title to the property is taken by the person who will put it to public use or at the time the condemnor is authorized to take possession of the property as stated in an order for possession, whichever is earlier. Tenant, at its option, may terminate this Lease, as a result of a substantial taking of the Premises, if land taken by eminent domain results in a net loss of twenty percent (20%) or more of the total area of the Premises or if the Leasehold Improvements taken, if any, result in a net loss of twenty percent (20%) or more of the total rentable building and hangar space or if such taking substantially and detrimentally impacts Tenant's business operations from the Premises. In such event, Tenant shall notify City of its intention to terminate this Lease within 30 days of Tenant's receipt from City of a notice of intended taking. If Tenant does not so notify City, the taking shall be deemed a partial taking. The Lease shall terminate as of the last day of the calendar month following the calendar month in which the notice of termination is served on City. On termination of this Lease pursuant to this Section, all subleases and subtenancies in or on said Premises or any portion or portions of said Premises created by Tenant under the Lease also terminate, and said Premises shall be delivered to City free and clear of all such subleases and subtenancies. On termination of the Lease pursuant to this Section, both parties shall be released from all obligations under this Lease except those specified in Section 31 of this Lease.

51.5 Rent and Term After Partial Taking

In the event that there shall be a partial taking of the Premises during the Lease term under the power of eminent domain as in this Section defined, this Lease shall remain in full force and effect, covering the remaining property, except that the Rent shall be reduced in the same ratio as the percentage of the area of the ground taken bears to the total area of the Premises.

51.6 Restoration of Improvements After Partial Taking

Promptly after a partial taking of the Premises during the Lease term under the power of eminent domain as in this Section defined, at Tenant's sole expense and in the manner specified in provisions of this Lease relating to maintenance, repairs, and alterations, Tenant shall repair, alter, modify, or reconstruct the Leasehold Improvements so as to make them economically and feasibly usable by Tenant. If Tenant does not repair, alter, modify, or reconstruct as set forth herein, the cost of such repair shall be deducted from Tenant's share of the award and paid to any Lender of Tenant demanding it.

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51.7 Award

Awards and other payments on account of a taking of the Premises or the Leasehold Improvements thereon (the "Award"), or the leasehold estate created by this Lease, shall be applied as follows:

a. Awards received on account of a total or substantial taking of the Premises or the Leasehold Improvements and/or the Leasehold Estate created by this Lease thereon shall be paid in the following order of priority:

- i. First, to any Lender under a Permitted Mortgage, that portion of the Award attributable to the Leasehold Improvements and/or the Leasehold Estate created by this Lease in an amount up to, but not to exceed, the unpaid balance of said Permitted Mortgage;
- ii. Second, to City that portion of the Award attributable to any land that is part of the Premises;
- iii. Third, to Tenant that portion of the Award attributable to the Leasehold Improvements that equals the percentage of the Term of this Lease that has, at the time of the taking, not expired;
- iv. Fourth, to City that portion of the Award attributable to the Leasehold Improvements that equals the percentage of the Term of this Lease that has, at the time of the taking, expired;
- v. Fifth, to Tenant that portion of the Award attributable to Tenant's loss of goodwill and any cost or loss that Tenant may incur in the removal and relocation of Tenant's business and its trade fixtures; and
- vi. Sixth, to City that portion of the Award attributable to severance damages.

vii. Without duplicating any award referenced above, seventh, to Tenant that portion of the award attributable to any excess of the market value of the Leasehold Estate for the remainder of the Lease term over the present value of the Leasehold Estate as of the Lease termination date under sections 23.3 and 23.4 (commonly referred to as the "bonus value" of the Lease).

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b. Awards and payments received on account of a partial taking of the Premises or the Leasehold Improvements thereon shall be applied in the following order of priority:

- i. First, to pay the cost of restoration, repair, and reconstruction of the Premises and the Leasehold Improvements so as to make them economically and feasibly usable by Tenant;
- ii. Second, to any Lender under a Permitted Mortgage in an amount equal to the decrease (if any) in its security as a result of the partial taking, less amounts payable or recovered pursuant to such taking, but not to exceed the unpaid balance of the Permitted Mortgage;
- iii. Third, to City that portion of the Award attributable to any land that is part of the Premises; and
- iv. Fourth, to the City, that portion of the award attributable to severance damages for the City's fee interest in the remainder property.

51.8 Relocation Costs

Tenant shall have the right to make a separate claim for relocation cost under Government Code Section 7262 in the event of a total or substantial taking of the Premises, the Leasehold Improvements, and/or the Leasehold Estate.

52 NON-EXCLUSIVITY

This Lease is non-exclusive in character and in no way prevents the City from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other tenants and/or operators or others in other premises at the Airport during the term of this Lease. Tenant's use of Airports' facilities for any purpose, other than as specified herein, shall be prohibited unless the Director's prior written approval has been obtained.

[remainder of page intentionally left blank]

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Executed as of the day and year first written above.

"CITY"

CITY OF SAN JOSE,

a chartered municipal corporation of the State of California

SARAH ZARATE

Director, City Manager's Office

Date:

"TENANT"

SJC HANGARS LLC, a Delaware limited liability company authorized to do business in the State of California

Signature

Print Name

Title

Date

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EXHIBIT A

AIRPORT CAMPUS MAP AND DESCRIPTION OF PREMISES

(all space approximate):

Description of Premises:

1210 Aviation Ave, San Jose, CA, 95110 as shown on Exhibit A encompassing Lot W-9 Parcel 230-46-051.

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EXHIBIT B

INSURANCE

TENANT shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the Property. The cost of all such insurance shall be borne by the TENANT.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001, including ongoing operations and products and completed operations;
2. The coverage provided by Insurance Services Office Form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non- owned, and hired automobiles;
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability insurance;
4. Professional Liability Errors & Omissions coverage for all professional services;
5. Pollution Liability insurance including coverage for all operations. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions;
6. Hangar Keepers Liability providing coverage for damage to or destruction of the aircraft of others while in the insured's custody for storage, repair, or safekeeping;
7. Builder's Risk insurance covering Leasehold Improvements on the Premises in the course of construction.
8. Property insurance covering TENANT'S personal property on the PREMISES.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

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B. Minimum Limits of Insurance

TENANT shall maintain limits no less than:

1. Commercial General Liability: \$10,000,000 per occurrence and in the aggregate for bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident and per disease.
4. Professional Liability Errors & Omissions \$2,000,000 per occurrence/aggregate limit.
5. Pollution Liability Insurance: \$2,000,000 per contamination incident.
6. Hangar Keepers Liability: \$10,000,000 limit each aircraft each loss.
7. Builder's Risk: Replacement cost.
8. Property: Replacement cost.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Auto Liability Coverages

- a. The CITY, its officers, officials, employees and agents are to be covered as additional insureds with respect to: liability arising out of activities performed by, or on behalf of, TENANT, premises owned, occupied or used by the TENANT, or automobiles owned, leased, hired or borrowed by the TENANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or agents.

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- b. The TENANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees and agents. Any insurance or self- insurance maintained by CITY, its officers, officials, employees or agents shall be in excess of the TENANT's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies by TENANT shall not affect coverage provided CITY, its officers, officials, employees, or agents.
- d. Coverage shall state that the TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation by endorsement in favor of the CITY, its officers, officials, employees, and agents.

2. Property, Builder's Risk, and Workers' Compensation and Employers' Liability

Coverage shall contain a waiver of subrogation in favor of the City, its officers, officials, employees, and agents.

3. Builder's Risk

City shall be named as a loss payee on any Builder's Risk policy to the full extent allowable and for which the City's insurable interests may appear.

4. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

5. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

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F. Verification of Coverage

TENANT shall furnish the City with certificates of insurance and endorsements affecting coverage required by this clause. The certificates and copies of endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the TENANT's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov.

Certificate Holder

City of San José – Finance Department

Risk and Insurance

200 East Santa Clara St., 14th Floor Tower

San Jose, CA 95113-1905

G. Subconsultants/Subcontractors

TENANT shall include all subcontractors, subconsultants or subcontractors as insureds under its policies or shall obtain separate certificates and endorsements from each subcontractors, subconsultants or subcontractors. TENANT shall upon written request from City provide all certificates and endorsements for each subcontractors, subconsultants or subcontractors within five (5) calendar days.

H. Review of Coverage

These insurance requirements shall be subject to periodic review by City's Risk Manager. Should the Risk Manager require any change in any coverage such change shall be communicated in writing to TENANT and TENANT shall comply with the said change within thirty (30) days of the date of receipt of the notice.

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During the period of the Tenant's build out, remodeling or any Tenant Improvements, Tenant's Contractors, and/or Professional Consultants, Insurance Requirements are as follows

INSURANCE

Contractor/Consultant, at Contractors/Consultants sole cost and expense, shall procure and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor/Consultant, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Service Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Professional Liability Errors and Omissions appropriate to consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

(For Contractors or Subcontractors performing any type of design or engineering services or other professional services including but not limited to, surveying, sampling, testing and similar activities)

5. Builders' Risk refer to Tenants requirements above.

B. Minimum Limits of Insurance

Contractor/Consultant shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

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2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers' Liability limits of \$1,000,000 per accident.

4. Professional Liability Errors and Omissions \$2,000,000 Aggregate Limit.

5. Builder's Risk: Completed value of the project. No deductible shall exceed \$25,000. Refer to Tenant's requirements above.

C. Omitted

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

a. The City of San José its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City its officers, employees, agents and contractors.

b. Contractor's insurance coverage shall be primary insurance as respects City its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City its officers, employees, agents or contractors shall be excess of Contractor's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided City its officers, employees, agents, or contractors.

d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Coverage shall contain a waiver of subrogation in favor of the City its officials, employees, agents, and contractors.

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3. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state waiver of subrogation against the City its officials, employees, agents and contractors.

4. Professional Liability:

Contractor/Consultant agrees to maintain continuous coverage for professional liability applicable to work performed on this project for a period no less than five years after completion of the work on this project. Any claims-made policy used to meet the requirements of this Lease shall have a retroactive date prior to commencement of work on this project.

5. Builders Risk - Refer to requirements listed in Tenant's requirements above.

6. All Coverages:

Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Verification of Coverage

Contractor/Consultant shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Lease. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

There are two (2) options for the delivery of insurance to Risk Management

- PDF via e-mail: Riskmgmt@sanjoseca.gov
- Proof of insurance shall be mailed to the following address, or any subsequent address as may be directed in writing by the Risk Manager:

City of San José, Finance Department

Risk & Insurance

200 East Santa Clara St., 14th Floor

San José, CA 95113-1905

with a copy mailed to:

Airport Property Management
Norman Y. Mineta San José International Airport
1701 Airport Blvd., Suite B-1130
San José, CA 95110
airportproperties@sjc.org

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G. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. Review of Coverage

These insurance requirements shall be subject to review by City's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by City to Tenant and Tenant shall comply with the change within thirty (30) days of the date of receipt of the notice.

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EXHIBIT C

HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this Lease, Tenant agrees to the following provisions:

1. Notification of Release. Tenant shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Premises, or is caused by or results from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees on the Airport other than the Premises. Tenant shall immediately notify City of any Hazardous Material release which occurs on the Premises, regardless of whether the release was caused by or results from Tenant's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Airport other than the Premises and is caused by or results from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.
2. Liability. Tenant shall be solely and fully responsible and liable for:
 - (a) any Hazardous Material Release which is caused by or results from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees on the Airport;
 - (b) any Hazardous Material release that commences during the term of the Lease on the Premises, unless Tenant establishes through investigation, sampling, testing and analysis acceptable to the City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises from a specifically identifiable source off the Premises.
3. Prevention of Release. Tenant shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airport, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. Tenant, at Tenant's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:
 - (a) any release or danger of release of Hazardous Material on the Airport other than the Premises, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which, was caused, or results, in whole or in part from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees;

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- (b) any release or danger of release of Hazardous Material which commenced during the term of this Lease and which is discovered on the Premises, unless Tenant establishes through investigation, sampling, testing and analysis acceptable to the City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises from a specifically identifiable source off the Premises.

In addition to all other rights and remedies of City hereunder, if Tenant does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay, to have same remediated and Tenant shall reimburse City within fifteen (15) business days of City's demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Tenant.

5. Indemnification. Tenant shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:
 - (a) any Hazardous Material release on the Airport other than the Premises, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees; or
 - (c) any Hazardous Material release which commenced during the term of this Lease on the Premises, including, but not limited to any release into soil or groundwater, except a release which Tenant establishes, through investigation, sampling, testing and analysis acceptable to the City, was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Premises from a source off the Premises.

6. **Release of Claims Against City.** Tenant releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Tenant may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airport. This release shall not apply to any claims for contribution that Tenant may have against City in the event that Tenant incurs any cost in undertaking any cleanup of Hazardous Material from the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Tenant is not responsible and liable under this Lease. Tenant understands and agrees that Tenant is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

"1542. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

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7. (a) **Cessation of Activities.** Tenant shall cease its activities on the Premises to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Tenant shall not recommence its activities on the Premises until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to the City.

(b) **Abatement of Fees and Charges on Premises.** Tenant shall not be entitled to an abatement of any fees or charges due under this Lease after Tenant has been requested to cease activities for investigation, cure or remediation of Hazardous Materials on the Premises, except if Tenant establishes, through investigation, sampling, testing and analysis acceptable to the City that the presence of Hazardous Materials on the Premises was due to the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Premises from a source off the Premises.

8. **Records and Inspections.**

(a) Tenant shall maintain, during the term of this Lease and for a period of not less than four (4) years after the expiration or termination of this Lease, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(b) Upon request by City, Tenant shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this Lease, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(c) After the expiration of four (4) years following the termination of this Lease, Tenant may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Tenant shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty days (30) days after such notice is received, deliver copies of said records to City.

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9. **No Third Party Beneficiaries**

Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this Lease, nor as creating any right in any person not a party to this Lease to enforcement of any obligation created under this Lease.

10. **Survival of Obligations**

Tenant's obligations under this Lease shall survive the expiration or earlier revocation or suspension of this Lease.

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EXHIBIT D

LABOR PEACE ASSURANCES AND EMPLOYEE WORK ENVIRONMENT REPORT

I, , an authorized representative of ,

(name of Airport Business)

attach a copy of the following existing or planned programs that demonstrate a good work environment that prevents the disruption in services due to disputes with employees.

Copy of Company Employee Handbook that includes information such as: terms of employment; performance appraisals; employee responsibilities; non-discrimination and anti-harassment policy; complaint resolution procedures; working hours and conditions; breaks; assignment of responsibilities; general rules of conduct; prohibited activities; disciplinary procedure; leaves of absence; drug and alcohol use; appearance, grooming and uniform policy; health and safety.

Joint Labor-Management Committee

Collective Bargaining Agreement

Labor Neutrality Provision

Card Check Provision

Any other information, plan, benefits or programs undertaken by Airport Business to attract and retain qualified employees and assist in providing uninterrupted service through the Airport Business's workplace conditions and practices.

The above listed benefits and complaint procedure(s) will be maintained during the period of time work is performed at the Norman Y. Mineta San José International Airport.

It is the intent of to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

(name of Airport Business)

Signature

Title

Name of Airport Business

Date

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EMPLOYEE BASIC BENEFITS

Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year			
After 5 years			
After 10 years			

Other: (Explain.)

Indicate the paid holidays your workers receive by placing check mark to the left of each.

<input type="checkbox"/>	New Year's Day	<input type="checkbox"/>	Independence Day	<input type="checkbox"/>	Christmas
<input type="checkbox"/>	Martin Luther King Jr. Day	<input type="checkbox"/>	Labor Day	<input type="checkbox"/>	Floating Holiday
<input type="checkbox"/>	Washington's Birthday	<input type="checkbox"/>	Veterans' Day	<input type="checkbox"/>	Other:
<input type="checkbox"/>	Memorial Day	<input type="checkbox"/>	Thanksgiving Day	<input type="checkbox"/>	Other:

1 Do you allow for unpaid leave? Yes, please briefly explain policy.

No

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COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees?

2 California Department of Fair Employment and Housing (DFEH).

NO, our company has not had any final judgment or administrative order.

YES, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order:

Agency that obtained the order:

Attach a description of the nature of violation.

3 California Department of Industrial Relations (Cal OSHA).

NO, our company has not had any final judgment(s) or administrative order(s).

YES, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order:

Agency that obtained the order:

Attach a description of the nature of violation.

4 California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

NO, our company has not had any final judgment(s) or administrative order(s).

YES, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order:

Agency that obtained the order:

Attach a description of the nature of violation.

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EXHIBIT E

AUTHORIZED ACTIVITIES

While engaging in any of the Authorized Activities at the Premises, Tenant shall comply with the standards set forth in the Airport's Minimum Standards, dated September 2023, for SASO operations, as amended from time to time. In the event the Airport's Minimum Standards is amended, such document shall supersede the authorized activities listed below.

A copy of the Airport's Minimum Standards can be found at https://www.flysanjose.com/sites/default/files/Minimum_Standards.pdf.

1. Right to use, in common with others, all public areas and facilities of the Airport, including the runways, landing areas, taxiways, ramps, roadways, parking areas, runway lights, signals and other operating aids.

2. Engage in subleasing of hangar and office space (including ancillary parking and ramp space) to others;
3. A SASO may provide aircraft fueling services to its own aircraft and the aircraft for owners leasing space directly from the SASO Tenant and based at the Airport. All fueling services must be provided within the Tenant's leased premises and must have the required fueling permits for such fueling services and comply with the requirements as stated the Airport Minimum Standards. Alternatively , a SASO and its tenants may elect to secure fueling and or line services from an approved Fixed Based Operator located at the Airport.
4. Tenant as a SASO must provide at least one but no more than three of any aeronautical services as established by the Airport's Minimum Standards. Tenant may select its services and provide no less than thirty (30) day written notification to the Director prior to starting such services. Director shall reserve the right to approve or deny services. The Director shall not unreasonably deny services.
5. Developing approximately an additional 28,000 sq feet of hangar space contiguous to the existing hangar space.
6. Other activities in accordance with the Airport's Minimum Standards.

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EXHIBIT F

SAMPLE LETTER OF CREDIT

(Bank Name)¹

(Bank Address)

IRREVOCABLE STANDBY LETTER OF [Date] CREDIT² NO.

BENEFICIARY:

CITY OF SAN JOSE, CALIFORNIA

NORMAN Y MINETA SAN JOSE INTERNATIONAL AIRPORT

1701 Airport Blvd, Suite B-1130 SAN JOSE, CALIFORNIA 95110

APPLICANT:

(Tenant Name)

(Tenant Address)

Gentlemen:

We hereby open our irrevocable standby letter of credit no. in your favor for account of the applicant for an amount not to exceed in the aggregate U.S. dollars AND 00/100 U.S. \$0.00 ³ available by your draft(s) drawn at sight ⁴ on us accompanied by:

Your written statement purportedly signed by an authorized representative of City of San José, California showing the name and title of the signer and reading as follows:

"The undersigned, a duly authorized representative of City of San José, California does hereby certify that (Tenant Name) has been in default of contractual obligations with respect to its agreement with the City of San José, California, entitled ⁵, effective on ⁶.

This letter of credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reason of our reference to any agreement or instrument referred to herein or in which this letter of credit is referred to. Any such agreement or instrument shall not be deemed incorporated herein by reference.

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Draft(s) must be marked "drawn under (Bank Name)Letter Of Credit No. ⁷"

Draft(s) must be presented to (Bank Name) and Address) located at Attn: not later than [date] (the "expiration date") or any such automatically extended expiration date as provided herein below. Partial draws are allowed.⁶

It is a condition of this standby letter of credit that the expiration date shall be automatically extended, without amendment, for periods of one year from each successive expiration date, unless, no less than thirty (30) days before the then current expiration date, we notify you in writing by registered mail (return receipt) that this letter of credit will not be extended beyond the then current expiration date⁷, in which event the City of San José may draw the full amount of the letter of credit. Any such notice shall be deemed received by you on the date such notice is deposited in the U.S. mails, registered (return receipt), postage prepaid.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this letter of credit shall be duly honored on due presentation to (Bank Name).⁸

Except as otherwise expressly stated herein, this credit is issued subject to the Uniform Customs And Practice For Documentary Credits (12007 Revision), International Chamber Of Commerce Publication No. 600 or with the International Standby Practices ISP98, as published by the International Chamber of Commerce Publication No. 590.⁹

Communications to us with respect to this letter of credit must be in writing and shall be addressed to us at (Bank Name) and Address) Attn: , specifically referring thereon to this letter of credit by number.

Very truly yours

Authorized signature¹⁰

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EXHIBIT G

LEASEHOLD IMPROVEMENTS

- Approximately 28,000 square feet of hangar contiguous to the existing building.
- Improvements to the existing building with high quality finished and advanced feature is as follows:

- o Climate and humidity controllable hangar
- o Smart controls through Tenant's Smart Hangar smartphone App
- o PV, EV charging receptacles, indoor vehicle parking
- o Native, drought-tolerant landscaping throughout (meeting or exceeding all regulatory requirements).
- Other improvements as mutually agreed to by City and Tenant.

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EXHIBIT H

MAINTENANCE PLAN

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EXHIBIT I

MAINTENANCE RESPONSIBILITIES

Maintenance: All maintenance, repairs, and improvements will be the sole responsibility of the selected Proposer, except for the base building structure including the roof, which shall be maintained by the Airport.

Tenant's responsibilities shall include, but shall not be limited to:

- a. Exterior painting maintenance of the base building and hangar
- b. Landscaping, irrigation, and time clocks
- c. Parking lot – All striping, signage, lighting, and electric car charging stations
- d. Sidewalks, curbs, & walkways inside the perimeter fence
- e. Ramp (leased ramp space only)
- f. All interior & exterior building systems
- g. Fire life safety system with aqueous film forming foam and all fire extinguishers, and monitoring and inspections per local and state codes
- h. Plumbing – All pipes, drains, floor grates/screens, fixtures, and cleanouts
- i. Electrical – Any and all electrical apparatus (lamps, ballast, electrical systems/components/equipment, receptacles, interior/exterior, conductors, transformer, circuits, breakers, switches, space heaters (hangar), etc.)
- j. Data, communications, & all security systems
- k. Heating, Ventilation, and Air Conditioning (HVAC) System
- l. Hangar doors - All components associated with the proper operation of the hangar doors (i.e., guides, wheels, tracks, motors, controls, toe guards, sump pumps, etc. including any and all parts, mechanical, and electrical systems)
- m. Roll-up doors - All components associated with the proper operation of the roll-up doors (i.e., chains, motors, controls, guides, safety stops, etc.)
- n. Vehicle/pedestrian/perimeter gates – All components associated with the proper operation of the vehicle/pedestrian gates. (i.e., motor/control, loop detectors, pedestal, card reader, hardware, housing, etc.)
- o. All other building systems that exclusively service the Tenant's operations
- p. Compressor (permit/inspections) for air for the hangar/shops
- q. Building generator
- r. Interior and Exterior Airport Operations Area card readers
- s. Garbage enclosure
- t. Drinking water fountains
- u. Kitchen appliances
- v. All flooring inside the bldg., base cove, and hangar floor coating
- w. Emergency lighting/signs
- x. Windows, glass, & coverings – interior and exterior including the hangar
- y. Doors/Locks/Keys/Hardware
- z. Electrical car charging station
- aa. Oil water separator
- bb. French drains in the hangar
- cc. Eyewash stations

- dd. Fall protection/tie-off system in the hangar
- ee. Exterior bldg. signage (if permitted)
- ff. Janitorial
- gg. Restrooms
- hh. Hangar fans

Airports Specific Responsibilities include:

- a. Base building structure
- b. Roofing
- c. Gutters and downspouts
- d. Building Foundation
- e. Ramp access gates

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EXHIBIT J

SCHEDULE OF AUTHORIZED AIRCRAFT

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EXHIBIT K

PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT

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EXHIBIT L

TENANT'S PROPOSAL

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CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, , certify that I am the manager of the limited liability company named in the attached agreement;

Name of Manager

that signed the agreement on behalf of the limited liability company as

Name of Person that Signed Agreement

the of the limited liability company; and that the agreement was duly signed for and on behalf of the

Title of Person that Signed Agreement

limited liability company by authority of its members, and is within the scope of its limited liability company powers.

By:

Name:

Its: Manager

Date:

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Exhibit 10.2

ORLANDO EXECUTIVE AIRPORT
FIXED BASE OPERATOR
LEASE AGREEMENT

Orlando Executive Airport
 Orlando, Florida

Effective as of _____

Lessee:

SHOLA, LLC

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**ORLANDO INTERNATIONAL AIRPORT
FIXED BASE OPERATOR LEASE AGREEMENT
(FIXED BASED OPERATOR FACILITY)**

THIS FIXED BASED OPERATOR LEASE AGREEMENT ("Lease") is made to be effective as of the Effective Date (as defined below), between the **GREATER ORLANDO AVIATION AUTHORITY**, an independent special district and agency of the City existing under the laws of the State of Florida, a public entity that operates the Orlando Executive Airport ("Airport"), whose mailing address is One Jeff Fuqua Boulevard, Orlando, Florida 32827-4399 ("Authority"), and **SHOLA, LLC.**, a Delaware corporation whose address is 136 Tower Road, Suite 205, West Harrison, New York 10604 ("Lessee").

WITNESSETH:

In consideration of the mutual covenants and agreements herein set forth, Authority and Lessee agree, and covenant as follows:

**ARTICLE I
DEFINITIONS**

1.1Definitions. The following words, terms and phrases wherever used in this Lease shall, for purposes of this Lease, have the following meanings:

- (a) "Additional Rent" shall have the meaning set forth in Section 4.8 of this Lease.
- (b) "Affiliate" shall have the meaning set forth in Section 13.6(a) of this Lease.
- (c) "Air Operations Area" shall mean that portion of the Airport consisting of the cargo areas, airside buildings, aircraft aprons, ramps, taxiways, and runways.
- (d) "Airport" shall have the meaning set forth above in the preamble to this Lease.
- (e) "Amended and Restated Operation and Use Agreement" shall have the meaning set forth in Section 2.2 of this Lease.
- (f) "Applicable Laws" shall have the meaning set forth in Section 2.8 of this Lease.
- (g) "Authority" shall mean the Greater Orlando Aviation Authority, a public entity created pursuant to Chapter 57-1658, Special Laws of Florida 1957, as replaced by Chapter 98-492, Laws of Florida, as amended.
- (h) "CERCLA" shall have the meaning set forth in Section 8.1 of this Lease.
- (i) "City" shall have the meaning set forth in Section 2.2 of this Lease.
- (j) "Construction Period" shall mean the earlier to occur of (i) issuance of a Certificate of Occupancy by the City for the Phase I Improvements and the Off-Site Improvements or (ii) twenty-four (24) months from the Effective Date of this Lease.
- (k) "Due Diligence Access Agreement" shall mean the agreement executed on even date with this Lease that provides for a due diligence period for Lessee to inspect the Premises.

(l) "Effective Date" shall mean the date that Lessee issues its Notice to Proceed as set forth in the Due Diligence Access Agreement.

(m) "Environmental Laws" shall have the meaning set forth in Section 8.1 of this Lease.

(n) "Environmental Condition" shall have the meaning set forth in Section 8.1 of this Lease.

(o) "Event of Default" shall have the meaning set forth in Section 12.1 of this Lease.

(p) "Expiration Date" shall have the meaning set forth in Section 3.1 of this Lease.

(q) "Force Majeure" shall have the meaning set forth in Section 13.17 of this Lease.

(r) "Gross Receipts" for purposes of calculating the Percentage Privilege Fee payable to Authority described in Section 4.5 below, shall mean all gross income derived (i) by Lessee from providing FBO Services as required by Section 2.4 and permitted by Section 2.5 on or about the Airport, exclusive of aviation fuel sales, (ii) by Lessee or any agent of Lessee or controlled by Lessee or an officer or stockholder of Lessee from or in connection with the activities described in Section 2.4 or 2.5 below, (iii) by Lessee from or in connection with car rental services, conducted on or about the Premises, or otherwise originating from the Premises. Gross revenues shall not include the following, provided that separate records are maintained for such deductions:

i. the amount of any separately-stated federal, state or local sales or use taxes, imposed upon the Lessee, its agents, operators or their customers and collected by Lessee, its agents or operators.

ii. the amount of any separately-stated excise or similar taxes on aviation gasoline, jet fuel or lubricating oil sold or delivered by Lessee or its agents and paid by Lessee,

iii. the amount of any landing or other fees collected for or on behalf of the Authority by Lessee or its agents or operators pursuant to Section 6.04(d) and paid by Lessee to the Authority.

iv. revenue from aircraft sales or leases or aircraft engine sales, except for brokerage fees, finders fees or other fees paid or gross income derived from aircraft sales or leases or aircraft parts sales.

v. revenue from secondary services, provided that Lessee shall pay the greater of 5-1/2% of the net profit exceeding \$5,000 annually from each secondary service or 5-1/2% of the Fair Market Value of rent for the land and existing improvements where that Secondary Service is provided. Fair Market Value shall be established through the appraisals obtained by Authority.

No deduction shall be made from Gross Receipts by reason of repossessions or returns, or by reason of any credit loss sustained by Lessee, its agents or operators, or other discount that may be applicable, or by reason of any other credit arrangements. Gross Receipts shall include any charge which Lessee or its agents or operators customarily make for the rights described in Section 2.4, or for the sale of goods or services or for the lease of space, described in Section 2.4 or 2.5, or Lessee or its agents or operators customarily make for the sale of goods or services described in Sections 4.7(b) and (c) below, whether or not such charge is actually assessed, charged or collected by Lessee, its agents or operators. Notwithstanding the foregoing, Gross Receipts shall not include any rent concessions provided as incentives to subtenants or sums for which subtenants have defaulted and are uncollectable by the Tenant. All computations in the determination of Gross Receipts shall be made in accordance with the provisions of this Agreement.

(s) "Hazardous Substances" shall have the meaning set forth in Section 8.1 of this Lease.

(t) "Improvements" means all infrastructure, buildings, structures, fixtures, fences, utility installations, parking facilities, landscaping and irrigation systems on the Premises including, but not limited to, the Phase I Improvements, the Phase II Improvements, and the Phase III Improvements (all defined herein) and generally depicted on Exhibit "C".

(u) "Insurance Requirements" shall have the meaning set forth in Article 7 of this Lease.

(v) "Lease" shall have the meaning set forth above in the preamble to this Lease.

(w) "Lessee" shall have the meaning set forth in the preamble to this Lease.

(x) "Lessee Improvements" shall have the meaning set forth in Section 5.2 of this Lease.

(y) "Minimum Annual Rent" shall have the meaning set forth in Section 4.2 of this Lease.

(z) "Minimum Standards" shall mean the then current Orlando Executive Airport Aeronautical Service Operator Minimum Standards which are published by the Authority and amended from time to time.

(aa) "Net Profit" shall have the meaning set forth in Section 13.6(a) of this Lease.

(bb) "Off-Site Improvements" shall mean all necessary off-site improvements necessary to support the Improvements, including, but not limited to, taxiway upgrades for group III aircraft and associated connections, service road and access gate relocations, roadway improvements, utility extensions, NAVAID relocations, and all necessary fill material and drainage improvements required by same and generally depicted on Exhibit "D".

(cc) "Partial Taking" shall have the meaning set forth in Section 11.3 of this Lease.

(dd) "Permitted Uses" shall have the meaning set forth in Section 2.4 of this Lease.

(ee) "Phase I Improvements" shall mean a 5,000 square foot FBO Terminal, 71,700 square feet of hangar space, all with a minimum door height of 28 feet and width of 100 feet, 374,800 square feet of aircraft pavement, 55,000 square feet of vehicle pavement, and a fuel farm consisting of a minimum capacity of 10,000 gallons of AVGAS and 20,000 gallons of JET-A.

(ff) "Phase I Improvements Initial Investment" is estimated to be Thirty Million and 00/100 Dollars (\$30,000,000.00).

(gg) "Phase II Improvements" shall mean an additional 43,100 square feet of hangar space, all with a minimum door height of 28 feet and width of 100 feet together with 33,000 square feet of vehicle pavement.

(hh) "Phase II Improvements Investment" is estimated to be Five Million and 00/100 Dollars (\$5,000,000.00).

(ii) "Phase III Improvements" shall mean an additional 43,100 square feet of hangar space, all with a minimum door height of 28 feet and width of 100 feet together with 33,000 square feet of vehicle pavement.

(jj) "Phase III Improvements Investment" is estimated to be Five Million and 00/100 Dollars (\$5,000,000.00).

(kk) "Plans" shall have the meaning set forth in Section 5.2(d) of this Lease.

(ll) "Premises" shall have the meaning set forth in Section 2.1 of this Lease.

(mm) "Rent" shall have the meaning set forth in Section 4.2 of this Lease.

(nn) "Southeast Quad" shall mean that area of property bounded on the north by Runway 7-25, the west by Runway 31-13, the south by S.R. 408 and the east by George DeSalvia Way.

(oo) "Taking" shall have the meaning set forth in Section 11.1 of this Lease.

(pp) "Temporary Taking" shall have the meaning set forth in Section 11.5 of this Lease.

(qq) "Term" shall have the meaning set forth in Section 3.1 of this Lease.

ARTICLE II

PREMISES AND PERMITTED USES

2.1 Demise of Premises. Subject to the terms and conditions set forth in this Lease, Authority hereby demises and leases to Lessee, and Lessee hereby leases from Authority, a parcel of real property containing approximately 871,200 square feet located at the Airport (the "FBO Premises Land"), together with any buildings, structures, fixtures, fences, utility installations, parking facilities, landscaping and irrigation systems currently existing or hereafter located thereon (the "FBO Premises Improvements"), all as depicted on **Exhibit "A"** attached hereto and incorporated herein by reference (the FBO Premises Land and the FBO Premises Improvements are collectively referred to herein as the "FBO Premises" or "Premises"). Within one hundred twenty (120) calendar days following the Effective Date of this Lease, Lessee shall, at Lessee's sole cost and expense, obtain and deliver to Aviation Authority, a survey and final legal description of the FBO Premises Land (the "Survey") for Aviation Authority's review and approval, which shall not be unreasonably withheld. The Survey shall be prepared by a surveyor licensed by the State of Florida and in accordance with the Florida Administrative Code and shall set forth a legal description and the total square footage of FBO Premises Land for the purpose of determining the exact boundaries of the FBO Premises Land. Upon approval of the Survey by the Aviation Authority, the acreage and square feet for the FBO Premises Land, set forth herein shall be revised to conform to the Survey and shall be incorporated herein as part of the Revised Exhibit "A," without further need for amendment. The above procedure may be repeated during each phase of development as needed. In no event shall the FBO Premises Land be less than 871,200 square feet. The Minimum Annual Rent calculation shall be adjusted based upon the Survey acreage and square feet.

2.2 Condition of Premises. The City of Orlando (the "City") is the owner in fee simple of the Premises, and the Authority presently operates the Premises under an Amended and Restated Operation and Use Agreement with the City dated August 31, 2015, as may be amended from time to time (such Operation and Use Agreement, as amended, is hereinafter the "Operation and Use Agreement"). Pursuant to the Operation and Use Agreement, the Authority warrants to Lessee that the Authority has the full power and authority to enter into this Lease and perform its obligations hereunder. Upon Lessee's issuance of a Notice to Proceed under the Due Diligence Access Agreement, Lessee accepts the FBO Premises in its "AS-IS, WHERE IS" condition and agrees that the FBO Premises are suitable for Lessee's use as described herein subject to the Authority's performance of its obligations under this Lease. Lessee acknowledges that Authority has made no representations or warranties relating to the suitability of the Premises for any particular use except as otherwise provided herein, and unless otherwise expressly provided in this Lease, Authority shall have no obligation whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises. Lessee shall not permit any unlawful nuisance or waste on the Premises, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, or (iii) loss by condemnation. Lessee agrees to surrender the FBO Premises, or portions thereof, upon the expiration, or earlier termination of this Lease, in a condition substantially similar to the condition of the Premises at the expiration of the Construction Period Term, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, or (iii) loss by condemnation.

Lessee agrees that, except as otherwise expressly provided herein, all Improvements, infrastructure, trade fixtures, furnishings, equipment and Lessee's other personal property of every kind or description which may at any time be on the FBO Premises shall be at Lessee's sole risk, or at the sole risk of those claiming under Lessee, and Authority shall not be liable for any damage to said property or loss suffered by the business of Lessee caused by water (excluding an Environmental Problem) from any source whatsoever or from the bursting, overflowing or leaking of sewer or steam pipes or from the heating or plumbing fixtures or from electric wires or from noise, gas or odors or caused in any other manner whatsoever, provided such damage is not the result of Authority's gross negligence or willful misconduct. Provided, however, that in such an event Authority shall exercise reasonable diligence to restore any services or utilities so interrupted, curtailed, stopped, or suspended.

2.3 Obligations of Authority.

(a) **Quiet Enjoyment.** Authority agrees that, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, Lessee shall peaceably and quietly have, hold, and enjoy the Premises and other rights granted hereunder in accordance with the terms and conditions of this Lease.

(b) **Condition and Maintenance of Streets; Access.** Authority will maintain the streets and roads in the Southeast Quad area in reasonably good condition. Lessee shall have vehicular access to the Premises using such vehicles as are legally permitted to operate on public roads in the City. Lessee shall have access to the air operations area of the Airport for its employees, customers and subtenants as is reasonably necessary, over such roadways which Authority shall from time to time designate for such purpose, subject to such reasonable nonarbitrary rules and regulations regarding the use of such roadways, and to such reasonable fees of uniform application, as may be established by Authority from time to time. Portions of public and controlled access roadways may be closed from time to time in order to make repairs or renovations thereto, but the Authority shall be obligated to provide reasonable temporary access to the Premises and air operations area. Such roadways may be closed entirely in the event of emergency; provided, however, that in such event Authority will make a reasonable effort to resolve the emergency expeditiously.

(c) **No Other Obligations of Authority.** Lessee acknowledges that Authority has made no representations or warranties relating to the suitability of the Premises for any use, and that, except as otherwise expressly provided in this Lease, and that except as otherwise expressly provided in this Section 2.3, Authority shall have (i) no obligation whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any Improvements, furnishings or equipment now or hereafter / constructed, installed or used on the Premises, and (ii) no liability to Lessee arising out of any defect or deficiency in the Premises or the Improvements.

2.4 Permitted Uses. In addition to all other rights elsewhere granted in this Agreement, Lessee shall conduct business activities and provide the services set forth in Section 6 of the Minimum Standards for a Category A Fixed Base Operator ("FBO Services"), as may be amended from time to time, including the construction, maintenance, and repair of a fuel farm storage facility to include Jet A and 100LL. Of the FBO Services, aircraft maintenance may be carried out by Lessee or any sublessee, licensee, or third-party, who is authorized by Lessee and who meets the Minimum Standards for Aircraft Maintenance Facility or Mobile Aircraft Repair and Maintenance, as set forth in the Minimum Standards, as may be amended from time to time. (the "Permitted Uses"). Provided it is in compliance with Section 8.1(a), Lessee may store all fuels, aircraft equipment, and other materials and substances related to the Permitted Uses on the Premises, and if Lessee so elects, it shall maintain storage tank liability insurance as required by the Florida Department of Environmental Protection and shall be in compliance with Section 8 of this Lease. All uses on the Premises shall comply at all with the then current FAA regulations on use of land and facilities on the Airport. The Authority shall have the right to inspect the Premises upon forty-eight (48) hours written notice to the Tenant.

2.5 Additional Uses. In addition to the required business activities and services set forth in the Minimum Standards for a Category A Fixed Base Operator, as may be amended from time to time, Lessee may provide the following services:

(a) leasing or licensing office, facilities, storage and/or hangar space to aircraft operators or other aeronautical businesses;
(b) fueling and washing automobiles owned or operated for Lessee's customers;
(c) servicing of ground servicing equipment ("GSE") and vehicles used on the Premises, with gasoline, diesel fuel, and any other fuel or supplies reasonably required by Lessee;

(e) furnishing catered food to Lessee's customers and food and beverages served and consumed on the Premises by Lessee's customers, employees, agents, contractors, and subtenants;

(d) car rental to transient aircraft passengers and crew;

(e) transportation to and from the Airport area, by "limousine service" or otherwise, general aviation passengers and luggage and property, customers, crew, contractors, and other general aviation related people and property;

(f) short-term meeting room rental for transient aircraft operators and tenants or sublessees;

(g) sale of aviation-related accessories (including, without limitation, hats, shirts, jackets, and other clothing), aircraft parts and other similar and related goods;

(h) operation of an avionics and radio repair and maintenance service;

(i) operation of air charter service for the transportation of persons and/or freight;

(j) providing flight instruction and rental of aircraft;

(k) providing other ancillary activities normally provided by a general aviation FBO, not otherwise expressly required by the Minimum Standards; and

(l) engaging in Aeronautical Activity as defined in the Minimum Standards.

2.6 Prohibited Uses. Lessee shall not conduct any other activities not expressly permitted herein without the prior written consent of the Aviation Authority Chief Executive Officer, said consent is to be in the sole and absolute discretion of the Chief Executive Officer.

2.7 Signage. All signage on the Premises shall be approved in writing by the Authority before being installed. Such approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the above, rooftop signage shall be strictly prohibited.

2.8 Contest of Applicable Laws. Lessee may exercise any rights provided by law to contest the Applicable Laws and shall not thereby be deemed in default under this Lease, provided: (i) no Event of Default has occurred and is continuing hereunder; (ii) upon request by the Authority, Lessee shall provide security reasonably satisfactory to the Authority assuring compliance with such Applicable Laws and protecting Authority and the Premises against any penalty, fine, charge or other expense which may arise as a result of any delay in compliance therewith; (iii) such contest shall operate to suspend enforcement of compliance with the Applicable Laws; and (iv) such contest is maintained and prosecuted by Lessee, at Lessee's cost, with due diligence.

2.9 Noise and Vibrations. Lessee shall support the reasonable noise mitigation measures established by the Authority to mitigate noise impacts of Lessee's operations outside the boundaries of the Airport.

2.10 Conduct of Lessee Parties. Lessee shall control the conduct, demeanor and appearance of Lessee's invitees, licensees, subtenants, contractors, and any other parties doing business at the Premises and, upon reasonable written objection from the Authority concerning the conduct of any such person, shall immediately take all reasonable steps necessary to remove the cause of the objection.

2.11Nuisance. Lessee shall not commit any physical nuisance on the Premises and shall not do or permit any of its subtenants to do anything which would result in the creation, commission or maintenance of such nuisance on the Premises.

2.12Vehicular Parking. Lessee shall not allow Lessee Parties to park vehicles within the grassed areas of the Premises or in other areas of the Airport that are not leased or licensed to Lessee without the prior written consent of the Authority, which consent may be granted or withheld in the Chief Executive Officer's sole and absolute discretion.

2.13Inoperable, Derelict, and Abandoned Aircraft. Lessee shall promptly notify the Authority of any inoperable aircraft being stored on the Premises. For the purposes of this section, an inoperable aircraft is an aircraft that is not airworthy and not in the process of being restored to an airworthy condition. Upon receipt of such notice, the Chief Executive Officer may request in writing that Lessee demonstrate that maintenance of the inoperable aircraft necessary to render the aircraft operable is being actively pursued. If an inoperable aircraft, or a derelict or abandoned aircraft as defined in Florida Statutes, remains on the Premises for a period of forty-five (45) days or more after such written notice is provided, the Chief Executive Officer may, in their sole discretion, declare the aircraft "abandoned" or "derelict," as defined in Section 705.183, Florida Statutes. In the case of derelict or abandoned aircraft, the Authority may take the necessary steps under Florida law, or appoint the Lessee as Authority's designee to take the necessary steps under Florida law, in order to have the aircraft removed from the Premises and the Airport by way of disposal, auction, or other reasonable method. In the event Authority designates Lessee, Lessee shall have 30 days to initiate the procedure under Florida law to remove the aircraft from the Premises.

2.14Derelict Vehicles. Lessee shall not store and shall not allow tenants or users to store inoperable vehicles on the Premises and shall take reasonable steps to have inoperable vehicles removed from the Premises in a timely manner when it is aware of such a vehicle. In the event that a vehicle is identified as a derelict vehicle, pursuant to Section 705.184, Florida Statutes, the Authority and the Lessee shall cooperate to take the necessary steps under Florida law in order to have the vehicle removed from the Premises and the Airport.

2.15Evacuation and Hurricane Plans. Within thirty (30) days of the Effective Date, Lessee shall provide the Authority with emergency evacuation and hurricane plans consistent with the Authority's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Lessee and its sublessees, if an evacuation need or hurricane alert warning is present. Hurricane plans are to be annually updated, if requested by the Authority.

ARTICLE III

TERM OF LEASEHOLD

3.1Term. The Term of this Lease shall be divided into two periods of the time, (i) the period of time defined as after the Effective Date until the expiration of the Construction Period (the "Construction Period Term") and (ii) thirty (30) full years defined as the period beginning on expiration of the Construction Period Term and shall expire the date that is thirty (30) years thereafter (the "Expiration Date") (the "Post Construction Period Term"), unless sooner terminated or otherwise extended in accordance with the terms and provisions hereof. To the extent that the Improvements Actual Construction Costs and Off-Site Improvements Actual Construction Costs, as applicable, both defined below, is less than or exceeds the Phase I Improvements Minimum Investment the Post Construction Period Term shall be adjusted by increasing or decreasing it by one (1) year for each One Million Dollars (\$1,000,000.00) more or less than the Phase I Improvements Investment Estimate. Upon the completion of Phase II and Phase III, the Term shall be adjusted by adding one (1) year for each One Million dollars (\$1,000,000.00) expended for each Phase as indicated by the Actual Construction Costs, defined below. In no event shall the maximum term exceed fifty (50) years.

ARTICLE IV

ANNUAL RENT, FEES, TAXES, AND AUDIT

4.1Privilege Fee. For the privilege of performing FBO Services at the Airport pursuant to Section 2 above, beginning on the Rent Commencement Date and during the Term of the Lease, Lessee shall pay to the Aviation Authority each month during the term of this Lease a Privilege Fee in an amount equal to the greater of either (a) one twelfth (1/12) of the Minimum Annual Rent determined pursuant to Section 4.3 below or (b) the sum of the Percentage Privilege Fees determined pursuant to Section 4.5 (The Privilege Fee or Minimum Annual Rent shall be referred to as "Annual Rent"). The Privilege Fee shall be payable, without demand, on or before the twentieth (20th) day of the month following each calendar month of the term hereof and on the calendar month immediately following the end of the term, a sum of money equal to the amount, if any, by which the Percentage Privilege Fees calculated pursuant to Section 4.5 exceeds the Minimum Annual Rent payable for such month.

4.2Minimum Annual Rent. Minimum Annual Rent (as defined in Section 4.3 for each twelve-(12) month period or portion thereof during the Term of this Lease, beginning on the Rent Commencement Date, in the amount detailed below, which Minimum Annual Rent shall be payable on or before the twentieth (20th) day of each calendar month (or partial calendar month) thereafter, in amounts equal to one-twelfth (1/12) of the Annual Rent then due, in advance, in lawful money of the United States, without deduction or set-off (except as otherwise expressly provided in this Lease), at the office of the Authority's Chief Financial Officer. The Minimum Annual Rent for a partial month during the Term or any Renewal Term of this Lease shall be prorated based on the number of days in such month.

4.3Calculation of Minimum Annual Rent. Beginning on the Rent Commencement Date the Minimum Annual Rent shall be the total sum of THREE HUNDRED NINETY-TWO THOUSAND FORTY DOLLARS AND 00/100 DOLLARS (\$392,040.00) per annum (the "FBO Premises Rent"), payable in equal monthly installments of THIRTY-TWO THOUSAND SIX HUNDRED SEVENTY AND 00/100 DOLLARS (\$32,670.00). The Minimum Annual Rent is based on an appraisal that determined the fair market rent of \$0.45 per square foot.

4.4 Adjustment of Annual Rent. On the first anniversary of the Rent Commencement Date and continuing each anniversary thereafter, the applicable Minimum Annual Rent, including Ground Rent, shall be increased by three and one-half percent (3.5%) above the then prevailing Minimum Annual Rent.

4.5Percentage Privilege Fee. Percentage Privilege Fee shall be calculated as an amount equal to five and one-half (5.5%) percent ("Privilege Fee Rate") of Lessee's Gross Receipts for each month during the term of this Lease.

(a) Adjustment of the Percentage Privilege Fee. The Authority shall have the right to adjust the Privilege Fee Rate once every five (5) years during the term of the Lease. The first adjustment in the Privilege Fee Rate shall be effective no earlier than five years from the Notice to Proceed, and subsequent adjustments in the Privilege Fee Rate shall be effective no earlier than the fifth, tenth, fifteenth, and twentieth anniversary of such date. At least ninety (90) days prior to the date that any adjustment in the Privilege Fee

Rate is proposed to become effective, the Authority shall notify Lessee in writing of its intent to adjust the then prevailing Privilege Fee Rate, indicating the new Privilege Fee Rate schedule, and the date such schedule will go into effect. Lessee shall submit its comments in writing to the Authority within thirty (30) days following the date of such notice. The proposed new Privilege Fee Rate schedule shall be (a) applicable equally to all Fixed Base Operators who have a lease with the Authority ; (b) be approved by the Authority Board; (c) less than or equal to the statewide average of privilege or gross receipts fee. Within 90 days of notification of a proposed new Privilege Fee Rate, Tenant shall have the right to appeal the Privilege Fee Rate by presenting a market appraisal of the FBO Premises Land reflecting that the fair market rent of the FBO Premises Land (not including the Improvements thereupon) ("Tenant's Appraisal") is less than the Percentage Privilege Fee that would be assessed under the proposed new Privilege Fee Rate. In such case, the Authority shall have the option of amending this Lease to reflect that the Annual Rent assessed will be the amount stated in the Tenant's Appraisal or conducting a second appraisal at the Authority's sole cost and expense ("Authority's Appraisal"). If the Authority's Appraisal is greater than the Tenant's Appraisal the lease shall be amended to reflect the Annual Rent as being the average of the rent as determined by the Tenant's Appraisal and the Authority's Appraisal.

(b) Monthly Report. Lessee shall provide Authority monthly with a revenue report on the date that the Privilege Fee is due, signed by an officer of Lessee, which certifies the total amount of Gross Receipts derived during the period covered by the report, in a form attached as Exhibit B.

4.6Annual Report. No later than one hundred eighty (180) days from the end of Lessee's fiscal year, Lessee shall provide the Authority with an annual audit report or attestation report covering Lessee's preceding fiscal year ("Annual Report"). The first Annual Report shall cover the first day of operation through the end of the first year of this Lease. The last Annual Report shall cover through Lessee's last day of operation pursuant to this Lease. The Annual Report shall include the following schedules:

a) A schedule detailing the total number of gallons of fuel sold by fuel type and month; the total number of gallons of fuel disbursed by type and month; total number of gallons of oil sold by month, total number of gallons of oil disbursed by month; the total number of gallons of exempt fuel and/or oil disbursed by type and month; the total amount of Fuel Flowage Fees payable to the Authority by month; the actual amount Fuel Flowage Fee said to the Authority by month; and a calculation of the amount owed, if any, to either party.

b) A schedule detailing gross revenues from rental car agency services by company and month and any amounts due hereunder for the provision of such services, if any.

(c) A schedule detailing gross revenues from FBO Services, exclusive of sale of aviation fuel.

The Annual Report shall include an audit opinion or attestation report, as applicable, from an independent Certified Public Accountant, in accordance with Generally Accepted Audited Standards ("GAAS") prescribed by the American Institute of Certified Public Accountants or any successor agency thereto regarding the information contained in the schedules and calculations listed above. In the event the Annual Report contains a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules and calculations, it shall not be acceptable to the Aviation Authority unless and until said qualification, or disclaimer is removed. If the Annual Report indicates that the amount due and owing is greater than the amount paid by Lessee to the Authority during such period, Lessee shall pay the difference to the Authority as indicated in the Annual Report. If the amount paid by Lessee to the Authority exceeds the amount due and owing for such period, the Authority shall credit the overpayment to Lessee in the following order: (a) against any past due amounts owed to the Authority by Lessee, including interest and late fees; (b) against currently outstanding, but not yet due, rental payments owed to the Authority by Lessee; and (c) against any other sums payable by Lessee to the Authority. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease until satisfied.

4.7Fuel Flowage Fee. Fuel Flowage Fee shall be an amount equal to twelve cents (\$0.12) per gallon of aviation gasoline, mogas, or jet fuel delivered from fuel farms owned, leased, or operated by Lessee or to the Premises, including "into plane" and "contract fuel," during the immediately preceding calendar month. Lessee agrees to pay the Aviation Authority, the Fuel Flowage fee on or before the twentieth (20th) day of each month for the prior month as Additional Rent. The Parties agree and acknowledge that the intent of the Fuel Flowage Fee is to establish a fee based on profits made by Lessee from the provision of energy to power aircraft. In the event that technological development affecting the manner in which aircraft are powered substantially disrupts the collection of Fuel Flowage Fees as currently stated herein, the parties agree to negotiate in good faith an amendment to the provisions of this Lease regarding the Fuel Flowage Fee, in order to retain the benefit of the bargain regarding the equitable apportionment of monies received by Lessee from the sale of goods and services related to the provision of energy to power aircraft. Such negotiations will be based on standard industry practices regarding the provision of energy to power aircraft in existence at the time of negotiation. Lessee shall provide Authority monthly with a revenue report on the date that the Fuel Flowage Fee is due, signed by an officer of Lessee, which certifies the total amount of Fuel Flowed and the Fuel Flowage Fee derived during the period covered by the report, in a form attached as Exhibit B.

i. Adjustment of the Fuel Flowage Fee. At the election of the Chief Executive Officer of the Authority the fuel flowage fee may be increased (but not decreased) effective on the third anniversary of the Rent Commencement Date and every three years thereafter during the term of this Lease based on the Annual Consumer Price Index - All Urban Consumers (South Urban) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics, which was in effect on the date of the Rent Commencement Date (hereinafter referred to as "Initial Index"). The annual index published most immediately preceding the adjustment date in question (hereinafter referred to as "Adjustment Index") shall be used in determining the amount of the adjustment. If the applicable Adjustment Index has increased over the Initial Index, the initial fuel flowage fee of twelve cents (\$0.12) per gallon shall be multiplied by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Initial Index to determine the adjusted fuel flowage fee.

4.8Additional Rent. Any amounts specified herein as part of the rent due from Lessee under this Lease shall be in addition to the amount of Annual Rent due from Lessee (the "Additional Rent") (Annual Rent and Additional Rent, collectively, "Rent"). For any amount of Additional Rent due under this Lease, Authority shall furnish Lessee with an invoice setting forth the nature and amount of such Additional Rent, and except as otherwise stated in this Lease, payment of such Additional Rent shall be made in full within thirty (30) days following the receipt of such invoice.

4.9Delinquent Rent. Any installment of Annual Rent, and any fees or other charges accruing under this Lease that are not received within fifteen (15) business days after such payment is due, shall bear interest from the date when the same was due until paid by Lessee at the interest rate of eighteen percent (18%) per annum (or, if less, the maximum interest rate allowed by law).

If Authority has paid any sum or sums or has incurred any obligation or expense for which Lessee is obligated to pay or reimburse Authority, or if Authority is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure or refusal of Lessee to perform or fulfill any of the terms or conditions of this Lease, then the same shall be deemed Additional Rent due hereunder, and Lessee shall, promptly after demand by Authority, reimburse Authority therefor. Authority agrees that it shall not pay any sum or incur any obligation or expense on behalf of Lessee unless Authority has notified Lessee and Lessee fails or refuses to comply with its obligations under this Lease within ten (10) business days of receipt of such notice; provided, however, that in the event of an emergency, Authority shall not be obligated to notify Lessee prior to incurring obligations as contemplated herein. Notwithstanding the foregoing, any sums due from Lessee to the Authority under the provisions of this subsection shall bear interest at the rate of interest provided for above from the date any such sum was paid, or such expense was incurred by the Authority.

4.10 Unconditional Payment Obligation. Except as otherwise expressly provided in this Lease, Lessee's obligation to make the payments provided for in Section 4 shall be absolute and unconditional and will not be affected by the occurrence of any event or circumstance whatsoever. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, Rent under this Lease shall not abate, but the term of this Lease shall be extended by the period of such suspension, and Lessee will have the right to make any claim against any third party permitted by law and to receive any award paid with respect to such claim.

4.11 Collection Agent. As and when requested by the Authority, Lessee agrees to serve as the Authority's collection agent with respect to landing fees, customs fees, or any other fees applicable to any aircraft (or particular class of aircraft) arriving at and utilizing the Airport. Lessee hereby accepts such appointment and agrees to remit said fees to the Authority at such times and in accordance with such procedures as the Authority may from time to time establish with respect thereto.

4.12 Audit, Accounting, Books and Records

(a) **Accounting and Audit.** Within one hundred eighty (180) days after the close of Lessee's fiscal year (January 1 to December 31) during the term hereof, Lessee, at its own cost and expense, shall provide to Authority a written annual Statement of Concessionaire Fees Due to the Authority, accompanied by an independent auditor's attestation report prepared by an independent Certified Public Accountant, setting forth the actual number of gallons of aviation fuel delivered from fuel farms owned, leased or subleased by Lessee or to the Premises, including "into plane" and "contract fuel", during the preceding fiscal year, the actual amount of Lessee's Gross Receipts by category during such fiscal year and the amount of percentage fees and charges which are due to Authority as a result thereof, the amount of such fees and charges actually paid by Lessee to Authority for such fiscal year, and the amount, if any, by which the sums actually due and owing for such period have been overpaid or underpaid by Lessee (such statement being hereinafter referred to as the "Annual Accounting"). Lessee shall require each sublessee or sublicensee owned or controlled by Lessee or an officer or stockholder of Lessee providing FBO services to provide to Lessee an Annual Accounting, in substantially the same form as required by Authority from Lessee, setting forth the actual amount of such sublessee's or sublicensee's Gross Receipts at the Premises during such fiscal year, the amount of fees and charges which were due to Lessee as a result thereof and the amount of fees and charges actually paid by such sublessee or sublicensee to Lessee for such fiscal year. The Annual Accounting submitted to Lessee by each such third-party sublessee or sublicensee shall be submitted to Authority with Lessee's Annual Accounting. If Lessee's Annual Accounting indicates that the fees or charges for such fiscal year have been overpaid, then the amount of such overpayment shall be credited to the Rent, fees, or charges next due and owing to Authority from Lessee upon issuance of a credit memorandum by Authority, unless the term hereof has expired in which event such amount shall be promptly refunded by the Authority to Lessee. If the Annual Accounting indicates that the fees or charges for such fiscal year have been underpaid, then Lessee shall forthwith pay to Authority the amount remaining due for such fiscal year, together with interest thereon from the date such amount should have been paid, at the maximum interest rate then allowed by applicable law; provided however, that if no maximum interest rate is then provided by applicable law, the interest rate shall be eighteen percent (18%) per annum. Lessee shall, at all times during the term hereof, maintain, or shall cause its authorized agents, contractors, or subcontractors, to maintain, complete and accurate books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Lessee (the "Books and Records"). The Books and Records shall reflect all of the Lessee's operations and business done on the Airport in a form consistent with generally accepted accounting principles in the United States ("U.S. GAAP"), as applicable, consistently applied. Such Books and Records shall contain an itemized record of the actual number of gallons of aviation fuel delivered from fuel farms owned, leased, or subleased by Lessee or to the Premises, including "into plane" and "contract fuel", and of all Gross Receipts by such categories as shall be reasonably acceptable to the Authority, and shall separately identify all other receipts derived by Lessee from its operations on the Airport. Lessee shall install and use or cause to be installed and used on the Premises such appropriate accounting equipment or devices as are reasonably necessary in order to categorize and record properly, accurately and completely all sales of goods and services and other business transactions by Lessee on the Airport with respect to which Authority is entitled to participate financially. Lessee, when processing, transmitting, or storing transactional data, shall be responsible for ensuring the processing platform is Payment Card Industry (PCI) and Data Security Standard (DSS) compliant, and shall provide evidence of such to the Authority with each Annual Accounting. All such Books and Records shall be available for inspection by Authority, its employees, and its duly authorized representatives during reasonable business hours at the offices of the Authority or at the Premises within seven (7) days of a request to review same for the purpose of determining the accuracy thereof and of the reports required to be made by Lessee under the provisions hereof; provided, however, that no such inspections will be conducted in such manner or at such time as to unduly interfere with the conduct of Lessee's business. Lessee shall maintain such Books and Records for a period of no less than four (4) years after the fiscal year to which such Books and Records pertain, including the retention of relevant collateral records and forms including, but not limited to, sales checks or slips, cash register and adding machine tapes and analogous supporting data. Authority shall further have the right, upon reasonable notice to Lessee, to cause an audit to be made of the Books and Records of Lessee which relate to its operations on the Airport to determine the correctness of the fees and charges paid by Lessee to Authority for any or all of the four (4) years immediately preceding such audit. If, as a result of such audit, it is established that additional sums are due from Lessee to Authority, Lessee shall forthwith, upon written demand from Authority, pay such additional fees and charges with interest thereon from the date such sums should have been paid, at the maximum interest rate then allowed by applicable law; provided however, that if no maximum interest rate is then provided by applicable law, the interest rate shall be eighteen percent (18%) per annum. Further, if such audit establishes that Lessee has understated and underpaid the fees and charges due hereunder for any Fiscal Year by two percent (2%) or more, the entire expense of such audit shall be borne by Lessee. The Authority's rights under this paragraph shall survive the expiration or earlier termination of this Agreement.

(b) **Books and Records.** Lessee shall, at all times during the Term hereof, make available complete and accurate Books and Records of its operations on the Premises, in a form consistent with U.S. GAAP, as applicable, and shall cause to be installed for use at all times in the Premises appropriate devices and forms as are reasonably

necessary to record properly, accurately and completely all sales of goods and services and other business transactions by Lessee on the Premises. Lessee's Books and Records shall be maintained in sufficient detail to allow the Authority or its representatives to audit, in accordance with GAAS, Lessee's Gross Receipts as defined in Article 1, above. Lessee shall account for all receipts of any nature related to transactions in connection with this Lease in a manner which segregates in detail those transactions from other transactions of the Lessee and which supports the amounts reported to the Authority in Lessee's Monthly Gross Receipts Report schedules prepared in accordance with Article 4.5(b). At a minimum, Lessee's accounting for such receipts shall include the following:

1. Serially numbered sales slips, using a numbering system for transactions under this Lease which is separate from any numbering system used by Lessee for other transactions; or comparable numbering system that allows traceability to other supporting documents evidencing individual sales transactions, as applicable;
2. Lessee's bank account statements (separate bank accounts shall be maintained for all receipts from operations on the Premises and no receipts from any other source shall be deposited in such accounts; in lieu of a separate bank account, Lessee shall establish internal controls sufficient to identify and trace receipts from operations on the Premises to a centralized bank account;
3. A compiled report of transactions from the Premises showing all Gross Receipts, all exclusions from Gross Receipts by category (as set forth in Article 1), and all fuel dispensing transactions, which report shall be subtotalized by day and totaled by month. The monthly total shall correspond with the amounts reported to the Authority on Lessee's Monthly Gross Receipts Report under Article 6.05(b). If requested, Lessee shall provide the Authority a computer text file that details month Gross Receipts information by transaction;
4. The monthly reports required under this Article 6.07, which reports shall be subtotalized by day and totaled by month. The monthly total shall correspond with the amounts reported to the Authority in the Monthly Gross Receipts Reports and the annual total shall correspond with the amount reported by the Lessee to the Authority on the Annual Certification of Fees required in this Article 6.07; and
5. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of Lessee's Gross Receipts in accordance with GAAS and the provisions of this Lease.

Such records may be in the form of (a) electronic media compatible with the computers available to the Authority, or (b) a computer-run hard copy. The Chief Executive Officer may require other records necessary at his determination to enable the accurate audit of Lessee's Gross Receipts hereunder. Upon five (5) business days written notice from the Chief Executive Officer, all such Books and Records, including, the general ledger and bank statements and all federal, state and local sales tax returns relating thereto, shall be made available at the offices of the Authority for inspection by the Authority through its duly authorized representatives at any time for up to four (4) years after the end of the fiscal year to which such books and records related (and Lessee shall not be obligated to retain such books and records subsequent to the termination of such four (4) year period). The Authority shall further have the right, upon reasonable written notice to Lessee from the Chief Executive Officer and at the sole cost of the Authority except as specified below, to examine or designate a representative to audit or examine the books and records and computerized accounting systems of Lessee which relate to its operations on the Premises to determine the correctness of the Gross Receipts and Privilege Fees reported or paid by Lessee to the Authority for any or all of the four (4) fiscal years immediately preceding such audit or examination. Such shall include, but is not limited to, a review of the general input, processing and output controls, information systems, using read only access, for all computer applications used to record financial transactions and information. If, as a result of such audit or examination, it is established that the Gross Receipts and/or Privilege Fees for any fiscal year have been under-reported to the Authority, Lessee shall forthwith, upon written demand from the Chief Executive Officer, pay any resulting amount due to the Authority, together with interest thereon at the rate set forth Article 6.06, above, from the date such amount or amounts should have been paid, at the maximum interest rate then allowed by applicable law; provided however. Further, if such audit or examination establishes that Lessee has under-reported Gross Receipts and/or Privilege Fees for any fiscal year by two percent (2%) or more, then the entire expense of such audit or examination shall be borne by Lessee. The Authority's rights under this paragraph shall survive the expiration or earlier termination of this Agreement.

(c) Intentionally omitted

(d) **Bank Accounts.** Lessee shall maintain separate bank accounts for all receipts from operations on the Premises and no receipts from any other source shall be deposited in such accounts. In lieu of a separate bank account, Lessee shall establish internal controls sufficient to identify and trace receipts from operations on the Premises to a centralized bank account;

(e) **PCI Compliance.** Lessee, and any sublessees and sublicensees, shall not connect to or utilize any computer network or systems of the Authority, including, without limitation, for transmission of credit card networks and systems and shall ensure its system used to collect, process, store, or transmit credit card or customer credit card and/or personal information is compliant with all applicable Payment Card Industry ("PCI") Data Security Standard ("DSS").

1. Lessee shall notify the Authority of any security malfunction or breach, intrusion or unauthorized access to cardholder or other customer data that in each case concerns data transmitted from the Premises within five (5) business days of Lessee's awareness of such security malfunction or breach, intrusion or unauthorized access, and shall comply with all then applicable PCI requirements.

2. Lessee, in addition to notifying the Authority of any security malfunction or breach, intrusion or unauthorized access to cardholder or other customer data that in each case concerns data transmitted from the Premises and satisfying the PCI requirements, will immediately take the remedial actions available under the circumstances and provide the Authority with an explanation of the cause of the breach or intrusion and the proposed remediation plan. Lessee will notify the Authority promptly if it learns that it is no longer PCI DSS compliant relating to cardholder or other customer data that is transmitted from the Premises and will provide the Authority within ten (10) days of discovering it is no longer PCI DSS compliant with a report on steps being taken to remediate the non-compliance status and provide evidence of compliance once PCI DSS compliance is achieved.

3. Lessee, its successors and assigns, will continue to comply with all provisions of this Lease relating to accidents, incidents, damages and remedial requirements after the termination of this Lease, subject to applicable statute of limitations.

4. Lessee shall ensure compliance with PCI DSS for each credit card transaction and acknowledges responsibility for the security of cardholder data.

5. Lessee must maintain PCI Certification as a merchant which accepts bankcards at the Premises at the Airport. Lessee is responsible, at Lessee's own expense, to contract and pay for all quarterly, annual or other required assessments, remediation activities related to processes within Lessee's control, analysis or certification processes necessary to maintain PCI certification as a merchant that accepts bankcards.

6. PCI DSS – Lessee shall make available, within 24 hours upon request by the Authority, such documentation, policies, procedures, reports, logs, configuration standards and settings and all other documentation necessary for the Authority to validate Lessee's compliance with PCI DSS as well as make available to the individuals responsible for implementing, maintaining and monitoring those system components and processes. Requested logs must be made available to the Authority in electronic format compatible with computers used by the Authority. Notwithstanding the foregoing, Lessee may satisfy the foregoing requirement by supplying Lessee's Certificate of Compliance with the PCI DSS as provided in number 7 below.

7. Evidence of PCI DSS Compliance - Lessee agrees to supply their PCI DSS compliance status and evidence of its most recent validation of compliance upon execution of this Lease Agreement. Lessee must supply to the Authority evidence of validation of compliance at least annually to be delivered along with the Annual Certification of Fees in accordance with Article 4.12(a) of this Lease.

ARTICLE V

OBLIGATIONS OF LESSEE

5.1Absolute Net Lease. This Lease shall be without cost to the Authority except for Authority's obligations set forth in Section 2 above, or expressly provided elsewhere herein. Lessee at its own expense shall:

- (a) keep and maintain the Premises and all Improvements, infrastructure, furnishings, and equipment now or hereafter located thereon, in a good state of repair and working order (reasonable wear and tear excepted) and in clean, safe condition and all maintenance, repairs and replacements shall be of a quality at least equal to the original in materials and workmanship.
- (b) pay all taxes in accordance with the provisions of Article 6;
- (c) pay all casualty, liability and other insurance premiums required in accordance with provisions of Article 7; and
- (d) satisfy all of its other obligations under this Lease.

5.2Right and Obligation to Construct, Operate and Maintain. Lessee agrees that it will operate and maintain all Improvements on the Premises in a first class, safe and clean condition, in accordance with all terms and conditions of this Lease and the Development Standards. In addition:

- (a) **Construct Improvements.** The Parties acknowledge that Lessee shall construct an FBO campus, comprised of the Improvements, all as defined herein, and all as generally depicted on Exhibit "C," which is attached hereto and incorporated herein, on the FBO Premises Land, in accordance with the terms and conditions of the Lease, and in three phases as set forth herein. Lessee's estimated minimum investment for the construction of the Phase I Improvements is estimated to be no less than Thirty Million Dollars and no/100 (\$30,000,000.00) and for each of Phase II Improvements and Phase III Improvements shall be no less than Five Million Dollars and no/100 (\$5,000,000.00) for each phase. Prior to each phase of construction, Lessee shall provide its budget for the portion of the Improvements to be constructed for review by the Authority to confirm the estimated minimum investment is being satisfied. For the purposes of valuation, improvements may consist of soft costs of up to fifteen percent (15%) of the estimated minimum investment. Soft costs include only the following expenses: architectural and design expenses; permitting; engineering; development fees, project management, legal fee (to the extent said fees are limited to legal services directly related to the architectural, design permitting, engineering, development, project management of the particular phase of construction), bond financing costs and professional fees. All improvements constructed or placed on the Premises, including, but not limited to, drainage and landscaping, shall be of attractive construction and first-class design; comply with any and all applicable governmental laws, regulations, rules, and orders; follow standard construction methods; and be constructed in accordance with applicable requirements of this Article. Within one hundred twenty (120) days of completion of construction of each of the phased improvements, Lessee shall provide its final costs, including a schedule detailing the costs of constructing the Improvements by category and amount (the "Improvements Actual Construction Costs"). The report shall be in a form acceptable to the Lessor, and shall contain an opinion or attestation report, as applicable, from an independent Certified Public Accountant regarding the information contained the schedules illustrating the total investment which will be the basis of the adjustment to the Term as set forth above. The report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules.

- (b) **Construct Off-Site Improvements.** Lessee, at its sole cost and expense, shall complete all necessary off-site improvements necessary to support the Improvements, including, but not limited to, taxiway upgrades for group III aircraft and associated airfield connections, service road and access gate relocations, roadway improvements, utility extensions, NAVAID relocations, and all necessary fill material and drainage improvements required by same during the Phase I Construction Period ("Off-Site Improvements") as more particularly set forth on Exhibit "D". The Aviation Authority shall provide a Temporary Construction License to Tenant during the Phase I Construction Period covering areas outside of the Premises necessary to construct the Off-Site Improvements. Should Tenant fail to complete the Off-Site Improvements as required under the Lease, the Aviation Authority may elect to complete the airfield improvements at Tenant's sole cost and expense. For the purposes of valuation, improvements may consist of soft costs of up to fifteen percent (15%) of the estimated minimum investment. Soft costs include only the following expenses: architectural and design expenses; permitting; engineering; project management and professional fees. All improvements constructed or placed on the Premises, including, but not limited to, drainage and landscaping, shall be of attractive construction and first-class design; comply with any and all applicable governmental laws, regulations, rules, and orders; follow standard construction methods; and be constructed in accordance with applicable requirements of this Article. Within one hundred twenty (120) days of completion of construction of the portion of the Improvements, Lessee shall provide its final costs, including a schedule detailing the costs of constructing the Improvements by category and amount (the "Off-Site Improvements Actual Construction Costs"). The report shall be in a form acceptable to the Lessor and shall contain an opinion or attestation report, as applicable, from an independent Certified Public Accountant regarding the information contained the schedules illustrating the total investment which will be the basis of the adjustment to the Term as set forth above. In the event that the report contains a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding

the information contained in the required schedules it shall be deemed unacceptable to the Authority until such time as said qualification, adverse opinion, or disclaimer is removed or satisfied.

(c) Construction Period Schedule.

i. Phase I Improvements. The Phase I Improvements shall be completed within twenty-four (24) months of the issuance of the Effective Date of the lease.

ii. Phase II Improvements. Construction of the Phase II Improvements shall be initiated within sixty (60) months of the Effective Date and shall be completed within twenty-four (24) months of initiation of construction.

iii. Phase III Improvements. Construction of the Phase III Improvements shall be initiated within eighty-four (84) months of the Effective Date and shall be completed within twenty-four (24) months of initiation of construction.

iv. Construction Period Extension. Upon a showing of cause from the Lessee, including, but not limited to issues such as permitting delays, material acquisition delays and other delays beyond the Lessee's reasonable control, the Chief Executive Officer of the Aviation Authority may grant a reasonable extension, not to exceed eight (8) months per phase, to the above-described construction schedule (the "Force Majeure Extension").

(d) Prior to commencement of construction of any Improvements, and prior to commencing to renovate, enlarge, demolish, or modify any Improvements now or hereafter existing on the Premises, Lessee shall submit the plans and specifications therefor (prepared in accordance with all applicable governmental regulations, including the City of Orlando, St. Johns River Water Management District, Army Corp of Engineers, and the Aviation Authority Horizontal Permitting Rules and Regulations and under the seal of a duly licensed architect or engineer) to Authority for its approval (the "Plans"), which approval shall not be unreasonably withheld, conditioned, or delayed. No construction of any type shall commence prior to Lessee's receipt of: (i) Authority's written approval of the Plans, (ii) a notice to proceed from the Authority, and (iii) all required permits, including without limitation those from the Authority, City, Orange County, and the applicable Water Management District. Within one hundred eighty (180) days after completion of construction of the Improvements, Lessee shall, at its expense, provide Authority with record drawings and surveys showing the "as built" condition of any Improvements constructed by Lessee on the Premises or off-site in support of the Premises.

(e) Surety Bonds.

i. Prior to the commencement of any improvements greater than \$200,000 at the Premises, Lessee shall obtain, or cause to be obtained by its Contractor(s) and deliver to the Authority and record in the public records of Orange County, payment, and performance bonds in sums equal to the full amount of the construction contract awarded by Lessee for the improvements, as described more fully herein.

ii. Such payment and performance bonds required hereunder shall name the Contractor of Lessee as principal, shall name the Authority as an additional obligee thereunder through a multiple obligee rider and shall be drawn from such company licensed to do business in the State of Florida, subject to the Authority's reasonable approval.

iii. All payment bonds required hereunder from any Contractor of Lessee shall be in the sum equal to the full amount of the construction contract awarded by Lessee for the improvements. Such payment bonds shall be conditioned upon the payment of all labor, materials, equipment, and supplies used in the performance of said construction contract.

iv. All performance bonds required hereunder from any Contractor of Lessee shall guarantee the faithful performance of said construction contract and shall protect the obligees from losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that the obligees sustain because of a default by the Contractor under the contract.

v. Bonds required hereunder shall be submitted in the forms attached hereto Exhibit "E" which fully comply, both in form and substance, with the requirements of Section 255.05, Fla. Stat., any successor thereto and any other applicable law or regulation and shall be reasonably acceptable to the Lessor. Lessee shall provide the Lessor with a certified copy of the bonds as evidence of thereof, which shall be recorded by the Lessee, if requested by the Lessor.

vi. Any construction or installation work by or for Lessee at the Airport shall not unreasonably interfere with the operation of the Airport, or otherwise unreasonably interfere with the permitted activities of other tenants and users.

(f) Alternate Form of Security.

In lieu of a payment bond and a performance bond in the amount of any contract between Lessee and a Contractor, and in lieu of a demolition bond, pursuant to Section 255.05, Fla. Stat., Lessee may furnish or cause to be furnished to the Lessor an alternate form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Fla. Stat., in the amount of the underlying contract. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond for which the alternative form of security is being substituted. The determination of the value of an alternative form of security shall be reasonably made by the Lessor.

(g) Sureties' Qualifications.

It is further mutually agreed between Lessee and the Lessor that if at any time, the surety that issued a bond no longer meets the requirements set forth herein, Lessee shall, at its expense, within thirty (30) days after the receipt of notice from the Lessor to do so, furnish or cause to be furnished an additional or replacement bond or bonds from a surety that meets the requirements hereof.

Any bond shall be on a form to be provided by the Lessor and shall be written by a company that meets at least one of the following criteria: (A) has at least one investment grade long-term debt rating from Moody's Investors Service ("Moody's"), Standard & Poor's Financial Services ("S&P") or Fitch Ratings ("Fitch"); or (B) has a Financial Strength rating of A- or better from A.M. Best Company ("A.M. Best"). Any Letter of Credit provided hereunder shall be on a form provided by the Lessor and shall be issued by an FDIC-insured bank that meets a minimum of one of the following criteria: (A) has at least one investment grade long-term debt rating from Moody's, S&P or Fitch; or (B) has a Financial Strength rating of A- or better from A.M. Best; or (C) has at least \$100 million in total assets, has maintained this asset level for the past three years, and has maintained a Tier 1 (core) risk based capital ratio of at least 6.0% for the past three years. In addition, no bank that is subject to a current enforcement action by any regulatory agency may provide a bond or Letter of Credit. Finally, bonds and Letters of Credit must be provided by institutions physically located within the United States.

(h) Authority's approval of any Plans submitted by Lessee shall not constitute the assumption of any liability by Authority for the compliance or conformity of the Plans with applicable building codes, zoning regulations and municipal, county, state and federal laws, ordinances, and regulations, or for their accuracy or suitability for Lessee's intended purpose, and Lessee shall be solely responsible for the Plans. Authority's approval of the Plans shall not constitute a waiver of Authority's right thereafter to require Lessee, at its expense, to amend the same so that they comply with building codes, zoning regulations, municipal, county, state and federal laws, ordinances and regulations either applicable at the time the Improvements were constructed or by laws otherwise made applicable to Lessee's Improvements, and to make such construction changes as are necessary so that the completed work is in conformity with the approved Plans. Authority's approval of such Plans shall mean that the Authority has found such Plans to have been prepared in accordance with the Development Standards, and such approval shall waive Authority's right thereafter to require Lessee to amend the same to comply with the Development Standards.

(i) Lessee shall obtain, at its expense, all necessary licenses and permits to accomplish the Improvements, and shall pay all applicable impact fees relating thereto. Authority, at no expense to the Authority, shall use reasonable efforts to assist Lessee in its efforts to obtain all necessary approvals, licenses, and permits, including, but not limited to, executing any documents, applications, and other instruments as may be required by any applicable governmental authority for Lessee's Improvements. Lessee hereby warrants and covenants to Authority that all Improvements now or hereafter erected on the Premises shall be at all times free and clear of all liens, claims and encumbrances and hereby agrees to indemnify and hold Authority and the City harmless from and against any and all losses, damages, and costs, including reasonable attorneys' fees, relating to, or arising out of any such lien, claim or encumbrance. If any such lien or notice of lien on account of the alleged debt of Lessee or any notice of contract by a party engaged by Lessee or Lessee's contractor to work on the Premises shall be filed against the Premises, Lessee's leasehold interest therein or any Improvements, the Lessee shall, within thirty (30) days after notice of filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

(j) Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Authority, express or implied, to any contractor, subcontractor, laborer, materialman, architect, surveyor, or engineer for the performance of any labor or the furnishing of any materials or services for or in connection with the Premises or any part thereof. Notice is hereby given that the Authority shall not be liable for any labor or materials, or services furnished or to be furnished to Lessee upon credit, and that no construction or other lien for labor, materials or services shall attach to or affect the fee or reversionary or other estate or interest of the Authority in the Premises or in this Lease. All Persons dealing with the Premises and with Lessee are hereby put on notice that Lessee does not have the power to deal with the Premises in such a manner as to authorize the creation of construction liens, by implication or otherwise; and all Persons making improvements to the Premises, either by doing work or labor or services or by supplying materials thereto, at the request of Lessee or Persons dealing by, through or under Lessee, are hereby put on notice that they must look solely to the Lessee and not to the Premises or any part thereof or to this Lease for the payment of all services, labor or materials performed upon or delivered to the Premises. Any such lien placed upon the Premises or any Improvements (excluding liens for taxes which are not delinquent and mortgages permitted hereunder) must be discharged by payment or bond within thirty (30) days.

(k) Once Lessee has commenced construction of any Improvements, such construction shall be accomplished pursuant to standard construction procedures and practices established by Authority for work on the Airport and shall be pursued diligently to completion. All Improvements shall be constructed in strict accordance with the approved plans and specifications, the Development Standards and all applicable building codes, zoning regulations and municipal, county, state and federal laws, ordinances, and regulations unless a waiver or exemption has been obtained from the appropriate authority.

5.3 Title to Improvements.

(a) Title.

i. **Premises.** Title to all improvements now or hereafter constructed by Lessee on the Premises shall remain with Lessee during the Term of the Lease. Upon the termination of Lessee's right of possession under this Lease whether as a result of the expiration of the term of this Lease or any sooner termination thereof in accordance with the terms of this Lease, all right title and an interest to the Improvements shall vest in the Authority. Upon such "vesting" as herein provided, Lessee hereby covenants to execute and deliver to Authority any and all instruments or documents that Authority reasonably requests to effectively transfer, assign and convey such Improvements in fee to Authority, provided, that such instruments or documents shall be in a form reasonably acceptable to Lessee. Notwithstanding the above, should the Inspection, defined below, reveal that the conditions of the Improvements on the Premises warrant demolition, the Aviation Authority reserves the right to require Tenant to remove the Improvements and restore the Premises to its original condition existing prior to the Effective Date of this Lease, with said determination to be in the sole and absolute discretion of the Aviation Authority. Lessee's obligations under this Article shall survive the expiration or earlier termination of the Lease Term. At completion of construction, Lessee shall deliver a current amortization schedule, to be straight line over the full thirty (30) year term with the cost of Improvements being the actual invoiced amount for same.

ii. **Off-Site Improvements.** Title to all improvements now or hereafter constructed by Lessee off-site in support of the Premises shall vest with the Aviation Authority upon full completion of said construction and acceptance by the Aviation Authority. Upon such "vesting" as herein provided, Lessee hereby covenants to execute and deliver to Authority any and all instruments or documents that Authority reasonably requests to effectively transfer, assign and convey such Improvements in fee to Authority together with any warranties or guarantees associated with the Off-Site Improvements, provided, that such instruments or documents shall be in a form reasonably acceptable to Lessee.

(b) **Deferred Maintenance Inspection Right.** The Aviation Authority shall cause the Improvements located on the Premises to be inspected no later than eighteen (18) months prior to the expiration of the Term for any required deferred and preventative maintenance work ("Inspection"). Tenant shall perform all such deferred and preventative maintenance work identified in the Inspection prior to the termination of the Lease. If Tenant fails to perform any of the deferred and/or preventative maintenance identified in the Inspection prior to the end of the Lease Term, the Aviation Authority may either perform all work not completed by Tenant and charge Tenant for the full cost incurred by Aviation Authority in performing such work to the Improvements.

5.4 Grass and Landscaping. Lessee shall grass and landscape the Premises in accordance with the landscape plan approved by Authority and the terms of the Development Standards, and shall install on the Premises such automatic irrigation systems as shall be necessary to maintain such landscaping and grass areas, and thereafter Lessee shall be obligated to keep all landscaping and grass areas on the Premises in a clean and well-trimmed condition, and to keep and maintain such automatic irrigation systems in a good state of repair.

5.5 Utilities. All utility services within and to the Premises required by Lessee must be obtained at Lessee's sole cost and expense by connection to the utilities installed at the Premises or in the vicinity thereof. The routes for all utility services lines or mains shall be reasonably approved by Authority, and all service lines and mains shall be placed underground by and at the expense of Lessee, and Lessee shall restore any property affected by placing such facilities underground. In addition, all utility curb cuts, excavation and trenching shall be subject to the prior written approval of Authority as part of Authority's review of Lessee's Plans as provided in Section 5.2 above and shall be completed by and at the expense of Lessee. All backfill, tamping, landscaping and street repair required as a result of such curb cuts, excavation and trenching shall be completed by and at the expense of Lessee, to the reasonable satisfaction of Authority.

(a) Lessee shall pay for all meters and measuring devices installed by Lessee or by any utility on the Premises, to the extent payment is required by those utilities providing service, and shall pay for all utilities (including, without limitation, stormwater utility fees) consumed by Lessee on the Premises.

(b) Lessee agrees that Authority shall have no liability to Lessee arising out of any interruption of utility service to the Premises, whether or not caused by repairs or alterations being made to any part of the Airport, unless such liability arises from Authority's proven negligence or willful misconduct; provided, however, to the extent that utility service is within the control of Authority, Authority will provide reasonable notice to Lessee of any scheduled interruption and will make a reasonable effort to restore (or cause to be restored) utility service as promptly as reasonably possible. Reasonable notice under this Section 5.5(b) shall be no later than thirty (30) days prior to commencement of ordinary repairs and alterations, and in the event of an emergency as soon as the Authority becomes aware of the emergency. In the event that an interruption of utility service is caused by the Authority's negligence, and such interruption continues for more than twenty-four (24) hours, Lessee's then current Annual Rent shall be abated on a day for day basis until the utility service is restored to a level satisfactory to Lessee in its sole discretion. For purposes of this Section 5.5, the acts of a third party shall not constitute acts within the control of Authority unless such acts were authorized by Authority.

5.6 Trash and Garbage. Lessee shall make suitable arrangements for the storage, collection, and removal from the Premises of all trash, garbage and other refuse resulting from Lessee's activities on the Premises. Lessee shall provide appropriate covered, metal receptacles for trash, garbage, and other refuse. Lessee will maintain the receptacles in an attractive, safe, and sanitary manner, and will store receptacles in inconspicuous places on the Premises that are screened from public view.

5.7 Trade Fixtures.

(a) Lessee may, from time to time, at its expense, install, operate, repair, and replace any trade fixtures and other personal property on the Premises or in the Improvements, all of which shall be and remain the property of Lessee and may be removed at any time during the term hereof and within thirty (30) days after expiration or earlier termination of the term hereof. Lessee shall repair any damage to the Premises, or any Improvements caused by such removal in a manner that restores the Premises and/or the applicable Improvements as near as reasonably practicable to the condition that existed prior to the removal the trade fixture. Failure to remove trade fixtures or other personal property as provided herein shall not constitute a holdover by Lessee, but all such property not removed within the time specified above shall be deemed to have been abandoned by Lessee, in which case, Authority may either use or dispose of the same as it shall see fit without any liability to Lessee therefor, or may remove and store the same at Lessee's expense. The terms "trade fixtures" and "other personal property" shall not include: (i) any item hereafter installed or erected thereon by Authority, or at its expense, or for which Lessee has been reimbursed by Authority, or (ii) any item affixed to the Premises or any Improvement which cannot be removed without structural injury to the Premises or to any Improvement, whether or not installed by and at the expense of Lessee.

(b) If, upon the expiration or earlier termination of the term hereof, Lessee shall be in default hereunder, the Chief Executive Officer may, at his option, but shall not be obligated to, give notice to Lessee that Lessee may, within thirty (30) days after the date such notice is given, remove its trade fixtures and other personal property, provided that such removal will not result in structural injury to the Premises or any Improvement, and that Lessee shall at its expense repair any damage to the Premises or any Improvement caused by such removal, in a manner that restores the Premises and/or the applicable Improvements as near as reasonably practicable to the condition that existed prior to the removal of the trade fixture. In such event, any trade fixtures or other personal property not so removed within such time period shall be deemed to have been abandoned by Lessee, in which case, Authority may either use or dispose of the same as it shall see fit without any liability to Lessee therefor.

5.8 Fire Protection System. Lessee shall, at its own cost and expense, maintain in good working order in each building on the Premises where the same is required by applicable fire and safety standards a fire protection system satisfying applicable requirements of NFPA, the local building code enforcement agency and any other applicable legal requirements, which Lessee shall cause to be certified as meeting all applicable fire and safety standards upon installation, and recertified at least annually thereafter, by a qualified fire protection system inspector with a copy of each such certification provided to Authority.

5.9 Airport Security. Lessee shall comply with all applicable regulations of the Federal Aviation Administration relating to airport security (including, at the Authority's request and without limitation, all such regulations applicable to the Authority with respect to the operation of the Premises) and shall control the Premises so as to prevent or deter unauthorized persons from obtaining access to that portion of the Airport consisting of cargo areas, airside buildings, aircraft aprons, ramps, taxiways and runways (the "Air Operations Area"). Any fines or other penalties incurred by the Authority as a result of Lessee's breach of this Section shall be included in the indemnification provided to Authority pursuant to Article 9 of the Lease.

5.10 Compliance with Stormwater Regulations.

(a) Lessee acknowledges that the Airport is subject to State stormwater regulations, F.A.C. 62-620 and -621 (the "Stormwater Regulations"), which are applicable to, among other activities, (i) certain industrial activity, including, without limitation, the operation of a vehicle maintenance shop (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations and deicing operations and (ii) certain construction activity at the Airport. Lessee also acknowledges that it is familiar with the Stormwater Regulations and agrees to comply with the Stormwater Regulations as they may be amended from time to time. Lessee further acknowledges that it has been advised that the Authority has complied with the Stormwater Regulations by obtaining coverage under the State of Florida Multi-

Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity (the "Multi-Sector Permit"). Lessee may be able to become a co-permittee under such Multi-Sector Permit by filing separately in accordance with the provisions of the Stormwater Regulations and the Multi-Sector Permit. Lessee shall provide to the Authority's Manager of Environmental Services copies of any such filings and such other information as the Chief Executive Officer may reasonably request with respect to Lessee's compliance with the Stormwater Regulations. Lessee agrees to comply with such Multi-Sector Permit, or any other permit obtained by Authority or Lessee in connection with the Stormwater Regulations as they pertain to the Premises, and any modifications to or renewals thereof. Such permit will not cover construction activities as defined by the Stormwater Regulations and will not eliminate the need to obtain permits from state or local agencies as applicable laws, ordinances or regulations may require.

(b) If Lessee, or its authorized agents or representatives, engages in construction activity at the Airport, including, without limitation, clearing, grading, or excavation, Lessee shall determine whether the Stormwater Regulations require a permit, and if so, Lessee shall obtain the permit, send a copy of the permit to the attention of the Authority's Manager of Environmental Services, and comply with the permit conditions.

5.11 Americans with Disabilities Act. As used herein, "ADA" shall mean the Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), as amended from time to time, and the regulations promulgated thereunder. Lessee shall be responsible for any actions required to comply with ADA (including, without limitation, any actions required by the Authority to enable the Authority to meet its ADA obligations with respect to Lessee's operations) as a result of (i) any Improvements or modifications which it makes to the Premises, (ii) its particular use of the Premises and (iii) any changes to the ADA after the Effective Date. Any modification to the Premises, which Lessee is required to make under this Section, shall be performed to the satisfaction of the Authority. In the event the Lessee shall fail to construct or modify any Improvements to the Premises as required under this Section, the Authority shall have the right to enter the Premises and perform such modifications on the Lessee's behalf, without liability for any disruption to the Lessee's activities therein during the completion of or as a result of such modifications, and the cost of such modifications shall be invoiced to the Lessee and shall be promptly paid by the Lessee to the Authority as Additional Rent hereunder.

ARTICLE VI

TAXES

6.1 Payment of Sales Tax. Lessee shall be liable, at its sole cost and expense, for any sales, use or similar taxes if imposed by law with respect to all Annual Rent, Additional Rent, and other payments made by Lessee in accordance with the provisions of this Lease.

6.2 Property Taxes. Lessee shall pay when due all taxes (including, without limitation, any required ad valorem taxes), assessments (including, without limitation, stormwater utility charges) and impact fees levied against or in connection with the Premises, its leasehold interest therein and any Improvements thereto, and pay when due all taxes and assessments levied against Lessee's personal property located on the Premises or otherwise arising out of its operations on the Premises. In the event Lessee shall fail to pay when due any such taxes and assessments, then regardless of whether Authority exercises its right to terminate this Lease because of Lessee's default, Lessee shall also be obligated to pay all resulting interest and penalties on such delinquent taxes and assessments. None of the terms, covenants or conditions of this Lease shall be construed as a release or waiver on the part of Authority or the City of the right to assess, levy or collect any license, personal property, intangible, occupation or other tax which they, or either of them, may lawfully assess, levy or collect on the business or property of Lessee. Lessee may exercise any rights provided by law to contest or pay under protest any taxes and shall not thereby be deemed in default under this Lease, provided that such contest or payment under protest does not result in the imposition of a lien for delinquent taxes on the Premises or any Improvements and Lessee promptly pays all taxes and assessments (and any interest and penalties with respect thereto) ultimately determined to be due.

If the term of this Lease expires or is earlier terminated prior to the close of the tax year for which any such tax is payable, or if the term of this Lease commences on a date other than the first day of such tax year, Lessee shall be responsible for paying a percentage of the tax calculated by dividing the number of days that this Lease was in effect during such tax year by the total number of days that the Premises was leased to tenants (excluding any tenant engaging in a use of the Premises which results in the Premises being exempt from taxation) during such tax year. If this Lease is in effect for a period less than any entire period for which an assessment other than a tax is imposed, Lessee shall pay a percentage of the assessment calculated by dividing the number of days this Lease was in effect during that assessment period by the total number of days in the assessment period. Lessee's obligations under this Section 6.2 shall survive the expiration or earlier termination of the term of this Lease.

6.3 Tax Indemnity. Lessee shall indemnify, defend, and hold Authority completely harmless from and against any liability, including any interest and penalties, which might arise in connection with Lessee's failure to timely remit any such taxes described in Sections 6.1 and 6.2, whether remitted directly to the State of Florida or remitted to Authority as provided in Section 4.1 above.

ARTICLE VII

INSURANCE

7.1 Insurance While Under Construction, During Major Renovations and Demolition.

(a) This section shall apply during the time period a building permit is filed through receipt of the certificate of occupancy from the City for the Lessee or its agent, representative, or contractor(s) to perform construction-related work and services for a new structure, renovations or major improvements or alterations, or demolition to existing structure as outlined in this Lease. Lessee will ensure the following obligations are met as outlined herein:

i. All-Risk Property Insurance – Lessee shall be responsible for any physical damage and delays in substantial completion for the full replacement cost of the structure and/or Improvements, including any materials and equipment, in accordance with the designs provided to and approved by the Authority. Coverage shall protect against any loss of revenues owed to Authority arising from any delay in meeting substantial completion. This requirement may be met with a builder's risk insurance policy, Lessee's property insurance, Lessee's risk management program or self-insurance as deemed acceptable by the Authority.

ii. Commercial General Liability for property damage and bodily injury, including death, which shall include, but not be limited to, premises, products and completed operations, and contractual liability with limits not less than Five Million Dollars (\$5,000,000) each occurrence. Completed Operations coverage for the entire period of repose under Chapter 95 of Florida Statute is required. Authority and City of Orlando shall be included as additional insureds.

iii. Subject to Article 8, any liability, including clean-up expenses, resulting from any pollution or environmental impairment which arises out of or in connection with the construction-related work and services shall be the responsibility of the Lessee.

iv. Automobile Liability insurance covering motor vehicles used in conjunction with the performance of the construction work, resulting in property damage or bodily injury (including death) with limits of liability not less than Five Million Dollars (\$5,000,000) combined single limit, each accident. The Authority and City of Orlando shall be included as additional insureds.

v. Workers Compensation and Employers liability – Lessee shall ensure and indemnify Authority for any personal injuries, illness or death to persons associated with, participating in, and performing any construction-related work or services.

7.2. Liability Insurance.

(a) At its sole expense, Lessee shall maintain the following insurance for its operations and its use of the Premises throughout the Term of this Lease, including any extensions or renewals, and such insurance will apply to Lessee, its employees, agents, and representatives.

i. Commercial General Liability insurance covering property damage and bodily injury (including death) and including, but not limited to, premises, products and completed operations, contractual liability and fire legal liability insurance with limits of liability of not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence. This insurance shall not be written on a claims-made basis.

ii. Automobile Liability insurance covering each motor vehicle, including but not limited to owned, non-owned and hired, used in conjunction with the operations performed at Airport resulting in property damage or bodily injury (including death) in the amount of not less than One Million Dollars (\$1,000,000.00) combined single limit per accident.

iii. Workers Compensation and Employers Liability insurance covering all Lessee's employees who will be engaged at Airport with statutory limits in accordance with Florida law, and employer's liability with policy limits not less than Five Hundred Thousand Dollars (\$500,000) for each accident, Five Hundred Thousand Dollars (\$500,000) for disease each employee and Five Hundred Thousand Dollars (\$500,000) for disease policy limit. If the Lessee is self-insured, the Lessee shall provide proof of self-insurance and authorization to self-insure as required by applicable Florida laws and regulations.

iv. Pollution Liability insurance covering bodily injury, property damage, defense costs, clean-up and restoration expenses, resulting from any pollution/pollutant(s) or environmental impairment, which arises out of or in connection with the Lessee's operations with a limit of liability not less than Two Million Dollars (\$2,000,000) each occurrence. If coverage is provided on a claims-made basis, such insurance shall be maintained or include tail coverage for three (3) years from the date the Agreement is terminated or expired. The Greater Orlando Aviation Authority and the City of Orlando and their members (including without limitation, members of the Owner's board and the City Council and members of the citizens' advisory committees of each) shall be named as additional insured without limitations.

(b) Lessee agrees to the following as it relates to all above required insurance:

i. Self-insured retentions (SIR) or deductibles shall not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the insurer is required to pay claims from first dollar without a requirement that Company pay its deductible/SIR prior to that time;

ii. The insurance shall be primary and not contributory to any other valid and collectible insurance the Authority may possess, including any self-insured retention or deductible amount, and that any other insurance shall be considered excess insurance only;

iii. Insurance shall be carried with an insurance company or companies that have a current minimum A.M. Best rating of B+ or better and said policies shall be in a form acceptable to Authority;

iv. All insurance required for this Lease shall contain a waiver of subrogation clause, as allowed by law, in favor of Authority and the City of Orlando;

v. Prior to the Effective Date, above insurance shall be in place;

vi. A properly completed and executed certificate(s) of insurance on an ACORD form or its equivalent, evidencing all insurance requirements herein this Lease shall be furnished to the Authority at least fifteen (15) days prior to the Effective Date, and each renewal thereafter during the term of this Lease and its renewal/extension. Lessee acknowledges that any acceptance of certificate of insurance by Authority does not waive any obligations herein this Lease.

vii. Lessee shall provide Authority immediate written notice upon Lessee's knowledge, of any adverse material change in Lessee's required insurance coverage. For purposes of this insurance section, an "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction of insurance coverage, any increase or decrease in the Company's self-insured retention or deductible, any reduction of any insurance coverage any non-renewal or cancellation of required insurance;

viii. Commercial General Liability and Automobile Liability insurance shall name Authority and City of Orlando and their members (including, without limitation, all members of the governing board and the advisory committees of each), officers, employees, and agents of each as additional insureds;

ix. The Chief Executive Officer shall have the right to alter the monetary limits or the coverages herein specified from time to time during the Term of this Lease, and Lessee shall comply with all reasonable requests of the Chief Executive Officer with respect thereto.

7.3. Property Insurance.

(a) The Authority may, at its option, maintain property insurance on the Terminal Complex and other property at the Airport, but it is expressly understood that such insurance shall not cover the Premises or Improvements thereon, equipment or other contents, including property of Lessee.

(b) At its sole expense, Lessee shall be responsible for any physical damage for the full replacement cost of all Premises and Improvements thereon, equipment or other property hereafter installed or located at the Airport by Lessee. The covered perils on such property insurance will be no less than the covered perils under the ISO Causes of Loss – Special Form. Regardless of any deductible or self-insured retention or exclusions provided within the property insurance policy that the Lessee may maintain, Lessee shall be responsible for damages to Premises and Improvements.

(c) Lessee agrees to the following as it relates to the property insurance maintained:

i. At least fifteen (15) days prior to the Effective Date or the installation of any Improvements by Lessee at the Terminal Complex, whichever first occurs, and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Lessee under this Article 7.3., Lessee shall furnish to Authority a properly completed

and executed certificate(s) of insurance on an ACORD form, or its equivalent, evidencing all such insurance and each renewal thereafter during the term of this Lease and its renewal/extension. Lessee acknowledges that any acceptance of certificate of insurance by Authority does not waive any obligations herein this Lease.

ii. Authority, its successors, or assigns shall be named as loss payees as their interests may appear.
iii. Proper insurance shall be carried with an insurance company or companies that have a current minimum A.M. Best rating of B+ or better and said policies shall be in a form acceptable to Authority.

iv. Lessee shall provide Authority immediate written notice upon Lessee's knowledge, but not less than 30 days, of any adverse material change in Lessee's property insurance. For purposes of this insurance section, an "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction of any insurance coverage, or any non-renewal or cancellation of required insurance.

v. Lessee, on behalf of itself and its insurance carrier(s), hereby waives any and all rights of subrogation that the issuers of such policies might have against Authority or the City (or recovery which it may have against the Authority with respect to the City) or any of the other Indemnified Parties for any loss of or damage to property it may suffer as a result of perils covered under ISO Causes of Loss-Special Form under Lessee's property insurance.

vi. The Chief Executive Officer shall have the right to alter the monetary limits, or the coverages herein specified from time to time during the Term of this Lease, and Lessee shall comply with all reasonable requests with respect thereto.

7.4Miscellaneous Insurance Provisions.

(a) **Authority's Right to Purchase.** If Lessee does not comply with its covenants made in paragraph 7.3 of this Article 7, the Authority shall have the right, but not the obligation, to purchase a property insurance policy, at current market rates, covering the Premises and Improvements. In such event and upon Authority's demand, Lessee shall reimburse Authority for such insurance premiums, commissions, deductibles and/or self-insured retentions as each may apply.

(b) **Member Protection.** No recourse under or upon any obligation, covenant or agreement contained in this Lease, or any other agreements or documents, pertaining to the operations of Lessee under this Lease, as this Lease may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against the Authority, or by enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Lease, shall be had individually and personally against any past, present or future member, officer, employee or agent (each an "Authority Representative"), of the Authority, as such, either directly or through the Authority or otherwise, for any claim arising out of this Lease or the operations conducted pursuant to it, or for any sum that may be due and unpaid by the Authority. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Authority member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part of otherwise for any claim arising out of this Lease or the operations conducted pursuant to it, or for the payment of or to the Authority, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by the Authority, is hereby expressly waived and released as a condition of and as consideration for the execution of this Lease.

(c) **Survival of Provisions.** The provisions of this Article 7 shall survive the expiration or early termination of this Lease.

ARTICLE VIII

ENVIRONMENTAL

8.1Environmental Obligations.

(a) Lessee shall comply with all "Environmental Laws", which are defined as all applicable federal, state, and local laws, regulations, administrative rulings, orders, ordinances, or other legally binding requirements, or all Authority rules, regulations, to the extent such Authority rules and regulations are not inconsistent with other applicable Environmental Laws, pertaining to the protection of the environment, including but not limited to those regulating the storage, handling, and disposal of waste materials that have been defined, designated or listed under Environmental Laws as being hazardous, toxic, or presenting hazards to human health or the environment. Further, during the Term of this Lease, neither party to this Lease nor any agent or party acting at the direction or with the consent of either party hereto shall use, store, handle or dispose of by any means any "Hazardous Substances", as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time ("CERCLA"), or petroleum (including crude oil or any fraction thereof) on the Premises, except that Lessee shall be entitled to use, store, handle or dispose of Hazardous Substances or petroleum of the type and in the quantities typically used by companies performing similar aviation services in accordance with all applicable Environmental Laws.

(b) Upon reasonable prior written notice to Lessee, the Authority may conduct or cause to be conducted through a reputable third-party consultant, an environmental audit or other investigation of Lessee's operations to determine whether Lessee has breached its obligations under subparagraph (a) above, provided that the Authority has received notice or has a reasonable basis to believe that such a breach or a Release of Hazardous Substances on the Premises has occurred. Lessee shall pay all reasonable costs associated with any such investigation conducted by a third-party environmental contractor if such investigation shall disclose any such breach by Lessee, otherwise such costs shall be paid by the Authority. The Authority shall pay all costs associated with any investigation conducted by Authority or its employees, as opposed to a third-party consultant. Lessee reserves the right to accompany Authority or any third-party environmental contractor on such audits or investigations.

(c) Lessee shall fully and promptly pay, perform, discharge, defend, indemnify and hold harmless Authority from any and all claims, orders, demands, causes of action, proceedings, judgments, or suits and all liabilities, losses, fines, costs and expenses (including, without limitation, technical consultant fees, court costs, expenses paid to third parties and reasonable attorneys' fees) and damages arising out of Lessee's operations, or as a result of, (i) any "Release" as defined in Section 101(22) of CERCLA, of any Hazardous Substance placed into, on or from the Premises at any time after the Effective Date of this Lease; (ii) any contamination of the Premises' soil or groundwater or damage to the environment and natural resources of the Premises, the result of actions occurring after the Effective Date of this Lease, whether arising under CERCLA or other statutes and regulations, or common law; and (iii) any toxic, explosive or otherwise dangerous materials or Hazardous Substances which have been buried beneath, concealed within or released on or from the Premises after the Effective Date of this Lease; provided, however, the foregoing indemnification obligations shall not apply to Environmental Conditions existing on the Premises prior to the Effective Date of this Lease, Environmental Conditions migrating unto the Premises that were not caused by Lessee or its predecessors in interest, or Environmental Conditions caused by the Authority, its contractors or agents, or any third-party unrelated to Lessee.

(d) Authority shall deliver a Baseline Environmental Impact Investigation Report (the "Authority Baseline Report") to the Lessee within sixty (60) days of the Effective Date this Lease. Within thirty (30) days of the expiration of this Lease, or portion thereof, Lessee shall deliver an environmental report equivalent to a Phase I Environmental Site Assessment (ESA) to establish the environmental condition of each component of the Premises as of expiration of the Lease, or portion thereof ("Exit Baseline"). In the event it is determined during the Lease, or as a result of the Exit Baseline, that the Premises contains an "Environmental Condition", which, for purposes of this Section 8.1 shall mean any Hazardous Substances in amounts which violate any Environmental Laws, Lessee shall be responsible for any and all remedial action with respect to any such Environmental Condition at the Premises caused by Lessee or its predecessors in interest. For the avoidance of doubt, as stated in Section 8.1(c), Lessee shall not be responsible for any remedial action with respect to any Environmental Condition at the Premises, to the extent such Environmental Condition was not caused by Lessee's operations upon the Premises.

(e) Lessee shall perform aircraft washing (dry or wet, with soap or chemicals) only on a "wash rack" which is designed for such purpose and complies with the requirements of this Section 8.1.

(f) The provisions of this Section 8.1 shall survive the expiration or earlier termination of this Lease.

ARTICLE IX INDEMNIFICATION

9.1 Lessee Indemnification. Lessee shall indemnify, defend and hold completely harmless the Aviation Authority, the City of Orlando and the members (including, without limitation, all members of the governing board and the advisory committees of each), officers, agents and employees of each, (the "Indemnified Parties") from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities (including statutory liability and liability under Workers' Compensation Laws), and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing (a) arising directly or indirectly out of the use, occupancy or maintenance of the Premises and the Airport, including any Improvement thereto, or Lessee's operations at the Airport or in connection with any of Lessee's rights and obligations contained in this Agreement, including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to any property which arises as a result of any act or omission on the part of Lessee or its officers, directors, partners, employees, agents, contractors, subcontractors, or licensees, regardless of where the damage, injury or death occurred, or (b) arising out of the failure of Lessee to keep, observe or perform any of its obligations under this Agreement. This indemnification shall not apply to the extent that any claims, damages, losses, and expenses arise from Aviation Authority's sole negligence, gross negligence or intentional misconduct. The Aviation Authority shall give Lessee reasonable notice of any suit or claim for which indemnification will be sought under this Indemnification section, allow Lessee or its insurer to compromise and defend the same to the extent of its interests (subject to the Aviation Authority's right to approve any proposed settlement, which approval shall not be unreasonably withheld) and reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this Indemnification section, Lessee shall use counsel reasonably acceptable to the Aviation Authority. Nothing herein shall be deemed a waiver by Aviation Authority of its sovereign immunity rights under the laws of The State of Florida.

ARTICLE X DESTRUCTION OF IMPROVEMENTS

10.1 Obligations of Lessee. In the event the Improvements are damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt written notice thereof to Authority, and subject to the terms of Section 10.2 below, Lessee, at its own expense, shall promptly repair, replace, and rebuild the same, at substantially the same value and character as the Improvements and equipment existing immediately prior to such time, in compliance with Article 5 above. Damage to the Improvements shall not cause an abatement of Lessee's obligation to pay Annual Rent to the Aviation Authority or to make any other payments required to be made by Lessee under this Lease. If Lessee fails to repair or replace such improvements in accordance with a schedule approved by the Authority, the Authority shall have the right (but not the obligation) to make such repairs and/or replacement and recover from Lessee the cost and expense thereof.

10.2 Insurance Proceeds. Upon receipt by Lessee and the Authority of the proceeds of any property or builder's risk insurance policy or policies, Lessee and the Authority shall deposit same in an interest-bearing escrow account to pay for the cost of such repair, replacement, and rebuilding. Lessee shall receive and hold such proceeds (and any interest earned thereon) in trust for such work, and Lessee shall distribute such proceeds (and any interest earned thereon during construction) solely to pay the cost of such work. If the amount of such insurance proceeds (together with the interest earned thereon) is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds (together with the interest earned thereon) is in excess of the costs thereof, the amount of such excess shall be retained by Lessee. Notwithstanding anything in this Section 10.2 to the contrary, Lessee shall solely be entitled to receive and retain any insurance proceeds for Lessee's personal property, including any aircraft.

ARTICLE XI CONDEMNATION

11.1 Notice of Condemnation. The party receiving any notice in connection with any proceedings or negotiations with respect to an actual or potential condemnation proceeding by a third-party governmental agency (a "Taking") shall promptly give the other party notice of the receipt, contents and date of the notice received.

11.2 Rights of Authority and Lessee. Authority and Lessee shall each have the right to represent its respective interests in each proceeding or negotiation with respect to a Taking. Authority and Lessee each agrees to execute and deliver to the other any instrument that may be required or which would facilitate the provisions of this Lease relating to the condemnation.

11.3 Taking of Leasehold. Upon a Taking of the entire Premises, Lessee's interest in this Lease shall cease on the first to occur of the date on which Lessee is denied use of the Premises as such use is contemplated hereunder or the date on which such Taking is completed by deed, contract, or final order of condemnation, unless otherwise specified by court order. If the Taking is of fifty percent (50%) or more of the Premises, or substantially all of the access to the Premises, or of those portions of the Premises that are necessary for Lessee's use of the Premises as contemplated herein, Lessee may, by notice to Authority within ninety (90) days after Lessee receives notice of the Taking, elect to treat the taking in accordance with the preceding sentence. If Lessee does not so notify Authority, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Annual Rent payable hereunder by Lessee shall be equitably adjusted (a "Partial Taking").

11.4 Obligations of Lessee under Partial Taking. It is understood and agreed that all condemnation proceeds for any Partial Taking of the Premises shall be paid to Lessee to be held by it in trust and used for the repair and reconstruction of the Premises and replacement of the Improvements. Upon the completion of such repair or reconstruction work and the discharge of the Premises and Improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus of condemnation proceeds obtained by Lessee over the cost of repair or reconstruction and shall be liable for any deficiency between the cost of repair or reconstruction and any condemnation proceeds obtained by Lessee.

11.5 Taking of Temporary Use of Premises and Improvements. Upon any Temporary Taking (as hereinafter defined) of the use of all or any part of the Premises or Improvements, or both, neither the Term nor the Annual Rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. All condemnation proceeds for any Temporary Taking shall be paid to Lessee to be held by it in trust and used for the repair and reconstruction of the Premises and Improvements, with the excess to be retained by Lessee as provided below. If a result of the Temporary Taking is to necessitate expenditures for reconstruction of the Improvements to make them reasonably suitable for Lessee's continued use in connection with its operations under this Lease, after the termination of such Temporary Taking, Lessee shall perform such work in accordance with the provisions of the Lease. Upon the completion of the work and the discharge of the Premises and Improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus of condemnation proceeds obtained by Lessee over the cost of repair or reconstruction and shall be liable for any deficiency between the cost of repair or reconstruction and any condemnation proceeds obtained by Lessee. A "Temporary Taking" is defined as a taking of the use of all or any part of the Premises or Improvements, or both, for a period with a duration of less than twelve (12) months. In the event that any Temporary Taking shall exceed twelve (12) months in duration and shall materially adversely affect Lessee's use and operation of the Premises for the Permitted Uses under this Lease, then Lessee may elect to terminate this Lease upon sixty (60) days prior written notice to Authority. Upon any such termination of this Lease, Lessee shall retain the right to pursue such rights and remedies as may be available under applicable law relative to such taking. If Lessee does not so notify Authority, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Annual Rent payable hereunder by Lessee shall be equitably adjusted.

11.6 Deposit of Sums Payable on Taking. If Authority and Lessee are unable to agree on how all sums payable by a third party on the Taking are to be distributed and disbursed as between Authority and Lessee, then Authority and Lessee agree to take such action as shall reasonably be required to withdraw such sums from the registry of the Court and jointly deposit such sums in an interest bearing escrow account, and once agreement is reached between Authority and Lessee as to how such sums are to be distributed and disbursed (or the matter has been determined in accordance with the laws of the State of Florida), the interest earned on such sums shall be distributed between Authority and Lessee in the same proportion as the distribution of the principal amount of such sums. To the extent permitted by applicable law, Lessee shall be entitled to bring a separate action against a third-party condemning authority for the collection of, among other things, but not limited to: (i) the value of the Lessee Improvements, and Lessee's fixtures, furniture, and equipment; (ii) relocation costs; (iii) reasonable loss of profits; and (iv) goodwill. Notwithstanding the foregoing, any such action, recovery or collection by Lessee shall not include the value of Lessee's leasehold interest under this Lease.

ARTICLE XII

DEFAULT

12.1 Events of Default. The occurrence of any of the following shall constitute an event of default (an "Event of Default") by Lessee under this Lease: (i) the failure of Lessee to make any payment of Minimum Annual Rent, Privilege Fee, Fuel Flowage Fee, Additional Rent, or any other payment required to be made by Lessee hereunder when due, which failure is not remedied within ten (10) days after written notice of such failure from Authority to Lessee; (ii) the failure of Lessee to keep, observe or perform any other material covenants or agreements herein, and the continued failure to observe or perform any such covenant or agreement after a period of thirty (30) days after written demand; provided, however, that if such failure cannot be cured within such thirty (30) day period and Lessee commences such cure promptly within such thirty (30) day period and diligently proceeds to effect such cure, then Lessee shall have such additional time as reasonably necessary to effect such cure, but in any event Lessee shall cure such breach within one hundred twenty (120) days after the initial written demand by Authority, which one hundred twenty (120) day period shall be extended one (1) day for each day of an event of Force Majeure; (iii) commencement by or against the Lessee of an insolvency or bankruptcy proceeding, including, without limitation, a proceeding for liquidation, reorganization or for the readjustment of its indebtedness, or the insolvency of the Lessee, or an assignment or arrangement for the benefit of its creditors or the appointment of a receiver, trustee or custodian, provided, however, that any of the foregoing set forth in this subsection (iii) which is commenced by a person other than Lessee shall not constitute an Event of Default if it is discharged within ninety (90) days; or (iv) the placement of any lien upon the Premises or any Improvements (excluding liens for taxes which are not delinquent and mortgages permitted hereunder) which is not discharged of record by payment or bond within thirty (30) days, or any levy under any such lien.

12.2 Remedies for Default. Upon the occurrence of an Event of Default which is not cured within the applicable cure period, the Authority may in its sole discretion pursue any of the following remedies, or such other remedies as may be available to the Authority at law or in equity:

- (a) Authority may terminate the Lease and re-enter and repossess the Premises; or
- (b) Authority may, without terminating this Lease, terminate Lessee's right to possession of the Premises, retake possession of the Premises, and recover immediately from the Lessee damages calculated as follows:
 - i. all unpaid Annual Rent and other payments due from Lessee at the time of termination of Lessee's right to possession, together with,
 - ii. the amount by which the unpaid Annual Rent and other payments due from Lessee earned after the date of termination of Lessee's right to possession of the Premises until the time of a damages award in favor of Authority (which shall not extend beyond the Expiration Date) exceeds the amount of the loss of Annual Rent and other payments due from Lessee that Lessee proves has been or could have reasonably been avoided, together with
 - iii. the worth, at the time of such award (which shall not extend beyond the Expiration Date), of the amount by which the unpaid Annual Rent and other payments due from Lessee for the balance of the Term after the time of award exceeds the amount of the loss of Annual Rent and other payments due from Lessee that Lessee proves could reasonably be avoided. (For purposes of this subparagraph (iii), the worth, at the time of award, of such amount shall be determined by discounting such amount in accordance with accepted financial practice to its present worth at a rate of interest of four percent (4%) per year.)

For purposes of the calculation of damages described above, and in subsection (c) below, recurring payments under the Lease other than Annual Rent due from Lessee after the termination of Lessee's right to possession of the Premises shall be based upon the average of such payments payable during the thirty-six (36) month period prior to the termination of possession (or, if shorter, the prior period of the Term of the Lease).

Upon entry of judgment for such damages, as described above, this Lease shall be deemed to be terminated; or

(c) Authority may, without terminating this Lease, terminate Lessee's rights to possession of the Premises, retake possession of the Premises and relet the Premises, or any part or parts thereof, for the account of Lessee, for a term that may, at Authority's reasonable option, be less than or exceed the period which would otherwise have constituted the balance of the Term of this Lease. In such event, Lessee shall pay to Authority any deficiency between the Annual Rent and other charges herein reserved and the net amount of the rents and other charges collected on account of any other lease of the Premises for each month of the period which would otherwise have constituted the balance of the Term of this Lease. Authority may recover such deficiency from Lessee at the time each payment becomes due under the Lease, or, at Authority's option, upon the expiration of the Term of this Lease. Anything in this Section 12.2 to the contrary notwithstanding, Authority shall use commercially reasonable efforts to relet the Premises or any part thereof, alone, or together with other premises.

Regardless of the exercise of any of the above-referenced options, Authority shall have the right to recover all unpaid Annual Rent, Additional Rent and other payments earned by Authority prior to the date of termination of possession or of the Lease, and all of Authority's actually incurred reasonable attorneys' fees, incurred in connection with the recovery of sums due under this Lease, or due to the breach of any covenant or agreement of Lessee contained in this Lease, including actual and reasonable costs and expenses of reletting the Premises, such as all necessary repairs and renovations, all brokerage fees and attorneys' fees. Except as may be otherwise agreed in writing by the Authority, Authority will have the right at any time following an Event of Default which is not cured within the applicable cure period to elect to terminate the Lease.

The rights and remedies given to Authority by this Lease shall not be exclusive, and in addition thereto, Authority shall have such other rights and may pursue such other remedies as are provided by law or in equity. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by Authority shall not impair its standing to exercise any other right or remedy, provided, however, that Lessee shall in no event be liable for special, consequential, or punitive damages.

12.3Advances by Authority and Lessee.

(a) If Authority has paid any reasonable sums of money or incurred any obligation or reasonable expense for which Lessee is obligated to pay or reimburse Authority, or if Authority is required or elects to do so because of the failure of Lessee to perform any of the terms or conditions of this Lease, subject to applicable notice and cure periods provided herein, then the same shall be deemed Additional Rent and shall be paid to Authority in accordance with Section 4.4 herein.

(b) In the event that Authority fails to perform any maintenance obligation required to be performed by it under this Lease, which failure is not cured, except in the case of an emergency as necessary to protect health, safety or property damage (in which event Lessee shall notify Authority as soon as possible), within ninety (90) days after written notice from Lessee specifying the failure (or Authority does not within said period commence and diligently proceed to cure such failure and cure same in all events within one hundred eighty (180) days from initial notice), Lessee shall have the right to cure such failure for the account of Authority and Authority shall reimburse Lessee for the reasonable costs and expenses incurred in connection therewith by Lessee within thirty (30) days after receipt of an invoice from Lessee.

12.4Non-Waiver by Authority. No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall constitute a waiver of any subsequent breach of such covenant or condition or justify or authorize the non-observance on any other occasion of the same or of any other covenant or condition hereof. The acceptance of Annual Rent, Additional Rent or other payments from Lessee by Authority at any time when Lessee is in default under this Lease shall not be construed as a waiver of such default or of Authority's right to exercise any remedy arising out of such default, nor shall any waiver or indulgence granted by Authority to Lessee be taken as an estoppel against Authority, it being expressly understood that Authority may at any time thereafter, if such default continues, exercise any such remedy in the manner hereinbefore provided or as otherwise provided by law or in equity.

ARTICLE XIII

MISCELLANEOUS

13.1Right to Operate Aircraft at Airport. Nothing contained in this Lease shall give Lessee the right to operate a scheduled airline or scheduled air service at the Airport.

13.2Broker. The Parties acknowledge and agree that no broker has been utilized or consulted in connection with this Lease. Lessee shall indemnify and hold Authority harmless from and against any commission, claim or other cost or expense related to any Broker with whom Lessee has dealt. Authority shall indemnify and hold Lessee harmless from and against any commission, claim or other cost or expense related to any Broker with whom Authority has dealt.

13.3Recording. This Lease shall not be recorded. Simultaneously herewith, the parties will execute a Memorandum of Lease in the form attached hereto as **Exhibit "F,"** which will be recorded by Authority at its cost in the Public Records of Orange County, Florida.

13.4Additional Reserved Rights of Authority. Authority reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit so long as Authority does not interfere with Lessee's: (i) use or quiet enjoyment of the Premises in other than a de minimis manner; or (ii) access to the Premises other than for such reasonable, temporary periods (of which periods the Authority shall provide advance notice to Lessee) during which access ways to the Premises may be closed or relocated as necessary for such development, improvements, repairs or alterations by Authority at the Airport, or in the event of an emergency. Authority shall be free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned by the making of such improvements, repairs, alterations and additions that do not interfere with Lessee's use or quiet enjoyment of the Premises in other than a de minimis manner or Lessee's access to the Premises during such reasonable, temporary periods. Upon prior written notice to Lessee, Authority reserves the right to establish such fees and charges for the use of the Airport by Lessee (excluding any additional charge for the use of the Premises) and all others similarly situated, on a non-discriminatory basis, from time to time as Authority may deem reasonably advisable. Authority reserves the right for itself and others to utilize and maintain any utility and drainage easements located on the Premises, and to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Premises and to grant necessary utility easements therefore, provided that in the exercise of such rights, Lessee's use of the Premises and any Improvements shall not be materially impaired and any damage to the Premises or any Improvements caused by Authority as a

result thereof shall be repaired diligently without cost to Lessee. The Authority reserves the right, for the benefit of itself and all others authorized by the Authority to use the Airport, to taxi aircraft over the paved areas of the Premises either if pre-approved or in an emergency situation.

13.5 Leasehold Encumbrances.

(a) Lessee may encumber only its leasehold estate and its interest in the Lessee Improvements by execution and delivery of any leasehold mortgage. Authority will not subordinate its interest in the Premises or this Lease to any mortgage, including any leasehold mortgage. In the event of foreclosure of the leasehold mortgage by any mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure, shall succeed, as lessee, to and be bound by all of Lessee's rights, interests, duties, and obligations under this Lease. Notwithstanding the foregoing, no person other than the mortgagee shall have the right to become lessee under this Lease, and the interest of Lessee under this Lease shall not be conveyed to the purchaser at a foreclosure sale or to a person acquiring Lessee's interest in lieu of foreclosure, without complying with the requirements of Section 13.6 below. In particular, any change in lessee pursuant to this Section shall be treated as an assignment or subletting pursuant to Section 13.6 below, such that the Annual Rent shall immediately apply to such successor lessee, which Annual Rent shall then be subject to future increases pursuant to the terms hereof.

(b) The Authority will agree to give the leasehold mortgagee written notice that an Event of Default has occurred under the terms of this Lease promptly following the occurrence of an Event of Default that is not waived by Authority, or, in the event Lessee files for bankruptcy protection prior to the expiration any applicable cure period and subsequently rejects this Lease in connection with any proceedings under applicable bankruptcy laws, promptly following the rejection of this Lease (the "Default Notice"). The leasehold mortgagee shall have the right but to the obligation to cure the default in the longer of (i) a period of thirty (30) days following receipt of a Default Notice, or (ii) the applicable cure period under this Lease, to cure such Event of Default and/or pay to the Authority any and all amounts outstanding under this Lease, including without limitation, all past due Annual Rent, any Annual Rent coming due during the cure period, and any Additional Rent; provided, however, that the leasehold mortgagee shall have no obligation to cure any non-monetary defaults, except to the extent such non-monetary default has resulted in Additional Rent being owed hereunder.

(c) the Mortgagee shall not become liable for Lessee's obligations under this Lease unless and until the mortgagee becomes the owner of the leasehold estate and/or Improvements established hereby by foreclosure, assignment in lieu of foreclosure or otherwise, or if such mortgagee gives written notice to the Authority that such mortgagee will assume Lessee's obligations under this Lease. A mortgagee shall remain liable for the obligations of Lessee under this Lease only for so long as it remains the owner of the leasehold estate established hereby, and its interest has been assigned or transferred to pursuant to an assignment approved by the Authority.

(d) If this Lease is terminated by reason of Lessee's breach before the end of the Term for any reason other than a default that has not been cured by Lessee or mortgagee within the period specified, including, without limitation, as a result of a rejection or disaffirmation of the Lease in a bankruptcy, insolvency or other proceeding affecting creditor's rights then the Authority shall provide a copy of the termination notice to the mortgagee. Upon the written request of mortgagee made within thirty (30) days after the receipt of such notice from the Authority, the Authority shall agree to enter into a new lease of the Premises with mortgagee for the remainder of the term of the Lease upon the same covenants, conditions, limitations and agreements contain in the Lease, except for such provisions which must be modified to reflect any such termination, rejection or disaffirmance and the passage of time, provided, that, in the event of any such termination, rejection or disaffirmance, mortgagee (or such successor or assign) (A) shall pay to the Authority, simultaneously with the delivery of such new lease, all unpaid amounts due under the Lease up to and including the date of the commencement of the term of such new lease and all reasonable and substantiated expenses incurred by the Authority to prepare such new lease, and (B) otherwise shall cure all other defaults under the Lease promptly and with due diligence after the delivery of such new lease. If the Authority does not enter into a new lease with the mortgagee, then mortgagee shall immediately remove all trade fixtures and other personal property from the Premises and repair to the Authority's reasonable satisfaction, any damage caused to the Premises by the removal. Mortgagee shall not remove or tamper with any improvement on the Premises.

(e) Upon written notice of termination set forth in 13.5(d) mortgagees or similar beneficiaries are intended third party beneficiaries to this Section 13.5. As third-party beneficiaries, they are entitled to the applicable rights under and may enforce this provisions of this Section 13.5 of the Lease as if they were parties thereto.

(f) Lessee shall be permitted to finance the design, construction, and operation of the Improvements through a Private Activity Bond ("PAB"). The Authority shall provide customary consents and all related approvals required in connection with a PAB issuance and leasehold mortgage as part of the PAB financing program, which will be provided at Lessee's sole cost and expense. Any lien created to secure such financing or any other debt undertaken by Lessee shall be secured by Lessee's leasehold interest in the Lease and the Lessee Improvements and shall not be secured by the fee interest in the Premises. IT IS UNDERSTOOD AND AGREED THAT LESSEE'S FINANCING OF THE IMPROVEMENTS THROUGH PAB IS SOLELY THE DEBT OF LESSEE AND SHALL NOT RESULT IN ANY FINANCIAL BURDEN OR OBLIGATION OF THE AUTHORITY IN ANY MANNER, INCLUDING ANY COST OR EXPENSE ASSOCIATED WITH THE TEFRA HEARING OR ANY OTHER CONSENT OR APPROVAL REQUIRED TO BE PROVIDED BY THE AUTHORITY. Lienholders through PAB financing described herein shall be a mortgagee entitled to the rights provided for in this Section 13.5.

13.6 Assignment and Subletting.

(a) **Assignment and Subletting in accordance with the Permitted Use.** Lessee shall be authorized to sublet hangar space and tie downs in accordance with its Permitted Use and all the terms of this Lease, subject to the written consent of said sublease by the Authority, said consent not to be unreasonably withheld, conditioned, or delayed. Any assignment or sublease, which is not in strict compliance with the terms and conditions of this Section, shall be void ab initio and shall be of no force or effect whatsoever.

(a) (b) **Assignment and Subletting other than in the Course of the Permitted Use.** Other than as set forth in 13.6(a), Lessee shall not at any time sublet or assign this Lease, in whole or in part, or assign any of its obligations hereunder without the prior approval of Authority, which approval shall which approval may be granted or withheld in the Authority's reasonable discretion; except that Lessee may assign this Lease or sublet all or any portion of the Premises without prior approval (but upon prior written notice to Authority) to (i) a corporate parent, affiliate, related company, or subsidiary (collectively, an "Affiliate"), upon submitting proof of such affiliation that is reasonably satisfactory to Authority, or (ii) any entity that results from any merger, consolidation, or reorganization of Lessee or into which Lessee may be merged or with which it may be consolidated, or (iii) to a purchaser of all or substantially all of Lessee's assets (provided such purchaser also assumes substantially all of Lessee's liabilities) (any individual or entity under (i), (ii), or (iii) is a "Related Entity"). In the event Lessee assigns this Lease or subleases all or any portion of the Premises to an individual or entity that is not a Related Entity of Lessee, in

determining whether to grant or withhold its consent to an assignment, the Authority may consider such factors as it deems to be pertinent, including, without limitation, the net worth and operating experience of the proposed assignee. No sublease or assignment shall release Lessee from any of its obligations under this Lease unless the Authority agrees to such release in writing in its sole discretion. Approvals required under this Section shall be in writing. For so long as Lessee is a corporation whose stock is publicly traded, no approval of Authority shall be required for any change in ownership of or power to vote a majority of the outstanding voting stock of Lessee, or for any mergers, consolidations, or other restructurings of Lessee, and the Annual Rent shall not increase as a result of any of the foregoing events. In the event that Lessee converts to a private company or otherwise ceases to be a company whose stock is publicly traded: (i) any change in Lessee from a corporation whose stock is publicly traded to a private entity; or (ii) any change in ownership of or power to vote a majority of the outstanding voting stock or other equity interests of Lessee; or (iii) any transfer of an interest in the Lessee entity which results in a change in the control of such entity; or (iv) any other restructuring of Lessee from time to time (even when Lessee is no longer a corporation whose stock is publicly traded), shall not require the approval of Authority, and the Annual Rent shall not increase as a result of any of the foregoing events. Any assignment or sublease, which is not in strict compliance with the terms and conditions of this Section, shall be void ab initio and shall be of no force or effect whatsoever.

(c) Lessee agrees to reimburse the Authority for its reasonable attorneys' fees and costs actually incurred in determining whether to give its consent to any proposed sublease or assignment pursuant to Section 13.6(b), whether or not such consent is given, and the negotiation and preparation of any documents with respect to such sublease or assignment.

13.7 Notice. Any notice permitted or required to be given under the terms of this Lease shall be in writing, addressed to the party to whom it is directed, and sent either by (1) hand delivery, (2) United States certified or registered mail, postage prepaid, return receipt requested or (3) overnight delivery by a nationally recognized company, to the address shown below or to such other address as either party may from time to time designate by written notice in accordance with this Section:

To Authority: Chief Executive Officer
Greater Orlando Aviation Authority
One Jeff Fuqua Boulevard
Orlando International Airport
Orlando, Florida 32827-4399

Copy: Vice President of Aviation Real Estate
Greater Orlando Aviation Authority
One Jeff Fuqua Boulevard
Orlando International Airport
Orlando, Florida 32827-4399

To Lessee: Sky Harbour
Attn: In House Counsel
136 Tower Road, Suite 205,
West Harrison, New York 10604

Copy: Sky Harbour
Attn: Vice President of Corporate Real Estate
3851 NW 145th St.
Opa-Locka, FL 33054

Any such notice shall be deemed effective upon receipt.

13.8 Federal Aviation Administration Requirements.

(a) Authority reserves unto itself, and unto its successors and assigns for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Premises, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the airspace, and use of the airspace for landing on, taking off or operating on the Airport.

(b) Lessee expressly agrees on behalf of itself and its successors and assigns:

- i. to restrict the height of structures, vegetation, and other Improvements on the Premises in compliance with the requirements of Federal Aviation Administration Regulations, 14 C.F.R. Part 77 as they may be amended from time to time; and
- ii. to prevent any use of the Premises and any Improvements which would unreasonably interfere with or adversely affect the operation and maintenance of the Airport, or which would otherwise constitute a hazard at the Airport.

13.9 Member Protection. No recourse under or upon any obligation, covenant or agreement contained in this Lease, or any other agreement or document pertaining to the operations of Lessee hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Authority, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Lease, shall be had against any member (including, without limitation, members of Authority's Board and members of Authority's citizens advisory committees), officer, employee or agent, as such, past, present and future, of Authority, either directly or through Authority or otherwise, for any claim arising out of this Lease or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Authority. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Authority member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Lease or the operations conducted pursuant to it, or for the payment for or to Authority, or any receiver therefor or otherwise of any sum that may remain due and unpaid by Authority, is hereby expressly waived and released as a condition of and as consideration for the execution of this Lease provided that Authority assumes such liability.

13.10 Authority Rules and Regulations. Lessee shall observe and comply with all reasonable rules and regulations of Authority which now exist or may hereinafter be promulgated from time to time governing all matters relating to the Airport, including, without limitation, access, use, safety and conduct of operations at the Airport and the safe use of Airport facilities. Authority shall, at Lessee's written request, furnish a copy of all such rules and regulations, and any amendments thereto, to Lessee. Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. §41713), of any state or local law or ordinance, or of the rules and regulations of Authority.

13.11 Authority Access to Premises. Lessee grants Authority and its authorized agents full and free access to the Premises and all Improvements located thereon at all reasonable times in the presence of a Lessee representative (upon reasonable at least 48 hours' prior notice, (except in the event of an emergency) for the purposes of examining the same and seeing that all of the obligations of Lessee hereunder are being met and performed, and for exercising the Authority's rights under Section 2.4 of the Lease, and shall permit them to enter any building or structure on the Premises at any time in the event of an emergency. Authority and its employees, licensees, invitees, agents, patrons and suppliers, and its tenants and their employees, licensees, invitees, agents, patrons, and suppliers, shall have the right of vehicular and pedestrian access, ingress, and egress over all non-restricted access streets at the Airport. Authority and its employees, licensees, invitees, agents, patrons and suppliers, and its tenants and their employees, licensees, invitees, agents, patrons, and suppliers, shall have the right of vehicular and pedestrian access, ingress, and egress over all non-restricted access streets at the Airport.

13.12 City as Authority's Successor. The Authority presently operates the Airport under the Amended and Restated Operation and Use Agreement with the City dated August 31, 2015 (such Operation and Use Agreement, as amended, is hereinafter the "Operation and Use Agreement"), which provides that on its termination for any reason, responsibility for operating the Airport would revert to the City. Authority, Lessee, and by its execution of the joinder attached hereto, the City, agree that on the termination for any reason of the Operation and Use Agreement between the City and Authority: (i) the City shall be deemed to be the lessor hereunder and shall be bound by all provisions of this Lease, and (ii) all references contained herein to "Authority" shall be deemed to refer to the City.

13.13 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by Authority or Lessee or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Authority and Lessee, it being expressly understood and agreed that neither the computation of Annual Rent, Rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Authority and Lessee other than the relationship of landlord and tenant.

13.14 Exclusive Rights. The rights granted to Lessee under this Lease are not exclusive, except that Lessee shall have the exclusive use of the Premises for the Term of this Lease in accordance with the provisions of this Lease. The Authority expressly reserves the right to grant to third parties rights and privileges on other portions of the Airport that are identical, in whole or in part, to those granted to Lessee hereunder.

13.15 Miscellaneous Provisions.

(a) The section headings contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provision of this Lease.

(b) Except as otherwise provided herein, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

(c) Time is expressed to be of the essence of this Lease.

(d) In the event that any proceeding at law or in equity arises hereunder or in connection herewith (including any appellate proceeding or bankruptcy proceeding) the prevailing party shall be awarded costs, reasonable expert fees and reasonable attorneys' fees actually incurred in connection therewith.

(e) This Lease was made in and shall be governed by and construed in accordance with the laws of, the State of Florida. If any covenant, condition, or provision contained in this Lease is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

(f) This Lease, together with the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any prior agreements, representations or statements heretofore made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements are merged herein. This Lease may be altered or amended only by written instrument executed by both parties hereto.

(g) Words of gender used in this Lease shall be held and construed to include any other gender; and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

(h) Approval By the Parties. Whenever the consent or approval of Authority or Lessee is called for herein and unless otherwise more specifically stated it is understood and agreed that such approval shall be in writing and obtained in advance and shall not be unreasonably withheld, conditioned, or delayed.

(i) Authority and Lessee represent and warrant to each other that they have dealt with no broker in connection with this Lease and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.

(j) At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to the best of the responding party's knowledge, the requesting party is not in default under this Lease (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Lease and the relationship between Authority and Lessee as may reasonably be requested.

13.16 COMMUNICATIONS CONCERNING DISPUTED DEBTS. ALL (A) COMMUNICATIONS CONCERNING DISPUTES ABOUT DEBTS THAT ARE OWED OR MAY BE OWED PURSUANT TO THIS LEASE, AND (B) INSTRUMENTS IN LESS THAN THE FULL AMOUNT CLAIMED BY THE AUTHORITY AND TENDERED AS FULL SATISFACTION OF A DISPUTED DEBT OR OTHER AMOUNT OWED, SHALL BE SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE FOLLOWING:

VICE PRESIDENT OF FINANCE

GREATER ORLANDO AVIATION AUTHORITY

ONE JEFF FUQUA BOULEVARD

ORLANDO INTERNATIONAL AIRPORT

ORLANDO, FLORIDA 32827-4399

(a) In accordance with Florida law, Lessee is hereby advised as follows:

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

13.17Force Majeure. If either party hereto shall fail to timely perform any of its obligations under this Lease as a result of strikes, lockouts or labor disputes, inability to obtain labor or materials, government restrictions, fire or other casualty, adverse weather conditions not reasonably foreseeable at the location and time of year in question, by reason of war or other national emergency, acts of God, or other causes beyond the reasonable control of the party obligated to perform ("Force Majeure"), then such failure shall be excused and not constitute a default under this Lease by the party in question, but only to the extent and for the time occasioned by such event. In the event the rights and privileges hereunder are suspended on account of Force Majeure, Annual Rent and Additional Rent under this Lease shall not abate, and Lessee shall have the right to make any claim against any third party permitted by law and to receive any award paid with respect to such claim. In no event shall this provision excuse any failure by Lessee to pay Annual Rent or Additional Rent or any other payment obligation hereunder, nor shall this provision apply to any inability by Lessee to procure funds or obtain financing necessary to comply with Lessee's obligations under this Lease.

13.18Subordination.

(a) This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the Authority and the City, and those between the Authority or the City and the United States of America, the State of Florida, or the County of Orange, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or city funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

(b) In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, Lessee hereby consents to any and all such modifications and changes as may be reasonably required.

(c) Notwithstanding the foregoing provisions of this Section 13, in the event any such restrictions, agreements or modifications to this Lease increase the Annual Rent payable hereunder or materially and adversely affect the ability of Lessee to use the Premises for the purposes permitted under this Lease, the Parties agree to work in good-faith to reach an equitable resolution but if an equitable resolution cannot be reached, Lessee shall have the right to terminate this Lease by written notice to the Authority.

13.19Public Entity Crimes Law. The Lessee acknowledges the following notice:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.

13.20Visual Arts. Lessee shall not permit a work of visual art, as defined in 17 USC § 101, to be installed in the Premises without providing Authority with a written waiver, in form acceptable to the Authority, of the artist's rights under the Visual Artists Rights Act of 1990, Pub. L. 101-650, and without obtaining the Authority's prior written approval.

13.21Engine Runups. Except to the extent that noise restrictions of any governmental authority having jurisdiction thereover may preclude or limit the same, Lessee shall have the right to conduct engine runups at the Premises, and/or the nonexclusive right in common with others, to conduct engine runups on the Airport at such location or locations as Authority may designate from time to time for such purposes, in reasonable proximity to the Premises on the Airport, and subject to the reasonable rules and regulations of Authority.

13.22FAA Contract Provisions. The Parties hereby agree that this Lease shall be subject to the provisions of Exhibit "G" hereto, which is incorporated herein by this reference.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto by their duly authorized officers have caused this Lease to be executed in their names as of the day and year first above written.

LESSEE:

SHOLA, LLC, a

Delaware limited liability corporation

By:

Name: _____

Title: _____

ATTEST:

By: _____

, Secretary

GREATER ORLANDO AVIATION AUTHORITY

By: _____

Kevin J. Thibault, P.E., F. ASCE

Chief Executive Officer

ATTEST:

By: _____

Anna Farmer, Assistant Secretary

APPROVED AS TO FORM AND LEGALITY

this day of , 202 for the use

and reliance of the Greater Orlando Aviation

Authority, only.

C.J. Wilson Law, P.A., Counsel

By: _____

Christopher J. Wilson, Esq.

CITY APPROVAL OF LEASE

Pursuant to Section 8(f) of the City Charter, the CITY OF ORLANDO hereby approves the FIXED BASED OPERATOR LEASE AGREEMENT dated , 20, between the GREATER ORLANDO AVIATION AUTHORITY and SHOLA, LLC, a Delaware limited liability corporation.

Date: _____

ATTEST

By: _____

City Clerk/Deputy City Clerk

Print
Name: _____

(City Seal)

Approved as to form and legality for the use and
reliance of the City of Orlando, Florida, only.

By: _____
Assistant City Attorney

CITY OF ORLANDO

By: _____

Mayor/Mayor Pro Tem

Print
Name: _____

EXHIBIT "A"

Premises

[Twenty Acres]

EXHIBIT "B"

[Percentage Privilege Fee and Fuel Flowage Fee Report]

EXHIBIT "C"

[Improvements]

EXHIBIT "D"

[Off-Site Improvements]

EXHIBIT "E"

[Bond Forms]

ORLANDO INTERNATIONAL AIRPORT

PERFORMANCE/PAYMENT BOND

COVER SHEET

PERFORMANCE/PAYMENT BOND COVER SHEET. This cover sheet is an integral part of the attached bonds and must not be separated from them.

GREATER ORLANDO AVIATION AUTHORITY

ORLANDO, FLORIDA

(Public Work)

In Compliance with Florida Statute Chapter 255.05(1)(a)

PERFORMANCE BOND NO.:	
PAYMENT BOND NO.:	

CONTRACTOR INFORMATION:		Name: _____
		Address: _____
		Phone: _____
SURETY PRINCIPAL:		Name: _____
BUSINESS INFORMATION		Address: _____
		Phone: _____
OWNER INFORMATION:		Name: _____ Address: _____ Phone: _____
		Greater Orlando Aviation Authority One Jeff Fuqua Boulevard Orlando, FL 32827 (407) 825-2001
BOND AMOUNT:		\$ _____
CONTRACT NO. (if applicable):		T- (T-# only no name)
DESCRIPTION OF WORK:		(Project Name from T-#)
PROJECT LOCATION:		Orlando International Airport, Orlando, FL
AGENT INFORMATION:		Name: _____ Address: _____ Phone: _____

**GREATER ORLANDO AVIATION AUTHORITY
ORLANDO, FLORIDA**

The cover page that lists the contact information for the entities involved in this bond is considered the front page of this bond and is an integral part of this bond and, therefore, must not be separated from this bond.

KNOW ALL MEN BY THESE PRESENTS that CONTRACTOR LEGAL NAME, hereinafter referred to as Principal, whose principal business address is _____ and NAME OF SURETY, a corporation organized under the laws of the State of _____ and licensed to do business in the State of Florida, hereinafter referred to as Surety, whose principal business address is _____, are held and firmly bound unto the Greater Orlando Aviation Authority as Obligee, hereinafter referred to as Authority, and TENANT LEGAL NAME as Co-Obligee, hereinafter referred to as Company, in the Penal Sum of U.S. DOLLARS (\$), for the payment of which sum well and truly made, Principal and Surety bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, TENANT LEGAL NAME hereinafter referred to as Company has leased from Authority real property at Orlando International Airport in accordance with the Lease Agreement dated _____, which is incorporated herein by reference, made a part hereof, and is hereinafter referred to as the Lease; and

WHEREAS, Principal has by written agreement dated Date of Contract, entered into a contract, hereinafter referred to as the Contract, with Company, for the construction of improvements to the above-described real property in accordance with the plans and specifications prepared by Name of Architect, dated Date on Final 100% Plans, which were approved by Authority, and which are incorporated herein by reference and made a part hereof, and which are hereinafter referred to as the Plans and Specifications (Contract and Plans and Specifications hereinafter referred to collectively as the Contract Documents); and

WHEREAS, under the terms of the Contract, Principal is required to complete the improvements to the above-described property in accordance with the Plans and Specifications and the requirements of the Contract Documents, and is also required to provide a bond guaranteeing the faithful performance of such improvements by the Principal; and

WHEREAS, Surety is authorized to do business in the State of Florida;

NOW, THEREFORE, the condition of this obligation is such that if Principal:

1. Promptly and faithfully completes and performs such improvements in accordance with the Plans and Specifications, the Contract, and the covenants and obligations imposed upon Principal by the Contract Documents in connection therewith, in the time and manner prescribed in therein; and

2. Pays Authority and Company, in that order, all losses, damages (liquidated or actual), including, but not limited to, damages caused by delays in performance of the Principal, expenses, legal costs and attorneys' fees (including, but not limited to, those for investigative and legal support services and those incurred in appellate or bankruptcy proceedings) that Authority sustains arising out of, related to, or resulting directly or indirectly from the conduct or omissions of Principal, including, but not limited to, failure of the Principal to complete the improvements in accordance with the Plans and Specifications or the terms of the Contract, any breach or default by Principal under the Contract, want of care or skill, negligence, patent infringement, or intentionally wrongful conduct on the part of the Principal, its officers, agents, employees, or any other person or entity for whom the Principal is responsible;

then this bond is void; otherwise it shall remain in full force and effect.

3. In the event that Principal fails to complete the improvements in accordance with the Plans and Specifications or the terms of the Contract, or fails to perform any of the terms, covenants and conditions of the Contract Documents or the Lease related to construction of such improvements during the period in which this Performance Bond is in effect, the Surety shall remain liable to the Authority and Company, for all such loss or damage, including legal costs and attorneys' fees (including, but not limited to, those for investigative and legal support services and those incurred in appellate or bankruptcy proceedings), arising out of, related to, or resulting from any failure to perform up to the amount of the Penal Sum.

4. In the event that the Surety fails to fulfill its obligations under this Performance Bond, then the Surety shall also indemnify and save the Authority and Company harmless from any and all loss, damage, cost, or expense, including legal costs and attorneys' fees (including, but not limited to, those for investigative and legal support services and those incurred in appellate or bankruptcy proceedings), arising out of, related to, or resulting directly or indirectly from the Surety's failure to fulfill its obligations hereunder. This paragraph shall survive the termination or cancellation of this Performance Bond. The obligations set forth in this paragraph shall not be limited by the Penal Sum of this Bond.

5. The Surety's obligations hereunder shall be direct and immediate and not conditional or contingent upon Authority's or Company's pursuit of its remedies against Principal, and shall remain in full force and effect notwithstanding (i) amendments or modifications to the Lease or the Contract entered into by Authority, Company and/or Principal without the Surety's knowledge or consent, (ii) waivers of compliance with or waivers of any default under the Lease or the Contract granted by Authority to Company or Authority to Principal without the Surety's knowledge or consent, (iii) the discharge of Principal from its obligations under the Contract as a result of any proceeding initiated under The Bankruptcy Code of 1978, as the same may be amended, or any similar state or federal law, or any limitation of the liability of Principal or its estate as a result of any such proceedings, or (iv) any other action taken by Authority or Company or Principal that would, in the absence of this clause, result in the release or discharge by operation of law of the Surety from its obligations hereunder.

6. The institution of suit upon this Bond shall be in accordance with, and subject to the limitations period of, Section 95.11, Florida Statutes.

7. Surety stipulates that any change, addition, omission, or other modification in or under the Lease or the Contract and compliance or noncompliance with any formality connected with the Lease or the Contract or the change therein shall not affect Surety's obligations under this Bond and Surety hereby waives notice of any such change, addition, omission, or other modification. Further, Principal and Surety acknowledge that the Penal Sum of this Bond shall increase or decrease in accordance with any approved change, addition, omission, or other modification to the Lease and/or the Contract.

[THIS SPACE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their several seals on the day of , 20. the name and corporate seal of each corporate party being hereto affixed and these presents fully signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

Print Name: _____

"Principal"

CONTRACTOR LEGAL NAME

(Principal must indicate whether it is a Corporation, Company, Partnership, or Individual)

Print Name: _____

By:

Print Name: _____

Print Title: _____

(SEAL)

Signed, sealed and delivered in the presence of:

Print Name: _____

"Surety"

SURETY LEGAL NAME

(Principal must indicate whether it is a Corporation, Company, Partnership, or Individual)

Print Name: _____

By:

Print Name: _____

Print Title: _____

(SEAL)

Countersigned by Florida Registered Agent

Title: _____

License No.: _____

Agency: _____

Address: _____

NOTE: If Principal and Surety are corporations, the respective corporate seals shall be affixed and attached.

Surety shall execute and attach a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety, as well as the Power of Attorney appointing the Florida licensed agent.

PRINCIPAL SHALL CAUSE THIS BOND, INCLUDING THE COVER SHEET, TO BE RECORDED IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND SHALL PROVIDE A CERTIFIED COPY OF THE RECORDED BOND TO THE AUTHORITY PRIOR TO COMMENCING ANY WORK UNDER THE CONTRACT.

PERFORMANCE BOND CERTIFICATION FORM
GREATER ORLANDO AVIATION AUTHORITY
ORLANDO, FLORIDA

I, , certify that I am the Secretary of the corporation, the General Partner of the Partnership, or Manager or Managing Member of the LLC named as Principal in the foregoing Performance Bond; that [individual] who signed the said Bond on behalf of the Principal was then President or Vice-President of said corporation, the General Partner of the Partnership, or the Manager or Managing Member of the LLC; that I that individual's signature, and that the individual's signature is genuine, and that said Bond was duly signed, sealed, and attested to for and in behalf of said Principal by authority of its governing body or is otherwise authorized by the Principal to enter into this Contract and Bond.

Secretary Signature

Secretary Printed Name

(Corporate Seal)

GREATER ORLANDO AVIATION AUTHORITY
ORLANDO, FLORIDA

The cover page that lists the contact information for the entities involved in this bond is considered the front page of this bond and is an integral part of this bond and, therefore, must not be separated from this bond.

KNOW ALL MEN BY THESE PRESENTS that CONTRACTOR LEGAL NAME, hereinafter referred to as Principal, whose principal business address is , and NAME OF SURETY, a corporation organized under the laws of the State of , having its home office in the City of , and licensed to do business in the State of Florida, hereinafter referred to as Surety, whose principal business address is , are held and firmly bound unto the Greater Orlando Aviation Authority, as Obligee, hereinafter referred to as Authority, and TENANT LEGAL NAME, as Co-Obligee, hereinafter referred to as Company, in the Penal Sum of U.S. DOLLARS (\$), for the payment of which sum well and truly to be made, Principal and Surety bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,TENANT LEGAL NAME, hereinafter referred to Company has leased from Authority real property at Orlando International Airport in accordance with the (Name of the Agreement) Lease Agreement dated , which is incorporated herein by reference, made a part hereof, and is hereinafter referred to as the Lease, and

WHEREAS, Principal has by written agreement dated Date of Contract, entered into a contract, hereinafter referred to as the Contract, with Company, for the construction of improvements to the above-described real property; and

WHEREAS, under the terms of the Lease, Company is required to indemnify and hold harmless Authority from and against any and all claims of claimants, as defined in Sections 255.05(1) and 713.01(16), Florida Statutes, for improvements to the above-described real property, and is also required to provide a bond protecting the rights of such claimants to payment for services, labor, materials or supplies used directly or indirectly in the prosecution of the improvements to the above-described real property; and

WHEREAS, Surety is authorized to do business in the State of Florida;

NOW, THEREFORE, the condition of this obligation is such that if Principal shall promptly make payments to all claimants as defined in Sections 255.05(1) and 713.01(16), Florida Statutes, supplying Principal with services, labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the improvements to Authority's real property as provided for in the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

1. This bond is furnished for the purpose of complying with the requirements of Section 255.05, Florida Statutes, to the extent applicable; and for the purpose of exempting any legal or equitable interest in real property owned by Authority from liens, and complying with the requirements of Section 713.23, Florida Statutes, to the extent applicable.

2. It is a specific condition of this bond that a claimant's right of action on the bond is limited to the provisions of Sections 255.05 and 713.23, Florida Statutes, including, but not limited to, the one-year time limitation within which suits may be brought.

Therefore, a claimant, except a laborer, who is not in privity with the Principal shall, before commencing or not later than 45 days after commencing to furnish labor, services, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he or she intends to look to the bond for protection. Any claimant who is not in privity with the Principal and who has not received payment for services, labor, materials, or supplies shall deliver to the Principal and to the Surety written notice of the performance of the services or labor or delivery of the materials or supplies and of the nonpayment in accordance with Section 255.05(2), Florida Statutes. The notice of nonpayment may be served at any time during the progress of the work or thereafter, but not before forty-five (45) days after first furnishing of the labor, services, material, or supplies and not later than ninety (90) days after the final furnishing of the labor, services, materials, or supplies by the claimant. No action for the services, labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the services or labor or completion of the delivery of the materials or supplies.

3. The Surety's obligations hereunder shall remain in full force and effect notwithstanding (i) amendments or modifications to the Lease or Contract entered into by Authority, Company, and/or Principal without the Surety's knowledge or consent, (ii) waivers of compliance with or any default under the Lease or Contract granted by Authority to Company or Authority to Principal without the Surety's knowledge or consent, (iii) the discharge of Principal from its obligations under the Lease or Contract as a result of any proceeding initiated under The Bankruptcy Code of 1978, as the same may be amended, or any similar state or federal law, or any limitation of the liability of Principal or its estate as a result of any such proceeding, or (iv) any other action taken by Authority, Company, or Principal that would, in the absence of this clause, result in the release or discharge by operation of law of the Surety from its obligations hereunder.

4. Any change, addition, omission, or modification in or under the Lease or Contract and compliance or noncompliance with any formality connected with the Lease or Contract or the changes therein shall not affect Surety's obligations under this Bond, and Surety hereby waives notice of any such change. Further, Principal and Surety

acknowledge that the Penal Sum of this Bond shall increase or decrease in accordance with any approved change, addition, omission, or other modification to the Lease and/or the Contract.

[THIS SPACE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument under their several seals on the day of , 20, the name and corporate seal of each corporate party being hereto affixed and these presents fully signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

"Principal"

CONTRACTOR LEGAL NAME

(Principal must indicate whether it is a Corporation,
Company, Partnership, or Individual)

By:

Print Name: _____

Print Title: _____

(SEAL)

"Surety"

SURETY LEGAL NAME

(Principal must indicate whether it is a Corporation,
Company, Partnership, or Individual)

By:

Print Name: _____

Print Title: _____

(SEAL)

Countersigned by Florida Registered Agent

Title: _____

License No.: _____

Agency: _____

Address: _____

NOTE: If Principal and Surety are corporations, the respective corporate seals shall be affixed and attached.

Surety shall execute and attach a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of this Bond on behalf of Surety, as well as the Power of Attorney appointing the Florida licensed agent.

PRINCIPAL SHALL CAUSE THIS BOND, INCLUDING THE COVER SHEET, TO BE RECORDED IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND SHALL PROVIDE A CERTIFIED COPY OF THE RECORDED BOND TO THE AUTHORITY PRIOR TO COMMENCING ANY WORK UNDER THE CONTRACT.

PAYMENT BOND CERTIFICATION FORM

GREATER ORLANDO AVIATION AUTHORITY

ORLANDO, FLORIDA

I, , certify that I am the Secretary of the corporation, the General Partner of the Partnership, or Manager or Managing Member of the LLC named as Principal in the foregoing Payment Bond; that [individual] who signed the said Bond on behalf of the Principal was then President or Vice-President of said corporation, the General Partner of the Partnership, or the Manager or Managing Member of the LLC; that I that individual's signature, and that the individual's signature is genuine, and that said Bond was duly signed, sealed, and attested to for and in behalf of said Principal by authority of its governing body or is otherwise authorized by the Principal to enter into this Contract and Bond.

Secretary Signature

Secretary Printed Name

(Corporate Seal)

EXHIBIT "F"

MEMORANDUM OF LEASE AGREEMENT

THIS INSTRUMENT PREPARED BY

AND SHOULD BE RETURNED TO:

Christopher J. Wilson, Esq.

C.J. Wilson Law, P.A.

1636 Hillcrest Street

Orlando, Florida 32803

(407) 232-2003

For Recording Purposes Only

MEMORANDUM OF LEASE AGREEMENT

THIS MEMORANDUM OF LEASE AGREEMENT ("Memorandum") is effective this day of , 20, by and between the **GREATER ORLANDO AVIATION AUTHORITY**, a public entity that operates the Orlando International Airport pursuant to that certain Amended and Restated Operation and Use Agreement dated August 31, 2015, whose mailing address is One Jeff Fuqua Boulevard, Orlando, Florida 32827-4399 ("Authority"), and **SHOLA, LLC**, a Delaware limited liability corporation ("Lessee").

WITNESSETH

1. **Lease.** Authority and Lessee entered into that certain Lease Agreement dated as of , 20 ("Lease"), having an effective date as of ("Lease") with respect to the lease of certain real property and improvements thereon located in Orange County, Florida, more particularly described on the attached **Exhibit "A"** (the "Premises").
2. **Term.** The Term of the Lease began and the Term of the Lease will end, unless sooner terminated in accordance with the terms and provisions of the Lease.
3. **Lessee's Improvements.** Pursuant to the terms of the Lease, Authority's interest in the Property shall not be subject to any liens or claims of lien for any improvements made by or on behalf of Lessee.
4. **Election Not to Claim Depreciation.** To the extent Lessee finances any Improvements on the Property with the proceeds of tax-exempt bonds, neither Lessee nor any successor-in-interest to Lessee shall claim depreciation or an investment credit with regard to any Improvements constructed at the Property.

5. **Definitions.** TERMS NOT SPECIFICALLY DEFINED IN THIS MEMORANDUM SHALL HAVE THE SAME RESPECTIVE MEANINGS AS ARE ASCRIBED THERETO IN THE LEASE.

6. **Lessee's Address.** A copy of the Lease is maintained at Lessee's office located at the following address: 136 Tower Road, Suite 205, West Harrison, New York 10604, Attention: Lease Administrator.

7. **Lease Governs.** This Memorandum is executed for the sole purpose of giving public notice of certain terms and provisions of the Lease and shall not create, expand, modify, or affect in any way the respective rights, interests, estates, obligations or remedies of Authority or Lessee. This Memorandum shall not be considered or taken into account in connection with the construction or interpretation of the Lease or any provision thereof.

8. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

9. **Prior Memoranda Superseded.** This Memorandum amends, restates, replaces, and supersedes any prior memoranda executed or recorded with respect to the Lease.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum effective as of the day and year first above written.

WITNESSES:

Print Name:

Print Name:

LESSEE:

SHOLA, LLC, a Delaware limited liability corporation

By:

Printed Name:

Title:

ATTEST:

Printed Name:

Title:

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of physical present or online notarization, this day of , 20, by , as of SHOLA, LLC., a Delaware limited liability corporation, on behalf of the corporation.

(NOTARY SEAL)

Signature of Notary Public

PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known

OR Produced Identification

Type of Identification Produced

WITNESSES:

Print Name:

AUTHORITY:

GREATER ORLANDO AVIATION AUTHORITY

Print Name: _____

ATTEST:

Anna Farmer, Assistant Secretary

APPROVED AS TO FORM AND LEGALITY
this day of , 202 for the use
and reliance of the Greater Orlando Aviation
Authority, only.

C.J. Wilson Law, P.A., Counsel

By:

Christopher J. Wilson

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical present or online notarization, this day of , 20, by , as of GREATER ORLANDO AVIATION AUTHORITY.

(NOTARY SEAL)

Signature of Notary Public

PRINT, TYPE OR STAMP NAME OF NOTARY

Personally known

OR Produced Identification _____

Type of Identification Produced _____

EXHIBIT "G"

FAA Required Contract Provisions

GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee"), agrees as follows, if and to the extent applicable as a matter of law:

1. **Compliance with Regulations:** The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-lessees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-lessee or supplier will be notified by the Lessee of the Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** If and to the extent applicable as a matter of law, the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Lessee will use reasonable efforts to include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment entered into after the effective date of the Lease, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto, but in all instances shall comply with all applicable federal laws, orders, rules, and regulations. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

7. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- In the event facilities are constructed, maintained, or otherwise operated on the property described in the Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- In the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.
- The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.
- In the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon subject to the terms of the Lease.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

The above list may be amended from time to time upon thirty (30) days' advance written notice to Lessee.

CERTIFICATIONS

I, Tal Keinan, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sky Harbour Group Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023 May 14, 2024

/s/ Tal Keinan

Tal Keinan, Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Francisco Gonzalez, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sky Harbour Group Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023 May 14, 2024

/s/ Francisco Gonzalez

Francisco Gonzalez, Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO

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REFINITIV 

18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Sky Harbour Group Corporation (the "Company") on Form 10-Q for the period ended **September 30, 2023** **March 31, 2024** as filed with the Securities and Exchange Commission on or about the date hereof (the "Report"), the undersigned, in the capacities and on the date indicated below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: **November 9, 2023** **May 14, 2024**

/s/ Tal Keinan

Tal Keinan, Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Sky Harbour Group Corporation (the "Company") on Form 10-Q for the period ended **September 30, 2023** **March 31, 2024** as filed with the Securities and Exchange Commission on or about the date hereof (the "Report"), the undersigned, in the capacities and on the date indicated below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: **November 9, 2023** **May 14, 2024**

/s/ Francisco Gonzalez

Francisco Gonzalez, Chief Financial Officer
(Principal Financial Officer)

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