Pinellas County

Staff Report

File #: 23-0405A, **Version:** 1 **Agenda Date:** 5/9/2023

Subject:
Lease with Sheltair Aviation for development and occupancy of a hangar and office space for Pinellas County Sheriff and waiver of the County's Indemnification Policy detailed in Resolution No. 06-70.

Recommended Action:
Approval of the lease (Lease) between Pinellas County (County) and Sheltair Aviation, Inc (Sheltair) for development and occupancy of a hangar and office space for use by the Pinellas County Sheriff's Office (PCSO) Flight Unit and waiver of the County's Indemnification Policy detailed in Resolution No. 06-70.

- The current hangar utilized by the PCSO was constructed in the mid-1960's and is past its useful life, not only from a design/structural perspective but also from an operational perspective. The current hangar is 11,000 square feet (SF), situated on 1.30 acres of land leased by the County from the St. Petersburg Clearwater International Airport (Airport), and is not large enough to house the PCSO Flight Unit.
- The proposed new hangar is estimated to be 43,000 SF and will be constructed on 5.14 acres of land currently leased by the Airport to Sheltair (Prime Lease).
- The new hangar will be purposefully built to house the PCSO Flight Unit's helicopters and airplane. The hangar will contain a climate-controlled repair and parts facility, office space, locker/restrooms, and meeting/training space. It will be designed in a modular format for potential future expansion if required by the PCSO.
- The proposed new hangar site was a former aircraft fueling operation, Pemco World Air Service. There were four spill events during 1986 and 1987 resulting in the site requiring remediation prior to construction. The search for sites and limited number of sites available combined with the environmental testing and subsequent remediation of the current site has resulted in a protraction of this project.
- Discussion and planning pertaining to a hangar replacement has been ongoing for several years with the former Real Estate Management Department; the Department of Administrative Services began the site selection process approximately two years ago resulting in the current Lease for consideration.
- Once remediation is completed by the Airport and design is completed by Sheltair with PCSO approval, construction is expected to take 18 months. We anticipate the PCSO will have use of this facility by October 2025.
- The Lease is coterminous with Sheltair's Prime Lease which expires November 15, 2066, inclusive of two ten-year renewal options.
- Sheltair has communicated that they cannot agree to the County's standard language related to indemnification; consequently, we are requesting the Board waive the County's Indemnification Policy, Resolution No. 06-70 disallowing indemnification of other parties.
- The full-year fiscal impact of this lease will be $2,267,382.00 and is anticipated n Fiscal Year (FY) 2026. The current year cost of $315,000.00 is fully budgeted in FY23. No expenses are

anticipated in FY24, and partial-year expenses of approximately $1.3M are anticipated in FY25 (seven months of rent) if project completed ahead of schedule.

Strategic Plan:
Ensure Public Health, Safety and Welfare
2.1 Provide planning, coordination, prevention, and protective services to create and enhance a safe, secure and health community

Deliver First Class Services to the Public and Our Customers
5.3 Ensure effective and efficient delivery of county services and support

Summary:
This agreement provides the PCSO a greatly enhanced and modern aircraft hangar designed and built specific to the needs and operations of the PCSO. The design of the hangar is modular allowing potential future expansion should the need arise. The site the new hangar will be constructed on is controlled by lease agreement between the Airport and Sheltair. The site was once an aircraft fueling operation run by Pemco; there were four spill events during 1986 and 1987 resulting in the necessary, current remediation of the site being performed by the Airport with Florida Department of Environmental Protection oversite.

The new hangar will meet full operational requirements of the PCSO with PCSO staff involved in every aspect of design and operation and will include but not be limited to: climate controlled repair and parts section; locker/bathrooms and meeting/training space. The new facility will have ample surface parking and will fill immediate and future needs of the PCSO.

Background Information:
The discussion and planning pertaining to the construction of a new hangar for the PCSO has apparently been going on for several years. The DAS started the site selection process approximately 2 years ago, trying to find an appropriate site at the Airport to either construct or have a third-party construct and lease back a new hangar. There were three potential sites for a new hangar at the Airport of which the current selected site became the only viable option. The new site is located very close to the current PCSO hangar and has access to a runway. The site has been under lease by Sheltair for many years; prior to Sheltair control, the site was occupied by Pemco and utilized as a fueling operation. There were four spill events during 1986 and 1987 resulting in current remediation by the Airport at the site resulting in some protraction of this initiative.

Resolution No. 06-70 disallows the County's indemnification of other parties; the County's Policy may only be waived based on the availability of the goods or services from other sources and the County's need/desire for the goods or services. Based on the unavailability of alternate sites for this required project, and the need to provide PSCO with adequate facilities for their Flight Unit, the criteria to waive the County's Policy has been met.

Fiscal Impact:
Total year one (FY26) expenses in connection with this Lease are projected to be $2,267,382.00 and are comprised of estimated rent to Sheltair, pass through land rent to Airport, real estate taxes, utilities, and operating expenses. The current facilities have an annual expense of $115,229.00,

making this a $2,152,153.00, or 1,867.7% increase to annual expenses.

The agreement requires an expene of $315,000.00 to be paid in FY23 by the County to Sheltair towards project costs but is budgeted at $980,000.00. This will create $665,000 lapse funds in DAS in FY23. There will be no costs related to this item in FY24 as costs are not expected to be incurred again until March 2025 (FY25).

Staff Member Responsible:
Diana Sweeney, Deputy Director, Administrative Services
Joe Lauro, Director, Administrative Services
Tom Jewsbury, Director, Clearwater St Petersburg International Airport

Partners:
Pinellas County Sheriff Office
Sheltair

Attachments:
Lease Agreement
Resolution No. 06-70
Map of site
Concept drawing of hangar

OFFICE/HANGAR LEASE AGREEMENT

THIS OFFICE/HANGAR LEASE AGREEMENT (the "Lease") is made on the day of May 9, 2023 ("Execution Date"), by and between SHELTAIR ST. PETERSBURG, LLC, a Florida limited liability company, whose address is 5302 NW 21st Terrace, Fort Lauderdale, Florida 33309 ("Landlord"), and Pinellas County (the "Tenant").

1. GENERAL INFORMATION

1.01 Tenant's Full Legal Name:
Pinellas County, a political subdivision of the State of Florida

Tenant's Mailing Address:
509 East Avenue S
Clearwater, FL 33756

1.02 Type(s) of Aircraft

Make/Model/Color: Cessna 28B
Registration No.: N58501
Make/Model/Color: Airbus AS350B2
Registration No.: N1SD
Make/Model/Color: Airbus AS350B2
Registration No.: N2SD
Make Model/Color: Airbus H125
Registration No.: N43SD
Registered Owner: Pinellas's County Sherriff's Office ("Operator")

Any replacement of the above referenced aircraft.

Any additional aircraft purchased leased or operated by Operator, or operated by an aircraft manager engaged by Operator to operate Operator's aircraft, in the future, subject to providing Landlord written advance notice of same.

For the purposes of this Lease, the capitalized term "Tenant's Aircraft" shall *only* mean any and all aircraft listed above and in compliance with this Sub-Paragraph.

Tenant shall be permitted to store any aircraft on the Premises not registered to, leased, or operated by Tenant pursuant to subleases that do not exceed one (1) year in duration ("Managed Aircraft").

For the purposes of this Lease, the capitalized term "Aircraft" shall *only* mean any and all aircraft listed above and in compliance with this Sub-Paragraph.

In the event any Managed Aircraft are stored on the Premises, or in the event Tenant contracts with a third-party operator of Tenant's Aircraft, then in that event Tenant shall be required to provide Landlord with a copy or copies of the subleases or operator agreement(s) and proof of insurance in compliance with Section 6 for such Aircraft before storing such Aircraft on the Premises. In Landlord's sole discretion, Tenant shall also be required to obtain and provide to Landlord a signed Joinder Agreement, in a form substantially similar to that attached as **Exhibit "E"** signed by the Registered Owner of any and all Managed Aircraft or third-party operator of Tenant's Aircraft and proof of insurance in accordance with the applicable provisions of Section 6.

Without limitation on the foregoing, from time-to-time Landlord may request in writing for Tenant to provide a complete list of all aircraft stored on the Premises within fourteen (14) days of said request. Should Tenant fail to respond to Landlord's request within fourteen (14) days, and after being provided an additional five (5) day written notice to cure, Tenant may be deemed in Default pursuant to the Defaults and Terminations Paragraph, and all Sub-Paragraphs thereunder, of this Lease.

1.03 <u>Premises:</u>

The Premises shall be constructed according to the below and as generally located in the Site Plan as described below with all amendments and supplements thereto. on **Exhibit "A"**. The Landlord reserves the right to adjust the final location in the first ninety (90) days after the Execution Date and the resolution of Tenant's environmental issues, whichever occurs later, with the reasonable consent of Tenant, which consent shall not be unreasonably withheld or delayed.

Tenant acknowledges that the Premises shall be designed and constructed by Landlord in accordance with the following documents, as hereinafter amended, that are incorporated by reference herein: (a) the Pinellas County Hangar Criteria Design Volume 1 dated August 6, 2020 ; (b) the Pinellas County Airport Hangar Criteria Design Volume 2 dated August 6, 2020 ; (c) the Pinellas County Airport Hangar Criteria Design Volume 3 Drawings dated September 10, 2021 , which shall be amended by agreement of both parties in writing within ninety (90) days of the Execution Date or the Tenant's resolution of the environmental contamination of the proposed construction site, whichever occurs later, and (d) the requirements of all governing authorities having jurisdiction over construction of the Premises which shall supersede and amend these exhibits and in accordance with Paragraph 15.02 ("Landlord Improvements"). Any changes or additions requested by Tenant that are not included in the above plans and specifications ("Premises Plans") shall be designed, permitted and constructed by Landlord explicitly conditioned however on such changes and/or additions being communicated and agreed to by the Landlord within sixty (60) days of the Execution Date (the "Initial Design Phase"). Any further changes to the Premises Plans requested by Tenant arising after the Initial Design Phase are subject to the consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and any such further modifications to the Preliminary Plans occurring after the Initial Design Phase shall be constructed, if consented to by the Landlord, solely at

the Tenant's cost and expense (including any and all professional, permitting, engineering and construction costs related to such requested changes or modifications). Tenant acknowledges that the Landlord Improvements are limited to those signed off on by all parties in the Initial Design. Tenant shall be solely responsible for all costs and expenses related to the Tenant Improvements that are not included in the Initial Design. Landlord represents and warrants that upon the completion of Landlord's Improvements, the Premises will be materially and substantially in compliance with all applicable building, safety, fire, and all other laws, statutes, codes, ordinances, rules, and regulations of federal, state and local governmental agencies, including, without limitation, the Americans with Disabilities Act, as existing as of the Execution Date, and subject to all permitted and lawful exceptions to same and further subject to all matters of public record (collectively "Applicable Laws"). All of Landlord's Improvements shall be done in a good and workmanlike manner and materially and substantially in compliance with all Applicable Laws. To the best of Landlord's actual knowledge, Landlord hereby warrants and represents that at such time as it delivers possession of the Premises to Tenant, the structure, roof, roof membrane, elevator (if any), heating, ventilation, air conditioning, lighting, electrical, plumbing, sewer, and other systems and fixtures serving the Premises will be in good condition and working order.

By taking occupancy of the Premises on the Commencement Date as defined below, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Premises in an "AS IS/WHERE IS" condition. BY TENANT'S EXECUTION OF THIS LEASE, TENANT IS WAIVING ANY AND ALL CLAIMS ARISING FROM THE EASILY OBSERVABLE CONDITIONS OF THE PREMISES. This Lease and the Premises are subject to all matters of public record.

Tenant accepts the estimates herein, including the estimates for the interior buildout referenced herein as Pinellas County Hangar Criteria Design Volumes 1 through 3,

1.04 **Initial Term:** The Lease shall commence ten (10) days after (i) a Certificate of Occupancy for the Premises is issued; (ii) all Landlord Improvements are substantially completed with less than five (5%) percent remaining ("Substantial Completion"). ("Commencement Date"). The Initial Term of the Lease shall then continue to be automatically coterminous with the Landlord's Prime Lease as defined below in Section 2, including any terminations, extensions or expiration to the Term of the Prime Lease. Commencement Date of the Initial Term will be memorialized in a Rent Commencement Addendum in form similar to that attached as **Exhibit "D"**.

Landlord shall diligently pursue the Substantial Completion and delivery of the Premises to Tenant. The parties acknowledge that such Substantial Completion could take a total of approximately twenty-nine-months (eight-months for final design; seven-months for plan review, permitting and other governmental approvals, bidding and contracting, and fourteen-months for construction), from the date this Lease is fully executed subject to extensions caused by events of Force Majeure as defined in this Lease.

In no event shall Landlord be liable to Tenant for any damages whatsoever for failure to deliver the Premises by any particular date, nor shall Tenant be liable to pay any Rent or other sums to Landlord until ten (10) days after Substantial Completion other than the Pre-Paid Rent/Design Deposit as defined below.

Renewal Term(s) (Subject to Par. 3 titled "Term"): The Lease is automatically co- terminus with the termination of the Prime Lease as defined in Section 2. Therefore, Tenant shall have no Renewal Terms, although the Lease shall be subject to further extension to the extent the Prime Lease is extended, in Landlord's sole and absolute discretion.

1.05 **Rent During Initial Term (Subject to increases as set forth in Par. 4 titled "Rent"):** The Rent shall be approximately One Million Sixty Hundred Fifty Thousand and no/100 Dollar ($1,650,000.00) per Annum or ($38.62/ sq. ft.) per square foot, based on Landlord's preliminary total project cost estimate for constructing a forty-two thousand, seven hundred twenty square feet (42,720 sq. ft.) hangar/office plus the pass through rent from the Prime Lease attributed to the Premises and the Sheltair's cost of providing the required Real Property Insurance if the Tenant elects to have Sheltair do so instead of it being purchased by Tenant. The parties acknowledge that the above annual and per square foot Rent amount is preliminary in nature and calculated based on an initial working estimate of Twenty Million and no/100 Dollar ($20,000,000.00) total project cost (soft, financing, and hard costs) to Landlord, less the Three Hundred and Fifteen Thousand and N0/100 Dollars ($315,000.00) paid by Tenant for Pre-paid Rent/Design as outlined in Paragraph 4 "Rent". The first year annual Rent shall be determined by multiplying the total project costs (soft, financing, and hard costs) by Eight and one quarter per cent (8.25%) plus the pass-through rent from the Prime Lease attributed to the Premises and Landlord's cost of providing the Real Property Insurance if the Tenant elects to have Landlord do so instead of it being purchased by Tenant. The per square foot Rent and pass through rent from the Prime Lease shall be memorialized in the Rent Commencement Addendum in form similar to that attached as **Exhibit "D"**. The Parties further acknowledge that any changes to the total project cost of the Landlord Improvements occurring from the Initial Design Phase through completion of construction, shall subject the above rent calculations (but not the pass-through Prime Lease rent,) to the extent that the total project cost exceeds or falls below the above stated initial working estimate. Prior to the completion of construction, the Landlord shall provide the Tenant with a sworn statement of the total project costs broken down to reasonable descriptive subcomponents, for the purposes of adjusting the per square foot rent as required above. Tenant shall be entitled to review Landlord's total project costs documentation to confirm the total project and subcomponent actual costs. If any actual cost is disputed, Tenant shall pay rent based upon the initial working estimate adjusted for any undisputed overrun, until such time as any disputed actual total project cost have been determined, at which time any resulting shortfall or overpayment of rent shall be paid by Tenant or refunded by Landlord. Further this is a triple net lease. Tenant shall be solely responsible for all

items listed on **Exhibit "B"** hereto including without limitation, all utilities, insurance, maintenance and the Rent as set forth herein shall also include the direct pass-through rent owed by Landlord under the Prime Lease attributable to the Premises as defined herein including any subsequent rent increases under the Prime Lease.

1.06 **Annual Rent Increase:** See Paragraph 4, titled "Rent."

1.07 **Late Charge and Returned Check Charge:** A late charge, the greater of ten (10%) percent of Rent or $100.00, will be assessed on all Rent not received by the 5th of each month. Such late charge shall be charged each month thereafter until such Rent payment is received in full. If funds are insufficient for any payments made by check, note or similar instrument, payment will be subject to a $75.00 reprocessing fee. All sums of money required to be paid by the Tenant to the Landlord under this Lease shall bear interest at the highest rate permitted by law, both pre and post judgment, from the date same was due until the date same is paid in full. Should two (2) or more checks, notes, or similar instruments of payment be returned to Landlord as insufficient within the Initial Term and/or any Renewal Terms of this Lease, Landlord shall have the option to demand Rent payments be made by certified check and/or fund, wire transfer, credit card and/or be prepaid.

PURSUANT TO PARAGRAPH 4, TITLED "RENT," ANY AND ALL AMOUNTS DUE BY TENANT TO LANDLORD UNDER THIS LEASE SHALL BE DEEMED RENT.

1.08 **Security Deposit (Subject to Par. 5 "Security Deposit"-min. 0-months' Rent):** N/A

1.09 Intentionally Omitted.

1.10 **Utilities (Subject to Par. 16 titled "Utilities"):** See **Exhibit "B"** attached hereto.

1.11 **Permitted Use.** Tenant shall use the Premises for administration, offices, aircraft operations, training, storage of only Operator's Aircraft listed above, and as may be added and approved by Landlord as provided herein, and storage of any Managed Aircraft as defined herein; and maintenance, repairs, and servicing of Operator's Aircraft (but not Managed Aircraft). The Permitted Uses listed herein are explicitly conditioned on the Prime Landlord's approval having been obtained by Tenant for this Permitted Use, which approval has been received by Landlord. Tenant's use of the Premises is strictly limited to the Permitted Uses detailed within this Sub-Paragraph and Tenant is expressly prohibited from utilizing and/or using the Premises for any other uses, businesses, services, and/or any other activities that are not explicitly and expressly listed within this Sub-Paragraph. Any conflicts between this Sub-Paragraph and the Paragraphs of this Lease titled "Compliance with Governmental and Airport Regulations" and "Safe Use of Premises," and all Sub-Paragraphs included thereunder, shall be resolved in favor of Landlord. With the exception of a state or federal declared disaster, under no other circumstances shall the Premises be used for any Fixed Base Operation or Aviation Fuel Service to third parties, nor shall the Premises be used as an

ancillary location for "through the fence" servicing of other uses or operations of Tenant unless specifically authorized in this Sub-Paragraph 1.11 above titled "Permitted Uses". Tenant represents and covenants that substantially all of the functions at the Premises will be directly related to the day-to-day operations at the Airport facility and/or directly related to aviation. Tenant agrees that Landlord and/or the landlord under the Prime Lease may establish and amend from time-to-time reasonable Rules and Regulations regarding the use, operation and maintenance of the Premises and the complex housing same, and Tenant covenants to abide by all such Rules and Regulations that shall be now or hereafter in effect from time to time as implemented by the Landlord, and by the landlord under the Prime Lease, as long as Tenant or Operator is permitted to conduct all maintenance and repairs permitted by FAA repair station. Tenant shall be permitted to perform maintenance, repairs, and servicing on Tenant's Aircraft(s). No repairs or maintenance shall be performed on Managed Aircraft or third-party Aircraft in the Hangar without the prior written approval of Landlord, except such minor maintenance as would normally be performed by an aircraft owner without the benefit of an aircraft mechanic. Tenant shall not block, in any way, manner or form, any adjacent Hangars and ingress and egress therefrom beyond what is necessary for ingress and egress into the Premises. **Tenant shall not engage in any vehicle maintenance of any kind anywhere on the Premises, except for restocking of medical supplies and cleaning and cosmetic maintenance.** Tenant shall not engage in solicitation anywhere on the Premises or the surrounding Airport without the express written permission of Landlord. Specifically, and without limitation, Tenant warrants it shall not provide hangar storage for any length of time to any aircraft other than the Aircraft and/or Managed Aircraft permitted, defined and outlined within Sub-Paragraph 1.02 of this Lease titled "Type(s) of Aircraft".

Tenant shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week and three hundred sixty-five (365) days a year.

1.12 **Safe Use of Premises:** Tenant agrees to make no unlawful, offensive or noxious use of the Premises. In addition, no explosives, volatile or flammable chemicals (except for automotive and aviation fuels and oil), or any other property which would materially increase the hazard of fire shall be stored on the leased Premises unless explicitly and expressly approved by Landlord, subject to any and all statutes, ordinances, rules, regulations and/or requirements of the federal, state, county or city government departments and/or bureaus exercising jurisdiction over the Premises, including FAA regulations and rules and regulations of the applicable airport. In addition, and not withstanding anything in this Lease to the contrary, Tenant shall not perform any aircraft fuel transferring, welding, torch cutting, torch soldering, and/or doping within the Premises pursuant to applicable NFPA guidelines and **painting is strictly prohibited**. Tenant shall be solely responsible for any and all fire inspection and/or other safety related inspection fees.

1.13 **Brokers:** Each Party warrants to the other that no brokers are due or owed any commission or fees related to this Lease. Each party covenants and agrees to hold harmless and indemnify the other party from and against any and all cost, expense (including without limitation reasonable attorneys' fees) or liability for any

compensation, commissions or charges claimed by any broker or agent representing such party with respect to this Lease or the negotiation thereof.

2. **PRIME LEASE**. This Lease shall be subordinate to Landlord's Airport lease and any amendments thereto (collectively the "Prime Lease"), which is attached as **Exhibit "F"**. Tenant shall be bound by the terms and conditions of the Prime Lease, and shall not do anything which will result in a default by Landlord under the Prime Lease, and shall comply with all applicable provisions of the Prime Lease.

To the extent Landlord extends the term of the Prime Lease, in Landlord's sole and absolute discretion, then in that event the Term as defined in this Lease shall be automatically extended upon written notice by Landlord to Tenant.

3. **TERM**. The Initial Term of this Lease shall be as set forth in Sub-Paragraph 1.04 titled, "Initial Term." Landlord shall have the right to charge Tenant Holdover Rent as so defined in the Paragraph 12 of this Lease titled "Surrender of Premises", and if Landlord has provided Tenant with a Lease Amendment and/or Renewal of Lease Term requiring signature, if any, and the Tenant has not returned such executed documents to Landlord within ten (10) days of receiving same from Landlord.

4. **RENT**. The term "Rent" shall include all amounts due by Tenant to Landlord under this Lease. During the Initial Term of this Lease, Tenant shall pay Landlord Rent as set forth in Sub-Paragraph 1.05, titled "Rent During Initial Term," in equal monthly installments in advance on the first day of each month without demand or set off whatsoever. Rent shall be due and owing starting on the Commencement Date ("Rent Commencement Date"). If the Commencement Date is not the first day of the month, then the Rent for the first partial month shall be prorated accordingly. In addition to monthly Rent, Tenant shall pay all applicable sales tax on rentals, if any. On each anniversary date of the Rent Commencement Date, during the Initial Term and during any Renewal Terms, if any, the Rent shall be increased by the greater of Consumer Price Index ("CPI") (All urban consumers 1982= 100; all items) based on a twelve (12) month period ending ninety (90) days prior to the anniversary date of the Commencement Date not to exceed five percent (5%) and not to be less than three percent (3%) ("Annual Increase"). Additionally, Rent shall also automatically and simultaneously increase on a direct pass through basis in an amount equal to any increase of Landlord's cost of providing real property insurance required herein, if applicable, plus any increase in rent attributable to the Premises as calculated under the Prime Lease effective after the Rent Commencement Date any increase in Rent attributable to an increase in the rent due under the Prime Lease, which shall occur simultaneously with the effective date of all such increases irrespective of whether same occurs with an anniversary fate of the Commencement Date. The late charge set forth in Sub-Paragraph 1.07, titled "Late Charge and Returned Check Charge," shall be added to all Rents received and accepted after the 5th day of the month, and for all checks which are not honored. Tenant hereby designates the following individual as Tenant's billing contact:

Name: Budget & Analytics Manager
Direct Phone No.: (727) 464-4215
Email: pdidiana@pinellas.gov

The Parties acknowledge that Tenant shall pay Landlord, within 30-days from the Execution Date, an amount equal to Three Hundred Fifteen Thousand and no/100 ($315,000.00) Dollars ("Pre-Paid Rent/Design Deposit") which shall be non-refundable and shall be used by Tenant to pay a portion of the total project costs, unless:

4.01 In the event from the Execution Date until start of construction (including demolition and site preparation work) due to the occurrence of an uncured default by Tenant under this Lease, then Landlord shall: (w) so notify Tenant in writing; (x) provide Tenant within thirty (30) days of such notice commercially reasonable proof of all funds expended by Landlord related to all costs associated with this Lease and the Premises Plans and design/permitting of same ("Expended Costs"); and (y) return the Pre-Paid Rent/Design Deposit Landlord *less* the amount of the Expended Costs which shall be retained by Landlord as reimbursement for same; and (z) the Lease shall terminate upon return of the Pre-Paid Rent/Design Deposit less the Expended Costs to Tenant; or

4.02 In the event from the start of construction (including demolition and site preparation work) due to circumstances reasonably beyond the control of Landlord, the Premises Plans cannot be completed or a building permit cannot be obtained for any or no reason; then in either event, Landlord shall: (i) so notify Tenant in writing; (ii) provide Tenant within thirty (30) days of such notice commercially reasonable proof of all funds expended by Landlord related to the Expended Costs; and (iii) return the Pre-Paid Rent/Design Deposit Landlord *less* the amount of the Expended Costs; and (z) the Lease shall terminate upon return of the balance of the Pre-Paid Rent/Design Deposit less the amounts stated herein.

5. SECURITY DEPOSIT. Omitted.

6. INSURANCE. During the Initial Term of this Lease and any applicable Renewal Term(s) thereof, Tenant shall, at its own cost and expense, purchase and continuously maintain the following insurance policies: (i) Worker's Compensation Insurance - per statutory coverage as prescribed by the State where the Premises is located; (ii) Employer's Liability Insurance - in the minimum amount of $5,000,000; (iii)All Risk Hull Insurance on the Aircraft in an amount to cover all Aircraft, (iv) (v) Comprehensive Aircraft Hull and General Liability Insurance with a combined single limit of not less than $2,000,000, or as otherwise agreed to by Landlord in writing, insuring Tenant's liability and any Registered Owner's liability against bodily injury to persons, guests, including passengers, or damage to property; (vi) n/a; (vii) Automobile Liability Insurance, to a minimum limit of $1,000,000 per occurrence for all Tenant's vehicles operated on non-Aircraft Operations Areas; (viii); and (ix) a $1,000,000 environmental liability and remediation insurance policy, (ix) Contents, Equipment and Personal Property Insurance covering the full value of Tenant's property located

on the Premises, and (x) Real Property Insurance covering the full market value of Landlord's improvements. At Tenant's election, Tenant can direct Landlord to procure the Real Property Insurance provided that Tenant reimburses Landlord for the expense of said Insurance. If Tenant's activities in conjunction with the use of the Premises require vehicle and/or support equipment access to the Airport's Aircraft Operations Area (AOA), Tenant shall further be required to obtain Comprehensive Automobile Liability coverage in an amount not less than the higher of the minimum required by the Airport for such coverage or $2,000,000. Such determination shall be made by Landlord. Landlord and Landlord's designated fueling agent, if applicable, shall be named as an additional insured on all such insurance policies including those required to be obtained by the Registered Owner of any Managed Aircraft, excepting only the Worker's Compensation policy, and such insurance shall provide that same may not be canceled or the coverage reduced without at least thirty (30) days written notice to Landlord and the landlord under the Prime Lease. Tenant shall provide certificates of such insurance prior to the Commencement Date of this Lease, and subsequently prior to the expiration of the succeeding certificate and at any time upon request by Landlord.

In lieu of third-party insurance, Tenant shall have the right to partially self-insure the insurances required above in subsections (i), (ii), (v) and (vii) as to General Liability, Auto Liability and Workers Compensation. The term "self-insure" shall mean Tenant is itself acting as though it were the insurance company providing the insurance required under the provisions of this Lease and Tenant shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease. If an event or claim occurs for which a defense and/or coverage would have been available from the insurance company issuing insurance for which Tenant is required to maintain pursuant to this Section and Tenant has self-insured with respect to such required insurance, Tenant shall, to the extent required under this Lease, and subject to the limitations of the required insurance or
§768.28, Florida Statutes, whichever is greater (i) undertake the defense of any such claim resulting from acts of negligence exclusively by Tenant or its employees, agents, subcontractors or invitees, including a defense of Landlord at Tenant's sole cost and expense; and

Furthermore, and conditioned upon execution of the Joinder Agreement in a form substantially similar to the one attached hereto as **Exhibit "E"**, the requirements of (iii), (v) as to Comprehensive Aircraft Hull may be satisfied by the listing of Landlord as an additional named insured on the operator's insurance in satisfaction of these insurance requirements.

6.01. Primary Insurance: Tenant's insurance policies will respond on a primary basis for any occurrence resulting from the exclusive negligence of Tenant or its employees, with any insurance carried by Landlord to be construed as secondary or excess insurance in cases of Tenant's exclusive negligence.

7. LANDLORD'S LIEN. On its own accord, Tenant pledges and assigns (and waives all objections and defenses) to Landlord, all the improvements, furnishings, fixtures, equipment, and other personal property, including any interest held by Tenant in same, as security for the payment of all monies due Landlord herein, and fully consents that Landlord's

lien for such payment(s) may be enforced by one or more of the following: recording a lien (including without limitation a UCC-1, Warehouse or FAA lien), distress, foreclosure or otherwise at the option of Landlord. Tenant agrees that such liens are granted to and vested in Landlord. In addition, Landlord is entitled to all remedies provided under all applicable statutes. The Tenant specifically acknowledges and agrees that any deadlines applicable as to the date of last service performed shall be deemed waived and/or non-applicable as lien is being pre-approved to be recorded.

7.01. Derelict/Abandoned Aircraft. Tenant specifically acknowledges and agrees that any and all Aircraft and/or Managed Aircraft on the Premises, shall be and remain at all times either: (i) flight worthy and bearing a current certificate of airworthiness issued by the Federal Aviation Administration; or (ii) shall be in the process of being repaired and/or undergoing maintenance, which repairs and/or maintenance shall be pursued diligently and continuously in a reasonable and efficient manner and in accordance with any governing rules and/or regulations set in place by the Airport and/or any governing authority having jurisdiction at the Airport. In the event an Aircraft, Managed Aircraft and/or aircraft on the Premises is not compliant with the above, it shall be deemed a derelict and/or abandoned aircraft ("Derelict/Abandoned Aircraft") by Landlord, the landlord under the Prime Lease, and/or any other applicable governmental authority, and subject to all applicable government and Airport regulations related to same, including, without limitation, removal of the Aircraft, Managed Aircraft and/or aircraft and disposal of same by Landlord and/or the landlord under the Prime Lease after prior written notice pursuant to applicable airport rules and regulations and/or local, state and/or federal law. Any and all fees, costs or other expenses related to the removal of the Derelict/Abandoned Aircraft shall be reimbursed to Landlord and/or the landlord under the Prime Lease within the applicable time frame provided in such notice.

8. DISCLAIMER OF LIABILITY. Landlord will not be liable for any injury or damage to Tenant or Tenant's property which may be caused by any theft, vandalism, water damage or any other cause, (unless caused by the gross negligence, breach of this Agreement, or willful misconduct of Landlord, its officers, or employees).

9. INDEMNIFICATION AND LIABILITY. Each party agrees to bear responsibility for its own negligence and negligence of its employees, agents, invitees and subcontractors. Landlord agrees to indemnify Tenant for any breach of this Agreement or other claim based upon Landlord or its agents, invitees or subcontractors' gross negligence or willful misconduct that is not disclaimed in the preceding paragraph 8, plus Tenant's attorney fees and costs in connection with such claim, with the scope of Landlord's indemnification being limited to the value of Landlord's equity in Landlord's leasehold interest in the Premises for the satisfaction of Tenant's remedies Tenant shall indemnify and defend the Landlord for any breach of this Agreement and claims that comply with the procedures found in §768.28, Florida Statutes, and pursuant to the

requirements of § 129.06, Florida Statutes and Article VII, section 10 of the Florida Constitution, with the scope of Tenant's indemnification to Landlord being limited to the amounts provided in the Insurance and self-insurance provisions above, as otherwise owed under this Lease, or the limitations of §768.28, Florida Statutes, whichever is greater, plus Landlord's attorney fees and costs in connection with such claim.

10. **FORCE MAJEURE**. Landlord and Tenant each shall not be liable for its failure to perform this Lease or for any loss, injury, damage or delay of any nature whatsoever caused by any Act of God, fire, flood, accident, strike, labor dispute, riot. insurrection, war or any other cause beyond a party's control. Notwithstanding the foregoing, to the extent performance is still required by Landlord under the Prime Lease, then in that event, performance shall be required by Tenant hereunder. If the Premises, either partially or entirely, should be damaged or destroyed by any Act of God or casualty including but not limited to those listed above, Tenant will promptly notify Landlord of such casualty.

10.01. Hurricane Procedures/Act of God. Tenant shall be solely responsible for taking necessary precautions to preserve and protect any Aircraft, Managed Aircraft, and/or aircraft and personal property on the Premises related to Hurricanes and other Acts of God. Tenant further agrees to comply with and abide by any provisions for storm or hurricane preparedness required by Landlord and/or the landlord under the Prime Lease, in their respective sole discretion, if any, necessary for the safety and security of the Aircraft, Managed Aircraft, aircraft and/or Airport and/or Premises and/or neighboring aircraft and property ("Hurricane Plan").

10.02 Damage not caused intentionally by Tenant. If the damage or destruction is not proximately caused by Tenant's, Tenant's agents', invitees' or employees': (i) intentional act; (ii) intentional failure to act; (iii) breach of this Lease; or (iv) gross negligence, Landlord will repair and restore the buildings and improvements (exclusive of improvements installed by Tenant) so damaged or destroyed as nearly as possible to their condition prior to such casualty, limited, however, to the amount of insurance proceeds actually received by Landlord. In the meantime, if the Premises should be rendered totally unusable due to such casualty, there will be an abatement of Rent until the Premises are again tenantable. In the event Landlord does not make the Premises useable within one hundred eighty (180) days after Landlord receives the insurance proceeds in connection with the casualty, or in any event within three hundred sixty (360) days after the date of the casualty, Tenant may terminate this Lease in writing but shall have no other remedies and Tenant shall thereafter owe no further obligations to Landlord. In the event the damage is partial, and the remaining Premises are usable for the use stated herein in the sole discretion of the Landlord, the Rent shall be pro-rated diminished according to the square footage of Hangar and Office Premises to the extent so taken until restored or the Lease is terminated as to such remaining unusable areas. All such calculations shall be performed by Landlord.

10.03 Damage intentionally caused by Tenant. If the damage or destruction is proximately caused by Tenant's, Tenant's agents', invitees' or employees': (i) intentional act;
(ii) intentional failure to act; (iii) breach of this Lease; or (iv) gross negligence, then in that event there shall be no abatement of Rent. Furthermore, all of the repair and or reconstruction

costs of the Premises shall be the primary responsibility of Tenant and/or Tenant's insurance carrier, if applicable, without limitation to the amount of insurance proceeds if any received by Tenant, and further shall be also subject to the provisions of Sub-Paragraph 6.02 above. In the event the Premises are not useable within one hundred eighty (180) days after Landlord receives the proceeds from Tenant and/or Tenant's insurance in connection with the casualty, or in any event within three hundred sixty (360) days after the date of the casualty, Landlord may terminate this Lease in writing, and shall retain Landlord's rights to all other remedies hereunder. In the event the damage is partial, and the remaining Premises are usable for the use stated herein, the Lease in Landlord's sole discretion shall continue as to such areas without any proration in Rent.

11. ASSIGNMENT AND SUBLETTING. Tenant may not assign this Lease, except to another County government entity, appointing authority, or other County special district (the "Pre-Approved Successors in Interest"). Tenant shall not let or sublet the whole or any part of the Premises without the prior written consent of Landlord which may be withheld and/or conditioned in Landlord's commercially reasonable discretion. Notwithstanding the foregoing, in the event of an approved assignment, and unless specifically and explicitly consented to by Landlord, Tenant and any Guarantors shall remain liable throughout the Term of the Lease post assignment and post sub-letting for obligations of the Lease.

This Lease shall be freely assignable by Landlord to a Pre-Approved Successor in Interest, with thirty (30) days written notice.

12. SURRENDER OF PREMISES. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Premises will be substantial and will exceed the amount of the Rent payable hereunder. Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord on the expiration date or sooner termination of this Lease, in addition to any other right or remedy Landlord may have hereunder or at law or in equity, Tenant shall pay to Landlord for each month and for each portion of any month during which Tenant holds over in the Premises after the expiration date or sooner termination of this Lease, a per diem calculated with respect to an annual rate equal to one hundred fifty(150%) percent of the respective Rent (payable hereunder for the last month of the Term of this Lease) ("Holdover Rent"). Notwithstanding the forgoing, the Parties agree that for the first six (6) holdover months only, Holdover Rent shall be equal to 100% and not 150% of the then applicable Rent. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the expiration date or sooner termination of this Lease and no acceptance by Landlord of payments from Tenant after the expiration date or sooner termination of the Term of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Paragraph. If Tenant remains in possession of the Premises after the expiration or other

termination of this Lease, Tenant shall be considered to be a tenant holding over and not a tenant from month to month. All other provisions of this Lease shall apply during the holdover period. No such period shall be deemed to be an extension or renewal of this Lease. In connection with the provisions of this Paragraph, Tenant hereby waives any claim or right arising out of any applicable law requiring the service of a notice to terminate said holdover tenancy notwithstanding the fact Landlord accepted payment of any monies theretofore mentioned.

Upon termination, Tenant shall surrender the Premises in broom swept, good repair and condition and with all improvements located thereon (except as otherwise provided for removal by Tenant herein), reasonable wear and tear excepted. Notwithstanding the forgoing, Tenant shall not be required to remove any Tenant Improvements, including wiring, cable, or conduits, which were properly installed in accordance with the requirements of this Lease. Any and all costs or expense of any repairs necessary to restore the Premises to good condition and repair shall be the sole responsibility of the Tenant. Tenant shall provide Landlord with the same number of keys, access cards, and badges for all gates, offices, mailboxes, etc. given to Tenant and/or its representatives during the Initial Term of this Lease and/or any applicable Renewal Term(s).

13. <u>ALTERATIONS OR IMPROVEMENTS</u>. Tenant shall not make any alterations, additions or improvements to the exterior or interior of the Premises or to any other property of Landlord without Landlord's prior written consent, or erect or install any additional improvements, signs and equipment without Landlord's prior written consent, which shall not be unreasonably withheld. Any alterations or additions that Tenant desires to seek Landlord's approval for hereunder, shall be presented to Landlord in writing with detailed plans for same. Tenant acknowledges that if and when approval is granted, if at all, such approval shall be conditioned on: (i) Tenant being solely responsible for obtaining all applicable government permits; (ii) furnishing Landlord or all updated/current plans, specifications and copies of all permits; (iii) complying with all applicable regulations and performing all work in a workmanlike and expeditious manner in compliance with all terms and conditions of this Lease; (iv) supplying Landlord with completed as-built plans and specifications;; and (v) any and all vendors, third parties, licensees and/or invitees to be retained by Tenant to perform the alterations meeting the Landlord's conditions (i)-(v) stated above.

It is expressly understood that no signs are to be installed anywhere on the Premises without Landlord's written prior and explicit consent. Should any governing authority, including without limitation the Prime Landlord, demand removal of any alterations, said removal will be at Tenant's sole expense and responsibility.

If any mechanic's or construction lien is recorded against the Premises or against Tenant's leasehold interest in the Premises by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant, Tenant shall, within thirty (30) days after the recording thereof, cause such lien to be discharged or bonded off of record. In any event, neither the Prime

Landlord's nor the Landlord's interest in the Premises shall be subject to any lien arising out of any work, labor, services or materials supplied or claimed to have been supplied to or for Tenant. **Tenant shall never, under any circumstances, have the power to subject the interest of Landlord or the Prime Landlord in the Premises to any mechanics', construction or materialmen's liens or liens of any kind, nor shall any provision contained in this Lease ever be construed as empowering the Tenant to encumber or cause the Landlord to encumber the title or interest of Landlord in the Premises. Tenant shall be solely responsible for notifying all vendors and contractors of this provision. Any lien filed against the Premises in violation of this Paragraph shall be null and void and of no force or effect. Tenant shall indemnify and hold Landlord harmless for, inter alia, any and all fees and costs related to the enforcement of this provision.**

If so requested by Landlord, Tenant agrees to execute within five (5) days of demand, a Memorandum of SubLease encompassing this provision of no lien in a form substantially similar to the attached **Composite Exhibit "C-1"**.

13.01 Landlord Improvements. As set forth above in additional detail, Landlord agrees to be responsible for finalizing all architectural and civil design, permitting and construction of the Premises at Landlord's sole cost in accordance with the Premises Plans. Notwithstanding the forgoing, Landlord shall consult with Tenant, and provide periodic progress and key milestone updates and the final Premises Plans for the hangar and office portions of the Premises will be subject to Tenant's additional design, explicitly conditioned on such final input being given by Tenant to Landlord during the Initial Design Phase.

Tenant further acknowledges that the feasibility for the development of this project on the Premises is dependent on, among other things, receiving approvals from all applicable governmental jurisdictions having environmental, zoning, fire protection, stormwater/drainage authorization including all review and approving authorities with the Pinellas County Government. In particular, the requirements associated with coastal floodplain impacts compensating storage requirements, the new base flood elevation relative to the limit of moderate wave action, and requirements to or not to discharge to the Cross Bayou Canal.

13.02 Tenant Improvements. Tenant is responsible for providing Landlord with full and complete specifications sufficient to allow Landlord to obtain building permits and begin construction, prior to the end of the Initial Design Phase and to provide all Tenant supplied equipment or materials so as to not cause any delay in Landlord's construction of the following: procurement and installation of FF&E, communications and network service, technology software and hardware including all networking and server equipment, procurement and installation of their security system including access control and cameras/monitoring). Any of the above items that are provided at Landlord's cost shall be added to the total project costs for purpose of calculating rent pursuant to paragraph 1.05. Tenant shall also be responsible for procurement and activation of all utility services.

Ownership of Tenant Improvements. All Tenant improvements, fixtures, furnishings, inventory, machinery, and equipment constructed or installed on the leased premises by Tenant shall be personal property, and Tenant shall have legal title thereto during the term of this Lease. Upon the expiration of the term of this Lease Agreement, or a termination hereof for Tenant's

default, or the sale or attempted sale of the Tenant's improvements or fixtures, title to all Tenant improvements constructed on the leased premises and any fixtures therein shall vest in the Landlord. All personal property installed within the structure contemplated by this Lease Agreement may be removed by the Tenant, provided that said removal is accomplished prior to the expiration of the lease term or any renewal thereof without damage to the building. Tenant's right to remove said personal property shall not be construed to include removal of support equipment or fixtures such as air conditioning, base electrical service, or plumbing, which would customarily be provided within such a structure.

14. **MAINTENANCE BY TENANT**. Tenant agrees to keep the Premises in a good state of repair during the Term, including, without limitation, Tenant being responsible for any items so indicated on the attached **Exhibit "B"**, if any. Nothing shall limit the obligations set forth herein, and Tenant hereby waives any claims of lack of access, prior use or the age of the Premises. Tenant shall keep the Hangar floor clean and clear of debris, oil, grease and/or toxic chemicals and no boxes, crates, rubbish, paper or other debris that could cause or support combustion shall be permitted to accumulate within or outside the Hangar. Landlord, at its sole cost and expense, shall maintain only the structural components of the Hangar and Office, unless specifically identified as Landlord's responsibility on **Exhibit "B"**. All items on **Exhibit "B"** shall be the responsibility of Tenant, unless specifically marked as Landlord's responsibility. Furthermore, in the event Tenant's negligence cause, exacerbate or require the repair, replacement or maintenance of any items on the Premises, in such event all such costs shall be borne solely by Tenant.

Landlord's obligations to repair, replace or maintain items as explicitly set forth on **Exhibit "B"** are at Landlord's sole cost and expense, and shall only apply to improvements existing as of the Commencement Date and shall specifically not apply to any improvements constructed by Tenant under Section 13.02, Tenant Improvements, above which shall remain the sole and exclusive maintenance, repair and replacement obligation of the Tenant.

Tenant warrants that no hazardous or flammable materials will be stored within or about the Premises, subject to the Paragraph of this Lease titled "Safe Use of Premises." This Lease, at Landlord's option, shall be terminated if Tenant willfully or grossly negligently causes damage to Landlord's property, including specifically, but not limited to, any of the following:

14.01. Paints or otherwise covers the internal or external walls floor or ceiling of the Premises without Landlord's prior written consent.

14.02. Dumps oil, gas or any harmful liquids or solids anywhere on Landlord's property other than in appropriate disposal containers. An accidental discharge shall not be grounds for termination if Tenant properly remediates/mitigates such accidental discharge and reports same to Landlord and any governmental authority to whom reporting would be legally required. In connection therewith, in the event any asphalt is damaged due to the dumping or leaking of any gasoline or oil, then Tenant shall immediately repair same at Tenant's expense within five (5) days after written notice from Landlord, or, at Landlord's option, Landlord shall repair same, in which event Tenant shall reimburse Landlord for all of Landlord's costs and expenses relating to such repair within five (5) days written demand by Landlord.

Landlord also has the right, in addition to terminating this Lease, to collect damages from Tenant for repairs made by the Landlord to return the property to the condition it was in at the time of delivery to Tenant.

15. **UTILITIES**. Tenant agrees to pay all utility charges, including without limitation charges for electricity, water and sewer, data, internet, and telephone consumed on the Premises. In the event any such utilities are not separately metered for the Premises, then Landlord shall determine Tenant's prorata share of all periodic bills for same, and Tenant shall pay same to Landlord within thirty (30) days after written notice from Landlord. Tenant shall pay all utilities on a timely basis and shall provide Landlord with proof of payment within thirty (30) days of written request for same. Tenant shall not install or use any special equipment, which uses extraordinary amounts of electricity without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, and the only electricity consumed on the Premises shall be for purposes compatible with the existing electrical services and wiring. Landlord shall not be liable for any disruption of any of the above-referenced utility or other services, nor shall Tenant be entitled to any reduction or abatement of any Rent or other Tenant payments as a result of any such disruption.

16. **NOTICES**. All notices to be given hereunder shall be in writing and shall be sent either by U.S. Certified Mail, Return Receipt Requested, or a commercial overnight delivery service where the carrier provides or retains evidence of the date of delivery to the addresses shown on the front page of this Lease, or to such other address as either party may have furnished by prior written notice sent pursuant hereto. Any notices permitted or required to be given by the terms of this Lease shall be effective upon mailing and shall be deemed sufficient if mailed by U.S. Certified Mail, Return Receipt Requested, with proper postage and address affixed thereto, or by a commercial overnight delivery service. Mail which is refused shall be deemed delivered for all purposes under this Lease.

17. **DEFAULTS AND TERMINATION.**

17.01. Anything to the contrary notwithstanding, for a period of five (5) days after receipt of written notice (mail refused shall be deemed received by Tenant), if: (i) Tenant shall fail to pay to Landlord any Rent or other charges as and when the same shall become due and payable; (ii) and for a period of fourteen (14) days after receipt of written notice (mail refused shall be deemed received by Tenant), if Tenant shall Default in the performance of or violate any of the other terms, covenants or conditions of this Lease, including without limitation as related to Derelict/Abandoned Aircraft; (iii) if any execution or attachment shall be issued against Tenant or any property on the Premises, whereby the Premises or any such property shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant (including without limitation any aircraft stored on the Landlord's property); (iv) the Premises becomes vacant, deserted, or abandoned for a period in excess of ninety (90) days or the minimum amount of time as prescribed by applicable law in the jurisdiction of the Premises (except in case of fire or similar casualty); (v) Tenant, or any entity sharing any common ownership with and/or controlled or managed by Tenant or sharing any officers or directors of Tenant ("Affiliated Tenant Entity"), shall be in default under any other agreement or contract or obligation that Tenant or any Affiliated Tenant Entity has with the Landlord or an affiliated entity of Landlord; or (vi) except as set forth herein, if Tenant shall assign this Lease or sublet the whole or any part

of the Premises, without the prior written consent of Landlord; Landlord shall have the right, at Landlord's option, to terminate this Lease and the applicable Term hereof, as well as all of the right, title and interest of the Tenant hereunder, by giving Tenant five (5) days' written notice of termination of this Lease (the "Notice of Termination"), and upon the expiration of the time stated in the Notice of Termination (the "Termination Date"), this Lease and the applicable Term hereof, as well as all of the right, title and interest of Tenant hereunder, shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's continued liability), as if the Termination Date was the expiration of the Lease Term; and Tenant shall immediately quit and surrender to Landlord the Premises and each and every part thereof, and Landlord may enter into or repossess the Premises and all personal property of Tenant located therein including without limitation Tenant's Aircraft, by any legal means, through summary proceedings or otherwise. The notices above established shall substitute for any "statutory" demands or notices as would otherwise be required prior to institution of summary proceedings for removal of Tenant or plenary collection actions in the event Rent is not paid as and when due.

17.02. Anything to the contrary notwithstanding, if for a period of thirty (30) days after receipt of written Notice of Default (i) either Party shall fail to cure a noticed Default in the performance of or violation of any of the terms, covenants or conditions of this Lease or if the default is not capable of being cured within thirty (30) days and the defaulting party has not begun and continued reasonable efforts to cure such Default within thirty (30) days, the non-defaulting party shall have the right, at non-defaulting party's option, to terminate this Lease, which termination shall be effective by giving the defaulting party a subsequent five (5) days' advance written notice of termination of this Lease (the "Notice of Termination"), after the expiration of the thirty days required by the Notice of Default(the "Termination Date"). when the right, title and interest of Tenant pursuant to the Lease shall wholly cease and expire and Tenant shall quit and surrender to Landlord the Premises. If the Lease is terminated due to an uncured default, the defaulting party shall be obligated to pay all amounts and obligation owed to the non-defaulting party. The non-defaulting party shall also be entitled to all other remedies provided by law.

In the event of a cancellation or termination of this Lease, either by operation of law, by issuance of a Judgment of Eviction or similar adjudication granting Landlord lawful right to repossess the Premises (for non-payment of Rent or for any other Default hereunder), by the service of a Notice of Default to the Tenant, by Tenant's abandonment, or otherwise, for any cause or causes whatsoever, Tenant shall nevertheless, remain and continue to be liable to Landlord for all Rent for the balance of the Term then in effect, be it the Initial Term or Renewal Term, and same shall automatically accelerate and become due and payable upon cancellation or termination of this Lease for any cause or causes whatsoever. In the event of a cancellation or termination of this Lease, Landlord may re-enter the Premises, using such force for that purpose as may be legal in the circumstances without being liable to any prosecution for said re-entry or the use of such force, and Landlord may repair or restore the Premises in such manner as may be deemed necessary or advisable, and/or re-let the Premises or any or all parts thereof for the whole or any part of the remainder of the Initial Term or Renewal Term in Landlord's name, or as the agent of Tenant, and may grant concessions or free rent or charge a higher rental than that in this Lease. From any rent so collected or received, Landlord shall first pay to itself the expenses and costs, including reasonable attorneys' fees, of enforcing this Lease, retaking, repossessing and

repairing the Premises and the expenses (including reasonable attorneys' fees, marshal's fees and moving expenses) of removing all persons and property therefrom, and any costs, including brokerage commissions, and reasonable attorneys' fees, of reletting (without obligation to so do); and second, pay to itself any balance remaining on account of the liability of Tenant for any Rent then unpaid by Tenant. Any entry or re-entry, repossession or acceptance of possession by Landlord, whether taken under summary proceedings or otherwise, shall not absolve or discharge Tenant from liability hereunder. In the event of any termination of this Lease, Tenant shall not be responsible for the cost of restoring the Premises to its original condition and shall not be responsible for the costs to repair or remove any Tenant improvements so long as such improvements are constructed in accordance with Lease, as well as any additional alterations made during the Initial Term, Renewal Term, and any extensions or expansions, regardless of whether customary or not. Any and all personal property or fixed improvements remaining on the Premises at termination shall become the sole and exclusive property of the Landlord.

The parties specifically acknowledge that full performance of the Tenant obligations under this Lease through the entirety of the Term constitutes a material portion of the consideration for Landlord to construct the Landlord Improvements which are Landlord Improvements are being built in a custom fashion to Tenant's specific use requirements and will not otherwise be the best and highest economic use by Landlord of the Premises. Therefore, in addition to the above remedies and without limitation on the above, Landlord shall also be entitled to a further amount equal to the total cost of construction of the Landlord Improvements, less any Rent paid through the date of the Tenant default.

17.03. Should any Rent so collected by Landlord be insufficient to fully pay to Landlord any and all Rent due hereunder, the balance or deficiency of such Rent shall be paid by Tenant. Tenant shall pay to Landlord the amount of any such deficiency and Tenant shall be and remain liable for any such deficiency, and the right of Landlord to recover from Tenant the amount thereof, or a sum equal to the amount of all Rent, if there shall be no reletting, shall survive the issuance of any writ of possession or other termination hereof. Tenant hereby expressly waives any defense that might be predicated upon the issuance of such writ of possession or other termination or cancellation of the then applicable Initial Term or Renewal Term hereof.

17.04. Suit or suits for the recovery of any such deficiency or damages, or for any Rent payable hereunder, may be brought by Landlord, from time-to-time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term hereof would have expired by limitation had there been no such Default by Tenant or no such termination or cancellation.

17.05. Tenant hereby expressly waives service of any notice of intention to re-enter. Tenant hereby waives any and all right to recover or regain possession of the Premises or to reinstate or to redeem this Lease as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

17.06. Tenant hereby authorizes Landlord to relocate Tenant's Aircraft, Managed Aircraft, and/or aircraft to another location on Landlord's leasehold in the event of an uncured Default on the part of the Tenant, which location may include outside tie-down or parking.

18. MISCELLANEOUS.

18.01. Services Provided: Unless agreed to in writing and executed by both parties or as part of Tenant's hurricane preparedness pursuant to Sub-Paragraph 10.01 of this Lease titled "Hurricane Procedures/Act of God", the parties hereto agree that all movement of the Aircraft into, out from and within the Hangar, within and outside the Premises shall be completed by Tenant and that at no time will Landlord attempt to move an Aircraft unless requested by Tenant. The only exception being the Tenant agrees that any movement of the Aircraft within, or ingressing or egressing any community hangars located outside of the Premises and controlled by the Landlord shall be conducted solely by Landlord. Tenant shall be liable for (i) any and all damage to the Aircraft or property of third parties or Landlord and any other property of Tenant and for injuries to all persons conditioned explicitly on same occurring as a direct and proximate result of any movement of the Aircraft by Tenant and/or (ii) from or as a result of other aircraft, items or objects impacting the Aircraft at or within the hangar, including, but not limited to hangar doors, tugs and engine stands during movement of the Aircraft. Tenant acknowledges that it is accepting all risks of loss or damage related to the movement of the Aircraft.

Where required or recommended to be piloted or otherwise cockpit assisted during towing or movement pursuant to any maintenance, ownership or operational manual applicable to the Aircraft ("Suggested Cockpit Assisted Movement"), Tenant shall be solely and exclusively responsible for insuring compliance with the applicable Suggested Cockpit Assisted Movement within or without the Premises. Notwithstanding anything herein to the contrary, any and all damage or loss directly or indirectly caused or increased by the failure of Tenant to comply with any such Suggested Cockpit Assisted Movement shall be the sole and exclusive liability of Tenant. Tenant shall be liable for any damages arising from or as a result of other aircraft, items or objects impacting the Aircraft at or within the hangar, including, but not limited to hangar doors, tugs and engine stands during movement of the Aircraft.

18.02. INTENTIONALLY OMITTED.

18.03. Storage. No storage of personal items and/or non-aviation related items, unless such items are ancillary to the permitted use, including, but not limited to, boats, trucks, trailers or mobile homes, is permitted inside and/or outside of the Premises and/or anywhere on Landlord's property unless approved by Landlord in writing in Landlord's sole discretion.

18.04. Pets. Tenant may have no more than two (2) domesticated pets (hereinafter collectively, "Pets"), defined as trained dogs, cats, or caged birds (or any combination thereof resulting in a

total of two domesticated pets), on or in the Hangar Premises at any given time during the Initial Term of this Lease or any Renewal Term(s) hereof, in addition to any pet qualified as a Service Animal under the Americans with Disabilities Act of 1990, as amended from time to time, on or in the Premises in accordance with the terms thereof. Unless the Landlord and/or the landlord under the Prime Lease have designated a particular area of the Premises for pet defecation, all Pets must be taken off the Premises and other Landlord property for that purpose. Tenant hereby agrees to immediately pick up all solid waste generated by any Pets, including any Service Animals, on in and/or around the Premises, and promptly dispose of such waste in an appropriate and sanitary manner. All dogs and cats qualifying as Pets hereunder must be leashed at all times when on and/or in the Premises. Pets may not be tied up or leashed to any object on the Premises and/or to any portion of Landlord's property at any time. Landlord shall have the right to pick up any un-leashed Pets and/or may report them to the proper authorities. Landlord, and/or the landlord under the Prime Lease, may, in addition to the terms hereof, currently have or enact in the future, additional rules and regulations regarding Pets allowed on the Premises, with which Tenant agrees to abide by at all times during the Initial Term of this Lease, and/or any applicable Renewal Term(s) thereof. Should the Landlord, landlord under the Prime Lease and/or any other governmental authority having jurisdiction over the Premises require, in accordance with any applicable law, that a Pet be removed from the Premises for any reason, Tenant shall immediately remove same upon receipt of written notice requesting removal. In the event Tenant violates the terms of this Sub-Paragraph during the Initial Term of this Lease, and/or any applicable Renewal Term(s), Landlord shall be entitled to any and all applicable rights and remedies available to it under applicable law and this Lease, including, but not limited to, the right to fine Tenant and/or the require the permanent removal of Tenant's Pets from the Premises for the remainder of the Lease. Notwithstanding anything contained herein to the contrary, if any Pets permitted on the Premises in accordance with this Sub- Paragraph become a nuisance at any point to Landlord, landlord under the Prime Lease, or any of Landlord's, and/or landlord under the Prime Lease's other tenants, guests, invitees, licensees and/or employees; then Landlord shall promptly notify Tenant of such nuisance in writing, and upon Tenant's receipt of same, Tenant shall promptly correct all actions giving rise to said nuisance and take appropriate steps to prevent same from occurring again at any point in the future. Tenant's failure to timely stop, correct and/or prevent the nuisance from occurring in the future shall entitle Landlord, in its sole and absolute discretion, to ban all Pets from the Premises, except as required by the Americans with Disabilities Act of 1990, as amended, for the remainder of this Lease. Any and all Pets brought onto the Premises in accordance with this Sub-Paragraph shall be deemed Tenant's property for the purposes of this Lease, and the Paragraphs of this Lease titled "Disclaimer of Liability", "Force Majeure", and "Vendor/Invitee or Invitees' Invitees Indemnification", and any/all provisions and/or Sub-Paragraphs thereunder, shall be deemed to specifically apply to the entirety of this Sub-Paragraph.

18.05. Keys. Tenant shall not re-key, modify or replace the locks on or to the Premises without Landlord's prior written consent which may not be unreasonably withheld, conditioned or delayed. Tenant shall do so only after consent from Landlord as required herein and at Tenant's sole cost and expense. A reasonable number of additional keys shall be provided to Landlord at Tenant's sole expense immediately upon any re-key, modification and/or replacement of the locks on or to the Premises. Should Landlord be required to re-key, modify and/or replace the locks on or to the Premises for any reason, during and/or after the Initial Term of this Lease,

and/or any applicable Renewal Term(s), Landlord shall be entitled to collect the cost of same from Tenant by any means without further consent of Tenant, including, but not limited to deducting from the Security Deposit.

18.06. **Nuisance**. Tenant shall not engage in any behaviors on or near the Premises that create in any manner a nuisance to any other tenants, invitees, agents, third parties, Landlord and/or the landlord under the Prime Lease.

18.07. **Substitution of Premises.** Omitted as inapplicable.

18.08. **Aircraft Relocation Service.** Omitted as inapplicable.

19. **COMPLIANCE WITH GOVERNMENTAL AND AIRPORT REGULATIONS**. Tenant shall comply with all statutes, ordinances, rules, regulations and requirements of the federal, state, county or city government departments or bureaus exercising jurisdiction over the Premises, including FAA regulations and rules and regulations of the applicable Airport, and shall comply with all rules and regulations promulgated by without limitation the Landlord and the FAA; including without limitation rules and procedures established for the safety and security of aircraft, crew and passengers in the event of an approaching storm, whether or not such storm is forecast to or actually reaches hurricane status. The Tenant further acknowledges that pursuant to the terms of the Prime Lease, the Prime Landlord under the Prime Lease reserves the right to itself, 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, 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, for the navigation of or flight in the airspace, and for the use of the airspace for landing on, taking off from or operating within the Airport. In no event shall Tenant circumvent or seek to circumvent the above. Tenant, in exercising any of the rights or privileges herein granted to it, shall not on the grounds of race, color or natural origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Secretary of Transportation. The Prime Landlord is hereby granted the right to take such action, anything to the contrary herein notwithstanding, as the United States may direct in enforcing this non-discrimination covenant. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises encompassed by this Lease to such a height so as to comply with Federal Aviation Regulations, Part 77. Tenant agrees for itself, its successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an airport hazard.

20. **EXCESS REFUSE**. Tenant shall be solely responsible for the removal of any and all trash and/or excess refuse from the Premises. Tenant shall immediately remove, at its own expense, any trash and/or excess refuse from the Premises upon receipt of written notice from Landlord. Should Tenant not remove excess refuse within three (3) days of receipt of written notice from Landlord, Tenant shall reimburse Landlord for any and all charges incurred by Landlord in removing any excess refuse of Tenant or its guests or invitees.

21. SUBORDINATION/ATTORNMENT TO PRIME LEASE AND TO MORTGAGES.

21.01. Estoppels/Subordination and Non-Disturbance Agreements. Within ten (10) days of request by Landlord, Tenant shall execute commercially reasonable estoppels and/or Subordination and Non-Disturbance Agreements as requested by Landlord and/or Landlord's mortgagee in a form substantially similar to those attached as **Composite Exhibit "C-2"** and **"C-3"**.

21.02. Mortgages. This Lease is subject and subordinate to any and all mortgages which may now or hereafter affect the real property of which the Premises are located and to all renewals, modifications and extensions thereof. Tenant shall, upon request of Landlord, execute within ten (10) business days, any subordination documents which Landlord or any mortgagee of the Premises may reasonably request, but no such documents shall be required to effectuate said subordination.

21.03. Attornment. Tenant agrees that in the event of a sale, transfer or assignment of Landlord's interest in the Premises, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any mortgage made by Landlord encumbering the Premises, to attorn to and to recognize such transferee, purchaser or mortgagee as the Landlord under this Lease.

22. CONSTRUCTION OF LEASE. All the provisions contained herein shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns. In the event, at any future time, one or more of the provisions of this Lease shall be held to be void by any court of competent jurisdiction for any reason, such provision shall be deemed to be separable, and the remainder of this Lease shall be valid and in full force and effect. The parties acknowledge that this Lease is the product of negotiations between the parties, both sides being represented (or having an opportunity to be represented) by counsel. The mere fact that one party or the other drafted, typed, printed or produced the written form hereof shall not be construed to prejudice such party and this Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

23. LANDLORD'S RIGHT TO ENTER PREMISES. Landlord reserves the right to enter the Premises, without liability to Tenant, for routine inspections, including, but not limited to, any and all local and/or federal governmental inspections, fire marshal inspections and/or building code inspections, and/or for other purposes relating to the maintenance of the building in which the Premises is located, and/or, for any emergency or potentially hazardous conditions that may arise, and to secure any assets subject to lien by Landlord under Paragraph 7 titled, "Landlord's Lien," in the event of a Default by Tenant. If Landlord is not provided a key for the Premises and Landlord desires to enter the Premises, Landlord shall have the right to remove any lock installed by Tenant, and if Landlord removes or replaces such lock, Tenant shall pay Landlord's cost of same. Landlord shall also have the

right to exhibit the Premises upon reasonable notice of not less than twenty-four (24) hours to Landlord's lenders.

24. TAXES. Tenant shall be responsible for all real estate taxes, if any, and for assessments and special assessments charged by any governmental authority against the Premises (as to the land and/or the improvements contained thereon from time to time) during the Initial Term and any applicable Renewal Term(s), if any. In the event any taxes are required to be paid by applicable law in lieu of real estate taxes, then Tenant shall be responsible for paying same to Landlord in the same manner as provided herein as to real estate taxes. Such real estate taxes and assessments shall be due and payable by Tenant to Landlord within ten (10) days after written demand by Landlord, which demand will include a copy of the then current real estate tax bill or assessment. The amount of taxes payable by Tenant shall be prorated as to the first and last years of this Lease based upon the number of days during the respective calendar years in which this Lease is in effect. To the extent that this Lease terminates or expires prior to the time that the tax bill has been issued for that applicable calendar year, the parties will prorate the taxes as of the expiration or Termination Date based upon the prior year's tax bill, which will be subject to reproration upon receipt of the actual tax bill for such year. This Paragraph will survive the expiration or termination of this Lease.

24.01. Real Estate Taxes. Notwithstanding the preceding Paragraph titled, "Taxes," in the event that Tenant disputes any of the real estate taxes levied against the Premises, the Landlord shall permit Tenant to place in an escrow account to be held with a law firm of Landlord's choosing, the amount of the taxes in dispute whereupon the Tenant may appeal any such assessment of taxes. Landlord shall cooperate with Tenant in so prosecuting such appeal provided same is done at no cost or expense to Landlord. In the event that Tenant wins any such appeal, then Tenant shall be permitted to immediately receive that portion of the funds being held in escrow which are the difference between the amount of the money escrowed and the adjusted amount of the taxes then due and owing. In the event Tenant is not successful in its appeal, then Tenant shall forthwith pay out of escrow all taxes then assessed plus any interest or penalties levied by the authorities thereon. Notwithstanding the foregoing, in the event that the holder of any mortgage encumbering the Prime Lease or this Lease requires that the taxes be paid to the governmental authorities as a condition to proceeding with any such appeal, then Tenant shall be required to comply with such requirement in lieu of paying the escrowed funds to a law firm as provided in this Sub-Paragraph. In the event Tenant is successful in any appeal and any refund is paid by the governmental authority in connection therewith, Tenant shall be entitled to receive such refund.

24.02. Personal Property Taxes. Tenant shall pay, prior to delinquency, all taxes assessed or levied upon its business operation, and upon its leasehold interest, trade fixtures, furnishings, equipment, and personal property of any kind owned, installed or used by Tenant in, on or upon the Premises, and all alterations, changes and additions thereto, including all leasehold intangible taxes assessed against the Lease or the Premises.

24.03. Sales Tax. Tenant shall pay to Landlord, simultaneously with each Rent payment and all other monies owed hereunder, all applicable state and/or local sales, use or excise taxes

required by law to be paid in connection with each Rent payment or other payment of monies owed.

The parties recognize that Tenant is exempt from sales tax use to its governmental status.

25. **TIME OF THE ESSENCE**. Time shall be of the essence in connection with all terms and conditions set forth herein.

26. **FINAL AGREEMENT**. This Lease represents the entire agreement between the parties, and any other statements, conditions, representations or commitments are considered to be merged herein.

27. **SURVIVAL OF COVENANTS**. All portions of this Lease which may by necessity be required to be enforced by either party are enforceable beyond the date of the termination of this Lease.

28. **NO WAIVER**. No waiver of any breach of any covenant or condition or agreement of this Lease shall be construed or operate as a waiver of subsequent or prior adherence to or performance of the covenant, condition or agreement of this Lease or any future or continuing breach thereof. The failure of either party to enforce any covenant or other provision of this Lease shall not constitute a waiver of the right to do so thereafter, nor shall the same give rise to any cause of action or defense on the part of the Tenant.

29. **MODIFICATION**. No modification of this Lease will be effective to vary any of the terms or provisions thereof unless the modification is in writing, referencing this Lease, and signed by both parties. A copy of any modification will be given to both parties.

30. **HAZARDOUS WASTE**. Tenant agrees that it will comply with all environmental laws/ regulations, whether local, state or federal, as same may be amended from time to time. Without limiting the foregoing, Tenant agrees that it will: (i) give written notice to Landlord at least seven (7) days in advance of any production, generation, handling, storage, treatment, transportation, disposal, release or removal of "Hazardous Waste" (as defined below) from or on the Premises; (ii) not use or employ the Premises or any portion of Landlord's leased premises under the Prime Lease to handle, transport, store, treat or dispose of any Hazardous Waste, whether or not it was generated or produced on the Premises; (iii) defend, indemnify and hold Landlord harmless from and against any and all claim, damage, liability, expense or cost of any kind whatsoever, including, but not limited to, attorneys' fees and costs at all tribunal levels, which Landlord may suffer, incur or pay resulting from or arising out of any act or omission of Tenant, or Tenant's Agents, or any other person on the Premises under color of authority of Tenant, effecting the handling, storage, treatment, transportation, disposal, release or threat of release, or removal of Hazardous Waste from or on the Premises or any portion of the Premises. Prior to Tenant producing, storing, and/or generating any Hazardous Waste from or on the Premises, Tenant shall obtain (and provide Landlord with evidence that it has obtained) environmental liability insurance naming Landlord and any mortgagee as additional

insured. Such insurance shall be issued by a company with minimum limits of coverage satisfactory to Landlord.

The term "Hazardous Waste" shall include, without limitation, any toxic waste, chemical pollutant, solid waste, combination of solid waste, or similar environmental hazard, which, because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to: (i) an increase in mortality, (ii) an irreversible or incapacitating illness, or (iii) a substantial, present, or potential hazard to human health or the environment, when improperly treated, stored, transported or disposed, or otherwise managed, whether at such time of occurrence, it shall be deemed a violation of any Law.

It is expressly understood and agreed by Tenant that Tenant shall be fully responsible for the disposal of any and all waste oil consumed, produced and expended by Tenant. Tenant shall contract with an authorized oil disposal company and shall not utilize Landlord's property, tanks or equipment for disposing of any waste oil. Should Tenant not dispose of any and all waste oil as required under this Paragraph, Landlord may, at its option, use all or any part of the Tenant's Security Deposit for any expenses incurred in the disposal of any and all waste oil from the Premises without notice to Tenant. Should Landlord exercise this option, Tenant shall be required to replenish the Security Deposit within fifteen (15) days after receipt of written notice pursuant to the Security Deposit terms of this Lease.

The obligations of Tenant, as well as the foregoing indemnity in connection with this Paragraph, shall survive the expiration or earlier termination of this Lease, anything herein to the contrary notwithstanding.

31. EXECUTION OF LEASE. This Lease may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the Parties and all of which when so executed and delivered shall be deemed an original for all purposes, but all such counterparts shall together constitute one and the same instrument. Electronic signatures using DocuSign or any other third-party electronic execution program shall be effective for all purposes hereunder with the exception of the execution of the Memorandum of Lease and the Subordination and Non-Disturbance Agreement, where applicable, both of which shall require original ink signatures. Notwithstanding anything to the contrary, maintenance of a full electronic copy of this Lease is hereby consented to by the parties.

32. RADON GAS. 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 the area containing the Premises. Additional information regarding Radon and Radon testing may be obtained from the county public health unit.

33. LITIGATION

33.01. Venue/Applicable Law. This Lease shall be governed and construed only in accordance with the laws of the State of Florida, regardless of conflict of laws. The parties agree that sole

and exclusive venue and jurisdiction for purposes of any litigation arising out of or related to this Lease shall be only in Pinellas County, Florida.

33.02. <u>Attorneys' Fees By and Between the Parties.</u> In the event of any litigation or other contested action filed between the parties which is under or related in any way to this Lease, each party shall be responsible for their own attorneys', paralegals and paraprofessional fees and costs incurred at all trial and appellate levels, including, but not limited to, pre-trial, trial, appeal and/or bankruptcy.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year written below.

LANDLORD:

SHELTAIR ST. PETERSBURG, LLC
a Florida limited liability company

By: _____
Title: Authorized Signatory
Print Name: TODD ANDERSON
Date: 4/20/2023

TENANT:
PINELLAS COUNTY
a political subdivision of the state of Florida

By: Janet C. Long
Title: Chair
Print Name: Janet C. Long
Date: May 9, 2023

BOARD OF COUNTY COMMISSIONERS
SEAL
PINELLAS COUNTY, FLORIDA

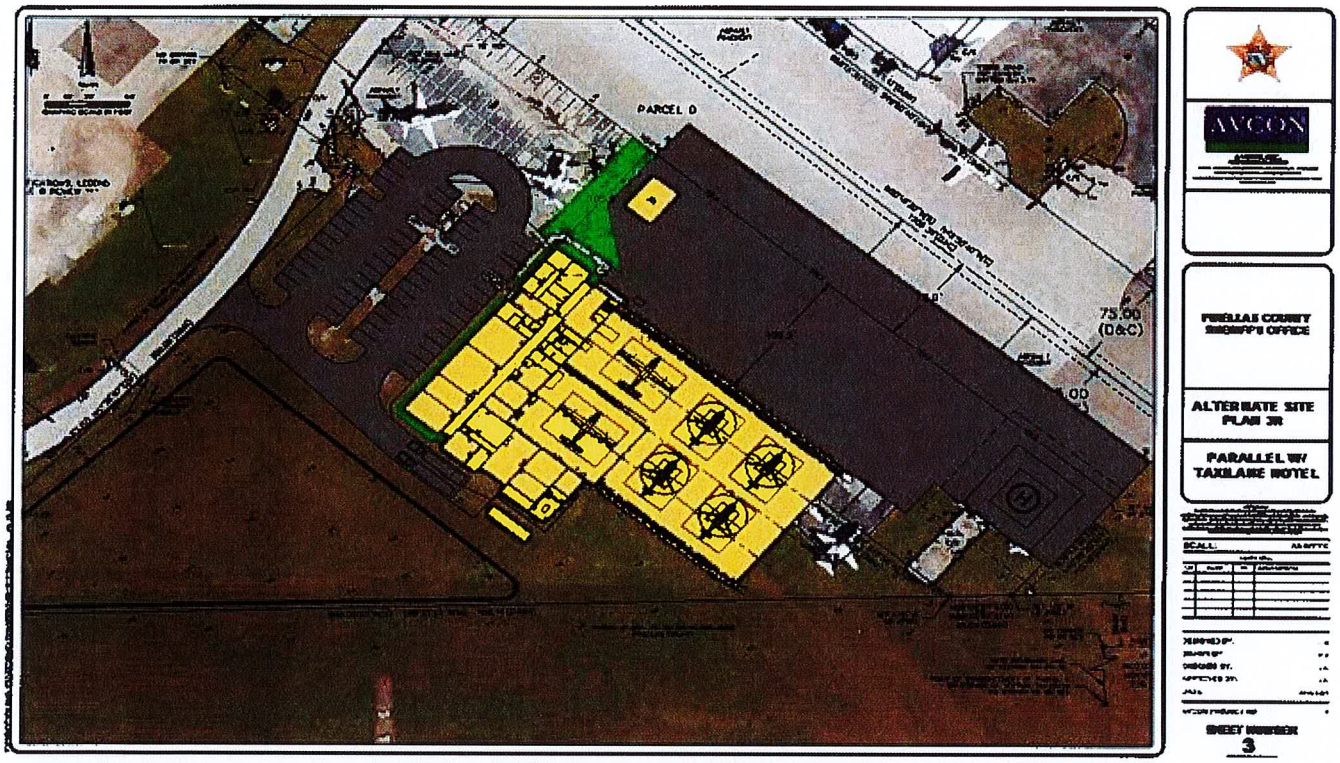
ATTEST: KEN BURKE, CLERK

By: _____

APPROVED AS TO FOR
By: *Maria C. White, Esq.*

EXHIBIT "A"

Premises



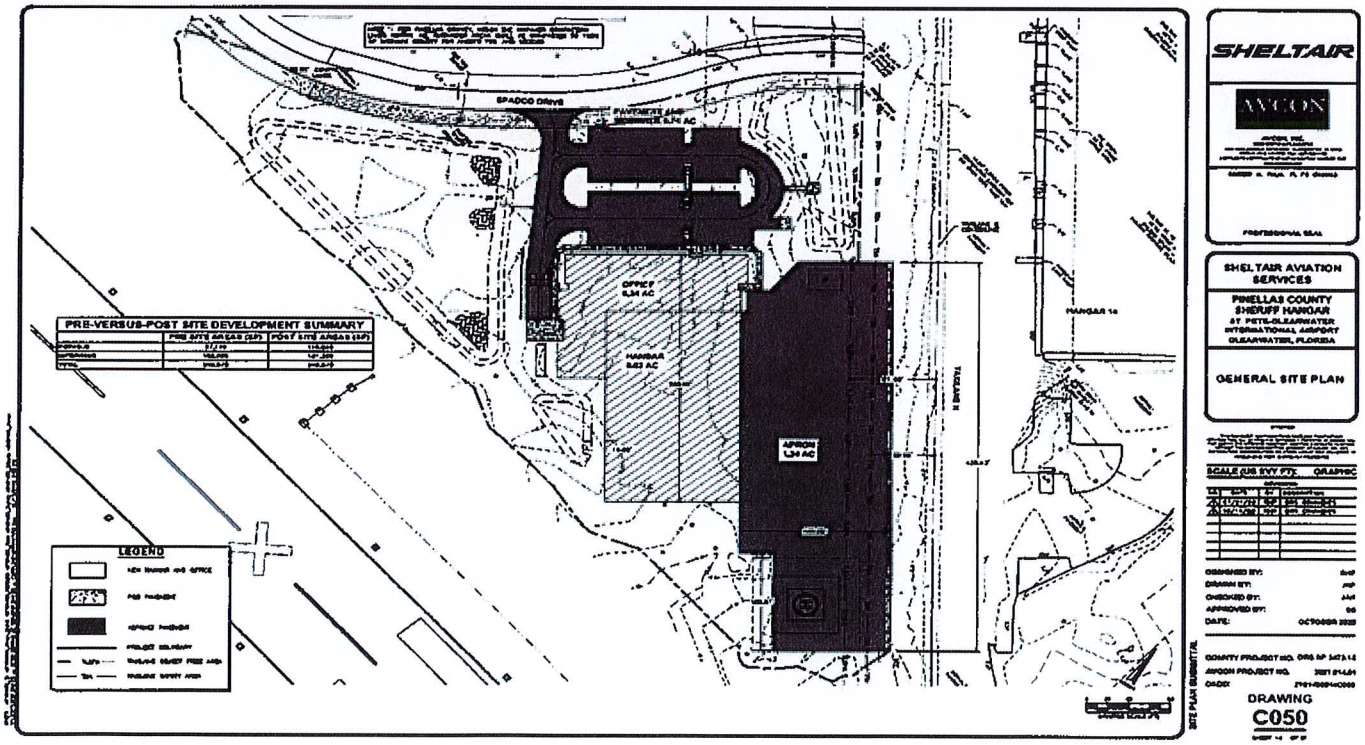


EXHIBIT "B"		
Summary of Landlord-Tenant Maintenance Responsibilities		
Item	**Landlord**	**Tenant**
1) Utilities		X
A) Oil		X
B) Gas		X
C) Water		X
D) Electricity		X
E) Sewer Charges/Taxes		X
F) Phone		X
G) Internet/Data		X
H) Cable		X
2) H.V.A.C. Equipment		
A) Repair		X
B) Replace	X	
C) Ordinary Preventative Maintenance		X
D) Change Air Filter: Quarterly		X
3) Electrical Equipment		
A) Repair		X
B) Replace existing	X	
C) Interior Lamp & Ballast Replacement		X
D) Emergency Lighting and Exit Lighting		X
E) Parking Field & Exterior Building Lighting lamps		X
F) Parking Field Lamp Replacement		X
4) Plumbing		
A) Repair and Replace		X
B) Ordinary Preventative Maintenance		X
C) Clean Out: Drainage Structures & Systems		X
D) Clean Out: Sewage Structures & Systems		X
5) Structural Repairs, Maintenance, and Replacement		
A) Sidewalks, Curbs, Ramps, Driveways, Parking Areas, Roadways, Roof & Roofing, Interior (Due to faulty construction), Drainage Structures & Systems, Sewage Structures & Systems	X	
B) Building Envelope	X	
C) Aircraft ramp areas	X	
6) Hangar Doors and Mechanical Operator		
A) Replace	X	
B) Ordinary Preventative Maintenance and Repair		X
7) Custodial (within Premises)		X
8) Common Area Custodial and Maintenance		X
9) Clean Windows - Exterior, (1x year)		X

4/20/23

10) Shampoo Carpets, Wax Floors (as needed) and Cleaning and Maintenance of Hangar Floors		X
11) Cartage	N/A	N/A
12) Snow & Ice Removal to Parking Areas, Drives, Ramps, and Walks	N/A	N/A

13) Grounds Maintenance		X
A) Grass & Landscaping Maintenance		X
B) Irrigation of Grass & Landscaping		X
C) Parking Field		X
14) Interior Maintenance and Repairs		X
15) Glazing		X
16) Vermin and Rodent Extermination Exterior	X	
17) Vermin and Rodent Extermination Interior		X
18) Fire Sprinklers & PRS - Maintenance and Testing		X
19) Fire Alarm System – Installation & Replacement	X	
20) Fire Alarm – Maintenance		X
21) Fire Alarm – Repair		X
22) Fire Extinguishers – Maintenance and Monitoring		X
23) Security Alarm – Installation, Maintenance, Monitoring and Repair		X
24) Flag Pole	N/A	N/A
25) Elevator Repair and Maintenance and Certification **26) Elevator Repair & Replacement**	N/A	N/A

CMA
4/20/23

COMPOSITE EXHIBIT "C-1"

Memorandum of Lease

This instrument was prepared by
Record and Return to:
Keith A. Graham , Esq.
Marchena and Graham PA
976 Lake Baldwin Lane Suite 101
Orlando , Florida 32814

MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE is executed this _____th day of _____, 2022 by Sheltair St. Petersburg, LLC, a Florida limited liability company ("Landlord"), whose address is 4860 N.E. 12th Ave., Fort Lauderdale, Florida 33334 and Pinellas County, a political subdivision of the state of Florida ("Tenant"), whose address is,509 East Avenue S Clearwater, FL 33756 .

RECITALS

WHEREAS, Landlord is the lessee of that certain premises more particularly described below ("Premises") leased from the applicable fee simple owner; and

WHEREAS, pursuant to that certain Office/Hangar Lease Agreement dated _____ _, 2022 by and between Landlord and Tenant, the Premises more particularly described below have been subleased to Tenant ("Sublease"); and

WHEREAS, the Sublease contains provisions relating to the obligations of the Landlord and rights of the Tenant pertaining to the Premises, and by this Memorandum of Sublease, the Landlord desires to advise all parties of record the existence of said Sublease, in order to inform third parties, including any lenders, as to the terms of same.

W I T N E S E T H:

NOW, THEREFORE, in consideration of the Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby notify all parties of the following:

1. That the above recitals are true and correct.

1. The Sublease is the sole and only sublease encumbering the Premises, as defined below.

2. Landlord has subleased to Tenant and Tenant has subleased from Landlord the Premises referred to as Building # __ at the St. Pete-Clearwater International Airport, with a street address of__ _____ St., Clearwater, Florida 33762.

3. Term of Sublease: The term of the Sublease is for _____ ("Term"). The Term commenced on _____ _, 2022 and ends on _____ _, _____.

5. **That Landlord's interest in the Premises shall not be subject to any lien arising out of any work, labor, services or materials supplied or claimed to have been supplied to or for Tenant.**

6. That the Tenant shall, at all times, attorn to the holder of a mortgage in due course and shall make payments on a timely basis of all Rent when due. At no time shall the holder of a mortgage have an election to terminate the Lease.

IN WITNESS WHEREOF, the parties hereunto executed this Memorandum of Lease effective this _ day of _____, 2022

Signed, sealed and delivered in the presence of:

LANDLORD:

SHELTAIR ST. PETERSBURG, LLC

_____

By:_____

Print Name:_____

_____, authorized signator

_____

Print Name:_____

STATE OF FLORIDA
COUNTY OF _____
The foregoing instrument was acknowledged before me by means of ☐hysical presence or o☐ine notarization, this _____day of _____ __, 2022 by _____

(name of member, manager, officer or agent, title of member, manager, officer or agent) of _____ (name of company), a _____ (state or place of formation) limited liability company, on behalf of the company, who is personally known to me or who has produced _____(type of identification) as identification.

_____
Signature - NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

_____
(Name typed, printed or stamped)

_____
(Serial number, if any)

NOTARY SEAL

Signed, sealed and delivered
in the presence of:

TENANT:
PINELLAS COUNTY

_____

By:_____

Print Name:_____

_____, authorized signator

_____

Print Name:_____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____day of _____ _, 2022 by _____ (name of member, manager, officer or agent, title of member, manager, officer or agent) of PINELLAS COUNTYa political subdivision of the State of Florida, on behalf of the company, who is personally known to me or who has produced _____(type of identification) as identification.

_____
Signature - NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

_____
(Name typed, printed or stamped)

_____
(Serial number, if any)

NOTARY SEAL

COMPOSITE EXHIBIT "C-2"

Tenant Estoppel Certificate

SUBLANDLORD: Sheltair St. Petersburg, LLC
PREMISES: As defined in the Sublease

SUBTENANT Pinellas County
DATE OF SUBLEASE:_____

With the understanding that (i) SUNTRUST BANK (the "Mortgagee") as successor by merger to Truist Bank, in its capacities as administrative agent, lender and mortgagee under a leasehold mortgage with respect to the Premises leased to Subtenant pursuant to the Sublease described in paragraph 1 below (the "Sublease") and (ii) the other participating lenders from time to time (collectively with Mortgagee, the "Lenders") will rely upon Subtenant's representations made in this Tenant Estoppel Certificate in extending certain financial accommodations to Sublandlord, Subtenant hereby represents, warrants and agrees as follows:

1. A true, correct and complete copy of the Sublease, as amended, is attached hereto. The Sublease contains all of the agreements between Subtenant and Sublandlord, and is in full force and effect.

2. The term of the Sublease commenced on _____ _, 2022, full rental is now accruing under the Sublease, the term of the Sublease expires on _____ __, _____ subject to early expiration or termination as provided in the Sublease, and the Sublease contains one(1) additional Renewal Term conterminous with the expiration of Landlord's Prime Lease, as amended.

3. All conditions required under the Sublease that could have been satisfied have been met.

4. No Rent under the Sublease has been paid more than one (1) month in advance of its due date beyond the Pre-Paid Rent/Design Deposit.

5. Omitted.

6. No Default exists under the Sublease nor does any circumstance exist which, with the passage of time or the giving of notice or both, would constitute a Default under the Sublease.

7. The Subtenant, as of this date, has no charge, lien or claim of offset under the Sublease or otherwise, against Rents or other charges due or to become due thereunder.

8. Subtenant is the only individual or entity in possession of said Premises or having any right to the possession or use of said Premises (other than Sublandlord and the record owner, and those claiming under or through Sublandlord or the record owner), and Subtenant has not further leased or sub-subleased (or entered into any other similar arrangement granting the right to use or possess) the Premises or any portion thereof to any other individual or entity.

9. Subtenant has no right or interest in or under any contract, option or agreement for the purchase or transfer of the Premises (including the ground leasehold interest of Sublandlord therein).

10. The amount of the monthly Rent currently payable under the Sublease is $_____, and such monthly rent remains the same through _____.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed and delivered on this ____ day of _____, 20__.

SUBTENANT:
PINELLAS COUNTY
By:_____

Print Name: _____

Title: _____

COMPOSITE EXHIBIT "C-3"

Subordination Non-Disturbance and Attornment Agreement

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Florida, Colorado and New York)

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "**Agreement**") is made and entered into as of this __ day of _____, 2022, (the "**Effective Date**") by and among **TRUIST BANK**, successor by merger to SunTrust Bank, in its capacity as "Mortgagee" as defined below; **PINELLAS COUNTY("Subtenant")** and **SHELTAIR ST. PETERSBURG, LLC,** a Florida limited liability company ("**Sheltair**" or "**Sublandlord**").

RECITALS

A. Sheltair and certain other affiliates of Sheltair, as co-borrowers or guarantors (collectively the "Loan Parties") have entered into a secured loan transaction (the "Loan") with SunTrust Bank as successor by merger to Truist Bank ("Truist"), in its capacities as administrative agent, lender and mortgagee under the Leasehold Mortgage defined herein (in its capacities as administrative agent and mortgagee, the "Mortgagee") and other participating lenders from time to time (collectively with SunTrust, in its capacity as a lender, the "Lenders"). As security for the Loan, Sheltair has executed a first leasehold mortgage (as the same has been or may be modified from time to time) (the "Leasehold Mortgage"), for the benefit of Mortgagee upon Sheltair's leasehold interest in or with respect to the real property described in the Leasehold Mortgage ("Property").

B. Subtenant is the subtenant of a portion of the Property (the "Leased Premises") pursuant to the terms of that certain Office/Hangar Lease Agreement dated _____ ___, 2022 (the "Sublease"), executed by Subtenant and Sublandlord.

C. Subtenant, Sheltair and Mortgagee desire to confirm their understanding with respect to certain matters pertaining to the Sublease as set forth herein.

D. This Agreement is being entered into to induce Mortgagee and the Lenders to provide the Loan to the Loan Parties.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

AGREEMENT

1. So long as Subtenant is not in default (beyond any applicable grace or cure periods contained in the Sublease) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Sublease, Subtenant's possession and occupancy of the Leased Premises shall not be interfered with or disturbed by Mortgagee during the term of the Sublease (including any extension thereof pursuant to the terms of the Sublease).

2. Subtenant agrees that it will attorn to and recognize: (i) Mortgagee, whether as mortgagee in possession or otherwise; (ii) any purchaser at a foreclosure sale under the Leasehold

Mortgage; (iii) any transferee who acquires possession of or interest in the Property, whether by reason of judicial foreclosure, power-of-sale foreclosure, or deed in lieu of foreclosure, or other means; and (iv) the successors and assigns of Mortgagee, such purchasers and/or transferees, as its Sublandlord for the unexpired balance of the term of the Sublease upon the same terms and conditions as set forth in the Sublease. Such attornment shall be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee's succeeding to the interest of the Sublandlord under the Sublease.

3. Subtenant acknowledges that it has been advised that Sublandlord has assigned or is assigning the Sublease and the rents thereunder to Mortgagee as additional security (the "Assignment"). Subtenant agrees that if Mortgagee, pursuant to the Assignment (whether or not it becomes a mortgagee in possession), shall give notice to Subtenant that Mortgagee has elected to require Subtenant to pay to Mortgagee the rent or other charges payable by Subtenant under the Sublease, Subtenant shall, until Mortgagee shall have cancelled such election, be similarly bound to Mortgagee and shall similarly attorn to Mortgagee and shall thereafter pay to Mortgagee all rent and other sums payable under the Sublease. Any such payment shall be made notwithstanding any right of setoff, defense, or counterclaim which Subtenant may have against Sublandlord.

4. If Mortgagee shall succeed to the interest of Sublandlord under the Sublease or become owner of or ground lessee with respect to the Property, Mortgagee shall, subject to the last sentence of this Section 4, be bound to Subtenant under all of the terms, covenants and conditions of the Sublease; provided, however, that Mortgagee shall not be:

(a) liable for any act or omission of any prior lessor (including Sublandlord); or

(b) subject to any offset or defenses which Subtenant might have against any prior lessor (including Sublandlord); or

(a) bound by any rent or additional rent or advance rent which Subtenant might have paid for more than thirty (30) days prior to the date due to any prior lessor (including Sublandlord) and all such rent shall remain due and owing notwithstanding such advance payment; or

(b) bound by any amendment or modification of the Sublease made without its consent and written approval; or

(a) required to complete the building or otherwise perform the obligations of Sublandlord under the Sublease in the event of a foreclosure of the Leasehold Mortgage or acceptance by Mortgagee of a deed in lieu of foreclosure prior to full completion of the improvements to the Property, if such improvements are not complete as of the date hereof; or

(b) liable or responsible with respect to any security deposit paid under the Sublease unless and to the extent that Mortgagee has received such security deposit.

Neither Mortgagee nor any other party who, from time to time, shall be included in the definition of Mortgagee hereunder shall have any liability or responsibility under or pursuant to the

terms of this Agreement after it ceases to own or hold an interest in the Property.

5. The Sublease now is, and shall at all times continue to be, subject and subordinate in each and every respect, to the Leasehold Mortgage and all other documents entered into in connection with the Loan (collectively, the "Loan Documents") and to (i) any and all renewals, modifications, restatements and extensions of the Leasehold Mortgage and any other of the Loan Documents; and (ii) all substitutions, replacements and/or consolidations of any of the Loan Documents. Nothing herein contained shall be deemed or construed as limiting or restricting the enforcement by Mortgagee of any of the terms, covenants, provisions or remedies of the Leasehold Mortgage or any of the other Loan Documents, as long as said enforcement is consistent with the non-disturbance provisions of this Agreement.

6. In the absence of the prior written consent of Mortgagee, Subtenant agrees not to do any of the following: (a) prepay the rent under the Sublease for more than one (1) month prior to the date due; (b) enter into any agreement with Sheltair to amend or modify the Sublease; (c) voluntarily surrender the Leased Premises or terminate the Sublease without cause except as permitted by or in accordance with the Sublease; or (d) sub-sublease or assign the Leased Premises except as permitted by or in accordance with the Sublease.

7. In the event Sheltair shall fail to perform or observe any of the terms, conditions or agreements in the Sublease, or a default by Sheltair shall otherwise occur thereunder, Subtenant shall give written notice thereof to Mortgagee and Mortgagee shall have the right (but not the obligation) to cure such failure. Subtenant shall not take any action with respect to such failure under the Sublease including, without limitation, any action in order to terminate, rescind or avoid the Sublease or to withhold any rent thereunder, for a period of thirty (30) days after receipt of such written notice by Mortgagee; provided, however, that in the case of any such default which cannot with diligence be cured within said 30-day period, if Mortgagee shall proceed promptly to cure such failure and thereafter prosecute the curing of such failure with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary.

8. The term "Mortgagee" shall be deemed to include Mortgagee and any of its successors and assigns, including anyone who shall have succeeded to Sublandlord's interest or ownership or ground leasehold interest of the Property by, through or under judicial or power-of-sale foreclosure or other proceedings brought pursuant to the Leasehold Mortgage, or deed in lieu of such foreclosure or proceedings, or otherwise.

9. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns. This Agreement constitutes a covenant running with the land and shall be binding upon transferees of the Property.

10. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

11. All notices, demands and requests given hereunder shall be in writing and shall be either by: (i) hand delivery to the address for notices; (ii) delivery by overnight courier service to the address

for notices; or (iii) by certified mail, return receipt requested, addressed to the address for notices by United States mail, postage prepaid.

All notices shall be deemed received upon the earlier to occur of: (i) the hand delivery of such notice to the address for notices; (ii) one (1) day after the deposit of such notice with an overnight courier service addressed to the address for notices; or (iii) three (3) days after depositing the notice in the United States mail as set forth above.

All notices shall be addressed to the following addresses:

If to Sheltair: **Sheltair St Petersburg, LLC**
4860 N.E. 12th Ave.
Fort Lauderdale, Florida 33334
Attn: Lisa Holland, Manager

If to Subtenant: **Pinellas County**
509 East Avenue S
Clearwater, FL 33756
Attn: _____

If to Mortgagee: Truist Bank
777 Brickwell Ave.
Miami, Florida 33131
Attention: Richard D. Richkin

or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.

{Signatures on next page.}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date and year first above written.

SUBTENANT:
PINELLAS COUNTY

By:_____

Name:_____

Title:_____

Date: _____

MORTGAGEE:

TRUIST BANK,
successor by merger to SunTrust Bank

By:_____

Name:_____

Title:_____

Date: _____

JOINED BY SHELTAIR, as SUBLANDLORD, FOR THE PURPOSE OF EVIDENCING SHELTAIR'S CONSENT TO THE TERMS OF THIS AGREEMENT:

SHELTAIR ST. PETERSBURG, LLC

By:_____

Name: Gerald M. Holland, Manager

Date: _____

EXHIBIT "D"

Pinellas County
c/o Real Estate Management Department
Real Property Division,
509 East Avenue South
Clearwater, Florida 33756

Re: Lease Agreement dated _____, by and between Landlord and Tenant for the property located at _____, containing approximately XXXXXX square feet (the "Premises").

In accordance with the terms and conditions of the Lease, Tenant accepts possession of the Premises, acknowledges that the Premises are suitable for Tenant's permitted use and agrees to the following:

1. The Rent Commencement Date is: _____.
2. The per square foot Rent is: _____.
3. The pass through rent from the Prime Lease is:_____.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing below.

Landlord: _____

By:_____

Date:_____

Tenant: Pinellas County

By:_____

Date: _____

EXHIBIT "E"
Lease Joinder Agreement

LEASE JOINDER AGREEMENT

Full Legal Name of Aircraft Operator ("Operator"):
Pinellas County Sheriff's Office
[___] Proof of Current Secretary of State Registration attached

Operator's Mailing Address:
10750 Ulmerton Rd.
Largo, FL 33778

Type(s) of Aircraft:

Make/Model/Color: Cessna 28B
Registration No.: N58501
Make/Model/Color: Airbus AS350B2
Registration No.: N1SD
Make/Model/Color: Airbus AS350B2
Registration No.: N2SD
Make Model/Color: Airbus H125
Registration No.: N43SD
Registered Owner: Pinellas's County Sherriff's Office

The Operator identified above hereby warrants, represents and agrees as set forth below:

1) Operator shall be bound by the terms and conditions set forth in the following identified Sections of that certain Office/Hangar Lease Agreement executed by and between Pinellas County, a political subdivision of the State of Florida, as Tenant, and Sheltair St. Petersburg, LLC, as Landlord, including any future modifications or amendments thereto to be included herein, as such sections are applicable only to the Aircraft identified above ("Joined Sections"): Section 1.11 entitled Permitted Uses, Section 2 entitled Prime lease, Section 3 entitled Disclaimer of Liability, Section 6 entitled Insurance, Section 9 entitled Force Majeure, Section 10 entitled Vendor/Invitee or Invitees' Invitees Indemnification, Section 15.01 entitled Security Cameras, Section 17 entitled Tenant's Losses, Section 20 entitled Defaults and Termination as to right of the Landlord to enter Premises and relocate the Aircraft, Section 22 entitled Use, Section 23 entitled Compliance with Governmental and Airport Regulations, Section 24 entitled Safe Use of Premises, Section 36 entitled Hazardous Waste, Section 39 entitled Radon Gas, and Section 40 entitled Litigation.
2) Operator hereby acknowledges and agrees that Landlord, as defined in the Lease, shall be relying on the execution of this Lease Joinder Agreement by Operator in Landlord's execution of the Lease.
3) The person executing this Lease Joinder Agreement on behalf of the Operator is the

authorized representative of the Operator and has full authority to execute this Lease Joinder Agreement.

4) Operator is the Operator of the Aircraft listed above.

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

LANDLORD:

SHELTAIR ST. PETERSBURG, LLC

_____

By: its officer

OPERATOR:
PINELLAS COUNTY SHERIFF'S OFFICE

_____

By: [ ]

EXHIBIT F
PRIME LEASE AGREEMENT

RESOLUTION 06- 70

A RESOLUTION RELATING TO CONTRACTUAL INDEMNIFICATION BY THE COUNTY.

WHEREAS, Pinellas County frequently enters into contractual relationships;

WHEREAS, these contracts vary from purchase orders to multimillion dollar contracts, to interlocal agreements;

WHEREAS, the County generally requires other contracting parties to indemnify the County for the negligence both of the contractor and of the County;

WHEREAS, many parties refuse to indemnify the County for the actions or inactions of the County and often seek to require the County to indemnify them for the actions of the County, its contractors, or third parties;

WHEREAS, the nature of the party, and the subject matter of the contract are factors in the County's decision making regarding risk assumption and indemnification;

WHEREAS, the County usually has refused to indemnify other entities for several reasons: 1) The County is entitled to sovereign immunity under the Florida Constitution and §768.28, Fla. Stat., and an indemnification could be interpreted as a contractual waiver of that sovereign immunity; 2) The Florida Constitution prohibits a County from pledging its credit to another entity and the indemnification could be viewed as a pledge of the County's credit; 3) Article VII Section 10 of the Florida Constitution, and §§129.06 and 129.07, Fla. Stats. require that a County limit its expenditures to the budgeted amounts, and contracts requiring expenditures in violation of these statutes are not only void,

but subject the commissioners voting and contracting for such amounts, and their individual bonds, to liability for any excess indebtedness contracted for; 4) §§129.08 and 129.09, Fla. Stats. provide for criminal liability for commissioners knowingly voting for such expenditures, and the clerk of the circuit court signing any payment thereon;

WHEREAS, currently various individuals make determinations relative to these indemnification or risk assumption decisions based on the nature, size, necessity or desirability of the agreement at issue;

WHEREAS, in advising various departments and bodies regarding these indemnification or risk assumption matters, the County Attorney's Office has caused the phrase, "to the extent permitted by law" to be added to clauses wherein the County purports to indemnify another entity;

WHEREAS, the County Attorney's Office interpretation has been that due to all of the constraints listed above, "the extent permitted by law" is – not at all, and that the indemnification of another entity is a void *ab initio* action with no effect;

WHEREAS, certain legal precedents have come out that could be construed to undermine the County Attorney's Office interpretation;

WHEREAS, American Home Assurance Company v. National Railroad Passenger Corporation, 908 So.2d 459 (Fla. 2005) (***holding that a municipality could contractually be held liable under an indemnification provision despite sovereign immunity defenses raised***), and Florida Department of Natural Resources v. Garcia, 753 So.2d 72 (Fla. 2000) (*holding that the City of*

Miami could indemnify the State of Florida despite a statutory provision that prohibits one governmental entity from indemnifying a second governmental entity for the second entity's negligence) are two cases that raise potential problems for the interpretation previously relied upon by the County Attorney's Office;

WHEREAS, the County Attorney's Office has been in contact with other County Attorney's Offices, reviewed the widely varying policies thereof, and has researched and discussed the matter internally;

WHEREAS, it is the opinion of the County Attorney's Office that the most conservative and safest course of action is to never indemnify another party;

WHEREAS, as a practical matter, it is sometimes necessary, to achieve policy goals that are in the best interests of the County, to take on the risk of such an indemnity provision; and

WHEREAS, the Board of County Commissioners hereby finds that there is a need for the County to implement a uniform policy and methodology for the review of matters relating to contractual risk assumption or indemnification of other entities by the County.

NOW THEREFORE BE IT RESOLVED by the Pinellas County Board of County Commissioners as follows:

I. The County Policy is that the County does not indemnify other parties. That Policy may only be waived based on certain factors such as:

1) the availability of the goods or services from other sources;
2) the County's need/desire for the goods or services;
3) the probability of a loss occurring.

II. County policy not to indemnify others should not be waived lightly and when done, shall conform to the following requirements:

1) The other entity must have refused, in writing, to remove all indemnification requirements requested of the County directly, and refused to allow a statement that each party be responsible for its own negligence to take the place of the indemnification provision.
2) No indemnification by the County for the acts of any entity other than the County, its Governing Body, or its employees shall be approved. Particularly, no contract shall be entered into that requires the indemnification for acts or omissions of third parties, or third party agents of the County.
3) County indemnification of a party shall specifically be limited to the lesser of the contract amount, or the limits of sovereign immunity under §768.28, Florida Statutes (~~$100,000/$200,000~~). 200,000/300,000 Recovery shall be limited contractually to the actual damages incurred as a result of County's sole negligence. No recovery of attorney's fees and costs should be permitted.
4) County indemnification shall specifically be limited to traditional liabilities for which the County could be held liable under common law interpreting the limited waiver of sovereign immunity (i.e. no waiver of sovereign immunity for planning functions or otherwise). Language shall also be included that states that any claim must comply with the procedures found in §768.28, Fla. Stat. for such tort claims.
5) County indemnification requires specific individual review through the contract review process which must include, at a minimum, the Clerk of the Circuit Court, the County Attorney's Office, the County Risk Management Department, and the County Administrator's Office.

III. To the extent possible, and after consideration as outlined above, the following language is to be used for the County to indemnify another party (Contractor):

County hereby agrees to indemnify the Contractor for claims brought against the Contractor only to the extent that they are found to result from the sole negligence of the County, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the County. This indemnification shall not be construed as a waiver of the County's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the County could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the County must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129.06, Florida Statutes, and Article VII,

section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the County to only those damages caused by County's sole negligence, and specifically not include any attorney's fees or costs associated therewith.

IV. Notwithstanding any contractual authority delegation to the contrary, any indemnification provisions entered into by the County other than that listed in paragraph III. may only be entered into at the specific direction of the County Administrator or his designee, and only after review by the County Attorney's Office. Any indemnity provision entered into pursuant to this subsection IV shall be reported to the Board of County Commissioners in arrears no less than quarterly.

Commissioner Morroni offered the foregoing resolution and moved its adoption, which was seconded by Commissioner Seel, and upon roll call the vote was:

AYES: Duncan, Stewart, Harris, Seel, and Morroni.
NAYS: None.
ABSENT AND NOT VOTING: Welch and Latvala.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By _____ Attorney