

Contract No. _____

Property: Lunken Airport – Lease Area No. 11, 28, 29
Hangars 1 and 2

LUNKEN AIRPORT LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Lease**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and **39th Parallel Leasing, LLC.**, an Ohio limited liability company, the address of which is 1 East 4th Street, Ste. 1400, Cincinnati, Ohio 45202 (“**Lessee**”).

Recitals:

A. The City owns certain real property known as Lunken Airport (the “**Airport**”), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. The City and Lessee, as successor in interest, are parties to (i) that certain *Lunken Airport Lease Agreement*, dated June 6, 2007, and as amended, by and between the City and LBK Hangar LLC, for Lease Area 29, (ii) that certain *Lunken Airport Lease Agreement*, dated June 6, 2007, by and between the City and LBK Hangar LLC, for Lease Area 11, and (iii) that certain *Lunken Airport Lease Agreement*, dated January 29, 2007, by and between the City and Avionics, LLC, for Lease Area 28 (collectively, the “**Existing Lease**”), pursuant to which the City leases Lessee a portion of the Airport designated as Lease Area No. 11, 28, and 29 containing approximately 206,305 square feet, as generally depicted on Exhibit A (Site Map), and more particularly described on Exhibit B (Legal Description) hereto (the “**Leased Premises**”). Under the terms of the Existing Lease, Lessee made certain improvements to the Leasehold Improvements located thereon to facilitate Lessee’s parking, storage, maintenance and, repair of airplanes and accessories for the conduct of activities incident thereto and for other general aeronautical purposes (the “**Permitted Use**”).

C. The term of the Existing Lease expired and Lessee is holding over and Lessee desires to continue occupying the Leased Premises to operate its business. Lessee desires to enter into a new lease pursuant to which the City will lease the Leased Premises to Lessee for a period expiring on **October 31, 2044** (an initial term ending on October 31, 2029, with five 3-year renewal options). As used in this Lease, the term “**Leasehold Improvements**” shall be inclusive of [x] any and all buildings, facilities, and improvements, including without limitation to ordinary and trade fixtures, located on or within the Leased Premises; [y] any and all additions, buildings, facilities, and improvements, including without limitation to ordinary and trade fixtures, constructed, placed, or otherwise installed on or within the Leased Premises pursuant to the terms of the Existing Lease; and [z] any and all future additions, buildings, facilities, and improvements, including without limitation to ordinary and trade fixtures, approved by DOT and constructed, placed, or otherwise installed by Lessee on or within the Leased Premises during the term of this Lease. The City is agreeable to enter into a new lease on the terms and conditions set forth herein.

D. The rent set forth in this Lease reflects the fair market rental value of the Leased Premises, as determined by analysis by the City’s Real Estate Services Division and the Airport Manager, considering airport industry standards and FAA requirements.

E. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s lease of the Leased Premises to Lessee at its meeting on _____.

F. Execution of this Lease was authorized by Ordinance No. _____, passed by Cincinnati City Council on _____.

NOW, THEREFORE, the parties hereby agree as follows:

1. Leased Premises; Termination of Existing Lease.

(A) Grant. The City hereby leases the Leased Premises to Lessee, and Lessee hereby leases the Leased Premises from the City on the terms and conditions set forth herein. The City makes no representations or warranties to Lessee regarding the physical condition of the Airport or Leased Premises, and Lessee accepts the Leased Premises in “as is” condition. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions, and other matters of record affecting the Leased Premises and to any and all existing agreements between the City and the federal government pertaining to the Airport. Throughout the Term of this Lease, Lessee shall have the non-exclusive right to use Airport Road for ingress/egress, subject to the City’s rules and regulations governing the rights of tenants and others to use Airport Road. Title and ownership to the Leasehold Improvements vested with the City upon expiration of the Existing Lease.

(B) City’s Right to Enter. The City’s employees, agents, and contractors shall have the right to enter upon the Leased Premises at any reasonable time and from time to time to examine the condition of the Leased Premises, determine Lessee’s compliance with the provisions of this Lease, access any public utility installations as shown on drawings at the office of the Airport Manager, and for any other proper purpose. The City shall use reasonable efforts to avoid disrupting Lessee’s business operations and promptly repair any damage to the Leased Premises caused by the City’s entry. The City shall use reasonable efforts to notify Lessee prior to entering upon the Leased Premises, except that no notice shall be required in the event of an emergency.

(C) Termination of Existing Lease. The Existing Lease shall automatically terminate on the Commencement Date set forth in Section 2 below, provided, however, that any and all obligations of Lessee under the Existing Lease that have accrued but have not been fully performed as of such date (for example, Lessee’s obligation to pay rent through the termination date) shall survive such termination until fully performed.

2. Term; Renewal Periods.

(A) Initial Term. The initial term of this Lease (“**Initial Term**”) shall commence on November 1, 2024 (the “**Commencement Date**”) and, unless extended or sooner terminated as herein provided, shall expire on **October 31, 2029**. As used herein, a “**Lease Year**” shall mean each 12-month period from November 1 to October 31.

(B) Renewal Periods (five 3-year automatic renewal periods unless Lessee provides Notice of Non-Renewal). Provided that (i) on the commencement date of each renewal period, Lessee is not in default under this Lease beyond any applicable notice and cure period provided for herein, (ii) the Lease has not been terminated as herein provided, and (iii) Lessee shall not have notified the City in writing that Lessee does NOT wish to extend the Term (a “**Notice of Non-Renewal**”), the Initial Term of this Lease shall automatically be extended for five (5) renewal periods of three (3) years each (each, a “**Renewal Period**”). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 5th Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Lease). As used herein, the “**Term**” of this Lease means the Initial Term and, if applicable, the Renewal Periods.

3. Rent.

(A) Base Rent. Beginning on the Commencement Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month, in the amounts calculated in this paragraph. The monthly rent installment for any partial calendar month at the beginning or end of the Term shall be prorated on a per diem basis. Notwithstanding the rent adjustments provided for herein, in

no event shall annual base rent decrease.

(i) Initial Term (the Commencement Date – October 31, 2029) (fixed). From the Commencement Date through October 31, 2029, annual base rent shall be equal to the following amount:

Annual Amount	Monthly Installment
\$90,927.00	\$7,577.25

(ii) Renewal Periods (CPI adjustment every 3 years). Effective as of the first day of Lease Years 6, 9, 12, 15, and 18 (i.e., every 3 years), the annual base rent shall increase to an amount that is equal to the product of multiplying the annual base rent payable during the term then just ended by a fraction, the numerator of which is the CPI most recently published 60 days prior to the rent adjustment date, and the denominator of which is the CPI most recently published 60 days prior to the commencement of the term then just ended. “CPI” means the Consumer Price Index, All Urban Consumers, U. S. City Average (1982-1984=100) published from time to time by the United States Bureau of Labor Statistics. Lessee shall make all CPI rent adjustment computations under this section 3(A) and shall send written notice of each CPI-based rent adjustment, together with Lessee’s computations (“**Lessee’s Rent Adjustment Notice**”), to DOTE (to the two addresses set forth in section 12 below) and to the City’s Real Estate Services Division (801 Plum Street, Room 122, Cincinnati, OH 45202) no less than 30 days prior to each rent adjustment date.

(B) Place of Payment. As used herein, “rent” shall mean base rent and all other amounts payable by Lessee to the City under this Lease. Rent shall be payable to “Treasurer – City of Cincinnati” and mailed or delivered to: City of Cincinnati, 465 Wilmer Ave, Cincinnati, OH 45226, Attn: Lunken Airport Manager, or to such other address as the City may from time to time specify in writing.

(C) Late Payments. If any payment of rent is not paid when due, a late charge of 5% of the amount past due shall automatically become due and payable. If rent is outstanding for longer than 30 days, such past due amount shall bear interest at the rate of 10% per annum until paid.

(D) Operating Fees; Gross Revenue Statements (§402-23, Cincinnati Municipal Code). Throughout the Term, Lessee shall (i) provide the City, on a semi-annual basis, with complete and accurate sworn statements of gross revenue received from operations (the “**Semi-Annual Gross Revenue Statements**”), and (ii) pay the City a percentage of gross revenue (currently, one percent (**1.0%**), but subject to change) (“**Operating Fees**”), all as required under Section 402-23, CMC, as the same may be modified from time to time. Lessee acknowledges that the City administration has no control over the Operating Fees established by Cincinnati City Council or when the new rates go into effect. (The parties acknowledge that, under Section 402-23, as currently written, Lessee is not required to pay the 1% fee on revenue derived from the carrying of United States mail, passengers or cargo on scheduled air routes, the sale of airplanes, the sale of gasoline, or revenue received for storage of aircraft in City-owned hangars; and that, where an operator provides more than one type of service licensed under Section 402-22, CMC, the minimum operating fee is \$500/year.) Lessee acknowledges that the City administration has no control over the Operating Fees established by Cincinnati City Council or when the new rates go into effect.

4. Permitted Use. Provided Lessee has obtained all valid permits from the City and any and all other required permits. Lessee shall use the Leased Premises for the storage, maintenance and repair of airplanes, flight school operations, as long as the annual permit is obtained, and other general aeronautical purposes (the “**Permitted Use**”) and for no other activities whatsoever without the City’s prior written consent. Lessee shall not deviate from the Permitted Use without the City’s prior written approval (and if required, as determined by the City, without the prior written approval of the FAA)

5. Utilities; Real Estate Taxes; Other Expenses. This is a “triple net” lease for the City, and during the Term of this Lease, Lessee shall pay (i) any and all utility charges associated with the Leased Premises, (ii) all real estate taxes and assessments levied (including the two semi-annual tax bills issued

by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears), and (iii) any and all other expenses associated with the Leased Premises, including without limitation any and all other fees required to be paid under Chapter 402 (*Airport*) of the CMC. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this Lease.* Lessee shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. If the Leasehold Improvements are not separately taxed for real estate tax purposes, the City shall calculate Lessee's share of each tax bill based upon the Hamilton County Auditor's respective values of the land and Leasehold Improvements, and Lessee shall pay its allocated share of the bill within 15 days after receiving written notice from the City of the amount due.

6. Project; Maintenance and Repairs; Other Operating Requirements.

(A) Project. As the Leasehold Improvements are owned by the City, Lessee shall complete any approved project in accordance with Exhibit C (Construction Requirements) hereto and plans and specifications must be submitted, reviewed, and approved in writing by DOTE, including without limitation the design, location of proposed additions, and all other material aspects thereof (as approved by DOTE, the "**Final Plans**"). Licensed architects or engineers shall prepare all plans and specifications for any project. Lessee shall bear all costs associated with any project. Once approved by DOTE, Lessee shall not make any modifications to the Final Plans without the prior written approval of DOTE. Upon commencement of on-site work, Lessee shall thereafter diligently pursue the same to completion. Upon completion of construction, Lessee shall provide DOTE with a copy of the "as built" plans.

(B) Maintenance and Repairs/ 3-Year Facility Audit. Lessee shall maintain the Leased Premises in good, clean, and safe condition and repair, shall not permit any waste or nuisance on the Leased Premises, shall not permit any debris or rubbish to accumulate in open space, and shall keep the Leased Premises free from unreasonable accumulations of snow and ice and other obstructions. Without limitation of the foregoing, Lessee shall replace all light bulbs and filters, provide water sprinkler system inspection and repair, provide trash removal, window washing, grass cutting, and proper maintenance of landscaped areas, and maintain and keep in good condition and repair the exterior and interior structural portions and roof of any and all buildings, structures, hangars, fences, fixtures, pavement, HVAC, electrical, plumbing and mechanical fixtures, fuel farm, and any and all other improvements located on the Leased Premises, reasonable wear and tear excepted, and in compliance with all applicable building and fire codes, airport regulations and other laws (collectively, "**Applicable Laws**"). At the beginning of every Renewal Period, Lessee shall provide the Airport Manager with a comprehensible leasehold facility audit report which will include a list of preventative maintenance actions completed during the prior period and any ongoing facility maintenance needs.

(C) Lessee's Right to Grant Leasehold Mortgage.

(i) Right to Grant Leasehold Mortgage. The City acknowledges and agrees that [x] Lessee shall have the right to grant a leasehold mortgage to the construction lender who will be providing financing to Lessee for approved projects for the Leasehold Improvements (a "**Permitted Leasehold Mortgage**", and the "**Permitted Leasehold Mortgagee**", as applicable), and [y] if Lessee defaults under the Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee shall be permitted, by written notice to the City, to assume Lessee's leasehold interests under this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and on the terms and conditions set forth therein.

(ii) Delivery of Default Notices to Permitted Leasehold Mortgagee. Provided Lessee or the Permitted Leasehold Mortgagee shall have given the City a recorded copy of the Permitted Leasehold Mortgage and notified the City in writing of the Permitted Leasehold Mortgagee's mailing address for purposes of notices under this Lease, then, if, while the Permitted Leasehold Mortgage remains in effect, the City gives a written notice of default to Lessee under this Lease, which default, if uncured, would entitle the City to terminate this Lease under section 9 hereof (a "**Default Notice**"), the City shall send a copy of

the Default Notice to the Permitted Leasehold Mortgagee. Notwithstanding the City's termination rights under section 9 hereof, the City agrees that it shall not exercise its right to terminate this Lease upon Lessee's default until the City has given the Permitted Leasehold Mortgagee at least sixty (60) days (following the City's delivery of the Default Notice to the Permitted Leasehold Mortgagee) to cure such default. The foregoing shall not be construed as requiring the Permitted Leasehold Mortgagee to cure Lessee's default. If neither Lessee nor the Permitted Leasehold Mortgagee cures Lessee's default within the applicable time periods specified in this paragraph (B)(ii) and section 9, the City shall be free to exercise its right to terminate this Lease and thereby extinguish the Permitted Leasehold Mortgage (and whereupon, if the City requires Lessee to surrender the Leasehold Improvements to the City under section 12 hereof, Lessee shall take all steps necessary to ensure that the Leasehold Improvements are transferred to the City free and clear of all monetary liens and encumbrances as required under section 12.

(D) Taxiway. Lessee acknowledges that the FAA requires an obstacle-free area on Taxiway "C" of 131 feet and that any modifications to the leasehold terrain/taxilane onto and/or adjacent to Taxiway "C" needs to be compliant with FAA taxiway design standards. Lessee shall bear all costs associated with any modifications.

(E) Soil and Environmental Conditions. Lessee acknowledges that it is familiar with and has had an opportunity to investigate the soil and environmental conditions at the Leased Premises. The City shall have no responsibility or liability in the event that the existing conditions do not support Lessee's proposed Leasehold Improvements.

(F) Protection from Aircraft Engine Blasts. Lessee shall provide an approved means of protection for persons and property from jet aircraft engine blasts or exhaust emissions at any time jet aircraft is operated on the Leased Premises.

(G) Parking. Lessee shall provide within the limits of the Leased Premises, at its own cost, a parking area for motor vehicles sufficient for vehicle parking needs of Lessee, its agents, employees, and customers.

(H) Permits. Lessee shall obtain all required permits and shall pay all required permit fees associated with Lessee's activities at the Leased Premises.

(I) Changes to Land Grade or Level. Lessee shall not make any changes in the land grade or level of the Leased Premises that might affect the abutting properties without the prior written consent of DOTE.

(J) Compliance with Federal Air Regulations. Lessee shall comply with Federal Air Regulations Part 77 and shall not penetrate any designated runway clear zone.

(K) Flood Plain. Lessee acknowledges that (i) the Leased Premises are located in a flood plain, (ii) FEMA requires that all improvements constructed within a flood plain comply with precise, rigorous construction standards, (iii) City building officials will not issue construction permits if the plans are not in compliance with the FEMA standards specific to flood plains, and (iv) compliance may add significant additional time and costs to the design and construction of the Leasehold Improvements.

(L) Alterations and Future Improvements. Once installed, Lessee shall not alter or remove any Leasehold Improvements except in accordance with section 12 below. Any and all alterations to the Leased Premises shall require the prior written consent of DOTE and shall comply with the minimum aesthetic and architectural standards and requirements adopted by the City (if any) that are applicable to the exterior of all other buildings and structures at the Airport.

(M) Determinations by DOTE. All determinations of the City, including determinations by the DOTE Director, with respect to the construction, alteration, maintenance, repair, restoration or removal of improvements at the Leased Premises shall be based upon confirmation that the improvements (i) are

structurally sound, (ii) comply with the safety standards and requirements applicable to all other buildings and structures at the Airport, (iii) are consistent with the quality and appearance of Airport facilities adjacent to Wilmer Avenue and/or Airport Road, and (iv) comply with all other requirements under this Lease applicable to the Leasehold Improvements.

(N) Potential Access Roads. The City may elect to develop or lease additional lease areas in the areas surrounding the Lease Premises. If the City develops or leases such areas, then the City or other persons may construct access roads or improve the pavements to create access roads to the surrounding areas. The access roads may be placed near or along the border of the Leased Premise. After creation of the access roads, Lessee shall at all times keep such access roads open and not impede or place anything on the access roads. The creation of the access roads will not reduce Lessee's rents or reduce any amounts owed to the City under this Lease. Lessee shall be responsible for its share of the costs to maintain and improve the access roads if Lessee uses the access roads.

7. Insurance.

(A) Insurance. Throughout the Term, Lessee shall maintain the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Leasehold Improvements, naming the City and Lessee as their interests may appear;

(ii) property insurance on any and all personal property of Lessee from time to time located at the Leased Premises in the amount of the full replacement cost thereof;

(iii) Commercial General Liability insurance of at least Three Million Dollars (\$3,000,000) per occurrence, combined single limit, naming the City as an additional insured, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar-sized airport facilities;

(iv) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the City as an additional insured; and

(v) workers compensation insurance as required by law.

(B) Policy Requirements. Lessee's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. No later than the Commencement Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(C) Waiver of Subrogation. Lessee hereby waives all claims and rights of recovery, and on behalf of Lessee's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Lessee or any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages

and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Premises or in connection with any breach by Lessee under this Lease.

8. Casualty; Eminent Domain.

(A) Casualty. If the Leased Premises are damaged or destroyed by fire or other casualty, Lessee shall repair and restore the Leased Premises (or, in the event of a partial taking, the remaining portion thereof), as expeditiously as possible, and to the extent practicable, to substantially the same condition in which they were in immediately prior to such occurrence. The City and Lessee shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. All insurance proceeds shall be deposited with an insurance trustee appointed by both the City and Lessee, and such insurance proceeds shall be disbursed to Lessee for purposes of paying costs associated with restoration, repair, stabilization, or demolition, as necessary to meet the provisions set forth herein. If the insurance proceeds are insufficient to fully repair and restore the Leasehold Improvements, Lessee shall make up for the deficiency. Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Premises are being repaired or restored (it being the agreement of the parties that Lessee shall purchase business interruption insurance, if it so chooses, to alleviate such financial burden). Lessee shall oversee all construction in accordance with the applicable requirements set forth herein. Notwithstanding anything herein to the contrary, Lessee shall have the right, but not the obligation to repair and restore the Leased Premises and Leasehold Improvements, *provided, however*, in the event that Lessee elects not to restore or repair the Leasehold Improvements, Lessee shall provide written notice to the City within thirty days after such damage or casualty event to terminate this Lease. If notice of termination is timely provided, this Lease shall terminate on the date specified in the notice. Upon termination of this Lease following a casualty event, the insurance proceeds shall be allocated as follows: (i) first to Lessee to perform any and all work necessary for the Leased Premises to be surrendered to the City in a safe and proper condition (i.e., to cause any and all remaining improvements to comply with all applicable laws, including the City's building code or to otherwise demolish the Leasehold Improvements); and (ii) second to any Permitted Leasehold Mortgagee to satisfy any outstanding principal, interest or any other amounts owed to such Permitted Leasehold Mortgagee. Upon such termination, Lessee shall satisfy and cause to be released any mortgages, liens, or other encumbrances placed upon or permitted to be placed upon the Leased Premises.

(B) Eminent Domain. If any portion of the Leased Premises is taken by exercise of eminent domain (federal, state, or local), Lessee shall repair and restore the Leased Premises (or, in the event of a partial taking, the remaining portion thereof), as expeditiously as possible, and to the extent practicable, to substantially the same condition in which they were in immediately prior to such occurrence. Notwithstanding the foregoing, if (i) the entire Leased Premises are taken by eminent domain, this Lease shall automatically terminate on the date on which Lessee is required to surrender possession, and (ii) if a substantial portion of the Leased Premises is taken by eminent domain such that the remainder is not usable for the Permitted Use as determined by Lessee, Lessee shall have the right to terminate this Lease by giving written notice thereof to the City on or before the date on which Lessee is required to surrender possession of such portion. Upon such termination of this Lease, the eminent domain proceeds shall be allocated as follows: (i) in the case of a taking by the state or federal government, to the City, to compensate the City for the value of the land taken (and, in the event of a partial taking, for the cost of clearing and otherwise restoring the remaining portion of the Leased Premises); and (ii) to Lessee, to compensate Lessee for the value of the Leasehold Improvements; provided, however, following title and ownership of the Leasehold Improvements vesting with the City, all such value shall be allocated to the City.

9. Default; Remedies.

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than ten (10) days after Lessee receives written notice thereof from the City;

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than twenty (20) days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 20-day period, an event of default shall not be deemed to have occurred if Lessee commences to cure such failure within such 20-day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within ninety (90) days after Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it); and

(iii) The commencement of levy, execution or attachment proceedings against Lessee, any principal (which shall be defined as any individual or entity having an ownership interest in Lessee of more than 25%) or partner of Lessee, or any of the assets of Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Lessee or any principal or partner of Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Lessee or any principal or partner of Lessee; or the commencement of a case by or against Lessee or any principal or partner of Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution).

(B) **Remedies.** Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof, (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

10. Assignment and Subletting. Lessee acknowledges that the City is entering into this transaction because of the City's confidence that Lessee has the financial means and business experience that are necessary to carry out the construction of the Leasehold Improvements and to successfully operate Lessee's business in accordance with the provisions of this Lease. Lessee acknowledges that the City shall not be expected to consent to a proposed assignment or sublease by Lessee of its interests under this Lease to any person or entity in whom the City does not have similar confidence. Any attempt by Lessee

to assign or otherwise transfer its interests under this Lease to a third party without the City's prior written consent shall be null and void and shall, at the option of the City, constitute a default of Lessee under this Lease. The foregoing notwithstanding, if Lessee transfers its interests under this Lease to an affiliate of Lessee (including without limitation a sublease of a portion of the Leased Premises to Lessee's affiliate), or to the surviving entity in a merger involving Lessee, or to the purchaser of all or substantially all of Lessee's assets or ownership interests, such transfer shall not constitute a prohibited assignment for purposes of this section provided that Lessee provides the City with no less than 30 days prior written notice thereof, accompanied by the relevant supporting documentation. As used in the preceding sentence, an "affiliate" of Lessee means an entity that controls, or is controlled by, or is under common control with, Lessee. For purposes hereof "control" shall mean the power, exercisable jointly or severally, to manage and direct the business and affairs of a party through the ownership of more than fifty percent (50%) of membership or partnership interests, corporate stock and/or voting rights. No assignment or sublease by Lessee of its rights or obligations under this Lease to an affiliate or any other third party shall relieve Lessee from any liability to the City under this Lease. All compensation received by Lessee in connection with a subletting relating to or otherwise allocable to this Lease in respect of the interval in question that exceeds the base rent ("Excess Compensation") for the same interval shall be payable as follows:

(1) first, to Lessee until Lessee has received an amount equal to all actual, third-party, out-of-pocket costs incurred by Lessee in connection with such transfer (including brokerage commissions, attorneys' fees and expenses, Lessee finish-work, and other Lessee inducements); an

(2) thereafter, 50% to City and 50% to Lessee.

(a) If an event of default occurs, all such Excess Compensation accruing thereafter shall be payable to City. Lessee shall hold all amounts it receives which are payable to City in trust and shall deliver all such amounts to City within ten business days after Lessee's receipt thereof.

11. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS, or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati
Dept of Transportation & Engineering
801 Plum Street, Suite 450
Cincinnati, OH 45202

To Lessee:

Jay Schmalfuss, Member
4510 Airport Rd.
Cincinnati, OH 45226
513-321-1200 ext. 806
jay@flightlogix.com

with a copy to:

City of Cincinnati
Attn: Airport Manager
465 Wilmer Ave, Cincinnati, OH 45226

If Lessee sends a notice to the City alleging that the City is in default under this Lease, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

12. Surrender; Holdover.

(A) Surrender. At the end of the Term, Lessee shall peaceably surrender the Leased Premises to the City, free and clear of all leasehold mortgages and other liens (except those, if any, created by the

City); provided, however, that, notwithstanding any other provision of this Lease to the contrary, no less than 90 days prior to the end of the Term, Lessee shall notify DOTE in writing of the existence of any fuel tanks at the Leased Premises ("**Fuel Tanks**"), whereupon DOTE shall notify Lessee as to whether or not the City requires the removal of the Fuel Tanks. If the City requires Lessee to remove the Fuel Tanks, Lessee shall remove the same and repair any and all damage to the Leased Premises caused thereby no later than the end of the Term. As provided in paragraph 6(L) above, Lessee shall not be permitted to remove any other improvements and acknowledges that the City would not enter into this Lease on the terms and conditions set forth herein but for Lessee's obligation to surrender all improvements to the City, free and clear of all liens, at the end of the Term.

(B) Lessee's Right to Remove Items of Personal Property. No later than the last day of the Term, Lessee shall remove all of Lessee's personal property at the Leased Premises (excluding trade fixtures, which shall not be removed unless otherwise directed by the City under paragraph 12(A) above)) shall repair any and all damage to the Leased Premises caused by the installation or removal thereof and otherwise restore the Leased Premises to a safe, clean, and satisfactory condition.

(C) Holdover. If Lessee fails to surrender possession of the Leased Premises to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term and except that base rent payable during the holdover period shall be equal to two hundred percent of the base rent in effect at the end of the Term), terminable by either party at any time by giving written notice thereof to the other party. Lessee shall be liable for all costs and damages suffered or incurred by the City as a result of Lessee's failure to surrender possession at the end of the Term, including without limitation costs and damages suffered or incurred by the City during the holdover period.

(D) Documents to be Delivered to City. At the end of the Term, Lessee shall deliver to the City originals or copies of all books and records, operating manuals, contracts with third parties (but only if the City has expressly agreed to accept an assignment of such contracts), warranty information, and all other written materials and documents that are in Lessee's possession or under Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation and maintenance of the Leased Premises for the Permitted Use.

13. Compliance with Laws.

(A) Compliance with Laws. Lessee shall comply with all federal, state, and local laws, ordinances, rules, and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati pertaining to the Airport, all applicable requirements set forth in Chapter 402 (*Airport*) of the CMC, and all requirements under Title 49 of the Code of Federal Regulations, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. In all its activities, the Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964 which Lessee shall comply with. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. In the event of breach of any of the above Nondiscrimination covenants, the City will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued. With reference to 49 CFR Subtitle A, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation", Lessee shall include the

foregoing provision in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing services to the public and shall include therein a provision granting the City the right to take such action as the United States may direct to enforce such covenant. Lessee shall defend, indemnify, and hold harmless the City from any and all claims and demands of third persons, including the United States of America, resulting from Lessee's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason of such noncompliance.

14. Coordinated Report Conditions (CR #40-2024). All conditions set forth in the City's Coordinated Report #40-2024 shall apply (summarized generally as follows):

(A) Metropolitan Sewer District of Greater Cincinnati and Stormwater Management Utility. Lessee shall comply with all requirements of the Metropolitan Sewer District of Greater Cincinnati ("MSD"), the City's Stormwater Management Utility (SMU), and the Ohio EPA with respect to sewer service, storm water, detention, and flood plain requirements.

(B) Greater Cincinnati Water Works. Lessee must conform to Greater Cincinnati Water Works' requirements for water service, including backflow prevention requirements, entirely at their cost." GCWW records show that this site does not have backflow prevention devices installed as required for commercial accounts. To bring this service into compliance, backflow prevention devices will need to be installed. Test results will be required to be submitted to GCWW upon initial installation and annually thereafter. Lessee must contact GCWW Field Services at 513-591-7825 for more information or to schedule an inspection. The Lessee is advised that the Lease Area is served by 1.5 inch copper service. The Lease Area contains two public fire hydrants which must be kept clear and accessible and otherwise maintain the integrity of the fire hydrants.

No building, structure or improvement of any kind shall be made in the lease area which will interfere with access to or operation of the existing water main. The City of Cincinnati, Ohio shall not be responsible to any present or future owners of said property or present or future owners of property with rights of ingress and egress over said property for reason of entering for constructing, maintaining or replacing the water mains. Further, the City of Cincinnati, Ohio shall not be responsible to any present or future owners of said property or future owners of property with rights of ingress and egress over said property for any damages which result from disruption or denial of said rights of ingress and egress or other rights of access by reason of entering for constructing, maintaining, or replacing the water main. No grade changes of any kind over any part of the full width profile of this lease area are permitted at any time so not to impact any present or future Water Works operations. The full width lease area must be accessible to the Water Works at all times for future maintenance and operation purposes

(C) Duke Energy. Lessee shall not do anything to interfere with Duke Energy's right to access, use, maintain, repair, or replace its existing electric or gas facilities at the site, if any. Any and all damage to the electric and gas facilities caused by Lessee, its employees, agents, contractors, licensees, or invitees shall be repaired at Lessee's expense. If required by Duke, Lessee shall grant Duke a recordable utility easement for Duke's existing gas facilities (such easement to encumber only Lessee's leasehold interest in the Leased Premises, and not the City's fee interest; the parties acknowledging that any such easement from the City would require approval by City Planning Commission and City Council).

(D) Altafiber. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work required to relocate the facilities as a result of this request will be handled entirely at the property owner's expense.

(E) Buildings & Inspections. If the Leased Premises do not constitute a separate tax parcel on the Hamilton County Auditor's tax maps, Lessee shall take all steps to accomplish the same, in cooperation with DOTE and the City's Real Estate Services Division.

15. General Provisions.

(A) Entire Agreement. This Lease (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Lease shall be brought in the Hamilton County Court of Common Pleas, and Lessee agrees that venue in such court is proper. Lessee hereby waives trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

(G) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's office.

(H) Time. Time is of the essence with respect to the performance by Lessee of its obligations under this Lease.

(I) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. Lessee represents that it has not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future member, officer, agent, or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. Lessee represents that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease has been duly authorized by all necessary actions on Lessee's part.

16. Exhibits. The following exhibits are attached hereto and made a part hereof:

Exhibit A - *Site Map*

Exhibit B - *Legal Description*

Exhibit C - *Construction Requirements*

[SIGNATURE PAGES FOLLOW]

This Lease is executed by the parties on the dates of acknowledgement indicated below, effective as of the later of such dates (the “**Effective Date**”).

39th Parallel Leasing, LLC., an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____, the _____ of **39th Parallel Leasing, LLC.**, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

[City Signature Page Follows]

CITY OF CINCINNATI

By: _____

Printed Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

Recommended by:

John Brazina, Director
Department of Transportation and Engineering

Jaime Edrosa, Lunken Airport

Approved as to Form:

Assistant City Solicitor

NO CERTIFICATION OF FUND REQUIRED

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Lease
Site Map

Figure 1

Lunken Airport LA 11, 28, 29 Combined Area, approximately 4.5 acres.



EXHIBIT B
to Lease
Legal Description

City of Cincinnati
Department of Transportation and Engineering
August 2024

Lunken Airport
Consolidation of Lease Areas 11, 28, and 29

Situated in Sections 24 and 30, Town 5, F.R. 1, Spencer Township, Hamilton County, Ohio, and being part of certain lots of the M.S. Wade Estate and parts of certain lots of Mary W. Luckett's Estate and more particularly described as follows:

Ohio State Coordinates (South Zone 3402)

E 1421258.67 N 406963.17
E 1421591.78 N 407130.83
E 1421826.80 N 406633.45
E 1421487.84 N 406473.32
E 1421326.79 N 406817.57
E 1421298.78 N 406804.34
E 1421266.01 N 406874.38
E 1421294.02 N 406887.61

Area 206,305.52 +/- SF

Coordinates Based On NAD-83 (1986)
Corpscon

EXHIBIT C
to Lease
Construction Requirements

As the Leasehold Improvements are owned by the City, Lessee shall comply with all applicable City requirements for construction, improvement, or repairs to the Leasehold Improvements and facilities.

1. **Design & Construction.** In accordance with Section 6 of the Lease, prior to commencing construction, Lessee shall provide DOTE with plans and specifications for the Project for DOTE's review and approval. All construction shall be performed in a good and workmanlike manner and in accordance with all legal requirements. All materials and workmanship shall be of good quality, and upon completion of construction, all improvements will be structurally safe and sound, and all parts therefor and all mechanical equipment therein and all utilities serving the improvements will be in good working order and will have been properly installed, tested, and paid for.

2. **Construction Schedule.**

(A) **Construction Completion.** Lessee shall request approvals from DOTE prior to commencement of construction or modifications to the Leasehold Improvements. Lessee shall diligently work to complete any project and shall not leave any project uncompleted.

(B) **Notice of Commencement and Completion.** Lessee shall provide DOTE written notice within 10 business days upon commencing any project and shall provide DOTE written notice within 10 business days following the date on which Lessee completes any project. The City shall inspect the project upon completion and notify Lessee of any observable deficiencies.

3. **City's Approval of General Contractor and Subcontractors.** Lessee shall not hire any contractor or subcontractor who is listed on the Federal Debarred List or State Debarred List, or any contractor or subcontractor who is identified as being debarred on the City's Vendor's Performance list (as identified on the applicable federal, state, and local government websites).

4. **Monthly Project Reports.** On a calendar month basis, and until such time as a project has been completed, Lessee shall submit a monthly progress report to DOTE so that the City can be kept up-to-date on all matters pertaining to the project.

5. **Inspections.** The City shall have the right to periodically inspect the project. If the City discovers any defects in the project or deviation from the Final Plans, Lessee shall promptly correct the same upon receipt of written notice from the City. The City shall use reasonable efforts to verbally notify Lessee prior to each inspection (except that no prior notice shall be needed in the event of inspections by the City's Building Department or Health Department) and shall use reasonable efforts not to disrupt construction.

6. **No Liens.** Lessee shall not permit any mechanics' liens to attach to the Leased Premises in connection with the project. If any such liens attach, Lessee shall cause them to be released within thirty (30) days after receiving notification of the filing thereof.

7. **Prevailing Wage.** Lessee shall comply with applicable prevailing wages for the project as determined by state and local law. Lessee acknowledges and agrees that it has not and shall not rely upon determinations or representations made by the City, its employees, or agents regarding applicability of state and local prevailing wage laws and that Lessee's decisions regarding applicability of and compliance with such laws shall be based upon its own and its counsel's investigations, determinations, and opinions.

Without limitation of other rights and remedies available to the City under this Lease or under state or local laws, Lessee shall defend, indemnify, and hold the City harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against them as a result of or arising from Lessee's failure to comply with applicable prevailing wage laws.

8. Punch-List Work. Promptly after delivering the Notice of Completion to DOTE under Section 1 above, Lessee shall create a punch-list of unfinished work and shall promptly thereafter complete such work (but in any event within 90 days after the date of the Notice of Completion).

9. Correction of Defects During Warranty Period. If any defect should appear that, in the reasonable opinion of the City, is due to defective materials or workmanship, Lessee shall remedy such defect within the applicable warranty period under Lessee's contract with its general contractor.

* * *