

# April 25, 2022 Board Meeting

Dan McClure Auditorium East  
600 Airport Circle Dr  
Sarasota, FL 34243



April 25, 2022 01:00 PM

Agenda Topic	Presenter	Page
1. Call to Order, Invocation, and Pledge to Flag	Chairman Beruff	
2. Introduction of New Employees	Anita Eldridge	
3. Approval: Minutes of Regular Meeting of February 15, 2022	Chairman	4
4. Public Comments - Items on the Agenda	Chairman	
<p>Members of the public who wish to speak on a topic, whether on the agenda or not, are asked to fill out a Citizen's Comment card and present it to the Board Secretary at this time. This is the time for anyone wishing to speak on ANY agenda item, even those that may involve a contract in excess of the \$325,000 threshold amount. A later item on the agenda is set aside for those wishing to speak on items NOT on the agenda.</p>		
5. Presentation: Terminal Design Update	Matthew Wilson, Gresham Smith	
6. Items Needing Action	Fredrick J. Piccolo	8
6.1 Approval: Resolution 2022-01 to Representative James Buchanan in Appreciation		8
6.2 Approval: Amendments to SMAA Defined Contribution Retirement 401(a) Plan for IRS-Prescribed Updates and General Clarification		9
6.3 Approval: Amendment to SMAA Personnel Policy Regarding Employment of Relatives		152
6.4 Approval: Implement Recommendations Contained in Public Sector Personnel Consultants Classification and Compensation Study		153
6.5 Approval: Authorization to Allow President, CEO to Approve Purchases of Shuttle Buses as Needed		158
6.6 Approval: General Ground Lease with the Experimental Aircraft Association, Chapter 180 of Manasota County		159

6.7	Approval: Fixed Base Operator Lease and Development Agreement with Sheltair Aviation SRQ, LLC for FBO Development and Operation		209
6.8	Approval: Lease and Development Agreement with DJG SRQ Hangar, LLC for Aircraft Hangar Development		272
6.9	Approval: Lease and Development Agreement with SRQ Hangar, LLC for Aircraft Hangar Development, Aircraft Sales, and Aircraft Storage		318
7.	Items Needing Action - Over \$325,000 Threshold	Fredrick J. Piccolo	366
The following item(s) involve a contract in excess of the threshold of \$325,000 and pursuant to Section 332.0075(3)(b) F.S., a reasonable opportunity for public comment must be offered before their approval, award, or ratification.			
7.1	Approval: Construction Contract Award to Ajax Paving Industries of Florida, LLC for Taxiway C - F Rehabilitation Project		366
7.2	Approval: Construction Phase Services Contract with Hanson Professional Services for the Taxiway C - F Rehabilitation Project		370
7.3	Approval: Increase Contract Scope with Magnum Builders of Sarasota for the Parking Lot Expansion Project		388
8.	Department Reports	Fredrick J. Piccolo	395
8.1	Financial Statements		395
8.2	Investment Portfolio		399
8.3	Finance & Administration		401
8.4	Real Estate Development & Properties		409
8.5	ARFF, Operations & Police		412
8.6	Development/Community Relations & Activity Report		421
8.7	Engineering, Planning & Facilities		422
8.8	Internal Audit & Investment Compliance		426
8.9	Information Technologies		427
9.	Old/New Business	Fredrick J. Piccolo	428
Discussion: SMAA Board Meeting Schedule			
10.	Attorney Presentations		
11.	Public Comments - Items Not on the Agenda	Chairman	
Anyone wishing to speak on items not on the agenda must complete a Citizen's Comment card and present it to the Board Secretary. Comments are limited to five minutes per person. No individual may give their time to another speaker.			

12. Comments by Commissioners

Chairman

13. Adjournment

Chairman

## **AGENDA ITEM NO. 3**



### **Minutes for February 15, 2022**

02/15/2022 | 11:00 AM - 11:46 AM - Eastern Time (US and Canada)

Dan P McClure Auditorium, 6000 Airport Circle, Sarasota FL 34243

### **Attendees (10)**

Commissioners: Carlos Beruff; Jesse Biter; Kristin Incrocci; Jeff Jackson; Robert Spencer

Staff/Council: Fredrick Piccolo; Kent Bontrager; Anita Eldridge; Dori Guzman; Dan Bailey

### **Absent (1)**

Commissioner Holder

### **Note**

Commissioner Jackson arrived to the meeting at 11:05 a.m., and did not vote on Items 6.1 through 6.6.

## **AGENDA**

### **Item 1. Call to Order, Invocation, and Pledge to Flag**

Chairman Beruff called the meeting to order at 1:00 p.m., gave the invocation, and led the pledge of allegiance to the flag.

### **Item 2. Introduction of New Employees**

Anita Eldridge introduced new employee Emma Klostermeyer, Operations Officer.

### **Item 3. Approval: Minutes of Regular Meeting of November 22, 2021**

The Board approved the minutes of the Regular Meeting of November 22, 2021, as presented.

### **Item 4. Public Comments**

No public comments were offered.

### **Item 5. Communication: Plante Moran Audited Fiscal Year 2021 Financials**

Mr. Piccolo informed the Board the audited FY 2021 Financial Report was available. He also noted this is the Authority's twentieth year with no audit exceptions, and the Authority is strong, with \$54 million in reserves.

## **Item 6. Items Needing Action**

### **Item 6.1 Approval: Increase Contract Scope for Airport Parking Lot Expansion Project with American Infrastructure Development**

Due to significant and unanticipated increase in airline traffic and the loss of three overflow parking lots, it is necessary to amend professional engineering services which were approved at the May 20, 2019 SMAA Board Meeting. Additional design and permitting fees associated with two new Park and Ride lots were negotiated in the amount of \$224,507.00 with a 10% contingency, providing an authorized level of \$246,958.00.

**MOTION:** Commissioner Biter moved to approve the design amendment with American Infrastructure Development and authorized staff to prepare all documents necessary to implement this action. Commissioner Incrocci seconded. **MOTION PASSED UNANIMOUSLY (4-0).**

### **Item 6.2 Approval: Ratification of Increase in Contract Scope for Construction of Parking Lot Expansion Project with Magnum Builders of Sarasota, Inc**

After analyzing the need for immediate parking spaces for holiday traffic, the President, CEO spoke with the Commissioners, and the Board Chairman approved an increase in scope with Magnum Builders. Staff is requesting ratification of the emergency expenditures of \$253,100.67 that was needed to complete the parking lot improvements.

**MOTION:** Commissioner Biter moved to ratify the increase in contract scope and fee of \$253,100.67 with Magnum Builders to improve the old Avis overflow lot and authorize staff to prepare all documents necessary to implement this action. Commissioner Incrocci seconded. **MOTION PASSED UNANIMOUSLY (4-0).**

### **Item 6.3 Approval: Intergovernmental Agreement Fire Marshal Services in Unincorporated Sarasota County**

An agreement has been reached with the County of Sarasota whereby the SMAA Fire Marshal will be designated as the Authority Having Jurisdiction (AHJ) in the portions of the Airport within unincorporated Sarasota County.

**MOTION:** Commissioner Biter moved to approve an Intergovernmental Agreement with County of Sarasota allowing the SMAA Fire Marshal to function as AHJ in the portions of the Airport within unincorporated areas of Sarasota County. Commissioner Incrocci seconded. **MOTION PASSED UNANIMOUSLY (4-0).**

### **Item 6.4 Approval: Request to Award FBO Lease and Development Agreement**

In FY 2021, the Authority received unsolicited inquiries from two national firms requesting to develop and operate a new Fixed Base Operation (FBO) at the Airport: REW Investments, a privately held affiliate of Million Air Interlink, Inc (Million Air) and Sheltair Aviation SRQ, LLC (Sheltair). In reply, staff issued an Invitation for Proposal to each firm for award of an FBO Lease and Development Agreement on a 20-acre site on the Airport's North Quadrant, identified in the Airport's Master Plan for general aviation development. Based on criteria established and reviewed by staff, the President, CEO recommended award of the proposed Lease and Development Agreement to Sheltair. The proposed initial Term of Agreement to be awarded is 30 years, with one 10-year Renewal Term, subject to compliance; initial land rental rate of \$0.45/SF, subject to CPI adjustments every three years thereafter; and proposed fuel flowage fee of \$0.09/gallon, consistent with all other FBOs on the Airport.

**MOTION:** Commissioner Biter moved to approve award of proposed Lease and Development Agreement to Sheltair Aviation SRQ, LLC. Commissioner Incrocci seconded. **MOTION PASSED UNANIMOUSLY (4-0).**

#### **Item 6.5 Approval: B-220003 Roof Replacement on Air Cargo Building, Contract Award to Allied Roofing, Inc.**

In order to replace the original 1988 gravel-tar roof on the air cargo building, staff prepared and distributed a Request for Proposal to secure the services of a qualified roofing firm. After all bids were received and reviewed, staff determined Allied Roofing, Inc. to be the lowest, responsive, and responsible bidder meeting all specification requirements. The winning bid was \$214,000.00.

**MOTION:** Commissioner Biter moved to approve the award of the replacement roof for the air cargo building to Allied Roofing, Inc., in the amount of \$214,000.00 and authorized staff to prepare all documents necessary. Commissioner Incrocci seconded. **MOTION PASSED UNANIMOUSLY (4-0).**

#### **Item 6.6 Approval: One Time Addition to Employee Incentive Plan Policy**

Staff is requesting a one-time addition to the SMAA Employee Incentive Plan Policy to recognize employees hired on or before September 30, 2021. This one-time payment of \$500 (FT) or \$250 (PT or substitute) is to recognize those employees who did not meet the qualification of the plan for 2021.

**MOTION:** Commissioner Biter moved to approve a one-time addition to the Employee Incentive Plan to recognize employees hired on or before September 30, 2021. Commissioner Incrocci seconded. **MOTION PASSED UNANIMOUSLY (4-0).**

### **Item 7. Department Reports**

#### **7.1 Financial Statements**

#### **7.2 Investment Portfolio**

#### **7.3 Finance and Administration**

#### **7.4 ARFF, Operations and Police**

**7.5 Development/Community Relations and Activity Report**  
**7.6 Engineering, Planning, and Facilities**

**7.7 Internal Audit and Investment Compliance**  
**7.8 Information Technologies**  
**7.9 Real Estate Development and Properties**

**Item 8. Attorney Presentation**

Airport council reminded the Board of annual requirement of four hours of ethics training. Staff will provide further instructions.

**Item 9. Old/New Business**

There was no old/new business.

**Item 10. Public Comments - Items Not on the Agenda**

No public comments were offered.

**Item 11. Commissioners' Comments**

Commissioner Spencer made a motion to direct the President, CEO to request the Transportation Security Administration (TSA) assume passenger and baggage screening functions at Sarasota Bradenton International Airport, effective immediately.

After discussion between the Board, President, and Airport Council, the motion was amended as follows:

**MOTION:** Commissioner Spencer directed the President, CEO, on behalf of Airport Authority, to request that TSA terminate the present provider for non-compliance; and request that TSA provide required services on a temporary basis; and request that TSA put out proposals for replacement private providers. Commissioner Jackson seconded. **MOTION PASSED UNANIMOUSLY (5-0).**

**Item 12. Adjournment**

The meeting was adjourned at 1:46 p.m.

**ATTEST:**

---

Jesse Biter, Secretary

---

Carlos Beruff, Chairman

**RESOLUTION NO. 2022-01**

**RESOLUTION OF THE SARASOTA MANATEE AIRPORT AUTHORITY**

**WHEREAS**, Representative James Buchanan has served as the representative of the 74<sup>th</sup> District of the Florida House of Representatives since 2018; and

**WHEREAS**, Representative Buchanan serves on six House Committees, including as a Chair of one; and

**WHEREAS**, the SMAA is a body politic and corporate authorized by Chapter 2003-309, Laws of Florida, as amended, to operate airport facilities within either or both of Sarasota and Manatee Counties; and

**WHEREAS**, the SMAA operates the Sarasota Bradenton International Airport (hereinafter referred to as the "Airport") in Sarasota and Manatee Counties; and

**WHEREAS**, the Airport has become the fastest growing airport in the United States and must undertake significant expansion projects to handle the increased passenger demand safely and efficiently; and

**WHEREAS**, the Florida Legislature provides significant assistance to all Florida commercial airports through capital improvement grants; and

**WHEREAS**, Representative Buchanan sponsored an appropriation request that resulted in a \$21,500,000 capital grant to the Sarasota Bradenton International Airport to construct a five-gate terminal addition and improve the baggage screening system.

**THEREFORE, BE IT RESOLVED AND CONFIRMED THAT:**

The Sarasota Manatee Airport Authority wants to express its sincere appreciation for his assistance, its high degree of admiration for his counsel, and its continued desire to work with Representative Buchanan for the betterment of aviation throughout the State and at the Sarasota Bradenton International Airport.

**APRIL 25, 2022**

**SARASOTA MANATEE AIRPORT AUTHORITY**

\_\_\_\_\_  
**Carlos Beruff, Chairman**

\_\_\_\_\_  
**Jesse Biter, Secretary**





## AGENDA ITEM NO. 6.2

**SARASOTA MANATEE AIRPORT AUTHORITY  
APRIL 25, 2022 MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL: AMENDMENTS TO SMAA DEFINED CONTRIBUTION RETIREMENT 401(A) PLAN FOR IRS-PRESCRIBED UPDATES AND GENERAL CLARIFICATION**

---

---

**EXECUTIVE SUMMARY: The SMAA Defined Contribution Retirement 401(a) Plan calls for changes to meet IRS requirements, due by July 31, 2022. With guidance from legal counsel, staff would also like to update certain provisions for clarification.**

---

---

NARRATIVE: The Airport Authority provides a Defined Contribution Retirement 401(a) Plan ("the Plan") for employees hired after October 1, 2007. The Plan is governed by the Authority and administered by the Principal Financial Group. In addition to the IRS requirements, staff is updating certain long-standing provisions to provide clarification:

- Student interns are not eligible to participate in the Plan, regardless of number of hours worked.
- New hires may be eligible for contribution in their first year of employment if they work six (6) months and 1,000 hours within the first Plan year.
- Former employees not actively in the Plan will be permitted to make partial withdrawals from their account.
- SMAA Administration will not determine eligibility for withdrawals from the Plan due to disability; SMAA Administration will recognize determinations made by the Social Security Administration or an insurance company paying a disability benefit to the employee.
- "Hours of service" will refer only to hours worked and not hours paid.

---

---

**RECOMMENDATION: It is hereby recommended that the Sarasota Manatee Airport Authority approve the proposed Basic Plan Document and Adoption Agreement #001 to the Defined Contribution Retirement Plan and that staff be authorized to prepare any documents in order to implement this action.**

---

---

Attachments: Proposed Basic Plan Document and Adoption Agreement to the Sarasota Manatee Airport Authority 401(a) Plan.

**NONSTANDARDIZED GOVERNMENTAL PROFIT SHARING/401(k) PLAN  
ADOPTION AGREEMENT #001**

By executing this Nonstandardized Governmental Profit Sharing/401(k) Plan Adoption Agreement (the "Adoption Agreement" or "AA"), the undersigned Employer agrees to establish or continue a Governmental Profit Sharing/401(k) Plan for its Employees. The Governmental Profit Sharing/401(k) Plan adopted by the Employer consists of the Governmental Defined Contribution Pre-Approved Plan Basic Plan Document #03 (the "BPD") and the elections made under this Adoption Agreement (collectively referred to as the "Plan"). An Employer may jointly co-sponsor the Plan by signing a Participating Employer Adoption Page, which is attached to this Adoption Agreement. **This Plan is effective as of the Effective Date identified on the Signature Page of this Adoption Agreement.**

**SECTION 1  
EMPLOYER INFORMATION**

**1-1 EMPLOYER INFORMATION.**

Name: Sarasota Manatee Airport Authority

Address: 6000 Airport Circle  
Sarasota, FL 34243

Telephone: 941-359-5200

**1-2 EMPLOYER IDENTIFICATION NUMBER (EIN).** 59-6001787

**1-3 FORM OF BUSINESS.**

- State or political subdivision of a State
- State agency or instrumentality
- Indian Tribal Government
- Describe other Employer qualified to adopt a Governmental Plan: \_\_\_\_\_

**1-4 EMPLOYER'S TAX YEAR END.** The Employer's tax year ends 9/30

**1-5 RELATED EMPLOYERS.** Is the Employer part of a group of Related Employers (as defined in Section 1.83 of the Plan)?

- Yes
- No

If yes, Related Employers may be listed below. A Related Employer must execute a Participating Employer Adoption Page for Employees of that Related Employer to participate in this Plan.

*[Note: This AA §1-5 is for informational purposes and the Employer need not list Related Employers. The failure to identify all Related Employers will not jeopardize the qualified status of the Plan.]*

**SECTION 2  
PLAN INFORMATION**

**2-1 PLAN NAME.** SMAA 401(a) Plan

Original Effective Date: October 1, 2007

Restatement Effective Date: October 1, 2021

**2-2 PLAN NUMBER.** 002

**2-3 TYPE OF PLAN.**

- (a) This Plan is a Profit Sharing Plan. (*Note: May also include Matching Contributions under AA §6B.*)
- (b) This Plan is a Grandfathered Profit Sharing/401(k) Plan. [*Note: To qualify as a Grandfathered Profit Sharing/401(k) Plan, the Employer must have maintained a 401(k) plan as of May 6, 1986. A Grandfathered Profit Sharing/401(k) Plan may also include a plan of an Indian Tribal Government, as defined in Section 1.58 of the Plan. See Section 1.55 of the Plan for a more detailed description of a Grandfathered Profit Sharing/401(k) Plan.*]

- (c) The Plan is intended to be a FICA Replacement Plan (as described under Section 4.03 of the Plan). *[Note: If this subsection (c) is checked, elections under this AA must be consistent with the requirements of a FICA Replacement Plan as described under Section 4.03 of the Plan.]*

2-4 **PLAN YEAR.**

- (a) Calendar year.  
 (b) The 12-consecutive month period ending on 9/30 each year.  
 (c) The Plan has a Short Plan Year running from \_\_\_\_ to \_\_\_\_.

2-5 **FROZEN PLAN.** Check this AA §2-5 if the Plan is a frozen Plan to which no contributions will be made.

- This Plan is a frozen Plan effective \_\_\_\_\_. (See Section 3.02(a)(2) of the Plan.)

*[Note: As a frozen Plan, the Employer will not make any contributions with respect to Plan Compensation earned after such date and no Participant will be permitted to make any contributions to the Plan after such date. In addition, no Employee will become a Participant after the date the Plan is frozen.]*

2-6 **MULTIPLE EMPLOYER PLAN.** Is this Plan a Multiple Employer Plan as defined in Section 16.07 of the Plan? (See Section 16.07 of the Plan for special rules applicable to Multiple Employer Plans.)

- Yes  
 No

2-7 **PLAN ADMINISTRATOR.**

- (a) The Employer identified in AA §1-1.

(b) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

2-8 **DEFINITION OF DISABLED.** An individual is considered Disabled for purposes of applying the provisions of this Plan if:

- (a) The individual is covered by the Employer’s disability insurance plan and is determined to be disabled under such plan.  
 (b) The individual is determined to be disabled by the Social Security Administration under Section 223(d) of the Social Security Act for purposes of determining eligibility for Social Security benefits.  
 (c) The Plan Administrator determines an individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence. The Plan Administrator may establish reasonable procedures for determining whether a Participant is Disabled.

*[Note: An Employer may elect any or all of (a), (b) and (c) above. If more than one of (a), (b) and (c) is selected, the hierarchy for determining whether an individual is considered Disabled is (a), then (b) and then (c), unless described otherwise under separate administrative procedures or under subsection (d) below.]*

- (d) Alternative definition of Disabled: The individual is covered by a commercial long-term disability insurance policy and is determined to be disabled under such policy.

*[Note: Any alternative definition described in this subsection (d) will apply uniformly to all Participants under the Plan and will be applied in a nondiscretionary manner. The Employer may describe different definitions of Disabled for different purposes under the plan.]*

**SECTION 3  
ELIGIBLE EMPLOYEES**

3-1 **ELIGIBLE EMPLOYEES.** In addition to the Employees identified in Section 2.02 of the Plan, the following Employees are excluded from participation under the Plan with respect to the contribution source(s) identified in this AA §3-1. See Sections 2.02(d) and (e) of the Plan for rules regarding the effect on Plan participation if an Employee changes between an eligible and ineligible class of employment.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Collectively Bargained Employees
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Non-resident aliens who receive no compensation from the Employer which constitutes U.S. source income
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) Leased Employees
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) Employees paid on an hourly basis
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Employees paid on a salaried basis
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Employees in an elected or appointed position.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Part-Time Employees (as defined in Section 1.71 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) Seasonal Employees (as defined in Section 1.89 of the Plan)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(j) Temporary Employees (as defined in Section 1.93 of the Plan)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(k) Employees eligible for another qualified plan sponsored by the Employer or a Related Employer Specify name of other qualified plan (optional): <u>the defined benefit plan known as the Sarasota Manatee Airport Authority Retirement Plan</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(l) Other: <u>Employees classified as Traffic Control Specialists, "Substitute Employees," or "Student Interns," and Employees hired before October 1, 2007.</u>

*[Note: The elections under the ER column apply to any Pick-Up Contributions and any After-Tax Employee Contributions authorized under AA §6-7, unless elected otherwise under subsection (l) above. The exclusions inserted may not result in a specifically named individual or a finite group (such as employees hired before a certain date) being the only employee or employees participating under the plan in violation of the permanency requirements or Treas. Reg. §1.401-1(b)(2). It is permissible to limit participation under the plan to an employee or employees of a specifically named position or positions.]*

**SECTION 4  
MINIMUM AGE AND SERVICE REQUIREMENTS**

4-1 **ELIGIBILITY REQUIREMENTS – MINIMUM AGE AND SERVICE.** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service conditions under this AA §4-1 will be eligible to participate under the Plan as of his/her Entry Date (as defined in AA §4-2 below).

(a) **Service Requirement.** An Eligible Employee must complete the following minimum service requirements to participate in the Plan.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(1) There is no minimum service requirement for participation in the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) ___ Year(s) of Service (as defined in Section 2.03(a)(1) of the Plan and AA §4-3).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) The completion of at least ___ Hours of Service during the first ___ months of employment (or the first ___ days of employment) or the completion of a Year of Service (as defined in AA §4-3), if earlier.

- | Deferral  | Match                               | ER                                  |   |
|---|-------------------------------------|-------------------------------------|---|
|   |                                     |                                     | <input type="checkbox"/> (i) An Employee who completes the required Hours of Service satisfies eligibility at the end of the designated period, regardless if the Employee actually works for the entire period.  |
|   |                                     |                                     | <input type="checkbox"/> (ii) An Employee who completes the required Hours of Service must also be employed continuously during the designated period of employment. See Section 2.03(a)(2) of the Plan for rules regarding the application of this subsection (ii).                    |
| <input type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/>            | (4) The completion of ___ Hours of Service during an Eligibility Computation Period. [ <i>Note: An Employee satisfies the service requirement immediately upon completion of the designated Hours of Service rather than at the end of the Eligibility Computation Period.</i> ]        |
| <input type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/>            | (5) Full-time Employees are eligible to participate as set forth in subsection (i) below. Employees who are “part-time” Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a full-time Employee is any Employee not defined in subsection (ii) below. |
|   |                                     |                                     | (i) Full-time Employees must complete the following minimum service requirements to participate in the Plan:  |
|   |                                     |                                     | <input type="checkbox"/> (A) There is no minimum service requirement for participation in the Plan.   |
|   |                                     |                                     | <input type="checkbox"/> (B) The completion of at least ___ Hours of Service during the first ___ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier.  |
|   |                                     |                                     | <input type="checkbox"/> (C) Under the Elapsed Time method as defined in AA §4-3(c) below.  |
|   |                                     |                                     | <input type="checkbox"/> (D) Describe: _____<br><i>[Note: Any conditions provided under this subsection (D) must be definitely determinable.]</i>   |
|   |                                     |                                     | (ii) Part-time Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than:  |
|   |                                     |                                     | <input type="checkbox"/> (A) For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than:   |
|   |                                     |                                     | <input type="checkbox"/> (I) ___ hours per week.  |
|   |                                     |                                     | <input type="checkbox"/> (II) ___ hours per month.  |
|   |                                     |                                     | <input type="checkbox"/> (III) ___ hours per year.  |
|   |                                     |                                     | <input type="checkbox"/> (B) Describe part-time Employees for this purpose: _____<br><i>[Note: A part-time employee must be described as an individual who works less than a specified number of hours (no greater than 40) during a standard work week.]</i>                           |
| <input type="checkbox"/>  | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | (6) Under the Elapsed Time method as described in AA §4-3(c) below.   |
| <input type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/>            | (7) Describe eligibility conditions: _____  |
| <br>(b) <b>Minimum Age Requirement.</b> An Eligible Employee (as defined in AA §3-1) must have attained the following age with respect to the contribution source(s) identified in this AA §4-1(b). |                                     |                                     |   |

- | Deferral                 | Match                               | ER                                  |   |
|--------------------------|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | (1) There is no minimum age for Plan eligibility. |
| <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | (2) Age 21.                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | (3) Age <u>18</u> .                               |

(c) **Special eligibility rules.** The following special eligibility rules apply with respect to the Plan: \_\_\_\_\_

*[Note: Any elections under the ER column under this AA §4-1 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions authorized under AA §6-7, unless elected otherwise under subsection (c) above. Subsection (c) above may be used to apply the eligibility conditions selected under this AA §4-1 separately with respect to different Employee groups or different contribution formulas under the Plan. Any special rules under subsection (c) above must be definitely determinable.]*

4-2 **ENTRY DATE.** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service requirements in AA §4-1 shall be eligible to participate in the Plan as of his/her Entry Date. For this purpose, the Entry Date is the following date with respect to the contribution source(s) identified under this AA §4-2.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) <b>Immediate.</b> The date the minimum age and service requirements are satisfied (or date of hire, if no minimum age and service requirements apply).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) <b>Semi-annual.</b> The first day of the 1st and 7th month of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) <b>Quarterly.</b> The first day of the 1st, 4th, 7th and 10th month of the Plan Year.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(d) <b>Monthly.</b> The first day of each calendar month.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) <b>Payroll period.</b> The first day of the payroll period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) <b>The first day of the Plan Year.</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Describe Entry Date: _____

*[Note: Entry Date under this subsection (g) must be no later than 3 years after the date described under (a).]*

An Eligible Employee’s Entry Date (as defined above) is determined based on when the Employee satisfies the minimum age and service requirements in AA §4-1. For this purpose, an Employee’s Entry Date is the Entry Date:

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) <b>next following</b> satisfaction of the minimum age and service requirements.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(i) <b>coinciding with or next following</b> satisfaction of the minimum age and service requirements.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(j) <b>nearest</b> the satisfaction of the minimum age and service requirements.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(k) <b>preceding</b> the satisfaction of the minimum age and service requirements.

This section may be used to describe any special rules for determining Entry Dates under the Plan. For example, if different Entry Date provisions apply for the same contribution sources with respect to different groups of Employees, such different Entry Date provisions may be described below.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(l) <b>Describe</b> any special rules that apply with respect to the Entry Dates under this AA §4-2: _____

*[Note: The elections under the ER column under this AA §4-2 apply to any Pick-Up Contributions selected under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (l) above. Any special rules under subsection (l) above must be definitely determinable.]*

4-3 **DEFAULT ELIGIBILITY RULES.** In applying the minimum age and service requirements under AA §4-1 above, the following default rules apply with respect to all contribution sources under the Plan:

- **Year of Service.** An Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service during an Eligibility Computation Period. Hours of Service are calculated based on actual hours worked during the Eligibility Computation Period. (See Section 1.57 of the Plan for the definition of Hour of Service.)
- **Eligibility Computation Period.** If one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years. (See Section 2.03(a)(3)(i) of the Plan). If more than one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Anniversary Years. (See Section 2.03(a)(3)(ii) of the Plan.)

To override the default eligibility rules, complete the applicable sections of this AA §4-3. **If this AA §4-3 is not completed for a particular contribution source, the default eligibility rules apply.**

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ Hours of Service during an Eligibility Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) <b>Eligibility Computation Period (ECP).</b> The Plan will use Anniversary Years, unless more than one Year of Service is required under AA §4-1(a), in which case the Plan will shift to Plan Years if the Employee does not earn a Year of Service during the first Eligibility Computation Period. (See Section 2.03(a)(3)(ii) of the Plan.)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(c) <b>Elapsed Time method.</b> Eligibility service will be determined under the Elapsed Time method. An Eligible Employee (as defined in AA §3-1) must complete a period of service, as designated below, to participate in the Plan. (See Section 2.03(a)(6) of the Plan.) <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) For Deferral, must complete a ____ period of service</li> <li><input checked="" type="checkbox"/> (2) For Match, must complete a <u>6 month</u> period of service</li> <li><input checked="" type="checkbox"/> (3) For ER, must complete a <u>6 month</u> period of service</li> </ul> <p><i>[Note: Under the Elapsed Time method, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Eligibility Computation Period designated in Section 2.03(a)(3) of the Plan.]</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) <b>Equivalency Method.</b> For purposes of determining an Employee's Hours of Service for eligibility, the Plan will use the Equivalency Method (as defined in Section 2.03(a)(5) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) All Employees.</li> <li><input type="checkbox"/> (2) Only Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, eligibility will be determined based on actual hours worked.</li> </ul> <p>Hours of Service for eligibility will be determined under the following Equivalency Method.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.</li> <li><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.</li> <li><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.</li> <li><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period worked.</li> <li><input type="checkbox"/> (7) <b>Describe Equivalency Method:</b> _____</li> </ul> <p><i>[Note: Any description of an Equivalency Method under this subsection (7) must be definitely determinable.]</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) <b>Special eligibility provisions.</b> _____

*[Note: The elections under the ER column under this AA §4-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (e) above. Any special rules under subsection (e) above must be definitely determinable.]*

4-4 **EFFECTIVE DATE OF MINIMUM AGE AND SERVICE REQUIREMENTS.** The minimum age and/or service requirements under AA §4-1 apply to all Employees under the Plan. An Employee will participate with respect to all contribution sources under the Plan as of his/her Entry Date, taking into account all service with the Employer, including service earned prior to the Effective Date.

To allow Employees employed on a specified date to enter the Plan without regard to the minimum age and/or service conditions, complete this AA §4-4.

**Deferral      Match      ER**

An Eligible Employee who is employed by the Employer on the following designated date will enter the Plan on the designated date without regard to minimum age and/or service requirements (as designated below):

- (a) the Effective Date of this Plan (as designated in the Employer Signature Page).
- (b) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
- (c) \_\_\_\_\_ [insert date no earlier than the Effective Date of this Plan]

An Eligible Employee who is employed on the designated date will enter the Plan on the designated date without regard to the minimum age and service requirements under AA §4-1. If both minimum age and service conditions are not waived, select subsection (d) or (e) below to designate which condition is waived under this AA §4-4.

- (d) This AA §4-4 only applies to the minimum service condition.
- (e) This AA §4-4 only applies to the minimum age condition.

The provisions of this AA §4-4 apply to all Eligible Employees employed on the designated date unless designated otherwise under subsection (f) or (g) below.

- (f) The provisions of this AA §4-4 apply to the following group of Employees employed on the designated date: \_\_\_\_\_
- (g) Describe special rules: \_\_\_\_\_

*[Note: An Employee who is employed as of the designated date described in this AA §4-4 will enter the Plan as of such date unless a different Entry Date is designated under subsection (g) above. The elections under the ER column apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (g) above. Any special rules under subsection (g) above must be definitely determinable.]*

4-5 **SERVICE WITH PREDECESSOR EMPLOYER.** Service with the following Predecessor Employers will be counted for purposes of determining eligibility, vesting and allocation conditions under this Plan, unless designated otherwise under subsection (a) or (b) below. (See Sections 2.06, 3.07(b) and 6.07 of the Plan.)

(a) The Plan will count service with the following Predecessor Employers:

	Eligibility	Vesting	Allocation Conditions
<input type="checkbox"/> (1) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(b) Describe any special provisions applicable to Predecessor Employer service: \_\_\_\_\_

4-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for eligibility purposes, complete this AA §4-6. (See Section 2.07 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate.
- (b) If an Employee incurs at least \_\_\_\_\_ Breaks in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate. [Enter "0" if prior service will be disregarded for all rehired Employees.]
- (c) The Nonvested Participant Break in Service rule applies to all Employees, including Employees who have not terminated employment.
- (d) Describe: \_\_\_\_\_



**SECTION 5  
COMPENSATION DEFINITIONS**

5-1 **TOTAL COMPENSATION.** Total Compensation is based on the definition set forth under this AA §5-1. See Section 1.94 of the Plan for a specific definition of the various types of Total Compensation.

- (a) W-2 Wages
- (b) Code §415 Compensation
- (c) Wages under Code §3401(a)

*[Note: For purposes of determining Total Compensation, each definition includes Elective Deferrals as defined in Section 1.36 of the Plan, pre-tax contributions to a Code §125 cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4).]*

5-2 **POST-SEVERANCE COMPENSATION.** Total Compensation includes post-severance compensation, to the extent provided in Section 1.94(b) of the Plan, unless otherwise elected below.

- (a) **Exclusion of post-severance compensation from Total Compensation.** The following amounts paid after a Participant’s severance of employment are excluded from Total Compensation.
  - (1) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.
  - (2) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee’s gross income.

*[Note: Plan Compensation (as defined in Section 1.75 of the Plan) includes any post-severance compensation amounts that are includible in Total Compensation. The Employer may elect to exclude all compensation paid after severance of employment from the definition of Plan Compensation under AA §5-3(j) below or may elect to exclude specific types of post-severance compensation from Plan Compensation under AA §5-3(l) below.]*

- (b) **Continuation payments for disabled Participants.** If this subsection (b) is not elected, Total Compensation does not include continuation payments for disabled Participants. If this subsection (b) is elected, Total Compensation shall include post-severance compensation paid to a Participant who is permanently and totally disabled, as provided in Section 1.94(c) of the Plan.

5-3 **PLAN COMPENSATION.** Plan Compensation is **Total Compensation** (as defined in AA §5-1 above) with the following exclusions described below.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(b) Elective Deferrals (as defined in Section 1.36 of the Plan), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4) are excluded.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(c) All fringe benefits (cash and noncash), reimbursements or other expense allowances, moving expenses, deferred compensation, and welfare benefits are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) Compensation above \$___ is excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) Amounts received as a bonus are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Amounts received as commissions are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Overtime payments are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Amounts received for services performed for a non-signatory Related Employer are excluded. (See Section 2.02(c) of the Plan.)
			<i>[Note: If this subsection (h) is not elected, amounts received for services performed for a non-signatory Related Employer are INCLUDED in Plan Compensation.]</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) “Deemed §125 compensation” as defined in Section 1.94(d) of the Plan.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(j) Amounts received after termination of employment are excluded. (See Section 1.94(b) of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(k) Differential Pay (as defined in Section 1.94(e) of the Plan).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(l) Describe adjustments to Plan Compensation: <u>Amounts received as a distribution from a nonqualified deferred compensation plan</u>

[*Note: Any modification under subsection (l) must be definitely determinable and preclude Employer discretion. The elections under the ER column under this AA §5-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (l).*]

5-4 **PERIOD FOR DETERMINING COMPENSATION.**

- (a) **Compensation Period.** Plan Compensation will be determined on the basis of the following period(s) for the contribution sources identified in this AA §5-4. [*Note: If a period other than the Plan Year applies for any contribution source, any reference to the Plan Year as it refers to Plan Compensation for that contribution source will be deemed to be a reference to the period designated under this AA §5-4.*]

Deferral	Match	ER	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(1) The Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) The calendar year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) The Employer's fiscal tax year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) The 12-month period ending on ____ which ends during the Plan Year.

- (b) **Compensation while a Participant.** Unless provided otherwise under this subsection (b), in determining Plan Compensation, only compensation earned while an individual is a Participant under the Plan with respect to a particular contribution source will be taken into account.

To count compensation for the entire Plan Year for a particular contribution source, including compensation earned while an individual is not a Participant with respect to such contribution source, check below. (See Section 1.75(b) of the Plan.)

Deferral	Match	ER	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	All compensation earned during the Plan Year will be taken into account, including compensation earned while an individual is not a Participant.

- (c) **Few weeks rule.** The few weeks rule (as described in Section 5.02(c)(7)(i) of the Plan) will not apply unless designated otherwise under this subsection (c).

- Amounts earned but not paid during a Limitation Year solely because of the timing of pay periods and pay dates shall be included in Total Compensation for the Limitation Year, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no amounts are included in more than one Limitation Year.

**SECTION 6  
EMPLOYER AND EMPLOYEE CONTRIBUTIONS**

6-1 **EMPLOYER / EMPLOYEE CONTRIBUTIONS.** The Employer/Employee may make the following contributions under the Plan:

- (a) Employer Contributions under AA §6-2
- (b) Voluntary After-Tax Employee Contributions under AA §6-7(a)
- (c) Mandatory After-Tax Employee Contributions under AA §6-7(b)
- (d) Employer Pick-Up Contributions under AA §6-7(c)

(e) N/A. No Employer/Employee Contributions are permitted under the Plan [*Skip to Section 6A*]

6-2 **EMPLOYER CONTRIBUTION FORMULA.** For the period designated in AA §6-5(a) below, the Employer will make the following Employer Contributions on behalf of Participants who satisfy the allocation conditions designated in AA §6-6 below. Any Employer Contribution authorized under this AA §6-2 will be allocated in accordance with the allocation formula selected under AA §6-3.

(a) **Discretionary contribution.** The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.

(b) **Fixed contribution.**

(1) **Fixed percentage.** \_\_\_% of each Participant’s Plan Compensation.

(2) **Fixed dollar.** \$\_\_\_ for each Participant.

(3) **Determined in accordance with the terms of the Employment contract** between an Eligible Employee and the Employer. [*Note: If this subsection (3) is checked, the provisions of an Employment contract addressing retirement benefits will override any selection under this AA §6-2.*]

(c) **Contributions under Collective Bargaining Agreement, employment contract or equivalent arrangement.** The Employer will make an Employer Contribution based on a Collective Bargaining Agreement, employment agreement or equivalent arrangement as follows: \_\_\_\_\_

[*Note: Insert the appropriate contribution formula (and allocation formula, if applicable) from the Collective Bargaining Agreement, employment agreement or equivalent arrangement. The formula must be definitely determinable as required under Treas. Reg. §1.401-1.*]

(d) **Service-based contribution.** The Employer will make the following contribution:

(1) **Discretionary.** A discretionary contribution determined as a uniform percentage of Plan Compensation for each period of service designated below.

(2) **Fixed percentage.** \_\_\_% of Plan Compensation paid for each period of service designated below.

(3) **Fixed dollar.** \$\_\_\_ for each period of service designated below.

The service-based contribution will be based on the following periods of service:

(4) Each Hour of Service

(5) Each week of employment

(6) Describe period: \_\_\_\_\_

The service-based contribution is subject to the following rules.

(7) Describe any special provisions that apply to service-based contribution: \_\_\_\_\_

(e) **Describe special rules for determining contributions under Plan:** \_\_\_\_\_

[*Note: Any special rules under this subsection (e) may only describe the basis for determining a discretionary service-based contribution, such as a uniform dollar amount, and must be definitely determinable.*]

6-3 **ALLOCATION FORMULA.**

(a) **Pro rata allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated:

(1) as a uniform percentage of Plan Compensation.

(2) as a uniform dollar amount.

(b) **Fixed contribution.** The fixed Employer Contribution under AA §6-2 will be allocated in accordance with the selections made with respect to fixed Employer Contributions under AA §6-2.

- (c) **Permitted disparity allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated under the two-step method (as defined in Section 3.02(a)(1)(i)(B)(I) of the Plan), using the Taxable Wage Base (as defined in Section 1.92 of the Plan) as the Integration Level.

To modify these default rules, complete the appropriate provision(s) below.

- (1) **Integration Level.** Instead of the Taxable Wage Base, the Integration Level is:
- (i) \_\_\_% of the Taxable Wage Base, increased (but not above the Taxable Wage Base) to the next higher:
 

<input type="checkbox"/> (A) N/A	<input type="checkbox"/> (B) \$1
<input type="checkbox"/> (C) \$100	<input type="checkbox"/> (D) \$1,000
  - (ii) \$\_\_\_ (not to exceed the Taxable Wage Base)
  - (iii) 20% of the Taxable Wage Base

*[Note: See Section 3.02(a)(1)(i)(B)(IV) of the Plan for rules regarding the Maximum Disparity Rate that may be used where an Integration Level other than the Taxable Wage Base is selected.]*

- (2) **Describe** special rules for applying permitted disparity allocation formula: \_\_\_\_\_

*[Note: Any special rules under subsection (2) must be definitely determinable.]*

- (d) **Uniform points allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated to each Participant in the ratio that each Participant's total points bears to the total points of all Participants. A Participant will receive the following points:

- (1) \_\_\_ point(s) for each \_\_\_ year(s) of age (attained as of the end of the Plan Year).
- (2) \_\_\_ points for each \$\_\_\_ of Plan Compensation.
- (3) \_\_\_ point(s) for each \_\_\_ Year(s) of Service. For this purpose, Years of Service are determined:
  - (i) In the same manner as determined for eligibility.
  - (ii) In the same manner as determined for vesting.
  - (iii) Points will not be provided with respect to Years of Service in excess of \_\_\_.

- (e) **Employee group allocation.** The Employer may make a separate discretionary Employer Contribution to the Participants in the following allocation groups. The Employer must notify the Trustee in writing of the amount of the contribution to be allocated to each allocation group.

- (1) A separate discretionary Employer Contribution may be made to each Participant of the Employer (i.e., each Participant is in his/her own allocation group).
- (2) A separate discretionary or fixed Employer Contribution may be made to the following allocation groups. If no fixed amount is designated for a particular allocation group, the contribution made for such allocation group will be allocated as a uniform percentage of Plan Compensation to all Participants within that allocation group, unless otherwise designated as a uniform dollar amount below.
  - The contribution made for each allocation group will be allocated as a uniform dollar amount to all Participants within the allocation group.

**Group 1:** \_\_\_\_\_

*[Note: The Employee allocation groups designated above must be clearly defined in a manner that will not violate the definite allocation formula requirement of Treas. Reg. §1.401-1(b)(1)(i).]*

- (3) **Special rules.** Unless designated otherwise under this subsection (3), if a Participant is in more than one allocation group described in (2) above during the Plan Year, the Participant will receive an Employer Contribution based on the Participant's status on the last day of the Plan Year. (See Section 3.02(a)(1)(i)(D) of the Plan.)

- (i) **Determined separately for each Employee group.** If a Participant is in more than one allocation group during the Plan Year, the Participant's share of the Employer Contribution will be based on the Participant's status for the part of the year the Participant is in each allocation group.

- (ii) **Describe:** \_\_\_\_\_

*[Note: This subsection (ii) may only describe the amount of the Employer Contribution a Participant will receive when such Participant is in more than one allocation group. Any language under this subsection (ii) must be definitely determinable.]*

- (f) **Age-based allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated under the age-based allocation formula so that each Participant receives a pro rata allocation based on adjusted Plan Compensation. For this purpose, a Participant’s adjusted Plan Compensation is determined by multiplying the Participant’s Plan Compensation by an Actuarial Factor (as described in Section 1.03 of the Plan).

A Participant’s Actuarial Factor is determined based on a specified interest rate and mortality table. Unless designated otherwise under subsection (1) or (2) below, the Plan will use an applicable interest rate of 8.5% and a UP-1984 mortality table.

- (1) **Applicable interest rate.** Instead of 8.5%, the Plan will use an interest rate of \_\_\_% (must be between 7.5% and 8.5%) in determining a Participant’s Actuarial Factor.
- (2) **Applicable mortality table.** Instead of the UP-1984 mortality table, the Plan will use the following mortality table in determining a Participant’s Actuarial Factor: \_\_\_\_\_
- (3) **Describe special rules applicable to age-based allocation:** \_\_\_\_\_

*[Note: See Appendix A of the Plan for sample Actuarial Factors based on an 8.5% applicable interest rate and the UP-1984 mortality table. If an interest rate or mortality table other than 8.5% or UP-1984 is selected, appropriate Actuarial Factors must be calculated. Subsection (3) must provide for a definitely determinable allocation method.]*

- (g) **Service-based allocation formula.** The service-based Employer Contribution selected in AA §6-2(d) will be allocated in accordance with the selections made in AA §6-2(d).
- (h) **Describe special rules for determining allocation formula:** \_\_\_\_\_

*[Note: Any special rules under this subsection (h) must be described in a manner that precludes Employer discretion.]*

6-4 **CONTRIBUTIONS OF ACCRUED SICK, PTO AND/OR VACATION LEAVE.** *[Note: Do not complete this AA §6-4 and instead use AA§6-7(c) if this is an Employer Pick-Up Contribution.]*

- (a) The Employer will make and allocate Employer Contributions of amounts of accrued unpaid sick leave, as described below: \_\_\_\_\_
- (b) The Employer will make and allocate Employer Contributions of amounts of accrued unpaid vacation leave, as described below: \_\_\_\_\_

*[Note: The Employer must describe an Employer Contribution of accrued unpaid sick, and/or vacation leave that meets the following requirements:*

- *The leave converted under the arrangement can only be accrued unpaid leave;*
- *The leave converted can only be sick and/or vacation leave;*
- *The Employer must designate how often the conversions occur under this AA §6-4;*
- *The eligibility requirements for participation in the plan cannot be such that an Employee becomes a Participant only in the plan year in which the Employee terminates employment;*
- *The only accrued unpaid leave which can be converted under the arrangement must only be leave for which the Employee has no right to request a cash payment;*
- *The leave conversion formula can only be one which involves multiplying an Employee’s current daily rate of pay against the amount of accrued unpaid leave being converted; and*
- *The leave conversion formula is definitely determinable.]*

6-5 **SPECIAL RULES.** No special rules apply with respect to Employer/Employee Contributions under the Plan, except to the extent designated under this AA §6-5. Unless designated otherwise, in determining the amount of the Employer/Employee Contributions to be allocated under this AA §6, the contribution will be based on Plan Compensation earned during the Plan Year.

(a) **Period for determining Employer/Employee Contributions.** Instead of the Plan Year, Employer/Employee Contributions will be determined based on Plan Compensation earned during the following period: [*Note: The Plan Year must be used if the permitted disparity allocation method is selected under AA §6-3(c) above.*]

(1) Plan Year quarter

(2) calendar month

(3) payroll period

(4) Other: \_\_\_\_\_

[*Note: Although Employer Contributions are determined on the basis of Plan Compensation earned during the period designated under this subsection (a), this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Employer Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this subsection (a).*]

(b) **Limit on Employer Contributions.** The Employer Contribution elected in AA §6-2 may not exceed:

(1) \_\_\_% of Plan Compensation

(2) \$\_\_\_

(3) A discretionary amount determined by the Employer applied in a uniform manner for all eligible Participants for the Plan Year.

(c) **Offset of Employer Contribution.**

(1) A Participant's allocation of Employer Contributions under AA §6-2 of this Plan is reduced by contributions under \_\_\_\_\_ [*insert name of plan(s)*]. (See Section 3.02(a)(1) of the Plan.)

(2) In applying the offset under this subsection (c), the following rules apply: \_\_\_\_\_

(d) **Special rules:** \_\_\_\_\_

[*Note: Any special rules under this subsection (d) must be definitely determinable.*]

6-6 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6-6 to receive an allocation of Employer Contributions under the Plan. [*Note: No allocation conditions apply to After-Tax Employee Contributions or Employer Pick-Up Contributions under AA §6-7.*]

(a) **No allocation conditions** apply with respect to Employer Contributions under the Plan.

(b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.

(c) **Minimum service condition.** An Employee must be credited with at least:

(1) 1,000 Hours of Service during the Plan Year.

(i) Hours of Service are determined using actual Hours of Service.

(ii) Hours of Service are determined using the following Equivalency Method (as defined under Section 2.03(a)(5) of the Plan):

(A) Monthly

(B) Weekly

(C) Daily

(D) Semi-monthly

(E) Describe: \_\_\_\_\_

[*Note: Any description under this subsection (E) must be definitely determinable.*]

(2) \_\_\_ consecutive days of employment with the Employer during the Plan Year.

- (d) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee:
    - (i) dies.
    - (ii) terminates employment due to becoming Disabled.
    - (iii) becomes Disabled.
    - (iv) terminates employment after attaining Normal Retirement Age.  
 [Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in subsection (e) below.]
    - (v) terminates employment after attaining Early Retirement Age.  
 [Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in subsection (e) below.]
    - (vi) is on an authorized leave of absence from the Employer.
  - (2) The exceptions selected under subsection (1) above will apply even if an Employee has not terminated employment at the time of the selected event(s).
  - (3) The exceptions selected under subsection (1) above do not apply to:
    - (i) an employment condition under subsection (b) above.
    - (ii) a minimum service condition under subsection (c) above.
- (e) **Describe** any special rules governing the allocation conditions under the Plan: "Hours of Service" only includes hours paid for actual service, as described in BPD s. 1.57(a). Other hours paid, such as hours paid for sick leave, are excluded.
- 
- [Note: Any special rules under this subsection (e) must be definitely determinable.]

6-7 **AFTER-TAX EMPLOYEE CONTRIBUTIONS AND EMPLOYER PICK-UP CONTRIBUTIONS.**

- (a) **Voluntary After-Tax Employee Contributions.** If permitted under this subsection (a), a Participant may contribute any amount as Voluntary After-Tax Employee Contributions up to the Code §415 Limitation (as defined in Section 5.02 of the Plan), except as limited under this subsection (a).
  - (1) **Limits on Voluntary After-Tax Employee Contributions.** If this subsection (1) is checked, the following limits apply to Voluntary After-Tax Employee Contributions:
    - (i) **Maximum limit.** A Participant may make Voluntary After-Tax Employee Contributions up to:
      - (A) \_\_\_\_\_% of Plan Compensation
      - (B) \$\_\_\_\_\_
 for the following period:
      - (C) the entire Plan Year.
      - (D) the portion of the Plan Year during which the Employee is eligible to participate.
      - (E) each separate payroll period during which the Employee is eligible to participate.
    - (ii) **Minimum limit.** The amount of Voluntary After-Tax Employee Contributions a Participant may make for any payroll period may not be less than:
      - (A) \_\_\_\_\_% of Plan Compensation
      - (B) \$\_\_\_\_\_
  - (2) **Change or revocation of Voluntary After-Tax Employee Contributions.** In addition to the Participant's Entry Date under the Plan, a Participant's election to change or resume an after-tax election will be effective as set forth under the After-Tax Employee Contributions election form or other written procedures adopted by the Plan Administrator. A Participant must be permitted to change or revoke an after-tax election at least once per year. Unless the After-Tax Employee Contributions election form or other written procedures adopted by the Plan Administrator provide otherwise, a Participant may revoke an after-tax election (on a prospective basis) at any time. Unless designated otherwise in a Participant's after-tax election form, a Participant's

affirmative election to make an After-Tax Employee Contribution will cease upon termination of employment and the Participant will need to make a new election upon rehire.

- (3) **Other limits or special rules relating to Voluntary After-Tax Employee Contributions:** \_\_\_\_\_

*[Note: Any limits described under this subsection (3) must be consistent with the provisions of Section 3.04 of the Plan.]*

- (b) **Mandatory After-Tax Employee Contributions.** If this subsection (b) is checked, Employees are required to make Mandatory After-Tax Employee Contributions in order to participate under the Plan.

- (1) **Amount of Mandatory After-Tax Employee Contributions.** Employees are required to contribute the following amount in order to participate in the Plan:

- (i) \_\_\_\_\_% of each Employee’s Total Compensation.  
 (ii) \$\_\_\_\_\_ for each Participant.  
 (iii) Describe rate or amount: \_\_\_\_\_

- (2) **Special rules** applicable to Mandatory After-Tax Employee Contributions: \_\_\_\_\_

- (c) **Employer Pick-Up Contributions.** Each Participant will be required to make a Pick-up Contribution to the Plan equal to the amount specified under this subsection (c). Any amounts contributed pursuant to this subsection (c) will be picked up by the Employer pursuant to Code §414(h) and will be treated as Employer Contributions under the Plan. Such contributions and earnings thereon will be 100% vested at all times. (See Section 3.03 of the Plan.)

- (1) The following amounts will be contributed to the Plan as an Employer Pick-Up Contribution:

- (i) \_\_\_\_\_% of Plan Compensation.  
 (ii) \$\_\_\_\_\_ per pay period.  
 (iii) Any amount from \_\_\_\_\_% to \_\_\_\_\_% of Plan Compensation, as designated by the Employee.

*[Note: This subsection (iii) may only be selected if the Employee designates the amount as a one-time irrevocable election.]*

- (2) Elect this subsection (2) if an Employee may make a one-time irrevocable election not to make Employer Pick-Up Contributions under the Plan.

- (3) Special rules applicable to Employer Pick-Up Contributions: \_\_\_\_\_

*[Note: Any Employer Pick-Up Contributions made under this subsection (c) must satisfy the requirements of Section 3.03 of the Plan. See AA §11-4 for an Employee’s ability to elect out of making Employer Pick-Up Contributions.]*

**SECTION 6A  
SALARY DEFERRALS**

- 6A-1 **SALARY DEFERRALS.** Are Employees permitted to make Salary Deferrals under the Plan?

- Yes.  
 No. *[If “No” is checked, skip to Section 6B.]*

- 6A-2 **MAXIMUM LIMIT ON SALARY DEFERRALS.** Unless designated otherwise under this AA §6A-2, a Participant may defer any amount up to the Elective Deferral Dollar Limit and the Code §415 Limitation (as set forth in Sections 5.02 and 5.03 of the Plan).

- (a) **Salary Deferral Limit.** A Participant may not defer an amount in excess of:

- (1) \_\_\_\_\_% of Plan Compensation.  
 (2) \$\_\_\_\_\_.

*[Note: If both subsection (1) and (2) above are checked, the deferral limit is the lesser of the amounts selected.]*

Any limit described in subsection (1) or (2) above applies with respect to the following period:

- (3) Plan Year.  
 (4) the portion of the Plan Year during which the individual is eligible to participate.



- (5) each separate payroll period during which the individual is eligible to participate.
- (b) **Limits on deferrals on bonus payments.** [*Note: This §6A-2(b) only may be selected, if bonus payments are not excluded under AA §5-3.*]
- (1) The same limits specified in (a)(1) and (a)(2) above apply to bonus and non-bonus Plan Compensation, Employees may defer any amounts out of bonus payments, subject to the Elective Deferral Dollar Limit and the Code §415 Limitation (as defined in Sections 5.02 and 5.03 of the Plan) and any other limit on Salary Deferrals under this AA 6A-2. The Employer may impose special limits on bonus payments or may impose special limits on bonus payments under the Salary Deferral Election. (See Section 3.02(c)(2) of the Plan.)
- (2) A Participant may defer up to \_\_\_% (*not to exceed 100%*) of any bonus payment (subject to the Elective Deferral Dollar Limit and the Code §415 Limitation), without regard to any other limits described under this AA §6A-2. The Employer may impose special limits on bonus payments under the Salary Deferral Election. (See Section 3.02(c)(2) of the Plan.)
- (3) Describe special rules applicable to deferrals on bonus payments: \_\_\_\_\_  
 [*Note: If this subsection (b) is checked, bonus payments may not be excluded from Plan Compensation in the Deferral column under AA §5-3(e).*]
- (c) **Describe** any other limits that apply with respect to Salary Deferrals under the Plan: \_\_\_\_\_
- 6A-3 **MINIMUM DEFERRAL RATE.** Unless designated otherwise under this AA §6A-3, no minimum deferral requirement applies under the Plan. Alternatively, a Participant must defer at least the following amount in order to make Salary Deferrals under the Plan.
- (a) \_\_\_% of Plan Compensation for a payroll period.
- (b) \$\_\_\_ for a payroll period.
- (c) Describe: \_\_\_\_\_
- [*Note: If more than one limit applies under this AA §6A-3, the minimum deferral rate is the lesser of the amounts designated under this AA §6A-3.*]
- 6A-4 **CATCH-UP CONTRIBUTIONS.** Catch-Up Contributions (as defined in Section 3.02(c)(2)(iv) of the Plan) are permitted under the Plan, unless designated otherwise under this AA §6A-4.
- Catch-Up Contributions are not permitted under the Plan.
- 6A-5 **ROTH DEFERRALS.** Roth Deferrals (as defined in Section 3.02(c)(2)(v) of the Plan) are not permitted under the Plan, unless designated otherwise under this AA §6A-5.
- (a) **Availability of Roth Deferrals.** Roth Deferrals are permitted under the Plan. [*Note: If Roth Deferrals are effective as of a date later than the Effective Date of the Plan, designate such special Effective Date in AA §6A-8(b) below. Roth Deferrals may not be made prior to January 1, 2006.*]
- (b) **Distribution of Roth Deferrals.** Unless designated otherwise under this subsection (b), to the extent a Participant takes a distribution or withdrawal from his/her Salary Deferral Account(s), the Participant may designate the extent to which such distribution is taken from the Pre-Tax Deferral Account or from the Roth Deferral Account. (As described under Section 7.11(b)(2) of the Plan for default distribution rules if a Participant fails to designate the appropriate Account for corrective distributions from the Plan, such distribution may be withdrawn equally from both the Pre-Tax Salary Deferral Account and the Roth Deferral Account or the Employer may withdraw such amounts first from either the Pre-Tax Salary Deferral Account or the Roth Deferral Account.)
- Alternatively, the Employer may designate the order of distributions as listed below:
- (1) Any distribution will be taken on a pro rata basis from the Participant’s Pre-Tax Deferral Account and Roth Deferral Account.
- (2) Any distribution will be taken first from the Participant’s Roth Deferral Account and then from the Participant’s Pre-Tax Deferral Account.
- (3) Any distribution will be taken first from the Participant’s Pre-Tax Deferral Account and then from the Participant’s Roth Deferral Account.

- (c) **In-Plan Roth Conversions.** Unless elected under this AA §6A-5(c), the Plan does not permit a Participant to make an In-Plan Roth Conversion under the Plan. To override this provision to allow Participants to make an In-Plan Roth Conversion, subsection (1) below must be checked.
- (1) **Effective date.** Effective \_\_\_\_\_ [not earlier than 1/1/2013], a Participant may elect to convert all or any portion of his/her non-Roth vested Account Balance to an In-Plan Roth Conversion Account.
- [Note: The Plan must provide for Roth Deferrals under AA §6A-5(a) above as of the effective date designated in this subsection (1). An election under this subsection (1) does not affect an In-Plan Roth Conversion that was allowed under prior Plan provisions.]
- (2) **In-Service Distribution.**
- (i) For a Participant to convert his/her eligible contributions to Roth Deferrals through an In-Plan Roth Conversion, the Participant need not be eligible to take a distribution from the Plan. [Note: If this subsection (i) is checked, a Participant may convert any or all of the eligible contribution sources to Roth Deferrals through an In-Plan Roth Conversion.]
- (ii) For a Participant to convert his/her eligible contributions to Roth Deferrals through an In-Plan Roth Conversion, a Participant must be eligible for a distribution of any amounts converted to Roth Deferrals through an In-Plan Roth Conversion. Thus, only amounts that are eligible for distribution under AA §9 or AA §10 are eligible for In-Plan Roth Conversion.
- (3) **Contribution sources.** An Employee may elect to make an In-Plan Roth Conversion from all available contribution sources under the Plan.
- To override this default provision to limit the contributions sources available for In-Plan Roth Conversion, select the applicable contribution sources from which an In-Plan Roth Conversion is available:
- (i) Pre-tax Salary Deferrals
- (ii) Employer Contributions
- (iii) Matching Contributions
- (iv) After-Tax Contributions
- (v) Rollover Contributions
- (vi) Employer Pick-Up Contributions
- (vii) Describe: \_\_\_\_\_
- [Note: Any contribution sources described in this subsection (vii) must be definitely determinable and not subject to Employer discretion.]
- (4) **Limits applicable to In-Plan Roth Conversions.** No limits apply with respect to In-Plan Roth Conversions, unless designated otherwise under this subsection (4).
- (i) Roth conversions may only be made from contribution sources that are fully vested (i.e., 100% vested).
- [Note: If an In-Plan Roth Conversion is permitted from partially-vested sources, special rules apply for determining the vested percentage of such amounts after conversion. See Section 6.09 of the Plan.]
- (ii) A Participant may not make an In-Plan Roth Conversion of less than \$\_\_\_\_ (may not exceed \$1,000).
- (iii) A Participant may not make an In-Plan Roth Conversion of any outstanding loan amount.
- [Note: If this subsection (iii) is not checked, a Participant may convert amounts that are attributable to an outstanding loan, to the extent the loan relates to a contribution source that is eligible for conversion under subsection (3) above.]
- (iv) Describe: \_\_\_\_\_
- [Note: Any selection in this subsection (iv) must be definitely determinable and not subject to Employer discretion.]

- (5) **Amounts available to pay federal and state taxes generated from an In-Plan Roth Conversion.** No special provisions apply to allow Participants to withdraw funds to pay federal or state taxes generated from an In-Plan Roth Conversion, except as provided otherwise under this subsection (5).
- (i) **In-service distribution.** If the Plan does not otherwise permit an in-service distribution at the time of the In-Plan Roth Conversion and this subsection (i) is checked, a Participant may elect to take an in-service distribution solely to pay taxes generated from the In-Plan Roth Conversion to the extent such in-service distribution would otherwise be permitted under Section 7.10 of the Plan.
- [Note: If this subsection (i) is checked, a Participant may take an in-service distribution only to the extent such distribution would otherwise be permitted under the provisions of Section 7.10 of the Plan. Thus, for example, a Participant may not take an in-service distribution of amounts attributable to Salary Deferrals prior to age 59½.]*
- (ii) **Participant loan.** Generally, a Participant may request a loan from the Plan to the extent permitted under Section 13 of the Plan and AA §B. However, to the extent a Participant loan is not otherwise allowed and this subsection (ii) is selected, a Participant may receive a Participant loan solely to pay taxes generated from an In-Plan Roth Conversion.
- [Note: If this subsection (ii) is selected and Participant loans are not otherwise authorized under the Plan, any Participant loan made pursuant to this subsection (ii) will be made in accordance with the default loan policy described in Section 13 of the Plan.]*
- (6) **Distribution from In-Plan Roth Conversion Account.** Distributions from the In-Plan Roth Conversion Account will be permitted at the same time as permitted for Roth Deferrals, as set forth under AA §10-1, unless designated otherwise under this subsection (6).
- (i) In-service distributions will not be permitted from an In-Plan Roth Conversion Account.
- (ii) An in-service distribution may be made from the In-Plan Roth Conversion Account at any time.
- (iii) Describe distribution options: \_\_\_\_\_
- (d) **Describe** any special rules that apply to Roth Deferrals under the Plan: \_\_\_\_\_

6A-6 **SALARY DEFERRAL ELECTIONS.**

- (a) **Change or revocation of deferral election:** In addition to the Participant’s Entry Date under the Plan, a Participant’s election to change or resume a deferral election will be effective as set forth under the Salary Reduction Agreement or other written procedures adopted by the Plan Administrator. A Participant must be permitted to change or revoke a deferral election at least once per year. Unless the Salary Reduction Agreement or other written procedures adopted by the Plan Administrator provide otherwise, a Participant may revoke a deferral election (on a prospective basis) at any time.
- (b) **Salary deferral elections of rehired participants:** Unless designated otherwise below, a Participant’s affirmative election to defer (or to not defer) will cease upon termination of employment and the Participant will need to make a new election upon rehire.
- Participant’s affirmative election does not cease upon termination of employment.** If this subsection (b) is selected, a terminated Participant’s affirmative election to defer (or to not defer) **will not cease** upon termination of employment and the Participant’s affirmative election to defer (or to not defer) in effect at the time of employment termination will apply upon rehire.
- [Note: The Employer may modify the rules applicable to rehired employees under the Salary Reduction Agreement or other administrative procedures.]*

6A-7 **AUTOMATIC CONTRIBUTION ARRANGEMENT.** No automatic contribution provisions apply under Section 3.02(c)(2)(iii) of the Plan, unless provided otherwise under this AA §6A-7.

- (a) **Automatic deferral election.** Upon becoming eligible to make Salary Deferrals under the Plan (pursuant to AA §3 and AA §4), a Participant will be deemed to have entered into a Salary Deferral Election for each payroll period, unless the Participant completes a Salary Deferral Election (subject to the limitations under AA §6A-2 and AA §6A-3) in accordance with procedures adopted by the Plan Administrator.
- (1) **Effective date of Automatic Contribution Arrangement.** The automatic deferral provisions under this AA §6A-7 are effective as of:
- (i) The Effective Date of this Plan as set forth under the Employer Signature Page.
- (ii) \_\_\_\_\_ *[insert date no earlier than the Effective Date of the Plan]*

- (iii) As set forth under a prior Plan document. [*Note: If this subsection (iii) is checked, the automatic deferral provisions under this AA §6A-7 will apply as of the original Effective Date of the automatic contribution arrangement. Unless provided otherwise under this AA §6A-7, an Employee who is automatically enrolled under a prior Plan document will continue to be automatically enrolled under the current Plan document.*]
- (2) **Automatic Contribution Arrangement.** Check this subsection (2) if the Plan is designated as an Automatic Contribution Arrangement, as described under Section 3.02(c)(2)(iii) of the Plan. [*Note: Unless an election is made under this AA §6A-7 that is inconsistent with the requirements of an Eligible Automatic Contribution Arrangement (EACA), the Automatic Contribution Arrangement will qualify as an EACA, as described in Code §414(w).*]
- (i) **Automatic deferral amount.**
- (A) \_\_\_% of Plan Compensation.
- (B) \$\_\_\_\_\_.
- (ii) **Automatic increase.** If elected under this subsection (ii), the automatic deferral amount will increase each Plan Year by the following amount.
- (A) \_\_\_% of Plan Compensation.
- (B) \$\_\_\_\_\_.
- (C) If this (C) and subsection (3)(iii) below (relating to the expiration of affirmative deferral elections) are both elected, the automatic increase will apply to all Participants, including those Participants whose affirmative deferral elections have expired and no subsequent affirmative election is made.
- Any automatic increase elected under this subsection (ii) will not cause the automatic deferral amount to exceed:
- (D) \_\_\_% of Plan Compensation.
- (E) \$\_\_\_\_\_.
- (F) Describe: \_\_\_\_\_
- [*Note: Any special application of the automatic increase provisions must be definitely determinable and must provide for Employer discretion.*]
- (3) **Application of automatic deferral provisions.** The automatic deferral election under subsection (2) will apply to new Participants and existing Participants as set forth under this subsection (3):
- (i) **New Participants.** The automatic deferral provisions apply to all Participants who become eligible on or after the effective date.
- (ii) **Current Participants.** The automatic deferral provisions apply to all other eligible Participants as follows:
- (A) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election (including an election not to defer under the Plan).
- (B) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election that is at least equal to the automatic deferral amount under subsection (2)(i) above. Current Participants who have made a Salary Deferral Election that is less than the automatic deferral amount or who have not made a Salary Deferral Election will automatically be increased to the automatic deferral amount unless the Participant enters into a new Salary Deferral election on or after the effective date of the automatic deferral provisions.
- (C) Automatic deferral provisions do not apply to current Participants. Only new Participants described in subsection (i) above are subject to the automatic deferral provisions.
- (D) Describe: \_\_\_\_\_
- (iii) **Expiration of affirmative deferral elections.** Unless this subsection (iii) is elected, for purposes of the automatic deferral provisions of the Plan, a Participant’s affirmative elective deferral election will not expire. If this subsection (iii) is elected, a Participant’s affirmative deferral election will expire:

- (A) at the end of each Plan Year.
- (B) Describe date that the affirmative election will expire: \_\_\_\_\_  
[*Note: The date must be definite and not discriminate in favor of Highly Compensated Employees.*]

If a Participant fails to complete a new affirmative deferral election subsequent to the prior election expiring, the Participant becomes subject to the automatic deferral percentage as specified in the Plan pursuant to the automatic contribution arrangement provisions. Each year, the Participant can always complete a new affirmative election and designate a new deferral percentage.

- (iv) **Treatment of automatic deferrals.** Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Pre-Tax Salary Deferrals, unless designated otherwise under this subsection (iv).
  - Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Roth Deferrals. [*Note: This subsection (iv) may only be checked if Roth Deferrals are permitted under AA §6A-5.*]
  - (v) **Special rules:** \_\_\_\_\_

[*Note: Any Salary Deferral Election (including an election not to defer under the Plan) made after the effective date of the automatic deferral provisions will override such automatic deferral provisions.*]

- (4) **Application of automatic increase.** Unless designated otherwise under this subsection (4), if an automatic increase is selected under subsection (2)(ii) above, the automatic increase will take effect as of the first day of the second Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant.
  - (i) **First Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2)(ii) above takes effect as of the appropriate date within the first Plan Year following the date automatic contributions begin.
  - (ii) **Designated Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2)(ii) above takes effect as of the appropriate date within the \_\_\_\_ Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant.
  - (iii) **Effective date.** The automatic increase described under subsection (2)(ii) above is generally effective as of the first day of the Plan Year. If this subsection (iii) is checked, instead of becoming effective on the first day of the Plan Year, the automatic increase will be effective on:
    - (A) The anniversary of the Participant's date of hire.
    - (B) The anniversary of the Participant's first automatic deferral contribution.
    - (C) The first day of each calendar year.
    - (D) Other date: \_\_\_\_\_
  - (iv) **Special rules:** \_\_\_\_\_

- (5) **Treatment of terminated Employees who are rehired.** Unless designated otherwise below, in applying the automatic deferral provisions under this AA§6A-7, including the automatic increase provisions, a rehired Participant is treated as a new Employee (regardless of the amount of time since the rehired Employee terminated employment).
  - (i) **Rehired Employees not treated as new Employee.** In applying the automatic deferral provisions under this AA§6A-7, including the automatic increase provisions, a rehired Participant is not treated as a new Employee. Thus, for example, a rehired Participant's deferral percentage will be calculated based on the date the individual first began making automatic deferrals under the Plan.
  - (ii) **Describe special rules applicable to rehired employees:** \_\_\_\_\_

[*Note: Any special rules under this subsection (ii) must satisfy the rules applicable to automatic enrollment under Treas. Reg. §1.401(k)-1, if applicable.*]

- (b) **Permissible Withdrawals under Automatic Contribution Arrangement.**
- (1) **Permissible withdrawals allowed.** An Employee who has Salary Deferrals contributed to the Plan pursuant to an automatic deferral election under this AA §6A-7 may elect to withdraw such contributions (and earnings attributable thereto) within 90 days after the date such Salary Deferrals would otherwise have been included in gross income, unless designated otherwise under subsection (3) below. Unless elected otherwise below, if an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissive withdrawal, but only with respect to default contributions made after the Employee’s return to employment.)
    - The ability to take permissible withdrawals does not apply to rehired Employees, even if such Employees have not made automatic deferrals to the Plan for an entire Plan Year due to termination of employment.
  - (2) **No permissible withdrawals.** The permissible withdrawal provisions under this subsection (b) are not available.
  - (3) **Time period for electing a permissible withdrawal.** Instead of a 90-day election period, a Participant must request a permissible withdrawal no later than \_\_\_\_ days after the date the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income.
- (c) **Other automatic deferral provisions:** \_\_\_\_\_

6A-8 **SPECIAL DEFERRAL EFFECTIVE DATES.** Unless designated otherwise under this AA §6A-8, a Participant is eligible to make Salary Deferrals under the Plan as of the Effective Date of the Plan (as designated in the Employer Signature Page). However, in no case may a Participant begin making Salary Deferrals prior to the later of the date the Employee becomes a Participant, the date the Participant executes a Salary Reduction Agreement or the date the Plan is adopted or effective. (See Section 3.02(c)(2)(i) of the Plan.)

To designate a later Effective Date for Salary Deferrals or Roth Deferrals, complete this AA §6A-8.

- (a) **Salary Deferrals.** A Participant is eligible to make Salary Deferrals under the Plan as of:
  - (1) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
  - (2) \_\_\_\_ (insert date no earlier than the date the Plan is executed by the Employer).
- (b) **Roth Deferrals.** The Roth Deferral provisions under AA §6A-5 are effective as of \_\_\_\_\_. [If Roth Deferrals are permitted under AA §6A-5 above, Roth Deferrals are effective as of the Effective Date applicable to Salary Deferrals under this AA §6A-8, unless a later date is designated under this subsection.]

**SECTION 6B**  
**MATCHING CONTRIBUTIONS**

6B-1 **MATCHING CONTRIBUTIONS.** Is the Employer authorized to make Matching Contributions under the Plan?

- Yes.**
- No.** [If “No” is checked, skip to Section 7.]

6B-2 **MATCHING CONTRIBUTION FORMULA:** For the period designated in AA §6B-5 below, the Employer will make the following Matching Contribution on behalf of Participants who satisfy the allocation conditions under AA §6B-6 below. [See AA §6B-3 for the definition of Eligible Contributions for purposes of the Matching Contributions under the Plan.]

- (a) **Discretionary match.** The Employer will determine in its sole discretion how much, if any, it will make as a Matching Contribution. Such amount will be allocated as a uniform percentage of Eligible Contributions, unless designated otherwise below. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)
  - (1) Discretionary matching contributions will be allocated as a flat dollar amount.

- (2) Allocation of discretionary Matching Contribution determined by written instructions to Plan Administrator (or Trustee). If a discretionary Matching Contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to allocate a Matching Contribution to Participants) and the Employer makes a discretionary Matching Contribution to the Plan, the Employer must provide the Plan Administrator (or Trustee, if applicable), written instructions describing: (1) how the discretionary Matching Contribution formula will be allocated to Participants (e.g., a uniform percentage of Eligible Contributions or a flat dollar amount), (2) the computation period(s) to which the discretionary Matching Contribution formula applies (unless otherwise designated under AA §6B-5), and (3) if applicable, a description of each business location or business classification subject to separate discretionary Matching Contribution allocation formulas.

Such instructions must be provided no later than the date on which the discretionary Matching Contribution is made to the Plan. A summary of these instructions must be communicated to Participants who receive discretionary Matching Contributions no later than 60 days following the last date on which the discretionary Matching Contribution is made to the Plan for the Plan Year. If this AA §6B-2(a)(2) is elected, the written instruction requirement does not take effect until the first day of the Plan Year following the Plan Year in which this Plan’s Cycle 3 restatement is executed.

- (b) **Fixed match.** The Employer will make a Matching Contribution for each Participant equal to:
  - (1) \_\_\_% of Eligible Contributions made for each period designated in AA §6B-5 below.
  - (2) \$\_\_\_ for each period designated in AA §6B-5 below.
- (c) **Matching Contributions under Collective Bargaining Agreement, employment contract or equivalent arrangement.** The Employer will make a Matching Contribution based on a Collective Bargaining Agreement, employment agreement or equivalent arrangement as follows: \_\_\_\_\_

[*Note:* Insert the appropriate Matching Contribution formula from the Collective Bargaining Agreement, employment agreement or equivalent arrangement. The formula must be definitely determinable as required under Treas. Reg. §1.401-1.]

- (d) **Tiered match.** The Employer may make a Matching Contribution to all Participants based on the following tiers of Eligible Contributions as a percentage of Plan Compensation. If discretionary Match is elected, the discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each tier.

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (1) Up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (2) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (3) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (4) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>

- (e) **Year of Service match.** The Employer will make a Matching Contribution as a uniform percentage of Eligible Contributions to all Participants based on Years of Service with the Employer. If discretionary Match is elected, the discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each Year of Service level.

Years of Service	Fixed Match	Discretionary Match
<input type="checkbox"/> (1) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (2) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (3) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (4) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (5) Years of Service equal to and above ___	_____%	<input type="checkbox"/>

For this purpose, a Year of Service is each Plan Year during which an Employee completes at least 1,000 Hours of Service. Alternatively, a Year of Service is: \_\_\_\_\_

[*Note:* Any alternative definition of a Year of Service must meet the requirements of a Year of Service as defined in Section 2.03(a)(1) of the Plan.]

- (f) **Different Employee groups.** The Employer may make a different Matching Contribution to the Employee groups designated under subsection (1) below. The Matching Contribution will be allocated separately to each designated Employee group in accordance with the formula designated under subsection (2) below.
- (1) **Designated Employee groups.**
- 
- [Note: Each group designation must describe a group of Employees which is definitely determinable with no Employer discretion.]*
- (2) **Matching Contribution formulas.**
- (i) **Discretionary Matching Contribution.** The Employer may make a different discretionary Matching Contribution for each Employee group designated under subsection (1) above. The discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each Employee group. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)
- (ii) **Different Matching Contribution formula.** The following Matching Contribution will apply for each Employee group designated under subsection (1) above.
- [Note: Each separate rate of Matching Contribution must be definitely determinable and will be allocated uniformly to the members of the group.]*
- (g) **Describe special rules for determining Matching Contribution formula:** \_\_\_\_\_
- [Note: Any special rules may not provide for a discretionary Matching Contribution allocation formula, must be described in a manner that precludes Employer discretion and must satisfy the definitely determinable requirements of Treas. Reg. §1.401-1.]*

6B-3 **ELIGIBLE CONTRIBUTIONS.** Unless designated otherwise under this AA §6B-3, the Matching Contribution described in AA §6B-2 will apply to all Eligible Contributions authorized under AA §6-7 and/or AA §6A.

- (a) **Designated Eligible Contributions.** If this subsection (a) is checked, the Matching Contribution described in AA §6B-2 will apply only to the Eligible Contributions selected below:
- (1) Pre-tax Salary Deferrals under AA §6A.
- (2) Roth Deferrals under AA §6A-5.
- (3) Catch-Up Contributions under AA §6A-4.
- (4) Voluntary After-Tax Employee Contributions under AA §6-7(a).
- (5) Mandatory After-Tax Employee Contributions under AA §6-7(b).
- (6) Employer Pick-Up Contributions under AA §6-7(c).
- (b) **Elective deferrals under another plan.** If this subsection (b) is checked, the Matching Contributions described in AA §6B-2 will apply to elective deferrals made under another plan maintained by the Employer.
- (1) The Matching Contribution designated in AA §6B-2 above will apply to elective deferrals under the following plan maintained by the Employer: Sarasota Manatee Airport (FL) Deferred Compensation Plan
- (2) The following special rules apply in determining the amount of Matching Contributions under this Plan with respect to elective deferrals under the plan described in subsection (1) above: \_\_\_\_\_
- [Note: This subsection (b) may be used to describe special provisions applicable to Matching Contributions provided with respect to elective deferrals under another plan maintained by the Employer, including another qualified plan or Code §403(b) or Code §457(b) plan.]*
- (c) **Calculation of Matching Contributions if Plan uses dual eligibility and/or multiple entry dates.** Unless designated otherwise below, if the Plan has dual eligibility and/or multiple entry dates (or the Employer chooses to use the Plan's optional true-up provisions), the Matching Contribution formula(s) will be based on Eligible Contributions and Plan Compensation for the period designated under AA §6B-5.
- The Plan will make Matching Contributions only on Salary Deferrals and After-Tax Employee Contributions (if applicable) made after the Participant becomes eligible for Matching Contributions, regardless of the period designated under AA §6B-5.



- (d) **Special rules.** The following special rules apply for purposes of determining the Matching Contribution under this AA §6B-3: \_\_\_\_\_

[Note: Any special rules under this subsection (d) must be definitely determinable.]

6B-4 **LIMITS ON MATCHING CONTRIBUTIONS.** In applying the Matching Contribution formula(s) selected under AA §6B-2 above, all Eligible Contributions designated under AA §6B-3 are eligible for Matching Contributions, unless elected otherwise under this AA §6B-4.

- (a) **Limit on amount of Eligible Contributions.** The Matching Contribution formula(s) selected in AA §6B-2 above apply only to Eligible Contributions under AA §6B-3 that do not exceed:

- (1) \_\_\_\_\_% of Plan Compensation.  
 (2) \$\_\_\_\_\_  
 (3) A discretionary amount determined by the Employer that will be applied in a uniform manner for all eligible Participants for the Plan Year.

[Note: If both subsections (1) and (2) above are selected, the limit under this subsection (a) is the lesser of the percentage selected in subsection (1) or the dollar amount selected in subsection (2).]

- (b) **Limit on Matching Contributions.** The total Matching Contribution provided under the formula(s) selected in AA §6B-2 above will not exceed:

- (1) \_\_\_\_\_% of Plan Compensation.  
 (2) \$\_\_\_\_\_.

- (c) **Special limits applicable to Matching Contributions:** \_\_\_\_\_

6B-5 **PERIOD FOR DETERMINING MATCHING CONTRIBUTIONS.** The Matching Contribution formula(s) selected in AA §6B-2 above (including any limitations on such amounts under AA §6B-4) are based on Eligible Contributions under AA §6B-3 and Plan Compensation for the Plan Year. To apply a different period for determining the Matching Contributions and limits under AA §6B-2 and AA §6B-4, complete this AA §6B-5.

- (a) payroll period  
 (b) Plan Year quarter  
 (c) calendar month  
 (d) Other: \_\_\_\_\_

[Note: Although Matching Contributions (and any limits on those Matching Contributions) will be determined on the basis of the period designated under this AA §6B-5, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Matching Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this AA §6B-5.]

[Note: In determining the amount of Matching Contributions for a particular period, if the Employer actually makes Matching Contributions to the Plan on a more frequent basis than the period selected in this AA §6B-5, a Participant will be entitled to a true-up contribution to the extent he/she does not receive a Matching Contribution based on the Eligible Contributions and/or Plan Compensation for the entire period selected in this AA §6B-5. If a period other than the Plan Year is selected under this AA §6B-5, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Plan Year was selected under this AA §6B-5. See Section 3.02(c)(3)(iii) of the Plan.]

6B-6 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6B-6 to receive an allocation of Matching Contributions under the Plan.

- (a) **Application of allocation conditions.**
- (1) **No allocation conditions** apply with respect to Matching Contributions under the Plan.  
 (2) Allocation conditions only apply to discretionary Matching Contributions under the Plan.  
 (3) Allocation conditions only apply to fixed Matching Contributions under the Plan.

[Note: (2) or (3) above should be selected only if the Plan provides for both Fixed and Discretionary Matching Contributions.]

- (b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.

- (c) **Minimum service condition.** An Employee must be credited with at least:
- (1) 1,000 Hours of Service during the Plan Year.
- (i) Hours of Service are determined using actual Hours of Service.
- (ii) Hours of Service are determined using the following Equivalency Method (as defined under AA §4-3):
- (A) Monthly  (B) Weekly
- (C) Daily  (D) Semi-monthly
- (E) Describe: \_\_\_\_\_
- [Note: Any description under subsection (E) above must be definitely determinable.]*
- (2) \_\_\_\_\_ consecutive days of employment with the Employer during the Plan Year.
- (d) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee, during the Plan Year:
- (i) dies.
- (ii) terminates employment due to becoming Disabled.
- (iii) becomes Disabled.
- (iv) terminates employment after attaining Normal Retirement Age.
- [Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in (e) below.]*
- (v) terminates employment after attaining Early Retirement Age.
- [Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in (e) below.]*
- (vi) is on an authorized leave of absence from the Employer.
- (2) The exceptions selected under subsection (1) above will apply even if an Employee has not terminated employment at the time of the selected event(s).
- (3) The exceptions selected under subsection (1) above do not apply to:
- (i) an employment condition designated under subsection (b) above.
- (ii) a minimum service condition designated under subsection (c) above.
- (e) **Describe** any special rules governing the allocation conditions under the Plan: "Hours of Service" only includes hours paid for actual service, as described in BPD s. 1.57(a). Other hours paid, such as hours paid for sick leave, are excluded.
- \_\_\_\_\_

**SECTION 7**  
**RETIREMENT AGES**

- 7-1 **NORMAL RETIREMENT AGE.** Normal Retirement Age under the Plan is:
- (a) Age 62 (not to exceed 65).
- (b) The later of age \_\_\_\_\_ (not to exceed 65) or the \_\_\_\_\_ (not to exceed 5<sup>th</sup>) anniversary of:
- (1) the Employee's participation commencement date (as defined in Section 1.68 of the Plan).
- (2) the Employee's employment commencement date.
- (c) Describe Normal Retirement Age: \_\_\_\_\_
- [Note: The Normal Retirement Age must be reasonably representative of the typical retirement age for the industry in which the Plan Participants work. A Normal Retirement Age of at least age 62 is deemed to be reasonable while a Normal Retirement Age under age 55 is presumed not to satisfy this requirement unless facts and circumstances show otherwise. Whether a Normal Retirement Age between 55 and 62 satisfies this requirement depends on the facts and circumstances. A Governmental Plan must*

comply with the final Normal Retirement Age regulations under Treas. Reg. §1.401(a)-1, as amended, effective for Annuity Starting Dates occurring in Plan Years beginning on or after the later of the two dates described in IRS Notice 2012-29. The Employer may use AA §7-1(c), for example, to describe a reasonable Normal Retirement Age that is between age 55 and 62 that takes into account service as well as age.]

7-2 **EARLY RETIREMENT AGE.** Unless designated otherwise under this AA §7-2, there is no Early Retirement Age under the Plan.

(a) A Participant reaches Early Retirement Age if he/she is still employed after attainment of each of the following:

- (1) Attainment of age \_\_\_\_
- (2) The \_\_\_\_ anniversary of the date the Employee commenced participation in the Plan, and/or
- (3) The completion of \_\_\_\_ Years of Service, determined as follows:
  - (i) Same as for eligibility.
  - (ii) Same as for vesting

(b) **Describe.** \_\_\_\_\_

**SECTION 8  
VESTING AND FORFEITURES**

8-1 **CONTRIBUTIONS SUBJECT TO VESTING.** Does the Plan provide for any Employer and/or Matching Contributions that are subject to a vesting schedule under AA §8-2?

- Yes
- No [If “No” is checked, skip to Section 9.]

*[Note: “Yes” should be checked under this AA §8-1 if the Plan provides for Employer Contributions and/or Matching Contributions that are subject to a vesting schedule, even if such contributions are always 100% vested under AA §8-2. “No” should be checked if the only contributions under the Plan are Salary Deferrals, After-Tax Employee Contributions and/or Employer Pick-Up Contributions. If the Plan holds Employer Contributions and/or Matching Contributions that are subject to vesting but the Plan no longer provides for such contributions, see Sections 6.03(d) and 6.11(e) of the Plan for default rules for applying the vesting and forfeiture rules to such contributions.]*

8-2 **VESTING SCHEDULE.** The vesting schedule under the Plan is as follows for both Employer Contributions and Matching Contributions, to the extent authorized under the Plan. See Section 6.02 of the Plan for a description of the various vesting schedules under this AA §8-2.

(a) **Vesting schedule for Employer Contributions and Matching Contributions:**

<b>ER</b>	<b>Match</b>	
<input type="checkbox"/>	<input type="checkbox"/>	(1) Full and immediate vesting.
<input type="checkbox"/>	<input type="checkbox"/>	(2) Three-year cliff vesting schedule
<input type="checkbox"/>	<input type="checkbox"/>	(3) Six-year graded vesting schedule
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(4) Modified vesting schedule
		0 ____% immediately on Plan participation
		0 ____% after 1 Year of Service
		0 ____% after 2 Years of Service
		0 ____% after 3 Years of Service
		0 ____% after 4 Years of Service
		100 ____% after 5 Years of Service
		100 ____% after 6 Years of Service
		100 ____% after 7 Years of Service
		100 ____% after 8 Years of Service
		100 ____% after 9 Years of Service
		100% after 10 Years of Service

**ER Match**

(5) Other: vesting schedule: \_\_\_\_\_

[*Note: If a modified vesting schedule is selected under this subsection (a), the vested schedule must satisfy the pre-ERISA Code vesting requirements.*]

(b) **Special provisions applicable to vesting schedule:** \_\_\_\_\_

[*Note: This subsection (b) may be used to apply a different vesting schedule for different contribution formulas or different Employee groups under the Plan. Any special provision must satisfy the pre-ERISA Code vesting requirements.*]

8-3 **VESTING SERVICE.** In applying the vesting schedules under this AA §8, all service with the Employer counts for vesting purposes, unless designated otherwise under this AA §8-3.

(a) Service before the original Effective Date of this Plan (or a Predecessor Plan) is excluded.

(b) Service completed before the Employee's \_\_\_\_ birthday is excluded.

(c) Describe vesting service exclusions: "**Hours of Service**" only includes hours paid for actual service, as described in BPD s. 1.57(a). Other hours paid, such as hours paid for sick leave, are excluded.

[*Note: See Section 6.07 of the Plan and AA §4-5 for rules regarding the crediting of service with Predecessor Employers for purposes of vesting under the Plan.*]

8-4 **VESTING UPON DEATH, DISABILITY OR EARLY RETIREMENT AGE.** An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee

(a) dies

(b) terminates employment due to becoming Disabled

(c) becomes Disabled

(d) reaches Early Retirement Age

(e) Not applicable. No increase in vesting applies.

8-5 **DEFAULT VESTING RULES.** In applying the vesting requirements under this AA §8, the following default rules apply. [*Note: No election should be made under this AA §8-5 if all contributions are 100% vested.*]

- **Year of Service.** An Employee earns a Year of Service for vesting purposes upon completing 1,000 Hours of Service during a Vesting Computation Period. Hours of Service are calculated based on actual hours worked during the Vesting Computation Period. (See Section 1.57 of the Plan for the definition of Hour of Service.)

- **Vesting Computation Period.** The Vesting Computation Period is the Plan Year.

To override the default vesting rules, complete the applicable sections of this AA §8-5. If this AA §8-5 is not completed, the default vesting rules apply.

**ER Match**

(a) **Year of Service.** Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of \_\_\_\_ Hours of Service during a Vesting Computation Period.

(b) **Vesting Computation Period.** Instead of the Plan Year, the Vesting Computation Period is:

(1) The 12-month period beginning with the Employee's Employment Commencement Date and, for subsequent Vesting Computation Periods, the 12-month period beginning with the anniversary of the Employee's Employment Commencement Date.

(2) Describe: \_\_\_\_\_

[*Note: Any Vesting Computation Period described in this subsection (2) must be a 12-consecutive month period and must apply uniformly to all Participants.*]

- | ER                                  | Match                               |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | (c) <b>Elapsed Time Method.</b> Instead of determining vesting service based on actual Hours of Service, vesting service will be determined under the Elapsed Time Method. If this subsection (c) is checked, service will be measured from the Employee’s Employment Commencement Date (or Reemployment Commencement Date, if applicable) without regard to the Vesting Computation Period designated in Section 6.05 of the Plan. (See Section 6.04(b) of the Plan.)   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | (d) <b>Equivalency Method.</b> For purposes of determining an Employee’s Hours of Service for vesting, the Plan will use the Equivalency Method (as defined in Section 6.04(a)(2) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) All Employees.</li> <li><input type="checkbox"/> (2) Only to Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, vesting will be determined based on actual hours worked.</li> </ul> Hours of Service for vesting will be determined under the following Equivalency Method. <ul style="list-style-type: none"> <li><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.</li> <li><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.</li> <li><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.</li> <li><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period.</li> <li><input type="checkbox"/> (7) <b>Describe Equivalency Method:</b> _____</li> </ul> [Note: Any description of an Equivalency Method must be definitely determinable.] |
| <input type="checkbox"/>            | <input type="checkbox"/>            | (e) <b>Special rules:</b> _____<br>[Note: Any special rules under this subsection (e) must be definitely determinable.]  |

8-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for vesting purposes, complete this AA §8-6. (See Section 6.08 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining vesting under the Plan.
- (b) If an Employee incurs at least \_\_\_\_\_ consecutive Breaks in Service, the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of determining vesting under the Plan. [Enter “0” if prior service will be disregarded for all rehired Employees.]
- (c) The Nonvested Participant Break in Service rule applies to all Employees, including Employees who have not terminated employment.
- (d) Describe any special rules for applying the vesting Break in Service rules: \_\_\_\_\_  
[Note: Any special rules under this subsection (d) must be definitely determinable.]

8-7 **ALLOCATION OF FORFEITURES.**

The Employer may decide in its discretion how to treat forfeitures under the Plan. Alternatively, the Employer may designate under this AA §8-7 how forfeitures occurring during a Plan Year will be treated. (See Section 6.11 of the Plan.)

- | ER                       | Match                    |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | (a) N/A. All contributions are 100% vested. [Do not complete the rest of this AA §8-7.]       |
| <input type="checkbox"/> | <input type="checkbox"/> | (b) Reallocated as additional Employer Contributions or as additional Matching Contributions. |
| <input type="checkbox"/> | <input type="checkbox"/> | (c) Used to reduce Employer and/or Matching Contributions.                                    |

For purposes of subsection (b) or (c) above, forfeitures will be applied:

- (d) for the Plan Year in which the forfeiture occurs.

**ER Match**

- (e) for the Plan Year following the Plan Year in which the forfeitures occur.

Prior to applying forfeitures under subsection (b) or (c):

- (f) Forfeitures may be used to pay Plan expenses. (See Section 6.11(d) of the Plan.)  
  (g) Forfeitures may not be used to pay Plan expenses.

In determining the amount of forfeitures to be allocated under subsection (b) above, the same allocation conditions apply as for the source for which the forfeiture is being allocated, unless designated otherwise below.

- (h) Forfeitures are not subject to any allocation conditions.  
  (i) Forfeitures are subject to a last day of employment allocation condition.  
  (j) Forfeitures are subject to a \_\_\_\_ Hours of Service minimum service requirement.

In determining the treatment of forfeitures under this AA §8-7, the following special rules apply:

- (k) Describe:  
 \_\_\_\_\_

**8-8 SPECIAL RULES REGARDING CASH-OUT DISTRIBUTIONS.**

- (a) **Additional allocations.** If a terminated Participant receives a complete distribution of his/her vested Account Balance while still entitled to an additional allocation, the Cash-Out Distribution forfeiture provisions do not apply until the Participant receives a distribution of the additional amounts to be allocated. (See Section 6.10(a)(1) of the Plan.)

To modify the default Cash-Out Distribution forfeiture rules, complete this AA §8-8(a).

- The Cash-Out Distribution forfeiture provisions will apply if a terminated Participant takes a complete distribution, regardless of any additional allocations during the Plan Year.

- (b) **Timing of forfeitures.** A Participant who receives a Cash-Out Distribution (as defined in Section 6.10(a) of the Plan) is treated as having an immediate forfeiture of his/her nonvested Account Balance.

To modify the forfeiture timing rules to delay the occurrence of a forfeiture upon a Cash-Out Distribution, complete this AA §8-8(b).

- A forfeiture will occur upon the completion of \_\_\_\_ consecutive Breaks in Service (as defined in Section 6.08 of the Plan).

- (c) **Repayment of Cash-Out Distribution.** Unless elected otherwise under this AA §8-8(c), if a Participant receives a Cash-Out Distribution that results in a forfeiture, and the Participant resumes employment covered under the Plan, such Participant may repay to the Plan the amount received as a Cash-Out Distribution.

- If a Participant receives a Cash-Out Distribution that results in a forfeiture, and the Participant resumes employment covered under the Plan, such Participant may NOT repay to the Plan the amount received as a Cash-Out Distribution and the provisions of Section 6.10(a)(2) do not apply.

**8-9 SPECIAL RULE FOR FORFEITURE UPON DEATH OF A PARTICIPANT.** Unless elected below, no vested benefits are forfeited upon the death of a Participant.

To modify this default forfeiture rule, check to box below.

- The Plan will forfeit benefits (including vested benefits) upon the death of a Participant, if not precluded by law. In no event may the Plan forfeit any amounts attributable to a Participant's Salary Deferrals or After-Tax Employee Contributions under the Plan or if the Plan has commenced distributions prior to the Participant's death.

**SECTION 9  
DISTRIBUTION PROVISIONS – TERMINATION OF EMPLOYMENT**

9-1 **AVAILABLE FORMS OF DISTRIBUTION.**

**Lump sum distribution.** A Participant may take a distribution of his/her entire vested Account Balance in a single lump sum upon termination of employment. In addition, the Plan Administrator may permit a Participant to take partial distributions or installment distributions solely to the extent necessary to satisfy the required minimum distribution rules under Section 8 of the Plan.

**Additional distribution options.** To provide for additional distribution options, check the applicable distribution forms under this AA §9-1.

- (a) **Installment distributions.** A Participant may take a distribution over a specified period not to exceed the life or life expectancy of the Participant (and a designated beneficiary).
- (b) **Partial lump sum.** A Participant may take a distribution of less than the entire vested Account Balance upon termination of employment.
  - Minimum distribution amount. A Participant may not take a partial lump sum distribution of less than \$\_\_\_\_\_.
- (c) **Annuity distributions.** A Participant may elect to have the Plan Administrator use the Participant’s vested Account Balance to purchase an annuity as described in Section 7.01 of the Plan.
- (d) **Describe distribution options:** The default is a single life annuity with installment refund

*[Note: Any distribution option described in this subsection (d) may not be subject to the discretion of the Employer or Plan Administrator.]*

9-2 **PARTICIPANT AND SPOUSAL CONSENT.**

- (a) **Involuntary Cash-Out Distribution.** A Participant who terminates employment with a vested Account Balance of \$5,000 or less will receive an Involuntary Cash-Out Distribution, unless elected otherwise under this AA §9-2. If a Participant’s vested Account Balance exceeds \$5,000, the Participant generally must consent to a distribution from the Plan, except to the extent provided otherwise under this AA §9-2. See Section 7.03 of the Plan for additional rules regarding the Participant consent requirements under the Plan.
  - (1) **No Involuntary Cash-Out Distributions.** The Plan does not provide for Involuntary Cash-Out Distributions. A terminated Participant must consent to any distribution from the Plan. (See Section 14.02(b) of the Plan for special rules upon Plan termination.)
  - (2) **Involuntary Cash-Out Distribution threshold.** A terminated Participant will receive an Involuntary Cash-Out Distribution only if the Participant’s vested Account Balance is less than or equal to \$\_\_\_\_\_.
  - (3) **Application of Automatic Rollover rules.** The Automatic Rollover rules described in Section 7.05 of the Plan do not apply to any Involuntary Cash-Out Distribution below \$1,000, unless elected otherwise under this subsection (3). If this subsection (3) is checked, the Automatic Rollover provisions apply to all Involuntary Cash-Out Distributions (including those below \$1,000).
  - (4) **Distribution upon attainment of stated age.** Participant consent will not be required with respect to distributions made upon attainment of Normal Retirement Age (or age 62, if later), regardless of the value of the Participant’s vested Account Balance.
  - (5) **Treatment of Rollover Contributions.** Unless elected otherwise under this subsection (5), Rollover Contributions will be excluded in determining whether a Participant’s vested Account Balance exceeds the Involuntary Cash-Out threshold for purposes of applying the distribution rules under this AA §9 and the Automatic Rollover provisions under Section 7.05 of the Plan. To include Rollover Contributions in determining whether a Participant’s vested Account Balance exceeds the Involuntary Cash-Out threshold, check this subsection (5).
- (b) **Spousal consent.** Spousal consent is not required for a Participant to receive a distribution or name an alternate beneficiary, unless designated otherwise under this subsection (b). See Section 9.02 of the Plan for rules regarding Spousal consent under the Plan.
  - (1) **Distribution consent.** A Participant’s Spouse must consent to any distribution or loan, provided the Participant’s vested Account Balance exceeds \$\_\_\_\_\_.
  - (2) **Beneficiary consent.** A Participant’s Spouse must consent to naming someone other than the Spouse as beneficiary under the Plan.

- (c) **Describe** any special rules affecting Participant or Spousal consent: \_\_\_\_\_  
[*Note: Any special rules under this subsection (c) must be definitely determinable.*]

9-3 **TIMING OF DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.**

- (a) **Distribution of vested Account Balances exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance exceeding \$5,000 may receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1 within a reasonable period following:
- (1) the date the Participant terminates employment.
  - (2) the last day of the Plan Year during which the Participant terminates employment.
  - (3) the first Valuation Date following the Participant's termination of employment.
  - (4) the end of the calendar quarter following the date the Participant terminates employment.
  - (5) attainment of Normal Retirement Age, death or becoming Disabled.
  - (6) Describe: \_\_\_\_\_

[*Note: Any special rules under this subsection (6) must be definitely determinable.*]

- (b) **Distribution of vested Account Balances not exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance that does not exceed \$5,000 will receive a **lump sum** distribution of his/her vested Account Balance within a reasonable period following:
- (1) the date the Participant terminates employment.
  - (2) the last day of the Plan Year during which the Participant terminates employment.
  - (3) the first Valuation Date following the Participant's termination of employment.
  - (4) the end of the calendar quarter following the date the Participant terminates employment.
  - (5) Describe: \_\_\_\_\_

[*Note: Any special rules under this subsection (5) must be definitely determinable.*]

- (c) **Alternate Cash-Out distribution threshold.** Instead of a vested Account Balance Cash-Out threshold of \$5,000, for purposes of applying the Cash-Out distribution provisions under this AA §9-3, the threshold for distributions upon termination of employment will be based on a vested Account Balance of \$ \_\_\_\_.
- (d) **Describe additional distribution options:** \_\_\_\_\_

[*Note: Any additional distribution option described in this subsection (d) may not be subject to the discretion of the Employer or Plan Administrator.*]

9-4 **DISTRIBUTION UPON DISABILITY.** Unless designated otherwise under this AA §9-4, a Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her vested Account Balance in the same manner as a regular distribution upon termination.

- (a) **Immediate distribution upon termination of employment.** Distribution will be made as soon as reasonable following the date the Participant terminates employment on account of becoming Disabled.
- (b) **Following year distribution upon termination of employment.** Distribution will be made as soon as reasonable following the last day of the Plan Year during which the Participant terminates employment on account of becoming Disabled.
- (c) **Describe:** \_\_\_\_\_

[*Note: Any distribution event described in this subsection (c) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.*]

9-5 **DETERMINATION OF BENEFICIARY.**

- (a) **Default beneficiaries.** Under Section 7.07(c) of the Plan, to the extent a Beneficiary has not been named by the Participant (subject to the spousal consent rules) and is not designated under the terms of the Investment Arrangement(s) to receive all or any portion of the deceased Participant's death benefit, such amount shall be distributed to the Participant's surviving Spouse (if the Participant was married at the time of death) who shall be considered the Beneficiary. If the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant's surviving children (including legally adopted children, but not including step-children), as designated Beneficiaries, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant's estate.



- If this subsection (a) is checked, the default beneficiaries under Section 7.07(c) of the Plan are modified as follows:
  - (1) The Plan adopts the default beneficiary rules under Section 7.07(c) of the Plan, except, if the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant’s children (including legally adopted children, but not including step-children), as designated Beneficiaries, **per stirpes**.
  - (2) Describe other modifications to the default beneficiaries under Section 7.07(c) of the Plan: \_\_\_\_\_  
*[Note: The description of the modifications to the default beneficiaries must be sufficiently clear for the Plan Administrator to determine the beneficiaries and the method of distribution of the Participant’s death benefit.]*
- (b) **One-year marriage rule.** For purposes of determining whether an individual is considered the surviving Spouse of the Participant, the determination is based on the marital status as of the date of the Participant’s death, unless designated otherwise under this subsection (b).
  - If this subsection (b) is checked, in order to be considered the surviving Spouse, the Participant and surviving Spouse must have been married for the entire one-year period ending on the date of the Participant’s death. If the Participant and surviving Spouse are not married for at least one year as of the date of the Participant’s death, the Spouse will not be treated as the surviving Spouse for purposes of applying the distribution provisions of the Plan. (See Section 9.03 of the Plan.)
- (c) **Divorce of Spouse.** Unless elected otherwise under this subsection (c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded as set forth under Section 7.07(c)(6) of the Plan.
  - If this subsection (c) is checked, a Beneficiary designation will not be rescinded upon divorce of the Participant and Spouse.  
*[Note: Section 7.07(c)(6) of the Plan and this subsection (c) will be subject to the provisions of a Beneficiary designation entered into by the Participant. Thus, if a Beneficiary designation specifically overrides the election under this subsection (c), the provisions of the Beneficiary designation will control. See Section 7.07(c)(6) of the Plan.]*

**SECTION 10  
IN-SERVICE DISTRIBUTIONS AND REQUIRED MINIMUM DISTRIBUTIONS**

10-1 **AVAILABILITY OF IN-SERVICE DISTRIBUTIONS.** A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of any of the event(s) selected under this AA §10-1. If more than one option is selected for a particular contribution source under this AA §10-1, a Participant may take an in-service distribution upon the occurrence of any of the selected events, unless designated otherwise under this AA §10-1.

Deferral	Match	ER	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age ____ (Not greater than age 70 1/2)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) A Hardship that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(h) The Participant has participated in the Plan for at least ____ (cannot be less than 60) months.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(i) The amounts being withdrawn have been held in the Trust for at least two years.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(j) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).
<input type="checkbox"/>	N/A	N/A	(k) As a Qualified Reservist Distribution.

**Nonstandardized Governmental Plan  
Section 10 – In-Service Distribution Provisions and Required Minimum Distributions**

Deferral	Match	ER	
<input type="checkbox"/>	N/A	N/A	(l) Upon a deemed separation of employment when an individual is on active duty for a period of at least 30 days while performing service in the Uniformed Services.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(m) Describe: _____

*[Note: No in-service distribution of Salary Deferrals is permitted prior to age 59½, except for Hardship, or Disability. If Normal Retirement Age or Early Retirement Age is earlier than age 59½, such age is deemed to be age 59½ for purposes of determining eligibility to distribute Salary Deferrals (if subsection (f) or (g) above is checked under the Deferral column). If this Plan has accepted a transfer of assets from a pension plan (e.g., a money purchase plan), no in-service distribution from amounts attributable to such transferred assets is permitted prior to age 62, except for Disability.]*

**10-2 APPLICATION TO OTHER CONTRIBUTION SOURCES.** If the Plan allows for Rollover Contributions under AA §C-2 or After-Tax Employee Contributions under AA §6-7, unless elected otherwise under this AA §10-2, a Participant may take an in-service distribution from his/her Rollover Account and After-Tax Employee Contribution Account at any time. Employer Pick-Up Contributions will not be eligible for in-service distribution.

Alternatively, if this AA §10-2 is completed, the following in-service distribution provisions apply for Rollover Contributions, After-Tax Employee Contributions and/or Employer Pick-Up Contributions:

Rollover	After-Tax	Pick-Up	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age _____. (Not greater than age 70 1/2)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) A Hardship (that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) Describe: _____

**10-3 SPECIAL DISTRIBUTION RULES.** No special distribution rules apply, unless specifically provided under this AA §10-3.

- (a) In-service distributions will only be permitted if the Participant is 100% vested in the source from which the withdrawal is taken.
  - (b) A Participant may take no more than \_\_\_\_ in-service distribution(s) in a Plan Year.
  - (c) A Participant may not take an in-service distribution of less than \$\_\_\_\_\_.
  - (d) A Participant may not take an in-service distribution of more than \$\_\_\_\_\_.
  - (e) Unless elected otherwise under this subsection (e), the hardship distribution provisions of the Plan are not expanded to cover primary beneficiaries as set forth in Section 7.10(e)(5) of the Plan. If this subsection (e) is checked, the hardship provisions of the Plan will apply with respect to individuals named as primary beneficiaries under the Plan.
  - (f) In determining whether a Participant has an immediate and heavy financial need for purposes of applying the non-safe harbor Hardship provisions under Section 7.10(e)(2) of the Plan, the following modifications are made to the permissible events listed under Section 7.10(e)(1) of the Plan: \_\_\_\_\_
- [Note: This subsection (f) may only be used to the extent a non-safe harbor Hardship distribution is authorized under AA §10-1 or AA §10-2.]*
- (g) If the Plan includes Accounts that hold inactive sources of contributions, the Employer may designate under this AA §10-3(g) the in-service distribution options available to such Accounts: \_\_\_\_\_
  - (h) Other distribution rules: \_\_\_\_\_

**10-4 REQUIRED MINIMUM DISTRIBUTIONS.**

- (a) **Required distributions after death.** If a Participant dies before distributions begin and there is a Designated Beneficiary, the Participant or Beneficiary may elect on an individual basis whether the 5-year rule (as described in Section 8.06(a) of the Plan) or the life expectancy method described under Sections 8.02 of the Plan applies. See Section 8.06(b) of the Plan for rules regarding the timing of an election authorized under this AA §10-4.

Alternatively, if selected under this subsection (a), any death distributions to a Designated Beneficiary will be made only under either the 5-year rule or the life expectancy method, as elected below:

- (1) The five-year rule under Section 8.06(a) of the Plan applies (instead of the life expectancy method). Thus, the entire death benefit must be distributed by the end of the fifth year following the year of the Participant’s death. Death distributions to a Designated Beneficiary may not be made under the life expectancy method.
- (2) The life expectancy method under Sections 8.02 and 8.04 of the Plan (and not the 5-year rule).

- (b) **Describe any special rules applicable to required minimum distributions:** \_\_\_\_\_

*[Note: Any special rule under this subsection (b) must satisfy the requirements of Code §401(a)(9). This subsection (b) may be used to override the default provision under Section 8.06(b) of the Plan. For example, the Employer may designate the life expectancy rules as the default rather than the five-year rule when a Participant or Beneficiary fails to make an election.]*

**SECTION 11  
MISCELLANEOUS PROVISIONS**

**11-1 PLAN VALUATION.** The Plan is valued **annually**, as of the last day of the Plan Year.

- (a) **Additional valuation dates.** In addition, the Plan will be valued on the following dates:

Deferral	Match	ER	
----------	-------	----	--

- |                          |                          |                          |  |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (1) <b>Daily.</b> The Plan is valued at the end of each business day during which the New York Stock Exchange is open. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (2) <b>Monthly.</b> The Plan is valued at the end of each month of the Plan Year.                                      |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (3) <b>Quarterly.</b> The Plan is valued at the end of each Plan Year quarter.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (4) <b>Describe:</b> _____   |

*[Note: The Employer may elect operationally to perform interim valuations, regardless of any selection in this subsection (a).]*

- (b) **Special rules.** The following special rules apply in determining the amount of income or loss allocated to Participants’ Accounts: \_\_\_\_\_

**11-2 SPECIAL RULES FOR APPLYING THE CODE §415 LIMITATION.** The provisions under Section 5.02 of the Plan apply for purposes of determining the Code §415 Limitation.

Complete this AA §11-2 to override the default provisions that apply in determining the Code §415 Limitation under Section 5.02 of the Plan.

- (a) **Limitation Year.** Instead of the Plan Year, the Limitation Year is the 12-month period ending \_\_\_\_\_.

*[Note: If the Plan has a short Plan Year for the first year of establishment, the Limitation Year is deemed to be the 12-month period ending on the last day of the short Plan Year.]*

- (b) **Imputed compensation.** For purposes of applying the Code §415 Limitation, Total Compensation includes imputed compensation for a Participant who terminates employment on account of becoming disabled. (See Section 5.02(c)(7)(ii) of the Plan.)

- (c) **Special rules:** \_\_\_\_\_

*[Note: Any special rules under this subsection (c) must be consistent with the requirements of Code §415.]*

- 11-3 **MILITARY SERVICE PROVISIONS -- BENEFIT ACCRUALS.** The benefit accrual provisions under Section 15.04 of the Plan do not apply. To apply the benefit accrual provisions under Section 15.04 of the Plan, check the box below.
- (a) **Eligibility for Plan benefits.** Check this box if the Plan will provide the benefits described in Section 15.04 of the Plan. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.
  - (b) **Deemed separation from service.** Unless otherwise elected under AA§10-1(l), an individual shall not be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I).
- 11-4 **ELECTION NOT TO PARTICIPATE (see Section 2.08 of the Plan).** All Participants share in any allocation under this Plan and no Employee may waive out of Plan participation.
- To allow Employees to make a one-time irrevocable waiver, check below.
- An Employee may make a one-time irrevocable election not to participate under the Plan.
- 11-5 **TREATMENT OF CERTAIN BENEFITS.** The protected benefits rules under Code §411(d)(6) do not apply to the Plan. However, the Employer may describe below (or in a separate addendum attached to this Adoption Agreement) the treatment of certain benefits following events such as plan merger or consolidation, transfer of assets or similar events.
- Describe treatment of benefits: \_\_\_\_\_
- [Note: If the benefit described here in the Plan or a plan being merged into the Plan is not either (i) available as a provision through the Pre-Approved Plan or (ii) the subject of a prior determination, advisory, or opinion letter, the Employer cannot rely on the Pre-Approved Plan Provider's opinion letter for qualification with respect to such benefit. If the benefit described here in the Plan or a plan being merged into the Plan is not permitted in a pre-approved plan, as described in Section 6.03 of Revenue Procedure 2017-41, such provision must be discontinued no later than the date the Employer adopts this Pre-Approved Plan or, in the case of a merger, the merger date.]*
- 11-6 **SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS.** If the Plan is a Multiple Employer Plan (as designated under AA §2-6), the rules applicable to Multiple Employer Plans under Section 16.07 of the Plan apply.
- The following special rules apply with respect to Multiple Employer Plans: \_\_\_\_\_
- [Note: Any special rules under this AA §11-6 must satisfy the nondiscrimination requirements under Code §401(a)(4) and must satisfy the rules applicable to Multiple Employer Plans under Code §413(c).]*

**APPENDIX A  
SPECIAL EFFECTIVE DATES**

*[Note: This Appendix A may be used to memorialize prior Plan provisions that pertain to sources that no longer accept new contributions under the Plan.]*

- A-1     **Eligible Employees.** The definition of Eligible Employee under AA §3 is effective as follows:  
\_\_\_\_\_
- A-2     **Minimum age and service conditions.** The minimum age and service conditions and Entry Date provisions specified in AA §4 are effective as follows:  
\_\_\_\_\_
- A-3     **Compensation definitions.** The compensation definitions under AA §5 are effective as follows:  
\_\_\_\_\_
- A-4     **Employer Contributions.** The Employer Contribution provisions under the Plan are effective as follows:  
\_\_\_\_\_
- A-5     **After-Tax Employee and Pick-Up Contributions.** The provisions of the Plan addressing Employee After-Tax Contributions and Pick-Up Contribution provisions under the Plan are effective as follows:  
\_\_\_\_\_
- A-6     **Salary Deferrals.** The Salary Deferral provisions under AA §6A are effective as follows:  
\_\_\_\_\_
- A-7     **Matching Contributions.** The Matching Contribution provisions under AA §6B are effective as follows:  
\_\_\_\_\_
- A-8     **Retirement ages.** The retirement age provisions under AA §7 are effective as follows:  
\_\_\_\_\_
- A-9     **Vesting and forfeiture rules.** The rules regarding vesting and forfeitures under AA §8 are effective as follows:  
\_\_\_\_\_
- A-10    **Distribution provisions.** The distribution provisions under AA §9 are effective as follows:  
\_\_\_\_\_
- A-11    **In-service distributions and Required Minimum Distributions.** The provisions regarding in-service distribution and Required Minimum Distributions under AA §10 are effective as follows:  
\_\_\_\_\_
- A-12    **Miscellaneous provisions.** The provisions under AA §11 are effective as follows:  
\_\_\_\_\_
- A-13    **Special effective date provisions for merged plans.** If any qualified retirement plans have been merged into this Plan, the provisions of Section 14.03 of the Plan apply, as follows:  
\_\_\_\_\_
- A-14    **Other special effective dates:**  
\_\_\_\_\_

- A-15 **Special effective dates for restated pre-approved plans:** Use this A-15 to memorialize plan operational changes that have occurred after the general effective date of the plan and the actual plan restatement adoption date. Adopting employers may use the above Special Effective Date options (A-1 through A-14) to memorialize these changes or they may use this A-15.
-

**APPENDIX B  
LOAN POLICY**

*Use this Appendix B to identify elections dealing with the administration of Participant loans. These elections may be changed without amending this Adoption Agreement by substituting an updated Appendix B with new elections. Any modifications to this Appendix B, or any modifications to a separate loan policy describing the loan provisions selected under the Plan, will not affect an Employer's reliance on the IRS Favorable Letter. Loans are subject to any internal limitations or rules imposed by the Investment Arrangement or the service provider or platform.*

B-1 Are **PARTICIPANT LOANS** permitted? (See Section 13 of the Plan.)

- (a) Yes
- (b) No

B-2 **LOAN PROCEDURES.**

- (a) Loans will be provided under the default loan procedures set forth in Section 13 of the Plan, unless modified under this Appendix B.
- (b) Loans will be provided under a separate written loan policy. [*Note: If this subsection (b) is checked, do not complete the rest of this Appendix B.*]

B-3 **AVAILABILITY OF LOANS.** Participant loans are available to all active Participants and Beneficiaries. Participant loans are not available to a former Employee or Beneficiary (including an Alternate Payee under a QDRO). To override this default provision, complete this AA §B-3:

- (a) A former Employee or Beneficiary (including an Alternate Payee) who has a vested Account Balance may request a loan from the Plan.
- (b) A “limited participant” as defined in Section 3.05 of the Plan may not request a loan from the Plan.
- (c) An officer or director of the Employer, as defined for purposes of the Sarbanes-Oxley Act, may **not** request a loan from the Plan.
- (d) Describe limitations on receiving loans under the Plan: \_\_\_\_\_  
[*Note: Any limitation under subsection (d) must be definitely determinable and not provide any Employer discretion.*]

B-4 **LOAN LIMITS.** The default loan policy under Section 13.03 of the Plan allows Participants to take a loan provided all outstanding loans do not exceed 50% of the Participant’s vested Account Balance. To override the default loan policy to allow loans up to \$10,000, even if greater than 50% of the Participant’s vested Account Balance, check this AA §B-4.

- A Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance.  
[*Note: If this AA §B-4 is checked, the Participant may be required to provide adequate security as required under Section 13.06 of the Plan.*]

B-5 **NUMBER OF LOANS.** The default loan policy under Section 13.04 of the Plan restricts Participants to one loan outstanding at any time. To override the default loan policy and permit Participants to have more than one loan outstanding at any time, complete subsection (a) or (b) below.

- (a) A Participant may have \_\_\_ loans outstanding at any time.
- (b) There are no restrictions on the number of loans a Participant may have outstanding at any time.

B-6 **LOAN AMOUNT.** The default loan policy under Section 13.04 of the Plan provides that a Participant may not receive a loan of less than \$1,000. To modify the minimum loan amount or to add a maximum loan amount, complete this AA §B-6.

- (a) There is no minimum loan amount.
- (b) The minimum loan amount is \$\_\_\_\_\_.
- (c) The maximum loan amount is \$\_\_\_\_\_.

B-7 **INTEREST RATE.** The default loan policy under Section 13.05 of the Plan provides for an interest rate commensurate with the interest rates charged by local commercial banks for similar loans. To override the default loan policy and provide a specific interest rate to be charged on Participant loans, complete this AA §B-7.

- (a) The prime interest rate plus \_\_\_ percentage point(s).
- (b) The interest rate is determined in accordance with the terms of the Investment Arrangement, service provider procedures, or other loan policy document adopted by the Plan Administrator.

- (c) Describe: \_\_\_\_\_  
[*Note: Any interest rate described in this AA §B-7 must be reasonable and must apply uniformly to all Participants.*]
- B-8 **PURPOSE OF LOAN.** The default loan policy under Section 13.02 of the Plan provides that a Participant may receive a Participant loan for any purpose. To modify the default loan policy to restrict the availability of Participant loans to hardship events, check this AA §B-8.
- (a) A Participant may only receive a Participant loan upon the demonstration of a hardship event, as described in Section 7.10(e)(1)(i) of the Plan.
- (b) A Participant may only receive a Participant loan under the following circumstances: \_\_\_\_\_
- B-9 **APPLICATION OF LOAN LIMITS.** If Participant loans are not available from all contribution sources, the limitations under Code §72(p) and the adequate security requirements of the Department of Labor regulations will be applied by taking into account the Participant’s entire Account Balance. To override this provision, complete this AA §B-9.
- The loan limits and adequate security requirements will be applied by taking into account only those contribution Accounts which are available for Participant loans.
- B-10 **CURE PERIOD.** The Plan provides that a Participant incurs a loan default if a Participant does not repay a missed payment by the end of the calendar quarter following the calendar quarter in which the missed payment was due. To override this default provision to apply a shorter cure period, complete this AA §B-10.
- The cure period for determining when a Participant loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed.
- (b) The cure period for determining when a Participant loan is treated as in default will be the greater of \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed or the last day of the second calendar quarter following the calendar quarter in which the missed payment was due.
- (c) The cure period for determining when a loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the first missed loan payment.
- B-11 **PERIODIC REPAYMENT – PRINCIPAL RESIDENCE.** If a Participant loan is for the purchase of a Participant’s primary residence, the loan repayment period for the purchase of a principal residence may not exceed ten (10) years. To override this default provision, complete this AA §B-11.
- (a) The Plan does not permit loan payments to exceed five (5) years, even for the purchase of a principal residence.
- (b) The loan repayment period for the purchase of a principal residence may not exceed \_\_\_\_\_ years (may not exceed 30).
- (c) Loans for the purchase of a Participant’s primary residence may be payable over any reasonable period commensurate with the period permitted by commercial lenders for similar loans.
- B-12 **TERMINATION OF EMPLOYMENT.** Section 13.10(a) of the Plan provides that a Participant loan becomes due and payable in full upon the Participant’s termination of employment. To override this default provision, complete this AA §B-12.
- A Participant loan will not become due and payable in full upon the Participant’s termination of employment.
- B-13 **DIRECT ROLLOVER OF A LOAN NOTE.** Section 13.10(b) of the Plan provides that upon termination of employment a Participant may request the Direct Rollover of a loan note. To override this default provision, complete this AA §B-13.
- A Participant may **not** request the Direct Rollover of the loan note upon termination of employment.
- B-14 **LOAN RENEGOTIATION.** The default loan policy provides that a Participant may renegotiate a loan, provided the renegotiated loan separately satisfies the reasonable interest rate requirement, the adequate security requirement, the periodic repayment requirement and the loan limitations under the Plan. The Employer may restrict the availability of renegotiations to prescribed purposes provided the ability to renegotiate a Participant loan is available on a non-discriminatory basis. To override the default loan policy and restrict the ability of a Participant to renegotiate a loan, complete this AA §B-14.
- (a) A Participant may **not** renegotiate the terms of a loan.
- (b) The following special provisions apply with respect to renegotiated loans: \_\_\_\_\_
- B-15 **SOURCE OF LOAN.** Participant loans may be made from all available contribution sources, to the extent vested, unless designated otherwise under this AA §B-15.
- Participant loans will not be available from the following contribution sources: \_\_\_\_\_



Participant loans will only be available from the following contribution sources: \_\_\_\_\_

B-16 **SPOUSAL CONSENT.** Spousal consent is not required for a Participant to receive a loan, unless required by State law. To override this provision, complete this AA §B-16.

Spousal consent is required to receive a Participant loan.

B-17 **MODIFICATIONS TO DEFAULT LOAN PROVISIONS.**

The following special rules will apply with respect to Participant loans under the Plan: \_\_\_\_\_

*[Note: Any provision under this AA §B-17 must satisfy the requirements under Code §72(p) and the regulations thereunder and will control over any inconsistent provisions of the Plan dealing with the administration of Participant loans.]*

**APPENDIX C  
ADMINISTRATIVE ELECTIONS**

Use this Appendix C to identify certain elections dealing with the administration of the Plan. These elections may be changed without amending this Adoption Agreement by substituting an updated Appendix C with new elections. The provisions selected under this Appendix C do not create qualification issues and any changes to the provisions under this Appendix C will not affect the Employer's reliance on the IRS Favorable Letter.

C-1 **DIRECTION OF INVESTMENTS.** Are Participants permitted to **direct investments**? (See Section 10.07 of the Plan.)

- (a) No
  - (b) Yes, but subject to the following restrictions:
    - (1) No restrictions apply
    - (2) Only for Accounts that are 100% vested
    - (3) Specify Accounts: \_\_\_\_\_
    - (4) Describe any special rules that apply for purposes of direction of investments: \_\_\_\_\_
- [Note: This subsection (4) may be used to describe special investment provisions for specific types of investments.]*

C-2 **ROLLOVER CONTRIBUTIONS.** Does the Plan accept **Rollover Contributions**? (See Section 3.05 of the Plan.)

- (a) No
- (b) Yes
  - (1) If this subsection (1) is checked, an Employee may make a Rollover Contribution to the Plan prior to becoming a Participant in the Plan.
  - (2) Check this subsection (2) if the Plan will accept Rollover Contributions from former Employees with an Account Balance under the Plan.
  - (3) Describe any special rules for accepting Rollover Contributions: \_\_\_\_\_

*[Note: The Employer may designate in this subsection (3), or in separate written procedures, the extent to which it will accept rollovers from designated plan types. For example, the Employer may decide not to accept rollovers from certain designated plans (e.g., 403(b) plans, §457 plans or IRAs). Any special rollover procedures will apply uniformly to all Participants under the Plan.]*

C-3 **LIFE INSURANCE.** Are **life insurance** investments permitted? (See Section 10.08 of the Plan.)

- (a) No
- (b) Yes

C-4 **QDRO PROCEDURES.** Although the requirements of Code §414(p) do not apply to the Plan, the Employer may elect to apply the procedures set forth under Section 11.05 of the Plan (which are patterned after the rules under Code §414(p)) by electing subsection (a) below or may elect not to apply the procedures set forth under Section 11.05 of the Plan and instead, describe the Plan's procedures for addressing domestic relations orders below or in separate administrative procedures.

- (a) The Employer elects to have the requirements of Section 11.05 of the Plan apply to its Plan.
  - (b) The requirements of Section 11.05 of the Plan do not apply to the Plan. The procedures for addressing the receipt of domestic relations orders are either set forth below or in separate administrative procedures.
- Describe domestic relations procedures: \_\_\_\_\_

**EMPLOYER SIGNATURE PAGE**

**PURPOSE OF EXECUTION.** This Signature Page is being executed for SMAA 401(a) Plan to effect:

- (a) The adoption of a **new plan**, effective \_\_\_ [insert Effective Date of Plan]. [**Note:** Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.]
- (b) The **restatement** of an existing plan in order to comply with the requirements for Cycle 3 Pre-Approved Plans, pursuant to Rev. Proc. 2017-41.
  - (1) Effective date of restatement: 10-1-2021. [**Note:** Date can be no earlier than the first day of the Plan Year in which the restatement is adopted.]
  - (2) Name of plan(s) being restated: SMAA 401(a) Plan
  - (3) The original effective date of the plan(s) being restated: 10-1-2007
- (c) An **amendment or restatement** of the Plan (other than to comply with the requirements for Cycle 3 Pre-Approved Plans under Rev. Proc. 2017-41). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
  - (1) Effective Date(s) of amendment/restatement: \_\_\_\_\_
  - (2) Name of plan being amended/restated: \_\_\_\_\_
  - (3) The original effective date of the plan being amended/restated: \_\_\_\_\_
  - (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: \_\_\_\_\_

**PRE-APPROVED PLAN PROVIDER INFORMATION.** The Pre-Approved Plan Provider (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Pre-Approved Plan Provider (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the IRS Opinion Letter to the Pre-Approved Plan Provider (or authorized representative) at the following location:

**Name of Pre-Approved Plan Provider (or authorized representative):** Carlton Fields, P.A.

**Address:** 4221 West Boy Scout Boulevard, Suite 1000 Tampa, FL 33607-5780

**Telephone number:** 813.229.4194

**IMPORTANT INFORMATION ABOUT THIS PRE-APPROVED PLAN.** A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the Internal Revenue Service to the Pre-Approved Plan Provider as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2017-41. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2017-41. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer may need to apply to the Internal Revenue Service for a determination letter.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #03. The Employer understands that the Pre-Approved Plan Provider has no responsibility or liability regarding the suitability of the Plan for the Employer’s needs, or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

Sarasota Manatee Airport Authority  
(Name of Employer)

Anita Eldridge Senior VP, Finance and Administration  
(Name of authorized representative) (Title)

\_\_\_\_\_  
(Signature) (Date)

**TRUST DECLARATION**

**This Trust Declaration may be used to identify and adopt the Trust associated with the Plan.**

*[Note: The Internal Revenue Service does not review the Trust Declaration, or the trust provisions associated with Pre-Approved Plans. Therefore, the provisions of the Trust Declaration, ASC Trust Agreement or any separate Trust agreement have not been approved by the IRS and the IRS opinion letter does not cover such Trust Agreement. The Provider, the Trustee and the adopting Employer should review the applicable Trust provisions, and any modifications thereto, with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]*

**Name of Plan.** SMAA 401(a) Plan

**Name of Employer.** Sarasota Manatee Airport Authority

**Effective date of Trust Agreement:** 5-20-2021

**(a) The Trust terms are:**

- (1) **Determined under the Trust provisions contained in the ASC Trust Agreement - Standard.**

*[Note: Trustee must complete the Trustee Signature section under Section (b) below.]*

- (i) **Directed Trustee.** The Trustee may only invest Plan assets as directed by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.
- (ii) **Discretionary Trustee.** The Trustee has discretion to invest Plan assets, unless specifically directed otherwise by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

**[Modification of ASC Trust Agreement Provisions.** The Employer may amend the Trust provisions as provided under Section 1.18 of the ASC Trust Agreement. Plan provisions will override any conflicting provisions in the Trust Agreement, including any modification thereto. The Provider and the adopting Employer should review any modifications of the ASC Trust Agreement with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]

- (2) **Determined under a separate Trust agreement(s).** The Trust provisions are contained in a separate Trust Agreement that has been furnished to the Employer. Notwithstanding the terms of the Plan, the terms of the Trust Agreement shall control the rights and responsibilities of the Trustee with respect to the Trust and the assets held in such Trust.

**Name of Trustee.** \_\_\_\_\_

**Title of Trust Agreement.** \_\_\_\_\_

**Address of Trustee.** \_\_\_\_\_

*[Note: In using a separate Trust Agreement, the Trustee may adopt such Trust Agreement by either completing the Trustee Signature section under Section (b) below or may execute the separate Trust Agreement. In either case, the information above – Name of Trustee, Title of Trust Agreement and Address of Trustee – must be completed.]*

- (3) **Plan is funded with custodial accounts, annuity contracts and/or insurance contracts.** There is no Trust associated with the Plan because the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts.

*[Note: No signature is required under this Trust Declaration if the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts. The Employer or Plan Administrator may enter into a separate agreement with the custodian or insurance company. Such separate agreement must be consistent with the terms of the Plan.]*

**PRE-APPROVED GOVERNMENTAL DEFINED CONTRIBUTION PLAN**

**BASIC PLAN DOCUMENT**

**[DC-BPD #03]**

TABLE OF CONTENTS

PLAN DEFINITIONS

1.01	Account.....	1
1.02	Account Balance .....	1
1.03	Actuarial Factor.....	1
1.04	Adoption Agreement (“Agreement” or “AA”).....	1
1.05	After-Tax Employee Contributions.....	1
1.06	Alternate Payee.....	1
1.07	Anniversary Years.....	1
1.08	Annual Additions.....	1
1.09	Annuity Contract.....	1
1.10	Annuity Starting Date .....	2
1.11	Beneficiary .....	2
1.12	Break in Service.....	2
1.13	Cash-Out Distribution.....	2
1.14	Catch-Up Contributions.....	2
1.15	Catch-Up Contribution Limit.....	2
1.16	Code .....	2
1.17	Code §415 Limitation .....	2
1.18	Collectively Bargained Employee .....	2
1.19	Compensation Limit .....	2
1.20	Computation Period .....	3
	(a) Eligibility Computation Period .....	3
	(b) Vesting Computation Period .....	3
1.21	Custodian .....	3
1.22	Defined Benefit Plan.....	3
1.23	Defined Contribution Plan.....	3
1.24	Designated Beneficiary.....	3
1.25	Differential Pay.....	3
1.26	Directed Account .....	3
1.27	Directed Trustee .....	3
1.28	Direct Rollover .....	3
1.29	Disabled .....	3
1.30	Discretionary Trustee.....	3
1.31	Distribution Calendar Year.....	3
1.32	Early Retirement Age.....	3
1.33	Effective Date.....	3
1.34	Elapsed Time.....	3
1.35	Elective Deferral Dollar Limit.....	3
1.36	Elective Deferrals.....	4
1.37	Eligible Employee .....	4
1.38	Eligible Retirement Plan .....	4
1.39	Eligible Rollover Distribution.....	4
1.40	Employee .....	4
1.41	Employer .....	4
1.42	Employer Contributions .....	4
1.43	Employer Pick-up Contributions .....	4
1.44	Employment Commencement Date.....	4
1.45	Entry Date.....	4
1.46	Equivalency Method.....	4
1.47	ERISA .....	4
1.48	Excess Amount.....	4
1.49	Excess Compensation .....	4
1.50	Excess Deferrals.....	4
1.51	Favorable IRS Letter.....	4
1.52	FICA Replacement Plan.....	4
1.53	General Trust Account.....	4
1.54	Governmental Plan.....	4
1.55	Grandfathered 401(k) Arrangement.....	4
1.56	Hardship.....	5
1.57	Hour of Service .....	5
	(a) Performance of duties.....	5

Pre-Approved Governmental Defined Contribution Plan  
Table of Contents

	(b) Nonperformance of duties .....	5
	(c) Back pay award.....	5
	(d) Related Employers/Leased Employees .....	5
	(e) Maternity/paternity/FMLA/military leave.....	5
1.58	Indian Tribal Government.....	6
1.59	Insurer .....	6
1.61	Integration Level.....	6
1.62	Leased Employee .....	6
1.63	Limitation Year .....	6
1.65	Matching Contributions.....	6
1.66	Maximum Disparity Rate.....	6
1.67	Normal Retirement Age .....	6
1.68	Participant.....	6
1.69	Participating Employer .....	7
1.70	Participating Employer Adoption Page .....	7
1.71	Part-Time Employee.....	7
1.72	Period of Severance .....	7
1.73	Plan .....	7
1.74	Plan Administrator.....	7
1.75	Plan Compensation.....	7
	(a) Determination period.....	7
	(b) Partial period of participation.....	7
1.76	Plan Year .....	8
1.77	Predecessor Employer .....	8
1.78	Pre-Tax Deferrals .....	8
1.79	Provider .....	8
1.80	Qualified Domestic Relations Order (QDRO).....	8
1.82	Reemployment Commencement Date .....	8
1.83	Related Employer .....	8
1.84	Required Beginning Date .....	8
1.85	Rollover Contribution .....	8
1.86	Roth Deferrals.....	8
1.87	Salary Deferral Election.....	8
1.88	Salary Deferrals .....	8
1.89	Seasonal Employee .....	8
1.90	Short Plan Year .....	8
1.91	Spouse.....	8
1.92	Taxable Wage Base.....	9
1.93	Temporary Employee.....	9
1.94	Total Compensation .....	9
	(a) Total Compensation definitions .....	9
	(b) Post-severance compensation .....	10
	(c) Continuation payments for disabled Participants .....	10
	(d) Deemed \$125 compensation.....	10
	(e) Differential Pay .....	10
1.95	Trust .....	11
1.96	Trustee.....	11
1.97	Valuation Date .....	11
1.98	Year of Service.....	11

**SECTION 2  
ELIGIBILITY AND PARTICIPATION**

2.01	Eligibility .....	12
2.02	Eligible Employees.....	12
	(a) Only Employees may participate in the Plan.....	12
	(b) Excluded Employees .....	12
	(c) Employees of Related Employers.....	12
	(d) Ineligible Employee becomes Eligible Employee .....	12
	(e) Eligible Employee becomes ineligible Employee.....	13
	(f) Improper exclusion of eligible Participant .....	13
2.03	Minimum Age and Service Conditions .....	13
	(a) Application of age and service conditions .....	13
	(b) Entry Dates.....	16

2.04 Participation on Effective Date of Plan..... 16  
 2.05 Rehired Employees..... 16  
 2.06 Service with Predecessor Employers..... 16  
 2.07 Break in Service Rules..... 16  
 2.08 Waiver of Participation..... 16

**SECTION 3  
PLAN CONTRIBUTIONS**

3.01 Types of Contributions..... 17  
 3.02 Employer Contribution Formulas..... 17  
     (a) Contribution formulas (Profit Sharing Plan)..... 17  
     (b) Employer Contribution formulas (Money Purchase Plan) ..... 20  
     (c) Contribution formulas (Grandfathered 401(k) Plan)..... 22  
 3.03 Employer Pick-Up Contributions..... 28  
 3.04 After-Tax Employee Contributions..... 29  
 3.05 Rollover Contributions..... 29  
 3.06 Deductible Employee Contributions ..... 30  
 3.07 Allocation Conditions..... 30  
     (a) Special rule for year of Plan termination..... 30  
     (b) Service with Predecessor Employers ..... 30  
 3.08 Contribution of Property ..... 30

**SECTION 4  
SPECIAL RULES AFFECTING GOVERNMENTAL PLANS AND INDIAN TRIBAL GOVERNMENT PLANS**

4.01 Governmental Plan..... 31  
     (a) Governmental Plan exemptions ..... 31  
     (b) Adoption Agreement elections ..... 31  
 4.02 Plan of Indian Tribal Government Treated as Governmental Plan..... 31  
 4.03 FICA Replacement Plan..... 31

**SECTION 5  
LIMITS ON CONTRIBUTIONS**

5.01 Limits on Employer Contributions ..... 33  
     (a) Limitation on total Employer Contributions ..... 33  
     (b) Limitation on Salary Deferrals ..... 33  
 5.02 Code §415 Limitation ..... 33  
     (a) No other plan participation ..... 33  
     (b) Participation in another plan ..... 33  
     (c) Definitions..... 34  
     (d) Restorative payments..... 35  
     (e) Corrective provisions ..... 35  
     (f) Change of Limitation Year..... 35  
 5.03 Elective Deferral Dollar Limit ..... 35  
     (a) Excess Deferrals ..... 36  
     (b) Correction of Excess Deferrals..... 36

**SECTION 6  
PARTICIPANT VESTING AND FORFEITURES**

6.01 Vesting of Contributions..... 38  
 6.02 Vesting Schedules ..... 38  
 6.03 Special vesting rules..... 38  
     (a) Normal Retirement Age..... 38  
     (b) 100% vesting upon death, disability, or Early Retirement Age ..... 38  
     (c) Vesting upon merger, consolidation or transfer ..... 38  
     (d) Vesting schedules applicable to prior contributions..... 38  
     (e) Different Vesting Schedules for Different Sources ..... 39  
 6.04 Year of Service..... 39  
     (a) Hours of Service ..... 39  
     (b) Elapsed Time method ..... 39  
 6.05 Vesting Computation Period..... 40  
 6.06 Excluded service ..... 40  
     (a) Service before the Effective Date of the Plan ..... 40  
     (b) Service before a specified age..... 40  
 6.07 Service with Predecessor Employers..... 40  
 6.08 Break in Service Rules..... 40



6.09	Special Vesting Rule - In-Service Distribution When Account Balance is Less than 100% Vested .....	40
6.10	Forfeiture of Benefits.....	41
	(a) Cash-Out Distribution .....	41
	(b) Five-Year Forfeiture Break in Service .....	42
	(c) Missing Participant or Beneficiary .....	42
	(d) Excess Deferrals .....	43
6.11	Allocation of Forfeitures .....	43
	(a) Reallocation as additional contributions under Profit Sharing Plan Adoption Agreement.....	43
	(b) Reallocation as additional Employer Contributions under Money Purchase Plan Adoption Agreement .....	43
	(c) Reduction of contributions .....	43
	(d) Payment of Plan expenses.....	44
	(e) Forfeiture rules for other contribution types.....	44

**SECTION 7  
PLAN DISTRIBUTIONS**

7.01	Available Forms of Distribution .....	45
7.02	Amount Eligible for Distribution .....	45
7.03	Participant Consent.....	45
	(a) Involuntary Cash-Out threshold.....	45
	(b) Participant notice .....	45
	(c) Special rules .....	46
7.04	Direct Rollovers .....	46
	(a) Definitions .....	46
	(b) Direct Rollover notice .....	47
	(c) Direct Rollover by non-Spouse beneficiary.....	47
	(d) Direct Rollover of non-taxable amounts.....	47
	(e) Rollovers to Roth IRA .....	47
7.05	Automatic Rollover.....	48
	(a) Automatic Rollover requirements.....	48
	(b) Involuntary Cash-Out Distribution .....	48
	(c) Treatment of Rollover Contributions .....	48
7.06	Distribution Upon Termination of Employment.....	48
	(a) Account Balance not exceeding Cash-Out threshold.....	48
	(b) Account Balance exceeding Cash-Out threshold .....	48
7.07	Distribution Upon Death.....	48
	(a) Death after commencement of benefits .....	48
	(b) Death before commencement of benefits.....	48
	(c) Determining a Participant's Beneficiary .....	49
7.08	Distribution to Disabled Employees .....	50
7.09	Qualified Distributions for Retired Public Safety Officers .....	50
	(a) Qualified health insurance premiums .....	50
	(b) Eligible retired public safety officer .....	50
7.10	In-Service Distributions .....	50
	(a) After-Tax Employee Contributions and Rollover Contributions.....	50
	(b) Employer Contributions and Matching Contributions.....	50
	(c) Salary Deferrals under Grandfathered 401(k) Arrangement.....	51
	(d) Penalty-free withdrawals for individuals called to active duty.....	51
	(e) Hardship distribution .....	51
7.11	Sources of Distribution.....	53
	(a) Exception for Hardship withdrawals.....	53
	(b) Roth Deferrals .....	53
	(c) In-kind distributions .....	54
7.12	Correction of Qualification Defects.....	54

**SECTION 8  
REQUIRED MINIMUM DISTRIBUTIONS**

8.01	Required Minimum Distributions .....	55
8.02	Death of Participant before required distributions begin .....	55
	(a) Surviving Spouse is sole Designated Beneficiary .....	55
	(b) Surviving Spouse is not the sole Designated Beneficiary .....	55
	(c) No Designated Beneficiary.....	55
	(d) Death of surviving Spouse .....	55
8.03	Required Minimum Distributions during Participant's lifetime .....	55
	(a) Amount of Required Minimum Distribution for each Distribution Calendar Year.....	55

	(b) Lifetime Required Minimum Distributions continue through year of Participant’s death .....	56
8.04	Required Minimum Distributions After Participant’s Death .....	56
	(a) Death on or after date required distributions begin.....	56
	(b) Death before date required distributions begin .....	56
8.05	Definitions .....	57
	(a) Designated Beneficiary .....	57
	(b) Distribution Calendar Year.....	57
	(c) Life expectancy.....	57
	(d) Account Balance.....	57
	(e) Required Beginning Date.....	57
8.06	Special Rules .....	57
	(a) Election to apply 5-year rule to required distributions after death .....	57
	(b) Election to allow Participants or Beneficiaries to elect 5-year rule.....	57
	(c) Forms of Distribution .....	57
	(d) Treatment of trust beneficiaries as Designated Beneficiaries .....	58
	(e) Special rules applicable to trust beneficiaries .....	58
8.07	Transitional Rule.....	59
	(a) The following provisions modify the required minimum distribution rules under this .....	59
	(b) Effective/Applicability Dates.....	60
	(c) Account Balance for Determining Minimum Distributions.....	60
	(d) Rules Applicable to Qualifying Longevity Annuity Contracts.....	60

**SECTION 9  
SPOUSAL CONSENT RULES**

9.01	Application of Joint and Survivor Annuity Rules.....	64
9.02	Spousal consent.....	64
9.03	One-year marriage rule.....	64

**SECTION 10  
PLAN ACCOUNTING AND INVESTMENTS**

10.01	Participant Accounts.....	65
10.02	Valuation of Accounts .....	65
	(a) Periodic valuation.....	65
	(b) Daily valuation.....	65
	(c) Interim valuations .....	65
10.03	Adjustments to Participant Accounts .....	65
	(a) Distributions and forfeitures from a Participant’s Account.....	65
	(b) Life insurance premiums and dividends .....	65
	(c) Contributions and forfeitures allocated to a Participant’s Account .....	65
	(d) Net income or loss.....	65
10.04	Share or unit accounting .....	66
10.05	Suspense accounts.....	66
10.06	Investments under the Plan .....	66
	(a) Investment options .....	66
	(b) Investment of tax deductible Employee contributions in life insurance and collectibles.....	66
10.07	Participant-directed investments.....	66
	(a) Limits on participant investment direction.....	66
	(b) Failure to direct investment.....	67
10.08	Investment in Life Insurance .....	67
	(a) Incidental Life Insurance Rules .....	67
	(b) Ownership of Life Insurance Policies .....	67
	(c) Evidence of Insurability.....	67
	(d) Distribution of Insurance Policies.....	67
	(e) Discontinuance of Insurance Policies.....	68
	(f) Protection of Insurer .....	68
	(g) No Responsibility for Act of Insurer.....	68

**SECTION 11  
PLAN ADMINISTRATION AND OPERATION**

11.01	Plan Administrator.....	69
11.02	Designation of Alternative Plan Administrator.....	69
	(a) Acceptance of responsibility by designated Plan Administrator.....	69
	(b) Multiple alternative Plan Administrators.....	69
	(c) Resignation or removal of designated Plan Administrator.....	69

Pre-Approved Governmental Defined Contribution Plan  
Table of Contents

(d) Employer responsibilities ..... 69

(e) Indemnification of Plan Administrator ..... 69

11.03 Duties, Powers and Responsibilities of the Plan Administrator ..... 69

(a) Delegation of duties, powers and responsibilities ..... 69

(b) Specific Plan Administrator responsibilities ..... 69

11.04 Plan Administration Expenses ..... 70

(a) Reasonable Plan administration expenses ..... 70

(b) Plan expense allocation ..... 70

(c) Expenses related to administration of former Employee or surviving Spouse ..... 70

11.05 Qualified Domestic Relations Orders (QDROs) ..... 70

(a) In general ..... 70

(b) Definitions related to Qualified Domestic Relations Orders (QDROs) ..... 70

(c) Recognition as a QDRO ..... 71

(d) Contents of QDRO ..... 71

(e) Impermissible QDRO provisions ..... 71

(f) Immediate distribution to Alternate Payee ..... 71

(g) Fee for QDRO determination ..... 71

(h) QDRO procedure ..... 71

11.06 Claims Procedure ..... 73

SECTION 12  
TRUST AND OTHER PLAN FUNDING

12.01 Establishment of Trust or Other Funding Mechanism ..... 74

12.02 Conflicting Trust Provisions ..... 74

12.03 More than One Trustee ..... 74

12.04 Annual Valuation ..... 74

12.05 Appointment of Custodian ..... 74

12.06 Custodial Accounts, Annuity Contracts and Insurance Contracts ..... 74

SECTION 13  
PARTICIPANT LOANS

13.01 Availability of Participant Loans ..... 75

13.02 Must be Available in Reasonably Equivalent Manner ..... 75

13.03 Loan Limitations ..... 75

13.04 Limit on Amount and Number of Loans ..... 75

(a) Loan renegotiation ..... 75

(b) Participant must be creditworthy ..... 75

13.05 Reasonable Rate of Interest ..... 75

13.06 Adequate Security ..... 76

13.07 Periodic Repayment ..... 76

(a) Leave of absence ..... 76

(b) Military leave ..... 76

13.08 Designation of Accounts ..... 76

13.09 Procedures for Loan Default ..... 76

13.10 Termination of Employment ..... 77

(a) Offset of outstanding loan ..... 77

(b) Direct Rollover ..... 77

13.11 Mergers, Transfers or Direct Rollovers from another Plan/Change in Loan Record Keeper ..... 77

13.12 Amendment of Plan to Eliminate Participant Loans ..... 77

SECTION 14  
PLAN AMENDMENTS, TERMINATION, MERGERS AND TRANSFERS

14.01 Plan Amendments ..... 78

(a) Amendment by the Provider ..... 78

(b) Amendment by the Employer ..... 78

(c) Method of amendment ..... 78

(d) Effective date of Plan Amendments ..... 79

14.02 Plan Termination ..... 79

(a) Full and immediate vesting ..... 79

(b) Distribution upon Plan termination ..... 79

(c) Missing Participants ..... 79

(d) Partial Termination ..... 79

14.03 Merger or Consolidation ..... 79

14.04 Transfer of Assets ..... 80

(a) Trustee’s right to refuse transfer .....	80
(b) Transfer of Plan to unrelated Employer .....	80
<b>SECTION 15</b>	
<b>MISCELLANEOUS</b>	
15.01 Exclusive Benefit.....	81
15.02 Return of Employer Contributions .....	81
(a) Mistake of fact .....	81
(b) Failure to initially qualify .....	81
15.03 Participants’ Rights.....	81
15.04 Military Service .....	81
(a) Death benefits under qualified military service .....	81
(b) Benefit accruals .....	81
(c) Plan distributions .....	82
(d) Make-Up Contributions.....	82
15.05 Annuity Contract.....	82
15.06 Use of IRS Compliance Programs .....	82
15.07 Governing Law .....	83
15.08 Waiver of Notice .....	83
15.09 Use of Electronic Media .....	83
15.10 Severability of Provisions.....	83
15.11 Binding Effect .....	83
<b>SECTION 16</b>	
<b>PARTICIPATING EMPLOYERS</b>	
16.01 Participation by Participating Employers .....	84
16.02 Participating Employer Adoption Page.....	84
(a) Application of Plan provisions.....	84
(b) Plan amendments.....	84
(c) Trustee designation.....	84
16.03 Compensation of Related Employers.....	84
16.04 Allocation of Contributions and Forfeitures .....	84
16.05 Discontinuance of Participation by a Participating Employer.....	84
16.06 Operational Rules for Related Employer Groups.....	84
16.07 Multiple Employer Plans .....	85
(a) Application of qualification rules to Multiple Employer Plans .....	85
(b) Definitions that apply to Multiple Employer Plans.....	85
(c) Special rules for Multiple Employer Plans.....	86
<b>APPENDIX A</b>	
<b>ACTUARIAL FACTORS</b>	
Actuarial Factor Table.....	88
<b>APPENDIX B</b>	
<b>INTERIM AMENDMENT #1</b>	
<b>FINAL REGULATIONS RELATING TO HARDSHIP DISTRIBUTIONS</b>	
B-1.01 Change in Hardship Distribution Requirements .....	89
B-2.01 Acceptance of Rollover Contributions.....	89
B-3.01 Relief for Victims of Certain Qualified Natural Disasters .....	91
B-3.02 Qualified Natural Disasters .....	91
B-3.03 General Rules .....	91

**PLAN DEFINITIONS**

This Section contains definitions for common terms that are used throughout the Plan. All capitalized terms under the Plan are defined in this Section or in the relevant section of the Plan document where such term is used.

**1.01** **Account.** The separate Account maintained for each Participant under the Plan by the Plan Administrator, Plan service provider, Custodian or insurance company. A Participant may have any (or all) of the following separate Accounts, to the extent authorized under the Plan:

- Employer Contribution Account
- Matching Contribution Account
- After-Tax Employee Contribution Account
- Employer Pick-Up Contribution Account
- Rollover Contribution Account
- Transfer Account

In addition, if this Plan qualifies as a Grandfathered 401(k) Arrangement (as defined in Section 1.55), a Participant also may have any (or all) of the following separate Accounts:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Roth Rollover Contribution Account

The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

**1.02** **Account Balance.** Account Balance shall mean a Participant's balances in all of the Accounts maintained by the Plan on his or her behalf.

**1.03** **Actuarial Factor.** A Participant's Actuarial Factor is used for purposes of determining the Participant's allocation under the age-based formula under AA §6-3(f) of the Profit Sharing Plan Adoption Agreement or under the age-based contribution formula under AA §6-2(e) of the Money Purchase Plan Adoption Agreement. See Section 3.02(a)(1)(i)(E) or 3.02(b)(4).

**1.04** **Adoption Agreement (“Agreement” or “AA”).** The Adoption Agreement contains the elective provisions that an Employer may complete to supplement or modify the provisions under the Plan. Each adopting Employer must complete and execute the Adoption Agreement. If the Plan covers Employees of an Employer other than the Employer that executes the Employer Signature Page of the Adoption Agreement, such additional Employer(s) must execute a Participating Employer Adoption Page under the Adoption Agreement. (See Section 16 for rules applicable to adoption by Participating Employers.) An Employer may adopt more than one Adoption Agreement associated with this Plan document. Each executed Agreement is treated as a separate Plan. The Employer may adopt a Profit Sharing Plan Adoption Agreement or a Money Purchase Plan Adoption Agreement. The Employer also may elect under the Profit Sharing Plan Adoption Agreement to provide for a Grandfathered 401(k) Arrangement under the Plan. Any reference to the Profit Sharing Plan Adoption Agreement includes the Grandfathered 401(k) Plan Adoption Agreement, unless specifically provided otherwise.

**1.05** **After-Tax Employee Contributions.** Employee Contributions that may be made to the Plan by a Participant that are included in the Participant's gross income in the year such amounts are contributed to the Plan and are maintained under a separate After-Tax Employee Contribution Account to which earnings and losses are allocated. See Section 3.04. For this purpose, Roth Deferrals are not considered as After-Tax Employee Contributions.

**1.06** **Alternate Payee.** A person designated to receive all or a portion of the Participant's benefit pursuant to a QDRO. See Section 1.80.

**1.07** **Anniversary Years.** An alternative period for measuring Eligibility Computation Periods (under Section 2.03(a)(3)) and Vesting Computation Periods (under Section 6.05). An Anniversary Year is any 12-month period which commences with the Employee's Employment Commencement Date, or which commences with the anniversary of the Employee's Employment Commencement Date.

**1.08** **Annual Additions.** The amounts taken into account under a Defined Contribution Plan for purposes of applying the limitation on allocations under Code §415. See Section 5.02(c)(1) for the definition of Annual Additions.

**1.09** **Annuity Contract.** A nontransferable group annuity certificate or individual contract as defined in Code §401(g) that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity and that meets the following requirements: (a) An Annuity Contract may only be offered by an Insurance Company; (b) The Annuity Contract may be owned by the Participant, and a group Annuity Contract may be held by the Trustee or Employer (if a

qualified trust substitute under Code §401(f)); and (c) An Annuity Contract may be fixed, variable, or a combination of fixed and variable.

A life insurance contract, an endowment contract, a health or accident insurance contract, or a property, casualty, or liability insurance contract do not constitute an Annuity Contract. However, this does not apply for contracts issued before September 24, 2007.

- 1.10 Annuity Starting Date.** The date an Employee commences distribution from the Plan. If a Participant commences distribution with respect to a portion of his/her Account Balance, a separate Annuity Starting Date applies to any subsequent distribution. If distribution is made in the form of an annuity, the Annuity Starting Date is the first day of the first period for which annuity payments are made.
- 1.11 Beneficiary.** A person designated by the Participant (or by the terms of the Plan) to receive a benefit under the Plan upon the death of the Participant. See Section 7.07(c) for the applicable rules for determining a Participant's Beneficiaries under the Plan.
- 1.12 Break in Service.** The Computation Period (as defined in Section 2.03(a)(3) for purposes of eligibility and Section 6.05 for purposes of vesting) during which an Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects under AA §4-3(a) or AA §8-5(a) to require less than 1,000 Hours of Service to earn a Year of Service for eligibility or vesting purposes, a Break in Service will occur for any Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn a Year of Service for eligibility or vesting purposes, as applicable. However, if the Elapsed Time method applies under AA §4-3(c) (for purposes of eligibility) or AA §8-5(c) (for purposes of vesting), an Employee will incur a Break in Service if the Employee incurs at least a one-year Period of Severance (as defined under Section 1.72). (See Section 2.07 for a discussion of the eligibility Break in Service rules and Section 6.08 for a discussion of the vesting Break in Service rules.)
- 1.13 Cash-Out Distribution.** A total distribution made to a terminated Participant in accordance with Section 6.10(a).
- 1.14 Catch-Up Contributions.** Salary Deferrals that may be made under a Grandfathered 401(k) Arrangement that are in excess of an otherwise applicable Plan limit and that are made by a Participant who is age 50 or over by the end of his/her taxable year. See Section 3.02(c)(2)(iv).
- 1.15 Catch-Up Contribution Limit.** The annual limit applicable to Catch-Up Contributions as set forth in Section 3.02(c)(2)(iv)(A).
- 1.16 Code.** The Internal Revenue Code of 1986, as amended.
- 1.17 Code §415 Limitation.** The limit on the amount of Annual Additions a Participant may receive under the Plan during a Limitation Year. See Section 5.02.
- 1.18 Collectively Bargained Employee.** An Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining. Such Employees may be excluded from the Plan if designated under AA §3-1(b). See Section 2.02(b)(1) for additional requirements related to the exclusion of Collectively Bargained Employees.
- 1.19 Compensation Limit.** The maximum amount of compensation that can be taken into account for any Plan Year for purposes of determining a Participant's Plan Compensation. The Compensation Limit is \$200,000, as adjusted for cost-of-living, increased in accordance with Code §401(a)(17)(B). For 2019, the Compensation Limit is \$280,000. In determining the Compensation Limit for any applicable period (the "determination period"), the cost-of-living adjustment in effect for a calendar year applies to any determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months, the Compensation Limit for such period is an amount equal to the otherwise applicable Compensation Limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. A determination period will not be considered to be less than 12 months merely because compensation is taken into account only for the period the Employee is a Participant. If Salary Deferrals, Matching Contributions, or After-Tax Employee Contributions are separately determined on the basis of specified periods within the determination period (e.g., on the basis of payroll periods), no proration of the Compensation Limit is required with respect to such contributions.

If compensation for any prior determination period is taken into account in determining a Participant's allocations for the current Plan Year, the compensation for such prior determination period is subject to the applicable Compensation Limit in effect for that prior period.

**Pre-Approved Governmental Defined Contribution Plan**  
**Section 1 – Plan Definitions**

In determining the amount of a Participant's Salary Deferrals under a Grandfathered 401(k) Arrangement, a Participant may defer with respect to Plan Compensation that exceeds the Compensation Limit, provided the total deferrals made by the Participant satisfy the Elective Deferral Dollar Limit and any other limitations under the Plan.

- 1.20** **Computation Period.** The 12-consecutive month period used for measuring whether an Employee completes a Year of Service for eligibility or vesting purposes.
- (a) **Eligibility Computation Period.** The 12-consecutive month period used for measuring Years of Service for eligibility purposes. See Section 2.03(a)(3).
- (b) **Vesting Computation Period.** The 12-consecutive month period used for measuring Years of Service for vesting purposes. See Section 6.05.
- 1.21** **Custodian.** An organization that has custody of all or any portion of the Plan assets in a custodial account as described in Code §401(f). See Section 12.05.
- 1.22** **Defined Benefit Plan.** A plan under which a Participant's benefit is based solely on the Plan's benefit formula without the establishment of separate Accounts for Participants.
- 1.23** **Defined Contribution Plan.** A plan that provides for individual Accounts for each Participant to which all contributions, forfeitures, income, expenses, gains and losses under the Plan are credited or deducted. A Participant's benefit under a Defined Contribution Plan is based solely on the fair market value of his/her vested Account Balance.
- 1.24** **Designated Beneficiary.** A Beneficiary who is designated by the Participant (or by the terms of the Plan) and whose life expectancy is taken into account in determining minimum distributions under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4. See Section 8.05(a).
- 1.25** **Differential Pay.** Certain payments made by the Employer to an individual while the individual is performing service in the Uniformed Services. See Section 1.94(e).
- 1.26** **Directed Account.** The Plan assets under a Trust which are held for the benefit of a specific Participant. See Section 10.03(d)(2).
- 1.27** **Directed Trustee.** A Trustee is a Directed Trustee to the extent that the Trustee's investment powers are subject to the direction of another person.
- 1.28** **Direct Rollover.** A rollover, at the Participant's direction, of all or a portion of the Participant's vested Account Balance directly to an Eligible Retirement Plan. See Section 7.04.
- 1.29** **Disabled.** An individual is considered Disabled for purposes of applying the provisions of this Plan if the individual meets the definition of Disabled elected by the Employer under AA §2.8.
- 1.30** **Discretionary Trustee.** A Trustee is a Discretionary Trustee to the extent the Trustee has exclusive authority and discretion to invest, manage or control the Plan assets without direction from any other person.
- 1.31** **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. See Section 8.05(b).
- 1.32** **Early Retirement Age.** The age and/or Years of Service set forth in AA §7-2. Early Retirement Age may be used to determine distribution rights and/or vesting rights. If a Participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the Participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement. The Plan is not required to have an Early Retirement Age.
- 1.33** **Effective Date.** The date this Plan, including any restatement or amendment of this Plan, is effective. The Effective Date of the Plan is designated on the Employer Signature Page under the Adoption Agreement.
- 1.34** **Elapsed Time.** A special method for crediting service for eligibility or vesting. See Section 2.03(a)(6) for more information on the Elapsed Time method of crediting service for eligibility purposes and Section 6.04(b) for more information on the Elapsed Time method of crediting service for vesting purposes. Also see Section 3.07 for the ability to use the Elapsed Time method for applying allocation conditions under the Plan.
- 1.35** **Elective Deferral Dollar Limit.** The maximum amount of Elective Deferrals a Participant may make for any calendar year. See Section 5.03.

**Pre-Approved Governmental Defined Contribution Plan**  
**Section 1 – Plan Definitions**

- 1.36** **Elective Deferrals.** A Participant's Elective Deferrals is the sum of all Salary Deferrals (as defined in Section 1.88) and other contributions made pursuant to a Salary Deferral Election under a SARSEP described in Code §408(k)(6), a SIMPLE IRA plan described in Code §408(p), a plan described under Code §501(c)(18), and a custodial account or other arrangement described in Code §403(b). Elective Deferrals shall not include any amounts properly distributed as an Excess Amount under Code §415.
- 1.37** **Eligible Employee.** An Employee who is not excluded from participation under Section 2.02 of the Plan or AA §3-1.
- 1.38** **Eligible Retirement Plan.** A qualified retirement plan or IRA that may receive a rollover contribution. See Section 7.04(a)(2).
- 1.39** **Eligible Rollover Distribution.** An amount distributed from the Plan that is eligible for rollover to an Eligible Retirement Plan. See Section 7.04(a)(1).
- 1.40** **Employee.** An Employee is any individual employed by the Employer (including any Related Employers). An independent contractor is not an Employee. An Employee is not eligible to participate under the Plan if the individual is not an Eligible Employee under Section 2.02. A Leased Employee is also treated as an Employee of the recipient organization, as provided in Section 2.02(b)(3).
- 1.41** **Employer.** Except as otherwise provided, Employer means the Employer that adopts this Plan and any Related Employer. The Employer must be qualified to maintain a Governmental Plan under Code §414(d). (See Section 2.02(c) for rules regarding coverage of Employees of Related Employers. Also see Section 16 for rules that apply to Employers that execute a Participating Employer Adoption Page.)
- 1.42** **Employer Contributions.** Contributions the Employer makes pursuant to AA §6. See Section 3.02.
- 1.43** **Employer Pick-up Contributions.** Contributions made by the Employee and picked up by the Employer in accordance with Code §414(h)(2). See Section 3.03.
- 1.44** **Employment Commencement Date.** The date the Employee first performs an Hour of Service for the Employer.
- 1.45** **Entry Date.** The date on which an Employee becomes a Participant upon satisfying the Plan's minimum age and service conditions. See Section 2.03(b).
- 1.46** **Equivalency Method.** An alternative method for crediting Hours of Service for purposes of eligibility and vesting. See Section 2.03(a)(5) for eligibility provisions and Section 6.04(a)(2) for vesting provisions.
- 1.47** **ERISA.** The Employee Retirement Income Security Act of 1974, as amended.
- 1.48** **Excess Amount.** Amounts which exceed the Code §415 Limitation. See Section 5.02(c)(4).
- 1.49** **Excess Compensation.** The amount of Plan Compensation that exceeds the Integration Level for purposes of applying the permitted disparity allocation formula. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.50** **Excess Deferrals.** Elective Deferrals that exceed the Elective Deferral Dollar Limit (as defined in Section 5.03). (See Section 5.03(b) for rules regarding the correction of Excess Deferrals.)
- 1.51** **Favorable IRS Letter.** An opinion letter issued by the IRS pursuant to Rev. Proc. 2017-41 (or its successor) to a Provider as to the qualified status of a Pre-Approved Plan.
- 1.52** **FICA Replacement Plan.** This Plan may qualify as a FICA Replacement Plan under Code §3121(b)(7)(F) if the requirements under Section 4.03 are satisfied.
- 1.53** **General Trust Account.** The Plan assets under a Trust which are held for the benefit of all Plan Participants as a pooled investment. See Section 10.03(d)(1).
- 1.54** **Governmental Plan.** A plan established and maintained for its Employees by any State or political subdivision of a State, any State agency or instrumentality, or an Indian Tribal Government (provided the requirements under Section 4.02 of the Plan are satisfied), as provided under Code §414(d).
- 1.55** **Grandfathered 401(k) Arrangement.** An arrangement under Code §401(k) maintained by a governmental employer that was in existence on May 6, 1986. If a governmental entity adopted a 401(k) plan before May 6, 1986, then all 401(k) plans adopted by the governmental entity are treated as adopted before such date, including a 401(k) plan that is actually adopted after such date. A Grandfathered 401(k) Arrangement also may be adopted by an Indian Tribal Government, as defined in Section 1.58.



The Employer may elect to provide a Grandfathered 401(k) Arrangement under AA §2-3 of the Profit Sharing Plan Adoption Agreement. Any such election under AA §2-3 will be null and void if the Employer does not satisfy the requirements for maintaining a Grandfathered 401(k) Arrangement. If the Employer elects a Grandfathered 401(k) Arrangement under AA §2-3, the Employer may authorize Employees to make Salary Deferrals under the Plan in addition to Matching Contributions, Employer Contributions and After-Tax Employee Contributions, to the extent provided under AA §6 - §6B of the Adoption Agreement.

**1.56 Hardship.** A heavy and immediate financial need which meets the requirements of Section 7.10(e).

**1.57 Hour of Service.** Each Employee of the Employer will receive credit for each Hour of Service he/she works for purposes of applying the eligibility and vesting rules under the Plan. An Employee will not receive credit for the same Hour of Service under more than one category listed below.

- (a) **Performance of duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours will be credited to the Employee for the computation period in which the duties are performed. In the case of Hours of Service to be credited to an Employee in connection with a period of no more than 31 days which extends beyond one computation period, all such Hours of Service may be credited to the first computation period or the second computation period. Hours of Service under this subsection (a) must be credited consistently for all Employees within the same job classifications.
- (b) **Nonperformance of duties.** Hours of Service include each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single Computation Period). Hours under this paragraph will be calculated and credited pursuant to §2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference.
- (c) **Back pay award.** Hours of Service include each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited both under subsection (a) or subsection (b) above, as the case may be, and under this subsection (c). These hours will be credited to the Employee for the Computation Period(s) to which the award or agreement pertains rather than the Computation Period(s) in which the award, agreement or payment is made.
- (d) **Related Employers/Leased Employees.** Hours of Service will be credited for employment with any Related Employer. Hours of Service also include hours credited as a Leased Employee or as an employee under Code §414(o).
- (e) **Maternity/paternity/FMLA/military leave.** Solely for purposes of determining whether a Break in Service has occurred in a Computation Period, an individual who is absent from work for maternity or paternity reasons will receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence:
  - (1) by reason of the pregnancy of the individual,
  - (2) by reason of a birth of a child of the individual,
  - (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
  - (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

The Hours of Service credited under this paragraph will be credited in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following Computation Period.

In addition, solely for purposes of determining whether a Break in Service has occurred in a Computation Period, an individual who is absent from work due to events described under the Family and Medical Leave Act (FMLA) and as required under DOL Reg. §825.215 will receive credit for the Hours of Service which would have been credited to such individual but for the absence. In addition, solely for purposes of determining whether a Break in Service has occurred in a Computation Period, an individual who is absent from work due to military leave described under the Uniformed Services Employment and Reemployment Rights Act and as required under Code §414(u)(8)(A) and DOL Reg. 20 CFR

§1002.259 will receive credit for the Hours of Service which would have been credited to such individual but for the absence.

- 1.58** **Indian Tribal Government.** The governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary of Treasury, after consultation with the Secretary of Interior, to exercise governmental functions, as defined under Code §7701(a)(40) and regulations thereunder. See Section 4.02 of the Plan for special rules applicable to Indian Tribal Governments.
- 1.59** **Insurer.** Any insurance company or affiliate or subsidiary thereof, or any legal reserve insurance company, which issues one or more contracts under the Plan in accordance with the requirements under Sections 10.07 and 10.08.
- 1.60** **Investment Arrangement.** The investments under the Plan as described in Section 10.06 of this Plan document. The terms governing each Investment Arrangement under the Plan, excluding those terms that are inconsistent with Code Section 401(a), are hereby incorporated by reference into the Plan. In the event of any conflict between the terms of the Plan (including, but not limited to, any elections under the Adoption Agreement) and the terms of the Investment Arrangement, the terms of the Plan shall control, except that the terms of the Plan may not alter or construe the terms of the Investment Arrangement or enlarge the obligations of the issuer or provider of the Investment Arrangement without the consent of the issuer or provider.
- 1.61** **Integration Level.** The amount used for purposes of applying the permitted disparity allocation formula. The Integration Level is the Taxable Wage Base, unless the Employer designates a different amount under the Adoption Agreement. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.62** **Leased Employee.** An individual who performs services for the Employer pursuant to an agreement between the Employer and a leasing organization, and who satisfies the definition of a Leased Employee under Code §414(n). See Section 2.02(b)(3) for rules regarding the treatment of a Leased Employee as an Employee of the Employer.
- 1.63** **Limitation Year.** The measuring period for determining whether the Plan satisfies the Code §415 Limitation under Section 5.02. See Section 5.02(c)(5).
- 1.64** **Mass Submitter.** The Mass Submitter, as described under Rev. Proc. 2017-41 or its successor, of this Pre-Approved Plan is ASC Institute, LLC.
- 1.65** **Matching Contributions.** Matching Contributions are contributions made by the Employer on behalf of a Participant on account of other contributions made by the Participant under this Plan or another plan maintained by the Employer. See Section 3.02(c)(3).
- 1.66** **Maximum Disparity Rate.** The maximum amount that may be allocated with respect to Excess Compensation under the permitted disparity allocation formula. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).
- 1.67** **Normal Retirement Age.** The age selected under AA §7-1. For purposes of applying the Normal Retirement Age provisions under AA §7-1, an Employee's participation commencement date is the first day of the first Plan Year in which the Employee commenced participation in the Plan. The Normal Retirement Age must be reasonably representative of the typical retirement age for the industry in which the Plan Participants work. A Normal Retirement Age of at least age 62 is deemed to be reasonable while a Normal Retirement Age under age 55 is presumed not to satisfy this requirement, unless facts and circumstances show otherwise. Whether a Normal Retirement Age between 55 and 62 satisfies this requirement depends on the facts and circumstances. A Governmental Plan must comply with the final Normal Retirement Age regulations under Treas. Reg. §1.401(a)-1, as amended, effective for Annuity Starting Dates occurring in Plan Years beginning on or after the later of the two dates described in IRS Notice 2012-29. The Employer may use AA §7-1(c), for example, to describe a reasonable Normal Retirement Age that is between age 55 and 62 that takes into account service as well as age.
- 1.68** **Participant.** Except as provided under AA §3-1, a Participant is an Employee (or former Employee) who has satisfied the conditions for participating under the Plan, as described in Section 2.03 and AA §4-1. A Participant also includes any Employee (or former Employee) who has an Account Balance under the Plan, including an Account Balance derived from a rollover or transfer from another qualified plan or IRA. A Participant is entitled to share in an allocation of contributions or forfeitures under the Plan for a given year only if the Participant is an Eligible Employee as defined in Section 2.02, and satisfies the allocation conditions set forth in Section 3.07.

An Employee is treated as a Participant with respect to Salary Deferrals and After-Tax Employee Contributions once the Employee has satisfied the eligibility conditions under AA §4-1 for making such contributions, even if the Employee chooses not to actually make such contributions to the Plan. An Employee is treated as a Participant with respect to Matching Contributions once the Employee has satisfied the eligibility conditions under AA §4-1 for receiving such contributions, even if

the Employee does not receive a Matching Contribution because of the Employee's failure to make contributions eligible for the Matching Contribution.

- 1.69 Participating Employer.** An Employer that adopts this Plan by executing the Participating Employer Adoption Page under the Adoption Agreement. See Section 16 for the rules applicable to contributions and deductions for contributions made by a Participating Employer.
- 1.70 Participating Employer Adoption Page.** The signature page in the Adoption Agreement for a Related Employer to adopt the Plan as a Participating Employer.
- 1.71 Part-Time Employee.** Unless designated otherwise under AA 3-1(h), a Part-Time Employee is an Employee who is normally scheduled to work 20 or fewer hours per week. Notwithstanding the foregoing, if the Employer is a post-secondary educational institution, an Employee who is a teacher shall not be considered a Part-Time Employee if he/ she normally has classroom hours of one-half or more of the number of classroom hours designated by the Employer as constituting full-time employment, provided that such designation is reasonable under all of the facts and circumstances.
- 1.72 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer and which is used to determine an Employee's Participation under the Elapsed Time method. See Section 2.03(a)(6) for rules regarding eligibility and Section 6.04(b) for rules regarding vesting.
- 1.73 Plan.** The Plan is the retirement plan established or continued by the Employer for the benefit of its Employees under this Plan document. The Plan consists of the basic plan document and the elections made under the Adoption Agreement. The basic plan document is the portion of the Plan that contains the non-elective provisions. The Employer may supplement or modify the basic plan document through its elections in the Adoption Agreement or by separate governing documents that are expressly authorized by the Plan. If the Employer adopts more than one Adoption Agreement under this Plan, then each executed Adoption Agreement represents a separate Plan. The Employer may adopt the Plan, under the appropriate Adoption Agreement, as a Profit Sharing Plan (with or without provisions for a Grandfathered 401(k) Arrangement) or as a Money Purchase Plan.
- 1.74 Plan Administrator.** The Plan Administrator is the person designated to be responsible for the administration and operation of the Plan. Unless otherwise designated by the Employer, and until such designation is accepted by the designee, the Plan Administrator is the Employer. If another Employer has executed a Participating Employer Adoption Page, the Employer referred to in this Section is the Employer that executes the Employer Signature Page of the Adoption Agreement. A Plan Administrator also includes a Qualified Termination Administrator (QTA) that assumes the responsibilities of Plan Administrator.
- 1.75 Plan Compensation.** Plan Compensation is Total Compensation, as modified under AA §5-3, which is actually paid to an Employee during the determination period (as defined in subsection (a) below). In determining Plan Compensation, the Employer may elect under AA §5-3(b) to exclude all Elective Deferrals (as defined in Section 1.36), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4). In addition, the Employer may elect under AA §5-3 to exclude other designated elements of compensation.

Plan Compensation generally includes amounts an Employee earns with a Participating Employer and amounts earned with a Related Employer (even if the Related Employer has not executed a Participating Employer Adoption Page under the Adoption Agreement). However, the Employer may elect under AA §5-3(h) to exclude all amounts earned with a Related Employer that has not executed a Participating Employer Adoption Page.

In no case may Plan Compensation for any Participant exceed the Compensation Limit (as defined in Section 1.19).

- (a) **Determination period.** Unless designated otherwise under AA §5-4(a), Plan Compensation is determined based on the Plan Year. Alternatively, the Employer may elect under AA §5-4(a) to determine Plan Compensation on the basis of the calendar year ending in the Plan Year or any other 12-month period ending in the Plan Year. If the determination period is the calendar year or other 12-month period ending in the Plan Year, for any Employee whose date of hire is less than 12 months before the end of the designated 12-month period, Plan Compensation will be determined over the Plan Year.
- (b) **Partial period of participation.** If an Employee is a Participant for only part of a Plan Year, Plan Compensation may be determined over the entire Plan Year or over the period during which such Employee is a Participant. In determining whether an Employee is a Participant for purposes of applying this subsection (b), the Employee's status will be determined solely with respect to the contribution type for which the definition of Plan Compensation is being determined. Plan Compensation does not include any amounts earned for any period while an individual is not an Eligible Employee (as defined in Section 2.02).

**Pre-Approved Governmental Defined Contribution Plan  
Section 1 – Plan Definitions**

- 1.76 Plan Year.** The 12-consecutive month period designated under AA §2-4 on which the records of the Plan are maintained. The Plan Year can be a 52-53 week period by designating the appropriate ending date in AA §2-4(b). If the Plan Year is amended to create a Short Plan Year, or if a new Plan has an initial Short Plan Year, the Employer may document such Short Plan Year under AA §2-4(c).
- 1.77 Predecessor Employer.** An employer that previously employed the Employees of the Employer. See Sections 2.06 (eligibility), 3.07(b) (allocation conditions) and 6.07 (vesting) for the rules regarding the crediting of service with a Predecessor Employer.
- 1.78 Pre-Tax Deferrals.** Pre-tax Deferrals are a Participant's Salary Deferrals that are not includible in the Participant's gross income at the time deferred.
- 1.79 Provider.** An entity defined under §4.08 of Rev. Proc. 2017-41, or its successor, that provides this Plan to adopting Employers.
- 1.80 Qualified Domestic Relations Order (ODRO).** A domestic relations order that provides for the payment of all or a portion of the Participant's benefits to an Alternate Payee and satisfies the requirements under Code §414(p). See Section 11.05.
- 1.81 Qualifying Longevity Annuity Contract (QLAC).** An annuity contract that is purchased from an insurance company for a Participant and that satisfies the requirements under Treas. Reg. §1.401(a)(9)-6, Q&A-17.
- 1.82 Reemployment Commencement Date.** The first date upon which an Employee is credited with an Hour of Service following a Break in Service (or Period of Severance, if the Plan is using the Elapsed Time method of crediting service).
- 1.83 Related Employer.** A Related Employer includes all members of a controlled group of corporations (as defined in Code §414(b)), all commonly controlled trades or businesses (as defined in Code §414(c)) or affiliated service groups (as defined in Code §414(m)) of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code §414(o). For purposes of applying the provisions under this Plan, the Employer and any Related Employers are treated as a single Employer, unless specifically stated otherwise. See Section 16.06 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.
- 1.84 Required Beginning Date.** The date by which minimum distributions must commence under the Plan. See Section 8.05(e).
- 1.85 Rollover Contribution.** A contribution made by an Employee to the Plan attributable to an Eligible Rollover Distribution (as defined in Section 7.04(a)(1)) from another qualified plan or IRA. See Section 3.05 for rules regarding the acceptance of Rollover Contributions under this Plan.
- 1.86 Roth Deferrals.** Roth Deferrals are Salary Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Deferrals in the Participant's Salary Deferral Election. A Participant's Roth Deferrals will be maintained in a separate Account containing only the Participant's Roth Deferrals and gains and losses attributable to those Roth Deferrals. See Section 3.02(c)(2)(v).
- 1.87 Salary Deferral Election.** An agreement between a Participant and the Employer, whereby the Participant elects to have a specific percentage or dollar amount withheld from his/her Plan Compensation, and the Employer agrees to contribute such amount into the Plan. A Salary Deferral Election may only be made if the Plan qualifies as a Grandfathered 401(k) Arrangement as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement. See Section 3.02(c)(2)(i).
- 1.88 Salary Deferrals.** Amounts contributed under a Grandfathered 401(k) Arrangement at the election of the Participant, in lieu of cash compensation, which are made pursuant to a Salary Deferral Election or other deferral mechanism. Salary Deferrals include Roth Deferrals and Pre-Tax Deferrals. Salary Deferrals shall not include any amounts properly distributed as an Excess Amount under Code §415 pursuant to Section 5.02(c)(4). An Employee's Salary Deferrals are treated as employer contributions for all purposes under this Plan, except as otherwise provided under the Code or Treasury regulations. See Section 3.02(c)(2).
- 1.89 Seasonal Employee.** An Employee who normally works on a full-time basis less than five months during any year.
- 1.90 Short Plan Year.** Any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year.
- 1.91 Spouse.** Subject to any additional guidance by the IRS, other Federal agency or court, or applicable State law, a Spouse is any individual who is lawfully married to the Participant under a state or foreign jurisdiction. However, a former Spouse of the Participant will be treated as the Spouse or surviving Spouse, and any current Spouse will not be treated as the Spouse or

surviving Spouse to the extent provided under a valid QDRO. The Plan Administrator may interpret the meaning of Spouse for purposes of this Plan as such term is applicable to Governmental Plans under the Code.

**1.92 Taxable Wage Base.** The maximum amount of wages taken into account for Social Security purposes. The Taxable Wage Base is used to determine the Integration Level for purposes of applying the permitted disparity allocation formula. See Section 3.02(a)(1)(i)(B) (Profit Sharing Plan) and Section 3.02(b)(2) (Money Purchase Plan).

**1.93 Temporary Employee.** Any Employee performing services under a contractual arrangement with the Employer of two years or less duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement, but only if, under the facts and circumstances, there is a significant likelihood that the Employee's contract will be extended. Future contract extensions are considered significantly likely to occur for purposes of this rule if:

- (a) on average 80 percent of similarly situated Employees have had bona fide offers to renew their contracts in the immediately preceding two academic or calendar years; or
- (b) the Employee with respect to whom the determination is being made has a history of contract extensions with respect to his or her current position.

An Employee is not considered a Temporary Employee solely because he or she is included in a unit of Employees covered by a collective bargaining agreement of two years or less duration.

**1.94 Total Compensation.** A Participant's compensation for services with the Employer, as defined in this Section 1.94. Total Compensation may be defined in AA §5-1 to be either W-2 Wages, Wages under Code §3401(a), or Code §415 Compensation. Each definition of Total Compensation includes Elective Deferrals (as defined in Section 1.36), elective contributions to a cafeteria plan under Code §125 or to an eligible deferred compensation plan under Code §457, Employer Pick-Up Contributions under Code §414(h)(2), and elective contributions that are not includible in the Employee's gross income as a qualified transportation fringe under Code §132(f)(4).

- (a) **Total Compensation definitions.** The Employer may elect under AA §5-1 to define Total Compensation as any of the following definitions:
  - (1) **W-2 Wages.** Wages within the meaning of Code §3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §6041(d), 6051(a)(3), and 6052, determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
  - (2) **Wages under Code §3401(a).** Wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.
  - (3) **Code §415 Compensation.** Wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer (without regard to whether or not such amounts are paid in cash) to the extent that the amounts are includible in gross income, including amounts that are includible in the gross income of an Employee under the rules of Code §409A or §457(f)(1)(A) or because the amounts are constructively received by the Employee. Such amounts include, but are not limited to, commissions, compensation for services on the basis of a percentage of profits, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. §1.62-2(c)), and excluding the following:
    - (i) Employer contributions (other than elective contributions described in Code §402(e)(3), §408(k)(6), §408(p)(2)(A)(i), or §457(b)) to a plan of deferred compensation (including a SEP described in Code §408(k) or a SIMPLE IRA described in Code §408(p), and whether or not qualified) to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified);
    - (ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
    - (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option.

- (iv) Other amounts which received special tax benefits, or contributions made by the Employer (other than Elective Deferrals) towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).
- (b) **Post-severance compensation.** Effective for the first Limitation Year beginning on or after July 1, 2007, Total Compensation includes compensation that is paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes such date of severance from employment. For this purpose, compensation paid after severance of employment may only be included in Total Compensation to the extent such amounts would have been included as compensation if they were paid prior to the Employee's severance from employment.

For purposes of applying this subsection (b), unless designated otherwise under AA §5-2(a), the following amounts that are paid after a Participant's severance of employment are included in Total Compensation:

- (1) **Regular pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
- (2) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; and
- (3) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment, and only to the extent that the payment is includible in the Employee's gross income.

Other post-severance payments (such as severance pay, parachute payments within the meaning of Code §280G(b)(2), or post-severance payments under a nonqualified unfunded deferred compensation plan that would not have been paid if the Employee had continued in employment) are not included as Total Compensation, even if such amounts are paid within the time period described in this subsection (b).

In determining the amount of a Participant's Employer Contributions, Matching Contributions or Salary Deferrals, Plan Compensation may not include any amounts that do not satisfy the requirements of this subsection (b) or subsection (c) below. If Total Compensation is defined to include post-severance compensation, the Employer may elect to exclude all such compensation paid after termination of employment from the definition of Plan Compensation under AA §5-3(j) or may elect to exclude any of the specific types of post-severance compensation defined in subsections (1), (2) and/or (3) above, by designating such compensation types under AA §5-3(l). The exclusion of post-severance compensation from the definition of Plan Compensation that is otherwise includible in Total Compensation may cause the Plan to fail the nondiscriminatory compensation rules under Treas. Reg. §1.414(s)-1.

- (c) **Continuation payments for disabled Participants.** Unless designated otherwise under AA §5-2(b), Total Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). If elected under AA §5-2(b), the Plan may take into account compensation the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled (if such compensation is greater than the Participant's compensation determined without regard to this subsection (c)), provided contributions made with respect to amounts treated as compensation under this subsection (c) are nonforfeitable when made. If so elected under AA §5-2(b), payment to disabled Participants will be included as Total Compensation, notwithstanding the rules under subsection (b) above.
- (d) **Deemed §125 compensation.** A reference to elective contributions under a Code §125 cafeteria plan includes any amounts that are not available to a participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. Such deemed §125 compensation will be treated as an amount under Code §125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan. If the Employer elects under AA §5-3(i) to exclude deemed §125 compensation from the definition of Plan Compensation, such exclusion also will apply for purposes of determining Total Compensation under this Section 1.94.
- (e) **Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the Employer:
- (1) such individual will be treated as an Employee of the Employer making the payment, and

- (2) the Differential Pay shall be treated as wages and will be included in calculating an Employee’s Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit based on Differential Pay. However, for purposes of applying this subparagraph, the provisions of Code §§410(b)(3), (4), and (5) shall apply. The Employer may elect to exclude Differential Pay from the definition of Plan Compensation under AA §5-3(k).

For purposes of this subsection (e), Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this subsection (e), Uniformed Services are services as described in Code §3401(h)(2)(A).

- 1.95** **Trust.** The Trust is the separate funding vehicle under the Plan.
- 1.96** **Trustee.** The Trustee is the person or persons (or any successor to such person or persons) identified in the Adoption Agreement or under a separate Trust document. The Trustee may be a Discretionary Trustee or a Directed Trustee. See Section 12 for the rights and duties of a Trustee under this Plan.
- 1.97** **Valuation Date.** The date or dates upon which Plan assets are valued. Plan assets will be valued as of the last day of each Plan Year. In addition, the Employer may elect under AA §11-1 to establish additional Valuation Dates. Notwithstanding any election under AA §11-1, Plan assets may be valued on a more frequent basis within the complete discretion of the Employer. See Section 10.02.
- 1.98** **Year of Service.** A Year of Service is a 12-consecutive month Computation Period during which an Employee completes 1,000 Hours of Service. For purposes of applying the eligibility rules under Section 2.03 of the Plan, an Employee will earn a Year of Service if he/she completes 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in Section 2.03(a)(3)). For purposes of applying the vesting rules under Section 6, an Employee will earn a Year of Service if he/she completes 1,000 Hours of Service with the Employer during a Vesting Computation Period (as defined in Section 6.05). The Employer may elect under AA §4-3(a) (for eligibility purposes) and AA §8-5(a) (for vesting purposes) to require the completion of any lesser number of Hours of Service to earn a Year of Service. Alternatively, the Employer may elect to apply the Elapsed Time method (for eligibility and/or vesting purposes) in calculating an Employee’s Years of Service under the Plan.

**SECTION 2  
ELIGIBILITY AND PARTICIPATION**

- 2.01** **Eligibility.** In order to participate in the Plan, an Employee must be an Eligible Employee (as defined in Section 2.02) and must satisfy the Plan's minimum age and service conditions (as defined in Section 2.03). Once an Employee satisfies the Plan's minimum age and service conditions, such Employee shall become a Participant on the appropriate Entry Date (as selected in AA §4-2). An Employee who meets the minimum age and service requirements set forth herein, but who is not an Eligible Employee, will be eligible to participate in the Plan only upon becoming an Eligible Employee. For purposes of determining eligibility to make Salary Deferrals, an Employee will be deemed to commence participation on a timely basis if the Employee is permitted to commence making Salary Deferrals as soon as administratively feasible after satisfying the eligibility conditions under the Plan.
- 2.02** **Eligible Employees.** Unless specifically excluded under AA §3-1 or under this Section 2.02, all Employees of the Employer are Eligible Employees. AA §3-1 lists various classes of Employees that may be excluded from Plan participation. If an Employee is not an Eligible Employee (e.g., such Employee is a member of a class of Employees excluded under AA §3-1), that individual may not participate under the Plan, unless he/she subsequently becomes an Eligible Employee.
- (a) **Only Employees may participate in the Plan.** To participate in the Plan, an individual must be an Employee. If an individual is not an Employee (e.g., the individual performs services with the Employer as an independent contractor) such individual may not participate under the Plan. If an individual who is classified as a non-Employee is later determined by the Employer, or by a court or other government agency, to be an Employee of the Employer, the reclassification of such individual as an Employee will not create retroactive rights to participate in the Plan. Thus, for example, if the IRS or DOL should find that an independent contractor is really an Employee, such individual will be eligible to participate in the Plan as of the date the IRS or DOL issues a final determination declaring such individual to be an Employee (provided the individual has satisfied all conditions for participating in the Plan (as described in this Section 2)). For periods prior to the date of such final determination, the reclassified Employee will not have any rights to accrued benefits under the Plan, except as agreed to by the Employer, or mandated by a court or government agency, or as set forth in an amendment adopted by the Employer.
- (b) **Excluded Employees.** The Employer may elect under AA §3-1 to exclude designated classes of Employees. Since a governmental plan is exempt from minimum coverage testing, the Employer may elect to exclude any class of Employees without subjecting the Plan to minimum coverage or nondiscrimination testing.
- (1) **Collectively Bargained Employees.** The Employer may elect under AA §3-1(b) to exclude Collectively Bargained Employees. For this purpose, a Collectively Bargained Employee is an Employee who is included in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives and whose retirement benefits are subject to good faith bargaining.
- (2) **Nonresident aliens.** The Employer may elect under AA §3-1(c) to exclude Employees who are nonresident aliens. For this purpose, a nonresident alien is neither a citizen of the United States nor a resident of the United States for U.S. tax purposes (as defined in Code §7701(b)), and who does not have any earned income (as defined in Code §911) for the Employer that constitutes U.S. source income (within the meaning of Code §861). If a nonresident alien Employee has U.S. source income, he/she is treated as satisfying this definition if all of his/her U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty.
- (3) **Leased Employees.** The Employer may elect under AA §3-1(d) to exclude Leased Employees. For this purpose, a Leased Employee is any person (other than an Employee of the Employer) who, pursuant to an agreement between the recipient Employer and a leasing organization, performs services for the recipient Employer on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control of the recipient Employer. (See Code §414(n) for rules applicable to the determination of Leased Employees.)
- (c) **Employees of Related Employers.** If the Employer is a member of a Related Employer group, Employees of each member of the Related Employer group may participate under this Plan, provided the Related Employer executes a Participating Employer Adoption Page under the Adoption Agreement. If a Related Employer does not execute a Participating Employer Adoption Page, any Employees of such Related Employer are not eligible to participate in the Plan. See Section 16.06 for operating rules that apply when the Employer is a member of a Related Employer group. Also see Section 16 for rules regarding participation of Employees of Related Employers.
- (d) **Ineligible Employee becomes Eligible Employee.** If an Employee changes status from an ineligible Employee to an Eligible Employee, such Employee will become a Participant immediately on the date he/she changes status to an Eligible Employee, provided the Employee has satisfied the Plan's minimum age and service conditions and has passed



the Entry Date (as defined in AA §4-2) that would otherwise have applied had the Employee been an Eligible Employee. If the Employee’s original Entry Date (determined as if the Employee was always an Eligible Employee) has not passed as of the date the Employee becomes an Eligible Employee, the Employee will not become a Participant until such Entry Date. If an ineligible Employee has not satisfied the Plan’s minimum age and service conditions at the time such Employee becomes an Eligible Employee, such Employee will become a Participant on the appropriate Entry Date following satisfaction of the Plan’s minimum age and service requirements. The requirements for the timing of participation under this subsection (d) is deemed satisfied with respect to Salary Deferrals if the Employee is permitted to commence making Salary Deferrals under the Plan as soon as administratively feasible after the Employee is eligible to participate in the Plan.

- (e) **Eligible Employee becomes ineligible Employee.** If an Employee ceases to qualify as an Eligible Employee (i.e., the Employee changes status from an eligible class to an ineligible class of Employees), such Employee will immediately cease to participate in the Plan. If such Employee should subsequently become an Eligible Employee, he/she will be able to participate in the Plan in accordance with subsection (d) above.
- (f) **Improper exclusion of eligible Participant.** If the Plan improperly excludes a Participant who has satisfied the requirements under this Section 2 for participating under the Plan, the Employer may take reasonable action to correct such violation, provided such corrective action is consistent with the requirements of the Employee Plans Compliance Resolution System (EPCRS) program.

**2.03 Minimum Age and Service Conditions.** AA §4-1 contains specific elections as to the minimum age and service conditions which an Employee must satisfy prior to becoming eligible to participate under the Plan. A Governmental Plan is exempt from both the ERISA and pre-ERISA eligibility requirements. Therefore, the Plan may provide any minimum age and service requirements under AA §4-1 without the need to comply with the requirements of Code §410(a).

The Employer may elect to apply different minimum age and service requirements for different groups of Employees or for different contribution formulas under AA §4-1(c). In addition, the Employer may select different age and service conditions under AA §4-1 for Salary Deferrals, Matching Contributions, and/or Employer Contributions if the Plan qualifies as a Grandfathered 401(k) Arrangement.

- (a) **Application of age and service conditions.** The Employer may elect under AA §4-1 to impose minimum age and service conditions that an Employee must satisfy in order to participate under the Plan.
  - (1) **Year of Service.** In applying the minimum service requirements under AA §4-1, unless designated otherwise under AA §4-3, an Employee will earn a Year of Service if the Employee completes at least 1,000 Hours of Service with the Employer during an Eligibility Computation Period (as defined in subsection (3) below). The Employer may modify the definition of Year of Service under AA §4-3(a) to require a different number of Hours of Service to earn a Year of Service. An Employee will receive credit for a Year of Service, as of the end of the Eligibility Computation Period during which the Employee completes the required Hours of Service needed to earn a Year of Service. Unless otherwise provided under AA §4-3, an Employee need not be employed for the entire Eligibility Computation Period to receive credit for a Year of Service, provided the Employee completes the required Hours of Service during such period.
  - (2) **Months of service.** The Employer may elect under AA §4-1(a) to require a specific number of Hours of Service during a designated number of months of employment. If an Employee is required under AA §4-1(a) to complete a certain number of Hours of Service during a designated period, an Employee generally will satisfy the eligibility conditions as of the end of the designated period, regardless of whether the Employee is employed during the entire period. Alternatively, the Employer may elect under AA §4-1(a)(3)(ii) to require an Employee to be employed continuously throughout the designated period provided the Employee is eligible to participate in the Plan upon completing a Year of Service as defined in subsection (1) above.

If an Employee does not complete the required Hours of Service during the designated period, or does not work continuously during the designated period, if required under AA §4-1(a)(3)(ii), the Employee will satisfy eligibility upon completion of a Year of Service as defined in subsection (1) above. For purposes of applying the Year of Service requirement, an Employee need not be employed during the entire measuring period as long as the Employee completes the required Hours of Service, as specified under subsection (1) above. For example, an Employee who is not employed throughout the designated period, if required under AA §4-1(a)(3)(ii), would still satisfy the eligibility conditions as of the end of the Eligibility Computation Period if the Employee completes a Year of Service, regardless of whether the Employee is employed during the entire period.

- (3) **Eligibility Computation Periods.** Unless provided otherwise under AA §4-3, in determining whether an Employee has earned a Year of Service for eligibility purposes, an Employee’s initial Eligibility Computation Period is the 12-month period beginning on the Employee’s Employment Commencement Date. Subsequent

**Pre-Approved Governmental Defined Contribution Plan  
Section 2 – Eligibility and Participation**

Eligibility Computation Periods will either be based on Plan Years or Anniversary Years (as set forth in AA §4-3).

- (i) **Plan Years.** If the Employer elects under AA §4-3 to base subsequent Eligibility Computation Periods on Plan Years, the Plan will begin measuring Years of Service on the basis of Plan Years beginning with the first Plan Year commencing after the Employee’s Employment Commencement Date. Thus, for the first Plan Year following the Employee’s Employment Commencement Date, the initial Eligibility Computation Period and the first Plan Year Eligibility Computation Period may overlap.
  - (ii) **Anniversary Years.** If the Employer elects under AA §4-3(b) to base subsequent Eligibility Computation Periods on Anniversary Years, the Plan will measure Years of Service after the initial Eligibility Computation Period on the basis of 12-month periods commencing with the anniversaries of the Employee’s Employment Commencement Date.
  - (iii) **Rehired Employee.** If an Employee is rehired following a Break in Service, the Employee’s initial Eligibility Computation Period following the Employee’s return to employment will be measured from the Employee’s Reemployment Commencement Date. Subsequent Eligibility Computation Periods will be measured based on the Plan Year or anniversaries of the Reemployment Commencement Date, as designated under subsection (i) or (ii) above. For this purpose, an Employee’s Reemployment Commencement Date is the first day the Employee is entitled to be credited with an Hour of Service after the first Eligibility Computation Period in which the Employee incurs a Break in Service.
- (4) **Hours of Service.** In calculating an Employee’s Hours of Service for purposes of applying the eligibility rules under this Section 2.03, the Employer will count the actual Hours of Service an Employee works during the year. (See Section 1.57 for the definition of Hour of Service). The Employer may elect under AA §4-3 to use an alternative method for crediting service, such as the Equivalency Method or Elapsed Time method (instead of counting the actual Hours of Service an Employee works). (See subsections (5) and (6) below for a description of the Equivalency Method and Elapsed Time method of crediting service.)
- (5) **Equivalency Method.** Instead of counting actual Hours of Service in applying the minimum service conditions under this Section 2.03, the Employer may elect under AA §4-3(d) to determine Hours of Service based on the Equivalency Method. Under the Equivalency Method, an Employee receives credit for a specified number of Hours of Service based on the period worked with the Employer.
- (i) **Monthly.** Under the monthly Equivalency Method, an Employee is credited with 190 Hours of Service for each calendar month during which the Employee completes at least one Hour of Service with the Employer.
  - (ii) **Daily.** Under the daily Equivalency Method, an Employee is credited with 10 Hours of Service for each day during which the Employee completes at least one Hour of Service with the Employer.
  - (iii) **Weekly.** Under the weekly Equivalency Method, an Employee is credited with 45 Hours of Service for each week during which the Employee completes at least one Hour of Service with the Employer.
  - (iv) **Semi-monthly.** Under the semi-monthly Equivalency Method, an Employee is credited with 95 Hours of Service for each semi-monthly period during which the Employee completes at least one Hour of Service with the Employer.
  - (v) **Other Equivalency Method.** The Employer may describe an alternative Equivalency Method in the Adoption Agreement, provided any description of an Equivalency Method is definitely determinable.
- (6) **Elapsed Time method.** Instead of counting actual Hours of Service in applying the minimum service requirements under this Section 2.03, the Employer may elect under AA §4-3(c) to apply the Elapsed Time method for calculating an Employee’s service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee’s first day of employment (or reemployment, if applicable) and ending on the date the Employee terminates employment with the Employer. If an Employee’s aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

In calculating an Employee’s aggregate period of service, the Employer may credit an Employee with service for any Period of Severance that lasts less than 12 consecutive months. For this purpose, a Period of Severance is any continuous period of time during which the Employee is not employed by the Employer. A Period of Severance begins on the date the Employee retires, quits or is discharged, or if earlier, the 12-month

anniversary of the date on which the Employee is first absent from service for a reason other than retirement, quit or discharge. In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence

- (i) by reason of the pregnancy of the Employee,
  - (ii) by reason of the birth of a child of the Employee,
  - (iii) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee, or
  - (iv) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.
- (7) **Amendment of age and service requirements.** If the Plan’s minimum age and service conditions are amended, the amendment may consider an Employee who is a Participant immediately prior to the effective date of the amendment as satisfying the amended requirements or may require all Employees to satisfy the amended minimum age and service conditions. If an Employee has not satisfied the minimum age and service conditions as of the effective date of the amendment, the Employee must satisfy the eligibility requirements as amended. This provision may be modified under the special Effective Date provisions under Appendix A of the Adoption Agreement or under a separate amendment implementing the updated minimum age and service provisions.
- (i) **Change to Elapsed Time method.** If the service crediting method is changed from an Hours of Service method to the Elapsed Time method, the amount of service credited to an Employee will equal the sum of the service under subsections (A) and (B) below. For this purpose, a change in service crediting method will occur if the Plan is amended to change the service crediting method or if the service crediting method is changed as a result of an Employee’s change in employment status.
    - (A) The number of Years of Service equal to the number of Years of Service credited under the Hours of Service method before the Eligibility Computation Period during which the change to the Elapsed Time method occurs.
    - (B) For the Eligibility Computation Period in which the change occurs, the greater of:
      - (I) the period of service that would be credited under the Elapsed Time method from the first day of that Eligibility Computation Period through the date of the change, or
      - (II) the service that would be taken into account under the Hours of Service method for the Eligibility Computation Period which includes the date of the change.

If the period of service described in subsection (I) is the greater amount, then subsequent periods of service are credited under the Elapsed Time method beginning with the date of the change. If the period of service described in subsection (II) applies, the Elapsed Time method will be used beginning with the first day of the Eligibility Computation Period that would have followed the Eligibility Computation Period in which the change to the Elapsed Time method occurred.

If the change to the Elapsed Time method occurs as of the first day of an Eligibility Computation Period, the use of the Elapsed Time method begins as of the date of the change, and the calculation in subsection (B) above does not apply. In such case, the Employee’s service is determined under subsection (A) above plus the subsequent periods of service determined under the Elapsed Time method, starting with the effective date of the change.

- (ii) **Change to Hours of Service method.** If the service crediting method is changed from the Elapsed Time method to an Hours of Service method, the Employee’s Elapsed Time service earned as of the date of the change is converted into Years of Service under the Hours of Service method, determined as the sum of subsections (A) and (B), below. For this purpose, a change in service crediting method will occur if the Plan is amended to change the service crediting method or if the service crediting method is changed as a result of an Employee’s change in employment status.
  - (A) A number of Years of Service is credited that equals the number of 1-year periods of service credited under the Elapsed Time method as of the date of the change.

- (B) For the Eligibility Computation Period which includes the date of the change, the Employee is credited with an equivalent number of Hours of Service, using one of the Equivalency Methods defined in subsection (5) above for any fractional year that was credited under the Elapsed Time method as of the date of the change.

For the portion of the Eligibility Computation Period following the date of the change, actual Hours of Service are counted. The Hours of Service credited for the portion of the Eligibility Computation Period in which the Elapsed Time method was in effect are added to the actual Hours of Service credited for the remaining portion of the Eligibility Computation Period to determine if the Employee has a Year of Service for that Eligibility Computation Period.

- (b) **Entry Dates.** Once an Eligible Employee satisfies the minimum age and service conditions (as set forth in AA §4-1), the Employee will be eligible to participate under the Plan as of his/her Entry Date (as set forth in AA §4-2). If the Employer adopts a Grandfathered 401(k) Arrangement as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement, the Employer may elect different Entry Dates with respect to Salary Deferrals, Matching Contributions, and Employer Contributions.

- 2.04 Participation on Effective Date of Plan.** Unless designated otherwise under AA §4-4, an Eligible Employee who has satisfied the minimum age and service conditions and reached his/her Entry Date as of the Effective Date of the Plan will be eligible to participate in the Plan as of such Effective Date. If an Employee has satisfied the minimum age and service conditions as of the Effective Date of the Plan but has not yet reached his/her Entry Date, the Employee will be eligible to participate on the appropriate Entry Date. The Employer may modify this rule under AA §4-4 by electing to treat all Employees employed on the Effective Date of the Plan as Participants (regardless of whether they have satisfied the Plan’s minimum age and service conditions) or by designating a specific date as of which all Eligible Employees will be deemed to be a Participant, (regardless of whether the Employee has otherwise satisfied the minimum age and service conditions).
- 2.05 Rehired Employees.** Subject to the Break in Service rules under Section 2.07, if a terminated Employee is subsequently rehired, such Employee will be eligible to participate in the Plan on his/her reemployment date, if the Employee is an Eligible Employee and the Employee had satisfied the Plan’s minimum age and service conditions prior to his/her termination of employment. If a rehired Employee had not satisfied the Plan’s minimum age and service conditions prior to termination of employment, such Employee is eligible to participate in the Plan on the appropriate Entry Date following satisfaction of the eligibility requirements under this Section 2.
- 2.06 Service with Predecessor Employers.** To the extent provided under AA §4-5, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the provisions of this Plan.
- 2.07 Break in Service Rules.** Generally, an Employee will be credited with all service earned for the Employer, including service earned prior to the effective date of the Plan and service earned while the Employee is an ineligible Employee. However, the Employer may elect under AA §4-6 to disregard an Employee’s service with the Employer under the Break in Service rules. For this purpose, an Employee incurs a Break in Service for any Eligibility Computation Period (as defined in Section 2.03(a)(3)) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects to require less than 1,000 Hours of Service to earn a Year of Service for eligibility purposes, a Break in Service will occur for any Eligibility Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn an eligibility Year of Service.
- 2.08 Waiver of Participation.** An Employee may not waive participation under the Plan unless specifically permitted under AA §11-4. For this purpose, the mere failure to make Salary Deferrals or After-Tax Employee Contributions is not a waiver of participation. The Employer may elect under AA §11-4 to permit Employees to make a one-time irrevocable election to not participate under the Plan. The Employer may elect under AA §6-7(c)(2) to permit Employees to make a one-time irrevocable election to waive any Employer Pick-Up Contributions under the Plan.

### SECTION 3 PLAN CONTRIBUTIONS

This Section 3 describes the type of contributions that may be made to the Plan. The type of contributions that may be made to the Plan and the method for allocating such contributions may vary depending on the type of Plan involved. (See Section 5 for a discussion of the limits that apply to any contributions made under the Plan.)

- 3.01** **Types of Contributions.** An Employer may designate under the Adoption Agreement the amount and type of contributions that may be made under the Plan. The Plan may provide for Employer Contributions (as authorized under AA §6) and, if so elected under AA §6-7, After-Tax Employee Contributions. In addition, the Profit Sharing Plan may provide for Matching Contributions with respect to any After-Tax Employee Contributions under the Plan or Elective Deferrals made under another plan maintained by the Employer. If the Plan qualifies as a Grandfathered 401(k) Arrangement (as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement, the Plan may provide for Salary Deferrals, Employer Contributions, Matching Contributions and After-Tax Employee Contributions.

To share in a contribution under the Plan, an Employee must satisfy all of the conditions for being a Participant (as described in Section 2) and must satisfy any allocation conditions (as described in Section 3.07) applicable to the particular type of contribution. The Employer may designate under AA §2-5 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions or Matching Contributions with respect to Plan Compensation earned after the date identified in AA §2-5 and no Participant will be permitted to make Salary Deferrals or Employee After-Tax Employee Contributions to the Plan for any period following the effective date of the freeze as identified in AA §2-5.

- 3.02** **Employer Contribution Formulas.** If permitted under AA §6, the Employer may make an Employer Contribution to the Plan, in accordance with the contribution formula selected under AA §6-2. Subsection (a) below describes the Employer Contributions that may be selected under the Profit Sharing Plan Adoption Agreement, subsection (b) below describes the Employer Contributions that may be made under the Money Purchase Plan Adoption Agreement and subsection (c) below describes the Employer Contributions that may be made under a Grandfathered 401(k) Arrangement. Since a governmental plan is exempt from the nondiscrimination requirements, the contribution formulas described in this Section 3.02 need not satisfy the nondiscrimination tests under Code §401(a)(4) or the regulations thereunder.

- (a) **Contribution formulas (Profit Sharing Plan).** The Employer may elect under AA §6-2 of the Profit Sharing Plan Adoption Agreement to make any of the following Employer Contributions. If the Employer elects more than one Employer Contribution formula, each formula is applied separately. The Employer's aggregate Employer Contribution for a Plan Year will be the sum of the Employer Contributions under all such formulas. Any reference to the Adoption Agreement under this subsection (a) is a reference to the Profit Sharing Plan Adoption Agreement.

- (1) **Employer Contributions.** An Employer may designate under AA §6 of the Profit Sharing Adoption Agreement the amount of Employer Contributions that may be made under the Plan. Any Employer Contributions selected under AA §6 will be made in accordance with the contribution formula selected under AA §6-2. Any Employer Contribution must be allocated in accordance with a definite allocation formula as set forth in AA §6-3. To receive an allocation of Employer Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.07 below.

In determining the amount of Employer Contributions to be allocated to Participants under the Plan, the Plan will take into account Plan Compensation (as defined in Section 1.75) for the Plan Year. The Employer may designate under AA §6-5(a) alternative periods for determining the allocation of Employer Contributions. If alternative periods are designated under AA §6-5(a), a Participant's allocation of Employer Contributions will be determined separately for each designated period based on Plan Compensation earned during such period. If an alternative period is designated under AA §6-5(a), the Employer need not actually make the Employer Contribution during the designated period, provided the total Employer Contribution for the Plan Year is allocated based on the proper Plan Compensation. (If the permitted disparity allocation method applies under AA §6-3(c), the allocation will be based on the Plan Year.)

If the Employer maintains any other qualified plan(s) which cover any Participants under this Plan, the Employer may elect under AA §6-5(c) to reduce such Participants' allocation under this Plan to take into account the benefits provided under the Employer's other qualified plan(s). The Employer describe how the offset will be applied under AA §6-5(c)(2).

- (i) **Discretionary Employer Contribution.** If a discretionary contribution is selected under AA §6-2(a), the Employer may decide on an annual basis how much (if any) it wishes to contribute to the Plan as an Employer Contribution. If the Employer elects to make a discretionary contribution, such amount may be allocated under the pro rata, permitted disparity, Employee group, age-based or uniform points allocation method (as selected in AA §6-3).

**Pre-Approved Governmental Defined Contribution Plan  
Section 3 – Plan Contributions**

- (A) **Pro rata allocation formula.** Under the pro rata allocation formula, a pro rata share of the Employer Contribution is allocated to each Participant’s Employer Contribution Account. A Participant’s pro rata share may be determined based on the ratio such Participant’s Plan Compensation bears to the total Plan Compensation of all Participants or as a uniform dollar amount, as designated in AA§6-3(a).
  - (B) **Permitted disparity allocation formula.** Under the permitted disparity allocation formula, the Employer Contribution is allocated to Participants’ Employer Contribution Accounts using a two-step method. The Employer may not elect the permitted disparity allocation formula under the Plan if the Employer maintains another qualified plan, covering any of the same Employees, which uses permitted disparity in determining the allocation of contributions or the accrual of benefits under such plan.
    - (I) **Two-step method.** Under the two-step method, the discretionary Employer Contribution is allocated under the following method:
      - (a) **Step one.** The Employer Contribution is allocated to each Participant’s Employer Contribution Account in the ratio that the sum of each Participant’s Plan Compensation plus Excess Compensation (as defined in subsection (II) below) bears to the sum of the total Plan Compensation plus Excess Compensation of all Participants, but not in excess of the Maximum Disparity Rate (as defined in subsection (IV) below).
      - (b) **Step two.** Any Employer Contribution remaining after the allocation in subsection (a) above will be allocated in the ratio that each Participant’s Plan Compensation bears to the total Plan Compensation of all Participants.
    - (II) **Excess Compensation.** The amount of Plan Compensation that exceeds the Integration Level.
    - (III) **Integration Level.** The Taxable Wage Base, unless specified otherwise under AA §6-3(c)(1).
    - (IV) **Maximum Disparity Rate.** The Maximum Disparity Rate is the maximum amount that may be allocated with respect to Excess Compensation. Unless provided otherwise under AA §6-3(c)(2), the maximum amount that may be allocated as a percentage of Plan Compensation and Excess Compensation under step one of the two-step allocation method under subsection (I) above, may not exceed the following percentage:
 

<u>Integration Level</u> <u>(as a percentage of the Taxable Wage Base)</u>	<u>Maximum</u> <u>Disparity Rate</u>
100%	5.7%
More than 80% but less than 100%	5.4%
More than 20% and not more than 80%	4.3%
20% or less	5.7%

The Employer may elect to apply a greater Maximum Disparity Rate under AA §6-3(c)(2).
  - (V) **Taxable Wage Base.** The maximum amount of wages that are considered for Social Security purposes as in effect at the beginning of the Plan Year.
- (C) **Uniform points allocation.** Under the uniform points allocation, the Employer will allocate the discretionary Employer Contribution on the basis of each Participant’s total points for the Plan Year, as determined under AA §6-3(d). A Participant’s allocation of the Employer Contribution is determined by multiplying the Employer Contribution by a fraction, the numerator of which is the Participant’s total points for the Plan Year and the denominator of which is the sum of the points for all Participants for the Plan Year.

A Participant will receive points for each year(s) of age and/or each Year(s) of Service designated under AA §6-3(d). In addition, a Participant also may receive points based on his/her Plan Compensation. Each Participant will receive the same number of points for each designated year of age and/or service and the same number of points for each designated level of Plan Compensation.

- (D) **Employee group allocation.** Under the Employee group allocation method, the Employer may make a different discretionary contribution to each Participant's Employer Contribution Account based on the Employee allocation groups designated under AA §6-3(e). The Employer Contribution made for an allocation group will be allocated as a uniform percentage of Plan Compensation or as a uniform dollar amount. If the Employer Contribution is allocated as a percentage of Plan Compensation, the amount that will be allocated to each Participant within an allocation group is determined by multiplying the Employer Contribution made for that allocation group by the following fraction:

$$\frac{\text{Participant's Plan Compensation}}{\text{Plan Compensation of all Participants in the allocation group}}$$

Alternatively, the Employer may set forth in the description of the Employee groups under AA §6-3(e)(2) a fixed contribution amount for a designated Employee group. If a fixed contribution is provided for a specific Employee group, the amount designated as the fixed contribution will be allocated to each Participant within the designated Employee group.

The Employer must designate how much of the Employer Contribution is made for each of the Employee allocation groups and whether such amounts are allocated on the basis of Plan Compensation or as a uniform dollar amount. The portion of the Employer Contribution designated for a specific allocation group will be allocated only to Participants within that allocation group. If a Participant is in more than one allocation group during the Plan Year, the Participant will receive an Employer Contribution based on the Participant's status on the last day of the Plan Year. In the event a Participant is in two or more allocation groups on the last day of the Plan Year, the Participant will receive an Employer Contribution based on the first allocation group listed under AA §6-3(e)(2) in which the Participant is a part. The Employer can provide for a different treatment of Employees in multiple groups under AA §6-3(e)(3)(i).

- (E) **Age-based allocation formula.** Under the age-based allocation formula, the Employer will allocate the discretionary Employer Contribution on the basis of each Participant's adjusted Plan Compensation. For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor. A Participant's Actuarial Factor is determined based on standard actuarial assumptions using a testing age that is the later of Normal Retirement Age or the Employee's current age. Unless designated otherwise under AA §6-3(f), a Participant's Actuarial Factor is determined based on an 8.5% interest rate and the UP-1984 mortality table. (See Appendix A of the Plan for the Actuarial Factors associated with an 8.5% interest rate and the UP-1984 mortality table and a testing age of 65. If an interest rate other than 8.5% or a mortality table other than the UP-1984 mortality table is selected under AA §6-3(f), or if a testing age other than age 65 is used, the Plan must determine the appropriate Actuarial Factors based on the designated interest rate, mortality table and testing age.)
- (ii) **Fixed Employer Contribution.** The Employer may elect under AA §6-2(b) to make a fixed contribution to the Plan. The Employer may elect under AA §6-2(b)(1) or (2) to make a fixed contribution as a designated percentage of Plan Compensation or as a uniform dollar amount. If a fixed contribution is selected under AA §6-2(b)(1) or (2), the Employer Contribution will be allocated under the fixed contribution formula under AA §6-3(b) in accordance with the selections made in AA §6-2(b).
- (iii) **Service-based Employer Contribution.** If elected in AA §6-2(d), the Employer may make a contribution based on an Employee's service with the Employer during the Plan Year (or other period designated under AA §6-5(a)). The Employer may elect to make the service-based contribution as a discretionary contribution or as a fixed contribution. Any such contribution will be allocated on the basis of Participants' Hours of Service, weeks of employment or other measuring period selected under AA §6-2(d). The Employer Contribution will be allocated under the service-based allocation formula under AA §6-3(g).

- (iv) **Contributions of Accrued Sick/Vacation Leave.** The Employer may elect under AA §6-4 to provide Employer Contributions of accrued sick and/or vacation leave, provided the following requirements are satisfied:
- (A) The leave converted under the arrangement can only be accrued unpaid leave;
  - (B) The leave converted can only be sick and/or vacation leave;
  - (C) The Employer designates how often the conversions occur;
  - (D) The eligibility requirements for participation in the plan cannot be such that an Employee becomes a Participant only in the plan year in which the Employee terminates employment;
  - (E) The only accrued unpaid leave which can be converted under the arrangement must only be leave for which the Employee has no right to request a cash payment;
  - (F) The leave conversion formula can only be one which involves multiplying an Employee's current daily rate of pay against the amount of accrued unpaid leave being converted; and
  - (G) The leave conversion formula is definitely determinable.
- (2) **Frozen Plan.** The Employer may designate under AA §2-5 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions with respect to Plan Compensation earned after the date identified in AA §2-5. If the Plan holds any unallocated forfeitures at the time the Plan is frozen, such forfeitures may be allocated to all eligible Participants in accordance with Section 6.11 in the year the Plan is frozen, regardless of any contrary selections under AA §8-7.
- (b) **Employer Contribution formulas (Money Purchase Plan).** The Employer may elect under AA §6 of the Money Purchase Plan Adoption Agreement to make any of the following Employer Contributions. Each Participant will receive an allocation of Employer Contributions equal to the amount determined under the contribution formula elected under AA §6-2. Any reference to the Adoption Agreement under this subsection (b) is a reference to the Money Purchase Plan Adoption Agreement. To receive an allocation of Employer Contributions, a Participant must satisfy any allocation conditions designated under the Plan, as described in Section 3.07 below.

In determining the amount of Employer Contributions to be allocated to Participants under the Plan, the Plan will take into account Plan Compensation (as defined in Section 1.75) for the Plan Year. The Employer may designate under AA §6-4 alternative periods for determining the allocation of Employer Contributions. If alternative periods are designated under AA §6-4, a Participant's allocation of Employer Contributions will be determined separately for each designated period based on Plan Compensation earned during such period. If an alternative period is designated under AA §6-4, the Employer need not actually make the Employer Contribution during the designated period, provided the total Employer Contribution for the Plan Year is allocated based on the proper Plan Compensation. (If the permitted disparity allocation method applies under AA §6-2(c), the allocation will be based on the Plan Year.)

If the Employer maintains any other qualified plan(s) which cover any Participants under this Plan, the Employer may elect under AA §6-3(b) to reduce such Participants' allocation under this Plan to take into account the benefits provided under the Employer's other qualified plan(s). The Employer may describe under AA §6-3(b)(2) how the offset will be applied.

- (1) **Uniform Employer Contribution.** If elected under AA §6-2(a), the Employer will make a contribution to each Participant under the Plan as a uniform percentage of Plan Compensation or as a uniform dollar amount, as designated in AA §6-2(a).
- (2) **Permitted disparity contribution formula.** If elected under AA §6-2(c), the Employer will make a permitted disparity contribution to each Participant using either the individual or group method. The Employer may not elect the permitted disparity contribution formula under the Plan if the Employer maintains another qualified plan, covering any of the same Employees, which uses permitted disparity in determining the allocation of contributions or the accrual of benefits under such plan.
  - (i) **Individual method.** Under the individual method, each Participant will receive an allocation of the Employer Contribution equal to the amount determined under the contribution formula under AA §6-2(c)(1). A Participant may not receive an allocation with respect to Excess Compensation that exceeds the Maximum Disparity Rate.



**Pre-Approved Governmental Defined Contribution Plan  
Section 3 – Plan Contributions**

- (A) **Excess Compensation.** The amount of Plan Compensation that exceeds the Integration Level.
- (B) **Integration Level.** The Taxable Wage Base, unless specified otherwise under AA §6-2(c)(3).
- (C) **Maximum Disparity Rate.** The Maximum Disparity Rate is the maximum amount that may be allocated with respect to Excess Compensation under the permitted disparity formula. Unless provided otherwise under AA §6-2(c)(3), the maximum amount that may be allocated as a percentage of Plan Compensation and Excess Compensation is the following percentage:

<u>Integration Level (as a percentage of the Taxable Wage Base)</u>	<u>Maximum Disparity Rate</u>
100%	5.7%
More than 80% but less than 100%	5.4%
More than 20% and not more than 80%	4.3%
20% or less	5.7%

The Employer may elect to apply a greater Maximum Disparity Rate under AA §6-2(c)(3)(ii).

- (D) **Taxable Wage Base.** The maximum amount of wages that are considered for Social Security purposes as in effect at the beginning of the Plan Year.
- (ii) **Group method.** Under the group method, the Employer contributes a fixed percentage of total Plan Compensation of all Participants. The Employer Contribution is then allocated under the two-step method (as described in subsection (a)(1)(i)(B)(I) above). In determining Excess Compensation, the Integration Level is the Taxable Wage Base, unless designated otherwise under AA §6-2(c)(3).
- (3) **Employee group contribution formula.** Under the Employee group contribution formula, the Employer may make a different contribution to each Participant’s Employer Contribution Account based on the designated Employee groups identified under AA §6-2(d).

The Employer Contribution made for a designated Employee group will be allocated to each eligible Participant in such group as a uniform percentage of Plan Compensation or as a uniform dollar amount, as designated in AA §6-2(d)(2). The Employer also may elect to allocate an amount to each eligible Participant in a designated Employee group the maximum amount permissible under Code §415. See Section 5.02.

The Employee groups designated in AA §6-2(d) must be clearly defined in a manner that will not violate the definite determinable requirement of Treas. Reg. §1.401-1(b)(1)(ii). The portion of the Employer Contribution designated for a specific Employee group will be allocated only to Participants within that group. If a Participant is in more than one Employee group during the Plan Year, the Participant will receive an Employer Contribution based on the Participant’s status on the last day of the Plan Year. In the event a Participant is in two or more Employee groups on the last day of the Plan Year, the Participant will receive an Employer Contribution based on the first Employee group listed under AA §6-2(d) in which the Participant is a part. The Employer can provide for a different treatment of Employees in multiple groups as part of the group description in AA §6-2(d)(1).

- (4) **Age-based contribution formula.** Under the age-based contribution formula, the Employer will contribute a specific percentage of each Participant’s adjusted Plan Compensation. For this purpose, a Participant’s adjusted Plan Compensation is determined by multiplying the Participant’s Plan Compensation by an Actuarial Factor. A Participant’s Actuarial Factor must be determined based on standard actuarial assumptions using a testing age that is the later of Normal Retirement Age or the Employee’s current age. Unless designated otherwise under AA §6-2(e), a Participant’s Actuarial Factor is determined based on an 8.5% interest rate and the UP-1984 mortality table. (See Appendix A of the Plan for the Actuarial Factors associated with an 8.5% interest rate and the UP-1984 mortality table and a testing age of 65. If an interest rate other than 8.5% or a mortality table other than the UP-1984 mortality table is selected under AA §6-2(e), or if a testing age other than age 65 is used, the Plan must determine the appropriate Actuarial Factors based on the designated interest rate, mortality table and testing age.)
- (5) **Service-based Employer Contribution.** If elected in AA §6-2(f), the Employer will make a contribution based on an Employee’s service with the Employer during the Plan Year (or other period designated under AA §6-4.)

The Employer Contribution will be allocated on the basis of Participants' Hours of Service, weeks of employment or other measuring period selected under AA §6-2(f).

- (6) **Frozen Plan.** The Employer may designate under AA §2-5 that the Plan is a frozen Plan. As a frozen Plan, the Employer will not make any Employer Contributions with respect to Plan Compensation earned after the date identified in AA §2-5. If the Plan holds any unallocated forfeitures at the time of the termination, such forfeitures may be allocated to all eligible Participants in accordance with Section 6.11 in the year of the termination, regardless of any contrary selections under AA §8-7.
- (c) **Contribution formulas (Grandfathered 401(k) Plan).** If the Employer is eligible to maintain a Grandfathered 401(k) Arrangement (as defined under AA §2-3), the Employer may elect under the Adoption Agreement to make Employer Contributions, Matching Contributions and/or Salary Deferrals. Any reference to the Adoption Agreement under this subsection (c) is a reference to the Grandfathered 401(k) Plan Adoption Agreement.
  - (1) **Employer Contributions.** An Employer may designate under AA §6 of the Grandfathered 401(k) Plan Adoption Agreement the amount of Employer Contributions that may be made under the Plan. The same rules apply with respect to Employer Contributions under the Grandfathered 401(k) Arrangement as apply under the Profit Sharing Plan, as set forth under subsection (a), above. If the Employer elects more than one Employer Contribution formula, each formula is applied separately. The Employer's aggregate Employer Contribution for a Plan Year will be the sum of the Employer Contributions under all such formulas.
  - (2) **Salary Deferrals.** The Employer may elect under AA §6A of the Grandfathered 401(k) Plan Adoption Agreement to authorize Participants to make Salary Deferrals under the Plan. A Participant's total Salary Deferrals may not exceed the lesser of any limitation designated under AA §6A-2, the Elective Deferral Dollar Limit described under Section 5.03, or the amount permitted under the Code §415 Limitation described under Section 5.02. The Employer may elect under AA §6A-2(b) of the Grandfathered 401(k) Plan Adoption Agreement to apply a different limit on Salary Deferrals to the extent such Salary Deferrals are withheld from a Participant's bonus payments.
    - (i) **Salary Deferral Election.** In order to make Salary Deferrals under the Plan, a Participant must enter into a Salary Deferral Election which authorizes the Employer to withhold a specific dollar amount or a specific percentage from the Participant's Plan Compensation. The Salary Deferral Election may permit a Participant to specify a different percentage or dollar amount be withheld from specified components of Plan Compensation, such as base pay, bonuses, commissions, etc. In addition, the Salary Deferral Election may provide the conditions on which an Employee's affirmative Salary Deferral Election will expire. If an Employee's Salary Deferral Election expires, such Employee can always complete a new affirmative election and designate a new deferral percentage. If the Plan is not an Automatic Contribution Arrangement and an Employee's affirmative election expires, the Salary Deferral Election may provide that the Employee's expiring deferral election remains in effect and may increase by a designated amount unless the Employee affirmatively elects otherwise. The Employer will deposit any amounts withheld from a Participant's Plan Compensation as Salary Deferrals into the Participant's Salary Deferral Account under the Plan. A Salary Deferral Election may only relate to Plan Compensation that is not currently available at the time the Salary Deferral Election is completed. In determining the amount to be withheld from a Participant's Plan Compensation, a Salary Deferral election may be rounded to the next highest or lowest whole dollar amount.

The Employer may designate under AA §6A-8 of the Grandfathered 401(k) Plan Adoption Agreement to apply a special effective date as of which Participants may begin making Salary Deferrals under the Plan. Regardless of any special effective date designated under AA §6A-8, a Salary Deferral Election may not be effective prior to the later of:

- (A) the date the Employee becomes a Participant;
- (B) the date the Participant executes the Salary Deferral Election; or
- (C) the date the Plan is first adopted or effective.

In addition, Salary Deferrals made pursuant to a Salary Deferral Election may not be made earlier than the date the Participant performs the services to which such Salary Deferrals relate or the date the compensation subject to such Salary Deferral Election would be currently available to the Participant absent the deferral election (if earlier). Regardless of when a Participant elects to commence making Salary Deferrals, the Employer may delay commencement for a reasonable period of time in order to implement the Salary Deferral election.

A Salary Deferral Election is valid even though it is executed by an Employee before he/she actually has qualified as a Participant, so long as the Salary Deferral Election is not effective before the date the Employee is a Participant.

- (ii) **Change in deferral election.** An Employee must be permitted to enter into a new Salary Deferral Election or to modify or terminate an existing Salary Deferral Election at least once a year. The Employer may designate additional dates on the Salary Deferral Election form (or other written procedures) as to when a Participant may modify or terminate a Salary Deferral Election. Any election to modify or terminate a Salary Deferral Election will take effect within a reasonable period following such election and will apply only on a prospective basis. The Employer may allow an Employee to increase his/her deferral election up to the Elective Deferral Dollar Limit at any time during the last two months of the Plan Year.
- (iii) **Automatic Contribution Arrangement.** The Employer may elect under AA §6A-7 of the Grandfathered 401(k) Plan Adoption Agreement to provide for an automatic deferral election under the Plan. If the Employer elects to apply an automatic deferral election, the Employer will automatically withhold the amount designated under AA §6A-7 from Participants' Plan Compensation, unless the Participant completes a Salary Deferral Election electing a different deferral amount (including a zero deferral amount). Unless provided otherwise under AA §6A-7, an Employee who is automatically enrolled under a prior plan document will continue to be automatically enrolled under the current Plan document.
- (A) **Automatic increase.** The Plan may provide under AA §6A-7 of the Grandfathered 401(k) Plan Adoption Agreement that the automatic deferral amount will automatically increase by a designated percentage each Plan Year. Unless designated otherwise under AA §6A-7(a)(4), in applying any automatic deferral increase under AA §6A-7, the initial deferral amount will apply for the period that begins when the employee first participates in the automatic contribution arrangement and ends on the last day of the following Plan Year. The automatic increase will apply for each Plan Year beginning with the Plan Year immediately following the initial deferral period and for each subsequent Plan Year.
- (B) **Annual notice requirement.** Each eligible Employee must receive a written notice describing the Participant's rights and obligations under the Plan which is sufficiently accurate and comprehensive to apprise the Employee of such rights and obligations and is written in a manner calculated to be understood by the average Plan Participant. The annual notice only needs to be provided to those Employees who are covered under the Automatic Contribution Arrangement. If it is impractical to provide the annual notice to a newly eligible Participant before the date such individual becomes eligible to participate under the Plan, the notice will be treated as timely if it is provided as soon as practicable after such date and the Employee is permitted to defer from Plan Compensation earned beginning on the date of participation.
- (C) **Timing of annual notice.** The annual notice must be provided within a reasonable period before the beginning of each Plan Year (or, in the year an Employee becomes an eligible Employee, within a reasonable period before the Employee becomes an eligible Employee). In addition, a notice satisfies the timing requirements only if it is provided sufficiently early so that the Employee has a reasonable period of time after receipt of the notice and before the first Salary Deferral made under the arrangement to make an alternative deferral election. The annual notice will be deemed timely if it is provided to each eligible Employee at least 30 days (and no more than 90 days) before the beginning of each Plan Year. In the case of an Employee who does not receive the notice within such period because the Employee becomes an eligible Employee after the 90th day before the beginning of the Plan Year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the Employee becomes an eligible Employee (and no later than the date the Employee becomes an eligible Employee).
- (D) **Timing of automatic deferral.** Generally, the automatic deferral will commence as of the date the Employee is otherwise eligible to make Salary Deferrals under the Plan, if the Employee had completed a Salary Deferral Election. However, an automatic deferral will be treated as timely if the deferral is made pursuant to reasonable administrative procedures established by the Plan Administrator. If the Plan provides an Employee with a written notice as described in Section 3.03(c)(2)(i)(D) above no later than 30 days after his/her Entry Date, provides the Employee with the opportunity to make an affirmative Salary Deferral Election up to 30 days after the notice is provided, and, in the absence of the Employee's affirmative Salary Deferral Election, provides

that automatic deferrals will commence as soon as administratively practicable following the last day of the 30 day period, then the Plan will be treated as having a reasonable administrative procedure.

- (E) **Permissible Withdrawals.** If so elected under AA §6A-7(b) of the Grandfathered 401(k) Plan Adoption Agreement, effective for Plan Years beginning on or after January 1, 2008, any Employee who has Salary Deferrals contributed to the Plan pursuant to an automatic deferral election may elect to withdraw such contributions (and earnings attributable thereto) in accordance with the requirements of this subsection (E). A permissible withdrawal under this subsection (E) may be made without regard to any elections under AA §10 and will not cause the Plan to fail the prohibition on in-service distribution applicable to Salary Deferrals under Section 7.10(c).
- (I) **Amount of distribution.** A distribution satisfies the requirement of this subsection (E) if the distribution is equal to the amount of Salary Deferrals made pursuant to the automatic deferral election through the effective date of the withdrawal election (as described in subsection (III) below) adjusted for allocable gains and losses as of the date of the distribution.
- The distribution amount determined under this subsection (I) may be reduced by any generally applicable fees. However, the Plan may not charge a greater fee for a permissible distribution under this subsection (E) than applies with respect to other Plan distributions.
- (II) **Timing of permissive withdrawal election.** An election to withdraw Salary Deferrals under this subsection (E) must be made no later than 90 days after the date of the first default Salary Deferral. The date of the first default Salary Deferral is the date that the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income. The Employer may designate an alternative period for making permissive withdrawals under AA §6A-7(b)(3).
- (III) **Effective date of permissible withdrawal.** The effective date of a permissible withdrawal election cannot be later than the pay date for the second payroll period that begins after the election is made or, if earlier, the first pay date that occurs at least 30 days after the election is made. If an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissive withdrawal, but only with respect to default contributions made after the Employee's return to employment.
- (IV) **Consequences of permissible withdrawal.** Any amount distributed under this subsection (E) is includible in the Employee's gross income for the taxable year in which the distribution is made. However, the portion of any distribution consisting of Roth Deferrals is not included in an Employee's gross income a second time. In addition, a permissible withdrawal under this subsection (E) is not subject to any penalty tax under Code §72(t). Unless the Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Salary Deferrals made on the Employee's behalf as of the date specified in subsection (III) above.
- (iv) **Catch-Up Contributions.** If permitted under AA §6A-4 of the Grandfathered 401(k) Plan Adoption Agreement, a Participant who is aged 50 or over by the end of his/her taxable year beginning in the calendar year may make Catch-Up Contributions, provided such Catch-Up Contributions are in excess of an otherwise applicable limit under the Plan. For this purpose, an otherwise applicable Plan limit is a limit in the Plan that applies to Salary Deferrals without regard to Catch-up Contributions, such as a Plan-imposed Salary Deferral limit under AA §6A-2, the Code §415 Limitation (described in Section 5.02), or the Elective Deferral Dollar Limit (described in Section 5.03).
- (A) **Catch-Up Contribution Limit.** Catch-up Contributions for a Participant for a taxable year may not exceed the Catch-Up Contribution Limit. The Catch-Up Contribution Limit for taxable years beginning in 2010 through 2014 is \$5,500. For taxable years beginning after 2014, the Catch-Up Contribution Limit will be adjusted for cost-of-living increases under Code §414(v)(2)(C). The Employer may operationally limit Catch-Up Contributions so that a Participant's total Catch-Up Contributions, when added to other Salary Deferrals, may not exceed 75 percent of the Participant's Plan Compensation for the taxable year.

- (B) **Special treatment of Catch-Up Contributions.** Catch-up Contributions are not subject to the Elective Deferral Dollar Limit or the Code §415 Limitation.
- (v) **Roth Deferrals.** For Plan Years beginning on or after January 1, 2006, if permitted under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement, a Participant may designate all or a portion of his/her Salary Deferrals as Roth Deferrals. For this purpose, a Roth Deferral is a Salary Deferral that satisfies the following conditions.
- (A) **Irrevocable election.** The Participant makes an irrevocable election (at the time the Participant enters into his/her Salary Deferral Election) designating all or a portion of his/her Salary Deferrals as Roth Deferrals. The irrevocable election applies with respect to Salary Deferrals that are made pursuant to such election. A Participant may modify or change a Salary Deferral Election to increase or decrease the amount of Salary Deferrals designated as Roth Deferrals, provided such change or modification applies only with respect to Salary Deferrals made after such change or modification. (See subsection (ii) above for rules regarding the timing of permissible changes or modifications to a Participant's Salary Deferral Election.)
- (B) **Subject to immediate taxation.** To the extent a Participant designates all or a portion of his/her Salary Deferrals as Roth Deferrals, such amounts will be includible in the Participant's income at the time the Participant would have received the contribution amounts in cash if the Employee had not made the Salary Deferral election.
- (C) **Separate account.** Any amounts designated as Roth Deferrals will be maintained by the Plan in a separate Roth Deferral Account. The Plan will credit and debit all contributions and withdrawals of Roth Deferrals to such separate Account. The Plan will separately allocate gains, losses, and other credits and charges to the Roth Deferral Account on a reasonable basis that is consistent with such allocations for other Accounts under the Plan. However, in no event may the Plan allocate forfeitures under the Plan to the Roth Deferral Account. The Plan will separately track Participants' accumulated Roth Deferrals and the earnings on such amounts.
- (D) **Satisfaction of Salary Deferral requirements.** Roth Deferrals are subject to the same requirements as apply to Salary Deferrals. Thus Roth Deferrals are subject to the following requirements:
- (I) Roth Deferrals are always 100% vested, as provided in Section 6.01.
- (II) Roth Deferrals are subject to the Elective Deferral Dollar Limit, as described in Section 5.03. For this purpose, all Salary Deferrals (both Pre-Tax Salary Deferrals and Roth Deferrals) are aggregated in applying the Elective Deferral Dollar Limit.
- (III) Roth Deferrals are subject to the same distribution restrictions as apply to Salary Deferrals under Section 7.10(c). See Section 7.11(b) for special distribution provisions applicable to Roth Deferrals.
- (IV) Roth Deferrals are subject to the required minimum distribution requirements under Code §401(a)(9), as set forth in Section 8.
- (E) **Rollover of Roth Deferrals.**
- (I) **Rollovers from this Plan.** For purposes of the rollover rules under Section 7.04, a Direct Rollover of a distribution from a Participant's Roth Deferral Account will only be made to another Roth Deferral Account under a qualified plan described in Code §401(a) or an annuity contract or custodial account described in Code §403(b) or to a Roth IRA described in §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).
- (II) **Rollovers to this Plan.** Subject to the provisions under Section 3.05, a Participant may make a Rollover Contribution to his/her Roth Deferral Account only if the rollover is a Direct Rollover from another Roth Deferral Account under a qualified retirement plan (as described in Section 3.05) and only to the extent the rollover is permitted under the rules of Code §402(c). A rollover of Roth Deferrals may not be made to this Plan from a Roth

**Pre-Approved Governmental Defined Contribution Plan  
Section 3 – Plan Contributions**

IRA. Any rollover of Roth Deferrals to this Plan will be held in a separate Roth Rollover Account.

- (III) **Minimum rollover amount.** The Plan Administrator may decide whether or not to provide for a Direct Rollover (including an Automatic Rollover) for distributions from a Participant's Roth Deferral Account if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than \$200. In addition, the Plan Administrator may decide whether or not to take into account any distribution from a Participant's Roth Deferral Account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than \$200 during a year. For purposes of applying the Automatic Rollover provisions under Section 8.06, a Participant's Roth Deferral Account and the Participant's other Accounts are treated as accounts held under separate plans. (See Treas. Reg. §1.401(k)-1(f)(4)(ii).)
- (IV) **Separate treatment of Roth Deferrals.** The provisions under Section 7.04 that allow a Participant to elect a Direct Rollover of only a portion of an Eligible Rollover Distribution, but only if the amount rolled over is at least \$500, is applied by treating any amount distributed from the Participant's Roth Deferral Account as a separate distribution from any amount distributed from the Participant's other Accounts in the Plan, even if the amounts are distributed at the same time.
- (vi) **In-Plan Roth Conversions.** Effective on or after January 1, 2013, the Employer may elect under AA §6A-5(c) of the Profit Sharing/401(k) Plan Adoption Agreement to permit In-Plan Roth Conversions under the Plan. For this purpose, an In-Plan Roth Conversion is a conversion of amounts held in a Participant's Plan Account, other than a Roth Deferral Account or Roth Rollover Account, into the Participant's In-Plan Roth Conversion Account under the Plan, pursuant to Code §402A(c)(4). Any election to make an In-Plan Roth Conversion during a taxable year may not be changed after the In-Plan Roth Conversion is completed. (For In-Plan Roth Conversions completed prior to January 1, 2013, a Participant had to be eligible to receive a distribution of the converted amounts at the time of the In-Plan Roth Conversion. The provisions of this Section 3.03(c)(vi) do not affect an In-Plan Roth Conversion completed prior to January 1, 2013.)

An In-Plan Roth Conversion may be elected by a Participant, a Spousal beneficiary, or an Alternate Payee who is a Spouse or former Spouse. To the extent the term "Participant" is used for purposes of determining eligibility to make an In-Plan Roth Conversion, such term will also include a Spousal beneficiary and an Alternate Payee who is a Spouse or former Spouse.

- (A) **Amounts Eligible for In-Plan Roth Conversion.** If permitted under AA §6A-5(c) of the Profit Sharing/401(k) Adoption Agreement, a Participant may convert any portion of his/her vested Account Balance (other than amounts attributable to Roth Deferrals or Roth Deferral rollovers) to an In-Plan Roth Conversion Account. Unless elected otherwise under AA §6A-5(c), a Participant need not be eligible to receive a distribution from the Plan at the time of the In-Plan Roth Conversion.

In addition, an In-Plan Roth Conversion will not be treated as a distribution for the following purposes:

- (I) **Participant loans.** A Participant loan directly transferred in an In-Plan Roth Conversion without changing the repayment schedule is not treated as a new loan.
- (II) **Spousal consent.** An In-Plan Roth Conversion is not treated as a distribution for purposes of applying the spousal consent requirements under Code §401(a)(11). Thus, a married Plan Participant is not required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion, even if the Plan is otherwise subject to the spousal consent requirements under Code §401(a)(11).
- (III) **Participant consent.** An In-Plan Roth Conversion is not treated as a distribution for purposes of applying the participant consent requirements under Code §411(a)(11). Thus, amounts that are converted as part of an In-Plan Roth Conversion continue to be taken into account in determining whether the Participant's vested Account Balance exceeds \$5,000 for purposes of applying the Involuntary Cash-Out provisions and will not trigger the requirement for a notice of the Participant's right to defer receipt of the distribution.

- (IV) **Mandatory withholding.** An In-Plan Roth Conversion is not subject to 20% mandatory withholding under Code §3405(c).
- (V) **Distribution restrictions.** Generally, a distribution will be permitted from the In-Plan Roth Conversion Account to the extent permitted for regular Roth Deferrals under AA §10-1. The distribution restrictions normally applicable to Roth Deferrals, as described in Section 7.10(c) of the Plan, do not apply to the extent the conversion is from a contribution source that is not otherwise subject to the distribution restrictions applicable to Roth Deferrals. In addition, distribution restrictions that otherwise apply with respect to a specific contribution source will continue to apply if such contribution source is converted to Roth Deferrals. For example, if Traditional Safe Harbor Contributions are converted to Roth Deferrals, such amounts may not be distributed on account of hardship or other event not otherwise permitted under Section 7.10(c) of the Plan, unless permitted otherwise under IRS guidance.
- (B) **Effect of In-Plan Roth Conversion.** A Participant must include in gross income the taxable amount of an In-Plan Roth Conversion. For this purpose, the taxable amount of an In-Plan Roth Conversion is the fair market value of the distribution, reduced by any basis in the converted amounts. If the distribution includes Employer securities, the fair market value includes any net unrealized appreciation within the meaning of Code §402(e)(4). If an outstanding loan is rolled over as part of an In-Plan Roth Conversion, the amount includible in gross income includes the balance of the loan.
- Generally, the taxable amount of an In-Plan Roth Conversion is includible in gross income in the taxable year in which the conversion occurs.
- (C) **Application of Early Distribution Penalty under Code §72(t).** An In-Plan Roth Conversion is not subject to the early distribution penalty under Code §72(t) at the time of the conversion. However, if an amount allocable to the taxable amount of an In-Plan Roth Conversion is subsequently distributed within the 5-taxable-year period beginning with the first day of the Participant's taxable year in which the conversion was made, the amount distributed is treated as includible in gross income for purposes of applying the Code §72(t) early distribution penalty. For this purpose, the 5-taxable-year period ends on the last day of the Participant's fifth taxable year in the period. This subsection (C) will not apply to the extent the distribution is rolled over to a Roth account in another qualified plan or is rolled over to a Roth IRA. However, the rule under this subsection (C) will apply to any subsequent distributions made from such other Roth account or Roth IRA within the 5-taxable-year period.
- (D) **Contribution Sources.** Unless elected otherwise under AA §6A-5(c), an In-Plan Roth Conversion may be made from any contribution source under the Plan, other than a Roth Deferral Account or Roth Rollover Account. The Employer may elect in AA §6A-5(c) to limit the contribution sources that are eligible for In-Plan Roth Conversion. In addition, the Employer may elect in AA §6A-5(c) to limit In-Plan Roth Conversions to contribution accounts that are 100% vested.
- (3) **Matching Contributions.** The Employer may elect under AA §6B of the Grandfathered 401(k) Plan Adoption Agreement to authorize Matching Contributions under the Plan. If the Employer elects more than one Matching Contribution formula under AA §6B-2, each formula is applied separately. A Participant's aggregate Matching Contributions will be the sum of the Matching Contributions under all such formulas. Any Matching Contribution made under the Plan will be allocated to Participants' Matching Contribution Account. To receive an allocation of Matching Contributions, a Participant must satisfy any allocations conditions designated under the Plan, as described in Section 3.07 below.
- (i) **Contributions eligible for Matching Contributions.** The Matching Contribution formula(s) apply to Salary Deferrals, Catch-Up Contributions, After-Tax Employee Contributions and/or Employer Pick-Up Contributions made under the Plan, to the extent authorized under the Adoption Agreement. In addition, the Employer may elect under AA §6B-3(b) to match Elective Deferrals under another qualified plan, 403(b) plan or 457(b) plan maintained by the Employer. If the Employer elects to make a Matching Contribution based on the Employee's Elective Deferrals or Roth Deferrals under another qualified plan, 403(b) plan or 457(b) plan, the Employer shall make a Matching Contribution on behalf of any eligible Participant who makes Elective Deferrals or Roth Deferrals to the plan designated under AA §6B-3(b). Any such Matching Contribution made to the Plan will be allocated in accordance with any special

provisions added under AA §6B-3(b). Any such Matching Contributions will be in addition to any Matching Contributions made with respect to Salary Deferrals, After-Tax Employee Contributions, Catch-Up Contributions and/or Employer Pick-Up Contributions under this Plan.

- (ii) **Period for determining Matching Contributions.** AA §6B-5 sets forth the period for which the Matching Contribution formula(s) applies. For this purpose, the period designated in AA §6B-5 applies for purposes of determining the amount of Salary Deferrals, Catch-Up Contributions, After-Tax Employee Contributions, and/or Employer Pick-Up Contributions taken into account in applying the Matching Contribution formula(s) and in applying any limits on the amount of Salary Deferrals that may be taken into account under the Matching Contribution formula(s). (See subsection (iii) below for rules applicable to true-up contributions where the Employer contributes Matching Contributions to the Plan on a different period than selected under AA §6B-5.)

If the Employer elects a discretionary Matching Contribution under the Plan, the Employer may elect to make a different Matching Contribution for each period for which Matching Contributions are determined under the Plan. Thus, for example, if the discretionary Matching Contribution is based on the Plan Year quarter, the Employer may elect to make a different level of Matching Contribution for each Plan Year quarter. The Matching Contribution for the full Plan Year must be taken into account in applying the ACP Test with respect to such Plan Year.

- (iii) **True-up contributions.** If the Employer makes Matching Contributions more frequently than annually, the Employer may need to make true-up contributions for Participants. True-up contributions will be required if the Employer actually contributes Matching Contributions to the Plan on a more frequent basis than the period that is used to determine the amount of the Matching Contributions under AA §6B-5. For example, if Matching Contributions apply with respect to Salary Deferrals made for the Plan Year, but the Employer contributes the Matching Contributions on a quarterly basis, the Employer may have to make a true-up contribution to any Participant based on Salary Deferrals for the Plan Year. If a true-up contribution is required under this subsection (iii), the Employer may make such additional contribution as required to satisfy the contribution requirements under the Plan. If true-up contributions will not be made for any Participant under the Plan, payroll period should be selected under AA §6B-5(a).

If Matching Contributions are determined on a period other than the Plan Year, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Matching Contributions were determined on a Plan Year basis. If an additional discretionary Matching Contribution is made under this subsection (iii), such contribution must be provided to all eligible Participants who would otherwise be entitled to a true-up contribution based on Plan Compensation for the Plan Year.

- 3.03 Employer Pick-Up Contributions.** The Employer may elect under AA §6-7(c) to make Employer Pick-Up Contributions. An Employer Pick-Up Contribution is a contribution made by an Employee that is “picked up” by the Employer in accordance with Code §414(h)(2). If the Employer elects to provide Employer Pick-Up Contributions under AA §6-7(c), a Participant who meets the eligibility requirements of AA §4-1 shall be deemed to have authorized the Employer to deduct the amount designated under AA §-6-7(c) from the Participant’s Plan Compensation prior to payment. Contributions picked-up under this Section 3.03 will be withheld from the Employee’s compensation and deposited into the Participant’s Employer Pick-up Contribution Account. Contributions that are picked up under this Section 3.03 will be treated as Employer Contributions under the Plan and such contributions and earnings thereon will be 100% vested at all times.

To constitute an Employer Pick-up Contribution under this Section 3.03, the Employer must:

- (a) specify that the contributions, although designated as Employee contributions, are being paid by the Employer in lieu of contributions by the Employee;
- (b) take the action necessary to effectuate the pick-up, which must be completed before the period to which such contributions relate;
- (c) exclude from the Employee's gross income the contributions picked up by the Employer until such time as they are distributed to the Employee; and
- (d) prohibit an Employee from opting out of the Employer Pick-up Contribution and prohibit the receipt of the contributed amounts directly instead of having them paid by the Employer to the Plan.

To satisfy the requirements of this Section 3.03, the Employer Pick-Up Contributions must be effectuated by a person duly authorized to take such action with respect to the Employer and must be evidenced by a contemporaneous written document,



such as minutes from a meeting, a resolution, an ordinance or this Plan document. Any Participating Employee may not enter into a cash or deferred election (within the meaning of Treas. Reg. § 1.401(k)-1(a)(3)) with respect to the designated Employee contributions, at any time from or after the date of the implementation of the Employer Pick-Up Contribution. For example, a Participant may not opt out of the Employer Pick-Up Contribution or receive the contributed amounts directly instead of having them paid by the Employer into the Plan.

- 3.04** **After-Tax Employee Contributions.** The Employer may elect under AA §6-7 to allow Participants to make After-Tax Employee Contributions under the Plan. If permitted under AA §6-7, a Participant's compensation will be reduced by the amount the Participant elects to contribute as an After-Tax Employee Contribution. The After-Tax Employee Contributions may be Voluntary After-Tax Employee Contributions, as designated under AA §6-7(a), or may be Mandatory After-Tax Employee Contributions, as designated under AA §6-7(b). Any After-Tax Employee Contributions made under the Plan will be held in Participants' After-Tax Employee Contribution Account, which is always 100% vested.

A Participant's election to change or resume an after-tax election will be effective as set forth under the After-Tax Employee Contributions election form or other written procedures adopted by the Plan Administrator. An Employee must be permitted to modify or terminate an existing After-Tax Employee Contribution election at least once a year. The Employer may designate additional dates on the After-Tax Employee Contribution election form (or other written procedures) as to when a Participant may commence, modify or terminate After-Tax Employee Contributions. Any election to modify or terminate an After-Tax Employee Contribution election will take effect within a reasonable period following such election and will apply only on a prospective basis.

A Participant may withdraw amounts from his/her After-Tax Employee Contribution Account at any time, in accordance with the distribution rules under Section 7.10(a), except as otherwise provided under AA §10. No forfeitures will occur solely as a result of an Employee's withdrawal of After-Tax Employee Contributions. The Employer may collect Participants' After-Tax Employee Contributions using payroll reduction or other collection procedures. The Employer may designate in the Adoption Agreement or in separate administrative procedures any special rules regarding the acceptance of After-Tax Employee Contributions. Any separate procedures will apply uniformly to all Participants under the Plan.

- 3.05** **Rollover Contributions.** An Employee (or former Employee) may make a Rollover Contribution to this Plan from a qualified retirement plan or from an IRA, if the acceptance of rollovers is permitted under AA §C-2 or if the Plan Administrator adopts administrative procedures regarding the acceptance of Rollover Contributions. Subject to the provisions under Section 3.02(c)(2)(v)(E) relating to rollovers of Roth Deferrals, any Rollover Contribution an Employee (or former Employee) makes to this Plan will be held in the Employee's Rollover Contribution Account, which is always 100% vested. A Participant may withdraw amounts from his/her Rollover Contribution Account at any time, in accordance with the distribution rules under Section 7, except as prohibited under AA §10. Any amounts received as a Rollover Contribution under this Section 3.05 will not be treated as an Annual Addition for purposes of applying the Code §415 Limitation described in Section 5.02.

For purposes of this Section 3.05, a qualified retirement plan is a tax-qualified retirement plan described in Code §401(a) or Code §403(a), an annuity contract described in §403(b) of the Code, or an eligible plan under §457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. To qualify as a Rollover Contribution under this Section, the Rollover Contribution must be transferred directly from the qualified retirement plan or IRA in a Direct Rollover or must be transferred to the Plan by the Employee within the requisite period of time for Rollover Contributions from the qualified plan or IRA.

The Plan Administrator may accept any Rollover Contribution that satisfies the requirements, including the time period to make Rollover Contributions, under Code §402(c) and applicable IRS regulations and other guidance. Thus, for example, the Plan Administrator may accept a Rollover Contribution as provided under Revenue Procedure 2016-47 relating to the waiver of the 60-day rollover period and acceptable self-certification by an Employee and the Plan may accept a Rollover Contribution of qualified plan loan offset amounts within the applicable time period.

If permitted under AA §C-2 or other administrative procedures, an Employee (or former Employee) may make a Rollover Contribution to the Plan even if the Employee is not a Participant with respect to any or all other contributions under the Plan. An Employee who makes a Rollover Contribution to this Plan prior to becoming a Participant shall be treated as a Participant only with respect to such Rollover Contribution Account, but shall not be treated as a Participant with respect to other contribution sources under the Plan until he/she otherwise satisfies the eligibility conditions under the Plan. To the extent Participant loans are authorized under the Plan, a "limited Participant" under this paragraph may request a Participant loan from the Rollover Contribution Account, unless provided otherwise under AA §B-3 or separate administrative procedures adopted by the Plan Administrator.

The Plan Administrator may refuse to accept a Rollover Contribution if the Plan Administrator reasonably believes the Rollover Contribution:

- (a) is not being made from a proper plan or IRA;

- (b) is not being made within sixty (60) days from receipt of the amounts from a qualified retirement plan or IRA;
- (c) could jeopardize the tax-exempt status of the Plan; or
- (d) could create adverse tax consequences for the Plan or the Employer.

Prior to accepting a Rollover Contribution, the Plan Administrator may require the Employee to provide satisfactory evidence establishing that the Rollover Contribution meets the requirements of this Section.

If the Plan accepts an invalid Rollover Contribution, the contribution will be treated, for purposes of applying the qualification requirements of Code §401(a) to the Plan, as if it were a valid Rollover Contribution if two conditions are satisfied:

- (a) When accepting the amount from the Employee as a Rollover Contribution, the Plan Administrator must reasonably conclude that the contribution is a valid Rollover Contribution; and
- (b) If the Plan Administrator later determines that the contribution was an invalid Rollover Contribution, the Plan Administrator must distribute the amount of the invalid Rollover Contribution, plus any earnings attributable thereto, to the Employee within a reasonable time after such determination.

The Plan Administrator may use the criteria set forth in IRS Revenue Ruling 2014-9, as well as other evidence, in reasonably determining whether a Rollover Contribution is valid. Thus, the Plan Administrator may access the EFAST2 database maintained by the Department of Labor to assist in determining whether a potential Rollover Contribution was distributed by a plan intended to be a qualified plan. If the Plan Administrator later determines that the Rollover Contribution was not valid, the Plan Administrator must have the amount rolled over plus any attributable earnings distributed within a reasonable period of time after such determination.

The Plan Administrator may apply different conditions for accepting Rollover Contributions from qualified retirement plans and IRAs. For example, the Plan Administrator may decide in its discretion whether to accept a Direct Rollover of a loan note from another qualified plan. Any conditions on Rollover Contributions must be applied uniformly to all Employees under the Plan.

**3.06 Deductible Employee Contributions.** The Plan Administrator will not accept deductible employee contributions that are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate Account which will be nonforfeitable at all times. The Account will share in the gains and losses under the Plan in the same manner as described in Section 10.03(d). No part of the deductible voluntary contribution Account will be used to purchase life insurance. The Participant may withdraw any part of the deductible voluntary contribution Account by making a written application to the Plan Administrator.

**3.07 Allocation Conditions.** In order to receive an allocation of Employer Contributions and/or Matching Contributions, a Participant must satisfy any allocation conditions designated under the Adoption Agreement with respect to such contributions. If the Employer elects to apply a minimum service requirement for Employer Contributions and/or Matching Contributions, the Employer may elect to base such minimum service requirement on the basis of Hours of Service or on the basis of consecutive days of employment under the Elapsed Time method.

- (a) **Special rule for year of Plan termination.** A last day employment condition automatically applies for any Plan Year in which the Plan is terminated, regardless of whether the Employer has elected to apply a last day employment condition under the Adoption Agreement. Thus, the Employer will not be obligated to make an Employer Contribution or Matching Contribution for the Plan Year in which the Plan terminates, unless the Employer provides for an Employer Contribution and/or Matching Contribution in its termination amendment. If there are unallocated forfeitures at the time of Plan termination, such forfeitures will be allocated to Participants under the Plan's procedures for allocating forfeitures.
- (b) **Service with Predecessor Employers.** To the extent provided by the Employer under AA §4-5, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the allocation conditions under this Section 3.07.

**3.08 Contribution of Property.** Subject to the consent of the Trustee, the Employer may make its contribution to the Plan in the form of property.

Pre-Approved Governmental Defined Contribution Plan  
Section 4 – Special Rules Affecting Governmental Plans and Indian Tribal Government Plans

**SECTION 4  
SPECIAL RULES AFFECTING GOVERNMENTAL PLANS AND INDIAN TRIBAL GOVERNMENT PLANS**

**4.01** **Governmental Plan.** Provided the Plan is properly adopted by an entity that meets the requirements for establishing and maintaining a Governmental Plan under Code §414(d), this Plan is a qualified plan under Code §401(a).

- (a) **Governmental Plan exemptions.** As a Governmental Plan, this Plan is exempt from Title I of ERISA and certain qualification rules under Code §401(a), including:
- (1) The minimum age and service rules under Code §410(a) and the minimum coverage rules under Code §410(b).
  - (2) The minimum vesting requirements of Code §411, including minimum vesting schedules, consent requirements for plan distributions, and the anti-cutback rule under Code §411(d)(6).
  - (3) The nondiscrimination requirements under Code §§401(a)(4), 401(k) and 401(m).
  - (4) The top-heavy rules under Code §416.
  - (5) The joint and survivor annuity rules under Code §§401(a)(11) and 417.
  - (6) The requirements for protecting benefits pursuant to a plan merger or a transfer of plan assets and liabilities, as prescribed by Code §401(a)(12).
  - (7) The anti-assignment rule under Code §401(a)(13). However, the Code provisions relating to the taxability of benefits distributed pursuant to a Qualified Domestic Relations Order (QDRO) are applicable to benefits payable to an alternate payee under the QDRO. See Code §414(p)(11).
  - (8) The commencement of benefit requirements under Code §401(a)(14).
  - (9) The protections under Code §401(a)(19).
- (b) **Adoption Agreement elections.** An Employer's election of provisions similar to requirements applicable to plans covered under Title I of ERISA, or to otherwise inapplicable qualification requirements under Code §401(a), will not affect the Plan's status as a Governmental Plan under Section 1.54. Provided the Employer is qualified to maintain a Governmental Plan, the Plan remains exempt from ERISA and certain Code requirements as a Governmental Plan.

**4.02** **Plan of Indian Tribal Government Treated as Governmental Plan.** A Plan established and maintained by:

- (a) an Indian Tribal Government, as defined in Code §7701(a)(40);
- (b) a subdivision of an Indian Tribal Government, determined in accordance with Code §7871(d); or
- (c) an agency or instrumentality of either subsection (a) or (b) above

is treated as a Governmental Plan, provided the conditions in this Section 4.02 are satisfied.

To qualify as a Governmental Plan, the Plan must cover only Employees substantially all of whose services are in the performance of essential government functions, but not in the performance of commercial activities (whether or not essential government functions). The interpretation of these conditions, including the meaning of essential government function and commercial activities, is determined under applicable regulations. Provided the requirements of this Section 4.02 are satisfied, the Plan may include a cash or deferred arrangement as provided under Code §401(k).

**4.03** **FICA Replacement Plan.** An Employee who satisfies the requirements as a Qualified Participant under subsection (b) below will be exempt from FICA tax as provided under Code §3121(b)(7)(F) if the requirements under this Section 4.03 are satisfied. The Plan may be identified as a FICA Replacement Plan under AA §2-3.

- (a) **Minimum benefit requirement.** The Plan must provide a minimum retirement benefit as set forth under this subsection (a). For this purpose, the Plan satisfies the minimum retirement benefit requirement with respect to an Employee if allocations to the Employee's Account (without regard to any earnings allocated to the Employee's Account) are at least 7.5% of the Employee's Plan Compensation for service with the Employer. Matching Contributions by the Employer may be taken into account for this purpose.

**Pre-Approved Governmental Defined Contribution Plan**  
**Section 4 – Special Rules Affecting Governmental Plans and Indian Tribal Government Plans**

---

- (1) **Definition of Plan Compensation.** The definition of Plan Compensation used in determining whether the minimum retirement benefit requirement under this subsection (a) is satisfied must be at least equal to the Employee's base pay, provided such designation is reasonable under all the facts and circumstances. Thus, the Employer may elect under AA §5-3 to exclude items such as overtime pay, bonuses, or fringe benefits. In addition, the Employer may elect under AA §5-3(l) to exclude any compensation in excess of the contribution base described in Code §3121(x) as of the beginning of the Plan Year.
  - (2) **Reasonable rate of earnings.** An Employee's Account must be credited with a reasonable rate of earnings. This requirement is satisfied if Employees' Accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual earnings under the Plan.
  - (3) **Employee Contributions.** Contributions from both the Employer and Employee may be used to make up the 7.5% allocation requirement under this subsection (a). If the Plan only provides for Employee Contributions, the Plan will satisfy the minimum benefit requirement under this subsection (a) if the total Employee Contributions are at least 7.5% of Plan Compensation.
- (b) **Qualified Participant.** An Employee is a Qualified Participant under the Plan with respect to the services performed on a given day if, on that day, the Employee has satisfied all conditions (other than vesting) for receiving an allocation under the Plan that meets the minimum retirement benefit requirement under subsection (a) above. An Employee will be a Qualified Participant on any day with respect to compensation earned during a period ending on that day and beginning on or after the beginning of the Plan Year, regardless of whether the allocations were made or accrued before the effective date of Code §3121(b)(7)(F).
- (1) **Part-Time, Seasonal and Temporary Employees.** A Part-Time, Seasonal, or Temporary Employee is not a Qualified Participant on a given day unless any benefit relied upon to meet the minimum benefit requirement under subsection (a) above is 100% vested. A Part-Time, Seasonal or Temporary Employee's benefit is considered 100% vested on a given day if on that day the Employee is unconditionally entitled to a single-sum distribution on account of death or separation from service of an amount that is at least equal to 7.5% of Plan Compensation for all periods of service taken into account in determining whether the Employee's benefit meets the minimum retirement benefit requirement under subsection (a) above.
  - (2) **Alternative lookback rule.** The Employer may elect to apply the alternative lookback rule described in Treas. Reg. §31.3121(b)(7)-2(d)(3) in determining whether an Employee is a Qualified Participant. Under the alternative lookback rule, an Employee may be treated as a Qualified Participant throughout a calendar year if the Employee is a Qualified Participant at the end of the Plan Year ending in the previous calendar year. For this purpose, if the alternative lookback rule is used, an Employee may be treated as a Qualified Participant on any given day during the first Plan Year of participation if it is reasonable on such day to believe that the Employee will be a Qualified Participant on the last day of such Plan Year.
- (c) **Special rule for short period.** An Employee may not be treated as a Qualified Participant if Plan Compensation for less than a full plan year or other 12-month period is regularly taken into account in determining allocations to the Employee's Account for the Plan Year unless, under all of the facts and circumstances, such arrangement is not a device to avoid the imposition of FICA taxes. For example, an arrangement under which Plan Compensation taken into account under AA §5-3 is limited to the contribution base described in section 3121(x)(1) is not considered a device to avoid FICA taxes by reason of such limitation.

**SECTION 5  
LIMITS ON CONTRIBUTIONS**

**5.01 Limits on Employer Contributions.** Any contributions the Employer makes under the Plan are subject to the limitations set forth in this Section 5.

- (a) **Limitation on total Employer Contributions.** All Employer Contributions the Employer makes under the Plan are subject to the Code §415 Limitation, as described in Section 5.02 below. For purposes of applying the Code §415 Limitation, Employer Contributions include any Employer Contributions, Matching Contributions, or Salary Deferrals made under the Plan. See the definition of Annual Additions under Section 5.02(c)(1) below.
- (b) **Limitation on Salary Deferrals.** If the Employer adopts the Grandfathered 401(k) Arrangement, any Salary Deferrals made under the Plan are subject to the Elective Deferral Dollar Limit, as described in Section 5.03 below.

**5.02 Code §415 Limitation.**

- (a) **No other plan participation.** If the Participant does not participate in, and has never participated in, another qualified retirement plan, a welfare benefit fund (as defined under Code §419(e)), an individual medical account (as defined under Code §415(l)(2)), or a SEP (as defined under Code §408(k)) maintained by the Employer which provides an Annual Addition as defined in subsection (c)(1) below, then the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan.

If an Employer Contribution that would otherwise be contributed or allocated to a Participant's Account will cause that Participant's Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount to be contributed or allocated to such Participant will be reduced so that the Annual Additions allocated to such Participant's Account for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2013-12.

- (b) **Participation in another plan.** This subsection (b) applies if, in addition to this Plan, the Participant receives an Annual Addition during any Limitation Year from another Defined Contribution Plan, a welfare benefit fund (as defined under Code §419(e)), an individual medical account (as defined under Code §415(l)(2)), or a SEP (as defined under Code §408(k)) maintained by the Employer.
  - (1) **This Plan's Code §415 Limitation.** The Annual Additions that may be credited to a Participant's Account under this Plan for any Limitation Year will not exceed the Maximum Permissible Amount (defined in subsection (c)(6) below), reduced by the Annual Additions credited to a Participant's Account under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the Employer for the same Limitation Year.
  - (2) **Annual Additions reduction.** If the Annual Additions with respect to the Participant under any other Defined Contribution Plan, welfare benefit fund, individual medical account, or SEP maintained by the Employer are less than the Maximum Permissible Amount and the Annual Additions that would otherwise be contributed or allocated to the Participant's Account under this Plan would exceed the Code §415 Limitation for the Limitation Year, the amount contributed or allocated will be reduced so that the Annual Additions under all such Plans and funds for the Limitation Year will equal the Maximum Permissible Amount. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2013-12.
  - (3) **No Annual Additions permitted.** If the Annual Additions with respect to the Participant under such other Defined Contribution Plan(s), welfare benefit fund(s), individual medical account(s), or SEP(s), in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year. However, if a contribution or allocation is made to a Participant's Account in an amount that exceeds the Maximum Permissible Amount, such excess Annual Additions may be corrected pursuant to the correction procedures outlined under the IRS' Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2013-12.

(c) **Definitions.**

- (1) **Annual Additions.** The amounts credited to a Participant's Account for the Limitation Year that are taken into account in applying the Code §415 Limitation, including:
- (i) Employer Contributions, including Matching Contributions, Salary Deferrals and Employer Pick-Up Contributions;
  - (ii) After-Tax Employee Contributions;
  - (iii) Forfeitures;
  - (iv) Amounts allocated to an individual medical account (as defined in Code §415(1)(2)), which is part of a pension or annuity plan maintained by the Employer;
  - (v) Amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the Employer; and
  - (vi) Allocations under a SEP (as defined in Code §408(k)).

An Annual Addition is credited to a Participant's Account for a particular Limitation Year if such amount is allocated to the Participant's Account as of any date within that Limitation Year. An Annual Addition will not be deemed credited to a Participant's Account for a particular Limitation Year unless such amount is actually contributed to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends. In the case of After-Tax Employee Contributions, such amount shall not be deemed credited to a Participant's Account for a particular Limitation Year unless the contributions are actually contributed to the Plan no later than 30 days after the close of that Limitation Year.

- (2) **Defined Contribution Dollar Limitation.** \$40,000, as adjusted under Code §415(d). For 2019, the Defined Contribution Dollar Limit is \$56,000.
- (3) **Employer.** For purposes of this Section 5.02, Employer shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in §414(b) of the Code, as modified by §415(h)), all commonly controlled trades or businesses (as defined in §414(c) of the Code, as modified by §415(h)) or affiliated service groups (as defined in §414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under §414(o) of the Code.
- (4) **Excess Amount.** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.
- (5) **Limitation Year.** The Plan Year, unless the Employer elects another 12-consecutive month period under AA §11-2(a). If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. If the Plan has an initial Plan Year that is less than 12 months, the Limitation Year for such first Plan Year is the 12-month period ending on the last day of that Plan Year, unless otherwise specified in AA §11-2(a).

If an Employer has multiple Limitation Years (e.g., due to the maintenance of multiple Defined Contribution Plans by a group of Related Employers), and a Participant is credited with Annual Additions in only one Defined Contribution Plan, the Code §415 Limitation is applied only with respect to that Plan. If a Participant is credited with Annual Additions in more than one Defined Contribution Plan, each such Plan satisfies the Code §415 Limitation based on Annual Additions for the Limitation Year with respect to such plan, plus any amounts credited to the Participant's Account under all other plans required to be aggregated pursuant to Code §415(f).

- (6) **Maximum Permissible Amount.** The maximum Annual Additions that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
- (i) the Defined Contribution Dollar Limitation; or
  - (ii) 100 percent of the Participant's Total Compensation for the Limitation Year.

The Total Compensation limitation referred to in subsection (ii) above shall not apply to any contribution for

medical benefits (within the meaning of Code §401(h) or §419A(f)(2)) which is otherwise treated as an Annual Addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

If a short Limitation Year is created because the Plan has an *initial* Plan Year that is less than 12 months, no proration of the Defined Contribution Dollar Limitation is required, unless provided otherwise under AA §11-2(c). (See subsection (5) above for the rule allowing the use of a full 12-month Limitation Year for the first year of the Plan, thereby avoiding the need to prorate the Defined Contribution Dollar Limitation.)

- (7) **Total Compensation.** The amount of compensation as defined under Section 1.94, subject to the Employer's election under AA §5-1.
- (i) **Total Compensation actually paid or made available.** For purposes of applying the limitations of this Section 5.02, Total Compensation for a Limitation Year is the Total Compensation actually paid or made available to an Employee during such Limitation Year. However, if elected in AA §5-4(c), the Employer may include in Total Compensation for a Limitation Year amounts earned but not paid in the Limitation Year because of the timing of pay periods and pay days, but only if:
- (A) the amounts are paid during the first few weeks of the next Limitation Year,
  - (B) such amounts are included on a uniform and consistent basis with respect to all similarly-situated employees, and
  - (C) no amounts are included in Total Compensation in more than one Limitation Year.
- (ii) **Disabled Participants.** Total Compensation does not include any imputed compensation for the period a Participant is disabled. However, the Employer may elect under AA §11-2(b) to include under the definition of Total Compensation, the amount a terminated Participant who is permanently and totally disabled (as described under Treas. Reg. §1.415(c)-2(g)(4)) would have received for the Limitation Year if the Participant had been paid at the rate of Total Compensation paid immediately before becoming permanently and totally disabled. If the Employer elects under AA §11-2(b) to include imputed compensation for a disabled Participant, a disabled Participant will receive an allocation of any Employer Contribution the Employer makes to the Plan based on the Employee's imputed compensation for the Plan Year. Any Employer Contributions made to a disabled Participant under this subsection (ii) are fully vested when made and will be made only to Non-Highly Compensated Employees.
- (d) **Restorative payments.** Restorative payments are not considered Annual Additions for any Limitation Year. For this purpose, restorative payments are payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary for which there is a reasonable risk of liability under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments.
- (e) **Corrective provisions.** The Plan is amended to eliminate any specific correction methods for correcting excess annual additions. If the Plan is eligible for self-correction under the IRS' EPCRS program, the Employer may use reasonable correction methods (including the correction methods described in § 1.415-6(b)(6) of the 1981 IRS regulations) to the extent permitted under the IRS' EPCRS program.
- (f) **Change of Limitation Year.** Where there is a change of Limitation Year, a "short" Limitation Year exists for the period beginning with the first day of the Limitation Year and ending on the day before the change in Limitation Year is effective. For this purpose, if the Plan is terminated effective as of a date other than the last day of the Limitation Year, the Plan is treated as if it were amended to change its Limitation Year.

**5.03 Elective Deferral Dollar Limit.** The Elective Deferral Dollar Limit under this Section 5.03 applies with respect to Salary Deferrals under the Grandfathered 401(k) Arrangement. Under this Elective Deferral Dollar Limit, an Employee may not make Elective Deferrals under this Plan (and any other plan, contract or arrangement maintained by the Employer) during any calendar year in an amount that exceeds the Elective Deferral Dollar Limit in effect for the Participant's taxable year beginning

in such calendar year. Additional restrictions apply if a Participant participates in a plan maintained by an unrelated employer. (See subsection (b)(6) below.)

The Elective Deferral Dollar Limit is the limit under Code §402(g)(1). The Elective Deferral Dollar Limit is \$19,000 for taxable years beginning in 2019. The Elective Deferral Dollar Limit will be adjusted for cost-of-living increases under Code §402(g)(4). Any such adjustments will be in multiples of \$500.

If a Participant is aged 50 or over by the end of the taxable year, the Elective Deferral Dollar Limit is increased by the Catch-Up Contribution Limit (as defined in Section 3.02(c)(2)(iv)(A)). If the Plan does not provide for Catch-up Contributions, the Elective Deferral Dollar Limit is not increased by the Catch-Up Contribution Limit.

- (a) **Excess Deferrals.** Excess Deferrals are Elective Deferrals made during the Participant's taxable year that exceed the Elective Deferral Dollar Limit (as described above) for such year; counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer. (See subsection (b)(6) below for provisions that apply when a Participant makes Elective Deferrals to a plan of an unrelated Employer.)
- (b) **Correction of Excess Deferrals.** If a Participant makes Excess Deferrals (i.e., Elective Deferrals in excess of the Elective Deferral Dollar Limit) under this Plan and any other plan maintained by the Employer, such Excess Deferrals (plus allocable income or loss) shall be distributed to the Participant. A distribution of Excess Deferrals may be made at any time (subject to the correction provisions under the IRS' EPCRS program as described in Rev. Proc. 2013-12 or subsequent guidance). If the corrective distribution of Excess Deferrals is made by April 15 of the calendar year following the year the Excess Deferrals are made to the Plan, such amounts will be taxable in the year of deferral but not in the year of distribution. If a corrective distribution of Excess Deferrals is made after April 15 of the following calendar year, such amounts will be taxable in both the year of deferral and the year of distribution. See subsection (3) below.
  - (1) **Amount of corrective distribution.** The amount to be distributed from this Plan as a correction of Excess Deferrals equals the amount of Elective Deferrals the Participant contributes during the taxable year to this Plan and any other plan maintained by the Employer in excess of the Elective Deferral Dollar Limit, reduced by any corrective distribution of Excess Deferrals the Participant receives during the calendar year from this Plan or other plan(s) maintained by the Employer. If a Participant has both a Pre Tax-Deferral Account and a Roth Deferral Account, the Participant may designate the extent to which the corrective distribution of Excess Deferrals is taken from the Pre-Tax Deferral Account or from the Roth Deferral Account under AA §6A-5. If a Participant does not designate the Account(s) from which the distribution will be made, the corrective distribution will be made first from the Participant's Pre-Tax Deferral Account.
  - (2) **Allocable gain or loss.** A corrective distribution of Excess Deferrals must include any allocable gain or loss for the taxable year in which the Excess Deferrals are contributed to the Plan. The gain or loss allocable to Excess Deferrals may be determined in any reasonable manner, provided the manner used to determine allocable gain or loss is applied consistently for all Participants and in a manner that is reasonably reflective of the method used by the Plan for allocating income to Participants' Accounts. A corrective distribution of Excess Deferrals will not include any income or loss allocable to the period between the end of the taxable year and the date of distribution.
  - (3) **Taxation of corrective distribution.** If a corrective distribution of Excess Deferrals is made by April 15 of the following calendar year, amounts attributable to the Excess Deferrals will be includible in the Participant's gross income in the taxable year in which such amounts are deferred under the Plan and amounts attributable to income or loss on the Excess Deferrals will be includible in gross income in the year of distribution. However, a corrective distribution of Excess Deferrals will not be included in gross income to the extent such distribution is comprised of Roth Deferrals. A Roth Deferral is treated as an Excess Deferral only to the extent that the total amount of Roth Deferrals for an individual exceeds the applicable limit for the taxable year or the Roth Deferrals are identified as Excess Deferrals and the individual receives a distribution of the Excess Deferrals and allocable income under this paragraph.

If a corrective distribution of Excess Deferrals is made after April 15, the amount of the corrective distribution attributable to Excess Deferrals will be includible in the Participant's gross income in both the taxable year in which such amounts are deferred under the Plan and the taxable year in which such amounts are distributed. (See Section 7.11(b)(2) for a discussion of the ordering rules for determining the Accounts from which the corrective distribution is made where a Participant has both a Pre-Tax Deferral Account and a Roth Deferral Account.)

If a corrective distribution of Excess Deferrals made after April 15 of the following calendar year apply to Excess Deferrals that are Roth Deferrals, such amounts are includible in gross income (without adjustment for



any return of investment in the contract under Code §72(e)(8)). In addition, such distribution cannot be a “qualified distribution” as described in Code §402A(d)(2) and is not an Eligible Rollover Distributions (within the meaning of Code §402(c)(4)). For this purpose, if a Roth Deferral account includes any Excess Deferrals, any distributions from the Roth Deferral account are treated as attributable to those Excess Deferrals until the total amount distributed from the Roth Deferral account equals the total of such Excess Deferrals and attributable income.

- (4) **Coordination with other provisions.** A corrective distribution of Excess Deferrals made by April 15 of the following calendar year may be made without consent of the Participant or the Participant’s Spouse, and without regard to any distribution restrictions applicable under Section 7. A corrective distribution of Excess Deferrals made by the appropriate April 15 also is not treated as a distribution for purposes of applying the required minimum distribution rules under Section 8.
- (5) **Suspension of Salary Deferrals.** If a Participant’s Salary Deferrals under this Plan, in combination with any Elective Deferrals the Participant makes during the calendar year under any other plan maintained by the Employer, equal or exceed the Elective Deferral Dollar Limit, the Employer may suspend the Participant’s Salary Deferrals under this Plan for the remainder of the calendar year without the Participant’s consent.
- (6) **Correction of Excess Deferrals under plans not maintained by the Employer.** The correction provisions under this subsection (b) apply only if a Participant makes Excess Deferrals under this Plan (or under this Plan and other plans maintained by the Employer). However, if a Participant has Excess Deferrals for a calendar year on account of making Elective Deferrals to a plan of an unrelated employer, the Participant may assign to this Plan any portion of his/her Elective Deferrals made under all plans during the calendar year to the extent such Elective Deferrals exceed the Elective Deferral Dollar Limit. The Participant must notify the Plan Administrator in writing on or before March 1 of the following calendar year of the amount of the Excess Deferrals to be assigned to this Plan. If any Roth Deferrals were made to a plan, the notification must also identify the extent to which, if any, the Excess Deferrals are comprised of Roth Deferrals.

Upon receipt of a timely notification, the Excess Deferrals assigned to this Plan will be distributed (along with any allocable income or loss) to the Participant in accordance with the corrective distribution provisions under this subsection (b). A Participant is deemed to notify the Plan Administrator of Excess Deferrals (including any portion of Excess Deferrals that are comprised of Roth Deferrals) to the extent such Excess Deferrals arise only under this Plan and any other plan maintained by the Employer.

**SECTION 6  
PARTICIPANT VESTING AND FORFEITURES**

- 6.01 Vesting of Contributions.** A Participant's vested interest in his/her Employer Contribution Account and Matching Contribution Account is determined based on the vesting schedule elected in AA §8. A Participant is always fully vested in his/her Employer Pick-Up Contribution Account, Salary Deferral Account, After-Tax Employee Contribution Account, and Rollover Contribution Account.
- 6.02 Vesting Schedules.** A Participant's vested interest in his/her Employer Contribution Account and/or Matching Contribution Account is determined by multiplying the Participant's vesting percentage (determined under the applicable vesting schedule selected in AA §8) by the total amount under the applicable Account.
- (a) **Full and immediate vesting schedule.** Under the full and immediate vesting schedule, the Participant is always 100% vested in his/her Account Balance.
- (b) **6-year graded vesting schedule.** Under the 6-year graded vesting schedule, an Employee vests in his/her Employer Contribution Account and/or Matching Contribution Account in the following manner:
- After 2 Years of Service – 20% vesting  
After 3 Years of Service – 40% vesting  
After 4 Years of Service – 60% vesting  
After 5 Years of Service – 80% vesting  
After 6 Years of Service – 100% vesting
- (c) **3-year cliff vesting schedule.** Under the 3-year cliff vesting schedule, an Employee is 100% vested after 3 Years of Service. Prior to the third Year of Service, the vesting percentage is zero.
- (d) **Modified vesting schedule.** Under the modified vesting schedule, the Employer may designate the vesting percentage that applies for each Year of Service. As a Governmental Plan, the Plan is not subject to the requirements of Code §411 and may modify the vesting schedule, provided the Plan satisfies the requirements of Code §§401(a)(4) and (7) as in effect before the enactment of ERISA. For this purpose, the modified vesting schedule must be at least as favorable as one of the following safe harbor vesting schedules:
- (1) **15-year cliff vesting schedule.** The Participant is fully vested after 15 years of creditable service. Service can be based on years of employment, years of participation or other creditable years of service.
- (2) **20-year graded vesting schedule.** The Participant is fully vested based on a graded vesting schedule of 5 to 20 years of creditable service. Service can be based on years of employment, years of participation or other creditable years of service.
- (3) **20-year cliff vesting for qualified public safety employees.** Participant is fully vested after 20 years of creditable service. Service can be based on years of employment, years of participation or other creditable years of service. The safe harbor schedule is available only with respect to the vesting schedule applicable to a group in which substantially all of the participants are qualified public safety employees (within the meaning of Code §72(t)(10)(B)).
- 6.03 Special vesting rules.**
- (a) **Normal Retirement Age.** Unless designated otherwise under AA §8-2(b), regardless of the Plan's vesting schedule, an Employee's right to his/her Account Balance is fully vested upon the date he/she attains Normal Retirement Age (as defined in AA §7-1), provided the Employee is still employed at such time.
- (b) **100% vesting upon death, disability, or Early Retirement Age.** The Employer may elect under AA §8-4 to allow a Participant's vesting percentage to automatically increase to 100% if the Participant dies, becomes Disabled, and/or attains Early Retirement Age while employed by the Employer.
- (c) **Vesting upon merger, consolidation or transfer.** No accelerated vesting will be required solely because a Defined Contribution Plan is merged with another Defined Contribution Plan, or because assets are transferred from a Defined Contribution Plan to another Defined Contribution Plan.
- (d) **Vesting schedules applicable to prior contributions.** If the Plan holds Employer Contributions and/or Matching Contributions that are subject to vesting, but the Plan no longer provides for such contributions, the Plan will continue to apply the vesting schedule applicable to those contributions as determined under the prior Plan document. See

**Pre-Approved Governmental Defined Contribution Plan  
Section 6 – Participant Vesting and Forfeitures**

Section 6.11(e) for the rules applicable to forfeitures of such prior contributions. The Employer may document any prior vesting schedule in AA §A-8.

- (e) **Different Vesting Schedules for Different Sources.** The Employer may designate different vesting schedules for different sources (e.g., Matching Contributions and/or Employer Contributions).

**6.04** **Year of Service.** An Employee's position on the vesting schedule is dependent on the Employee's Years of Service with the Employer. Generally, an Employee will earn a vesting Year of Service for each Vesting Computation Period (as defined in Section 6.05) during which the Employee completes at least 1,000 Hours of Service (or the Hours of Service designated under AA §8-5(a)). Alternatively, the Employer may elect to calculate Years of Service using the Elapsed Time method (as defined in subsection 6.04(b) below).

- (a) **Hours of Service.** Unless the Employer elects to use the Elapsed Time method under AA §8-5(c), vesting Years of Service will be determined based on an Employee's Hours of Service earned during the Vesting Computation Period.
- (1) **Actual Hours of Service.** In determining an Employee's vesting Years of Service, the Employer will credit an Employee with the actual Hours of Service earned during the Vesting Computation Period, unless the Employer elects under AA §8-5(d) to determine Hours of Service using the Equivalency Method.
- (2) **Equivalency Method.** Instead of counting actual Hours of Service in applying the Plan's vesting schedules, the Employer may elect under AA §8-5(d) to determine Hours of Service based on the Equivalency Method. Under the Equivalency Method, an Employee receives credit for a specified number of Hours of Service based on the period worked with the Employer.
- (i) **Monthly.** Under the monthly Equivalency Method, an Employee is credited with 190 Hours of Service for each calendar month during which the Employee completes at least one Hour of Service with the Employer.
- (ii) **Daily.** Under the daily Equivalency Method, an Employee is credited with 10 Hours of Service for each day during which the Employee completes at least one Hour of Service with the Employer.
- (iii) **Weekly.** Under the weekly Equivalency Method, an Employee is credited with 45 Hours of Service for each week during which the Employee completes at least one Hour of Service with the Employer.
- (iv) **Semi-monthly.** Under the semi-monthly Equivalency Method, an Employee is credited with 95 Hours of Service for each semi-monthly period during which the Employee completes at least one Hour of Service with the Employer.
- (v) **Other Equivalency Method.** The Employer may describe an alternative Equivalency Method in the Adoption Agreement, provided any description of an Equivalency Method is definitely determinable.
- (3) **Employee need not be employed for entire Vesting Computation Period.** Unless provided otherwise under AA §8-5(e), if an Employee completes the required Hours of Service during a Vesting Computation Period, the Employee will receive credit for a Year of Service as of the end of such Vesting Computation Period, even if the Employee is not employed for the entire Vesting Computation Period.
- (b) **Elapsed Time method.** Instead of using Hours of Service in applying the Plan's vesting schedules, the Employer may elect under AA §8-5(c) to apply the Elapsed Time method for calculating an Employee's vesting service with the Employer. Under the Elapsed Time method, an Employee receives credit for the aggregate period of time worked for the Employer commencing with the Employee's first day of employment (or reemployment, if applicable) and ending on the date the Employee terminates employment with the Employer. If an Employee's aggregate period of service includes fractional years, such fractional years are expressed in terms of days.

In calculating an Employee's aggregate period of service, the Employer may credit an Employee with service for any Period of Severance that lasts less than 12 consecutive months. For this purpose, a Period of Severance is any continuous period of time during which the Employee is not employed by the Employer. A Period of Severance begins on the date the Employee retires, quits or is discharged, or if earlier, the 12-month anniversary of the date on which the Employee is first absent from service for a reason other than retirement, quit or discharge. In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence:

**Pre-Approved Governmental Defined Contribution Plan  
Section 6 – Participant Vesting and Forfeitures**

- (1) by reason of the pregnancy of the Employee;
- (2) by reason of the birth of a child of the Employee;
- (3) by reason of the placement of a child with the Employee in connection with the adoption of such child by the Employee; or
- (4) for purposes of caring for a child of the Employee for a period beginning immediately following the birth or placement of such child.

For purposes of applying the Elapsed Time method, unless otherwise provided, service will be credited for employment with any Related Employer.

- 6.05 Vesting Computation Period.** Generally, the Vesting Computation Period is the Plan Year. Alternatively, the Employer may elect under AA §8-5(b) to use the 12-month period commencing on the Employee’s date of hire (or reemployment date, if applicable) and each subsequent 12-month period commencing on the anniversary of such date or the Employer may elect to use any other 12-consecutive month period as the Vesting Computation Period.
- 6.06 Excluded service.** Generally, all service with the Employer counts for purposes of applying the Plan’s vesting schedules. However, the Employer may elect under AA §8-3 to exclude certain service with the Employer in calculating an Employee’s vesting Years of Service.
- (a) **Service before the Effective Date of the Plan.** The Employer may elect under AA §8-3(a) to exclude service earned during any period prior to the date the Employer established the Plan or a Predecessor Plan. For this purpose, a Predecessor Plan is a qualified plan maintained by the Employer that is terminated within the 5-year period immediately preceding or following the establishment of this Plan. A Participant’s service under a Predecessor Plan must be counted for purposes of determining the Participant’s vested percentage under this Plan.
  - (b) **Service before a specified age.** The Employer may elect under AA §8-3(b) to exclude service before an Employee attains a specified age. An Employee will be credited with a Year of Service for the Vesting Computation Period during which the Employee attains the required age, provided the Employee satisfies all other conditions required for a Year of Service.
- 6.07 Service with Predecessor Employers.** To the extent provided, if the Employer maintains the plan of a Predecessor Employer, any service with such Predecessor Employer is treated as service with the Employer for purposes of applying the provisions of this Plan.
- 6.08 Break in Service Rules.** In addition to any service excluded under Section 6.06, the Employer may elect under AA §8-6 to disregard an Employee’s vesting service with the Employer earned prior to a Break in Service. For this purpose, an Employee incurs a Break in Service for any Vesting Computation Period (as defined in Section 6.05) during which the Employee does not complete more than five hundred (500) Hours of Service with the Employer. However, if the Employer elects to require less than 1,000 Hours of Service to earn a vesting Year of Service, a Break in Service will occur for any Vesting Computation Period during which the Employee does not complete more than one-half (1/2) of the Hours of Service required to earn a vesting Year of Service.
- 6.09 Special Vesting Rule - In-Service Distribution When Account Balance is Less than 100% Vested.** If amounts are distributed from a Participant’s Employer Contribution Account or Matching Contribution Account at a time when the Participant’s vested percentage in such amounts is less than 100% and the Participant may increase the vested percentage in the Account Balance:
- (a) A separate Account will be established for the Participant’s interest in the Plan as of the time of the distribution; and
  - (b) At any relevant time the Participant’s vested portion of the separate Account will be equal to an amount ("X") determined by the formula:
- $$X = P (AB + D) - D$$
- Where:
- P is the vested percentage at the relevant time;
  - AB is the Account Balance at the relevant time; and
  - D is the amount of the distribution.

**Pre-Approved Governmental Defined Contribution Plan  
Section 6 – Participant Vesting and Forfeitures**

**6.10 Forfeiture of Benefits.** A Participant will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account upon the occurrence of any of the events described below or at any such time as the Plan Administrator determines. The Plan Administrator has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited pursuant to this Section 6.10, a Participant's entire Account must remain in the Plan and continue to share in gains and losses of the Trust. A Participant will not forfeit any of his/her nonvested Account until the occurrence of one of the following events.

- (a) **Cash-Out Distribution.** Following termination of employment, a Participant may receive a total distribution of his/her vested benefit under the Plan (a Cash-Out Distribution) in accordance with the distribution provisions under Section 7. If a Participant receives a Cash-Out Distribution upon termination of employment, the Participant's nonvested benefit under the Plan will be forfeited in accordance with subsection 6.10(a)(1) below. If at the time of termination, a Participant is totally nonvested in his/her entire Account Balance, the Participant will be deemed to receive a total Cash-Out Distribution of his/her entire vested Account Balance (i.e., a deemed Cash-Out Distribution of zero dollars) as of the date of termination, subject to the forfeiture provisions under subsection 6.10(a)(1) below.

A Cash-Out Distribution does not occur until such time as the Participant receives a distribution of his/her entire vested Account Balance, including amounts attributable to Salary Deferrals. If a Participant receives a distribution of less than the entire vested portion of his/her Account Balance (including any additional amounts to be allocated under subsection 6.10(a)(1)(ii) below), the Participant will not be treated as receiving a Cash-Out Distribution until such time as the Participant receives a distribution of the remainder of the vested portion of his/her Account Balance.

- (1) **Timing of forfeiture.** Unless elected otherwise under AA §8-8(b), if a Participant receives a Cash-Out Distribution of his/her vested Account Balance (as defined in subsection (a) above), the Participant will immediately forfeit the nonvested portion of such Account Balance, as of the date of the distribution or deemed distribution (as determined under subsection (i) or (ii) below, whichever applies). (See Section 6.11 below for a discussion of the treatment of forfeitures under the Plan.)
- (i) **No further allocations.** For purposes of applying the Cash-Out Distribution rules, a terminated Participant who receives a total distribution of his/her vested Account Balance will be treated as receiving the Cash-Out Distribution as of the date the Participant receives such distribution (or in the case of a deemed Cash-Out Distribution (as described in subsection (a) above) as of the date the Participant terminates employment), provided the Participant is not entitled to any further allocations under the Plan for the Plan Year in which the Participant terminates employment. The Participant will forfeit his/her nonvested benefit as of the date the Participant receives the Cash-Out Distribution, in accordance with the provisions under Section 6.11.
- (ii) **Additional allocations.** For purposes of applying the Cash-Out Distribution rules, if upon termination of employment, a Participant is entitled to an additional allocation for the Plan Year in which the Participant terminates, such Participant will not be deemed to receive a Cash-Out Distribution until such time as the Participant receives a distribution of his/her entire vested Account Balance, including any amounts that are still to be allocated under the Plan. Thus, a terminated Participant who is entitled to an additional allocation (e.g., an additional Employer Contribution) for the Plan Year of termination will not be deemed to have a total Cash-Out Distribution until the Participant receives a distribution of such additional amounts. In the case of a deemed Cash-Out Distribution (as described in subsection (a) above), if the Participant is entitled to an additional allocation under the Plan for the Plan Year in which the Participant terminates employment, the deemed Cash-Out Distribution is deemed to occur on the first day of the Plan Year following the Plan Year in which the termination occurs, provided the Participant is still totally nonvested in his/her Account Balance.
- (iii) **Modification of Cash-Out Distribution rules.** The Employer may elect under AA §8-8(a) to modify the Cash-Out Distribution provision under subsection (ii) above to provide that the Cash-Out Distribution and related forfeiture occur immediately upon distribution (or deemed distribution) of the terminated Participant's vested Account Balance, without regard to whether the Participant is entitled to an additional allocation under the Plan.
- (2) **Repayment of Cash-Out Distribution.** Unless elected otherwise under AA §8-8(c), if a Participant receives a Cash-Out Distribution (as defined in subsection (a) above) that results in a forfeiture under subsection (1) above, and the Participant resumes employment covered under the Plan, such Participant may repay to the Plan the amount received as a Cash-Out Distribution. For this purpose, unless elected otherwise under AA §8-6, to be entitled to a restoration of benefits (as described in subsection (3) below), the Participant must repay the entire amount of the Cash-Out Distribution, including any amounts attributable to Salary Deferrals. A Participant will only be permitted to repay his/her Cash-Out Distribution if such repayment is made before the earlier of:

**Pre-Approved Governmental Defined Contribution Plan  
Section 6 – Participant Vesting and Forfeitures**

- (i) five (5) years after the first date on which the Participant is subsequently re-employed by the Employer; or
- (ii) the date the Participant incurs a Five-Year Forfeiture Break in Service (as defined in subsection (b) below).

If a Participant receives a deemed Cash-Out Distribution (as described in subsection (a) above), and the Participant resumes employment covered under this Plan before the date the Participant incurs a Five-Year Forfeiture Break in Service, the Participant is deemed to repay the Cash-Out Distribution immediately upon his/her reemployment.

- (3) **Restoration of forfeited benefit.** If a rehired Participant repays a Cash-Out Distribution in accordance with subsection (2) above, any amounts that were forfeited on account of such Cash-Out Distribution (unadjusted for any interest that might have accrued on such amounts after the distribution date) will be restored to the Plan no later than the end of the Plan Year following the Plan Year in which the Participant repays the Cash-Out Distribution (or is deemed to repay the Cash-Out Distribution under subsection (2) above). No amount will be restored under the Plan, however, until such time as the Participant repays the entire amount of the Cash-Out Distribution. (However, see subsection (d) below for a discussion of special rules that apply if a Participant's Cash-Out Distribution includes a distribution of Salary Deferrals.) In no event will a Participant be entitled to a restoration under this subsection (3) if the Participant returns to employment after incurring a Five-Year Forfeiture Break in Service (as defined in subsection (b) below).
- (4) **Sources of restoration.** If a Participant's forfeited benefit is required to be restored under subsection (3) above, the restoration of such forfeited benefits will occur from the following sources. If the following sources are not sufficient to completely restore the Participant's benefit, the Employer must make an additional contribution to the Plan.
  - (i) Any unallocated forfeitures for the Plan Year of the restoration.
  - (ii) Any unallocated earnings for the Plan Year of the restoration.
  - (iii) Any portion of a discretionary Employer Contribution to the extent such contribution has not been allocated to Participants' Accounts for the Plan Year of the restoration.
- (5) **Application of forfeiture rules under the Plan.** As a Governmental Plan (which is not subject to the rules under Code §411, the Plan Administrator has discretion on the manner in which the forfeiture and Cash-Out Distribution rules apply under the Plan.
- (b) **Five-Year Forfeiture Break in Service.** If a Participant has five (5) consecutive one-year Breaks in Service (a Five-Year Forfeiture Break in Service), all Years of Service after such Breaks in Service will be disregarded for the purpose of vesting in the portion of the Participant's Employer Contribution Account and/or Matching Contribution Account that accrued before such Breaks in Service. A Participant who incurs a Five-Year Forfeiture Break in Service will forfeit the nonvested portion of his/her Employer Contribution and/or Matching Contribution Account as of the end of the Vesting Computation Period in which the Participant incurs the fifth consecutive Break in Service. Except as provided under Section 6.08, a Participant who is rehired after incurring a Five-Year Forfeiture Break in Service will be credited with both pre-break and post-break service for purposes of determining his/her vested percentage in amounts that accrue under the Plan after the Five-Year Forfeiture Break in Service.
- (c) **Missing Participant or Beneficiary.** If a Participant or Beneficiary cannot be located within a reasonable period following a reasonable diligent search, the missing Participant's or Beneficiary's Account may be forfeited. An Employer will be deemed to have performed a reasonable diligent search if it performs the actions described in subsection (1) below. However, the Employer or Plan Administrator will be deemed to have waited a reasonable period following a reasonable diligent search if the Employer or Plan Administrator waits at least 6 months following the completion of the actions described in subsection (1) below.
  - (1) **Reasonable diligent search.** The Employer or Plan Administrator will be deemed to have performed a reasonable diligent search if it performs the following actions:
    - (i) Send a certified letter to the Participant's or Beneficiary's last known address.
    - (ii) Check related plan records of the Employer (e.g., health plan records) to determine if a more current address exists for the Participant or Beneficiary.

**Pre-Approved Governmental Defined Contribution Plan  
Section 6 – Participant Vesting and Forfeitures**

- (iii) If the Participant cannot be located, the Employer or Plan Administrator may attempt to identify and contact any individual that the Participant has designated as a Beneficiary under the Plan for updated information concerning the location of the missing Participant.
  - (iv) In addition to the search methods discussed above, the Employer or Plan Administrator may use other search methods, including the use of Internet search tools, commercial locator services, and credit reporting agencies to locate the missing Participant.
- (2) **Forfeiture of Account of missing Participant or Beneficiary.** If a Participant or Beneficiary is deemed to be missing (as described in this subsection (c)), the Plan Administrator may forfeit the distributable amount attributable to such missing Participant or Beneficiary, as permitted under applicable laws and regulations. If, after an amount is forfeited under this subsection (2), the missing Participant or Beneficiary is located, the Plan will restore the forfeited amount (unadjusted for gains or losses) to such Participant or Beneficiary within a reasonable time. However, if a missing Participant or Beneficiary has not been located by the time the Plan terminates, the forfeiture of such Participant's or Beneficiary's distributable amount will be irrevocable.
- (3) **Expenses attributable to search for missing Participant.** Reasonable expenses attendant to locating a missing Participant may be charged to such Participant's Account, provided that the amount of such expenses is reasonable. The Plan Administrator may take into account the size of a Participant's Account in relation to the cost of the search when deciding how extensive a search is required before declaring such Participant as missing under this subsection (c).
- (d) **Excess Deferrals.** If a Participant receives a distribution of Excess Deferrals, the portion of his/her Matching Contribution Account (whether vested or not) which is attributable to such distributed amounts will be forfeited. A forfeiture of Matching Contributions under this subsection (d) occurs in the Plan Year in which the Participant receives the distribution of Excess Deferrals.

**6.11 Allocation of Forfeitures.** The Employer may decide in its discretion how to treat forfeitures under the Plan. Alternatively, the Employer may designate under AA §8-7 how forfeitures occurring during a Plan Year will be treated. Under AA §8-7, the Employer may elect to use forfeitures in the Plan Year in which the forfeitures occur or in the Plan Year following the Plan Year in which the forfeitures occur. The Employer may elect under AA §8-7 to allocate forfeitures in any manner permitted under this Section 6.11.

- (a) **Reallocation as additional contributions under Profit Sharing Plan Adoption Agreement.** The Employer may elect in AA §8-7 to reallocate forfeitures as additional contributions under the Plan. If the Employer elects under the Profit Sharing Plan Adoption Agreement to reallocate forfeitures as additional contributions, the Employer may allocate such amounts as additional Employer Contributions and/or additional Matching Contributions. If the forfeitures allocated under this subsection (a) relate to discretionary contributions, such amounts may be allocated in the same manner as selected under AA §6-3 with respect to the contribution type being allocated. If the forfeitures relate to fixed contributions, such amounts may be allocated in addition to such fixed contributions in the ratio that the Plan Compensation of each Participant bears to the Plan Compensation of all Participants. In allocating forfeitures under this subsection (a), the Employer may take into account any limits under AA §6B-4 in determining the amount of forfeitures to be allocated as additional Matching Contributions. In applying the provisions of this subsection (a), no allocation of forfeitures will be made to any Participant with respect to forfeitures that arise out of his/her own Account. A Participant may share in any additional forfeitures to the extent the Participant is eligible to receive an allocation of such forfeitures under AA §8-7.
- (b) **Reallocation as additional Employer Contributions under Money Purchase Plan Adoption Agreement.** The Employer may elect in AA §8-7 to reallocate forfeitures as additional Employer Contributions under the Plan. If the Employer elects under the Money Purchase Plan Adoption Agreement to reallocate forfeitures as additional Employer Contributions, such amounts will be allocated in the ratio that the Plan Compensation of each Participant bears to the Plan Compensation of all Participants. In applying the provisions of this subsection (b), no allocation of forfeitures will be made to any Participant with respect to forfeitures that arise out of his/her own Account.
- (c) **Reduction of contributions.** The Employer may elect in AA §8-7 to use forfeitures to reduce Employer Contributions and/or Matching Contributions under the Plan. If the Employer elects to use forfeitures to reduce contributions, the Employer may, in its discretion, use such forfeitures to reduce Employer Contributions, Matching Contributions, or both. The Employer may adjust its contribution deposits in any manner, provided the total Employer Contributions and/or Matching Contributions made for the Plan Year properly take into account the forfeitures that are to be used to reduce such contributions for that Plan Year. If contributions are allocated over multiple allocation periods, the Employer may reduce its contribution for any allocation periods within the Plan Year in which the forfeitures are to be allocated so that the total amount allocated for the Plan Year is proper. If the Plan provides for a discretionary Employer or Matching Contribution and the Employer elects not to make an Employer or Matching Contribution for the Plan

**Pre-Approved Governmental Defined Contribution Plan  
Section 6 – Participant Vesting and Forfeitures**

---

Year, any forfeitures will be allocated to eligible Participants as an additional Employer or Matching Contribution, as provided under subsection (a) above.

- (d) **Payment of Plan expenses.** The Employer may elect under AA §8-7 to use forfeitures to pay Plan expenses for the Plan Year in which the forfeitures would otherwise be applied. If any forfeitures remain after the payment of Plan expenses under this subsection, the remaining forfeitures will be allocated as selected under AA §8-7. This subsection (d) only applies to the extent Plan expenses are paid by the Plan. Nothing herein affects the ability of the Employer to pay Plan expenses, as authorized under Section 11.04(a). In determining the Plan expenses that may be offset by Plan forfeitures, the Employer may use any reasonable method to determine the Plan expenses attributable to a particular year. In addition, the Employer may elect to use forfeitures first to reduce Employer and/or Matching Contributions or as an additional allocation (as set forth in AA §8-7) prior to using forfeitures to pay Plan expenses.
- (e) **Forfeiture rules for other contribution types.**
- (1) **Prior Employer and/or Matching Contributions.** If the Plan maintains Employer Contribution and/or Matching Contribution Accounts, but the Plan no longer provides for such contributions, such amounts will continue to vest under the vesting schedule applicable to such contributions under the prior Plan or under any vesting schedule designated under Appendix A of the Adoption Agreement. If there are any forfeitures related to such prior contributions, such amounts may be reallocated as an additional Employer Contribution or as an additional Matching Contribution in accordance with the provisions of subsection (a) or (b) above, to the extent such contributions are authorized under the Plan, or may be used to reduce any Employer Contribution or Matching Contribution, consistent with the provisions of subsection (c) above. If the Plan does not provide for either Employer Contributions or Matching Contributions, the Employer may reallocate forfeitures of prior contributions as an Employer Contribution (using the pro rata allocation formula) or as a discretionary Matching Contribution under the Profit Sharing Plan Adoption Agreement, as applicable, or as a fixed contribution under the Money Purchase Plan Adoption Agreement. Alternatively, the Employer may use such forfeitures to pay Plan expenses as authorized under subsection (d) above. The Employer may elect to use such forfeitures in the Plan Year the forfeiture occurs or in the following Plan Year.
- (2) **Other contributions.** If a Participant has any other amounts under the Plan which are treated as forfeited (e.g. a forfeiture for a missing Participant under Section 6.10(c)), and no selections are made under AA §8-7 regarding the treatment of forfeitures under the Plan, such amounts may be forfeited in accordance with any of the forfeiture options described in this Section 6.11.



## SECTION 7 PLAN DISTRIBUTIONS

A Participant may receive a distribution of his/her vested Account Balance at the time and in the manner provided under this Section 7. Upon reaching the Required Beginning Date (defined in Section 8.05(e)), a Participant must begin receiving distributions under the Plan (in accordance with the provisions of Section 8.)

**7.01 Available Forms of Distribution.** The Employer may elect under AA §9-1 the forms of distribution that are available to a Participant or Beneficiary under the Plan. Different distribution options may apply depending on whether a distribution is made upon termination of employment, death, disability or as an in-service withdrawal. Available distribution options under AA §9-1 may include a lump sum of all or a portion of the Participant's vested Account Balance, an in-kind distribution of an Annuity Contract, partial lump sums, installments, annuity payments, or any other form designated in AA §9-1. In addition, distribution options may be available as provided under a guaranteed income product to the extent such distribution options are consistent with qualification requirements applicable to such distributions. Any distribution options selected under the Plan must comply with the required minimum distribution rules under Section 8.

If the Plan provides for installment payments as an optional form of distribution, such payments may be made in monthly, quarterly, semi-annual, or annual payments over a period not exceeding the life expectancy of the Participant and his/her designated Beneficiary. The Plan Administrator may permit a Participant or Beneficiary to accelerate the payment of all, or any portion, of an installment distribution. If the Plan provides for annuity payments, the Plan must purchase an annuity that provides for payments over a period that does not extend beyond either the life of the Participant (or the lives of the Participant and his/her designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and his/her designated Beneficiary). (The availability of installments and/or annuity payments may be restricted under AA §9-1(d).)

If the Plan holds Employer Contributions and/or Matching Contributions, but the Plan no longer provides for such contributions, the Plan may continue to apply the distribution options applicable to those contributions as determined under the prior Plan document, unless elected otherwise. The Employer may document any prior distribution options in AA Appendix A or AA §10-3.

**7.02 Amount Eligible for Distribution.** For purposes of determining the amount a Participant or Beneficiary may receive as a distribution from the Plan, a Participant's Account Balance is determined as of the Valuation Date (as specified in AA §11-1) immediately preceding the date the Participant or Beneficiary receives his/her distribution from the Plan. For this purpose, the Account Balance must be increased for any contributions allocated to the Participant's Account since the most recent Valuation Date and must be reduced for any distributions made from the Participant's Account since the most recent Valuation Date. A Participant or Beneficiary does not share in any allocation of gains or losses attributable to the period between the most recent Valuation Date and the date of the distribution, unless provided otherwise under uniform funding and valuation procedures established by the Plan Administrator. See Section 10.03.

**7.03 Participant Consent.** To the extent elected under AA §9-2, if the value of a Participant's entire vested Account Balance exceeds the Involuntary Cash-Out threshold (as defined in subsection (a) below), the Participant must consent to any distribution of such Account Balance prior to his/her Required Beginning Date (as defined in Section 8.05(e)) or, if so provided in AA §9-2(a)(4), as of the date the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62. A failure by the Participant (and Spouse, if applicable) to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

(a) **Involuntary Cash-Out threshold.** For purposes of determining whether a distribution is subject to the Participant consent requirements as described in Section 7.03, the Involuntary Cash-Out threshold is \$5,000 unless a different amount is designated under AA §9-2(a). (See Section 7.05 for a discussion of the Automatic Rollover rules that apply if a Participant does not consent to a distribution that is otherwise available without Participant consent.) For purposes of determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, the value of the Participant's vested Account Balance shall be determined without regard to that portion of the Account Balance that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Code §§402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16). The Employer may elect in AA §9-2(a)(5) to include Rollover Contributions (and earnings allocable thereto) in determining whether the Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold.

(b) **Participant notice.** If a distribution is subject to Participant consent, the Participant must consent in writing to the distribution within a reasonable period prior to the Annuity Starting Date (as defined in Section 1.10). For this purpose, any consent made within the 180-day period ending on the Annuity Starting Date will be deemed to be made within a reasonable period. If the distribution is subject to spousal consent under AA §9-2(b), the Participant's Spouse also must consent to the distribution in accordance with Section 9.02.

Prior to receiving a distribution from the Plan, a Participant must be notified of his/her right to defer any distribution from the Plan. The notification shall include a general description of the material features and the relative values of the optional forms of benefit available under the Plan (consistent with the requirements under Code §417(a)(3)). Effective for Plan Years beginning on or after January 1, 2007, the Participant notice must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution. The notice must be provided no less than 30 days and no more than 180 days prior to the Participant's Annuity Starting Date. However, distribution may commence less than 30 days after the notice is given, if the Participant is clearly informed of his/her right to take 30 days after receiving the notice to decide whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects to receive the distribution prior to the expiration of the 30-day minimum period. The notice requirements described in this paragraph may be satisfied by providing a summary of the required information, so long as the conditions described in applicable regulations for the provision of such a summary are satisfied, and the full notice is also provided (without regard to the 180-day period described in this subsection).

- (c) **Special rules.** The consent rules under this Section 7.03 apply to distributions made after the Participant's termination of employment and to distributions made prior to the Participant's termination of employment. However, the consent of the Participant (and the Participant's Spouse, if applicable) shall not be required to the extent that a distribution is required to satisfy the required minimum distribution rules under Section 8 or to satisfy the requirements of Code §415, as described in Section 5.02. A Participant also will not be required to consent to a corrective distribution of Excess Deferrals.

**7.04 Direct Rollovers.** Notwithstanding any provision in the Plan to the contrary, a Participant may elect, at the time and the manner prescribed by the Plan Administrator, to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a Direct Rollover. If an Eligible Rollover Distribution is less than \$500, the Participant may not elect a Direct Rollover of only a portion of such distribution (i.e., a Participant must elect a complete Direct Rollover if the Eligible Rollover Distribution is less than \$500). For purposes of this Section 7.04, a Participant includes a Participant or former Participant. In addition, this Section applies to any distribution from the Plan made to a Participant's surviving Spouse or to a Participant's Spouse or former Spouse who is the Alternate Payee under a QDRO, as defined in Section 1.80. This Section 7.04 also applies to distributions made to a Participant's non-Spouse beneficiary, as set forth in subsection (c) below.

(a) **Definitions.**

- (1) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's Account Balance, except an Eligible Rollover Distribution does not include:
- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Beneficiary, or for a specified period of ten years or more;
  - (ii) any distribution to the extent such distribution is a required minimum distribution under Code §401(a)(9), as described under Section 8;
  - (iii) any Hardship distribution, as described in Section 7.10(e);
  - (iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities);
  - (v) any distribution if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than \$200;
  - (vi) a distribution made to satisfy the requirements of Code §415 (as described in Section 5.02) or a distribution to correct Excess Deferrals.
- (2) **Eligible Retirement Plan.** For purposes of applying the Direct Rollover provisions under this Section 7.04, an Eligible Retirement Plan is:
- (i) a qualified plan described in Code §401(a);
  - (ii) an individual retirement account described in Code §408(a);
  - (iii) an individual retirement annuity described in Code §408(b);

- (iv) an annuity plan described in Code §403(a);
- (v) an annuity contract described in Code §403(b);
- (vi) an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; or
- (vii) for rollovers made on or after December 31, 2015, a SIMPLE IRA described in Code §408(p). However, the following restrictions apply: (1) the provision does not allow SIMPLE IRAs to accept rollovers from designated Roth accounts, and (2) the change applies only to rollovers made after the two-year period beginning on the date the Participant first participated in their employer's SIMPLE IRA plan.

The definition of Eligible Retirement Plan also applies in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a QDRO.

To the extent any portion of an Eligible Rollover Distribution is attributable to Roth Deferrals (as defined in Section 3.02(c)(2)(v)), an Eligible Retirement Plan with respect to such portion of the distribution shall include only another designated Roth account of the Participant or a Roth IRA. To the extent any portion of an Eligible Rollover Distribution is attributable to After-Tax Employee Contributions, an Eligible Retirement Plan with respect to such portion of the distribution shall include only an individual retirement account or annuity described in Code §408(a) or (b) or a qualified Defined Contribution Plan described in Code §401(a) or §403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

- (3) **Direct Rollover.** A Direct Rollover is a payment made directly from the Plan to the Eligible Retirement Plan specified by the Participant. The Plan Administrator may develop reasonable procedures for accommodating Direct Rollover requests.
- (b) **Direct Rollover notice.** A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of his/her right to a Direct Rollover, the tax consequences of not making a Direct Rollover, and if applicable, any available special income tax elections. The notice must be provided within 30 –180 days prior to the Participant's Annuity Starting Date in the same manner as described in Section 7.03(b). The Direct Rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

If a Participant terminates employment and is eligible for a distribution which is not subject to Participant consent, and the Participant does not respond to the Direct Rollover notice indicating whether a Direct Rollover is desired and the name of the Eligible Retirement Plan to which the Direct Rollover is to be made, the Plan Administrator may distribute the Participant's entire vested Account Balance in the form of an Automatic Rollover (pursuant to Section 7.05). If a distribution would qualify for Automatic Rollover, the Direct Rollover notice must describe the procedures for making an Automatic Rollover, including the name, address, and telephone number of the IRA trustee and information regarding IRA maintenance and withdrawal fees and how the IRA funds will be invested. The Direct Rollover notice also must describe the timing of the Automatic Rollover and the Participant's ability to affirmatively opt out of the Automatic Rollover.

- (c) **Direct Rollover by non-Spouse beneficiary.** The Plan must permit a non-Spouse beneficiary (as defined in Code §401(a)(9)(E)) to make a direct rollover of an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). A non-Spouse rollover will be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements under Code §3405(c).
- (d) **Direct Rollover of non-taxable amounts.** Notwithstanding any other provision of the Plan, an Eligible Rollover Distribution may include the portion of any distribution that is not includible in gross income. For this purpose, an Eligible Retirement Plan includes a Defined Contribution or Defined Benefit Plan qualified under Code §401(a) and a tax-sheltered annuity plan under Code §403(b), provided the rollover is accomplished through a direct rollover and the recipient Eligible Retirement Plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.
- (e) **Rollovers to Roth IRA.** A Participant or beneficiary (including a non-spousal beneficiary to the extent permitted under subsection (c) above), may rollover an Eligible Rollover Distribution (as defined in subsection (a)(1) above) to a Roth

IRA, provided the Participant (or beneficiary) satisfies the requirements for making a Roth contribution under Code §408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code §408A(d)(3)(A)). For purposes of this subsection (e), the Plan Administrator is not responsible for assuring the Participant (or beneficiary) is eligible to make a rollover to a Roth IRA.

#### 7.05 Automatic Rollover.

- (a) **Automatic Rollover requirements.** If a Participant is entitled to an Involuntary Cash-Out Distribution (as defined in subsection (b) below), and the Participant does not elect to receive a distribution of such amount (either as a Direct Rollover to an Eligible Retirement Plan or as a direct distribution to the Participant), then the Plan Administrator may pay the distribution in a Direct Rollover to an individual retirement plan (IRA) designated by the Plan Administrator. (The Automatic Rollover provisions under this subsection (a) apply to any Involuntary Cash-Out Distribution for which the Participant fails to consent to a distribution, without regard to whether the Participant can be located. See Section 6.10(c) for alternatives if the Participant cannot be located after a reasonable diligent search.) For purposes of applying the Automatic Rollover provisions under this Section 7.05, a Participant's Roth Deferral Account and the Participant's other Accounts are treated as accounts held under separate plans. (See Treas. Reg. §1.401(k)-1(f)(4)(ii).)
- (b) **Involuntary Cash-Out Distribution.** An Involuntary Cash-Out Distribution is any distribution that is made from the Plan without the Participant's consent. Unless elected otherwise under AA §9-2(a)(3), an Involuntary Cash-Out Distribution, for purposes of applying the Automatic Rollover requirements under this Section 7.05 does not include any amounts below \$1,000. (See Section 7.03 for the Participant consent requirements with respect to distributions under the Plan.) The Plan Administrator may decide whether or not to provide for an Automatic Rollover for a distribution if it is reasonably expected (at the time of the distribution) that the total amount the Participant will receive as a distribution during the calendar year will total less than \$200.
- (c) **Treatment of Rollover Contributions.** Unless elected otherwise under AA §9-2(a)(5), for purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the Participant's distribution attributable to any Rollover Contribution is excluded.

#### 7.06 Distribution Upon Termination of Employment. Subject to the required minimum distribution provisions under Section 8, a Participant who terminates employment for any reason (other than death) is entitled to receive a distribution of his/her vested Account Balance in accordance with this Section 7.06. (See Section 7.07 for the applicable rules when a Participant dies before distribution of his/her vested Account Balance is completed.)

- (a) **Account Balance not exceeding Cash-Out threshold.** If a Participant's vested Account Balance does not exceed \$5,000 (or other Cash-Out threshold designated under AA §9-2(a)(2)) at the time of distribution, the only distribution option available under the Plan is a lump sum option. The Participant will be eligible to receive a distribution of his/her vested Account Balance as of the date selected in AA §9-3(b).
- (b) **Account Balance exceeding Cash-Out threshold.** If a Participant's vested Account Balance exceeds \$5,000 (or other Cash-Out threshold designated under AA §9-2(a)(2)) at the time of distribution, the Participant may elect to receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1. The Participant will be eligible to receive a distribution of his/her vested Account Balance as of the date selected in AA §9-3(a). The Employer may elect to accelerate the distribution to Employees upon special circumstances, such as termination after attainment of Normal Retirement Age or other special circumstances.

#### 7.07 Distribution Upon Death. Subject to the Required Minimum Distribution rules in Section 8, a Participant's vested Account Balance will be distributed to the Participant's Beneficiary(ies) in accordance with this Section 7.07. (See subsection (c) below for rules regarding the determination of Beneficiaries upon the death of the Participant.) The form of benefit payable with respect to a deceased Participant will depend on whether the Participant dies before or after distribution of his/her Account Balance has commenced.

- (a) **Death after commencement of benefits.** If a Participant begins receiving a distribution of his/her benefits under the Plan, and subsequently dies prior to receiving the full value of his/her vested Account Balance, the remaining benefit will continue to be paid to the Participant's Beneficiary(ies) in accordance with the form of payment that has already commenced. If a Participant commences distribution prior to death only with respect to a portion of his/her Account Balance, then the rules in subsection (b) below apply to the rest of the Account Balance.
- (b) **Death before commencement of benefits.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the form and timing of any death benefits will depend on whether the value of the death benefit exceeds \$5,000 (or other threshold designated under AA §9-2(a)(2)).

- (1) **Death benefit not exceeding \$5,000.** If the value of the death benefit does not exceed \$5,000, such benefit will be paid to the Participant's Beneficiary(ies) in a single sum as soon as administratively feasible following the Participant's death.
- (2) **Death benefit exceeding \$5,000.** If the value of the death benefit exceeds \$5,000, such benefit will be paid in a lump sum as soon as administratively feasible following the Participant's death. However, the death benefit may be payable in a different form if prescribed by the Participant's Beneficiary designation, or the Beneficiary, before a lump sum payment of the benefit is made, elects to receive the distribution in an alternative form of benefit permitted under Section 7.01.

In no event will any death benefit be paid in a manner that is inconsistent with the Required Minimum Distribution rules under Section 8. The Beneficiary of any pre-retirement death benefit described in this subsection (b) may postpone the commencement of the death benefit to a date that is not later than the latest commencement date permitted under Section 8.

- (c) **Determining a Participant's Beneficiary.** The determination of a Participant's (or Beneficiary's, if applicable) Beneficiary(ies) to receive any death benefits under the Plan will be based on the Participant's (or Beneficiary's, if applicable) Beneficiary designation under the Plan. If a Participant (or Beneficiary, if applicable) does not designate a Beneficiary to receive the death benefits under the Plan, distribution will be made to the default Beneficiaries, as set forth in subsection (3) below.
  - (1) **Post-retirement death benefit.** If a Participant dies after commencing distribution of benefits under the Plan (but prior to receiving a distribution of his/her entire vested Account Balance under the Plan), the Beneficiary of any post-retirement death benefit is determined in accordance with the Beneficiary selected under the distribution option in effect prior to death.
  - (2) **Pre-retirement death benefit.** If a Participant dies before commencing distribution of his/her benefits under the Plan, the surviving Spouse (determined at the time of the Participant's death) will be treated as the sole Beneficiary, unless:
    - (i) there is a valid contrary Beneficiary designation;
    - (ii) there is no surviving Spouse (determined under applicable laws at the time of Participant's death); or
    - (iii) the Spouse makes a valid disclaimer.
  - (3) **Default beneficiaries.** To the extent a Beneficiary has not been named by the Participant, and is not designated under the terms of the Investment Arrangement(s), this Plan, or the Adoption Agreement to receive all or any portion of the deceased Participant's death benefit, such amount shall be distributed to the Participant's surviving Spouse (if the Participant was married at the time of death) who shall be considered the designated Beneficiary. If a Participant is legally divorced, the former Spouse is not considered the default Beneficiary. If the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant's surviving children (including legally adopted children, but not including step-children), as designated Beneficiaries, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant's estate. The Employer may modify the default beneficiary rules described in this subparagraph under AA §9-5(a).
  - (4) **Identification of Beneficiaries.** The Plan Administrator may request proof of the Participant's death and may require the Beneficiary to provide evidence of his/her right to receive a distribution from the Plan in any form or manner the Plan Administrator may deem appropriate. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian or conservator recognized under state law, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator or Trustee will not be liable for any payments made in accordance with this subsection (4) and will not be required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan. (See Section 9.03 for a special one-year marriage rule that may apply under AA §9-5(b).)
  - (5) **Death of Beneficiary.** Unless specified otherwise in the Participant's (or Beneficiary's, if applicable) Beneficiary designation form or under AA §9-5, if a Beneficiary does not predecease the Participant but dies before distribution of the death benefit is made to the Beneficiary, the death benefit will be paid to the Beneficiary's estate. If the Participant and the Participant's Beneficiary die simultaneously, and the Participant's

Beneficiary designation form does not address simultaneous death, the determination of the death beneficiary will be determined under any state simultaneous death laws, to the extent applicable. If no applicable state law applies, the death benefit will be paid to the contingent beneficiaries named under the Participant's beneficiary designation. If there are no contingent beneficiaries, the death benefit will be paid to the Participant's default beneficiaries, as described in subsection (3) above.

- (6) **Divorce from Spouse.** Except as otherwise provided in an Investment Arrangement, and unless designated otherwise under AA §9-5(c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded unless specifically provided otherwise under a divorce decree or QDRO, or unless the Participant enters into a new Beneficiary designation naming the prior Spouse as Beneficiary. In addition, the provisions under this subsection (6) will not apply if the Participant has entered into a Beneficiary designation that specifically overrides the provisions of this subsection (6).
- (d) **Slaver Rule.** Notwithstanding anything to the contrary in the Plan, if the Plan Administrator receives notice prior to distribution of a Participant's vested Account that an individual is responsible for the death of such Participant, then no payment of benefits with respect to such Participant will be made under any provision of the Plan to such individual. An individual will be treated as being responsible for the death of a Participant for purposes of the foregoing sentence only if, by virtue of such individual's involvement in the death of the Participant, such individual's entitlement to any interest in assets of the deceased could be denied (whether or not there is in fact any such entitlement) under any applicable state law, including, without limitation, laws governing intestate succession, wills, jointly-owned property, bonds, and life insurance. For purposes of the Plan, any such responsible individual will be deemed to have predeceased the Participant. The Plan Administrator shall withhold distribution of benefits otherwise payable under the Plan for such period of time as is necessary or appropriate under the circumstances to make a determination with regard to the application of this section.
- 7.08** **Distribution to Disabled Employees.** Unless elected otherwise under AA §9-4, no special distribution rules apply to Disabled Employees. However, the Employer may elect in AA §9-4 to permit a distribution at an earlier date for Disabled Employees.
- 7.09** **Qualified Distributions for Retired Public Safety Officers.** If permitted under separate administrative procedures, a Participant who is an eligible retired public safety officer may elect, after separation from service, to have qualified health insurance premiums deducted from amounts to be distributed from the Plan that would otherwise be includible in gross income, and to have such amounts paid directly to the insurer or group health plan. The distribution may be excluded from the Participant's gross income to the extent that the aggregate amount of the distribution does not exceed the lesser of the amount used to pay the qualified health insurance premiums of the Participant, the Participant's spouse, and the Participant's dependents (as defined in Code §152), or \$3,000, determined by aggregating all distributions with respect to the Participant that are used to pay qualified health insurance premiums from all eligible retirement plans of the Employer as defined in Code §414(d).
- (a) **Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Participant, the Participant's spouse, and the Participant's dependents (as defined in Code §152) by an accident or health insurance plan (including under a self-insured plan) or qualified long-term care insurance contract (within the meaning of Code §7702B(b)).
- (b) **Eligible retired public safety officer.** The term "eligible retired public safety officer" means an individual who separated from service, either by reason of disability or after attainment of Normal Retirement Age, as a public safety officer with the Employer. For this purpose, a public safety officer is an individual serving the Employer in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or a member of a rescue squad or ambulance crew.
- 7.10** **In-Service Distributions.** The Employer may elect under AA §10 to permit in-service distributions under the Plan. Except to the extent provided under subsection (a) below, if an in-service distribution is not specifically permitted under AA §10, a Participant may not receive a distribution from the Plan until termination of employment, death or disability.
- (a) **After-Tax Employee Contributions and Rollover Contributions.** Unless designated otherwise under AA §10-2, a Participant may withdraw at any time, upon written request, all or any portion of his/her Account Balance attributable to After-Tax Employee Contributions or Rollover Contributions. No forfeiture will occur solely as a result of an Employer's withdrawal of After-Tax Employee Contributions.
- (b) **Employer Contributions and Matching Contributions.** The Employer may elect under AA §10 the extent to which in-service distributions will be permitted from Employer Contributions (including Matching Contributions, if applicable) under the Plan. If permitted under AA §10 of the Profit Sharing Plan Adoption Agreement, Employer Contributions may be withdrawn upon the occurrence of a specified event (such as attainment of a designated age or the occurrence of a Hardship, as defined in subsection (e) below). In addition, a Participant may withdraw his/her Employer

Contributions (and Matching Contributions, if applicable) upon the completion of a certain number of years, provided no distribution solely on account of years may be made with respect to Employer Contributions that have been accumulated in the Plan for less than 2 years, unless the Participant has been a Participant in the Plan for at least 5 years. (See Section 6.09 for special vesting rules that apply if a Participant takes an in-service distribution prior to becoming 100% vested in such contributions.)

For Plan Years beginning after January 1, 2007, if the Plan is a pension plan (e.g., a money purchase plan or if the Plan holds transferred assets from a money purchase plan), a Participant may not receive an in-service distribution of his/her vested Account Balance prior to the earlier of the attainment of Normal Retirement Age or age 62 (to the extent permitted under AA §10-1 or AA §10-2).

- (c) **Salary Deferrals under Grandfathered 401(k) Arrangement.** If the Plan qualifies as a Grandfathered 401(k) Arrangement, as designated under AA §2-3 of the Profit Sharing Adoption Agreement, any Salary Deferrals (including any earnings on such amounts) generally may not be distributed prior to the Participant's severance from employment, death, or disability. However, the Employer may elect under AA §10 to permit an in-service distribution of such amounts upon attainment of a specified age (no earlier than age 59½, upon a Hardship (as defined in subsection (e) below) or upon a Qualified Reservist Distribution, as defined under subsection (d) below.

If Normal Retirement Age or Early Retirement Age is earlier than age 59½ and an in-service distribution is permitted upon attainment of Normal Retirement Age or Early Retirement Age from Salary Deferrals, the Normal Retirement Age and/or Early Retirement Age will be deemed to be age 59½ for purposes of determining eligibility to distribute Salary Deferrals.

- (d) **Penalty-free withdrawals for individuals called to active duty.** Effective September 11, 2001, the distribution provisions applicable to Salary Deferrals include a Qualified Reservist Distribution, as defined in subsection (1) below. If a Participant takes a Qualified Reservist Distribution, such distributions will not be subject to the 10% penalty tax under Code §72(t). A Qualified Reservist Distribution is only available if permitted under AA §10-1.

- (1) **Qualified Reservist Distribution.** For purposes of this subsection (d), a Qualified Reservist Distribution means any distribution to an individual if:

- (i) such distribution is from amounts attributable to elective deferrals described in Code §402(g)(3)(A) or (C) or Code §501(c)(18)(D)(iii),
- (ii) such individual was (by reason of being a member of a reserve component (as defined in §101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and
- (iii) such distribution is made during the period beginning on the date of such order or call, and ending at the close of the active duty period.

- (2) **Active duty.** A Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001.

- (e) **Hardship distribution.** The Employer may elect under AA §10-1 or AA §10-2 of the Profit Sharing Plan Adoption Agreement to authorize an in-service distribution upon the occurrence of a Hardship event. A Hardship distribution of Salary Deferrals must meet the requirements of a safe harbor Hardship as described under subsection (1) below. For other contribution types, the Employer may elect to apply the safe harbor Hardship rules under subsection (1) below or the non-safe harbor Hardship provisions under subsection (2) below.

- (1) **Safe harbor Hardship distribution.** To qualify for a safe harbor Hardship, a Participant must demonstrate an immediate and heavy financial need, as described in subsection (i) below, and the distribution must be necessary to satisfy such need, as described in subsection 0 below.

- (i) **Immediate and heavy financial need.** To be considered an immediate and heavy financial need, the Hardship distribution must be made to satisfy one of the following financial needs:
  - (A) to pay expenses incurred or necessary for medical care (as described in Code §213(d)) of the Participant, the Participant's Spouse or dependents (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
  - (B) for the purchase (excluding mortgage payments) of a principal residence for the Participant;

- (C) for payment of tuition and related educational fees (including room and board) for the next 12 months of post-secondary education for the Participant, the Participant’s Spouse, children or dependents;
- (D) to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant’s principal residence;
- (E) to pay funeral or burial expenses for the Participant's deceased parent, Spouse, child or dependent;
- (F) to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165 (determined without regard to whether the loss exceeds the 10% of adjusted gross income limit); or
- (G) for any other event that the IRS recognizes as a safe harbor Hardship distribution event under ruling, notice or other guidance of general applicability.

For purposes of determining eligibility of a Hardship distribution under this subsection (i), a dependent is determined under Code §152. However, for taxable years beginning on or after January 1, 2005, the determination of dependent for purposes of tuition and education fees under subsection (C) above will be made without regard to Code §152(b)(1), (b)(2), and (d)(1)(B), and the determination of dependent for purposes of funeral or burial expenses under subsection (E) above will be made without regard to Code §152(d)(1)(B).

A Participant must provide the Plan Administrator with a written request for a Hardship distribution. The Plan Administrator may require written documentation, as it deems necessary, to sufficiently document the existence of a proper Hardship event.

- (ii) **Distribution necessary to satisfy need.** A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant if:
  - (A) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);
  - (B) The Participant has obtained all available distributions, other than Hardship distributions, and all nontaxable loans under the Plan and all plans maintained by the Employer; and
  - (C) The Participant is suspended from making Salary Deferrals (and After-Tax Employee Contributions) for at least 6 months after the receipt of the Hardship distribution.
- (2) **Non-safe harbor Hardship distribution.** The Employer may elect in AA §10-1(e) or AA §10-2(e) of the Profit Sharing Plan Adoption Agreement to permit Participants to take a Hardship distribution without satisfying the requirements of subsection (1) above.
  - (i) **Immediate and heavy financial need.** For purposes of determining whether a Hardship exists under this subsection (2), the same Hardship distribution events described in subsection (1)(i) will qualify as a Hardship distribution event under this subsection (2). The Employer may modify the permissible Hardship distribution events under AA §10-3(f) of the Profit Sharing Plan Adoption Agreement.
  - (ii) **Distribution necessary to satisfy need.** A Hardship distribution under this subsection (2) need not satisfy the requirements under subsection (1)(ii) above. Instead, all relevant facts and circumstances are considered to determine whether the Employee has other resources reasonably available to relieve or satisfy the need. For this purpose, resources include assets of the Employee's Spouse and minor children that are reasonably available to the Employee. In addition, the amount withdrawn for hardship may include amounts necessary to pay federal, state or local income taxes, or penalties reasonably anticipated to result from the distribution.

The Employer or Plan Administrator may rely upon the Employee's written representation that the need cannot be reasonably relieved through the following sources:

- (A) Reimbursement or compensation by insurance;



- (B) Liquidation of the Employee's assets;
- (C) Cessation of Salary Deferrals or After-Tax Employee Contributions under the Plan;
- (D) Other currently available distributions or nontaxable loans from the Plan or any other plan maintained by the Employer (or any other employer);
- (E) Borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

The Employer or Plan Administrator may not rely upon the written representation under this subsection (ii) if the Employer has actual knowledge to the contrary.

- (3) **Amount available for Hardship distribution.** A Participant may receive a Hardship distribution of any portion of his/her vested Employer Contribution Account or Matching Contribution Account (including earnings thereon), as permitted under AA §10. A Participant may receive a Hardship distribution of Salary Deferrals provided such distribution, when added to other Hardship distributions from Salary Deferrals, does not exceed the total Salary Deferrals the Participant has made to the Plan (increased by income allocable to such Salary Deferrals as of the later of December 31, 1988 or the end of the last Plan Year ending before July 1, 1989).
- (4) **Availability to terminated Employees.** If a Hardship distribution is permitted under AA §10-1 or AA §10-2, a Participant may take such a Hardship distribution after termination of employment to the extent no other distribution is available from the Plan.
- (5) **Application of Hardship distributions rules with respect to primary beneficiaries.** If elected under AA §10-3(e), if the Plan otherwise permits Hardship distributions based on the safe harbor hardship provisions under subsection (1), the existence of an immediate and heavy financial need under subsection (1)(i) may be determined with respect to a primary beneficiary under the Plan. For this purpose, a primary beneficiary is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of a Participant's Account Balance upon the death of the Participant. Hardship distributions with respect to primary beneficiaries under this subsection (5) are limited to Hardship distributions on account of medical expenses, educational expenses and funeral expenses (as described in subsections (1)(i)(A), (1)(i)(C) and (1)(i)(E), above)). Any Hardship distribution with respect to a primary beneficiary must satisfy all the other requirements applicable to Hardship distributions under subsection (e).

**7.11 Sources of Distribution.** Except as otherwise provided in the Investment Arrangement, and unless provided otherwise in separate administrative provisions adopted by the Plan Administrator, in applying the distribution provisions under this Section 7, distributions will be made on a pro rata basis from all Accounts from which a distribution is permitted. Alternatively, the Plan Administrator may permit Participants to direct the Plan Administrator as to which Account the distribution is to be made. Regardless of a Participant's direction as to the source of any distribution, the tax effect of such a distribution will be governed by Code §72 and the regulations thereunder.

- (a) **Exception for Hardship withdrawals.** If the Plan permits a Hardship withdrawal from both Salary Deferrals (including Roth Deferrals) and Employer Contributions, a Hardship distribution will first be treated as having been made from a Participant's Employer Contribution Account and then from the Employer's Matching Contribution Account, to the extent such Hardship distribution is available with respect to such Accounts. Only when all available amounts have been exhausted under the Participant's Employer Contribution Account and/or Matching Contribution Account will a Hardship distribution be made from a Participant's Pre-Tax Salary Deferral Account and/or Roth Deferral Account. (See subsection (b) below for the ordering rules for distributions from the Pre-Tax Salary Deferral and Roth Deferral Accounts.) The Plan Administrator may modify the ordering rules under this subsection (a) under separate administrative procedures.
- (b) **Roth Deferrals.** If a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, withdrawals and loans from such Accounts will be made in accordance with this subsection (b).
  - (1) **Distributions and withdrawals.** Unless designated otherwise under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement or separate administrative procedures, if a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, the Participant may designate the extent to which a distribution or withdrawal of Salary Deferrals will come from the Pre-Tax Salary Deferral Account or the Roth Deferral Account. Alternatively, the Employer may provide under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement (or under separate administrative procedures) that any distribution or withdrawal of Salary Deferrals will be made on a pro rata basis from the Pre-Tax Salary Deferral Account and the Roth Deferral Account.

Alternatively, the Employer may designate any other order of distribution and withdrawals under AA §6A-5 or separate administrative procedures.

- (2) **Distribution of Excess Deferrals.** Unless designated otherwise under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement or separate administrative procedures, if a Participant has both a Pre-Tax Salary Deferral Account and a Roth Deferral Account, and the Plan is required to make a corrective distribution of Excess Deferrals to such Participant, the Participant may designate whether the Plan will make such corrective distribution of Excess Deferrals from the Pre-Tax Salary Deferral Account or the Roth Deferral Account. Alternatively, the Employer may elect under AA §6A-5 of the Grandfathered 401(k) Plan Adoption Agreement (or under separate administrative procedures) that corrective distributions of Salary Deferrals to correct Excess Deferrals will be made pro rata from the Pre-Tax Salary Deferral Account and Roth Deferral Account or first from the Pre-Tax Salary Deferral Account or first from the Roth Deferral Account.

Unless designated otherwise under separate administrative procedures, if a Participant is permitted to designate the extent to which a corrective distribution is made from the Pre-Tax Salary Deferral Account or the Roth Deferral Account, and the Participant fails to designate the appropriate Account by the date the corrective distribution is made from the Plan, such corrective distribution may be withdrawn equally from both the Pre-Tax Salary Deferral Account and the Roth Deferral Account, or the Employer may withdraw such amounts first from either the Pre-Tax Salary Deferral Account or the Roth Deferral Account.

- (c) **In-kind distributions.** Nothing in this Section 7 precludes the Plan Administrator from making a distribution in the form of property, or other in-kind distribution. If the Plan invests in Annuity Contracts, the Plan Administrator may make a distribution in the form of distributed Annuity Contracts. An in-kind distribution is only available to the extent such investments are held in the Participant's Account at the time of the distribution. This subsection does not give any Participant the right to request an in-kind distribution if not otherwise authorized by the Plan Administrator.

- 7.12 **Correction of Qualification Defects.** Nothing in this Section 7 precludes the Plan Administrator from making a distribution to a Participant to correct a qualification defect consistent with the correction procedures under the IRS' voluntary compliance programs. Thus, for example, if an Employee is permitted to enter the Plan prior to his/her proper Entry Date under Section 2.03(b) and the Plan Administrator determines that a corrective distribution is a proper means of correcting the operational violation, nothing in this Section 7 would prevent the Plan from making such corrective distribution. Any such distribution must be made in accordance with the correction procedures applicable under the IRS' voluntary correction programs under Rev. Proc. 2013-12 (or successive guidance).

**SECTION 8  
REQUIRED MINIMUM DISTRIBUTIONS**

**8.01 Required Minimum Distributions.** Unless specified otherwise under Appendix A of the Adoption Agreement, the provisions of this Section apply to calendar years beginning on or after January 1, 2003. A Participant's entire interest under the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date (as defined in Section 8.05(e)). All distributions required under this Section 8 will be determined and made in accordance with the regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G). For purposes of applying the required minimum distribution rules under this Section 8, any distribution made in a form other than a lump sum must be made over one of the following periods (or a combination thereof):

- (a) the life of the Participant;
- (b) the life of the Participant and a Designated Beneficiary;
- (c) a period certain not extending beyond the life expectancy of the Participant; or
- (d) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and a Designated Beneficiary.

**8.02 Death of Participant before required distributions begin.** If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) **Surviving Spouse is sole Designated Beneficiary.** Unless designated otherwise under AA §10-4, if the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the surviving Spouse may elect to take distributions under the five-year rule (as described in Section 8.06(a) below) or under the life expectancy method. If the life expectancy method applies, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.
- (b) **Surviving Spouse is not the sole Designated Beneficiary.** Unless designated otherwise under AA §10-4, if the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary may elect to take distributions under the five-year rule (as described in Section 8.06(a) below) or under the life expectancy method. If the life expectancy method applies, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. If the Designated Beneficiary does not elect to commence distributions by December 31 of the calendar year immediately following the calendar year in which the Participant dies, a complete distribution must be made by December 31 of the calendar year containing the fifth anniversary of the Participant's death. See Section 8.06(a) below.
- (c) **No Designated Beneficiary.** If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) **Death of surviving Spouse.** If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 8.02 (other than subsection (a) above) will apply as if the surviving Spouse were the Participant.

For purposes of this Section 8.02 and AA §10-4, unless subsection (d) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (d) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under subsection (a) above. If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under subsection (a) above), the date distributions are considered to begin is the date distributions actually commence.

**8.03 Required Minimum Distributions during Participant's lifetime.**

- (a) **Amount of Required Minimum Distribution for each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
  - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

- (2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.
- (b) **Lifetime Required Minimum Distributions continue through year of Participant's death.** Required Minimum Distributions will be determined under this subsection (b) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

#### 8.04 **Required Minimum Distributions After Participant's Death.**

(a) **Death on or after date required distributions begin.**

- (1) **Participant survived by Designated Beneficiary.** If the Participant dies on or after the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:
- (i) The Participant's remaining life expectancy is calculated in accordance with the Single Life Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1, using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated using the Single Life Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1, for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
- (iii) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated under the Single Life Table using the age of the Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) **No Designated Beneficiary.** If the participant dies on or after the date required distributions begin and there is no Designated Beneficiary as of the Participant's date of death who remains a Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) **Death before date required distributions begin.**

- (1) **Participant survived by Designated Beneficiary.** Unless designated otherwise under AA §10-4, if the Participant dies before the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection (a) above.
- (2) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of the date of death of the Participant who remains a Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 8.02(a), this subsection (b) will apply as if the surviving Spouse were the Participant.

**8.05 Definitions.**

- (a) **Designated Beneficiary.** A Beneficiary designated by the Participant (or the Plan), whose life expectancy may be taken into account to calculate minimum distributions, pursuant to Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4.
- (b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 8.02. The Required Minimum Distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The Required Minimum Distribution for other Distribution Calendar Years, including the Required Minimum Distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- (c) **Life expectancy.** For purposes of determining a Participant's Required Minimum Distribution amount, life expectancy is computed using one of the following tables, as appropriate: (1) Single Life Table, (2) Uniform Life Table, or (3) Joint and Last Survivor Table found in Treas. Reg. §1.401(a)(9)-9, Q&A-1.
- (d) **Account Balance.** For purposes of determining a Participant's Required Minimum Distribution, the Participant's Account Balance is determined based on the Account Balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (the "valuation calendar year"), increased by the amount of any contributions or forfeitures allocated to the Account Balance as of dates in the calendar year after the Valuation Date, and decreased by distributions made in the calendar year after the Valuation Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year, if distributed or transferred in the valuation calendar year.
- (e) **Required Beginning Date.** Unless designated otherwise under AA §10-4, a Participant's Required Beginning Date under the Plan is April 1 that follows the end of the calendar year in which the later of the following two events occurs:
- (1) the Participant attains age 70½; or
  - (2) the Participant terminates employment.

A Participant may begin in-service distributions prior to his/her Required Beginning Date only to the extent authorized under Section 7.10 and AA §10. However, if this Plan were amended to add the Required Beginning Date rules under this subsection (e), a Participant who attained age 70½ prior to January 1, 1999 (or, if later, January 1 following the date the Plan is first amended to contain the Required Beginning Date rules under this subsection (e)) may receive in-service minimum distributions in accordance with the terms of the Plan in existence prior to such amendment.

**8.06 Special Rules.**

- (a) **Election to apply 5-year rule to required distributions after death.** If the Participant dies before distributions begin and there is a Designated Beneficiary, the Employer may elect under AA §10-4, instead of applying the provisions of Sections 8.02 and 8.04, to require the Participant's entire interest to be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to either the Participant or the surviving Spouse begin, this election will apply as if the surviving Spouse were the Participant.
- (b) **Election to allow Participants or Beneficiaries to elect 5-year rule.** If a Participant or Designated Beneficiary is permitted under AA §10-4 to elect whether to apply the life expectancy rule under Section 8.02 above or the five year rule under subsection (a) above, the election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 8.02 or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule under subsection (a) above, unless the Employer specifies otherwise under AA §10-4(b).
- (c) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a lump sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 8.02 and 8.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the regulations.

- (d) **Treatment of trust beneficiaries as Designated Beneficiaries.** If a trust is properly named as a Beneficiary under the Plan, the beneficiaries of the trust will be treated as the Designated Beneficiaries of the Participant solely for purposes of determining the distribution period under this Section 8 with respect to the trust's interests in the Participant's vested Account Balance. The beneficiaries of a trust will be treated as Designated Beneficiaries for this purpose only if, during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as Designated Beneficiaries, the following requirements are met:
- (1) the trust is a valid trust under state law, or would be but for the fact there is no corpus;
  - (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the Participant;
  - (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interests in the Participant's vested Account Balance are identifiable from the trust instrument; and
  - (4) the Plan Administrator receives the documentation described in subsection (e)(1) below.

If the foregoing requirements are satisfied and the Plan Administrator receives such additional information as it may request, the Plan Administrator may treat such beneficiaries of the trust as Designated Beneficiaries.

(e) **Special rules applicable to trust beneficiaries.**

(1) **Information that must be supplied to Plan Administrator.**

- (i) **Required minimum distribution before death where Spouse is sole beneficiary.** If a Participant designates a trust as the beneficiary of his/her entire benefit and the Participant's Spouse is the sole beneficiary of the trust, the Participant must provide the information under (A) or (B) below to satisfy the information requirements under subsection (d)(4) above.
- (A) The Participant must provide to the Plan Administrator a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator a copy of each such amendment; or
  - (B) The Participant must:
    - (I) provide to the Plan Administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the Spouse is the sole beneficiary) for purposes of Code §401(a)(9);
    - (II) certify that, to the best of the Participant's knowledge, the list under subsection (I) above is correct and complete and that the requirements of subsection (d) above are satisfied;
    - (III) agree that, if the trust instrument is amended at any time in the future, the Participant will, within a reasonable time, provide to the Plan Administrator corrected certifications to the extent that the amendment changes any information previously certified; and
    - (IV) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.
- (ii) **Required minimum distribution after death.** In order to satisfy the documentation requirement of subsection (d)(4) above for required minimum distributions after the death of the Participant (or Spouse in a case to which Treas. Reg. §.401(a)(9)-3, Q&A-5 applies), the trustee of the trust must satisfy the requirements of subsection (A) or (B) below by October 31 of the calendar year immediately following the calendar year in which the Participant died.
- (A) The trustee of the trust must:
    - (I) provide the Plan Administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the Participant's death;

**Pre-Approved Governmental Defined Contribution Plan  
Section 8 – Required Minimum Distributions**

(II) certify that, to the best of the trustee's knowledge, the list in subsection (I) above is correct and complete and that the requirements of subsection (d) above are satisfied; and

(III) agree to provide a copy of the trust instrument to the Plan Administrator upon demand.

(B) The trustee of the trust must provide the Plan Administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the Participant under the Plan as of the Participant's date of death.

(2) **Relief for discrepancy.** If required minimum distributions are determined based on the information provided to the Plan Administrator in certifications or trust instruments described in subsection (1) above, the Plan will not fail to satisfy Code §401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the Plan Administrator, provided the Plan Administrator reasonably relied on the information provided and the required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

**8.07 Transitional Rule.** Notwithstanding the other requirements of this Section 8, distribution on behalf of any Employee may be made in accordance with all of the following requirements (regardless of when such distribution commences):

- (a) The distribution by the Plan is one that would not have disqualified the Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984;
- (b) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant;
- (c) Such designation was in writing, was signed by the Participant or the beneficiary, and was made before January 1, 1984;
- (d) The Participant had accrued a benefit under the Plan as of December 31, 1983; and
- (e) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (a) - (e) above.

If a designation is revoked any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the proposed regulations thereunder, but for the TEFRA §242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Treas. Reg. §1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

**8.08 Modification of Minimum Distribution Rules Relating to Qualified Longevity Annuity Contracts.** The following provisions modify the required minimum distribution rules under this Section 8 of the Plan to conform the rules to final Treasury Regulation §1.401(a)(9)-6 relating to the purchase of Qualifying Longevity Annuity Contracts (QLACs). The Plan will apply the provisions consistent with the requirements under the Treas. Reg. §§1.401(a)(9)-5 and 1.401(a)(9)-6, as amended.

- (a) The following provisions modify the required minimum distribution rules under this Section 8 of the Plan to conform the rules to final Treasury Regulation §1.401(a)(9)-6 relating to the purchase of Qualifying Longevity Annuity

Contracts (QLACs). The Plan will apply the provisions consistent with the requirements under the Treas. Reg. §§1.401(a)(9)-5 and 1.401(a)(9)-6, as amended.

(b) **Effective/Applicability Dates.**

- (1) **General effective dates.** This Section 8.08 applies to contracts purchased on or after July 2, 2014. If on or after July 2, 2014 an existing contract is exchanged for a contract that satisfies the requirements of this Section 8.08, the new contract will be treated as purchased on the date of the exchange, and the fair market value of the contract that is exchanged for a QLAC will be treated as a premium paid with respect to the QLAC.
- (2) **Delayed applicability date for requirement that contract state that it is intended to be QLAC.** An annuity contract purchased before January 1, 2016, will not fail to be a QLAC merely because the contract does not satisfy the requirement of subsection (d)(1)(vi), provided that:
  - (i) When the contract (or a certificate under a group annuity contract) is issued, the Employee is notified that the annuity contract is intended to be a QLAC; and
  - (ii) The contract is amended (or a rider, endorsement or amendment to the certificate is issued) no later than December 31, 2016, to state that the annuity contract is intended to be a QLAC.

(c) **Account Balance for Determining Minimum Distributions.** For purposes of determining a Participant's Required Minimum Distribution as described under this Section 8.08 of the Plan, the Participant's Account Balance as defined under Section 8.05(d) of the Plan, does not include the value of any Qualifying Longevity Annuity Contract (QLAC), described under subsection (d) below and Treas. Reg. §1.401(a)(9)-6, Q&A - 17, that is held under the Plan.

(d) **Rules Applicable to Qualifying Longevity Annuity Contracts.**

- (1) **Definition of Qualifying Longevity Annuity Contracts.** A Qualifying Longevity Annuity Contract (QLAC) is an annuity contract that is purchased from an insurance company for an Employee and that, in accordance with the rules of application of this Article II and Treas. Reg. §1.401(a)(9)-6, Q&A - 17, satisfies each of the following requirements:
  - (i) Premiums for the contract satisfy the requirements of subsection (2) of this subsection (d);
  - (ii) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the 85<sup>th</sup> anniversary of the Employee's birth;
  - (iii) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of this Article and Treas. Reg. §1.401(a)(9) (other than the requirement that annuity payments commence on or before the Required Beginning Date);
  - (iv) The contract does not make available any commutation benefit, cash surrender right, or other similar feature;
  - (v) No benefits are provided under the contract after the death of the employee other than the benefits described in Subsection (3) of this subsection (d);
  - (vi) When the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and
  - (vii) The contract is not a variable contract under Code §817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner of the Internal Revenue Service in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.



- (2) **Limitations on premiums.**
- (i) **In general.** The premiums paid with respect to the contract on a date satisfy the requirements of this subsection (2) if they do not exceed the lesser of the dollar limitation in subsection (ii) below or the percentage limitation in subsection (iii) below.
- (ii) **Dollar limitation.** The dollar limitation is an amount equal to the excess of:
- (A) \$125,000 (as adjusted under Section (d)(2) of Treas. Reg. §1.401(a)(9)-6, Q&A - 17), over
- (B) The sum of:
- (I) The premiums paid before that date with respect to the contract, and
- (II) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the Employee under the Plan, or any other plan, annuity, or account described in Code §§ 401(a), 403(a), 403(b), or 408 or eligible governmental plan under Code §457(b).
- (iii) **Percentage limitation.** The percentage limitation is an amount equal to the excess of:
- (A) 25 percent of the Employee's Account Balance under the Plan (including the value of any QLAC held under the plan for the Employee) as of that date, determined in accordance with Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (d)(1)(iii), over
- (B) The sum of:
- (I) The premiums paid before that date with respect to the contract, and
- (II) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the employee under the plan.
- (3) **Payments after death of the Employee.**
- (i) **Surviving spouse is sole beneficiary.**
- (A) **Death on or after annuity starting date.** If the Employee dies on or after the annuity starting date for the contract, and the Employee's surviving spouse is the sole beneficiary under the contract, then except as provided in Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that is payable to the Employee.
- (B) **Death before annuity starting date.**
- (I) **Amount of annuity.** If the employee dies before the annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph in Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that would have been payable to the Employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a Qualified Preretirement Survivor Annuity.
- (II) **Commencement date for annuity.** Any life annuity payable to the surviving spouse under Subsection (I) above must commence no later than the date on which the annuity payable to the Employee would have commenced under the contract if the Employee had not died.
- (ii) **Surviving spouse is not sole beneficiary.**

- (A) **Death on or after annuity starting date.** If the Employee dies on or after the annuity starting date for the contract and the Employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (c)(2)(iii)) of the periodic annuity payment that is payable to the Employee.
- (B) **Death before annuity starting date.**
- (I) **Amount of annuity.** If the Employee dies before the annuity starting date and the Employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (c)(4), the only benefit permitted to be paid after the Employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under Treas. Reg. §1.401(a)(9)-6, Q&A - 17(c)(2)(iii)) of the periodic annuity payment that would have been payable to the Employee as of the date that benefits to the designated beneficiary commence under this subsection (I)
- (II) **Commencement date for annuity.** In any case in which the employee dies before the annuity starting date, any life annuity payable to a designated beneficiary under this subsection (II) must commence by the last day of the calendar year immediately following the calendar year of the Employee's death.
- (4) **Rules of application.**
- (i) **Rules relating to premiums.**
- (A) **Reliance on representations.** For purposes of the limitation on premiums described in Subsections (2)(ii) and (2)(iii) above, unless the Plan Administrator has actual knowledge to the contrary, the Plan Administrator may rely on an Employee's representation (made in writing or such other form as may be prescribed by the Commissioner of the Internal revenue Service) of the amount of the premiums described in subsections (2)(ii)(B)(II) and (2)(iii)(B)(II) above, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the Employer or Related Employer.
- (B) **Consequences of excess premiums.**
- (I) **General Rule.** If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under subsection (II) below, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the Employee's account in accordance with Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (d)(1)(ii)(B). If the contract fails to be a QLAC, then the value of the contract may not be disregarded under A-3(d) of Treas. Reg. §1.401(a)(9)-5 as of the date on which the contract ceases to be a QLAC.
- (II) **Correction in year following year of excess.** If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the Employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under this subsection (II) at any time, and the value of the contract will not be included in the Employee's Account Balance. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the Employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the Employee's account balance for that calendar year must be increased to reflect that excess premium in the same manner as an Employee's Account Balance is increased under Treas. Reg. §1.401(a)(9)-7, A-2 to reflect a rollover received after the last valuation date.
- (III) **Return of excess premium not a commutation benefit.** If the excess premium is returned to the non-QLAC portion of the Employee's account as described in Treas. Reg.

Pre-Approved Governmental Defined Contribution Plan  
Section 8 – Required Minimum Distributions

---

§1.401(a)(9)-6, Q&A - 17 (d)(1)(ii)(B), it will not be treated as a violation of the requirement in subsection (d)(1)(iv) that the contract not provide a commutation benefit.

- (C) **Application of 25-percent limit.** For purposes of the 25-percent limit under subsection (2)(iii)(A) above, an Employee's Account Balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The Account Balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid, and decreased for distributions made from the account during that period.
- (ii) **Dollar and age limitations subject to adjustments.**
  - (A) **Dollar limitation.** In the case of calendar years beginning on or after January 1, 2015, the \$125,000 amount under subsection (2)(ii)(A) above will be adjusted at the same time and in the same manner as the limits are adjusted under Code §415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this subsection that is not a multiple of \$10,000 will be rounded to the next lowest multiple of \$10,000.
  - (B) **Age limitation.** The maximum age set forth in subsection (1)(ii) above may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner of the Internal Revenue Service in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.
  - (C) **Prospective application of adjustments.** If a contract fails to be a QLAC because it does not satisfy the dollar limitation in subsection (2)(ii) above, or the age limitation in subsection (1)(ii) above, any subsequent adjustment that is made pursuant to Subsections (A) or (B) above will not cause the contract to become a QLAC.
- (iii) **Determination of whether contract is intended to be a QLAC.** If a contract fails to be a QLAC at any time for a reason other than an excess premium described in Treas. Reg. §1.401(a)(9)-6, Q&A - 17 (d)(1)(ii), then as of the date of purchase the contract will not be treated as a QLAC (for purposes of A-3(d) of Treas. Reg. §1.401(a)(9)-5), or as a contract that is intended to be a QLAC as of the date of purchase.
- (iv) **Group annuity contract certificates.** The requirement under subsection (d)(1)(vi) above, that the contract state that it is intended to be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the Employee's interest under the group annuity contract is intended to be a QLAC.

**SECTION 9  
SPOUSAL CONSENT RULES**

- 9.01** **Application of Joint and Survivor Annuity Rules.** As a Governmental Plan, the Qualified Joint and Survivor Annuity rules under Code §§401(a)(11) and 417 do not apply to the Plan. The Employer may elect to require spousal consent for Plan distributions under AA §9-2(b).
- 9.02** **Spousal consent.** If the Employer elects under AA §9-2(b) to require spousal consent to a Plan distribution, the Spouse's consent will be required with respect to a distribution as designated in AA §9-2(b). A Spouse's consent, if required, must be provided pursuant to a Qualified Election. For this purpose, a Qualified Election is a written election signed by both the Participant and the Participant's Spouse that specifically acknowledges the effect of the election. The Spouse's consent must be witnessed by a plan representative or notary public. If the Qualified Election permits the Participant to change a payment form or Beneficiary designation without any further consent by the Spouse, the Qualified Election must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit, as applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights.
- 9.03** **One-year marriage rule.** The Employer may elect under AA §9-5(b), for purposes of identifying a Beneficiary under Section 7.07(c) and for purposes of applying the spousal consent rules under this Section 9, that an individual will not be considered the surviving Spouse of the Participant if the Participant and the surviving Spouse have not been married for the entire one-year period ending on the date of the Participant's death.

SECTION 10  
PLAN ACCOUNTING AND INVESTMENTS

**10.01 Participant Accounts.** The Plan Administrator will maintain a separate Account for each Participant to reflect the Participant's entire interest under the Plan. The Plan Administrator may maintain any (or all) of the following separate sub-Accounts:

- Employer Contribution Account
- Matching Contribution Account
- After-Tax Employee Contribution Account
- Rollover Contribution Account
- Transfer Account.

In addition, if this Plan qualifies as a Grandfathered 401(k) Arrangement (as designated under AA §2-3 of the Profit Sharing Plan Adoption Agreement), the Plan Administrator may also maintain the following separate Accounts:

- Pre-Tax Salary Deferral Account
- Roth Deferral Account
- Roth Rollover Contribution Account
- In-Plan Roth Conversion Account

The Plan Administrator may establish other Accounts, as it deems necessary, for the proper administration of the Plan.

**10.02 Valuation of Accounts.** A Participant's portion of the Trust assets is determined as of each Valuation Date under the Plan. The value of a Participant's Account consists of the fair market value of the Participant's share of the Trust assets. The Trustee must value Plan assets at least annually. The Trustee's determination of the value of Trust assets shall be final and conclusive.

- (a) **Periodic valuation.** The Employer may elect under AA §11-1 or may elect operationally to value assets on a periodic basis. The Trustee and the Plan Administrator may adopt reasonable procedures for performing such valuations.
- (b) **Daily valuation.** The Employer may elect under AA §11-1 or may elect operationally to value assets on a daily basis. The Plan Administrator may adopt reasonable procedures for performing such valuations. Unless otherwise set forth in the written procedures, a daily valued Plan will have its assets valued at the end of each business day during which the New York Stock Exchange is open. The Plan Administrator has authority to interpret the provisions of this Plan in the context of a daily valuation procedure. This includes, but is not limited to, the determination of the value of the Participant's Account for purposes of Participant loans, distribution and consent rights, and corrective distributions.
- (c) **Interim valuations.** The Plan Administrator may request the Trustee to perform interim valuations.

**10.03 Adjustments to Participant Accounts.** Unless the Plan Administrator adopts other reasonable administrative procedures, as of each Valuation Date under the Plan, each Participant's Account is adjusted in the following manner.

- (a) **Distributions and forfeitures from a Participant's Account.** A Participant's Account will be reduced by any distributions, forfeitures and other reductions from the Account since the previous Valuation Date.
- (b) **Life insurance premiums and dividends.** A Participant's Account will be reduced by the amount of any life insurance premium payments under the Plan made for the benefit of the Participant since the previous Valuation Date. The Account will be credited with any dividends or credits paid on any life insurance policy held by the Trust for the benefit of the Participant.
- (c) **Contributions and forfeitures allocated to a Participant's Account.** A Participant's Account will be credited with any contribution, forfeiture or other additions allocated to the Participant since the previous Valuation Date.
- (d) **Net income or loss.** A Participant's Account will be adjusted for any net income or loss in accordance with any reasonable procedures that the Plan Administrator may establish. Such procedures may be reflected in a funding agreement governing the applicable investments under the Plan. To the extent the Plan Administrator does not establish separate written procedures, net income or loss will be allocated to Participants' Accounts in accordance with the following provisions.
  - (1) **Net income or loss attributable to General Trust Account.** To the extent a Participant's Account is invested as part of a General Trust Account, such Account is adjusted for its allocable share of net income or loss experienced by the General Trust Account. The net income or loss of the General Trust Account is allocated to the Participant Accounts in the ratio that each Participant's Account bears to all Accounts, based on the value of each Participant's Account as of the prior Valuation Date, as adjusted in subsections (a) - (c) above. In

determining Participant Account Balances as of the prior Valuation Date, the Employer may apply a weighted average method that credits each Participant's Account with a portion of the contributions made since the prior Valuation Date. The Plan's investment procedures may designate the specific type(s) of contributions eligible for a weighted allocation of net income or loss and may designate alternative methods for determining the weighted allocation. If the Employer elects to apply a weighted average method, such method will be applied uniformly to all Participant Accounts under the General Trust Account.

- (2) **Net income or loss attributable to a Directed Account.** If the Participant or Beneficiary is entitled to direct the investment of all or part of his/her Account (see Section 10.07), the Account (or the portion of the Account which is subject to such direction) will be maintained as a Directed Account, which reflects the value of the directed investments as of any Valuation Date. The assets held in a Directed Account may be (but are not required to be) segregated from the other investments held in the Trust. Net income or loss attributable to the investments made by a Directed Account is allocated to such Account in a manner that reasonably reflects the investment experience of such Directed Account. Where a Directed Account reflects segregated investments, the manner of allocating net income or loss shall not result in a Participant (or Beneficiary) being entitled to distribution from the Directed Account that exceeds the value of such Account as of the date of distribution.

**10.04 Share or unit accounting.** The Plan's investment procedures may provide for share or unit accounting to reflect the value of Accounts, if such method is appropriate for the investments allocable to such Accounts.

**10.05 Suspense accounts.** The Plan's investment procedures also may provide for special valuation procedures for suspense accounts that are properly established under the Plan.

**10.06 Investments under the Plan.**

- (a) **Investment options.** The person(s) responsible for the investment of Plan assets is authorized to invest Plan assets in any prudent investment. Investment options include, but are not limited to, the following:

- common and preferred stock or other equity securities (including stock bought and sold on margin);
- corporate bonds;
- open-end or closed-end mutual funds (including funds for which a Volume Submitter Sponsor, Trustee, or affiliate serves as investment advisor or other capacity);
- money market accounts;
- certificates of deposit;
- debentures;
- commercial paper;
- put and call options;
- limited partnerships;
- mortgages;
- U.S. Government obligations, including U.S. Treasury notes and bonds;
- real and personal property having a ready market;
- life insurance or annuity policies;
- commodities;
- savings accounts;
- notes; and
- securities issued by the Trustee and/or its affiliates, as permitted by law.

- (b) **Investment of tax deductible Employee contributions in life insurance and collectibles.** No portion of any voluntary, tax deductible Employee contributions being held under the Plan (or any earnings thereon) may be invested in life insurance contracts or, as with any Participant-directed investment, in tangible personal property characterized by the IRS as a collectible.

**10.07 Participant-directed investments.** Unless otherwise indicated in the Adoption Agreement or in separate procedures, and except as otherwise required in an Investment Arrangement, each Participant shall have the exclusive right, in accordance with the provisions of the Plan, to direct the investment of all or a portion of the amounts allocated to the separate Accounts of the Participant under the Plan. (A reference to Participant under this Section 10.07 also applies to any Beneficiary or Alternate Payee eligible to direct investments under the Plan.)

- (a) **Limits on participant investment direction.** The Employer may elect under AA §C-1 or under separate investment procedures to limit Participant direction of investment to specific types of contributions or with respect to specific

**Pre-Approved Governmental Defined Contribution Plan  
Section 10 – Plan Accounting and Investments**

investment options. The terms of an Investment Arrangement may impose additional limitations. In no case may Participants direct that investments be made in collectibles, other than U.S. Government or State issued gold and silver coins. (See Section 10.03(d)(2) for rules regarding allocation of net income or loss to a Directed Account.)

- (b) **Failure to direct investment.** If Participant direction of investments is permitted, the Plan Administrator will designate how accounts will be invested in the absence of proper affirmative direction from the Participant. The Plan or Plan Administrator may designate a default fund under the Plan on behalf of Participants who have been identified by the Plan Administrator as having not specified investment choices under the Plan.

**10.08 Investment in Life Insurance.** A group or individual life insurance policy purchased by the Plan may be issued on the life of a Participant, a Participant's Spouse, a Participant's child or children, a family member of the Participant, or any other individual with an insurable interest. If this Plan is a money purchase plan, a life insurance policy may only be issued on the life of the Participant. A life insurance policy includes any type of policy, including a second-to-die policy, provided that the holding of a particular type of policy is not prohibited under rules applicable to qualified plans.

Any premiums on life insurance held for the benefit of a Participant will be charged against such Participant's vested Account Balance. Unless directed otherwise, the Plan Administrator will reduce each of the Participant's Accounts under the Plan equally to pay premiums on life insurance held for such Participant's benefit. Any premiums paid for life insurance policies must satisfy the incidental life insurance rules under subsection (a) below.

- (a) **Incidental Life Insurance Rules.** Any life insurance purchased under the Plan must meet the following requirements:
- (1) **Ordinary life insurance policies.** The aggregate premiums paid for ordinary life insurance policies (i.e., policies with both nondecreasing death benefits and nonincreasing premiums) for the benefit of a Participant must be at any time less than 50% of the aggregate amount of Employer Contributions (including Salary Deferrals) and forfeitures that have been allocated to the Account of such Participant.
  - (2) **Life insurance policies other than ordinary life.** The aggregate premiums paid for term, universal or other life insurance policies (other than ordinary life insurance policies) for the benefit of a Participant shall not at any time exceed 25% of the aggregate amount of Employer Contributions (including Salary Deferrals) and forfeitures that have been allocated to the Account of such Participant.
  - (3) **Combination of ordinary and other life insurance policies.** The sum of one-half (½) of the aggregate premiums paid for ordinary life insurance policies plus all the aggregate premiums paid for any other life insurance policies for the benefit of a Participant shall not at any time exceed 25% of the aggregate amount of Employer Contributions (including Salary Deferrals) and forfeitures which have been allocated to the Account of such Participant.
  - (4) **Exception for certain Profit Sharing Plans.** If the Plan is a Profit Sharing Plan, the limitations in this Section do not apply to the extent life insurance premiums are paid only with Employer Contributions and forfeitures that have been accumulated in the Participant's Account for at least two years or are paid with respect to a Participant who has been a Participant for at least five years. For purposes of applying this special limitation, Employer Contributions do not include any Salary Deferrals, QMACs, QNECs or Safe-Harbor Contributions under a 401(k) plan.
  - (5) **Exception for After-Tax Employee Contributions and Rollover Contributions.** The Plan Administrator also may invest, with the Participant's consent, any portion of the Participant's After-Tax Employee Contribution Account or Rollover Contribution Account in a group or individual life insurance policy for the benefit of such Participant, without regard to the incidental life insurance rules under this Section.
- (b) **Ownership of Life Insurance Policies.** The Trustee is the owner of any life insurance policies purchased under the Plan. Any life insurance policy purchased under the Plan must designate the Trustee as owner and beneficiary under the policy. The Trustee will pay all proceeds of any life insurance policies to the Beneficiary of the Participant for whom such policy is held in accordance with the distribution provisions under Section 7. In no event shall the Trustee retain any part of the proceeds from any life insurance policies for the benefit of the Plan.
- (c) **Evidence of Insurability.** Prior to purchasing a life insurance policy, the Plan Administrator may require the individual whose life is being insured to provide evidence of insurability, such as a physical examination, as may be required by the Insurer.
- (d) **Distribution of Insurance Policies.** Life insurance policies under the Plan, which are held on behalf of a Participant, must be distributed to the Participant or converted to cash upon the later of the Participant's Annuity Starting Date (as defined in Section 1.10) or termination of employment. Any life insurance policies that are held on behalf of a

Pre-Approved Governmental Defined Contribution Plan  
Section 10 – Plan Accounting and Investments

---

terminated Participant must continue to satisfy the incidental life insurance rules under subsection (a) above. If a life insurance policy is purchased on behalf of an individual other than the Participant, and such individual dies, the Participant may withdraw any or all life insurance proceeds from the Plan, to the extent such proceeds exceed the cash value of the life insurance policy determined immediately before the death of the insured individual.

- (e) **Discontinuance of Insurance Policies.** Investments in life insurance may be discontinued at any time, either at the direction of the Trustee or other fiduciary responsible for making investment decisions. If the Plan provides for Participant direction of investments, life insurance as an investment option may be eliminated at any time by the Plan Administrator. Where life insurance investment options are being discontinued, the Plan Administrator, in its sole discretion, may offer the sale of the insurance policies to the Participant, or to another person, provided that the prohibited transaction exemption requirements prescribed by the Department of Labor are satisfied.
- (f) **Protection of Insurer.** An Insurer (as defined in Section 1.59) that issues a life insurance policy under the terms of this Section 10.08, shall not be responsible for the validity of this Plan and shall be protected and held harmless for any actions taken or not taken by the Trustee or any actions taken in accordance with written directions from the Trustee or the Employer (or any duly authorized representatives of the Trustee or Employer). An Insurer shall have no obligation to determine the propriety of any premium payments or to guarantee the proper application of any payments made by the insurance company to the Trustee.

The Insurer is not and shall not be considered a party to this Plan and is not a fiduciary with respect to the Plan solely as a result of the issuance of life insurance policies under this Section 10.08.

- (g) **No Responsibility for Act of Insurer.** Neither the Employer, the Plan Administrator nor the Trustee shall be responsible for the validity of the provisions under a life insurance policy issued under this Section 10.08 or for the failure or refusal by the Insurer to provide benefits under such policy. The Employer, the Plan Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the life insurance policy or which renders the policy invalid or unenforceable in whole or in part.



**SECTION 11  
PLAN ADMINISTRATION AND OPERATION**

- 11.01 Plan Administrator.** The Employer is the Plan Administrator, unless the Employer designates in writing an alternative Plan Administrator. The Plan Administrator has the responsibilities described in this Section 11.
- 11.02 Designation of Alternative Plan Administrator.** The Employer may designate another person or persons as the Plan Administrator by name, by reference to the person or group of persons holding a particular position, by reference to a procedure under which the Plan Administrator is designated, or by reference to a person or group of persons charged with the specific responsibilities of Plan Administrator.
- (a) **Acceptance of responsibility by designated Plan Administrator.** If the Employer designates an alternative Plan Administrator, the designated Plan Administrator must accept its responsibilities in writing. The Employer and the designated Plan Administrator jointly will determine the time period for which the alternative Plan Administrator will serve.
  - (b) **Multiple alternative Plan Administrators.** If the Employer designated more than one person as an alternative Plan Administrator, such Plan Administrators shall act by majority vote, unless the group delegates particular Plan Administrator duties to a specific person.
  - (c) **Resignation or removal of designated Plan Administrator.** A designated Plan Administrator may resign by delivering a written notice of resignation to the Employer. The Employer may remove a designated Plan Administrator by delivering a written notice of removal. If a designated Plan Administrator resigns or is removed, and no new alternative Plan Administrator is designated, the Employer is the Plan Administrator.
  - (d) **Employer responsibilities.** If the Employer designates an alternative Plan Administrator, the Employer will provide in a timely manner all appropriate information necessary for the Plan Administrator to perform its duties. This information includes, but is not limited to, Participant compensation data, Employee employment, service and termination information, and other information the Plan Administrator may require. The Plan Administrator may rely on the accuracy of any information and data provided by the Employer.
  - (e) **Indemnification of Plan Administrator.** The Employer will indemnify, defend and hold harmless the Plan Administrator (including the individual members of any administrative committee appointed by the Employer to handle administrative functions of the Plan or any Employees who have administrative responsibility for the Plan) with respect to any liability, loss, damage or expense resulting from any act or omission (except willful misconduct or gross negligence) in their official capacities in the administration of this Plan, including attorney, accountant and advisory fees and all other expenses reasonably incurred in their defense.
- 11.03 Duties, Powers and Responsibilities of the Plan Administrator.** The Plan Administrator will administer the Plan for the exclusive benefit of the Plan Participants and Beneficiaries, and in accordance with the terms of the Plan. If the terms of the Plan are unclear, the Plan Administrator may interpret the Plan, provided such interpretation is consistent with the rules of Code §401(a) and subject to the limitations of the Investment Arrangement(s). This right to interpret the Plan is an express grant of discretionary authority to resolve ambiguities in the Plan document and to make discretionary decisions regarding the interpretation of the Plan's terms, including who is eligible to participate under the Plan, and the benefit rights of a Participant or Beneficiary. Unless an interpretation or decision is determined to be arbitrary and capricious, the Plan Administrator will not be held liable for any interpretation of the Plan terms or decision regarding the application of a Plan provision.
- (a) **Delegation of duties, powers and responsibilities.** The Plan Administrator may delegate its duties, powers or responsibilities to one or more persons. Such delegation must be in writing and accepted by the person or persons receiving the delegation. The Employer must agree to such delegation by an alternative Plan Administrator.
  - (b) **Specific Plan Administrator responsibilities.** The Plan Administrator has the general responsibility to control and manage the operation of the Plan. This responsibility includes, but is not limited to, the following:
    - (1) To interpret and enforce the provisions of the Plan, including those related to Plan eligibility, vesting and benefits;
    - (2) To communicate with the Trustee and other responsible persons with respect to the crediting of Plan contributions, the disbursement of Plan distributions and other relevant matters;
    - (3) To develop separate procedures (if necessary) consistent with the terms of the Plan to assist in the administration of the Plan, including the adoption of a separate or modified loan policy (see Section 13), procedures for direction of investment by Participants (see Section 10.07), procedures for determining whether domestic

**Pre-Approved Governmental Defined Contribution Plan  
Section 11 – Plan Administration and Operation**

relations orders are QDROs, and procedures for the determination of investment earnings to be allocated to Participants' Accounts (see Section 10.03(d));

- (4) To maintain all records necessary for tax and other administration purposes;
- (5) To furnish and to file all appropriate notices, reports and other information to Participants, Beneficiaries, the Employer, the Trustee and government agencies (as necessary);
- (6) To provide information relating to Plan Participants and Beneficiaries;
- (7) To retain the services of other persons, including investment managers, attorneys, consultants, advisers and others, to assist in the administration of the Plan;
- (8) To review and decide on claims for benefits under the Plan; and
- (9) To correct any defect or error in the operation of the Plan;

**11.04 Plan Administration Expenses.**

- (a) **Reasonable Plan administration expenses.** All reasonable expenses related to plan administration may be paid from Plan assets, except to the extent the expenses are paid (or reimbursed) by the Employer. For this purpose, Plan expenses include, but are not limited to, all reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Trust (including such reasonable compensation to the Trustee as may be agreed upon from time to time between the Employer or Plan Administrator and the Trustee and any fees for legal services rendered to the Trustee).
- (b) **Plan expense allocation.** The Plan Administrator may allocate plan expenses among the accounts of Plan Participants. The Plan Administrator has authority to allocate these expenses either proportionally based on the value of the Account Balances or pro rata based on the number of Participants in the Plan. The Plan Administrator will determine the proper method for allocating expenses in accordance with such reasonable nondiscriminatory rules as the Plan Administrator deems appropriate under the circumstances. Unless the Plan Administrator decides otherwise, the following expenses will be allocated to the Participant's Account relative to which the expense is incurred: distribution expenses, including those relating to lump sums, installments, QDROs, hardship, in-service and required minimum distributions; loan expenses; participant direction expenses, including brokerage fees; and benefit calculations.
- (c) **Expenses related to administration of former Employee or surviving Spouse.** The Plan may charge reasonable Plan administrative expenses to the Account of that former Employee or surviving Spouse, but only if the administrative expenses are on a pro rata basis. Under the pro rata basis, the expenses are based on the amount in each account of a former Employee or surviving Spouse receiving benefits from the Plan. The Plan Administrator may use another reasonable basis for charging the expenses.
- (d) **Reimbursement Spending Account.** The Employer may maintain a reimbursement spending account to hold certain miscellaneous amounts that are remitted to the Plan. Any amounts allocated to the reimbursement spending account will be applied to pay reasonable Plan expenses no later than the end of the Plan Year following the Plan Year in which such amounts were allocated to the reimbursement spending account and any remaining amounts held in the reimbursement spending account may be allocated to Participants as an allocation of earnings for the Plan Year. Such excess amounts held under the reimbursement spending account may be allocated in a reasonable manner. For example, such excess amounts may be allocated to all Participants under the Plan pro-rata on the basis of Account Balances or under any other reasonable method.

**11.05 Qualified Domestic Relations Orders (QDROs).** As a Governmental Plan, the requirements of Code §414(p) do not apply to the Plan. The Employer may elect under AA §C-4 to use the rules set forth below (which are patterned after the rules under Code §414(p)) for domestic relations orders or may elect under AA §C-4 or under separate administrative procedures to develop its process for addressing domestic relations orders received by the Plan.

- (a) **In general.** Upon receipt of an order which appears to be a QDRO, the Plan Administrator will notify the Participant involved and each Alternate Payee under the order. The Plan Administrator will determine whether the order is a QDRO and will notify each affected individual of such determination.
- (b) **Definitions related to Qualified Domestic Relations Orders (QDROs).**
  - (1) **QDRO.** A QDRO is a domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive, or assigns to an Alternate Payee the right to receive, all or a portion of the benefits payable with

**Pre-Approved Governmental Defined Contribution Plan  
Section 11 – Plan Administration and Operation**

respect to a Participant under the Plan. The QDRO must contain certain information and meet other requirements described in this Section 11.05.

- (2) **Domestic relations order.** A domestic relations order is a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law).
- (3) **Alternate Payee.** An Alternate Payee must be a Spouse, former Spouse, child, or other dependent of a Participant.
- (c) **Recognition as a QDRO.** To be a QDRO, an order must be a domestic relations order (as defined in subsection (b)(2) above) that relates to the provision of child support, alimony payments, or marital property rights for the benefit of an Alternate Payee. The Plan Administrator is not required to determine whether the court or agency issuing the domestic relations order had jurisdiction to issue an order, whether state law is correctly applied in the order, whether service was properly made on the parties, or whether an individual identified in an order as an Alternate Payee is a proper Alternate Payee under state law.

A domestic relations order otherwise meeting the requirements to be a QDRO shall not fail to be treated as a QDRO solely because:

- (1) the order is issued after, or revises, another domestic relations order or QDRO; or
- (2) of the time at which the order is issued, including orders issued after the death of the Participant.

Any QDRO described in this Section 11.05 shall be subject to the same requirements and protections which apply to QDROs under Code §414(p)(7).

- (d) **Contents of QDRO.** A QDRO must contain the following information:
  - (1) the name and last known mailing address of the Participant and each Alternate Payee;
  - (2) the name of each plan to which the order applies;
  - (3) the dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the Alternate Payee; and
  - (4) the number of payments or time period to which the order applies.
- (e) **Impermissible QDRO provisions.**
  - (1) The order must not require the Plan to provide an Alternate Payee or Participant with any type or form of benefit, or any option, not otherwise provided under the Plan;
  - (2) The order must not require the Plan to provide for increased benefits (determined on the basis of actuarial value);
  - (3) The order must not require the Plan to pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a QDRO; and
  - (4) The order must not require the Plan to pay benefits to an Alternate Payee in the form of a Qualified Joint and Survivor Annuity for the lives of the Alternate Payee and his or her subsequent Spouse.
- (f) **Immediate distribution to Alternate Payee.** Even if a Participant is not eligible to receive an immediate distribution from the Plan, an Alternate Payee may receive a QDRO benefit immediately in a lump sum, provided such distribution is consistent with the QDRO provisions.
- (g) **Fee for QDRO determination.** The Plan Administrator may condition the making of a QDRO determination on the payment of a fee by a Participant or an Alternate Payee (either directly or as a charge against the Participant's Account).
- (h) **QDRO procedure.**
  - (1) **Access to information.** The Plan Administrator will provide access to Plan and Participant benefit information sufficient for a prospective Alternate Payee to prepare a QDRO. Such information might include the summary plan description, other relevant plan documents, and a statement of the Participant's benefit entitlements. The

disclosure of this information is conditioned on the prospective Alternate Payee providing to the Plan Administrator information sufficient to reasonably establish that the disclosure request is being made in connection with a domestic relations order.

- (2) **Notifications to Participant and Alternate Payee.** The Plan Administrator will promptly notify the affected Participant and each Alternate Payee named in the domestic relations order of the receipt of the order. The Plan Administrator will send the notification to the address included in the domestic relations order. Along with the notification, the Plan Administrator will provide a copy of the Plan's procedures for determining whether a domestic relations order is a QDRO.
- (3) **Alternate Payee representative.** The prospective Alternate Payee may designate a representative to receive copies of notices and Plan information that are sent to the Alternate Payee with respect to the domestic relations order.
- (4) **Evaluation of domestic relations order.** Within a reasonable period of time, the Plan Administrator will evaluate the domestic relations order to determine whether it is a QDRO. A reasonable period will depend on the specific circumstances. The domestic relations order must contain the information described in subsection (d) above. If the order is only deficient in a minor respect, the Plan Administrator may supplement information in the order from information within the Plan Administrator's control or through communication with the prospective Alternate Payee.
  - (i) **Separate accounting.** Upon receipt of a domestic relations order, the Plan Administrator will separately account for and preserve the amounts that would be payable to an Alternate Payee until a determination is made with respect to the status of the order. During the period in which the status of the order is being determined, the Plan Administrator will take whatever steps are necessary to ensure that amounts that would be payable to the Alternate Payee, if the order were a QDRO, are not distributed to the Participant or any other person. The separate accounting requirement may be satisfied, at the Plan Administrator's discretion, by a segregation of the assets that are subject to separate accounting.
  - (ii) **Separate accounting until the end of 18-month period.** The Plan Administrator will continue to separately account for amounts that are payable under the QDRO until the end of an 18-month period. The 18-month period will begin on the first date following the Plan's receipt of the order upon which a payment would be required to be made to an Alternate Payee under the order. If, within the 18-month period, the Plan Administrator determines that the order is a QDRO, the Plan Administrator must pay the Alternate Payee in accordance with the terms of the QDRO. If, however, the Plan Administrator determines within the 18-month period that the order is not a QDRO, or, if the status of the order is not resolved by the end of the 18-month period, the Plan Administrator may pay out the amounts otherwise payable under the order to the person or persons who would have been entitled to such amounts if there had been no order. If the order is later determined to be a QDRO, the order will apply only prospectively; that is, the Alternate Payee will be entitled only to amounts payable under the order after the subsequent determination.
  - (iii) **Preliminary review.** The Plan Administrator will perform a preliminary review of the domestic relations order to determine if it is a QDRO. If this preliminary review indicates the order is deficient in some manner, the Plan Administrator will allow the parties to attempt to correct any deficiency before issuing a final decision on the domestic relations order. The ability to correct is limited to a reasonable period of time.
  - (iv) **Notification of determination.** The Plan Administrator will notify in writing the Participant and each Alternate Payee of the Plan Administrator's decision as to whether a domestic relations order is a QDRO. In the case of a determination that an order is not a QDRO, the written notice will contain the following information:
    - (A) references to the Plan provisions on which the Plan Administrator based its decision;
    - (B) an explanation of any time limits that apply to rights available to the parties under the Plan (such as the duration of any protective actions the Plan Administrator will take); and
    - (C) a description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.

Pre-Approved Governmental Defined Contribution Plan  
Section 11 – Plan Administration and Operation

---

- (v) **Treatment of Alternate Payee.** If an order is accepted as a QDRO, the Plan Administrator will act in accordance with the terms of the QDRO as if it were a part of the Plan. Except as designated otherwise under this subsection (v), an Alternate Payee will be considered a Beneficiary under the Plan and be afforded the same rights as a Beneficiary. The Plan Administrator will provide any appropriate disclosure information relating to the Plan to the Alternate Payee. In determining the rights of an Alternate Payee, unless designated otherwise under AA §C-4(b), the following rules apply:
  - (A) **Loans.** An Alternate Payee is not permitted to take a loan from the Plan.
  - (B) **Death benefits.** If an Alternate Payee dies prior to receiving the entire amount designated under the QDRO, such benefits will be paid in accordance with Section 7.07, treating the Alternate Payee as the Beneficiary. If the Alternate Payee dies without a designated Beneficiary, the benefits will be paid to the Alternate Payee's estate. Any death benefit will be paid in a single sum as soon as administratively feasible after the Alternate Payee's death.
  - (C) **Direction of investments.** An Alternate Payee has the right to direct the investment of the portion of the Participant's benefit that is segregated for the Alternate Payee's benefit pursuant to a QDRO in the same manner as the Participant.

**11.06** **Claims Procedure.** The Plan Administrator may establish procedures for administering benefit claims. Such benefit claims procedures should provide claimants with a reasonable opportunity to have a full and fair review of a denied claim. The Plan Administrator is authorized to conduct an examination of the relevant facts to determine the merits of a Participant's or Beneficiary's claim for Plan benefits.

**SECTION 12  
TRUST AND OTHER PLAN FUNDING**

- 12.01** **Establishment of Trust or Other Funding Mechanism.** In conjunction with the establishment of this Plan, the Employer will establish and maintain a domestic Trust in the United States consisting of such sums as shall from time to time be paid to the Trustee under the Plan and such earnings, income and appreciation as may accrue thereon.

The Employer, in lieu of a Trust, may establish an alternative funding mechanism, as allowed for plans qualified under Code §401(a).

- 12.02** **Conflicting Trust Provisions.** In the event of any conflict between the terms of this Plan and any conflicting provision contained in any associated Trust, custodial account document or any document that is incorporated by reference, the terms of this Plan will govern.

- 12.03** **More than One Trustee.** If the Plan has more than one person acting as Trustee, the Trustees may allocate the Trustee responsibilities by mutual agreement. The Trustees may agree to make decisions by a majority vote or may permit any one of the Trustees to make any decision, undertake any action or execute any documents affecting this Trust without the approval of the remaining Trustees. The Trustees may agree to the allocation of responsibilities in a separate trust agreement or other binding document.

- 12.04** **Annual Valuation.** The Plan assets will be valued at least on an annual basis. The Employer may designate more frequent Valuation Dates under AA §11-1. Notwithstanding any election under AA §11-1, the Trustee and Plan Administrator may agree to value the Trust on a more frequent basis, and/or to perform an interim valuation of the Trust.

- 12.05** **Appointment of Custodian.** The Plan Administrator may appoint a Custodian to hold all or any portion of the Plan assets. A Custodian has the powers, rights and responsibilities similar to those of a Directed Trustee. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an investment manager, or other third party with authority to provide direction to the Custodian. The Employer may enter into a separate agreement with the Custodian. Such separate agreement must be consistent with the responsibilities and obligations set forth in this Plan document.

- 12.06** **Custodial Accounts, Annuity Contracts and Insurance Contracts.** As provided under Code §401(f), a custodial account, an annuity contract or a contract issued by an Insurer is treated as a qualified trust under the Plan if (i) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under Code §401(a) and (ii) in the case of a custodial account the assets thereof are held by a bank (as defined in Code §408(n)) or another person who demonstrates to the IRS that the manner in which the assets are held are consistent with the requirements of Code §401(a).

No insurance contract will be purchased under the Plan unless such contract or a separate definite written agreement between the Employer and the Insurer provides that no value under contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual contracts that provide a Participant's benefit under the Plan, such individual contracts shall constitute the Participant's Account Balance. If this Plan is funded by group contracts, under the group annuity or group insurance contract, premiums or other consideration received by the insurance company must be allocated to Participants' accounts under the Plan.

SECTION 13  
PARTICIPANT LOANS

**13.01 Availability of Participant Loans.** The Employer may elect under Appendix B of the Adoption Agreement to permit Participants to take loans from their vested Account Balance under the Plan. Participant loans may be treated as a segregated investment on behalf of each individual Participant for whom the loan is made or may be treated as a general investment of the Plan. If the Employer elects to permit loans under the Plan, the Employer may elect to use the default loan policy under this Section 13, as modified under Appendix B of the Adoption Agreement, or an outside loan policy for purposes of administering Participant loans under the Plan. If a separate written loan policy is adopted, the terms of such separate loan policy will control over the terms of this Plan with respect to the administration of any Participant loans. Any separate written loan policy must satisfy the requirements under Code §72(p) and the regulations thereunder. All loans are subject to the terms of the Investment Arrangement(s)

To receive a Participant loan, a Participant must sign (including, where applicable, using electronic or other means recognized as sufficient) a promissory note along with a pledge or assignment of the portion of the Account Balance used for security on the loan. The loan will be evidenced by a legally enforceable agreement which specifies the amount and term of the loan, and the repayment schedule.

**13.02 Must be Available in Reasonably Equivalent Manner.** Participant loans must be made available to Participants in a reasonably equivalent manner. The Employer may elect under AA §B-8 to limit the availability of Participant loans to specified events. For example, the availability of Participant loans may be limited to the occurrence of a hardship event as described in Section 7.10(c)(1)(i).

**13.03 Loan Limitations.** A Participant loan may not be made to the extent such loan (when added to the outstanding balance of all other loans made to the Participant) exceeds the lesser of:

- (a) \$50,000 (reduced by the excess, if any, of the Participant's highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which such loan is made, over the Participant's outstanding balance of loans from the Plan as of the date such loan is made) or
- (b) one-half (½) of the Participant's vested Account Balance, determined as of the Valuation Date coinciding with or immediately preceding such loan, adjusted for any contributions or distributions made since such Valuation Date.

If so elected under AA §B-4, a Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance. However, if a Participant takes a loan in excess of 50% of the Participant's vested Account Balance, such loan is still subject to the adequate security requirements under Section 13.06.

In applying the limitations under this Section 13.03, all plans maintained by the Employer are aggregated and treated as a single plan. In addition, any assignment or pledge of any portion of the Participant's interest in the Plan and any loan, pledge, or assignment with respect to any insurance contract purchased under the Plan will be treated as loan under this Section.

**13.04 Limit on Amount and Number of Loans.** Unless elected otherwise under AA §B-5 and/or AA §B-6, or under a separate written loan policy, a Participant may not receive a Participant loan of less than \$1,000 nor may a Participant have more than one Participant loan outstanding at any time.

- (a) **Loan renegotiation.** Unless designated otherwise under AA §B-14, a Participant may be permitted to renegotiate a loan without violating the one outstanding loan requirement to the extent such renegotiated loan is a new loan (i.e., the renegotiated loan separately satisfies the reasonable interest rate requirement under Section 13.05, the adequate security requirement under Section 13.06, and the periodic repayment requirement under Section 13.07) and the renegotiated loan does not exceed the limitations under Section 13.03 above, treating both the replaced loan and the renegotiated loan as outstanding at the same time. However, if the term of the renegotiated loan does not end later than the original term of the replaced loan, the replaced loan may be ignored in applying the limitations under Section 13.03 above.
- (b) **Participant must be creditworthy.** The Plan Administrator may refuse to make a loan to any Participant who is determined to be not creditworthy. For this purpose, a Participant is not creditworthy if, based on the facts and circumstances, it is reasonable to believe that the Participant will not repay the loan. A Participant who has defaulted on a previous loan from the Plan and has not repaid such loan (with accrued interest) at the time of any subsequent loan will be treated as not creditworthy until such time as the Participant repays the defaulted loan (with accrued interest).

**13.05 Reasonable Rate of Interest.** All Participant loans will be charged a reasonable rate of interest. Alternative methods for determining a reasonable rate of interest may be identified under AA §B-7 or under a separate written loan policy. The interest rate assumptions must be periodically reviewed to ensure the interest rate charged on Participant loans is reasonable.

If a Participant is in military service while he/she has an outstanding Participant loan, the applicable interest charged on such loan during the period while the Participant is in military service will not exceed 6% per year provided the Participant provides written notice and a copy of his/her call-up or extension orders to the Plan Administrator within 180 days following the Participant's termination or release from military service. For this purpose, military service is as defined in the Soldier's and Sailor's Civil Relief Act of 1940 as modified by the Servicemembers Civil Relief Act of 2003. The Participant may voluntarily waive this 6% interest limitation and the Plan Administrator may petition the court to retain the original interest rate if the ability to repay is not affected by the Participant's activation to military duty.

**13.06** **Adequate Security.** All Participant loans must be adequately secured. The Participant's vested Account Balance shall be used as security for a Participant loan provided the outstanding balance of all Participant loans made to such Participant does not exceed 50% of the Participant's vested Account Balance, determined immediately after the origination of each loan. The Plan Administrator may require a Participant to provide additional collateral to receive a Participant loan if the Plan Administrator determines such additional collateral is required to protect the interests of Plan Participants. A separate loan policy or written modifications to this loan policy may prescribe alternative rules for obtaining adequate security.

**13.07** **Periodic Repayment.** A Participant loan must provide for level amortization with payments to be made not less frequently than quarterly. A Participant loan must be payable within a period not exceeding five (5) years, unless the loan is for the purchase of the Participant's principal residence, in which case the loan may be payable within ten (10) years or such longer period that is commensurate with the repayment period permitted by commercial lenders for similar loans. Loan repayments must be made through payroll withholding, ACH and/or coupon payment.

(a) **Leave of absence.** A Participant with an outstanding Participant loan may suspend loan payments to the Plan for up to 12 months for any period during which the Participant's pay is insufficient to fully repay the required loan payments. Upon the Participant's return to employment (or after the end of the 12-month period, if earlier), the Participant's outstanding loan will be re-amortized over the remaining period of such loan to make up for the missed payments. The re-amortized loan may extend beyond the original loan term so long as the loan is paid in full by whichever of the following dates comes first:

- (1) the date which is five (5) years from the original date of the loan (or the end of the suspension, if sooner); or
- (2) the original loan repayment deadline (or the end of the suspension period, if later) plus the length of the suspension period.

Alternatively, upon a Participant's return to employment (or after the end of the 12-month period, if earlier), the Plan Administrator may allow the Participant's outstanding loan payments to resume at the same loan payment amount as of the time of the loan suspension, with a balloon payment of the remaining balance due by the earlier of (1) the date which is five (5) years from the original date of the loan (or the end of the suspension, if sooner), or (2) the original loan repayment deadline (or the end of the suspension period, if later) plus the length of the suspension period.

(b) **Military leave.** A Participant with an outstanding Participant loan also may suspend loan payments for any period such Participant is on military leave, in accordance with Code §414(u)(4). Upon the Participant's return from military leave (or the expiration of five years from the date the Participant began his/her military leave, if earlier), loan payments will recommence under the amortization schedule in effect prior to the Participant's military leave, without regard to the five-year maximum loan repayment period. Alternatively, the loan may be re-amortized to require a different level of loan payment, as long as the amount and frequency of such payments are not less than the amount and frequency under the amortization schedule in effect prior to the Participant's military leave.

**13.08** **Designation of Accounts.** A Participant loan will be treated as a segregated investment on behalf of the individual Participant for whom the loan is made or may be treated as a general investment of the Plan. Unless designated otherwise under AA §B-9 or under a separate loan procedure, loan amounts may be taken from any available contribution source under the Plan. The Plan Administrator may determine the contribution sources from which a loan is taken or may follow directions of the Participant.

Each payment of principal and interest paid by a Participant on his/her Participant loan shall be credited to the same Participant Accounts and investment funds within such Accounts from which the loan was taken.

**13.09** **Procedures for Loan Default.** Except as otherwise provided in the Investment Arrangement and in any loan agreement, and subject to applicable requirements in Code §72(p) and the regulations thereunder, the following loan default provisions will apply. A Participant will be considered to be in default with respect to a loan if any scheduled repayment with respect to such loan is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. The Employer may apply a shorter cure period under AA §B-10.

If a Participant defaults on a Participant loan, the Plan may not offset the Participant's Account Balance until the Participant is otherwise entitled to an immediate distribution of the portion of the Account Balance which will be offset and such amount



being offset is available as security on the loan, pursuant to Section 13.06. For this purpose, a loan default is treated as an immediate distribution event to the extent the law does not prohibit an actual distribution of the type of contributions which would be offset as a result of the loan default). The Participant may repay the outstanding balance of a defaulted loan (including accrued interest through the date of repayment) at any time.

Pending the offset of a Participant's Account Balance following a defaulted loan, the following rules apply to the amount in default.

- (a) Interest continues to accrue on the amount in default until the time of the loan offset or, if earlier, the date the loan repayments are made current or the amount is satisfied with other collateral.
- (b) A subsequent offset of the amount in default is not reported as a taxable distribution, except to the extent the taxable portion of the default amount was not previously reported by the Plan as a taxable distribution.
- (c) The post-default accrued interest included in the loan offset is not reported as a taxable distribution at the time of the offset.

A separate loan policy or written modifications to this loan policy may modify the procedures for determining a loan default.

### 13.10 **Termination of Employment.**

- (a) **Offset of outstanding loan.** If permitted under the Investment Arrangement, the loan agreement and any loan policy and unless elected otherwise under AA §B-12 or if a Participant requests a Direct Rollover as allowed under Section 13.10(b), a Participant loan becomes due and payable in full immediately upon the Participant's termination of employment. Upon a Participant's termination, the Participant may repay the entire outstanding balance of the loan (including any accrued interest) within a reasonable period following termination of employment. If the Participant does not repay the entire outstanding loan balance, the Participant's vested Account Balance will be reduced by the remaining outstanding balance of the loan to the extent such Account Balance is available as security on the loan, pursuant to Section 13.06, and the remaining vested Account Balance will be distributed in accordance with the distribution provisions under Section 7. If the outstanding loan balance of a deceased Participant is not repaid, the outstanding loan balance shall be treated as a distribution to the Participant and shall reduce the death benefit amount payable to the Beneficiary under Section 7.07.
- (b) **Direct Rollover.** Unless elected otherwise under AA §B-13, upon termination of employment, a Participant may request a Direct Rollover of the loan note (provided the distribution is an Eligible Rollover Distribution as defined in Section 7.04(a)(1)) to another qualified plan which agrees to accept a Direct Rollover of the loan note. A Participant may not engage in a Direct Rollover of a loan to the extent the Participant has already received a deemed distribution with respect to such loan. (See the rules regarding deemed distributions upon a loan default under Section 13.09.)

13.11 **Mergers, Transfers or Direct Rollovers from another Plan/Change in Loan Record Keeper.** Except as otherwise provided in an Investment Arrangement and related loan agreement, and subject to applicable requirements in Code §72(p) and the regulations thereunder, any Participant loan transferred into the Plan as the result of a merger, consolidation, or plan to plan transfer, or rolled over to the Plan from another plan, shall be administered in accordance with the provisions of the note reflecting such loan, and shall remain outstanding until repaid in accordance with its terms, except that the Participant may be permitted to renegotiate the terms of the loan to the extent necessary to ensure the administration of such loan continues to satisfy the requirements of Code §72(p) and the regulations thereunder. In addition, if there is a change in the person or persons to whom the record keeping of Participant loans has been delegated, a loan shall continue to be administered in accordance with the provisions of the note reflecting such loan, and shall remain outstanding until repaid in accordance with its terms, except that the Participant may be permitted to renegotiate the terms of a loan to the extent necessary to ensure the administration of the loan after the change in the loan record keeper continues to satisfy the requirements of Code §72(p) and the regulations thereunder, regardless of any contrary election under AA §B-14.

13.12 **Amendment of Plan to Eliminate Participant Loans.** The Plan may be amended at any time to eliminate Participant loans on a prospective basis. However, the elimination of a Participant loan feature may not result in the acceleration of payment of any existing Participant loans, unless the terms of the Participant loan permit such acceleration.

**SECTION 14**  
**PLAN AMENDMENTS, TERMINATION, MERGERS AND TRANSFERS**

**14.01 Plan Amendments.**

- (a) **Amendment by the Provider.** The Provider (as described in §4.08 of Revenue Procedure 2017-41 or its successor) may amend any part of the plan. However, for purposes of reliance on an Opinion Letter, the Provider will no longer have the authority to amend the plan on behalf of the Employer as of the date (1) the employer amends the plan to incorporate a type of plan described in §6.03 of Rev. Proc. 2017-41 that is not permitted under the Pre-approved Plan program, or (2) the Internal Revenue Service notifies the employer, in accordance with §8.06(3) of Rev. Proc. 2017-41, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan.

For purposes of Provider amendments, the Mass Submitter shall be recognized as the agent of the Provider. If the Provider does not adopt the amendments made by the Mass Submitter, it will no longer be identical to or a minor modifier of the Mass Submitter plan.

The Provider will maintain, or have maintained on its behalf, a record of the Employers that have adopted the Plan, and the Provider will make reasonable and diligent efforts to ensure that adopting Employers have actually received and are aware of all Plan amendments and that such Employers adopt new documents when necessary.

- (b) **Amendment by the Employer.** The Employer shall have the right at any time to amend the Adoption Agreement in the following manner without affecting the Plan's status as a Pre-Approved Plan. (The ability to amend the Plan as authorized under this subsection (b) applies only to the Employer that executes the Employer Signature Page of the Adoption Agreement. Any amendment to the Plan by the Employer under this subsection (b) also applies to any other Employer that participates under the Plan as a Participating Employer.)

- (1) The Employer may change any optional selections under the Adoption Agreement.
- (2) The Employer may add overriding language to the Adoption Agreement when such language is necessary to satisfy Code §415 because of the required aggregation of multiple plans.
- (3) The Employer may change the Employer Information in Section 1 of the Adoption Agreement and/or the administrative selections under Appendix C of the Adoption Agreement by replacing the appropriate page(s) within the Adoption Agreement. Such amendment does not require re-execution of the Employer Signature Page of the Adoption Agreement and any such change will not affect the Employer's reliance on the Favorable IRS Letter.
- (4) The Employer may amend administrative provisions of the trust or custodial document, including the name of the Plan, Employer, Trustee or Custodian, Plan Administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate.
- (5) The Employer may add certain sample or model amendments published by the IRS which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan.
- (6) The Employer may add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan.
- (7) The Employer may adopt any amendments that it deems necessary to satisfy the requirements for resolving qualification failures under the IRS' compliance resolution programs.

The Employer may amend the Plan at any time for any other reason. If such amendment is not deemed to be significant, the Plan will not lose its status as a Pre-Approved Plan. However, if the Employer modifies the language of the Plan or Adoption Agreement (other than the completion of optional selections (e.g., Describe lines), the Employer will not be able to rely on the Favorable IRS Letter issued with respect to the Plan and will need to submit the Plan to the IRS for a favorable determination letter to retain reliance. If an amendment to the Plan is deemed significant, such amendment could cause the Plan to lose its status as a Pre-Approved Plan and become an individually designed plan.

- (c) **Method of amendment.** An amendment to the Plan may be adopted as a modification to the Adoption Agreement and/or Basic Plan Document or as a separate snap-on amendment. An amendment to the Plan may be adopted as part of

**Pre-Approved Governmental Defined Contribution Plan  
Section 14 – Plan Amendments, Termination, Mergers and Transfers**

a properly executed board resolution. Any such amendment must be executed by the board of directors or an authorized representative of the Employer.

- (d) **Effective date of Plan Amendments.** If the Plan is restated or amended, such restatement or amendment is generally effective as of the Effective Date of the restatement or amendment (as designated on the Employer Signature Page with respect to such amendment), except where the context indicates a reference to an earlier Effective Date. The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A of the Adoption Agreement.
- (1) **Retroactive Effective Date.** If the Plan is amended retroactively (e.g., to add language required to comply with IRS guidance or law), the provisions of this Plan generally override the provisions of any prior Plan. However, if the provisions of this Plan are different from the provisions of the Employer's prior plan and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, the provisions of such prior plan are incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, regulations, or other IRS guidance.
- (2) **Retroactive effect of certain provisions.** This Plan is designed to comply with the Code, regulations, and general guidance applicable to qualified retirement plans in effect as of the Effective Date of the Plan. Certain provisions of the Plan are retroactively effective as indicated in the specific provisions. If the Plan is being restated within the remedial amendment period for retroactive compliance, the special effective dates for such provisions will apply, even if such special effective dates precede the Effective Date of the restatement designated on the Employer Signature Page of the Adoption Agreement. If the Effective Date of this restatement or amendment is later than the applicable special effective date, such special effective dates will apply and any prior plan being replaced by this Plan will be considered to have been timely amended for the applicable provisions.
- (3) **Merged plans.** Except for retroactive application of the provisions under this subsection (d), if one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the Effective Date of the Plan merger(s), unless provided otherwise under Appendix A of the Adoption Agreement.

**14.02 Plan Termination.** The Employer may terminate this Plan at any time by delivering to the Trustee and Plan Administrator written notice of such termination.

- (a) **Full and immediate vesting.** Upon a full or partial termination of the Plan (or in the case of a Profit Sharing Plan, the complete discontinuance of contributions), all amounts credited to an affected Participant's Account become 100% vested, regardless of the Participant's vested percentage determined under Section 6.02. The Plan Administrator has discretion to determine whether a partial termination has occurred.
- (b) **Distribution upon Plan termination.** Upon the termination of the Plan, the Plan Administrator shall direct the distribution of Plan assets to Participants in accordance with the provisions under Section 7. For purposes of applying the provisions of this subsection (b), distribution may be delayed until the Employer receives a favorable determination letter from the IRS as to the qualified status of the Plan upon termination, provided the determination letter request is made within a reasonable period following the termination of the Plan. Until all Plan assets have been distributed from the Plan, the Employer must amend the Plan in order to comply with current laws and regulations and may take any other actions necessary to retain the qualified status of the Plan.
- (c) **Missing Participants.** Upon termination of the Plan, if any Participant cannot be located after a reasonable diligent search (as defined in Section 6.10(c)(1)), the Plan Administrator may make a direct rollover to an IRA selected by the Plan Administrator. For this purpose, the Plan Administrator will adopt procedures similar to the procedures required under Section 7.05 for making Automatic Rollovers in applying the provisions under this subsection (c). An Automatic Rollover under this subsection (c) may be made on behalf of any missing Participant, regardless of the value of his/her vested Account Balance under the Plan.
- (d) **Partial Termination.** In determining whether a Plan has experienced a partial termination, the Plan Administrator will apply the principals set forth under IRS Revenue Ruling 2007-43.

**14.03 Merger or Consolidation.** In the event the Plan is merged or consolidated with another plan, each Participant must be entitled to a benefit immediately after such merger or consolidation that is at least equal to the benefit the Participant was entitled to immediately before such merger or consolidation (had the Plan terminated).

**Pre-Approved Governmental Defined Contribution Plan**  
**Section 14 – Plan Amendments, Termination, Mergers and Transfers**

---

If the Employer amends the Plan from one type of Defined Contribution Plan (e.g., a Money Purchase Plan) into another type of Defined Contribution Plan (e.g., a Profit Sharing Plan) that will not result in a partial termination or any other event that would require full vesting of some or all Plan Participants.

- 14.04** **Transfer of Assets.** Subject to the terms governing the applicable Investment Arrangement, the Plan Administrator may, but is not required to, permit plan-to-plan transfers to and from the Plan.

The Plan Administrator may, but is not required to, accept a transfer of assets from another qualified retirement plan on behalf of any Employee, even if such Employee is not eligible to receive other contributions under the Plan. If a transfer of assets is made on behalf of an Employee prior to the Employee's becoming a Participant, the Employee shall be treated as a Participant for all purposes with respect to such transferred amount. Any assets transferred to this Plan from another plan must be accompanied by written instructions designating the name of each Employee for whose benefit such amounts are being transferred, the current value of such assets, and the sources from which such amounts are derived. The Plan Administrator will deposit any transferred assets in the appropriate Participant's Transfer Account. The Transfer Account will contain any sub-Accounts necessary to separately track the sources of the transferred assets. Each sub-Account will be treated in the same manner as the corresponding Plan Account.

If the Plan is a Profit Sharing Plan or a Grandfathered 401(k) Arrangement and the Plan accepts a transfer of assets from a money purchase plan, the amounts transferred (and any gains attributable to such transferred amounts) continue to be subject to the distribution restrictions applicable to money purchase plan assets under the transferor plan. Such amounts may not be distributed for reasons other than death, disability, attainment of Normal Retirement Age, attainment of age 62, or termination of employment, regardless of any distribution provisions under this Plan that would otherwise permit a distribution prior to such events.

The Plan Administrator may refuse to accept a transfer of assets if the Plan Administrator reasonably believes the transfer (1) is not being made from a proper qualified plan; (2) could jeopardize the tax-exempt status of the Plan; or (3) could create adverse tax consequences for the Plan or the Employer. Prior to accepting a transfer of assets, the Plan Administrator may require evidence documenting that the transfer of assets meets the requirements of this Section. The Trustee will have no responsibility to determine whether the transfer of assets meets the requirements of this Section; to verify the correctness of the amount and type of assets being transferred to the Plan; or to perform a due diligence review with respect to such transfer.

- (a) **Trustee's right to refuse transfer.** If the assets to be transferred to the Plan under this Section 14.04 are not susceptible to proper valuation and identification or are of such a nature that their valuation is incompatible with other Plan assets, the Trustee may refuse to accept the transfer of all or any specific asset, or may condition acceptance of the assets on the sale or disposition of any specific asset.
- (b) **Transfer of Plan to unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated employer.

SECTION 15  
MISCELLANEOUS

- 15.01 Exclusive Benefit.** Plan assets will not be used for, or diverted to, a purpose other than the exclusive benefit of Participants or their Beneficiaries.

No amendment may authorize or permit any portion of the assets held under the Plan to be used for or diverted to a purpose other than the exclusive benefit of Participants or their Beneficiaries, except to the extent such assets are used to pay taxes or administrative expenses of the Plan. An amendment also may not cause or permit any portion of the assets held under the Plan to revert to or become property of the Employer.

- 15.02 Return of Employer Contributions.** Upon written request by the Employer, the Trustee may return any Employer Contributions provided that the circumstances and the time frames described below are satisfied. The Trustee may request the Employer to provide additional information to ensure the amounts may be properly returned. Any amounts returned shall not include earnings, but must be reduced by any losses.

- (a) **Mistake of fact.** Any Employer Contributions made because of a mistake of fact must be returned to the Employer within one year of the contribution.
- (b) **Failure to initially qualify.** Employer Contributions to the Plan are made with the understanding, in the case of a new Plan, that the Plan satisfies the qualification requirements of Code §401(a) as of the Plan's Effective Date. In the event that the Internal Revenue Service determines that the Plan is not initially qualified under the Code, any Employer Contributions (and allocable earnings) made incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

- 15.03 Participants' Rights.** The adoption of this Plan by the Employer does not give any Participant, Beneficiary, or Employee a right to continued employment with the Employer and does not affect the Employer's right to discharge an Employee or Participant at any time. This Plan also does not create any legal or equitable rights in favor of any Participant, Beneficiary, or Employee against the Employer, Plan Administrator or Trustee. Unless the context indicates otherwise, any amendment to this Plan is not applicable to determine the benefits accrued (and the extent to which such benefits are vested) by a Participant or former Employee whose employment terminated before the effective date of such amendment, except where application of such amendment to the terminated Participant or former Employee is required by statute, regulation or other guidance of general applicability. Where the provisions of the Plan are ambiguous as to the application of an amendment to a terminated Participant or former Employee, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.

- 15.04 Military Service.** To the extent required under Code §414(u), an Employee who returns to employment with the Employer following a period of qualified military service will receive any contributions, benefits and service credit required under Code §414(u), provided the Employee satisfies all applicable requirements under the Code and regulations. In determining the amount of contributions under Code §414(u), Plan Compensation will be deemed to be the compensation the Employee would have received during the period while in military service based on the rate of pay the Employee would have received from the Employer but for the absence due to military leave. If the compensation the Employee would have received during the leave is not reasonably certain, Plan Compensation will be equal to the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the military leave, or, if shorter, the Employee's actual period of employment with the Employer.

- (a) **Death benefits under qualified military service.** In the case of a Participant who dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death.
- (b) **Benefit accruals.** If elected under AA §11-3, for benefit accrual purposes, the Plan will treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service (as defined in Code §414(u)) with respect to the Employer, as if the individual has resumed employment in accordance with the individual's reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- (1) This subsection (b) shall apply only if all individuals performing qualified military service with respect to the Employer maintaining the Plan who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

- (2) The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this subsection (b) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of:
- (i) the 12-month period of service with the Employer immediately prior to qualified military service; or
  - (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- (c) **Plan distributions.** Notwithstanding the provisions regarding the treatment of Differential Pay and unless otherwise elected under AA §10-1(l), an individual may be treated as having been severed from employment during any period the individual is on active duty for a period of at least 30 days while performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I). If an individual elects to receive a distribution while on military leave, the individual may not make Salary Deferrals or Employee After-Tax Employee Contributions under the Plan during the 6-month period beginning on the date of the distribution. However, a distribution under this provision that is also a Qualified Reservist Distribution is not subject to the 6-month suspension.
- (d) **Make-Up Contributions.** A Participant who is reemployed following a qualified military leave shall have the right to make up any Salary Deferrals or After-Tax Employee Contributions to which he/she would have been entitled but for the fact the Participant was on qualified military leave. To the extent a Participant returning from qualified military leave would have been required to make Employer Pick-Up Contributions, as described in Section 3.03, the Participant will be required to make such Employer Pick-Up Contributions upon his/her return to employment based on the amount that would have been contributed but for the fact the Participant was on qualified military leave. The Employer will also make any Employer Contributions and Matching Contributions the Participant would have earned during the period of qualified military leave had the Participant remained employed during such period. The Employer will only be required to make Matching Contributions if the reemployed Participant makes up the underlying contributions that were eligible for the Matching Contributions.

In determining the amount of Make-Up Contributions a Participant may make under this subsection (d), a Participant will be treated as earning Plan Compensation during the period the Participant was on qualified military leave equal to:

- (1) the rate of pay the Participant would have received from the Employer during such period had the Participant not been on qualified military leave; or
- (2) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average Plan Compensation during the 12-month period immediately preceding the qualified military leave (or the entire period of employment, if shorter).

If the Employer is required under this subsection (d) to make Employer Contributions for a reemployed Participant, the Employer must make such Employer Contributions not later than 90 days after the date of reemployment or the date the Employer Contributions are otherwise due for the year in which the military service was performed. For Salary Deferrals and After-Tax Employee Contributions, a Participant who is reemployed following a qualified military leave may make up such contributions during the period beginning on the date of reemployment and ending on the earlier of the date that is three times the length of the military service period or 5 years from the date of reemployment. Any required Matching Contributions must be made in the same manner as other Matching Contributions under the Plan following the Participant's contribution of the amounts eligible for the Matching Contributions.

Any make up contributions under this subsection (d) are subject to the Code §415 Limitation under Section 5.02 and the Elective Deferral Dollar Limitation under Section 5.03 for the year for which the make-up contribution would have been made had the Participant not been on qualified military leave.

**15.05 Annuity Contract.** Any annuity contract distributed under the Plan must be nontransferable. In addition, the terms of any annuity contract purchased and distributed to a Participant, or to a Participant's Spouse, must comply with all requirements under the Code and regulations thereunder.

**15.06 Use of IRS Compliance Programs.** Nothing in this Plan document should be construed to limit the availability of the IRS' voluntary compliance programs. An Employer may take whatever corrective actions are permitted under the IRS voluntary compliance programs, as is deemed appropriate by the Plan Administrator or Employer. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this Volume Submitter Plan and will be considered an individually designed plan.

Pre-Approved Governmental Defined Contribution Plan  
Section 15 – Miscellaneous

---

- 15.07 Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of applicable Federal Law and, to the extent applicable, the laws of the state in which the Trustee has its principal place of business. The foregoing provisions of this Section shall not preclude the Employer and the Trustee from agreeing to a different state law with respect to the construction, administration and enforcement of the Plan.
- 15.08 Waiver of Notice.** Any person entitled to a notice under the Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by law, regulation or other pronouncement.
- 15.09 Use of Electronic Media.** The Employer, Plan Administrator, Trustee and any other designated individual responsible for providing applicable notices or disclosures under the Plan, and any Participant or beneficiary making an election under the Plan may use telephonic or electronic media to satisfy any notice requirements required by this Plan. Any use of electronic medium under the Plan must comply with the requirements outlined in Treas. Reg. §1.401(a)-21 or other general guidance concerning the use of telephonic or electronic media. The Plan Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) Salary Deferral Elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).
- 15.10 Severability of Provisions.** In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.
- 15.11 Binding Effect.** The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

SECTION 16  
PARTICIPATING EMPLOYERS

- 16.01 Participation by Participating Employers.** An Employer (other than the Employer that executes the Employer Signature Page of the Adoption Agreement) may elect to participate under this Plan by executing a Participating Employer Adoption Page under the Adoption Agreement. A Participating Employer (including a Related Employer defined in Section 1.83) may not contribute to this Plan unless it (or its authorized representative) executes the Participating Employer Adoption Page.
- 16.02 Participating Employer Adoption Page.**
- (a) **Application of Plan provisions.** By executing a Participating Employer Adoption Page, a Participating Employer adopts all the provisions of the Plan, including the elective choices made by the signatory Employer under the Adoption Agreement. The Participating Employer may elect under the Participating Employer Adoption Page to modify the elective provisions under the Adoption Agreement as they apply to the Participating Employer.
  - (b) **Plan amendments.** In addition, unless provided otherwise under the Participating Employer Adoption Page, a Participating Employer is bound by any amendments made to the Plan in accordance with Section 14.01.
  - (c) **Trustee designation.** The Participating Employer agrees to use the same Trustee as is designated on the Trust Declaration under the Agreement, except as provided in a separate trust agreement.
- 16.03 Compensation of Related Employers.** In applying the provisions of this Plan, Total Compensation (as defined in Section 1.94) includes amounts earned with a Related Employer, regardless of whether such Related Employer executes a Participating Employer Adoption Page. The Employer may elect under AA §5-3(h) to exclude amounts earned with a Related Employer that does not execute a Participating Employer Adoption Page for purposes of determining an Employee's Plan Compensation.
- 16.04 Allocation of Contributions and Forfeitures.** Unless selected otherwise under the Participating Employer Adoption Page, any contributions made by a Participating Employer (and any forfeitures relating to such contributions) will be allocated to all Participants employed by the Employer and Participating Employers in accordance with the provisions under this Plan. A Participating Employer may elect under the Participating Employer Adoption Page to allocate its contributions (and forfeitures relating to such contributions) only to the Participants employed by the Participating Employer making such contributions. If so elected, Employees of the Participating Employer will not share in an allocation of contributions (or forfeitures relating to such contributions) made by any other Participating Employer (except in such individual's capacity as an Employee of that other Participating Employer). Thus, for example, a Participating Employer may make a different discretionary contribution and allocate such contribution only to its Employees. Where contributions are allocated only to the Employees of a contributing Participating Employer, a separate accounting must be maintained of Employees' Account Balances attributable to the contributions of a particular Participating Employer. This separate accounting is necessary only for contributions that are not 100% vested, so that the allocation of forfeitures attributable to such contributions can be allocated for the benefit of the appropriate Employees.
- 16.05 Discontinuance of Participation by a Participating Employer.** A Participating Employer may discontinue its participation under the Plan at any time. To document a Participating Employer's cessation of participation, the following procedures should be followed:
- (a) the Participating Employer should adopt a resolution that formally terminates active participation in the Plan as of a specified date;
  - (b) the Employer that has executed the Employer Signature Page of the Adoption Agreement should re-execute such page, indicating an amendment by page substitution through the deletion of the Participating Employer Adoption Page executed by the withdrawing Participating Employer; and
  - (c) the withdrawing Participating Employer should provide any notices to its Employees that are required by law.
- Discontinuance of participation means that no further benefits accrue after the effective date of such discontinuance with respect to employment with the withdrawing Participating Employer. The portion of the Plan attributable to the withdrawing Participating Employer may continue as a separate plan, under which benefits may continue to accrue, through the adoption by the Participating Employer of a successor plan (which may be created through the execution of a separate Adoption Agreement by the Participating Employer) or by spin-off of the portion of the Plan attributable to such Participating Employer followed by a merger or transfer into another existing plan, as specified in a merger or transfer agreement.
- 16.06 Operational Rules for Related Employer Groups.** If an Employer has one or more Related Employers, the Employer and such Related Employer(s) constitute a Related Employer group. In such case, the following rules apply to the operation of the Plan.



**Pre-Approved Governmental Defined Contribution Plan  
Section 16 – Participating Employers**

- (a) If the term Employer is used in the context of administrative functions necessary to the operation, establishment, maintenance, or termination of the Plan, only the Employer executing the Employer Signature Page under the Adoption Agreement, and any Related Employer executing a Participating Employer Adoption Page, is treated as the Employer.
- (b) Hours of Service are determined by treating all members of the Related Employer group as the Employer.
- (c) The term Excluded Employee is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.
- (d) Compensation is determined by treating all members of the Related Employer group as the Employer, except as specifically provided in the Plan.
- (e) An Employee is not treated as terminated from employment if the Employee is employed by any member of the Related Employer group.
- (f) The Code §415 Limitation described in Section 5.02 is applied by treating all members of the Related Employer group as the Employer.

In all other contexts, the term Employer generally means a reference to all members of the Related Employer group, unless the context requires otherwise. If the terms of the Plan are ambiguous with respect to the treatment of the Related Employer group as the Employer, the Plan Administrator has the authority to make a final determination on the proper interpretation of the Plan.

**16.07 Multiple Employer Plans.** Regardless of any election under AA §2-6, if an Employer (other than a Related Employer) executes a Participating Employer Adoption Page under the Adoption Agreement, the Plan is treated as a Multiple Employer Plan. Treatment of the Plan as a Multiple Employer Plan will not affect reliance on the Favorable IRS Letter issued to the Provider or any determination letter issued on the Plan.

- (a) **Application of qualification rules to Multiple Employer Plans.** If the Plan is a Multiple Employer Plan, the following qualification rules apply, as applicable to a Governmental Plan.
  - (1) **Eligibility requirements.** If the Plan is a Multiple Employer Plan, the eligibility rules under the Plan are applied as if the Employees of all Employers participating in the Multiple Employer Plan are employed by a single Employer.
  - (2) **Vesting rules.** If the Plan is a Multiple Employer Plan, the vesting rules under the Plan are applied as if the Employees of all Employers participating in the Multiple Employer Plan are employed by a single Employer.
  - (3) **Code §415 Limit.** If the Employer is a Multiple Employer Plan, the Code §415 Limit under the Plan is applied as if the Employees of all Employers participating in the Multiple Employer Plan are employed by a single Employer. Thus, if a Participant receives contributions from more than one Employer within the Multiple Employer Plan, such contributions must be aggregated for purposes of applying the Code §415 Limit. For this purpose, Total Compensation from all Participating Employers may be considered in applying the Code §415 Limit.
  - (4) **Other rules applicable to Multiple Employer Plans.** To the extent not addressed in this Section 16.07, the rules under Code §413(c) and applicable regulations will apply to a Governmental Multiple Employer Plan.
- (b) **Definitions that apply to Multiple Employer Plans.**
  - (1) **Lead Employer.** The signatory Employer under the Adoption Agreement. See subsection (c)(2) below for rules regarding the ability of the Lead Employer to amend the Plan on behalf of Participating Employers.
  - (2) **Participating Employer.** An Employer which, with the consent of the Lead Employer, executes a Participating Employer Adoption Page. To the extent permitted by the Lead Employer, a Participating Employer may modify the selections made by the Lead Employer under the Adoption Agreement. Any modifications made by a Participating Employer may be described as an attachment to the Participating Employer Signature Page for that Participating Employer.
  - (3) **Professional Employer Organization (PEO).** An organization described in Rev. Proc. 2002-21 and any successor legislation or regulation. If the Lead Employer is a PEO, each Participating Employer is a Client Organization as defined in Rev. Proc. 2002-21. Any Employee on the PEO's payroll who receives amounts from the PEO for providing services pursuant to a service agreement between the PEO and the Client Organization shall be deemed to be the Employee of the Client Organization for whom the Employee performs services, and

not of the PEO. Any amounts paid by a PEO to an Employee of a Client Organization shall be treated as paid by the Client Organization for all purposes under the Plan.

- (c) **Special rules for Multiple Employer Plans.** The Lead Employer is the Plan Administrator under the Plan, unless specifically designated otherwise under AA §11-12 or under separate written procedures assigning such responsibilities to another party. The underlying Participating Employers are co-sponsors of the Multiple Employer Plan.
- (1) **Allocation of contributions.** Any contributions (and forfeitures relating to such contributions) made by a Participating Employer will be allocated only to the Participants employed by the Participating Employer making such contributions. By adopting the Plan, a Participating Employer agrees to make any contributions required under the Plan to maintain the qualified status of the Plan.
  - (2) **Amendment of Plan document.** The Lead Employer reserves the right to amend the Plan on behalf of all Participating Employers. Each Employer signing a Participating Employer Signature Page shall be bound by the provisions in this Plan document and any selections made under the Adoption Agreement, except to the extent the Participating Employer makes a contrary election under the Adoption Agreement, as set forth under subsection (b)(2) above.
    - (i) **Plan amendments.** The Lead Employer shall be responsible for ensuring the Plan is updated for any required amendments. Unless provided otherwise under the Participating Employer Signature Page, a Participating Employer is bound by any amendments made to the Plan by the Lead Employer.
    - (ii) **Trustee designation.** The Participating Employer agrees to use the same Trustee as is designated on the Trust Declaration under the Lead Employer Adoption Agreement, except as provided in a separate trust agreement.
    - (iii) **Plan termination.** The Lead Employer may terminate this Plan at any time by delivering to the Trustee and each Participating Employer a written notice of such termination.
    - (iv) **Execution of Participating Employer Adoption Page.** The Employer that has executed the Employer Signature Page of the Adoption Agreement, or its designated representative, is authorized to sign the Participating Employer Adoption Page on behalf of a Participating Employer to adopt an amendment or subsequent Plan restatement, unless otherwise provided under the Participating Employer Adoption Page.
  - (3) **Ability of Lead Employer to Remove Participating Employers.** The Lead Employer may remove any Participating Employer from the Plan if the Participating Employer refuses to correct a qualification defect under the Plan maintained by such Participating Employer. Upon removal from the Plan, the Participating Employer may continue to maintain its portion of the Plan as a single-Employer Plan. Upon removal of a Participating Employer, Employees of such terminated Participating Employer will cease to be eligible to accrue additional benefits under this Plan with respect to Plan Compensation earned on or after the date of termination.

The Lead Employer may develop reasonable administrative procedures outlining the procedures for removing a Participating Employer from the Plan. By adopting this Plan, each Participating Employer authorizes the Lead Employer to exercise the option to remove a Participating Employer from the Plan in accordance with such administrative procedures.

Upon removal of a Participating Employer, the terminated Participating Employer may elect to have the assets associated with Accounts of its Employees to be transferred to a separate Defined Contribution Plan maintained by the terminated Participating Employer consistent with the requirements under Code §414(l). If the Participating Employer does not establish a Defined Contribution Plan to accept the transfer of assets from this Plan, the Lead Employer may establish a new Defined Contribution Plan on behalf of the Participating Employer to which the assets attributable to the Employees of the terminating Participating Employer may be transferred consistent with the requirements under Code §414(l). Any new plan established by the Lead Employer will contain provisions consistent with the selections applicable to the Participating Employer under this Plan. The terminated Participating Employer will be responsible for designating the Trustee of the new Plan. If no such designation is made, the Trustee will be the highest ranking officer or representative of the Employer or such other financial institution designated by the Lead Employer to protect the interests of Plan Participants. Reasonable expenses associated with the establishment of the new plan may be charged to the Accounts of Participants of the terminated Participating Employer.

- (4) **Withdrawal from Plan.** Upon thirty (30) days written notice to the other party, either the Lead Employer or Participating Employer may voluntarily withdraw from the Plan. If a Participating Employer withdraws from the Plan, the Participating Employer may continue to maintain the Plan as a single-Employer Plan. Plan assets

attributable to the Employees of the Participating Employer will be transferred to the Participating Employer's Plan, consistent with the requirements of Code §414(l). No distributions will be permitted from the Plan solely on account of a Participating Employer's withdrawal from the Plan. The withdrawing Employer will bear all reasonable costs associated with the withdrawal and transfer of assets to a new plan. Employees of a withdrawing Employer will cease to be eligible to accrue additional benefits under this Plan with respect to Plan Compensation earned on or after the date of withdrawal. The withdrawal of a Participating Employer from the Plan is not considered a Plan termination which allows distributions to the Participants of the withdrawing Participating Employer.

- (5) **Indemnification of Lead Employer.** Each Participating Employer will indemnify and hold harmless the Plan Administrator, the Lead Employer and its subsidiaries; officers, directors, shareholders, employees, and agents of the Lead Employer; the Plan; the Trustees, Fiduciaries, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees) arising out of, or relating to, the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan.

**APPENDIX A**  
**ACTUARIAL FACTORS**  
**(For use with age-based contribution formula)**

**Actuarial Factor Table.** The following table sets forth Actuarial Factors based on a testing age of 65, an interest rate of 8.5% and an UP-1984 mortality table. The Actuarial Factors in this table must be modified if the Employer uses a testing age other than age 65 or selects a different interest rate or mortality table under the age-based contribution formula. To determine a Participant's Actuarial Factor, use the factor corresponding to the number of years to the Participant's testing age. The number of years to the testing age is determined by counting the number of years from the last day of the current plan year to the last day of the Plan Year in which the Participant reaches the testing age. If the Participant has reached the testing age as of the last day of the current Plan Year, the number of years is 0 for that year and all subsequent years.

Years to Testing Age	Actuarial Factor	Years to Testing Age	Actuarial Factor
0	0.07949	25	0.01034
1	0.07326	26	0.00953
2	0.06752	27	0.00878
3	0.06223	28	0.00810
4	0.05736	29	0.00746
5	0.05286	30	0.00688
6	0.04872	31	0.00634
7	0.04490	32	0.00584
8	0.04139	33	0.00538
9	0.03814	34	0.00496
10	0.03516	35	0.00457
11	0.03240	36	0.00422
12	0.02986	37	0.00389
13	0.02752	38	0.00358
14	0.02537	39	0.00330
15	0.02338	40	0.00304
16	0.02155	41	0.00280
17	0.01986	42	0.00258
18	0.01831	43	0.00238
19	0.01687	44	0.00219
20	0.01555	45	0.00202
21	0.01433	46	0.00186
22	0.01321	47	0.00172
23	0.01217	48	0.00158
24	0.01122	49	0.00146

**APPENDIX B  
INTERIM AMENDMENT #1  
FINAL REGULATIONS RELATING TO HARDSHIP DISTRIBUTIONS**

**B-1.01** **Change in Hardship Distribution requirements.** The IRS has issued Final Regulations that amend the rules relating to Hardship distributions from the Plan. This Interim Amendment #1 (Interim Amendment) sets forth the provisions of the Final Regulations and their application to the Plan by amending Section 7.10(e) of the Plan and providing appropriate Elective Provisions under Interim Amendment - Hardship Distributions Elective Provisions in the Adoption Agreement (Elective Provisions). The Plan Administrator shall administer the provisions of this Interim Amendment, and its Elective Provisions, consistent with a good-faith interpretation of the requirements of the Final Regulations as set forth under Treas. Reg. §§1.401(k)-1, 1.401(k)-3 and 1.401(m)-3, as amended.

- (a) **Effective Dates.** Except as otherwise provided in this Interim Amendment, and its Elective Provisions, the Final Regulations and this Interim Amendment apply to Hardship distributions made on or after January 1, 2020. For Hardship distributions made before January 1, 2020, the rules applicable to Hardship distributions prior to the Final Regulations apply, unless the Employer elects earlier application as permitted under subsections (a) and (b) below.
- (1) **Options for earlier application.** If elected under the Elective Provisions, the provisions of this Interim Amendment may be applied to distributions made in Plan Years beginning after December 31, 2018. The Employer may elect to apply the prohibition on the suspension of Salary Deferrals and After-Tax Employee Contributions as of the first day of the first Plan Year beginning after December 31, 2018, even if the Hardship distribution was made in a prior year. In addition, the Employer may operationally apply the revised deemed immediate and heavy financial need expenses under Section 7.10(e)(1) of the Plan, as amended by this Interim Amendment, to distributions made on or after a date as early as January 1, 2018.
- (2) **Certain rules optional in 2019.** If, in accordance with the provisions of Section B-1.01(a)(1) of this Interim Amendment, the Employer applies certain Hardship distribution provisions to distributions made before January 1, 2020, then the Employer may disregard the rules relating to the employee representation, as described under Section 7.10(e)(3)(ii)(B) of the Plan, as amended by this Interim Amendment, and the rules prohibiting the suspension of contributions, as described under Section 7.10(e)(3)(iii) of the Plan, as amended by this Interim Amendment, to such distributions.
- (3) **2020 effective date for employee representations and suspension prohibition.** In any event, the rules relating to the employee representation, as described under Section 7.10(e)(3)(ii)(B) of the Plan, as amended by this Interim Amendment, and the rules prohibiting the suspension of contributions, as described under Section 7.10(e)(3)(iv) of the Plan, as amended by this Interim Amendment, are formally made effective for Hardship distributions made on or after January 1, 2020.

**B-2.01** **Amendment of Section 7.10(e) of the Plan.** Section 7.10(e) of the Plan is deleted and replaced with the following:

- (e) **Hardship distribution.** The Employer may elect under AA §10-1 or AA §10-2 of the Profit Sharing/401(k) Plan Adoption Agreement or under Section HD-1 of the Elective Provisions to authorize an in-service distribution upon the occurrence of Hardship. A distribution is made on account of Hardship only if the distribution both is made on account of an immediate and heavy financial need and is necessary to satisfy the financial need.
- (1) **Deemed immediate and heavy financial need.** A distribution is deemed to be made on account of an immediate and heavy financial need of the Employee if the distribution satisfies one of the following needs:
- (i) Expenses incurred or necessary for medical care (as described in Code §213(d)) of the Participant, the Participant's Spouse or dependents (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
- (ii) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (iii) Payment of tuition, related educational fees and room and board for up to the next 12 months of post-secondary education for the Participant, the Participant's Spouse, children or dependents;
- (iv) Payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;
- (v) Payments for funeral or burial expenses for the Participant's deceased parent, Spouse, child or dependent;
- (vi) Expenses for the repair of damage to the Participant's principal residence that would qualify for the

casualty deduction under Code §165 (determined without regard to Code §165(h)(5) and whether the loss exceeds 10% of adjusted gross income);

- (vii) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or
- (viii) for any other event that the IRS recognizes as a deemed immediate and heavy financial need Hardship distribution event under ruling, notice or other guidance of general applicability.

For purposes of determining eligibility for a Hardship distribution under this subsection (1), a dependent is determined under Code §152. However, the determination of dependent for purposes of tuition and related educational fees under subsection (iii) above will be made without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B) and the determination of dependent for purposes of funeral or burial expenses under subsection (v) above will be made without regard to Code §152(d)(1)(B).

A Participant must provide the Plan Administrator with a written request for a Hardship distribution. The Plan Administrator may require written documentation, as it deems necessary, to sufficiently document the existence of a proper Hardship event.

- (2) **Non-deemed immediate and heavy financial need.** The Employer may elect under in the Profit Sharing/401(k) Plan Adoption Agreement to permit Participants to take a Hardship distribution without satisfying one of the needs in subsection (1) above by setting forth nondiscriminatory and objective standards under AA §10-3(f).
- (3) **Distribution necessary to satisfy financial need.**
  - (i) **Distribution may not exceed amount of need.** A distribution is treated as necessary to satisfy an immediate and heavy financial need of an Employee only to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
  - (ii) **No alternative means reasonably available.** A distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee unless each of the following requirements is satisfied:
    - (A) The Employee has obtained all other currently available distributions (including distributions of ESOP dividends under Code §404(k), but not Hardship distributions) under the Plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer;
    - (B) The Employee has provided to the Plan Administrator a representation in writing (including the use of an electronic medium as defined in Treas. Reg. §1.401(a)-21(e)(3)), or in such other form as may be prescribed by the IRS, that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and
    - (C) The Plan Administrator does not have actual knowledge that is contrary to the representation.
  - (iii) **Additional conditions.** The Plan generally may provide for additional conditions to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need of an employee. For example, a plan may provide that, before a Hardship distribution may be made, an Employee must obtain all nontaxable loans (determined at the time a loan is made) available under the Plan and all other plans maintained by the Employer.
  - (iv) **No suspensions allowed for Hardship distributions made on or after January 1, 2020.** The Plan may not provide for a suspension of an Employee's Salary Deferrals or After-Tax Employee Contributions under any plan described in Code §§401(a) or 403(a), any Code §403(b) plan, or any eligible governmental plan described in Treas. Reg. §1.457-2(f) as a condition of obtaining a Hardship distribution for Hardship distributions made on or after January 1, 2020.
- (4) **Sources for Hardship distributions.** For Plan Years beginning after December 31, 2018 (or such later date specified under the AA §10-1 or under §HD-1(a) and/or (b) of Elective Provisions, the Employer may permit Hardship distributions from the vested portion of a Participant's Employer Contribution Account, Matching

Contribution Account, Pre-Tax Salary Deferral Account, Roth Deferral Account, Qualified Nonelective Employer Contribution (QNEC) Account, Qualified Matching Contribution (QMAC) Account, Safe Harbor Employer Contribution Account, Safe Harbor Matching Contribution Account, QACA Safe Harbor Contribution Account and QACA Safe Harbor Matching Contribution Account. The Hardship distribution may include earnings on these Accounts, regardless of when amounts were contributed or earned. The Employer may designate the Accounts (including earnings) from which a Participant may receive a Hardship distribution under §HD-1 of the Elective Provisions. The Plan Administrator may adopt distribution ordering rules consistent with the sources available for Hardship distributions under separate administrative procedures. This subsection (4) supersedes any contrary provisions under the Plan, including any provision that limits the sources for Hardship distribution.

- (5) **Availability to terminated Employees.** If a Hardship distribution is permitted under AA §10-1 or AA §10-2 or under §HD-1 of the Interim Amendment, a Participant may take such a Hardship distribution after termination of employment to the extent no other distribution is available from the Plan.
- (6) **Application of Hardship distributions rules with respect to primary beneficiaries.** If elected under AA §10-3(e) of the Profit Sharing/401(k) Plan, if the Plan otherwise permits Hardship distributions based on the deemed immediate and heavy needs under subsection 7.10(e)(1)(i) (medical expenses), (1)(iii) (educational expenses) or (1)(v) (funeral expenses) above, the existence of an immediate and heavy financial need may be determined with respect to a primary beneficiary under the Plan. For this purpose, a primary beneficiary is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of a Participant's Account Balance upon the death of the Participant. Any Hardship distribution with respect to a primary beneficiary must satisfy all the other requirements applicable to Hardship distributions under Section 7.10(e) of the Plan, as amended by this Interim Amendment.

**B-3.01 Relief for Victims of Certain Qualified Natural Disasters.** Notwithstanding other provisions of the Plan, the Employer may operate the Plan to provide relief from certain qualification rules relating to Hardship distributions and loans for Participants who are victims of certain Qualified Natural Disasters, as set forth under applicable IRS or legislative guidance.

**B-3.02 Qualified Natural Disasters.** For purposes of this section, Qualified Natural Disasters, in addition to the Qualified Natural Disasters listed under the 2017 Pre-Approved Defined Contribution Plan Interim Amendment previously adopted by the Pre-Approved Plan Provider, include Hurricane Michael and Hurricane Florence, as provided under the preamble to the Final Regulations.

**B-3.03 General Rules.** If the Employer and the Plan Administrator make good-faith efforts to apply the Plan provisions in conformance with the relief provided under applicable guidance, the Plan will not be treated as failing to satisfy the requirements of the Code or regulations. In general, the following rules apply:

- (a) In order to make a loan or distribution (including a Hardship distribution), the Plan must provide for loans or distributions, as applicable.
- (b) Participants (victims) for whom the relief is available are determined under the appropriate IRS or legislative guidance.
- (c) The amount available for Hardship distribution is limited to the maximum amount that would be available for a Hardship distribution under the Plan. However, the relief provided applies to any Hardship distribution of the Participant and no post-distribution contribution restrictions apply.
- (d) To qualify for relief under this section, a Hardship distribution must be made on account of a Hardship resulting from the applicable Qualified Natural Disaster and within the time frame provided under the applicable guidance relating to the Qualified Natural Disaster.
- (e) The Plan will not be treated as failing to follow Plan procedural requirements for loans or distributions during the periods provided under guidance relating to the applicable Qualified Natural Disaster, which for Hurricane Michael and Hurricane Florence ended on March 15, 2019.

## AGENDA ITEM NO. 6.3

**SARASOTA MANATEE AIRPORT AUTHORITY  
APRIL 25, 2022 MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL: AMENDMENT TO SMAA PERSONNEL POLICY**

---

---

**EXECUTIVE SUMMARY: Staff requests approval of a revision to the Authority's Employment of Relatives Personnel Policy.**

---

---

Narrative: The Authority continues to face extraordinary challenges with the increase in passengers and "tight" labor market. Staff is requesting a change to the personnel policy for employment of relatives for a position in which they would **not** supervise a family member. The proposed revision to the Authority's Personnel Policy would be to amend Section I.F Employment of Relatives as follows:

**EMPLOYMENT OF RELATIVES (Section I.F)**

Any person related to ~~an Authority employee or~~ Board member is ineligible as a new hire with the Authority, ~~except for Part-time student groundskeepers and substitute employees. Related substitute employees shall not be hired for periods to exceed (6) six months without approval of the President, CEO.~~ For purposes of this section, related persons include: spouse, parent, child, sibling, step parent, step child, step sibling, foster parent, or in-laws. Spouse is defined as a person, (i.e., husband or wife), who is married pursuant to the laws of Florida.

Related employees shall not be employed in a position in which they would supervise or evaluate a relative. Should current conditions or subsequent circumstances create such a situation, one employee shall be reassigned to another position if available, otherwise, a three (3) month period will be allowed for one of the employees to voluntarily resign. If one of the employees does not resign, management shall have the discretion to determine which employee shall be terminated at the end of the three (3) month period. Failure to properly advise of such a prohibited relationship will be grounds for termination of both employees.

---

---

**RECOMMENDATION: Staff hereby recommends the Sarasota Manatee Airport Authority approve the amendment to the employment of relative's personnel policy.**

---

---



## AGENDA ITEM NO. 6.4

**SARASOTA MANATEE AIRPORT AUTHORITY  
APRIL 25, 2022 MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL: Implement Recommendations Contained in Public Sector Personnel Consultants Classification and Compensation Study.**

---

**EXECUTIVE SUMMARY: Staff requests approval to implement recommendations contained in Public Sector Personnel Consultants classification and compensation study.**

---

Narrative: Generally, every three years the Authority performs a classification and compensation study utilizing a professional consulting firm to assist in developing a competitive pay structure based upon market data. This study includes evaluation of the needs of the Authority with regards to recruitment and retention of staff. The results of the study are usually included in the next budget year, however; given the current local and national labor market shortages, combined with the inflationary pressures, and unprecedented airport growth, this requires more expeditious implementation of the recommendations by Public Sector Personnel Consultants. Staff recommends a May 2022 implementation to assist in recruiting new employees as the airport continues to grow. This will allow immediate assistance in recruitment of new employees to keep pace with airport growth.

Compensation strategies are designed to attract and retain outstanding employees. Additionally, the Authority's fiscal philosophy, financial strategies, and commitment to internal equity help determine appropriate compensation.

The survey classifications that had the most consistent and useful survey data were used as "benchmarks" in building the compensation plan. Benchmark classifications are those classifications that are tied directly to market salary data during the salary setting process. These classifications are used as a means of anchoring the authority's overall compensation plan using internal equity principals,

Internal equity between certain levels of classification is a fundamental factor to be considered when making salary decisions. When conducting a market compensation survey, results can often show that certain classifications that are aligned with each other are not the same in the outside labor market. However, as an organization, careful consideration needs to be given to these alignments because they represent internal value of classifications within job families, as well as across the organization.

For all classifications that were not benchmarked or where we did not find sufficient market data, internal alignments with other classifications were considered, either in the same class series or those classifications that have similar scope of work and level of responsibility.

Based on analysis and information from the classification and compensation study performed by Public Sector Personnel Consultants staff is seeking approval to:

- Move Job Class Specifications to the new proposed pay grades.
- Ensure salaries are at minimum of new grade.

- Move full-time and part-time employees through the new ranges based on time in their current position with a target of mid-point in seven years; and at 75% of range within the following seven years.
- Full-time and part-time employees be provided a minimum 3% increase.
- Increase Traffic Control Specialist and Baggage Handling Technician substitute employees pay by 3%.
- Address compression issue caused by new pay grades by increasing minimum salary for any full-time employee to \$33,280.

With nearly every employee receiving an increase, time in position will be based on today's date of April 25<sup>th</sup> and the effective date of increase will be May 9<sup>th</sup>. The cost to implement early is less than \$200,000. Sufficient funds are available for implementation.

**Union Bargaining Unit Exclusion:** Since compensation is a mandatory subject of bargaining, members of the Southwest Florida Chapter of the Police Benevolent Association-Sarasota Bradenton International Airport Unit (the "Union"), the Police Officer and Sergeant positions have not been included in this study. Staff will be bargaining with the Union regarding compensation, and suggested increases for Union members will be brought to the board for approval.

---

---

**RECOMMENDATION: Staff hereby recommends the Sarasota Manatee Airport Authority approve to implement recommendations contained in Public Sector Personnel Consultants study effective May 9, 2022.**

---

---

Attachment: Proposed Salary Structure

**Sarasota Manatee Airport Authority  
Proposed Salary Structure Based on Compensation Study  
FY 2022**

JCS	POSITION	Grade	MIN	MID	MAX
1002	Executive Vice President, Chief of Staff	54	\$142,201	\$177,753	\$213,302
1011	Executive Vice President, Chief Financial Officer	53	\$135,429	\$169,289	\$203,144
1010	Senior Vice President, Chief Information Officer (CIO)	52	\$128,980	\$161,227	\$193,471
3022	Senior Vice President, Engineering, Planning & Facilities	52	\$128,980	\$161,227	\$193,471
6001	Senior Vice President, Operations and Public Safety	52	\$128,980	\$161,227	\$193,471
3005	Senior Vice President, Real Estate Development & Properties	52	\$128,980	\$161,227	\$193,471
		51	\$122,838	\$153,550	\$184,258
		50	\$116,989	\$146,238	\$175,484
		49	\$111,418	\$139,274	\$167,127
3010	Vice President, Properties and Legal Affairs	48	\$106,112	\$132,642	\$159,169
		47	\$101,059	\$126,326	\$151,590
1024	Senior Director, Internal Audit, Risk Management and Civil Rights Compliance Officer	46	\$96,247	\$120,310	\$144,371
		45	\$91,664	\$114,580	\$137,496
5010	Director, Facilities	44	\$87,299	\$109,124	\$130,949
New	Director, Human Resources	44	\$87,299	\$109,124	\$130,949
1025	Director, Purchasing	44	\$87,299	\$109,124	\$130,949
6031	Fire Chief	44	\$87,299	\$109,124	\$130,949
5015	Police Chief	44	\$87,299	\$109,124	\$130,949
		43	\$83,142	\$103,928	\$124,713
		42	\$79,183	\$98,979	\$118,774
6032	Deputy Fire Chief	41	\$75,412	\$94,265	\$113,124
6000	Manager, Operations	41	\$75,412	\$94,265	\$113,124
4009	Senior Project Manager	40	\$71,821	\$89,777	\$107,737
		39	\$68,401	\$85,502	\$102,602
6029	Fire Captain	38	\$65,144	\$81,430	\$97,716
5006	Police Captain	38	\$65,144	\$81,430	\$97,716
3014	Property Leasing Manager	38	\$65,144	\$81,430	\$97,716
		37	\$62,042	\$77,552	\$93,063

5016	Facilities Superintendent	36	\$59,088	\$73,859	\$88,631
1022	Finance Administrator	36	\$59,088	\$73,859	\$88,631
1030	Network Administrator	36	\$59,088	\$73,859	\$88,631
1037	System Administrator	36	\$59,088	\$73,859	\$88,631
		35	\$56,274	\$70,343	\$84,411
5019	Facilities Airfield Supervisor	34	\$53,594	\$66,993	\$80,391
5040	Facilities Fleet Supervisor	34	\$53,594	\$66,993	\$80,391
5025	Facilities HVAC/Electronics Supervisor	34	\$53,594	\$66,993	\$80,391
5018	Facilities Landscape Supervisor	34	\$53,594	\$66,993	\$80,391
		33	\$51,042	\$63,803	\$76,563
1028	Buyer	32	\$48,611	\$60,764	\$72,917
1005	Executive Assistant	32	\$48,611	\$60,764	\$72,917
4008	Project Manager I, Engineering	32	\$48,611	\$60,764	\$72,917
4015	CAD & GIS Systems Operator	31	\$46,297	\$57,871	\$69,445
5052	CAD & Graphics Design Technician	31	\$46,297	\$57,871	\$69,445
5023	Electronic Systems Specialist	31	\$46,297	\$57,871	\$69,445
5024	Industrial Electrician	31	\$46,297	\$57,871	\$69,445
6010	Operations Officer	31	\$46,297	\$57,871	\$69,445
6035	Fire Fighter	30	\$44,092	\$55,115	\$66,138
5022	HVAC Mechanic	30	\$44,092	\$55,115	\$66,138
5026	Industrial Mechanic	30	\$44,092	\$55,115	\$66,138
5074	Senior Horticultural Specialist	30	\$44,092	\$55,115	\$66,138
5028	Electrician	29	\$41,992	\$52,491	\$62,989
4010	Engineering Assistant	29	\$41,992	\$52,491	\$62,989
3030	Human Resources Specialist	29	\$41,992	\$52,491	\$62,989
2012	Marketing Community Relations Coordinator	29	\$41,992	\$52,491	\$62,989
3033	Real Estate Developmnet and Properties Coordinator	29	\$41,992	\$52,491	\$62,989
5042	Mechanic	28	\$39,993	\$49,991	\$59,989
3012	Properties/Advertising Administrator	28	\$39,993	\$49,991	\$59,989
3011	Property Leasing Administrator	28	\$39,993	\$49,991	\$59,989
3033	Senior Administrative Assistant/Coordinator	28	\$39,993	\$49,991	\$59,989
1029	Technical Support Specialist	28	\$39,993	\$49,991	\$59,989
1027	Accounts Receivable Specialist	27	\$38,088	\$47,610	\$57,133
1035	Assistant Buyer	27	\$38,088	\$47,610	\$57,133
5017	Facilities Administrator	27	\$38,088	\$47,610	\$57,133
6011	Operations Security Coordinator	27	\$38,088	\$47,610	\$57,133
4017	Project Coordinator, Engineering & Environmental Affairs	27	\$38,088	\$47,610	\$57,133
3038	Records Retention Coordinator/Assistant Internal Audit	27	\$38,088	\$47,610	\$57,133
1023	Accounts Payables Specialist	26	\$36,275	\$45,343	\$54,412
5027	Facilities Tech II - HVAC	26	\$36,275	\$45,343	\$54,412
6020	Communications Specialist	25	\$34,547	\$43,184	\$51,821

April 25, 2022 Board Meeting - Items Needing Action

5060	Equipment Operator	25	\$34,547	\$43,184	\$51,821
5075	Horticultural Specialist	25	\$34,547	\$43,184	\$51,821
5076	Maintenance Specialist II	25	\$34,547	\$43,184	\$51,821
5011	Transportation Enforcement Specialist	25	\$34,547	\$43,184	\$51,821
3037	Administrative Assistant	24	\$32,902	\$41,128	\$49,353
3036	Administrative Assistant-Ops, ARFF and Marketing and Public Relations	24	\$32,902	\$41,128	\$49,353
1031	IT System Technician	24	\$32,902	\$41,128	\$49,353
5079	Maintenance Specialist I (Fleet Garage)	24	\$32,902	\$41,128	\$49,353
5004	Police Assistant	24	\$32,902	\$41,128	\$49,353
1038	Procurement Specialist	24	\$32,902	\$41,128	\$49,353
5030	Floor Maintenance Technician	23	\$31,335	\$39,169	\$47,003
5078	Maintenance Technician	23	\$31,335	\$39,169	\$47,003
3013	Property Leasing Assistant	23	\$31,335	\$39,169	\$47,003
5008	Traffic Control Specialist	23	\$31,335	\$39,169	\$47,003
		22	\$29,843	\$37,304	\$44,765
5070	Baggage Handling System Technician	21	\$28,422	\$35,528	\$42,633

## **AGENDA ITEM NO. 6.5**

### **SARASOTA MANATEE AIRPORT AUTHORITY April 25, 2022 MEETING STAFF NARRATIVE**

#### **REQUEST FOR APPROVAL: AUTHORIZATION TO ALLOW PRESIDENT, CEO TO APPROVE PURCHASE OF ADDITIONAL SHUTTLE BUSES AS NEEDED**

---

---

**EXECUTIVE SUMMARY:** Staff requests authorization from the Board to purchase needed Shuttle Buses for expanded Parking Lots for the Sarasota Manatee Airport Authority ("Authority").

---

---

NARRATIVE: The Purchasing Department is requesting Board Authorization to allow Mr. Piccolo to approve the purchase of additional Shuttles needed for the expansion of planned Parking Lots this fall.

With the rapid planned expansion of our parking lot facilities, Purchasing is requesting the Board to allow Mr. Piccolo to approve additional Shuttle Buses need to service these new lots. As with most vehicle purchases in this current market, inventory is not available and lead times for Shuttle Buses are projected to be over 6 months. Purchasing will follow all current Purchasing Policy procedures as these shuttles become available in the marketplace. We will be working closely with our Parking Management Company to determine the number of needed Shuttle Buses to meet our growing demand. Purchasing will follow all our normal solicitation procedures in these procurements.

---

---

**RECOMMENDATION:** It is hereby recommended that the Sarasota Manatee Airport Authority Board approve the purchase of additional Shuttle Buses and also request authorization for Mr. Piccolo to approve these purchases and prepare any and all documents necessary to implement this action.

---

---

## **AGENDA ITEM NO. 6.6**

**SARASOTA MANATEE AIRPORT AUTHORITY  
April 25, 2022, REGULAR MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL:  
GENERAL GROUND LEASE WITH THE EXPERIMENTAL AIRCRAFT ASSOCIATION, CHAPTER 180 OF  
MANASOTA COUNTY**

---

---

**EXECUTIVE SUMMARY: Requesting Approval of a General Ground Lease with Experimental Aircraft Association, Chapter 180 of Manasota County to Lease approximately 0.9 Acres of Land at the Airport for Aircraft Hangar Development.**

---

---

**NARRATIVE:** The Experimental Aircraft Association ("EAA") was founded in 1953 as a community of aviation enthusiasts that promotes recreational flying and has grown to more than 200,000 members. EAA Chapter 180 of Manasota County ("Chapter") serves the local aviation community by nurturing interest in aviation, providing pathways to participation and to experience flight, promoting youth education programs, events, and activities, and protecting the right and the freedom to fly.

The Chapter has requested to lease available land at the Sarasota Bradenton International Airport ("Airport") to provide support for their fund-raising efforts to construct a permanent home for the Chapter at the Airport. The proposed ground lease ("Lease") includes approximate 38,698 SF or roughly 0.9 acres of land located on the north quadrant of the Airport, immediately adjacent to the former Air Traffic Control Tower site, identified for aviation use on the Airport's Master Plan.

The proposed initial term of the Lease is twenty (20) years with three (3) five-year renewal terms that may be exercised by the Chapter, subject to compliance with all terms, covenants, and conditions of the Lease. The appraised fair market rental value of the land is \$0.65/SF. Given this organization is a 501.c.3 engaging in youth education and will also house the Civil Air Patrol, Teen Aircraft Factory, Inc. and The 99's, which are also 501, c.3 organizations that provide aviation educational programs as well, the proposed initial rental rate is \$0.186/SF, or \$7,200.00/Yr., subject to CPI adjustments every five (5) years throughout the term of the Lease, commencing on the earlier of: (a) the Chapter's receipt of a certificate of occupancy for its improvements, or (b) thirty-six (36) months immediately following the effective date of the Lease.

The scope of the Chapter's anticipated improvements is under design. Renderings of the anticipated improvements are attached for review. Based on the Chapter's service to the community and its contribution to aviation youth education, the President and CEO recommends approval of the Ground Lease, with the Experimental Aircraft Association, Chapter 180 of Manasota County, as presented.

---

---

**RECOMMENDATION: It is hereby recommended that the Sarasota Manatee Airport Authority Board approve the Ground Lease, with the Experimental Aircraft Association, Chapter 180 of Manasota County.**

---

---

**ATTACHMENTS:** (a) Proposed Ground Lease with the Experimental Aircraft Association, Chapter 180 of Manasota County; and (b) Renderings of EAA Chapter 180 of Manasota County's anticipated improvements





SARASOTA  
BRADENTON  
INTERNATIONAL  
AIRPORT

**GENERAL GROUND LEASE**

**SARASOTA MANATEE AIRPORT AUTHORITY  
and  
EXPERIMENTAL AIRCRAFT ASSOCIATION, CHAPTER 180**

**Execution Date:** \_\_\_\_\_

TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
1 Premises .....	1
2 Uses of Premises .....	2
3 Term .....	2
4 Rent .....	2
5 Security for Payment.....	4
6 Lessee’s Obligations .....	4
7 Default and Termination.....	6
8 Maintenance and Repair .....	8
9 Construction of Improvements .....	9
10 Title to Improvements .....	10
11 Construction Lien .....	10
12 Utilities .....	10
13 Ingress and Egress .....	10
14 Taxes, Permits and Licenses .....	11
15 Insurance .....	11
16 Indemnification.....	13
17 FAA Approval .....	14
18 Laws, Rules and Regulations .....	14
19 Environmental Regulations .....	14
20 Storm Water Regulations .....	16
21 Storage Tanks .....	18
22 Environmental Inspection.....	18
23 Americans with Disabilities Act .....	19
24 Affirmative Action .....	19
25 Nondiscrimination .....	19
26 Disadvantaged Business Enterprise.....	19
27 Right to Entry .....	20
28 Right of Flight.....	20
29 Rights Reserved .....	21
30 Signage .....	21
31 Quiet Enjoyment.....	21
32 Mortgage Rights of Lessee .....	21
33 Assignment and Subleasing .....	22
34 Corporate Tenancy .....	23
35 Eminent Domain.....	23
36 Surrender of Premises.....	23
37 Acceptance of Surrender .....	23
38 Personal Property .....	24
39 Applicable Law and Venue .....	24
40 Attorney’s Fees .....	24
41 Invalidity of Clauses .....	24
42 Notices and Communications.....	24
43 Subordination to Bond Resolution.....	25
44 Federal Right to Reclaim .....	25

45 Relationship of the Parties ..... 25  
46 Miscellaneous..... 25

**Exhibits:**

- Exhibit A Premises
- Exhibit B Sworn Statement Pursuant to Section 287.122(3)(a) Florida Statutes  
on Public Entity Crimes

**GENERAL GROUND LEASE**

THIS LEASE, made and entered into this 25th day of April, 2022 ("Effective Date"), by and between the **SARASOTA MANATEE AIRPORT AUTHORITY**, a body politic and corporate (hereinafter referred to as the "Authority" or "Lessor"), and the **EXPERIMENTAL AIRCRAFT ASSOCIATION, CHAPTER 180, OF MANASOTA, INC.**, a Florida not for profit corporation, (hereinafter referred to as the "Lessee").

**WITNESSETH:**

**WHEREAS**, the Authority owns and operates the Sarasota Bradenton International Airport located in the Counties of Sarasota and Manatee, State of Florida, hereinafter called the "Airport"; and

**WHEREAS**, the Authority owns certain real property upon and around the Airport located in Sarasota and Manatee Counties; and

**WHEREAS**, the Authority desires to lease to Lessee and Lessee desires to lease from Authority, upon the terms and conditions herein contained, certain real property to be used for the sole purpose of performing aircraft construction, aircraft restoration, aircraft storage, aviation education, flight training, and related ancillary uses;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter contained, the parties enter this General Ground Lease (hereinafter referred to as "Lease") and agree as follows:

**ARTICLE 1**  
**Premises**

**1.1 Premises**

Lessee hereby agrees to lease from Authority certain real property (herein referred to as the "Premises") further described in Exhibit "A" of this Lease, containing approximately 38,698 total acres, as more particularly described on the Land Title Survey prepared by David Michael Black, Architect, dated 21-SRQ attached hereto as Exhibit "A" and incorporated by reference.

**1.2 As Is Condition**

Authority delivers said Premises in "AS IS" condition and implies no further warranties or representations regarding said Premises. Authority has disclosed that the Premises has previously been used as an air traffic control tower facility and Lessee understands that it may need to remove concrete, asphalt, organics, and other foreign debris to prepare the Premises for construction.

**ARTICLE 2**  
**Uses of Premises**

The Premises shall be used by Lessee for the construction, development, and operation of an aircraft hangar for the sole purpose of performing aircraft construction, aircraft restoration, aircraft storage, aviation education, flight training, and related ancillary uses. No other uses of the Premises are permitted.

**ARTICLE 3**  
**Term**

**3.1 Initial Term**

The initial term of the lease shall begin upon the Rent Commencement Date of this Lease, as defined in Article 4.2 below, and continue thereafter uninterrupted for a period of twenty (20) years through the last day of the two-hundred fortieth (240<sup>th</sup>) month, immediately following the Commencement Date ("Initial Term").

**3.2 Renew Terms**

Provided Lessee is not in default of any of the terms or conditions of this Lease at the expiration of the Initial Term, as defined in this Article, thereafter, Lessee shall have the option to extend the Initial Term of this Lease for up to three (3) additional five-year terms ("Renewal Terms"). Provided Lessee is not in default of any of the terms or conditions of this Lease at the expiration of each Renewal Term, Lessee may exercise each said Renewal Term by giving written notice to Authority of its request to do so at least 180 days prior to the expiration of the then existing term, as may be amended.

**ARTICLE 4**  
**Rent**

**4.1 Rent Amount**

The annual rent due herein for the first year of this Lease shall be equivalent to approximately \$0.1861 per square foot for 38,698 square feet of land ("Initial Rent"). Said annual Initial Rent shall be \$7,200.00, plus applicable State of Florida sales tax, unless exempt by law, which amount shall be paid by Lessee to Authority in equal monthly installments in the amount of \$600.00 on or before the first (1st) day of each month throughout the Term of this Lease.

**4.2 Rent Commencement**

The first monthly installment of Initial Rent shall be due to Authority upon Lessee's receipt of a Certificate of Occupancy for Lessee's Improvement or upon the expiration of thirty-six (36) months immediately following the Effective Date of this Lease, whichever event shall first occur ("Rent Commencement Date").

**4.3 Due Diligence Period**

In recognition that Lessee will perform due diligence, surveying, grading, and site work, including removal of trash and debris, to prepare the Premises for development, Lessee shall be granted up to thirty-six (36) months of free rent commencing upon the Effective Date of this Lease and ending upon the earlier of a) Lessee's receipt of a Certificate of Occupancy for Lessee's Improvements, as defined in Article 6 below, or b) upon expiration of thirty-six (36) months immediately following the Effective Date of this Lease. The first installment of Rent shall be paid promptly upon the first occurrence thereof, with further installments due on the first day of each month thereafter as defined in this Article.

**4.4 Rental Adjustment**

Commencing on the first day of the sixth year following the Rent Commencement Date of this Lease and every five years thereafter including any renewal periods, the rental rate shall be adjusted to reflect cost of living increase based on the Consumer Price Index (CPI) of all Urban Consumers, distributed by the Bureau of Labor Statistics of the U.S. Department of Labor. For purposes of calculating the new Adjusted Rent, May 1, 2021, through April 30, 2022, shall be referred to as the "Base Year." At the time the calculation is being made the monthly index figure for the third calendar

month immediately prior to such Lease Year ("Adjustment Level") shall be used. The monthly index figure for the same month in the twelve-month period immediately preceding the fifth Lease Year shall be referred to as the "Base Level." The new Adjusted Rent shall be computed by multiplying Base Year Rent by a fraction, the numerator of which shall be the Adjustment Level, and the denominator of which shall be the Base Level. Stated as a mathematical formula, the adjusted rent shall be computed as follows:

$$\text{Adjusted Rent} = \text{Base Year Rent} \times \frac{\text{Adjustment Level}}{\text{Base Level}}$$

In no event shall the rental rate in effect be decreased because of such adjustment. The rental rate following the adjustment shall remain in effect until the next adjustment. For clarification purposes, the CPI adjustments will occur on the May 1st of years 2027, 2032, 2037 and so on. However, in no event shall the rent increase by more than two percent (2%) per year over the rent payable the preceding five-year period.

In all circumstances, the cost-of-living index applied shall be the Consumer Price Index (CPI) of all Urban Consumers, distributed by the Bureau of Labor Statistics of the U.S. Department of Labor. In the event said index ceases to be prepared and published, then the rental shall be adjusted in accordance with the most comparable index then in existence.

#### **4.5 Rent Payments**

Lessee shall pay all rents, fees, and charges required by this Lease to the following address:

Sarasota Manatee Airport Authority  
6000 Airport Circle  
Sarasota, FL 34243

All reports and other correspondence should be addressed as indicated in the Article hereof entitled, "Notices and Communications."

#### **4.6 Failure to Pay Rent, Fees or Charges**

In the event Lessee fails to make timely payment of any rent, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the maximum rate allowed by law shall accrue against the delinquent payment from the date due until the date payment is received by Authority. Notwithstanding the foregoing, Authority shall not be prevented from terminating this Lease for default in the payment of fees, charges, and payments due to Authority pursuant to this Lease, or from enforcing any other provisions contained herein or implied by law.

#### **4.7 Worthless Check**

In the event Lessee delivers a worthless check or draft to Authority in payment of any obligation arising under this Lease, Lessee shall incur a service charge of Fifty Dollars (\$50.00) or five (5) percent of the face amount of such check, whichever is greater; or, if Florida Statute §832.07 is amended, such other fee as shall be set by said statute.

#### **4.8 Additional Rents and Charges**

If the Authority is required to pay any sum or incur any obligations or expense by reason of the failure, neglect, or refusal of Lessee to perform or fulfill any one or more of the terms, covenants, or conditions of this Lease, or as a result of any act or omission of the Lessee contrary to said terms, covenants, or condition of this Lease, the Lessee agrees to pay Authority the sum or sums so paid

of the expense so incurred, including all interest, costs, damages, and penalties, and the same may be added to any installment of rent thereafter due herein and each and every part of the same shall become additional rent recoverable by the Authority in the same manner and with like remedies as if it were originally part of the rent set forth in this Article.

**4.9 Rent a Separate Covenant**

Lessee shall not for any reason withhold or reduce Lessee's required payments of rent and other charges provided in this Lease, it being expressly understood and agreed by the parties that the payment of rent and additional rent is a covenant by Lessee that is independent of the other covenants of the parties hereunder.

**ARTICLE 5  
Security for Payment**

**5.1 Security Options**

To provide security for the rents, fees, charges, obligations, and performance required hereunder, Lessee shall comply with either of the following two (2) options:

- A. Post with Authority a surety bond to be maintained throughout the term of this Lease in an amount equal to one year's rental payment under the terms of this Lease. The amount of the surety bond shall be increased as rental payments are increased. Such bond shall be issued by a surety company acceptable to Authority and authorized to do business in the State of Florida and shall be in the form and content acceptable to Authority; or
- B. Deliver to Authority an irrevocable letter of credit drawn in favor of Authority upon a bank which is satisfactory to Authority, and which is authorized to do business in the State of Florida. Said irrevocable letter of credit shall be in an amount equal to one year's rental payment under the terms of this Lease, shall be kept in force throughout the term of this Lease, and shall be in the form and content acceptable to Authority. As the rental payment is increased the amount of the irrevocable letter of credit shall similarly increase.

Thirty (30) days prior to the commencement of each year of the term, Lessee may request in writing that the requirement(s) contained in Article 5A. or B. above, be waived for the subsequent year. Provided that Lessee is not in default and has been timely in remittance of all rental payments due for the preceding twelve (12) months, said request shall not be unreasonably withheld. Timely shall be defined herein as having no instance where the rent due was in arrears thirty (30) days or more. Thereafter, in accordance with the terms and conditions, Lessee shall be entitled to request said waiver annually. If at any time, Lessee shall become delinquent in its payments due, Authority shall have the right to reinstate the security for payment requirement upon ten (10) days' written notice from the Authority.

**5.2 Satisfactory Performance**

The refund of the surety bond or irrevocable letter of credit required pursuant to this Article shall be conditioned on the satisfactory performance of all terms, conditions, and covenants contained herein throughout the entire Initial Term of this Lease and any Renewal Term.

**ARTICLE 6  
Lessee's Obligations**

- A. Lessee shall construct on the Premises, within thirty-six (36) months immediately following the

Effective Date of this Lease, one free standing aircraft hangar, offices, and related vehicle parking for the sole purpose of performing aircraft construction, aircraft restoration, aircraft storage, aviation education, flight training, and related ancillary uses ("Improvements"). Said Improvements shall be designed and constructed to industry standards in a manner acceptable to the Authority. The design of all Improvements shall be submitted by the Lessee to Authority for review and approved in writing by the Authority prior to Lessee's commencement of any construction of Improvements on the Premises.

- B. Conduct its operation hereunder in an orderly and proper manner, considering the nature of such operation so as not to unreasonably annoy, disturb, endanger or be offensive to others at the Airport or around the Premises.
- C. Control, within reason, the conduct, demeanor and appearance of its employees, invitees, and of those doing business with it and, upon objection from Authority concerning the conduct, demeanor, and appearance of any such persons, shall immediately take all reasonable steps necessary to remove the cause of objection.
- D. Remove from the Premises or otherwise dispose of in a manner approved by the Authority all garbage, debris, and other waste materials (whether solid or liquid) arising out of its occupancy of the Premises or out of its operations. Any such debris or waste which is temporarily stored in the open, shall be kept in suitable garbage and waste receptacles, made of metal, and equipped with tight-fitting covers and designed to contain whatever material safely and properly may be placed therein. Lessee shall use extreme care when effecting removal of all such waste.
- E. Not commit any nuisance, waste, or damage to the Premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such nuisance, waste, or damage to the Premises.
- F. Not create nor permit to be caused or created upon the Airport or the Premises any obnoxious odor, smoke or noxious gases or vapors. The creation of exhaust fumes by the operation of internal-combustion engines or engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this Lease.
- G. Not do or permit to be done anything which may interfere with effectiveness or accessibility of the drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on the Premises.
- H. Not overload any floor or paved area on the Premises and shall repair any floor, including supporting members, and any paved area damaged by overloading.
- I. Not do or permit to be done any act or thing upon the Premises:
  - 1. Which will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof or other contiguous Premises; or
  - 2. Which may constitute an extra-hazardous condition to increase the risks normally attendant upon the operations permitted by this Lease.
- J. Not keep or store flammable liquids within any covered and enclosed portion of the Premises more than Lessee's working requirements. Any such liquids having a flash point of less than 110°F shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.



- K. Provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the Federal Aviation Administration for the vicinity of the FAA Remote Receiver facility.
- L. Following the Effective Date, pay all applicable ad valorem taxes and any other taxes, unless exempt by law, or assessments against the Premises or the leasehold estate. Lessee reserves the right to contest any such taxes and withhold payment of such taxes, so long as the nonpayment of such taxes does not result in a lien against the leased Premises or a direct liability on the part of Authority. Lessee shall pay all sales tax due in connection with the Lease. This Lease shall be a net lease with Authority receiving rentals free of any indebtedness, encumbrances, or liens of any nature whatsoever. Lessee shall promptly file for all applicable property tax exemptions, if any.
- M. Expressly agree 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.

**ARTICLE 7**  
**Default and Termination**

**7.1 Events of Default**

The occurrence of any of the following events shall constitute a default of this Lease:

- A. Lessee's failure to pay the rent, or any other sums payable hereunder for a period of ten (10) days after written notice by Authority.
- B. Lessee's failure to observe, keep or perform any of the other terms, covenants, agreements, or conditions of this Lease or in the Airport Rules and Regulations for a period of ten (10) days after written notice by Authority.
- C. The bankruptcy of Lessee.
- D. Other than an assignment to the Lessee Bond Trustee, Lessee making an assignment for the benefit for creditors.
- E. A receiver or trustee being appointed for Lessee or a substantial portion of Lessee's assets.
- F. Lessee's voluntary petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement, or insolvency law
- G. Lessee's vacating or abandoning the Premises for thirty (30) consecutive days.
- H. Lessee's interest under this Lease being sold under execution or other legal process.
- I. Lessee's interest under this Lease being modified or altered by any unauthorized assignment or subletting or by operation of law.
- J. Lessee's failure to comply with its environmental obligations, any laws, programs, or audits promulgated by Authority or applicable regulatory agencies which may be revised from time to time.

- K. Noncompliance with Florida Statute 287.133 - Concerning Criminal Activity on Contracts with Public Entities.
- L. Regarding a non-monetary default that requires longer than 10 days to complete, Lessee shall not be held in default so long as Lessee, or the Lessee Bond Trustee, takes action to cure the default promptly upon receipt of written notice of the default and works diligently and completes the cure within a reasonable time, but in no event later than 90 days from receipt of notice.

#### **7.2 Remedies**

In the event of any of the foregoing events of default, Authority, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:

- A. Terminate Lessee's right to possession under the Lease and re-enter and retake possession of the Premises and relet or attempt to relet the Premises on behalf of Lessee at such rent and under such terms and conditions as Authority may deem best under the circumstances for the purpose of reducing Lessee's liability. In connection with same, the Authority may work directly with the Lessee Bond Trustee. Authority shall not be deemed to have thereby accepted a surrender of the Premises, and Lessee shall remain liable for all rent, or other sums due under this Lease and for all damages suffered by Authority because of Lessee's breach of any of the covenants of the Lease.
- B. Declare this Lease to be terminated, ended and null and void, and re-enter upon and take possession of the Premises whereupon all right, title and interest of Lessee in the Premises shall end; or
- C. Accelerate and declare the entire remaining unpaid rent for the balance of this Lease and any other sums due and payable forthwith and may, at once, take legal action to recover and collect the same.

#### **7.3 Additional Provisions**

No re-entry or retaking possession of the Premises by Authority shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to Lessee, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent or other monies due to Authority hereunder or of any damages accruing to Authority by reason of the violations of any of the terms, provision and covenants herein contained. Authority's acceptance of rent or other monies following any non-monetary event of default hereunder shall not be construed as Authority's waiver of such event of default. No forbearance by Authority of action upon any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions and covenants herein contained. Forbearance by Authority to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of any other violation or default. Legal actions to recover for loss or damage that Authority may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the expense of repossessions or reletting and any repairs or remodeling undertaken by Authority following repossession.

#### **7.4 Waiver of Jury Trial**

The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever

arising out of, or in any way connected with, this Lease, the relationship of Authority and Lessee, Lessee's use, or occupancy of the Premises and/or Improvements, and/or claim or injury or damage. In the event Authority commences any proceeding to enforce this Lease or Authority/Lessee relationship between the parties or for nonpayment of rent (of any nature whatsoever) or additional monies due Authority from Lessee under this Lease, Lessee will not interpose any counterclaim of whatever nature or description in any such proceedings. In the event Lessee must, because of applicable court rules, interpose any counterclaim or other claim against Authority in such proceedings, Authority and Lessee covenant and agree that, in addition to any other lawful remedy of Authority, upon motion of Authority, such counterclaim or other claim asserted by Lessee shall be severed out of the proceedings instituted by Authority and the proceedings instituted by Authority may proceed to final judgement in the Circuit Court of the 12th Judicial Circuit separately and apart from and without consolidation with or reference to the status of each counterclaim or any other claim asserted by Lessee.

**7.5 Time of the Essence**

Time is of the essence regarding this Lease; and in case Lessee shall fail to perform the covenants or conditions on its part to be performed at the time fixed for the performance of such respective covenants or conditions by the provisions of this Lease, Authority may declare Lessee to be in default of such Lease.

**ARTICLE 8**  
**Maintenance and Repair**

**8.1 Lessee's Responsibilities**

Lessee shall throughout the term of this Lease assume the entire responsibility and shall relieve Authority from all responsibility for all repair and maintenance whatsoever in the Premises, whether such repair or maintenance be ordinary or extraordinary, structural, or otherwise, and without limiting the generality hereof, shall:

- A. Always keep in a clean and orderly condition and appearance the Premises and all Lessee's fixtures, equipment and personal property which are in any part of the Premises which is open to or visible by the public.
- B. Provide and maintain fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinances, resolutions, or regulation of any competent authority.
- C. Keep all areas of the Premises in state of good repair to include repair of any damage to the automobile parking pavement or other surface of the premises or any building improvements caused by weathering and/or aging, Lessee's operations, or by any oil, gasoline, grease lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.
- D. Take such anti-erosion measures, including but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or built upon.
- E. Be responsible for the maintenance and repair of all utility service lines except common utilities, if any, including but not limited to, service lines for the supply of water, gas service lines, electrical power and telephone conduits and line, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises and used by Lessee exclusively.

**8.2 Authority's Rights**

Authority shall not be liable for, or required to make, any repairs or perform any maintenance upon the Premises. If Lessee fails to perform Lessee's maintenance responsibilities, Authority shall have the right, but not the obligation, to perform such maintenance responsibilities, provided Authority has first, in any situation not involving an emergency, by written notice to Lessee, afforded Lessee a period of thirty (30) days within which to correct the failure. All costs incurred by Authority in performing Lessee's maintenance responsibility, plus a fifteen percent (15%) administrative charge, shall be paid by Lessee within ten (10) days of receipt of billing, therefore.

**ARTICLE 9**  
**Construction of Improvements**

**9.1 Written Consent**

Lessee shall not construct any Improvements, or other alterations or improvements on the Premises without the prior written consent of the Authority's President/CEO, which approval shall not unreasonably be withheld.

**9.2 Required Conditions**

If Lessee's requests to construct its Improvements, or other alterations or improvements is consented to in writing by the Authority's President/CEO, the following conditions shall apply:

- A. Lessee shall obtain all required permits and licenses duly necessary and comply with applicable zoning laws, building codes and other laws or regulations of any appropriate governing body, whether it be state, county, city, or Authority.
- B. Prior to any construction within the Premises, all contractors, and subcontractors to perform work must be approved by Authority, such approval shall not be unreasonably withheld, and such contractors and subcontractors will be required to execute an indemnification agreement in favor of Authority, and to provide evidence of insurance satisfactory to Authority (in at least the same amounts and form required for Lessee).
- C. Lessee shall advance an estimate of costs necessary to complete Lessee's work and shall provide future cost estimates on any other alterations or improvements to the Premises upon written consent of Authority to authorize said alterations or improvements.
- D. Lessee shall post with Authority a performance and payment bond in an amount equal to the estimated cost of alterations or improvements to be delivered to Authority under the provisions above. Said amount is established to account for potential cost overruns, contingencies, and cost estimate errors.
- E. Lessee covenants and agrees to accept and pay all financial obligations associated with costs necessary to complete Authority-approved alterations or improvements.
- F. Lessee agrees throughout the term of this Lease to maintain at its expense the Premises and any improvements, equipment, or display within the Premises in a good state of repair and preservation. It is if Lessee shall be responsible for the cost of repair for any damage to the Premises or the adjacent grounds or improvements, caused by Lessee, its agents, or employees. Authority shall have the right to inspect the Premises at any reasonable time, provided that the exercise of such right shall not unreasonably interfere with Lessee's business. Lessee agrees to be solely responsible for any damage (other than normal wear and tear) resulting from the removal by Lessee of its personal property, trade fixtures, or signs.

**ARTICLE 10**  
**Title to Improvements**

All permanent improvements of whatever kind or nature, including but not limited to, all buildings and all equipment installed therein which, under the laws of the State of Florida, are part of the realty, heating and air conditioning equipment, interior and exterior light fixtures, fencing, landscaping, paving, tie-down facilities and all other permanent improvements which become part of the realty placed upon the Premises, with or without consent of Authority, shall become and be deemed to be a part of the Premises and shall become the property of Authority upon termination or default of this Lease and shall remain on the Premises unless otherwise agreed to in writing. Title to all personal property, furnishings and trade fixtures shall be and remain with Lessee and may be removed from the Premises at any time, provided Lessee is not then in default thereunder, and further provided Lessee exercises care in the removal of same and repairs any damage to the Premises caused by said removal.

Notwithstanding the foregoing, so long as Lessee is not in default of this Lease or in default under any mortgage securing Lessee's leasehold interest, all buildings and all equipment installed, constructed, or placed therein by Lessee during the Term of this Lease ("Lessee's Vertical Improvements"), shall not be deemed part of the realty and shall remain the personal property of the Tenant and shall not convey to the Landlord upon termination or default of this Lease provided that Tenant removes them prior to the expiration of the term and repairs any damage caused by their removal. Prior to removal of Lessee's Vertical Improvements Lessee must first provide to Authority the written consent of the Lessee Bond Trustee (or other First Leasehold Mortgagee if applicable.)

**ARTICLE 11**  
**Construction Lien**

Authority's interest in the Premises shall not be subjected to any construction, mechanics, materialman's, tax, laborers, or any other lien, whether Authority has given its written approval for the improvements or otherwise, and Lessee shall save and hold harmless Authority and its interest in the Premises from any such lien or purported lien. Within fifteen (15) days of filing of any lien, Lessee shall cause same to be satisfied or shall post bond for the lien.

**ARTICLE 12**  
**Utilities**

Lessee shall make all provisions it deems necessary for connection to necessary utilities and shall pay the full cost and expense for installation and use of all said utilities. All such utilities shall be segregated by a separately metered account in Lessee's name and Authority shall not be responsible for payment of any utility service used by Lessee.

**ARTICLE 13**  
**Ingress and Egress**

**13.1 Use of Public Way**

Lessee, its contractors, suppliers of material and furnishers of services, shall have the right of ingress and egress to the Premises via roadways as depicted on the Site Plan attached as Exhibit "C".

**13.2 Road Closures**

Authority may at any time temporarily or permanently close or consent to or request the closing of any such roadway, and any other area at the Premises presently or hereafter used as such, so long as a means of ingress and egress reasonably equivalent to that provided in 13.1 above is concurrently made available to Lessee. Lessee hereby releases and discharges Authority, its successors and assigns, of and from any and all claims, demands or causes of action which Lessee may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, or other areas used as such, whether within or outside the Premises, provided that Authority makes available to Lessee a means of ingress and egress reasonably equivalent to that provided in 13.1 above.

**ARTICLE 14**  
**Taxes, Permits and Licenses**

Lessee shall pay all applicable ad valorem taxes and any other taxes or assessments against the Premises or the leasehold estate, unless exempt by law. Lessee shall bear, at its own expense, all costs of operating its equipment and business including all taxes assessed against the operation of the business and any sales, use or similar taxes levied or assessed on any payments made by Lessee hereunder. Lessee shall bear all cost of obtaining any permits, licenses, or other authorizations required by authority of law in connection with the operation of its not-for-profit business at the Airport, and copies of all such permits, certificates and licenses shall be forwarded to Authority.

**ARTICLE 15**  
**Insurance**

**15.1 General Requirements**

Lessee shall provide, pay for, and maintain with insurance carriers rated A or better by Best's, the types of insurance described herein. All insurance shall be from responsible companies approved by Authority and authorized to do business in the State of Florida. All liability insurance policies of Lessee required herein shall provide a severability of interest provision. The insurance coverages and limits required shall be evidenced by properly executed certificates of insurance. Each certificate shall be an original, signed by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof attached. The required policies of insurance shall be performable in Sarasota and Manatee Counties, Florida, and shall be construed in accordance with the laws of the State of Florida.

All certificates shall provide thirty (30) days' prior written notice, by registered or certified mail, shall be given Authority of any cancellation, intent not to renew, reduction in the policies' coverages, or other material alteration. In the event of a reduction in any aggregate limit, Lessee shall take immediate steps to have it reinstated. If at any time Authority requests a written statement from the insurance company as to any impairments to the Aggregate Limit, Lessee shall promptly authorize and have delivered such statement to Authority. Lessee shall make up any impairment when known to it. Lessee authorizes Authority to confirm all information furnished Authority, as to compliance with the insurance requirements herein, with Lessee's insurance agents, brokers, and insurance carriers. All insurance coverages of Lessee shall be primary as regards any insurance or self-insurance program carried by Authority.

The acceptance of delivery by Authority of any certificate of insurance evidencing Lessee's insurance coverages and limits does not constitute approval or agreement by Authority that the

insurance requirements have been met or that the insurance policies shown in the certificates of insurance follow the requirements herein.

The certificates of insurance, or other evidence, must be filed with and approved by Authority prior to any activity being performed at the Airport by Lessee.

The insurance coverages and limits required of Lessee are designed to meet the minimum requirements of Authority. They are not designed as a recommended insurance program for Lessee. Lessee alone shall be responsible for the sufficiency of its own insurance program.

Lessee and Authority understand and agree that the limits of the insurance herein required may become inadequate based on Lessee's activities and industry practices, and Lessee agrees that it will increase such limits within thirty (30) days after receipt of notice in writing from Authority.

If any liability insurance required herein is to be issued or renewed on a "claims made" form as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Lease and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be unlimited.

All the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein. Submissions required by this Article shall be given to:

Sarasota Manatee Airport Authority  
6000 Airport Circle  
Sarasota, Florida 34243

Tenant's All Risk and liability policies shall contain a waiver of subrogation in favor of Authority. Renewal Certificates of Insurance shall be provided to Authority a minimum of thirty (30) days prior to expiration of current coverages.

Authority may terminate or suspend this Lease should at any time Lessee fail to provide or maintain: (1) the insurance coverages required in this Lease, or (2) an acceptable self-insurance program evidenced by documentation acceptable to Authority, or a surety bond from a corporate surety authorized to do business in the State of Florida, acceptable to Authority, guaranteeing Lessee's financial responsibility in complying with the general insurance requirements of this Lease. Such bond shall be in the amount of One Million Dollars (\$1,000,000) and protect Authority from any claims, debts, demands, liabilities, or causes of action as well as the cost of defense including attorneys' fees, and other fees, costs, and expenses resulting from the operations of Lessee under this Lease.

The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) policies, forms, and endorsements or broader where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to Authority.

**15.2 Workers' Compensation and Employers' Liability**

Workers' Compensation and Employers' Liability insurance in accordance with the statutes and regulations of the State of Florida including Employers Liability. Limits shall not be less than:

Workers' Compensation                      Florida Statutory requirements

Employers' Liability	\$500,000 limit each accident \$500,000 limit disease aggregate \$500,000 limit disease each employee
----------------------	---

**15.3 All Risk Property**

All Risk Property insurance including flood or earthquake, on all improvements now or hereafter located upon the assigned premises in an amount equal to the replacement cost (without depreciation) of such improvements. Coverage is to contain a 100% coinsurance clause or Agreed Amount Endorsement. Said insurance shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder.

**15.4 Commercial General Liability**

Commercial General Liability insurance, including Premises & Operations, Personal Injury, Contractual for this Lease, Independent Contractors, and Broad Form property Damage including Completed Operations. Limits of coverage shall not be less than:

\$1,000,000 Combined Single Limit each occurrence Bodily Injury, Personal Injury and Property Damage Liability,  
OR  
\$1,000,000 each occurrence and aggregate for liability associated with all operations under this specific lease. The aggregate limits shall be separately applicable to this lease.

**15.5 Automobile Liability**

Automobile Liability insurance shall be maintained by Lessee as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles that enter the Airport perimeter security fence with limits of not less than:

Bodily Injury Liability	\$1,000,000 limit each person/\$1,000,000 limit each accident
Property Damage Liability	\$1,000,000 limit each accident
OR	
Bodily Injury and Property Damage Liability	\$1,000,000 Combined Single Limit each occurrence

**15.6 Umbrella Liability or Excess Liability**

Umbrella Liability or Excess Liability insurance, if used to reach the limits of liability required, shall not be less than \$1,000,000 each occurrence and aggregate. The limits of primary liability insurance for the General Liability and Employers' Liability insurance coverages required in this section shall be not less than \$500,000 Combined Single Limit each occurrence and aggregate where applicable for Bodily Injury, Personal Injury, and Property Damage liability.

The Sarasota Manatee Airport Authority shall be named as additional insured on all insurance policies as required above.

**ARTICLE 16**  
**Indemnification**

Lessee agrees to protect, defend, reimburse, indemnify and hold Authority, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including, without limitation, attorney fees and costs incurred prior to trial, at trial, on any appeal, and in any bankruptcy proceeding) and



causes of action of every kind and character, known or unknown, against or from Authority by reason of any damage to property or the environment, including any contamination of Airport property such as the soil or storm water by fuel, gas, chemicals or other substances deemed by the EPA to be environmental contaminants at the time this Lease is executed or as may be redefined by the appropriate regulatory agencies in the future or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Lessee's performance under this Lease, Lessee's use or occupancy of the Premises, Lessee's acts, omissions or operations hereunder or the performance, nonperformance or purported performance of Lessee or any breach of the terms of this Lease. Lessee recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with laws of the State of Florida. This clause shall survive the termination of this Lease. Compliance with the insurance requirements as attached hereto shall not relieve Lessee of its liability or obligation to indemnify Authority as set forth in this Article. The foregoing indemnification is given without waiver of applicable sovereign immunity as may be granted in Section 1002.33(12)(h), Florida Statutes, or any waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

**ARTICLE 17**  
**FAA Approval**

This Lease may be subject to approval of the Federal Aviation Administration. If the FAA disapproves the Lease, either party may rescind the Lease by providing written notice.

**ARTICLE 18**  
**Laws, Rules and Regulations**

Lessee shall at all times comply with applicable federal, state and local laws and regulations, Airport Rules and Regulations (available at [www.srq-airport.com](http://www.srq-airport.com) under About SRQ, Operations), all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state or local government, Authority or Airport Management including but not limited to permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of the Airport. This shall include, but not be limited to, Lessee precluding its employees, agents, customers, or invitees from entering upon any restricted area of the Airport as noted in procedures, rules or regulations of Authority or Department of Homeland Security. In addition to other remedies provided hereunder, any violation of Airport or Department of Homeland Security procedures shall subject Lessee to an administrative damages payment of five hundred dollars (\$500.00) (in consideration for the administrative processing required by Authority to process and to respond to a violation) and to damages equal to the greater of (1) one thousand dollars (\$1,000) per occurrence (in consideration for damages which might be suffered by Authority in the form of fines or administrative procedures resulting from such violation), or (2) the civil fine imposed by the Department of Homeland Security upon Authority as a result of the violation. This amount must be paid by Lessee within ten (10) days of written notice, or this Lease shall be terminated by Authority.

**ARTICLE 19**  
**Environmental Regulations**

**19.1 Environmental Representations**

Notwithstanding any other provisions of this Lease, and in addition to all other Lease requirements,

and any other covenants and warranties of Lessee, Lessee hereby expressly warrants, guarantees, and represents to Authority, upon which Authority expressly relies that:

- A. Lessee is knowledgeable of all federal, state, regional and local governmental laws, ordinances, regulations, orders, and rules, without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environmental and natural resources due to, or in any way resulting from, the conduct by Lessee of its operations pursuant to or upon the Premises. Lessee agrees to keep informed of future changes in environmental laws, regulations, and ordinances.
- B. Lessee agrees to comply with all applicable federal, state, regional and local laws, regulations, and ordinances protecting the environmental and natural resources and all rules and regulations promulgated or adapted as some may from time to time be amended and accepts full responsibility and liability for such compliance.
- C. Lessee shall, prior to commencement of any such operations pursuant to this Lease, secure all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter hereof.
- D. Lessee, its employees, agents, contractors, and all persons working for, or on behalf of Lessee, have been fully and properly trained in the handling and storage of all such hazardous waste materials and other pollutants and contaminants; and such training complies with all applicable federal, state, and local laws, ordinances, regulations, rulings, orders, and standards which are now or are hereinafter promulgated.
- E. Lessee agrees that it will neither handle nor store any toxic waste materials on the Premises.
- F. Lessee shall provide Authority satisfactory documentary evidence of all such requisite legal permits and notifications as hereinabove required.
- G. Lessee agrees to cooperate with any investigation, audit or inquiry by Authority or any governmental agency regarding possible violation of any environmental law or regulation.

#### **19.2 Generator of Hazardous Waste**

If Lessee is deemed to be a generator of hazardous waste, as defined by state, federal, or local law, Lessee shall obtain an EPA identification number and the appropriate generator permit and shall comply with all federal, state, regional and local requirements imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law.

#### **19.3 Inventory of Regulated Materials**

Provisions shall be made by Lessee to have an accurate inventory list, including quantities, of all such hazardous, toxic, and other contaminated or polluted materials, whether stored, disposed of or recycled, available always for inspection at any time on the Premises by Authority officials and by Fire Department Officials or regulatory personnel having jurisdiction over the Premises, for implementation of proper storage, handling and disposal procedures.

#### **19.4 Notification and Copies**

Notification of all hazardous waste activities by Lessee shall be provided on a timely basis to Authority or such other agencies as Authority may from time to time designate. Lessee agrees that upon requests of Authority a twenty-four (24)-hour emergency coordinator and phone number shall

be furnished to Authority and to such state and county officials as are designated by Authority, in case of any spill, leak or other emergency involving hazardous, toxic, flammable, or other pollutants or contaminated materials. Designation of this emergency coordination may be required by existing federal, state, regional or local regulations which require such designation regardless of such request by Authority.

Lessee agrees to provide Authority copies of all permit application materials, permits, monitoring reports, environmental response plan, and regulated materials storage and disposal plans, within ten (10) days prior to their required submittal to regulation agencies having jurisdiction over such matters.

**19.5 Violations**

If Authority receives a notice from any governmental entity asserting a violation by Lessee of Lessee's covenants and agreements contained herein, or if Authority otherwise has reasonable grounds upon which to believe that such a violation has occurred, Authority shall have the right, but not the obligation, to contract, at Lessee's sole cost and expense, for the services of persons ("Site Reviewers") to enter the Premises and perform environmental site assessments for the purpose of determining whether there exists any environmental condition that could result in any liability, cost or expense to Authority. The Site Reviewers shall perform such tests on the Premises as may be necessary, in the opinion of the Site Reviewers, to conduct a prudent environmental site assessment. Lessee shall supply such information as is requested by the Site Reviewers. In the event Authority conducts testing due to information other than a notice of violation from a governmental authority, and the testing does not reveal any contamination other than the contamination referenced in Article 19 of this Lease, Authority agrees to bear all costs associated with the testing.

If Lessee receives a Notice of Violation or similar enforcement action or notice of noncompliance, Lessee shall provide a copy of same to Authority within twenty-four (24) hours of receipt by Lessee or Lessee's agent. Violation of any part of the provisions of this Article or disposition by Lessee of any sanitary waste, pollutants, contaminants, hazardous waste, toxic waste, industrial cooling water, sewage or any other materials in violation of the provisions of this Article shall be deemed to be a default under this Lease if not cured within ten (10) days of receipt of notice from Authority shall be grounds for termination of this Lease, and shall also provide Authority grounds for taking whatever other action it may have in addition to termination based upon default as provided for under this Lease.

**ARTICLE 20**  
**Storm Water Regulations**

Authority reserves rights of drainage over the Premises in accordance with plans approved or to be approved by applicable governing regulatory bodies, including but not limited to Southwest Florida Water Management District (SWFWMD). Lessee's plans, which are subject to Lessor's approval according to the terms of this Lease, shall include a drainage plan which must be approved by applicable governmental authorities. To the extent that the approved drainage plan provides for drainage over adjacent lands of Authority, Lessee is granted the right to drain over such lands in accordance with governmental approvals. Authority reserves drainage rights across the Premises to serve Authority's drainage requirements.

Notwithstanding any other provisions or terms of the Lease, Lessee acknowledges that certain properties and uses of properties within the Airport or on Authority owned land are subject to Federal storm water regulations as set forth in 40 CFR Part 122. Lessee agrees to observe and abide by

said regulations as applicable to its property and use.

Notwithstanding any other provisions or terms of the Lease, Authority acknowledges that Lessee has taken steps necessary to apply for or obtain a storm water discharge permit as required by the applicable regulations for Lessee's operations at the Airport.

Notwithstanding any other provisions or terms of this Lease, including Lessee's right to quiet enjoyment, Authority and Lessee both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that it may be necessary to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Lessee, as defined in the federal storm water regulations, by implementing and maintaining "Best management practices."

Authority will provide Lessee with written notice of those storm water discharge permit requirements, that are in Authority's storm water permit, that Lessee will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples for analysis of such samples for contamination; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee within seven (7) days of receipt of such written notice, shall notify Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed to assent to undertake such requirements. If Lessee provides Authority with timely written notice that it disputes such storm water discharge permit requirements, Authority and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to written notice from Authority for purposes of delay or avoiding compliance.

Lessee agrees to undertake those storm water discharge permit requirements for which it has received written notice from any governmental entity charged with enforcement of storm water regulations. Lessee acknowledges that time is of the essence and will make every effort to meet all deadlines that may be imposed on it.

Authority agrees to provide Lessee, at its request, with any nonprivileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations.

Authority will give Lessee written notice of any breach by Lessee of Authority's storm water discharge permit or the provisions of this section. If such a breach is material, and, if of a continuing nature, Authority may terminate this Lease. Lessee agrees to cure promptly any breach caused by Lessee or as a direct result of Lessee's operation.

Lessee agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. In addition, Lessee agrees to participate in Authority's Environmental Compliance Program and is subject to and agrees to periodic inspections conducted by Airport staff to monitor the management, handling, storage, and disposal practices associated with any petroleum substances, hazardous substances, or waste materials.

All such remedies of Authority regarding the environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Lease.

Lessee shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage or

disposal of all pollutants or contaminated materials, as same are defined by law, by Lessee or by Lessee's employees, invitees, suppliers or service or providers of materials or any other person whomsoever, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Lessee pursuant to the terms of this Lease.

**ARTICLE 21**  
**Storage Tanks**

Lessee agrees that it will not have any underground or above ground storage tanks on the Premises unless specifically authorized in writing by Authority. If any tank is authorized by Authority, Lessee covenants and agrees that it will comply with all regulations concerning the installation, operation, maintenance, and inspection of both above ground and underground storage tanks ("Tanks") including financial responsibility requirements.

**ARTICLE 22**  
**Environmental Inspections**

**22.1 Initial Inspection**

Authority will conduct an environmental assessment of the Premises within the first three months of the Lease, and to provide a copy of such report to Lessee to establish an environmental baseline indicating the current condition of the Premises ("Baseline Environmental Report").

**22.2 Final Inspection**

Within the last sixty (60) days of the Lease or after Lease termination, Authority shall have the right to have an environmental inspection performed to determine the status of any hazardous substances or hazardous waste as defined by the Comprehensive and Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. section 9601(14) pollutants or contaminants as defined in CERCLA, 42 U.S.C. section 9604 (A)(2) or hazardous waste as defined in the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. section 6903(5) or other similar applicable federal or state laws and regulations, including, but not limited to asbestos, PCB's, urea formaldehyde, and radon gas existing on the Premises or whether any said substances have been generated, released, stored or deposited over, or presently exist beneath or on the Premises from any source.

Lessee hereby expressly agrees to indemnify and hold Authority harmless from and against any and all liability for fines and physical damage to property or injury or deaths to persons, including reasonable expense and attorney's fees, arising from or resulting out of, or in any way caused by, Lessee's failure to comply with any and all applicable federal, state, and local laws, ordinances, regulations, rulings, orders and standards, now or hereafter promulgated for the purpose of protecting the environment. Lessee understands that this indemnification is in addition to and is a supplement of Lessee's indemnification set forth in other provisions of this Lease and Lessee is in full understanding to the extent of this indemnification and hereby expressly acknowledges that it has received full and adequate consideration from Authority to legally support this indemnification agreement. This provision of the lease shall survive termination of the Lease; provided, however, that Lessee's obligations hereunder shall not apply to any matter not arising out of, or incident to, or in connection with Lessee's activities under this Lease.

Regarding any contamination caused by Lessee or arising by reason of Lessee's use or occupancy of the Premises, Lessee shall immediately take such action as is necessary to clean up and remediate the Premises at its own expense in accordance with applicable federal, state, and local law. The remediation must continue until the applicable governmental authorities have determined

that no further action is necessary. If the Authority is unable to lease the Premises during the period of cleanup and remediation due to the environmental condition or cleanup work being performed, in addition to any other damages, Lessee shall be responsible for payment of lost rent or lost use to the Authority.

The firm(s) conducting the site inspection, or the site cleanup work must be qualified and approved by Authority, and the methodology used by such firm shall be consistent with the then current engineering practices and methods required by the State of Florida or the United States government and be acceptable to Authority.

Lessee understands and agrees that it is strictly liable for any environmental violation or harm, or any contamination to the soil or the water table under the Premises caused by Lessee or occurring by reason of Lessee's use or occupancy of the Premises. Said liability shall extend beyond the term of the Lease until the Premises are retested and determined to be free of contamination.

**ARTICLE 23**  
**Americans with Disabilities Act**

Lessee shall comply with the requirements of "The Americans with Disabilities Act" (ADA) as published in the Federal Register, Volume 56, No. 144, and the State of Florida Accessibility Requirements Manual (ARM).

**ARTICLE 24**  
**Affirmative Action**

Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the ground of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub-organizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**ARTICLE 25**  
**Nondiscrimination**

Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities; and (2) that Lessee shall use the Airport Premises in compliance with all requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, Authority shall have the right to terminate the Lease.

**ARTICLE 26**  
**Disadvantaged Business Enterprise**

If applicable, Lessee shall comply with Authority's approved Disadvantaged Business Enterprise (DBE) program submitted in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Office of the Secretary, Part 23, Participation by DBE programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations may be amended. Further provided, that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex.

Lessee will include the provisions of this Article in any authorized subleases and cause sublessee to similarly include such provisions in any further subleases.

**ARTICLE 27**  
**Right to Entry**

Authority, through its President/CEO, shall have the right to request from Lessee and to be provided entry to the Premises assigned herein to Lessee for the purposes and to the extent necessary to protect Authority's rights and interest, to provide for periodic inspection of said Premises from the standpoint of safety and health, provided such inspection does not unreasonably interfere with Lessee's business operations, and to check Lessee's compliance with the terms of this Lease. When students are present on the Premises, such entry by Authority shall be subject to Authority's compliance with the statutory requirements related to student safety, including, without limitation, the Jessica Lunsford Act.

**ARTICLE 28**  
**Right of Flight**

It shall be a condition of this Lease that Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight and an aviation easement for the passage of aircraft in the airspace above the surface of the real property owned by Authority, together with the right to cause in said airspace, such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the Airport.

Lessee on behalf of Lessee, and Lessee's invitees, agents, contractors, employees, assigns and successors in interest, does hereby release and hold harmless the Authority, and any and all related parties of Authority, including but not limited to Authority members, officers, managers, agents, servants, employees and lessees, from any and all claims, demands, damages, debts, liabilities, costs, attorneys' fees or causes of action of every kind or nature for which Lessee or its invitees, agents, contractors, employees, assigns and successors in interest assigns, or successors currently have, have in the past possessed, or will in the future possess, as a result of Airport operations or aircraft activities or noise levels related to or generated by Airport activity, or may hereafter have as a result of use of this easement, including but not limited to damage to the above-mentioned property or contiguous property due to noise, vibrations, fumes, dust, fuel particles and other effects of the operation of the Airport or of aircraft landing or taking off at the Airport.

Lessee further expressly agrees for itself, its successors and assigns to restrict the height of

structures, objects of natural growth and other obstruction on Premises to such a height to comply with Federal Aviation Regulation, Part 77.

**ARTICLE 29**  
**Rights Reserved**

Rights not specifically granted to Lessee by this lease are expressly and independently reserved to Authority. Authority expressly reserves the right to prevent any use of the described Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

This Lease shall be subject and subordinate to all the terms and conditions of any instruments and documents under which Authority acquired the land or improvements thereon, of which said Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Lessee understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between Authority and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport, and to any terms or conditions imposed upon the Airport by any other governmental entity.

**ARTICLE 30**  
**Signage**

**30.1 Written Approval**

Except with prior written approval of Authority, which may be withheld at Authority's sole discretion, Lessee shall not erect, maintain, or display any signs or any advertising at or on the exterior of any Improvements on the Premises or in the Premises to be visible from outside the Premises. Notwithstanding the foregoing, the Authority expressly authorizes the Lessee to erect a sign, consistent with Manatee County Land Development Code, for the identification of the charter school and direction of the public to the facilities.

**30.2 Removal**

Upon the expiration or termination of the Lease, Lessee shall remove, obliterate, or paint out, as Authority may direct, at its sole discretion, all signs and advertising on the Premises and, in connection therewith, shall restore the portion of the Premises affected by such signs or advertising to the same conditions as existed prior to the placement of such signs or advertising. In the event of failure on the part of Lessee to remove, obliterate or paint out each sign or advertising and to so restore the Premises, Authority may perform the necessary work and Lessee shall be bound to pay these costs to Authority.

**ARTICLE 31**  
**Quiet Enjoyment**

Authority covenants that Lessee shall and may peaceably and quietly have, hold, and enjoy the demised Premises and all parts thereof for the term hereby granted, subject to the terms and provisions hereof.



**ARTICLE 32**  
**Mortgage Rights of Lessee**

**32.1 Definitions**

- A. The term "Leasehold Mortgagee" shall have the meaning set forth in Exhibit "F" hereof and who has given written notice to Authority of its name and address for notices.
- B. The term "Property" shall mean the improvements constructed on the Premises identified in Exhibit A.
- C. The term "Leasehold Estate" shall mean all Lessee's interest conveyed by this Lease, including but not limited to the Property.

**32.2 Lessee's Right to Encumber Leasehold.** The Parties acknowledge and agree that Lessee may finance construction of improvements on the Premises. To accomplish this financing, Lessee intends to encumber its interests under this Lease through a Leasehold Mortgage (as defined herein). Terms related to the Leasehold Mortgage are attached hereto as Exhibit "F" and Lessee shall have the right to pledge its Leasehold Estate as security for indebtedness whether by deed of trust, mortgage, collateral assignment, or other document on terms acceptable to Lessee in its sole discretion, so long as the provisions of this Lease are observed.

**32.3 Notice to and Service on Leasehold Mortgagee.** Any notices or other communications permitted by this or any other Section of this Lease or by law to be served on or given to Leasehold Mortgagee by Lessor shall be deemed duly served on or given to Leasehold Mortgagee by deposit in the United States mail, certified, return receipt requested or by overnight courier, return receipt, addressed to Leasehold Mortgagee at the last mailing address for Leasehold Mortgagee furnished in writing to Lessor by Lessee or Leasehold Mortgagee. The date of notice shall be five (5) days after deposit in the U.S. mail or two (2) business days after deposit with a reputable national overnight carrier such as UPS or Federal Express.

**32.4 Rights of Leasehold Mortgagee.** See Exhibit "F" for mortgagee rights.

**32.5 Estoppel Certificates.** Lessor shall provide to the Leasehold Mortgagee, on request, an estoppel certificate pursuant to the provisions of this Lease and Exhibit "F", certifying to such matters, including, without limitation, the status of Rent payments, satisfaction of conditions, and defaults, and other matters reasonably requested by the Leasehold Mortgagee.

**32.6 No Subordination.** Lessee agrees that Lessor's ground leasehold interest shall always be and remain unsubordinated to any Leasehold Mortgage which may be imposed upon Lessee's leasehold interest hereunder or upon the improvements, and that nothing contained in this Lease shall be construed as an agreement by Lessor to subject its ground leasehold interest to any lien. Nothing in this Section or in any other provision of this Lease shall be construed as an agreement by Lessor to subordinate its ground leasehold interest in the Premises to any Leasehold Mortgage or other lien or right.

**ARTICLE 33**  
**Assignment and Subleasing**

Lessee shall not assign this Lease, or sublease any of Lessee's Improvements thereon, either in whole or in part, without prior written consent of Authority which consent shall not be unreasonably withheld. No request for, or consent to, such assignment or subletting shall be considered unless

Lessee shall have paid all rentals, fees, and charges which have accrued in favor of Authority and Lessee shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Lease or as this Lease may be subsequently amended or modified. Authority reserves the right to investigate the financial capacity of any proposed assignee or subletter prior to making its decision. Notwithstanding the foregoing, the Authority hereby expressly consents to the assignment of this Lease to the Lessee Bond Trustee and agrees to: (a) accept payments due hereunder directly from Lessee Bond Trustee, and (b) to permit Lessee Bond Trustee to cure any default hereunder on behalf of Lessee. See Exhibit F regarding the rights of the First Leasehold Mortgagee.

**ARTICLE 34**  
**Corporate Tenancy**

If Lessee is a not-for-profit corporation, the undersigned officer of Lessee hereby warrants and certifies to Authority that Lessee is a corporation in good standing and is authorized to do business in the State of Florida and shall provide proof of good standing to Authority. The undersigned officer of Lessee hereby further warrants and certifies to Authority that he or she, as such officer, is authorized and empowered to bind the corporation to the terms of this Lease by his or her signature thereto. Authority, before it accepts and delivers this Lease, shall require Lessee to supply it with a Sworn Statement on Public Entity Crimes, Exhibit B attached hereto and incorporated herein, and a certified copy of the corporate resolution authorizing the execution of this Lease by Lessee. If Lessee is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange), Lessee represents that the ownership and power to vote its entire outstanding capital stock belongs to and is vested in the officer or officers executing this Lease or members of his, her or their immediate family. If there shall occur any change in the ownership of and/or power to vote the majority of the outstanding capital stock of Lessee, whether such change or ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of Authority, then Authority shall have the option to terminate this Lease upon thirty (30) days' written notice to Lessee, furthermore, Lessee shall have an affirmative obligation to notify immediately Authority of any such change.

**ARTICLE 35**  
**Eminent Domain**

If the United States of America or the State of Florida shall, by exercise of the right of eminent domain or any other power, acquire title in whole or in part of the Airport, including any portion assigned to Lessee, Lessee shall have no right of recovery whatsoever against Authority but shall make its claim for compensation solely against the United States of America or the State of Florida, as the case may be.

**ARTICLE 36**  
**Surrender of Premises**

Lessee shall surrender up and deliver the leased Premises to Authority upon termination of this Lease in the same condition as existed at the commencement of the Lease, ordinary wear and tear excepted. Provided Lessee is not in violation of any of the terms and conditions herein or in default in the payment of rents, fees and any charges required under this Lease, Lessee, at the termination of this Lease, shall remove all its personal property from the Premises forthwith. Failure on the part of Lessee to remove its personal property on the date of termination shall constitute a gratuitous transfer of title thereof to Authority for whatever disposition is deemed to be in the best interest of Authority. Any costs incurred by Authority in the disposition of such personal property shall be borne

by Lessee.

**ARTICLE 37**  
**Acceptance of Surrender**

No act or thing done by Authority or Authority's agents or employees during the Term of this Lease shall be deemed an acceptance of the surrender of this Lease unless issued in writing and signed by the Authority's President/CEO.

**ARTICLE 38**  
**Personal Property**

Any personal property of Lessee or of others placed in the leased Premises shall be at the sole risk of Lessee or the owners thereof, and Authority shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage, and Lessee hereby waives all rights of subrogation or recovery from Authority for such damage, destruction, or loss.

**ARTICLE 39**  
**Applicable Law and Venue**

This Lease shall be construed in accordance with the laws of the State of Florida. Venue for any action brought pursuant to this Lease shall be in Sarasota or Manatee County, Florida. Any action for breach of or enforcement of any provision of this Lease shall be brought in the 12th Judicial Circuit Court in and for Sarasota or Manatee County.

**ARTICLE 40**  
**Attorney's Fees**

In the event legal action is required hereunder to enforce the rights of the parties pursuant to this Lease the prevailing party in such action shall be entitled to recover costs and attorney's fees, including appellate fees.

**ARTICLE 41**  
**Invalidity of Clauses**

The invalidity of any portion, article, paragraph, provision, or clause of this Lease shall have no effect upon the validity of any other part of portion thereof.

**ARTICLE 42**  
**Notices and Communications**

All notices or other communications to Authority or to Lessee pursuant hereto shall be deemed validly given, served, or delivered, upon deposit in the United States mail, certified and with proper postage and certified fee prepaid, addressed as follows:

**TO AUTHORITY:**

Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, Florida 34243

**TO LESSEE:**

Experimental Aircraft Association,  
Chapter 180, of Manasota, Inc.

\_\_\_\_\_  
\_\_\_\_\_

or to such other address as the addressee may designate in writing by notice to the other party delivered in accordance with the provisions of this paragraph.

**ARTICLE 43**  
**Subordination to Bond Resolution**

This Lease and all rights of Lessee hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by Authority to secure bond financing. This Lease is subject and subordinate to the terms, covenants and conditions of the bond resolution authorizing the issuance of bonds by Authority ("Bond Resolution.") Authority may amend or modify the Bond Resolution or make any change thereto that does not materially adversely affect the Bond Resolution or make any change thereto that does not materially adversely affect Lessee's rights under this Lease. Conflicts between this Lease and the Bond Resolution shall be resolved in favor of the Bond Resolution. Notwithstanding anything herein to the contrary, so long as Lessee is not in default pursuant to Section 7.1 of the Lease, no Bond Resolution shall materially interfere with Lessee's rights hereunder.

**ARTICLE 44**  
**Federal Right to Reclaim**

In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes, then this Lease shall hereupon terminate, and Authority shall be released and fully discharged from all liability hereunder. In the event of such termination, Lessee's obligation to pay rent shall cease, however, nothing herein shall be construed as relieving Lessee from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

**ARTICLE 45**  
**Relationship of the Parties**

Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority shall in no way be responsible therefor.

**ARTICLE 46**  
**Miscellaneous**

All terms and provisions hereof shall be binding upon, and the benefits inure to the parties hereto and their heirs, personal representatives, successors, and assigns. Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. This Lease, and instruments or documents relating to same, shall be construed under Florida law. This Lease represents the complete Lease between the parties and any prior Leases or representations, whether written or verbal, are hereby superseded. This Lease may subsequently be amended only by written instrument signed by the parties hereto.

(Continued on next page)

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

AUTHORITY:

SARASOTA MANATEE  
AIRPORT AUTHORITY

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LESSEE:

EXPERIMENTAL AIRCRAFT  
ASSOCIATION, CHAPTER 180,  
OF MANASOTA, INC.

\_\_\_\_\_

By: 

Printed Name: GARY D. STEVENS

Title: PRESIDENT, EAA CHAPTER 180  
OF MANASOTA, INC

Date: 4/7/22

WITNESSES:

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

By: 

Printed Name: BRADLEY E. SMITH

Title: PRESIDENT TEEN AIRCRAFT  
FACTORY OF MANASOTA, INC.

Date: 4/7/22

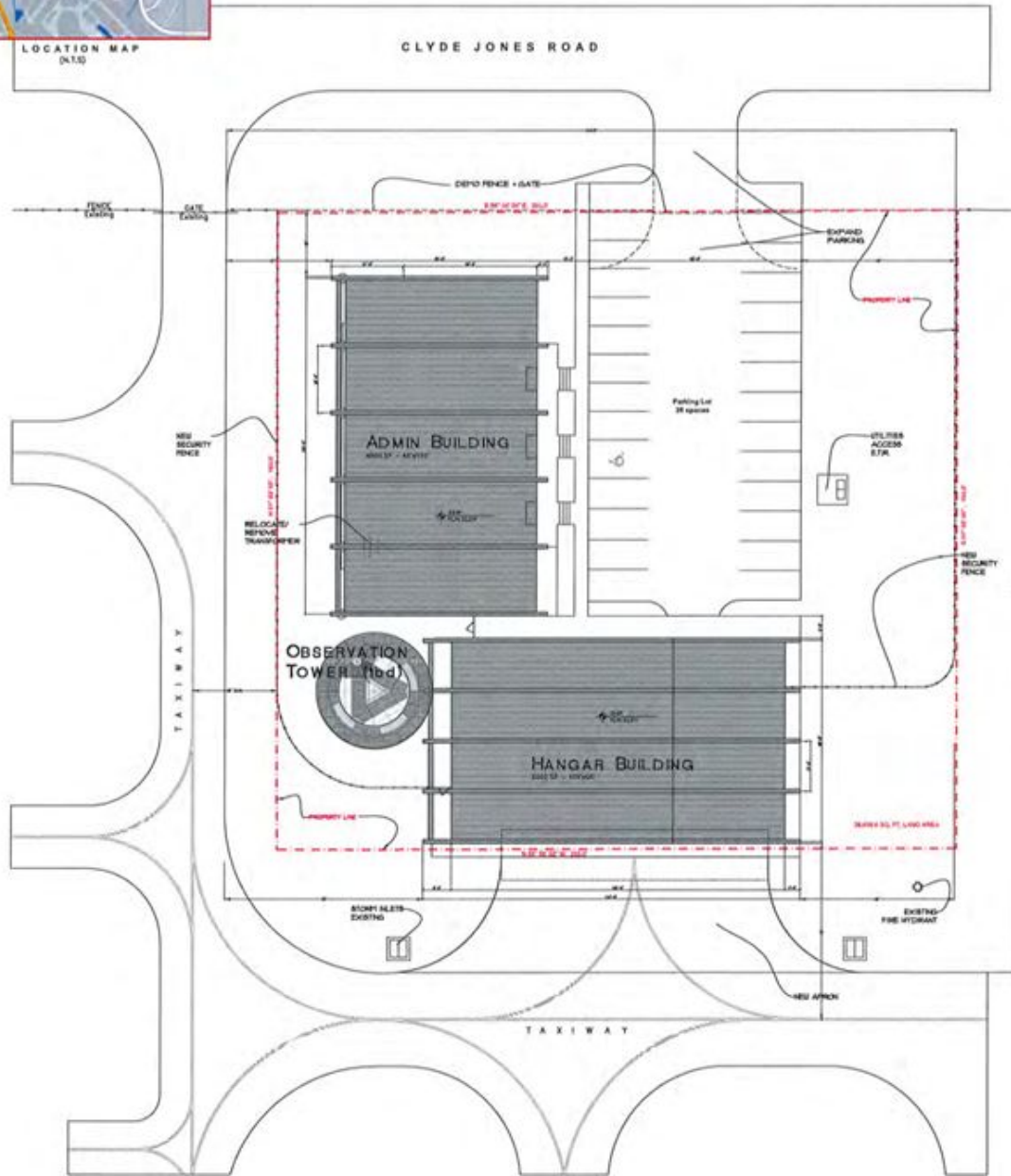


# EXHIBIT A



### LEGAL DESCRIPTION :

FROM THE NORTHEAST CORNER OF SECTION 36, TOWNSHIP 35 SOUTH, RANGE 17 EAST, HARRIS COUNTY, FLORIDA, THE POINT BEING THE POINT OF START (P.O.S.), 80 W 86° 57' 23" W, ALONG THE NORTH LINE OF SAID SECTION 36, 1788.37' THENCE LEAVING SAID NORTH LINE 65° 55' 48" 48" W, 1788.37' TO A POINT, THENCE N 86° 56' 05" W, 23.0' TO A POINT THIS POINT BEING THE POINT OF BEGINNING (P.O.B.) BEGINNING AT THE P.O.B., AND INCLUDING OF ALL ENCLOSED AREA, 62° 5' 42" 50" W, 183.0' TO A POINT, THENCE N 86° 56' 05" W, 205.0' TO A POINT, THENCE S 01° 52' 58" E, 183.0' TO A POINT, THENCE S 86° 56' 05" E, 205.0' TO THE P.O.B.



SCHEMATIC DESIGN : SITE PLAN  
DATE: 01/2021

**C-1X**

**SRQ COMMUNITY AVIATION CENTER**  
1120 CLYDE JONES ROAD | SARASOTA-BRADENTON INTERNATIONAL AIRPORT

ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF DM3M ARCHITECT. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DM3M ARCHITECT. THE USER OF THIS DOCUMENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AUTHORITIES.

**DM3M**  
DAVID MICHAEL BLACK ARCHITECT

Florida License Number: ARS4880  
black@DM3M.com  
841.504.7828 Sarasota, Florida





**EXHIBIT B**

ATTACHMENT TO:  
General Ground Lease – Experimental Aircraft Association (EAA)

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a)  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

- 1. This sworn statement is submitted to SARASOTA MANATEE AIRPORT AUTHORITY  
 by: GARY D STEVENS  
 (print individual's name and title)  
 for: EAA CHAPTER 130 OF MANASOTA, INC.  
 (print name of entity submitting sworn statement)  
 whose business address is: 8203 PLANTERS KNOLL TERRACE  
BRADENTON, FL 34201

and, (if applicable) its Federal Employer Identification Number (FEIN) is NA  
(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement) \_\_\_\_\_

- 2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- 3. I understand that "convicted" or "conviction" as defined in paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty of nolo contendere.
- 4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  - (1) A predecessor or successor of a person convicted of a public entity crime; or
  - (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months is considered an affiliate.
- 5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.



6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate by placing a check (  ) in front of the appropriate statement. **Check only one statement**)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, nor any affiliate of the entity was charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there was a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings, and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY, AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY, PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE AFFECTING THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS SWORN STATEMENT

Gary D Stevens 4/7/22  
(Signature) (Date)

GARY D. STEVENS  
(Printed Name)

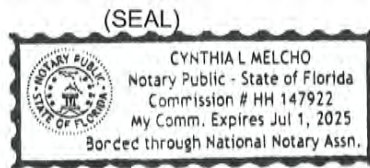
STATE OF Florida  
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 7 day of April, 2022 by Gary Stevens who is  personally known to me or  has produced \_\_\_\_\_ as identification.

Cynthia L. Melcho  
Signature of Notary Public

Cynthia L. Melcho  
Printed Name of Notary Public

My Commission Expires:







*Aviation Center Landside*





*Entry to Center Parking from Clyde Jones Road*







*Hangar Building North*





*Administration Building NW*





*Administration Building Outdoor Terrace*





*Observation Tower*





## AGENDA ITEM NO. 6.7

**SARASOTA MANATEE AIRPORT AUTHORITY  
April 25, 2022, REGULAR MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL:  
FIXED BASE OPERATOR LEASE AND DEVELOPMENT AGREEMENT WITH SHELTAIR AVIATION SRQ, LLC,  
FOR FBO DEVELOPMENT AND OPERATION**

---

**EXECUTIVE SUMMARY: Requesting Approval of a Fixed Base Operator Lease and Development Agreement with Sheltair Aviation SRQ, LLC, for approximately 24 Acres of Land at the Airport for FBO Development and Operation.**

---

**NARRATIVE:**

In FY 2021, the Authority received two unsolicited inquiries from two national FBO chains, including REW Investments, a privately held affiliate of Million Air Interlink, Inc. ("Million Air"), and Sheltair Aviation SRQ, LLC, a family-owned operator with locations in Florida and up the east coast ("Sheltair"), each requesting an opportunity to develop and operate a new FBO on the Airport. In response, on October 29, 2021, Staff issued an Invitation for Proposals (ITP) to each firm for award of a FBO Lease and Development Agreement, to be constructed on a twenty (20) acre parcel in the Airport's North Quadrant identified in the Airport's Master Plan for general aviation development ("Agreement"). Each firm invited submitted a proposal in response to the ITP that was evaluated and ranked by Staff against the other proposal received. Based thereon, on January 31, 2022, the Board selected Sheltair as the most responsive and responsible proposer to award the Agreement.

Subsequent to the Board's selection, Sheltair has agreed in writing to use all commercially reasonable efforts, for one year following the effective date of the Agreement, to actively market and enter into a sublease with an approved FAR Part 145 Repair Station Operator to provide aircraft maintenance and repair services at the Airport. In return, Sheltair has requested to temporarily defer the construction of the MRO facility until a FAR Part 145 Repair Station Operator is obtained and to increase the premise from twenty (20) acres to twenty-four (24) acres to provide additional land required for development of a third-party MRO facility.

The terms of the proposed Agreement include an initial term of thirty (30) years, with one ten (10) year renewal term, subject to the tenant's compliance with all terms and conditions of the Agreement. The proposed initial rental rate for the land is \$0.45/SF, subject to CPI adjustments every three (3) years throughout the term of the lease, commencing on the earlier of: (a) the date of substantial completion of the FBO executive terminal as evidenced by Tenant's receipt of a certificate of occupancy for said building; (b) the date Tenant commences using the premises (or any part thereof) for the conduct of its business (other than construction); or c) eighteen months from the effective date of the Agreement. The initial fuel flowage fee is nine cent (\$0.09) per gallon, consistent with all other FBOs on the Airport. The total estimated initial annual revenue following commencement of the Agreement is \$661,615.00, including \$541,015.20 of initial annual rent revenue and \$120,600.00 of initial annual fuel flowage revenue.

The proposed required improvements, as amended, include 10,400 SF executive terminal, 45,490 SF of aircraft hangar, 9,358 SF of office, 522,720 SF of aircraft apron, 40,000 gal. Jet-A storage, and 20,000 gal. 100LL storage. Construction of the required improvements are to be completed no later than twenty-four (24) months following the effective date of the lease. The proposed minimum initial capital investment remains \$32,415,873, consistent with the proposal received from Sheltair in response to the Authority's ITP.

Based on the terms and conditions presented, the President and CEO recommends approval of the Fixed Base Operator Lease and Development Agreement with Sheltair Aviation SRQ, LLC, as presented.

---

---

**RECOMMENDATION: It is hereby recommended that the Sarasota Manatee Airport Authority Board approve the Fixed Base Operator Lease and Development Agreement with Sheltair Aviation SRQ, LLC.**

---

---

**ATTACHMENTS:** (a) Proposed Fixed Base Operator Lease and Development Agreement with Sheltair Aviation SRQ, LLC; and (b) Renderings of Sheltair Aviation's proposed Improvements.

**FIXED BASE OPERATOR DEVELOPMENT AND OPERATING LEASE AGREEMENT  
BETWEEN  
SARASOTA MANATEE AIRPORT AUTHORITY  
AND  
SHELTAIR AVIATION SRQ, LLC**

**THIS FIXED BASE OPERATOR DEVELOPMENT AND OPERATING LEASE AGREEMENT** (this "Lease") is made and entered into by and between the Sarasota Manatee Airport Authority, a body politic and corporate existing under the laws of the State of Florida ("Authority"), and Sheltair Aviation SRQ, LLC, a limited liability company organized under the laws of the State of Florida, ("Tenant").

**WITNESSETH:**

**WHEREAS**, Authority owns and operates the Sarasota Bradenton International Airport ("Airport"), located in Sarasota County and Manatee County, Florida; and

**WHEREAS**, Authority is permitted to lease land and facilities at the Airport pursuant to the Florida Statutes; and

**WHEREAS**, Authority issued an Invitation for Proposals for the lease of land at the Airport for the development and operation of a Fixed Base Operation at the Airport, and

**WHEREAS**, Tenant submitted a proposal to Authority in response to Authority's Invitation for Proposals that was accepted by Authority for development and operation of a Fixed Base Operation at the Airport;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

**Article 1 - Recitals/Effective Date**

The foregoing recitals are true and correct and are hereby incorporated herein by reference. This Lease shall become effective when approved by the Sarasota Manatee Airport Authority Board and signed by all parties ("Effective Date").

**Article 2 - Definitions**

The following words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

2.01 "Adjustment Date" has the meaning set forth in Section 5.06.

2.02 "Airport" means the Sarasota Bradenton International Airport located in Sarasota and Manatee Counties, Florida.

041122SMAA

2.03 "Airport Rules and Regulations" means the Rules and Regulations for Aeronautical Activities, dated March 20, 2019, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport.

2.04 "Appraisal Adjustment Date" has the meaning set forth in Section 5.07.

2.05 "Approved Costs" has the meaning set forth in Section 8.01(B).

2.06 "Base Rental" means: (a) the initial annual Land Rent provided in Section 5.01(A); and (b) the initial annual Improvement Rent established on the dates provided in Section 5.02 for the buildings and improvements identified in Section 5.02. The Base Rental shall be adjusted as provided in Section 5.06 and 5.07 on the Appraisal Adjustment Dates.

2.07 "Base Year" For all rental adjustments occurring before the first Appraisal Adjustment Date, Base Year means the initial twelve-month period of the Lease starting with the Commencement Date. After the first Appraisal Adjustment Date, the Base Year shall be the lease year that began on the most recent Appraisal Adjustment Date.

2.08 "Board" means the Board of the Sarasota Manatee Airport Authority, Florida.

2.09 "CEO/President" means the CEO/President of the Sarasota Manatee Airport Authority.

2.10 "Commencement Date" has the meaning set forth in Section 3.01.

2.11 "Consumer Price Index" has the meaning set forth in Section 5.06.

2.12 "Damages" has the meaning set forth in Article 19.

2.13 "Derelict Aircraft" means an aircraft, stored in the open, that:

- (A) Does not hold a current and valid airworthiness certificate issued by the FAA, or other appropriate aircraft certifying authority, together with necessary aircraft registration and maintenance records with a current endorsement by an appropriately rated certificate holder that the aircraft is in an airworthy condition; or
- (B) Has been issued a condition notice by the FAA or other appropriate aircraft certification authority that specifies that the aircraft has one or more conditions which render it not airworthy; or
- (C) Has had major components, accessories, flight controls, portions of the airframe or engines removed to render the aircraft not airworthy.

2.14 "Derelict Vehicle" means a vehicle designed for use on the roadways that is in a wrecked, dismantled or partially dismantled condition, or which is in an inoperable condition.

041122SMAA

2.15 "Effective Date" shall have the meaning set forth in Article 1.

2.16 "Environmental Laws" means all applicable federal, state, or local laws, statutes, ordinances, rules, regulations, and governmental restrictions relating to the protection of the environment, human health, welfare, or safety, or to the emission, discharge, seepage, or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater, or land, or otherwise relating to the handling of such Hazardous Substances.

2.17 "FAA" means the Federal Aviation Administration.

2.18 "FBO" or "Fixed Base Operator" means a Fixed Base Operator as defined in Article 13 of the Minimum Standards for Aeronautical Activities at Sarasota Bradenton International Airport, dated March 26, 2018, as now or hereafter amended.

2.19 "Fuel Flowage Fees" means the fuel flowage fees established by resolution of the Board as now or hereafter amended, and any successor ordinance or resolution establishing fuel flowage fees. At the time of execution of this Lease the rate is currently nine (9) cents per gallon.

2.20 "Fuel System" means all fuel and oil storage tanks and components thereto, all fuel and oil lines and associated distribution systems, pumps, nozzles and outlets, all fuel monitoring and alarm systems, and remediation improvements, whether above or below ground.

2.21 "Hazardous Substances" means any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.

2.22 "Improvement Rent" has the meaning set forth in Section 5.02(A).

2.23 "Initial Term" has the meaning set forth in Section 3.01.

2.24 "Inspection Period" has the meaning set forth in Section 3.03(B).

2.25 "Inspections" means any inspections and tests that Tenant deems appropriate with respect to the Premises, including, but not limited to, the following: (a) physical inspection of the Premises; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities, and site planning studies.

2.26 "Landing Fees" has the meaning set forth in Section 5.04.

2.27 "Land Rent" is the rent payable by Tenant for the ground being leased by Authority to Tenant. See Section 5.01.

2.28 "Lease" means this Lease as now or hereafter amended, and all exhibits attached hereto, which are incorporated herein by reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.

- 2.29 "Leasehold Mortgage" has the meaning set forth in Section 15.01.
- 2.30 "Letter of Credit" has the meaning set forth in Section 5.09.
- 2.31 "Minimum Capital Expenditure" has the meaning set forth in Section 8.01(B).
- 2.32 "Minimum Standards" means the Minimum Standards for Aeronautical Activities for Sarasota Bradenton International Airport adopted by the Authority on March 26, 2018, as now or hereafter amended, and any successor minimum standards for aeronautical activities adopted for the Authority.
- 2.33 "Non-Discrimination Authorities" has the meaning set forth in Section 25.02(C).
- 2.34 "Person" includes a partnership, joint venture, association, corporation, limited liability company, trust, or other entity, or, where the context so permits or requires, a natural person.
- 2.35 "Phase I ESA" has the meaning set forth in Section 21.05.
- 2.36 "Phase II ESA" has the meaning set forth in Section 21.05.
- 2.37 "Plans" has the meaning set forth in Section 8.01(C).
- 2.38 "Pre-existing Environmental Condition" means the presence of Hazardous Substances in violation of Environmental Laws on, in or under the Property (including soil, groundwater, and soil vapor) because of the discharge, release, disposal, storage, treatment, migration or any other activities occurring prior to the Effective Date of this Lease.
- 2.39 "Premises" means the Property described on Exhibit A-1 and all buildings, hangars, structures, aircraft apron areas, pavements, and facilities for Tenant's exclusive use and other related improvements now or hereafter constructed thereon, subject to easements, rights-of-way, and any other encumbrances of record.
- 2.40 "Property" means the real property described on Exhibit A-1, subject to easements, rights-of-way, and any other encumbrances of record, excluding any improvements constructed thereon.
- 2.41 "Renewal Term" has the meaning set forth in Section 3.02.
- 2.42 "Required Improvements" has the meaning set forth in Section 8.02(A).
- 2.43 "Security Deposit" has the meaning set forth in Section 5.09.
- 2.44 "Tenant Parties" means Tenant and its subtenants, contractors, suppliers, employees, officers, licensees, agents, and invitees.
- 2.45 "Term" means the Initial Term and any Renewal Term.
- 2.46 "TSA" means the Transportation Security Administration of the Authority of Homeland

Security and its authorized successors.

**Article 3 – Commencement Date/Term**

3.01 Initial Term. The initial term of this Lease shall commence on the first of the following to occur (“Commencement Date”), which date shall be memorialized by Authority in writing to the Tenant: (a) the date of substantial completion of the Terminal Building as evidenced by Tenant’s receipt of a certificate of occupancy for said building; (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or c) eighteen months from the Effective Date, and shall terminate thirty (30) years from the Commencement Date (“Initial Term”), unless sooner terminated pursuant to the terms of this Lease. As used herein, “Lease Year” shall have the following meaning: the first Lease Year shall be the period beginning on the Commencement Date and ending on the last day of the previous calendar month one year later; successive Lease Years shall be the annual periods immediately succeeding the end of the first Lease Year.

3.02 Option to Renew. Provided that Tenant is not in default beyond any applicable cure period as to any of the terms or conditions of this Lease, Tenant shall have the option to renew this Lease for one (1) additional period of ten (10) years (a “Renewal Term”) by notifying Authority in writing of Tenant’s intent to exercise its option to renew not later than one hundred eighty (180) days prior to the expiration of the Initial Term. During a Renewal Term all provisions of the Lease shall remain in full force and effect except as specifically set forth herein. The renewal options are limited to those described in this section 3.02.

3.03 Inspections.

- (A) From and after the Effective Date and up to the Commencement Date, Tenant shall have the right to use and occupy the Premises for the installation and construction of the Required Improvements subject to the terms and conditions of this Lease.
- (B) From and after the Effective Date and expiring ninety (90) days thereafter (“Inspection Period”), Tenant may conduct any Inspections that Tenant deems appropriate with respect to the Premises. All Inspections performed hereunder shall be conducted at Tenant’s sole cost and expense and shall be performed by licensed Persons dealing in the respective areas or matters. Tenant agrees to indemnify Authority from and against all losses, damages, costs, expenses and/or liability of whatsoever nature arising from or out of a Tenant Party’s entry upon and inspection of the Premises. Tenant’s obligation to indemnify Authority pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Tenant shall provide Authority with one (1) complete copy of all written reports detailing the results of the Inspections obtained by Tenant hereunder.
- (C) If Tenant reasonably determines that it will be unable to use the Premises for the uses permitted hereunder based on the result(s) of the Inspections, or if environmental assessment(s) reveal the presence of a Pre-existing Environmental

Condition not acceptable to Tenant, Tenant may elect to terminate this Lease upon written notice to Authority on or before the expiration of the Inspection Period. In the event Tenant fails to properly exercise its right to terminate this Lease pursuant this Section, Tenant shall be deemed to have waived such right and accepted the Premises "As Is" in its then existing condition, subject to all defects, latent or patent, if any; provided, however, that Tenant's acceptance of the Premises will not limit Authority's obligations with respect to any Pre-existing Environmental Condition for which Authority has taken responsibility pursuant to Section 3.03 (D). In the event Tenant terminates this Lease pursuant to this Section, Tenant, at its sole cost and expense, shall repair any damage resulting from the Inspections and restore the Premises to the condition in which it existed prior thereto, using materials of like kind and quality.

- (D) Authority has provided Tenant with a Phase I environmental audit dated January 4, 2022, prepared by Enviro-Audit & Compliance, Inc. which states the condition of the Premises on the effective date of the report ("Environmental Baseline Report"). Tenant understands that it is accepting the condition of the Premises as described in the Environmental Baseline Report together with any environmental reports/studies, if any, prepared by Tenant during the Inspection Period, shared with, and confirmed by the Authority ("Tenant Environmental Report(s)").
- (E) Tenant may elect to have its own environmental inspections. If the Inspections of Tenant reveal a Pre-existing Environmental Condition that is not acceptable to Tenant, Tenant shall notify Authority in writing during the Inspection Period of the Pre-existing Environmental Condition with a copy of the Inspection report(s). Authority may give written notice to Tenant within thirty (30) days of the expiration of the Inspection Period of its election to: a) terminate this Lease; or b) to assume the full responsibility and cost to remedy the identified Pre-existing Environmental Condition in accordance with Environmental Laws; or c) provide Tenant the option, at Tenant's sole discretion, to oversee and advance the cost of the remediation for full reimbursement by Authority via rent credits or other agreed upon repayment terms between the parties at the sole cost and expense of the Authority. The parties acknowledge and agree that the means and methods of remedying any Pre-existing Environmental Condition shall be commercially reasonable in nature and shall not unreasonably affect the Tenant's Permitted Use. If Authority fails to provide written notice of its election to either terminate the Lease or to remedy the Pre-Existing Condition, the Lease shall be deemed terminated.
- (F) If a notice of termination is timely given by either party pursuant to this Section, or if the Lease is deemed terminated pursuant to this Section, the parties shall be relieved of all further liabilities and obligations under this Lease except for Tenant's indemnification obligations under Section 3.03(B) and Tenant's obligation to restore the Premises under Section 3.03(C).



**Article 4 – Premises and Privileges**

4.01 Description of Premises. Authority hereby demises and leases to Tenant, and Tenant hereby rents from Authority the Premises subject to the terms, conditions and covenants set forth herein. See attached Exhibit A-1.

4.02 Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the construction, development, maintenance, and operation of the Premises as a Fixed Based Operator and Aircraft Maintenance and Repair Operator pursuant to the terms and requirements of this Lease and the terms and requirements of the Authority's Minimum Standards, as may be amended by Authority from time-to-time throughout the term of this Lease. Tenant shall have the privileges and all obligations set forth in the Minimum Standards. For purposes of clarity, notwithstanding anything herein to the contrary, Tenant shall be entitled to deliver aircraft fuel subject to the Airport's Rules and Regulations on the Premises or elsewhere on the Airport.

4.03 Prohibited Uses, Products and Services. Tenant agrees that the Premises shall be utilized solely as a Fixed Based Operator and Aircraft Maintenance and Repair Operator as described in the Minimum Standards and as set forth on Exhibit B and for no other purpose whatsoever. Tenant agrees that it shall not provide any other products or services without the prior approval of the Authority.

4.04 Roadways and Sidewalks. In addition to the privileges granted in this Article above, Authority hereby grants to Tenant the following general privileges, uses, and rights, all of which shall be subject to the terms, conditions, and covenants set forth herein and all of which shall be non-exclusive on the Airport:

The general use, in common with others, of roadways, sidewalks and other Airport facilities necessary for Tenant's operations (including airfield access), including the roadways, sidewalks, and facilities that Airport generally makes available for its aeronautical tenants and that are not specifically leased to or under the contractual control of others. The right of ingress to and egress from the Premises shall be subject to such laws, rules, regulations, and orders as now or may hereafter have application at the Airport. Except as expressly set forth in this Section, nothing in this Lease shall be construed to grant or convey to Tenant the right to use any space or area improved or unimproved which is leased to or under contractual control of a third party, or which Authority has not leased herein. Authority may at any time temporarily or permanently close or consent to or request the closing of any such roadways, and any other area at the Premises presently or hereafter used as such, so long as a reasonable means of ingress and egress is concurrently made available to Tenant. Tenant hereby releases and discharges Authority, its successors and assigns, of and from any and all claims, demands or causes of action which Tenant may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, or other areas used as such, whether within or outside the Premises, provided that Authority simultaneously makes available to Tenant a reasonable means of ingress and egress.

4.05 Service Standards. Tenant shall:

- (A) Conduct its activities on and from the Premises in a safe, efficient, and first-class professional manner for which Tenant is known and consistent with the degree of care and skill exercised by Fixed Base Operators providing products, services,

- and facilities at comparable airports.
- (B) Furnish good, prompt, and efficient service and sales adequate to meet all reasonable demands of Tenant's customers.
  - (C) Provide its services and sales on a fair, equal, and non-discriminatory basis to all customers and charge fair, reasonable, and non-discriminatory prices for sales and services.
  - (D) Maintain sufficient supplies and personnel to meet the reasonable demands of the customers at the Airport twenty-four (24) hours a day, seven (7) days a week, unless otherwise approved in writing by Authority.

4.06 Compliance with Minimum Standards and Rules and Regulations. Tenant agrees to comply with the requirements set forth in the Minimum Standards for Aeronautical Activities and Airport Rules and Regulations applicable to Tenant's operations throughout the Term of this Lease. In the event of a conflict between this Lease and the Minimum Standards or Airport Rules and Regulations, Tenant acknowledges and agrees that the more stringent requirement shall apply to Tenant's operations hereunder.

4.07 Ground Transportation. Tenant shall allow limousine and rental cars concessionaires that are authorized to operate on the Airport free ingress to and egress from the Premises to serve the public. Tenant shall use authorized on-airport concessionaire rental car companies unless given prior written consent by Authority, which consent shall not be unreasonably withheld, to use an off-airport company for such services. Tenant shall submit requests to use off-airport companies for such services in writing to Authority and indicate why one of the on-airport concessionaire rental car companies cannot provide such services to Tenant. Tenant and its subtenants shall only use operators that have or will obtain all required licenses and permits to provide such services at the Airport and use all reasonable commercial efforts to ensure its subtenants, customers and clientele use authorized on-airport concessionaire rental car companies unless given prior written consent by Authority. Notwithstanding anything to the contrary, Tenant does not guarantee its customers and clientele shall only use authorized on-airport concessionaire rental car companies.

4.08 Condition and Use of Premises. Subject to Tenant's rights to complete Inspections pursuant to Section 3.03 and any obligations of the Authority with respect to Pre-existing Environmental Conditions, Tenant accepts the Premises in its "AS IS CONDITION" and "WITH ALL FAULTS," together with all defects, latent and patent, if any. Tenant further acknowledges that Authority has made no representations or warranties of any nature whatsoever regarding the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any improvements located thereon; the value of the Premises or improvements; the zoning of the Premises; title to the Premises; the suitability of the Premises or any improvements for Tenant's intended use; or Tenant's legal ability to use the Premises for Tenant's intended use.

Notwithstanding anything herein to the contrary, the Authority warrants and represents that the Non-Exclusive Off-Site Stormwater Facilities, as defined below in Section 5.01, are and shall remain in good working order and condition and are adequate to satisfy all requirements related to the permitting, construction, and use of the Required Improvements and Premises. Authority reserves the right to

041122SMAA

recover the operating and maintenance costs attributable to Tenant's proportional use of the Non-Exclusive Off-Site Stormwater Facilities in common with all other tenants of the Airport that use the Non-Exclusive Off-Site Stormwater Facilities, as provided for in Articles 5.01 (A) and 5.01(B) below, or as otherwise necessary to maintain the Non-Exclusive Off-Site Stormwater Facilities in good working order and condition, adequate to satisfy all requirements attributable to Tenant's proportionate use thereof.

**Article 5 – Rental, Fees, Charges and Security Deposit**

5.01 Land Rent.

- (A) Initial Rental Rate. Upon the Effective Date of this Lease, the leased Premises shall include approximately twenty-four (24) acres of Land for Tenant's exclusive use as a Fixed Base Operator, as depicted on Exhibit A-1, plus the equivalent of approximately three and six tenths (3.6) acres of Land for the nonexclusive use of the Authority's existing offsite stormwater management land and facilities as depicted on Exhibit A-2 ("Non-Exclusive Off-Site Stormwater Facilities"). Beginning on the Commencement Date, Tenant shall pay Authority an initial annual rental rate of \$0.45 per square foot per annum ("Rental Rate") for a total of approximately twenty-seven and six tenths (27.6) acres of Land, subject to adjustment as set forth in Articles 5.06 and 5.07 herein.
- (B) Monthly Installments. Land Rent and any Improvement Rent as hereinafter defined shall be payable in equal monthly installments, in advance, without demand and without any deduction, holdback or set off whatsoever, by the first day of each month, as adjusted in accordance with Section 5.06 and 5.07 together with applicable sales tax. Any payment due hereunder for a fractional month shall be calculated and paid on a per diem basis (calculated based on the actual number of days in the month).

Within one hundred-twenty (120) days following the Execution Date, Tenant shall cause a survey and legal description of the Property to be prepared and submitted to Authority, which survey and legal description shall be subject to approval by Authority, and if approved by Authority, shall serve as Exhibit A-1 and the Exhibit to the Memorandum of Lease, attached as Exhibit D to this Lease.

Thereafter, prior to the Commencement Date, Tenant shall cause a survey of each of the Buildings and Improvements to be prepared and submitted to Authority, which survey shall be subject to approval by Authority, and if approved by Authority, shall serve shall be substituted in lieu of Exhibit A-1 and the Exhibit to Memorandum of Lease, attached as Exhibit D to this Lease, without need for an amendment of this Lease. Rent shall be established based on the total square footage of each of the Buildings and Improvements as determined by such As-Built survey. The survey shall be prepared by a professional surveyor in accordance with the minimum technical standards for surveys within the State of Florida.

- (C) Address for Payment. All sums due hereunder shall be delivered to the Sarasota Manatee Airport Authority at 6000 Airport Circle, Sarasota, Florida 34243, or at such other address as may be directed in writing by Authority from time to time.

5.02 Building/Improvement Rent.

- (A) Improvement Rent. If this Lease is renewed as provided for in Article 3.02, Tenant shall commence payment of rent for the use of all buildings and improvements ("Improvement Rent") constructed or placed upon the Premises by the Tenant on the first day of the thirty first (31<sup>st</sup>) Lease Year. The Improvement Rent for shall commence on the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date. Accordingly, in the 31<sup>st</sup> Lease Year (and only if the Tenant has renewed the Lease) the Tenant shall pay both Land Rent and Improvement Rent.
- (B) Surveys. Prior to the commencement of Improvement Rent, Authority shall cause a survey of each of the buildings and improvements to be prepared for the purpose of determining their square footage. Rent shall be established based on the total square footage of each of the buildings and improvements as determined by such survey. Notwithstanding the foregoing, if Tenant does not agree with the results of any such survey, then Tenant may object in writing to such survey within thirty (30) days of delivery of the survey to Tenant. Tenant shall provide Authority with the specific basis for such objection. If Tenant and Authority cannot agree on an adjustment of Authority's survey's results within thirty (30) days after the date of Tenant's written notice to Authority stating its disagreement with Authority's survey, then Tenant may obtain, at its sole cost and expense, a second survey. The results of such second survey shall be reconciled with Authority's survey by Authority's surveyor. The parties agree that all surveys shall be prepared by a professional surveyor in accordance with the minimum technical standards for surveys within the State of Florida.
- (C) Determination of Improvement Rent. Improvement Rent to be paid by Tenant pursuant to this Section shall be determined by a fair market value appraisal. Authority may utilize the appraisal process set forth in Section 5.07 or may, at its sole option, elect to cause a separate appraisal of the buildings and improvements, utilizing the same methodology for appraisals obtained pursuant to Section 5.07 to be performed, which may occur on a different date than the Adjustment Date; provided that the appraiser shall be an independent qualified M.A.I. appraiser with demonstrated experience in appraising comparable aviation real estate selected by the Authority. Improvement Rent established pursuant to this Section shall be adjusted in accordance with Section 5.07. Any delay in establishing rents pursuant to this Section shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay rent for such buildings and improvements from the date provided in this Section.

5.03 Fuel Flowage Fees. Tenant, on behalf of Authority, shall collect Fuel Flowage Fees, currently set at a rate of Nine Cents (\$0.09) per gallon for each gallon of aviation fuel sold by or through

041122SMAA

Tenant anywhere at the Airport, except that, unless otherwise advised in writing in advance by Authority, Fuel Flowage Fees shall not be collected for Federal or State government owned aircraft. Fuel Flowage Fees shall also be paid by Tenant for aircraft owned or operated by Tenant. Fuel Flowage Fees shall be paid to Authority monthly pursuant to Article 6. Tenant acknowledges and agrees that Authority may adjust Fuel Flowage Fees from time-to-time, which adjustments may include, but shall not be limited to, adjustments to the rates, method of collection or basis for calculation.

5.04 Landing Fees. Authority reserves the right to cause Tenant to collect Landing Fees. The Authority reserves the right, in its discretion and after public hearing, to impose, modify or discontinue Landing Fees as it deems solely for itself to be in the best interest of the Airport, provided such action shall be applicable to all FBOs.

5.05 Rental Car Agent Fees. If Tenant acts as an agent for any rental car company, other than a rental car company operating under a concession agreement with Authority at the Airport, Tenant shall report and pay to Authority on a monthly basis pursuant to Article 6 a percentage of the gross receipts derived from such operations equal to the then current percentage payable by a rental car company operating at the Airport pursuant to a rental car concession agreement (currently set at a rate of ten percent (10%).

5.06 Adjustment of Rent.

Commencing on the first day of the fourth (4<sup>th</sup>) Lease Year and every three (3) years thereafter including renewal terms unless otherwise specifically provided ("Adjustment Date") the rental rate(s) as applicable shall be adjusted to reflect cost of living increases based upon the Consumer Price Index. At the time the calculation is being made, the monthly index figure for the third calendar month immediately prior to such Lease Year (the "Adjustment Level") shall be used. The monthly index figure for the same month in the twelve-month period immediately preceding the Base Year shall be referred to as the "Base Level." The new rent shall be computed by multiplying Base Rental from the Base Year by a fraction, the numerator of which shall be the Adjustment Level, and the denominator of which shall be the Base Level. Stated as a mathematical formula, the adjusted rent shall be computed as follows:

$$\text{Adjusted rent} = \frac{\text{Adjustment Level} \times \text{Base Rental for the Base Year}}{\text{Base Level}}$$

In no event shall the rental rate in effect be decreased because of such adjustment. The annual rent shall not increase by more than 9% percent over the annual rent payable during the preceding three-year period, except on the Appraisal Adjustment Dates. This 9% cap shall not be applicable when rent is being adjusted by appraisal. The rental rate following the adjustment shall remain in effect until the next Adjustment Date or Appraisal Adjustment Date. The cost-of-living index referred to herein shall be the Consumer Price Index (CPI) of all Urban Consumers, distributed by the Bureau of Labor Statistics of the U.S. Department of Labor. In the event said index ceases to be prepared and published, then the rental shall be adjusted in accordance with the most comparable index then in existence.

5.07 Adjustment Based Upon Appraisal. Upon the first day of the sixteenth lease year, and at the Commencement of any Renewal Term, (each such date an "Appraisal Adjustment Date"), the annual Land Rent and Improvement Rent, set forth in Sections 5.01 and 5.02, as applicable, shall be adjusted and new annual rent shall be determined as hereinafter set forth. Prior to each Adjustment Date, Authority  
041122SMAA

shall select a qualified M.A.I. appraiser with demonstrated experience in appraising comparable aviation real estate, selected by the Authority, who shall appraise the Premises to determine its fair market rental value using comparable aviation facilities. The Authority shall submit to Tenant a written statement of the then current fair market rental values as established by the appraisal. The annual rental rates provided for herein shall be adjusted to an amount equal to the values set forth in the final appraisal. The adjusted annual rental shall be payable commencing on the Adjustment Date. (The parties acknowledge that under this Lease the Improvement Rent does not commence until the Renewal Term, and therefore only the Land Rent shall be adjusted by appraisal during the Initial Term of this Lease.)

This Lease shall automatically be considered amended, without formal amendment hereto, upon written notification by Authority of the rental rates established pursuant to this Section. Any delay or failure of Authority in computing the adjustment in rental, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such adjusted annual rental from the applicable adjustment date. Notwithstanding any provision of this Lease to the contrary, annual rental rates shall not be adjusted to an amount less than the annual rental rates payable during the period immediately preceding the rental adjustment date.

The CPI adjustment as set forth in 5.07 above shall occur on the third anniversary of the Appraisal Adjustment Date, and every three years thereafter until the next Adjustment Date. After an Appraisal Adjustment Date, the CPI adjustment shall occur every three years after such Appraisal Adjustment Date.

5.08 Late Payments. Tenant shall pay to Authority interest at the maximum rate permitted by law, but not more than one and one-half percent (1½ %) per month or eighteen percent (18%) per annum, on any late payments commencing ten (10) days after the amounts are due. To the extent permitted by law, Tenant agrees that acceptance of late payments by Authority shall not constitute a waiver of Tenant's default by Authority with respect to such overdue amount, nor prevent Authority from terminating this Lease for default beyond applicable cure periods in the payment of rentals, fees, or charges due to Authority pursuant to this Lease or from enforcing any other provisions, rights, or remedies granted herein, or conferred by law. In the event Tenant delivers a worthless check or draft to Authority in payment of any obligation arising under this Lease, Tenant shall incur a service charge of One Hundred Dollars (\$100.00) or five percent of the face amount of such check, whichever is greater; or if Florida Statute section 832.07 is amended, such other fee as shall be set by said statute.

Tenant shall pay all rents, fees, charges, and billings required by this Lease to the following address:

Sarasota Manatee Airport Authority  
6000 Airport Circle  
Sarasota, FL 34243

5.09 Security Deposit. Prior to the Commencement Date of this Lease, Tenant shall post a non-interest-bearing security deposit with Authority equivalent to twelve (12) months of Land Rent ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to Authority and shall also secure the performance of all obligations of Tenant to Authority. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance reasonably satisfactory to Authority. In the event of any failure by Tenant to pay any rentals or charges when due or upon any other failure to perform any of its obligations or other default

041122SMAA

under this Lease beyond applicable cure periods, then in addition to any other rights and remedies available to Authority at law or in equity, Authority shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Tenant shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. Tenant shall increase the amount of the Security Deposit to reflect any increases in the sums payable hereunder within thirty (30) days after notification by Authority of any such increase. The Security Deposit shall be kept in full force and effect throughout the Term of this Lease and any extension thereof and for a period of six (6) months after the termination of this Lease. Not less than forty-five (45) calendar days prior to any expiration date of a Letter of Credit or Bond, Tenant shall submit evidence in form satisfactory to Authority that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this Section shall constitute a default of this Lease entitling Authority to all available remedies. The Security Deposit shall not be returned to Tenant or released by Authority until all obligations under this Lease are performed and satisfied. Prior to consent from Authority to any assignment of this Lease by Tenant, Tenant's assignee shall be required to provide a Security Deposit to Authority in accordance with the terms and conditions of this Section.

5.10 Absolute Net Lease. This Lease shall be deemed to be "triple net" without cost or expense to Authority including, but not limited to, cost and expenses relating to taxes, insurance, maintenance of facilities and infrastructure, and operation of the Premises.

5.11 Sales and Use Tax. Tenant hereby covenants and agrees to pay monthly to Authority any sales, use or other tax imposed pursuant to Florida Statutes, or any imposition in lieu thereof (excluding State and/or Federal Income Tax, franchise taxes and similar taxes) now or hereinafter imposed upon the rents or other payments due under the Lease, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon Authority as Authority, to the extent as applicable.

5.12 Additional Remedies. Authority shall have the same rights to enforce due and timely payment by Tenant of all sums of money or charges required to be paid by Tenant under this Lease as are available to Authority with regards to annual rent.

5.13 Licenses, Fees and Taxes. Tenant shall pay, on or before their respective due dates, all federal, state and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including improvements) or the estate hereby granted, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes (based upon Tenant's pro rata share according to the area of the Premises if the Premises do not have their own separate tax bill), and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Tenant; provided, however, that Tenant shall have the right to contest or protest any of the foregoing in accordance with applicable legal requirements. Authority agrees to reasonably cooperate with Tenant in such contest or protest. Authority also agrees to deliver to Tenant, promptly after receiving the same, but in any event at least thirty (30) days prior to the date such bills are due, any tax bills that Authority receives with respect to the Premises. Tenant shall maintain current all federal, state, and local licenses and permits required for the operation of the business conducted by Tenant. It is further provided that Tenant shall pay in full any tax or

041122SMAA

assessment which arose by reason of Tenant's use or occupancy of the Premises at any time after the Effective Date. Taxes for any partial calendar year during the Term shall be prorated.

5.14 Accord and Satisfaction. In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Authority may accept any check or payment without prejudice to Authority's right to recover the balance due or to pursue any other remedy available to Authority pursuant to this Lease or under the law.

#### **Article 6 – Collection of Fees**

6.01 Log and Collection of Fees. Tenant agrees to log the arrival and departure of aircraft using the Premises; to direct such aircraft to parking or service areas; to collect, on behalf of Authority, all fees and charges applicable to the operation and storage of the aircraft at the Airport, including, but not limited to, Landing Fees, Fuel Flowage Fees and any other fees or charges established by Authority (a schedule of the fees and charges shall be provided to Tenant by Authority, whenever new fees or charges are established or existing fees and charges are revised); to record, in accordance with general industry practice, the receipt of such fees and charges and to remit the amount that was collected, or should have been collected, less any percent retainage as may be authorized and approved by Authority. The fees and charges set forth in this Section shall not be collected from United States government military aircraft unless Tenant is otherwise advised in writing by Authority.

6.02 Accounting. Tenant agrees to provide an accurate accounting to Authority of the fees and charges collected under this Article, in a form and detail reasonably satisfactory to Authority, on or before the twentieth (20<sup>th</sup>) day of the month following the month in which the fees and charges were collected or accrued, which accounting shall be certified by an authorized officer of Tenant. Tenant shall pay to Authority the total amount due to Authority with the accounting, without demand, deduction, or setoff.

#### **Article 7 – Accounting Records and Reporting**

7.01 Accounting Records. Tenant shall keep, throughout the Term and any extension thereof, all books of accounts and records customarily maintained by a Fixed Base Operator, in accordance with Generally Accepted Accounting Principles (GAAP). Such books of accounts and records shall be retained and be available for five (5) years, including five (5) years following the expiration or termination of this Lease. With seven (7) business days advance written notice, Authority shall have the right to audit and examine during normal working hours all such books of accounts and records relating to Tenant's collection and payment of all rentals, fees, and charges payable to the Authority hereunder no more than three (3) times per year. If the books of accounts and records are kept at locations other than the Airport, Tenant shall arrange for them to be brought to a location convenient to the auditors for Authority to conduct the audits and inspections as set forth in this Article.

7.02 Audit by Authority. Notwithstanding any provision in this Lease to the contrary, Authority or its representative(s) may at any time at its sole cost and expense perform audits of all or selected operations performed by Tenant under the terms of this Lease. To facilitate the audit performed by

041122SMAA



Authority, Tenant agrees to make suitable arrangements with the Certified Public Accountant or employee who maintains Tenant's records to make available to Authority's representative(s) all working papers relevant to preparation of the audit. Authority or its representative(s) shall make available to Tenant a copy of the audit prepared by or on behalf of Authority. Tenant shall have sixty (60) days from receipt of the audit report from Authority or its representative(s) to provide a written response to Authority regarding the audit report. Tenant agrees that failure of Tenant to submit a written response to the audit report in accordance with the requirements of this Section shall constitute acceptance of the audit report as issued.

If the results of the audit determine that the amount paid by Tenant to Authority exceeded the amount required by this Lease, Authority shall pay Tenant the full amount of any over payment within thirty (30) days of the Authority's receipt of notice of such over payment. If the results of the audit determine that the amount paid by Tenant to Authority was two percent (2%) or less than the amount required by this Lease, Tenant shall pay Authority the full amount of under payment within thirty (30) days of the Tenant's receipt of notice of such under payment. However, if, the results of the audit determine that the amount paid by Tenant to Authority was more than two percent (2%) less than the amount required by this Lease, Tenant shall pay Authority the full amount of under payment plus interest on the full amount of under payment at the maximum rate permitted by law, but not more than one and one-half percent (1½ %) per month or eighteen percent (18%) per annum, within thirty (30) days of the Tenant's receipt of notice of such under payment.

#### **Article 8 – Construction of Improvements**

8.01 General Requirements for Construction. Tenant shall make no alterations or improvements to the leased Premises without the prior written consent of the Authority's President/CEO or designated representative. Tenant shall comply with the tenant construction permit process established by the Authority. If Tenant requests permission to make improvements or alterations and permission is granted, the following conditions shall apply:

- (A) Tenant shall obtain all required permits and licenses and comply with applicable zoning laws, building codes and other laws or regulations of any appropriate governing body, whether it be state, county, city, or Authority.
- (B) Prior to any construction within the Premises, all contractors, and subcontractors to perform work must be approved by Authority, and such contractors and subcontractors will be required to execute an indemnification agreement in favor of Authority, and to provide evidence of insurance satisfactory to Authority (in at least the same amounts and form required for Tenant).
- (C) Tenant shall advance an estimate of costs necessary along with a construction schedule to complete Tenant's work and shall provide future cost estimates on any other alterations or improvements to the Premises upon written consent of Authority to authorize said alterations or improvements.
- (D) Tenant shall post with Authority a performance and payment bond in an amount equal to the estimated cost of alterations or improvements to be delivered to Authority under the provisions above. Said amount is established to account for potential cost overruns,

contingencies, and cost estimate errors.

- (E) Tenant covenants and agrees to accept and pay all financial obligations associated with costs necessary to complete Authority-approved alterations or improvements. During construction, Tenant shall coordinate and incur the costs for the necessary and applicable inspections per local and industry requirements.
- (F) Tenant agrees throughout the term of this Lease to maintain at its expense the Premises and any improvements, equipment, or display within the Premises in a good state of repair and preservation. It is provided that, Tenant shall be responsible for the cost of repair for any damage to the Premises or the adjacent grounds or improvements, caused by Tenant, its agents, or employees. Authority shall have the right to inspect the Premises at any reasonable time, provided that the exercise of such right shall not unreasonably interfere with Tenant's business.

8.02 Tenant Construction Requirements. All improvements constructed or placed on the Premises, including, but not limited to, all structures, pavements, drainage, and landscaping, shall be of attractive construction and first-class design; comply with all applicable governmental laws, regulations, rules, and orders; follow standard construction methods; and be constructed in accordance with applicable requirements of this Article. (To the extent that any of the blanks in the provisions below are not filled in, the requirements of the Minimum Standards shall be the applicable standards.)

- (A) Tenant agrees that it shall construct, at its sole cost and expense, including all direct and indirect costs, the minimum improvements required for an FBO as set forth in the Minimum Standards and associated infrastructure and improvements, including, but not limited to, all structures, pavements, utilities, and drainage (nothing herein shall limit or modify the requirement however of the Authority to provide adequate use of the Non-Exclusive Off-Site Stormwater Facilities as set forth above), perimeter safety/security fencing, lighting and other security measures (hereinafter collectively referred to as the "Required Improvements"), which Required Improvements shall include at a minimum 10,400 SF of Executive Terminal, 45,490 SF of Aircraft Hangar, 9,358 SF of Aircraft Hangar Office, 522,720 SF of Aircraft Apron, 40,000 gal. Jet-A storage, and 20,000 gal. 100LL storage.
- (B) Construction of the Required Improvements shall be completed no later than twenty-four (24) months from the Effective Date, subject to automatic extensions as set forth under 29.01 below of a Force Majeure Event, unless otherwise approved in writing by Authority, which approval shall not be unreasonably withheld, conditioned, or delayed for reasons beyond the reasonable control of Tenant. All aircraft apron pavement sections to be constructed on the Premises, including the aircraft apron areas to be constructed as a part of the Required Improvements, shall be designed in accordance with FAA Advisory Circular 150/5320-6 Airport Pavement Design and Evaluation, as now or hereafter amended.

- (C) Minimum Capital Expenditure. Tenant shall expend not less than Thirty-Two Million, Four Hundred Fifteen Thousand, Eight Hundred Seventy-Three Dollars (\$32,415,873) on the construction of the Required Improvements ("Minimum Capital Expenditure").
- (D) In addition to the Required Improvements, Tenant shall use all commercially reasonable efforts, continuously for not less than one (1) year immediately following the Effective Date of this Lease, to actively market and enter into a sublease for occupancy and use of certain Required Improvements to a FAR Part 145 Repair Station Operator to perform aircraft maintenance and repair on the Premises. Tenant shall further cooperate with Authority, Manatee County, and the Bradenton Area Economic Development Corporation regarding all interest presented to or received from any third party regarding the potential sublease of any Required Improvements. In addition, each month, during said one (1) year, Tenant shall provide Authority a written report of its efforts to actively market and enter into a sublease for occupancy and use of Required Improvements to a FAR Part 145 Repair Station Operator.
- (E) Capital expenditure costs that may be counted towards satisfaction of the Minimum Capital Expenditures ("Approved Costs") shall include all costs paid for work performed, services rendered, and materials furnished for the construction of the Required Improvements, subject to the following conditions and limitations:
  - (1) The cost of design, construction and acquisition of the Required Improvements, including, but not limited to, building, site work, underground utilities, ramp, and taxi lane construction costs; the costs for the design and construction of apron edge roadways; payments to contractors and sub-contractors; construction and Tenant bonds; construction insurance; building, impact and concurrency fees; permit and inspection fees; utility connection fees; surveying and layout costs; environmental inspection, analysis and remediation costs; geotechnical and materials testing; site lighting, temporary and permanent fencing, and initial landscape and irrigation installation and material costs shall be considered Approved Costs, provided such costs shall first be approved in writing by the Authority to confirm the reasonableness of all such costs based on standard industry practices determined solely by the Authority.
  - (2) Payments made by Tenant to independent contractors for engineering, inspections, construction management services and architectural design work shall be considered Approved Costs; provided, however, such costs shall be limited to fifteen percent (15%) of the Minimum Capital Expenditure.
  - (3) Only true third-party costs, payments made by Tenant, and costs typically capitalized under GAAP provisions, shall be considered Approved Costs.

- (4) Costs for consultants (other than engineering, environmental, design consultants, and construction management, as provided above), legal fees and accountant fees shall not be considered Approved Costs.
- (5) Finance and interest expenses shall not be considered Approved Costs.
- (6) Administration, supervisor and overhead or internal costs of Tenant shall not be considered Approved Costs.
- (7) Costs incurred by any of Tenant's affiliates or subtenants for Required Improvements on the Premises shall be considered Approved Costs.
- (8) Costs associated with acquisition or installation of personality, such as furnishings, trade fixtures and equipment, that is not permanently affixed to the Premises, or any other personality whatsoever, shall not be considered Approved Costs.
- (9) Costs of interior decorations, special finishes, wall tile or other special wall finishes and coverings; construction photographs; special external and internal lighting; and signage, other than those required by local codes and ordinances, shall not be considered Approved Costs.
- (10) Costs associated with repairs, alterations, modifications, renovations, or maintenance of any further improvements on the Premises (including, but not limited to, improvements existing as of the Effective Date and improvements subsequently constructed on the Premises) shall not be considered Approved Costs nor Required Improvements.
- (11) Any costs associated with any improvements other than the Required Improvements shall not be considered Approved Costs unless Tenant has obtained written approval from Authority prior to incurring such costs.

#### 8.03 Construction Approvals.

Except as otherwise provided for herein, prior to constructing any improvements or alterations to the Premises (including, but not limited to, the Required Improvements), Tenant, without cost to Authority, shall prepare detailed preliminary design and construction plans and specifications for the improvements (hereinafter collectively referred to as the "Plans") in accordance with standards established by the Authority and deliver the preliminary Plans to the Authority for review, comment and adjustment. The Authority shall review the preliminary Plans and provide a written response to Tenant within thirty (30) days after receipt of the preliminary Plans and in the event the Authority fails to provide a written response within thirty (30) days, then any days over the allotted thirty (30) days until the Authority issues its written response will be automatically added to any applicable deadline for Tenant's completion of construction; provided, in the event the preliminary Plans are subject to review by another governmental authority with jurisdiction over the Airport, including, but not limited to the FAA, the

041122SMAA

timeframe for review may be extended by the amount of time necessary for such authority to complete its review. In the event the Authority does not approve the preliminary Plans, Tenant will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Tenant may then resubmit modified Plans to the Authority.

Within one hundred eighty (180) days of Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Article, Tenant, at its sole cost and expense, shall have prepared and delivered to the Authority one (1) complete set of as-built drawings in a PDF or other electronic format approved by the Authority, and one (1) complete set of Auto CADD files in the latest version acceptable by the Authority.

Unless waived by the CEO or his representative, within one hundred eighty (180) days of completion of the Required Improvements, Tenant shall provide to Authority a written agreed upon examination report detailing the costs of constructing the Required Improvements, which shall include a schedule detailing the total cost of constructing the Required Improvements by category and amount; and a schedule detailing the total Approved Costs of the Required Improvements by category and amount. The report shall be in a form and substance reasonably satisfactory to Authority and, unless waived by the Airport CEO, shall be prepared, and certified by an independent Certified Public Accountant, not a regular employee of Tenant, and shall include an opinion regarding the information contained in the schedules. The report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules.

8.04 No Liens. Authority's interest in the Premises shall not be subject to any construction, mechanics, materialman's, tax, laborers', or any other lien, whether Authority has given its written approval for the improvements or otherwise, and Tenant shall hold Authority and its interest in the Premises harmless from any such lien or purported lien. Tenant agrees that nothing contained in this Lease shall be construed as consent by Authority to subject the estate of Authority to liability under the Construction Lien Law of the State of Florida and understands that Authority's estate shall not be subject to such liability. Tenant shall notify all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so, requested by Authority, Tenant shall file a notice satisfactory to Authority in the Official Public Records of Authority, stating that Authority interest shall not be subject to liens for improvements made by Tenant. If a construction lien is filed against the Premises or other Authority property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within ten (10) days from the date of filing. If Tenant fails to transfer or satisfy such claim within the ten (10) day period, Authority may do so and thereafter Tenant shall reimburse Authority without delay all costs incurred by Authority in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Tenant shall promptly pay to Authority all such costs upon demand, as additional rent.

#### **Article 9 – Obligations of Tenant and Authority**

9.01 Rules and Regulations. Tenant covenants and agrees to observe and obey, and to require Tenant Parties to observe and obey all rules and regulations of the Authority (including amendments and supplements thereto) regulating the conduct and operations of Tenant and others on the Premises as may from time to time be promulgated. The obligation of Tenant to require such observance and obedience

on the part of its subtenants, guests, invitees, and business visitors shall pertain only while such Persons are on or in occupancy of any portion of the Premises.

9.02 Conduct of Operations. Tenant shall conduct its operations hereunder in an orderly and commercially reasonable manner, considering the nature of such operations so as not to unreasonably interfere with the operations of other tenants at the Airport.

9.03 Noise and Vibrations. Tenant shall comply with the reasonable noise mitigation measures established by the Authority to mitigate noise impacts of Tenant's operations outside the boundaries of the Airport, such as utilizing designated areas for engine run-up activities.

9.04 Conduct of Tenant Parties. Tenant shall control the conduct, demeanor and appearance of Tenant Parties doing business at the Premises and, upon objection from Authority concerning the conduct of any such persons, shall immediately take all reasonable steps necessary to remove the cause of objection.

9.05 Disposal of Garbage. Tenant shall remove from the Premises or otherwise promptly dispose of in a manner approved by Authority all garbage, debris, and other waste materials (whether solid or liquid) arising out of the use or occupancy of the Premises or out of any operations conducted thereon. Garbage, debris, and other non-hazardous waste materials may be temporarily stored on the Premises in suitable garbage and waste receptacles made of metal and equipped with tight fitting covers and designed to contain whatever material safely and properly may be placed therein.

9.06 Nuisance. Tenant shall not commit any physical nuisance on the Premises and shall not do or permit any of its subtenants to do anything which would result in the creation, commission, or maintenance of such nuisance on the Premises. Tenant shall not create nor permit to be caused or created upon the Airport of the Premises any obnoxious odor, smoke or noxious gases or vapors. The creation of exhaust fumes by the operation of internal combustion engines or engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this Lease.

9.07 Vehicular Parking. Tenant shall not allow Tenant Parties to park vehicles within the grassed areas of the Premises or in other areas of the Airport that are not leased or licensed to Tenant without the prior consent of the Authority, which consent may be granted or withheld in the Authority's sole and absolute discretion.

9.08 Accessibility of Utility Systems. Tenant shall not unreasonably interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Premises that are also used by other occupants, customers, or users of the Airport. This provision shall in no event require Tenant to modify or relocate any utilities systems that are approved by the Authority as part of the Required Improvements.

9.09 Overloading Paved Areas. Tenant shall not overload any aircraft apron or taxi lane, vehicle roadway or parking surface, hangar or office floor or other paved area on the Premises and shall repair any floor, including supporting members, and any paved area damaged by overloading.

9.10 Hazardous Operations. Tenant shall not do or permit to be done any act or thing upon the Premises that:

041122SMAA

- (A) will invalidate any insurance policies covering the Premises or the Airport; or
- (E) constitutes a hazardous condition considering the risks normally attendant upon the operations permitted by this Lease.

9.11 Storage of Flammable Liquids. All flammable liquids that are kept or stored at the Premises must always be handled, stored, and used in accordance with all applicable federal, state, and local laws.

9.12 Testing of Fire Systems. From time to time and as often as reasonably required by Authority or any governmental authority having jurisdiction, Tenant shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus which are located on the Premises.

9.13 Vending Machines. Except as specifically authorized by this Lease, Tenant shall not place any coin or token operated vending machine or similar device (including, but not limited to, beverage or food machines, or other commodities) upon the exterior of any buildings or improvements upon the Premises, without the prior written consent of Authority, which consent shall not be unreasonably withheld by Authority.

9.14 Derelict Aircraft. Tenant shall not permit the temporary or permanent storage (without an open work order being actively pursued) at the Premises of any Derelict Aircraft. Derelict Aircraft shall be removed from the Airport within a period of thirty (30) days after written notice from Authority. Notwithstanding the foregoing, Authority may make written request to Tenant to demonstrate that an open work order is being actively pursued. If Tenant fails to provide Authority with satisfactory evidence that an open work order is being actively pursued within three (3) business days of the date requested, then such Derelict Aircraft shall be removed from the Premises within thirty (30) days from the date Authority makes its written request for proof that an open work order is being actively pursued.

9.15 Derelict Vehicles. Tenant shall not permit the temporary or permanent storage at the Premises of any Derelict Vehicles. Tenant shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from Authority.

9.16 Evacuation and Hurricane Plans. Within thirty (30) days of request from Authority, Tenant shall provide Authority with emergency evacuation and hurricane plans consistent with Authority's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Tenant and its subtenants if an evacuation need or hurricane alert warning is present. Hurricane plans are to be annually updated, if requested by Authority.

#### **Article 10 – Maintenance and Repair**

10.01 Cleanliness of Premises/Maintenance. Tenant shall, throughout the Term and any extension thereof, be responsible for all repairs and maintenance of the Premises (which shall include, but shall not be limited to, all aircraft apron areas, buildings, and improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural, or otherwise. Authority shall not be liable

for, or required to make, any repairs or perform any maintenance upon the Premises, unless directly related to damages caused by the Authority's negligence in which event Authority shall be responsible to repair such damage. Maintenance and repairs shall be in quality and class comparable to the original work, to preserve the Premises and all apparatuses thereon in good order, repair, and first-class condition. Tenant shall be required to keep all aircraft apron areas, buildings, and other improvements in good and fit condition throughout the Term and any extension hereof, and without limiting the generality thereof, Tenant shall:

- (A) Keep painted without signs of chipping or cracking all the exterior and interior of the Premises, repair and maintain all doors, windows, pavements, equipment, lighting fixtures, furnishings, fixtures, roof, exterior walls, and structural support systems.
- (B) Keep the Premises at all times in a clean and orderly condition and appearance and all the fixtures, equipment and personal property which are in any part of the Premises that is open to or visible by the public.
- (C) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution, or regulation of any applicable governmental authority.
- (D) Repair any damage to the aircraft apron areas, paving or other surface of the Premises caused by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.
- (E) Take anti-erosion measures, including, but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or built upon.
- (F) Be responsible for the maintenance and repair of all utilities that are now or subsequently located within the Premises and are exclusively used by Tenant or any of its subtenants, including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers, and storm sewers.
- (G) Make no use of any portion of the Premises in a manner that causes or results in excessive dust, debris, or waste of any kind to be blown about or raised to be ingested by aircraft.
- (H) Be responsible for the maintenance, repair, cleaning, and landscaping of the entrance and exit roadways, sidewalks and signage serving the Premises, which Tenant acknowledges may be located outside of the Premises.

10.02 Inspections. Except for the need to address any emergency or other similar exigency, Authority, with forty-eight (48) hours prior notice to Tenant, shall have the right to enter the Premises at

041122SMAA



reasonable times to inspect same for the purpose of determining whether Tenant is following the requirements of this Lease. In the event Tenant is not in compliance with this Lease, as reasonably determined by Authority, Authority shall provide Tenant with written notice of such noncompliance. Tenant shall commence corrective action to remedy such noncompliance to the satisfaction of Authority promptly after receipt of the notice of noncompliance. If corrective action is not initiated within ten (10) days and pursued in a diligent manner to completion, Authority may, but shall not be obligated, to cause the same to be accomplished. Tenant agrees that Tenant shall assume and be liable to Authority for payment of all reasonable costs incurred by Authority, plus a fifteen percent (15%) administrative overhead fee, which costs, and administrative overhead fee shall constitute additional rent hereunder and shall be due and payable within thirty (30) days of the date of Authority's written notice.

#### **Article 11 – Utilities**

11.01 Utility Costs. Tenant shall pay for all electric, water, garbage, communications, and other utilities charges for the Premises. The metering devices installed by Tenant for such utilities shall be installed at the cost of Tenant and shall become the property of Authority upon installation unless owned by a third party. Extension of utility mains or services to meet the needs of Tenant on the Premises shall be at the expense of Tenant and shall become the property of Authority upon installation unless otherwise agreed upon by the parties to this Lease

11.02 Water, Industrial and Sanitary Sewage Systems. Tenant acknowledges that certain properties and uses of properties within the Airport or on Authority owned land are subject to Federal storm water regulations as set forth in 40 CFR Part 122. Tenant agrees to observe and abide by said regulations as applicable to its property and use. Tenant must take all steps necessary to apply for and obtain a storm water discharge permit as may be required by applicable regulations for Tenant's operations at the Airport before utilizing the Non-Exclusive Off-Site Stormwater Facilities.

Notwithstanding any other provisions or terms of this Lease, including Tenant's right to quiet enjoyment, Authority and Tenant both acknowledge that close cooperation is necessary between the parties and with all users of the Non-Exclusive Off-Site Stormwater Facilities to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Tenant acknowledges that it may be necessary along with other similarly situated tenants using the Non-Exclusive Off-Site Stormwater Facilities to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Tenant, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."

Authority will provide Tenant with written notice of those storm water discharge permit requirements, that are in Authority's storm water permit, that Tenant will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges as related to Tenant's use on the Premises; collection of storm water samples for analysis of such samples for contamination collected within the Premises; preparation of storm water pollution prevention or similar plans within the Premises; implementation of Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Tenant within seven (7) days of receipt of such written notice, shall notify Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Tenant does not provide such timely notice, it is deemed to assent to undertake such requirements. If Tenant provides Authority with timely written notice that it disputes such storm water

041122SMAA

discharge permit requirements, Authority and Tenant agree to negotiate a prompt resolution of their differences. Tenant warrants that it will not object to written notice from Authority for purposes of delay or avoiding compliance.

Tenant agrees to undertake those storm water discharge permit requirements for which it has received written notice from any governmental entity charged with enforcement of storm water regulations. Tenant acknowledges that time is of the essence and will make every effort to meet all deadlines that may be imposed on it. Authority agrees to provide Tenant, at its request, with any nonprivileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations.

Authority will give Tenant written notice of any breach by Tenant of Authority's storm water discharge permit or the provisions of this section. If such a breach is material, and, if of a continuing nature, Authority may terminate this Lease. Tenant agrees to cure promptly any breach caused by Tenant or as a direct result of Tenant's operation.

Tenant agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. In addition, Tenant agrees to participate in Authority's Environmental Compliance Program and is subject to and agrees to periodic inspections conducted by Airport staff to monitor the management, handling, storage, and disposal practices associated with any petroleum substances, hazardous substances, or waste materials by Tenant.

All such remedies of Authority regarding environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Lease.

Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures directly resulting from or connected with the improper use, handling, storage or disposal of all pollutants or contaminated materials, as same are defined by law, by Tenant or by Tenant's subtenants, employees, invitees, suppliers of service or providers of materials, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Tenant pursuant to the terms of this Lease.

#### **Article 12 – Airport Security**

Tenant agrees to observe and abide by all federal, state, and local laws, rules and safety and security requirements applicable to Tenant's operations, as now or hereafter promulgated.

#### **Article 13 – Insurance Requirements**

Tenant shall, at its sole expense, maintain in full force and effect, always during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein as related to its use of the Premises and Tenant's use of all other areas on the Airport permitted hereunder as may be approved in writing by the Authority. Neither the requirements contained in this Article nor Authority's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Tenant under this Lease. If the Minimum Standards or Airport Rules and Regulations impose more strenuous requirements, the Tenant shall comply with Minimum Standards and Airport Rules and Regulations. Tenant shall insure and/or obtain insurance coverage for its use of and impact to the Non-

041122SMAA

Exclusive Off-Site Stormwater Facilities.

13.01 Commercial General Liability/Airport Liability. Tenant shall maintain Commercial General Liability/Airport Liability Insurance with limits of liability not less than Ten Million Dollars (\$10,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. This coverage shall be provided on a primary basis.

13.02 Hangar Keeper's Legal Liability. Tenant shall maintain Hangar keeper's Legal Liability Insurance providing coverage for property damage to aircraft that are the property of others while in the care, custody, or control of Tenant (when such aircraft are not in flight), in an amount not less than Ten Million Dollars (\$10,000,000) any one aircraft and Twenty Million Dollars (\$20,000,000) any one occurrence.

13.03 Commercial Auto Liability. Tenant shall maintain Commercial Automobile Liability Insurance with limits of liability not less than Five Million Dollars (\$5,000,000) each occurrence for owned, non-owned and hired automobiles. If Tenant transports fuel the policy must include CA 99 48 Pollution Liability - Broadened Coverage for Covered Autos - Commercial Auto, Motor Carrier, and Truckers Coverage Forms Endorsement or equivalent. In the event Tenant has no owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability policy, or a separate Commercial Auto Liability policy. This coverage shall be provided on a primary basis.

13.04 Workers' Compensation & Employers Liability. Tenant shall maintain Workers' Compensation & Employers Liability as required by state and federal law. This coverage shall be provided on a primary basis.

13.05 Storage Tank Third-Party Liability and/or similar Environmental Impairment Liability. Tenant shall maintain Third-Party Storage Tank Pollution Liability Insurance, or similar Environmental Impairment Liability Insurance at a minimum limit not less than One Million Dollars (\$1,000,000) per occurrence at each location and Two Million Dollars (\$2,000,000) annual aggregate at each location providing coverage for damages against, but not limited to, third-party liability, clean up, corrective action including assessment, remediation, and defense costs. In the event the policy includes a self-insured retention or deductible more than One Hundred Thousand Dollars (\$100,000), Tenant shall provide a copy of Tenant's most recent annual report or audited financial statements to Authority at Authority's request and Authority may reject or accept a higher self-insured retention or deductible based on Tenant's financial condition.

13.06 Umbrella or Excess Liability. In addition to all other insurance requirements, Tenant shall maintain Excess Liability insurance coverage with a minimum /limit of Twenty-Five Million (\$25,000,000.00) for all operations to be performed by the Tenant at the Airport. Tenant may satisfy the minimum limits required above for Commercial General Liability/Airport Liability and/or Commercial Auto Liability and/or Environmental Impairment Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General Liability/Airport Liability, Commercial Auto Liability or Environmental Impairment Liability policy. Authority shall be specifically endorsed as an "Additional

041122SMAA

Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a "Follow-Form" basis.

13.07 Property, Wind, & Flood Insurance. Tenant shall maintain, subject to reasonable deductibles approved by the Authority:

- (A) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments, and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (B) Flood insurance, if within the 100-year flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (C) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

13.08 Additional Insured Endorsement. Tenant shall endorse Authority as an "Additional Insured" on each liability insurance policy required to be maintained by Tenant, except for Worker's Compensation and Commercial Auto Liability policies. The CG 2011 Additional Insured - Managers or Lessors of Premises or its equivalent, shall be an endorsement to the Commercial General Liability policy. Other policies, when required, shall provide a standard "Additional Insured" endorsement offered by the insurer. The "Additional Insured" endorsements shall provide coverage on a primary basis. "Additional Insured" endorsements shall read "Sarasota Manatee Airport Authority Board, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243".

13.09 Loss Payee Endorsement. Tenant shall endorse Authority as a "Loss Payee" on the Property, Flood, and Windstorm insurance policies. "Loss Payee" endorsements shall provide coverage on a primary basis and shall read "Sarasota Manatee Airport Authority Board, c/o Sarasota Manatee Airport Authority, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o 6000 Airport Circle, Sarasota, Florida 34243".

041122SMAA

13.10 Certificate of Insurance. Prior to the Commencement Date, Tenant shall provide Authority with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed during the Term or any extension thereof, Tenant shall provide Authority a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Sarasota Manatee Airport Authority Board, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243.

13.11 Waiver of Subrogation. By entering into this Lease, Tenant agrees to a Waiver of Subrogation for each policy required to be maintained or maintained by Tenant pursuant to or in connection with this Lease. When required by the insurer or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Tenant enter into such an agreement on a pre-loss basis.

13.12 Premiums and Proceeds. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood, or wind insurance policies. Tenant shall be responsible for all premiums, including increases, for property, flood, and wind insurance policies. Subject to the terms of any Leasehold Mortgage or financing arrangement entered into by Tenant, Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or behalf of Tenant.

13.13 Deductibles, Coinsurance and Self-Insured Retention. Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

13.14 Right to Review or Adjust Insurance. The Authority may review, modify, reject, or accept any required policies of insurance, including, but not limited to, limits, coverages, or endorsements, required by this Article from time to time throughout the Term and any extension thereof. Authority may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Authority shall provide Tenant a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt of the notice.

13.15 No Representation of Coverage Adequacy. Tenant acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for Authority. Tenant agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect Tenant against any loss exposures, whether because of this Lease or otherwise.

**Article 14 – Damage, Destruction or Condemnation of the Premises**

14.01 Removal of Debris. If the Premises, or any portion thereof, are damaged by fire, the elements or other casualty, Tenant shall promptly remove all debris resulting from such damage from the Premises and shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of Persons entering upon the Premises. If Tenant fails to promptly comply with the provisions of this Section, Authority may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Tenant agrees that Tenant shall fully assume and be liable to Authority for payment of any costs incurred by Authority, plus a fifteen percent (15%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Authority within thirty (30) days from the date of written notice provided by Authority.

14.02 Tenant's Obligations. Tenant assumes full responsibility for the condition of the Premises and the character, acts and conduct of all Persons admitted to the Premises by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Premises, or any portion thereof, is damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of Tenant, or a Tenant Party or any other Person other than the Authority, Tenant shall at its sole cost and expense restore the Premises to the condition existing prior to such damage. Tenant shall commence restoration within sixty (60) days and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 8; provided, that if the nature of the damage is such that more than sixty (60) days are reasonably required to commence, Tenant shall commence restoration as soon as reasonably practicable under the circumstances taking into consideration the extent of the damage. All repairs and restoration shall be made by Tenant at Tenant's sole cost and expense, in accordance with the construction requirements contained herein. If Tenant fails to restore the Premises as required by this Section, Authority shall have the right, but not the obligation, to enter the Premises and perform the necessary restoration. Tenant agrees that Tenant shall fully assume and be liable to Authority for payment of the reasonable costs of restoration plus a fifteen percent (15%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Authority within thirty (30) days from the date of the written notice provided by Authority.

14.03 Insurance Proceeds. Except as otherwise provided for herein, upon receipt by Tenant of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account approved by Authority to be available to pay for the cost of any required repair, replacement, or rebuilding. The proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of damaged improvements, Tenant shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is more than the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant.

14.04 Condemnation. If the whole or any material portion of the Leased Premises is acquired by a condemning authority other than Authority, either by sale in lieu of condemnation or by the exercise of the power of eminent domain rendering use of the remaining Leased Premises commercially infeasible, then in and as a direct result of that event, this Lease will terminate from the date of sale or title vesting, and Tenant will have no claim whatsoever, including claims of apportionment, as against Authority either for the value of any unexpired term of this Lease or for the value of leasehold improvements. However,

041122SMAA

nothing in this provision will limit or destroy any right of Tenant to separately assert all claims to which Tenant would be legally entitled against the condemning authority including without limitation the value of the unexpired term of this Lease and/or improvements, moving costs or business losses solely against the condemning authority where statutes or other applicable law apply. To the extent the Authority is the condemning authority hereunder, nothing herein shall waive, limit or modify Tenant's right to assert all claims to which Tenant would otherwise be legally entitled against the Authority.

If a portion of the Leased Premises is acquired by a condemning authority other than the Authority, either by sale in lieu of condemnation or by the exercise of the power of eminent domain rendering use of the remaining Premises commercially feasible, then in and as a direct result of that event, this Lease will terminate from the date of sale or title vesting as to the portion so condemned only, with the Rents reduced by the proportionate reduction in square footage, and Tenant will have no claim whatsoever, including claims of apportionment, against Authority either for the value of any unexpired term of this Lease or for the value of leasehold improvements taken. However, nothing in this provision will limit or destroy any right of Tenant to separately assert all claims to which Tenant would be legally entitled against the condemning authority including without limitation the value of the unexpired term of this Lease and/or improvements, moving costs or business loss solely against the condemning authority where statutes or other applicable law apply. To the extent the Authority is the condemning authority hereunder, nothing herein shall waive, limit or modify Tenant's right to assert all claims to which Tenant would otherwise be legally entitled against the Authority.

#### **Article 15 – Rights of Leasehold Mortgagees**

15.01 **Right to Mortgage.** Tenant may encumber its leasehold estate by granting a mortgage or other similar instrument creating a mortgage lien against the Tenant's leasehold interest. Any such instrument which creates a first mortgage lien is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term and any extension thereof; provided that, Authority shall not be obligated to, nor deemed to have subjected or subordinated Authority's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated the Authority's interest in this Lease to such Leasehold Mortgage. Authority's interests in the fee and in this Lease are and shall always remain superior and prior in right to any Leasehold Mortgage.

15.02 **Notice of Default, Default.** A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Authority, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Authority, Authority upon serving Tenant with any notice of default under this Lease, shall also serve a copy of that notice of default upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Authority.

In case Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to cure such default, within the time periods set forth for Tenant above, whether same consists of the failure to pay Rent or Improvement Rent, or the failure to perform any other matter or thing which Tenant is required to do or perform and Authority shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant subject to Authority's rights to damages, restitution, or other legal or equitable monetary remedies related directly

041122SMAA

to the default(s) at issue. The Leasehold Mortgagee, upon receiving such notice, shall have, in addition to any time to cure a default (a "Cure Period") extended to Tenant under the terms of this Lease, a period of an additional fifteen (15) days within which to cure the default or cause same to be cured or to commence to cure such default with diligence and continuity, notwithstanding the foregoing:

- (A) Where a provision of this Lease provides less than a thirty (30) day Cure Period, the Leasehold Mortgagee shall also have an additional fifteen (15) days Cure Period following the Tenant's Cure Period; or
- (B) Where a provision of this Lease expressly provides that Tenant has no opportunity to cure, the Leasehold Mortgagee shall have no Cure Period.

In case Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to cure such default, within the time periods set forth above, whether same consists of the failure to pay Rent or Improvement Rent, or the failure to perform any other matter or thing which Tenant is required to do or perform and Authority shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant.

15.03 Cure of Default or Termination. Authority will take no action to affect a termination of the Lease until such time as the Cure Period provided herein has expired and the defaults remain uncured. During the Cure Period, the Leasehold Mortgagee shall be entitled to: 1) obtain possession of the Premises (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when the Leasehold Mortgagee has obtained possession; or 2) institute foreclosure proceedings or otherwise acquire Tenant's interest under this Lease with diligence and continuity and thereafter proceed to cure such default; provided, however, that the Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for Authority serving such notice of default shall be cured, and provided further, that nothing in this paragraph shall preclude Authority from exercising any other rights or remedies under this Lease with respect to the default.

15.04 Foreclosure. The Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, subject to Authority's written consent, which shall not be unreasonably withheld, and effective upon such assignment whereupon such Leasehold Mortgagee or assignee shall become and remain liable under this Lease as provided in this paragraph, except that such Leasehold Mortgagee may assign this Lease with Authority's consent, which shall not be unreasonably withheld, and effective upon such assignment, the new lessee shall become and remain liable to Authority under this Lease, and the Leasehold Mortgagee shall no longer be liable to Authority. If a Leasehold Mortgagee shall become the owner or holder of Tenant's interest in this Lease by foreclosure of its Leasehold Mortgage or by assignment of this Lease in lieu of foreclosure, the term "Tenant" as used in this Lease, shall include the owner or holder of Tenant's interest in the event of a sale, assignment or other disposition of Tenant's interest in this Lease by the Leasehold Mortgagee.

Reference in this Lease to acquisition of Tenant's interest in this Lease by the Leasehold Mortgagee shall be deemed to include, where circumstances require, to acquisition of Tenant's interest in this Lease by any purchaser at a sale on foreclosure of the Leasehold Mortgage and provisions

041122SMAA



applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser. Leasehold Mortgagee's acquisition of Tenant's interest in this Lease and any assignment of the acquired interest by the Leasehold Mortgagee shall not be deemed a novation of Tenant's obligations under this Lease. Authority does not authorize any novation of Tenant's obligations under this Lease.

15.05 Prohibition on Fee Simple Transfer. So long as Tenant's interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree, for the benefit of such Leasehold Mortgagee, that Authority shall not sell, grant or convey to Tenant all or any portion of Authority's fee simple title to the Premises without the prior written consent of such Leasehold Mortgagee (which consent shall not be unreasonably withheld, conditioned, or delayed, provided the parties agree in writing that such sale, grant, or conveyance shall not result in a merger of this Lease into fee simple title to the Premises). In the event of any such sale, grant, or conveyance by Authority to Tenant, Authority and Tenant agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the Premises. This paragraph shall not be construed to prevent any, or to require any consent of any leasehold mortgagee or Tenant to any, sale, grant, or conveyance of Authority's fee simple title by Authority to any person, firm, or corporation other than Tenant, its successors, legal representatives, and assigns.

15.06 Leasehold Mortgagee. Reference in this Lease to a Leasehold Mortgagee shall be deemed to refer where circumstances require, to any assignee of a Leasehold Mortgagee; provided that such assignee shall forward to Authority, pursuant to paragraph 15.02 a duplicate original of the assignment of the Leasehold Mortgage in a form proper for recording or a copy of such assignment, as recorded in the Public Records, together with a written notice setting forth the name and address of the assignee and, to the extent available, the name, telephone number, facsimile number and email address of a representative of the assignee to whom notices may be sent.

15.07 Subordination. Any leasehold mortgage shall be specifically subject and subordinate to Authority's rights under this Lease and Authority's fee simple interest in the Premises. Despite any provision which is or may appear to the contrary in this Lease, under no circumstances whatsoever shall the fee simple title interest of Authority in the Premises, or any portion of same, be subordinated to the leasehold mortgage or encumbered by the leasehold mortgage.

15.08 Assignees. Notwithstanding anything herein to the contrary, after a default by Tenant whereby any Leasehold Mortgagee shall acquire any rights and/or obligations under this Lease, including as a result of bidding or lack thereof at auction after foreclosure, (this also includes any rights/obligations a Leasehold Mortgagee shall acquire under any other lease of Tenant at the Airport, as a result of cross-default provisions), and thereafter the Leasehold Mortgagee or referee at sale proposes to assign, sell, rent, or otherwise transfer any interests, rights, and obligations to a special purpose entity and/or third party, or allow use of the property under this Lease (or any other property under any other lease at the Airport that Tenant is a party to as a result of cross-default provisions) by a special purpose entity and/or third party, any such assignment, sale, transfer, or use of the property under this Lease (or any other property under any other lease at the Airport that Tenant is a party to as a result of cross-default provisions) by a special purpose entity and/or third party is contingent upon Authority confirming to its reasonable satisfaction that the special purpose entity and/or third party has the financial and operational capabilities sufficient for the proper conduct of a fixed base operator as those capabilities are defined in this Lease and the Minimum Standards for Aeronautical Activities, as may be amended from time-to-time by Authority applicable to the Airport. Authority may also submit nominees to the Leasehold Mortgagee,

041122SMAA

and the Leasehold Mortgagee shall negotiate in good faith and act with such nominees in order to determine whether any such nominee meets the Leasehold Mortgagee's qualifications.

15.09 Estoppel Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge.

#### **Article 16 – Title to Improvements**

16.01 Title to Improvements. Tenant shall be deemed to be the owner of all improvements and alterations constructed by Tenant upon the Premises during the Initial Term. Upon expiration of the Initial Term or the earlier termination of this Lease as provided herein, all improvements and alterations constructed or placed upon the Premises by Tenant except for any Fuel System, title to which has not previously vested in Authority hereunder, shall become the absolute property of Authority, and Authority shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of Authority, Tenant shall provide Authority with a bill of sale or other evidence of the transfer of ownership of the improvements and alterations together with evidence satisfactory to Authority that the improvements and alterations are free from liens, mortgages, and other encumbrances.

16.02 Fuel System. Tenant shall be fully responsible for the ownership, permitting, maintenance and liability of all components of any Fuel System installed, upon the Premises, at all times during the Term. Upon expiration or earlier termination of this Lease, Authority may, at Authority's sole option, require that (a) Tenant assign all right, title and interest to Authority or, at Authority's option, to a successor lessee or assignee, and thereafter the Fuel System shall become the absolute property of Authority, or successor lessee or assignee, who shall have every right, title, and interest therein; or (b) remove all or any portion of the Fuel System at the Tenant's sole cost. Upon the request of Authority, Tenant shall provide Authority with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to Authority, or the successor lessee or assignee, that the improvements are free from liens, mortgages, and other encumbrances. In the event Authority requires assignment of rights, title, and interest in the Fuel System to a third party, Tenant hereby reserves the right to require reasonable indemnification from such third party as to all faults, without recourse and without any representation or warranty, expressed or implied, as to merchantability, condition or fitness or compliance with governmental requirements. In the event of removal, partial removal, or modification of the Fuel System, Tenant shall provide a detailed closure report signed and sealed by a professional geologist or other environmental assessment prepared by an independent environmental consultant

041122SMAA

acceptable to Authority and certified to the Authority, detailing the total scope of work completed and any associated environmental findings. In no event shall underground storage tanks be permitted without express written authorization of the Authority.

16.03 Removal of Improvements. Notwithstanding any provision of this Lease to the contrary, Tenant may be required to remove any improvements made by Tenant during the Term of this Lease upon the expiration or earlier termination of this Lease, including the Fuel System as set forth in Section 16.02 above.

16.04 Survival of Article. The provisions of this Article 16 shall survive expiration or earlier termination of this Lease.

#### **Article 17 - Expiration, Default, Remedies and Termination**

17.01 Expiration. This Lease shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 3.02. In the event this Lease is renewed, this Lease shall automatically terminate at the end of the applicable Renewal Term.

17.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant or Authority:

- (A) The failure of Lessee to construct Lessee's Improvements in accordance with the terms, covenants, and conditions of this Lease. Notwithstanding, if the nature of Lessee's breach in this regard is such that more than thirty (30) days after written notice from Authority to Lessee is required to complete performance, then Lessee shall not be in default if Lessee commences performance within such thirty (30) day period and continues thereafter without interruption to diligently prosecute an absolute cure to completion. This provisional extension of time to cure shall not apply to any other event or form of breach by Lessee.
- (B) The abandonment (as that term is defined under applicable law) of the Premises by Tenant.
- (B) The failure by Tenant to make payment of rent or any other payment required to be made by Tenant hereunder as and when due, where such failure shall continue for a period of ten (10) days after written notice from Authority that such payment is due.
- (C) The failure by Tenant to maintain in full force and effect, the insurance limits, coverages, and endorsements required by this Lease.
- (D) The failure by Tenant to observe or perform any other covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, for a period of thirty (30) days after written notice thereof from Authority.

- (E) To the extent permitted by law: (a) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days); (c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within ninety (90) days; or (d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within ninety (90) days.
- (F) A material default by Tenant of any other agreement, permit or lease between Authority and Tenant, which default has not been cured within the applicable cure period provided in such agreement, permit, or lease.

In the event of a default by Lessee that remains uncured after the applicable cure period, Authority shall have the right to pursue any remedy now or hereafter available to Authority under the laws of the state of Florida, including, but not limited to, the right to terminate this Lease.

17.03 Remedies. Pursuant to Section 17.02, in the event of any material default or breach by Tenant, Authority may at any time thereafter, with notice or demand and without limiting any other right or remedy which Authority may have under the law by reason of such default or breach, elect to exercise any one of the following remedies while concurrently taking all reasonable steps to mitigate all its damages:

- (A) Declare the entire rent for the balance of the Initial Term, Renewal Term, or any part thereof due and payable while subtracting any rent that it has received or will receive through another tenant on the same Premises forthwith.
- (B) Terminate Tenant's right to possession of the Premises by any lawful means and reenter and retake possession of the Premises for the account of Tenant, in which case the rent and other sums hereunder shall be accelerated and due in full and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Authority is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by Tenant. Upon such reletting, all rentals received by Authority shall be applied, first to the payment of any indebtedness other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Authority due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by Authority relating to the unexpired Term of this Lease; third, to the payment of rent due and unpaid hereunder; and the residue,

if any, shall be paid to Tenant.

- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of Authority, thereby terminating any further liability under this Lease on the part of Tenant and Authority. Notwithstanding the foregoing, Authority shall have a cause of action to recover any rent remaining unpaid when Authority retakes possession of the Premises for the account of Authority.
- (D) Pursue any other remedy now or hereinafter available to Tenant under the laws of the State of Florida.

Notwithstanding any provision of this Lease to the contrary, Authority shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and Authority reserves all rights which laws of the State of Florida confer upon a landlord against a tenant in default. In the event legal action is required hereunder to enforce the rights of the parties pursuant to this Lease the prevailing party in such action shall be entitled to recover costs and attorney's fees, including appellate fees.

17.04 Default by Authority. Authority shall not be in default unless Authority fails to perform obligations imposed upon Authority hereunder within thirty (30) days after written notice by Tenant to Authority, specifying wherein Authority has failed to perform such obligations; provided, that if the nature of Authority's obligations is such that more than thirty (30) days are required for performance then Authority shall not be in default if Authority commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

17.06 Surrender of Premises. Tenant expressly agrees that it shall immediately surrender the Premises to Authority in working order, good condition, and in compliance with all then applicable laws, rules, and regulations, upon expiration or termination of this Lease, depreciation, and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Tenant shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Tenant shall be liable to Authority for all damages, and in addition thereto, Tenant shall also be strictly liable to pay to Authority during the entire time of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Tenant shall remove all its personal property from the Premises prior to the expiration or earlier termination of this Lease. Any personal property of Tenant not removed by Tenant shall become the property of Authority.

#### **Article 18 - Assignment, Transfer and Subletting**

Tenant shall not assign or sublet this Lease either in whole or in part, without prior written consent of Authority which consent shall not be unreasonably withheld. No request for, or consent to, such assignment shall be considered unless Tenant shall have paid all rentals, fees, and charges which have accrued in favor of Authority and Tenant shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Lease or as this Lease may be subsequently amended or modified. Authority reserves the right to investigate the financial capacity of the proposed assignee prior to making its decision.

No capital stock of any Tenant and no partnership or membership interest of any partnership or limited liability entity can be assigned, sold, or transferred without Authority's consent, which shall not unreasonably be withheld. The parties acknowledge however that notwithstanding the foregoing, Tenant may freely assign less than a controlling interest to a related corporate entity (defined as sharing some commonality of direct or indirect ownership interest with Tenant) and/or for estate planning purposes. Notwithstanding the foregoing, Tenant may sublease to an entity or entities for storage of privately owned aircraft non-commercially operated under Part 91 of the Federal Aviation Regulations without the Authority's advance consent if said sublease is substantially in agreement with a form sublease pre-approved by the Authority to be used by Tenant for subleases and the use of the subtenant does not cause a breach and/or violation of any applicable rule, regulation and/or law, including without limitation those promulgated enforced by the Federal Aviation Administration.

#### **Article 19 - Indemnification**

Tenant shall protect, defend, reimburse, indemnify and hold Authority and its elected officers, employees and agents and each of them free and harmless at all times from and against any and all liability, losses, expenses, costs, suits, claims, judgments, fines and damages (including reasonable attorney fees at trial and appellate levels) and causes of action of every kind and character (hereinafter collectively referred to as, "Damages"), or in which Authority is named or joined, arising out of Tenant's or a Tenant Party's use or occupancy of the Premises or Airport by Tenant or a Tenant Party, including, but not limited to, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third party or other Person whomsoever, or any governmental agency, arising out of or incident to or in connection with the condition of the Premises caused by Tenant, Tenant's or a Tenant Party's acts, omissions or operations at the Airport, or the performance, non-performance or purported performance of Tenant or any breach by Tenant or an Tenant Party of the terms of this Lease Tenant recognizes the broad nature of this indemnification and hold-harmless clause and acknowledges that Authority would not enter into this Lease without the inclusion of such clause, and voluntarily make this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

#### **Article 20 – Signage Outside of Premises**

No signs, posters, or similar devices shall be erected, displayed, or maintained by Tenant outside the Premises on other areas of the Airport or on the Premises that are visible in any way off the Premises without the written consent of Authority, which consent may be granted or withheld in Authority's sole and absolute discretion. All signs not approved by Authority shall be promptly removed at the sole cost and expense of Tenant upon written demand therefore by Authority.

#### **Article 21 - Laws, Regulations and Permits**

21.01 General. Tenant agrees that throughout the Term and any extension thereof, Tenant shall always remain in compliance with all applicable federal, state, and local laws, statutes, regulations, rules,

041122SMAA

rulings, orders, ordinances and directives of any kind or nature, as now or hereafter amended or promulgated, including, but not limited to, FAA Advisory Circulars, Orders and Directives, and the Airport Rules and Regulations.

21.02 Permits and Licenses. Tenant agrees that it shall, at its sole cost and expense, obtain, comply with, and maintain current any and all permits, licenses and other governmental authorizations required for its operations and activities on the Premises. Upon the written request of Authority, Tenant shall provide Authority with copies of all permits and licenses requested by Authority pursuant to this Section.

21.03 Air and Safety Regulation. Tenant shall conduct its operations and activities under this Lease in a safe manner and shall comply with all safety regulations and standards imposed by applicable federal, state, and local laws and regulations and shall require the observance thereof by Tenant Parties and all other Persons transacting business with or for Tenant resulting from, or in any way related to, the conduct of Tenant's business on the Premises. Tenant shall procure and maintain such fire prevention and extinguishing devices as required by Authority and by law and shall always be familiar and comply with the fire regulations and orders of Authority. Tenant agrees that neither Tenant, nor its employees or contractors or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as now or hereafter amended, as well as all applicable State and local laws, regulations, and orders relative to occupational safety and health.

21.04 Environmental and Natural Resource Laws, Regulations and Permits.

- (A) Notwithstanding any other provision of the Lease to the contrary, Tenant hereby expressly covenants, warrants, guarantees and represents to Authority, upon which Authority expressly relies, that Tenant is knowledgeable of, and shall comply with, all Environmental Laws applicable to Tenant and its operations hereunder.
- (B) Tenant acknowledges and understands that its operations performed pursuant to this Lease may involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, which are, or may be, subject to regulation under applicable Environmental Laws. Tenant further expressly covenants, warrants, guarantees, and represents that it is fully qualified to handle and to arrange disposal of all such Hazardous Substances, in a manner which is both safe and in full compliance with all applicable Environmental Laws.
- (C) Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Tenant's operations conducted on the Premises, and Tenant shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject

matter thereof. Tenant further represents, warrants, guarantees and covenants to Authority, upon which Authority hereby expressly relies, that Tenant, its employees, agents, contractors, and those Persons that are required to be so trained working for, or on behalf of, Tenant have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.

- (D) Tenant shall provide to Authority satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by Authority.
- (E) If Tenant is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - (1) Tenant shall obtain an EPA identification number and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in compliance with Environmental Laws.
  - (2) Tenant shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, or, in the alternative, copies of hazardous waste manifests, available always for inspection upon reasonable advance notice at any time on the Premises by Authority.
  - (3) Tenant shall notify the Authority, and such other appropriate agencies as Authority may from time to time designate, of all hazardous waste activities occurring at the Premises so that it shall be included as a Authority Generator of such waste.
  - (4) Tenant shall provide to the Authority, and to all appropriate governmental entities having jurisdiction thereover, the name and telephone number of Tenant's emergency coordinator in case of any spill, leak, or other emergency involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by the Tenant Parties on or from the Premises. All such remedies of Authority about environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.



- (G) Tenant agrees to protect, defend, reimburse, indemnify, and hold Authority, its agents, employees, and elected officers harmless from and against all Damages arising from, resulting out of or in any way caused by or connected to the Tenant Parties' failure to comply with all applicable Environmental Laws. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 19. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that Authority would not enter this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease.

21.05 Environmental Assessment. At least thirty (30) days, but no more than ninety (90) days, prior to the expiration or earlier termination of the Lease, Tenant shall cause a Phase I environmental assessment ("Phase I ESA") of the Premises to be prepared and delivered to Authority. If the Phase I ESA indicates that there is a potential that an environmental condition may exist on the Premises, or the adjacent property based on activities that have occurred or are occurring on the Premises. Tenant shall promptly cause a Phase II environmental assessment ("Phase II ESA") of the Premises to be prepared and delivered to Authority. The Phase I ESA and Phase II ESA shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to Authority, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Premises. The Phase I ESA and Phase II ESA shall state that Authority is entitled to rely on the information set forth therein. The Phase I ESA and Phase II ESA shall be prepared and delivered to Authority at Tenant's sole cost and expense. The Phase II ESA must address any potential environmental conditions or areas of contamination identified in the Phase I ESA. To the extent the environmental conditions and/or contamination identified in the environmental assessments are a result of Tenant Parties' activities or operations on the Premises, Tenant shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of the Lease relating to the condition of the Premises and shall survive the termination or expiration of the Lease.

#### **Article 22 – Americans with Disabilities Act**

Tenant shall comply with the applicable requirements of the Americans with Disabilities Act and the State of Florida Accessibility Requirements Manual ("ADA"), and applicable implementing regulations, and any similar or successor laws, ordinances, rules, and regulations, including cooperation with Authority, concerning the same subject matter.

#### **Article 23 – Disclaimer of Liability**

AUTHORITY HEREBY DISCLAIMS, AND TENANT HEREBY RELEASES AUTHORITY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT

041122SMAA

(INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY TENANT PARTIES DURING THE TERM OF THIS LEASE OR ANY EXTENSION HEREOF FOR LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF TENANT PARTIES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES. FURTHERMORE, TENANT ACKNOWLEDGES AND AGREES THAT ITS RELIANCE OR USE OF ANY INFORMATION PROVIDED BY AUTHORITY, WHETHER PREPARED OR PROVIDED BY AUTHORITY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS LEASE WAS AT ITS SOLE RISK. UNDER NO CIRCUMSTANCE SHALL AUTHORITY BE LIABLE FOR SPECIAL OR EXEMPLARY DAMAGES OR FOR LOSS OF REVENUE OR ANTICIPATED PROFITS.

#### **Article 24 - Governmental Restrictions**

24.01 **Federal Right to Reclaim.** In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes, for a period more than ninety (90) consecutive days then this Lease shall hereupon terminate, and Authority shall be released and fully discharged from all liability hereunder. In the event of such termination, Tenant's obligation to pay rent shall cease upon such government agency takes over, however, nothing herein shall be construed as otherwise relieving Tenant from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

24.02 **Federal Review.** Tenant acknowledges this Lease may be subject to review or inspection by the FAA to determine satisfactory compliance with federal law or grant assurances and agrees that this Lease shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Lease which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.

24.03 **Authority Tax Assessment Right.** None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of Authority, as a political subdivision of the State of Florida, or any of the public officials of Authority, City of Sarasota, Sarasota County, Florida, or Manatee County, Florida, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Tenant.

24.04 **Height Restriction.** 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 to such a height to comply with Title 14, Part 77 of the Code of Federal Regulations, as now or hereafter amended.

24.05 **Right of Flight.** Authority reserves unto 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 said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.

24.06 **Operation of Airport.** Tenant expressly agrees for itself, its sublessees, successors and assigns to prevent any use of the Premises that would interfere with or adversely affect the operation,

041122SMAA

maintenance or development of the Airport, or otherwise constitute an Airport hazard; provided that the operation of the Premises for the uses permitted under this Lease in accordance with the terms and conditions of this Lease and the Minimum Standards shall not be deemed to interfere with or adversely affect the operation, maintenance or development of the Airport or otherwise constitute an Airport hazard.

24.07 Release. Tenant acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases Authority from all liability relating to the same.

24.08 Nonexclusive Rights. Notwithstanding any provision of this Lease to the contrary, Tenant understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that Authority may grant similar privileges to another tenant or other tenants on other parts of the Airport.

24.09 Hazardous Wildlife Attractants. Tenant acknowledges that water detention and retention areas are considered wildlife attractants and shall request the approval of Authority prior to constructing a water detention or retention area within the Premises. If approved by Authority, water detention or retention areas shall follow the siting, design, and construction requirements of the Authority. Tenant further agrees to comply with the provisions of Federal Aviation Administration Advisory Circular No. 150/5200-33B, as now or hereafter amended, as such circular is interpreted by the Authority.

24.10 Subordination to Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which Authority acquired the land or improvements thereon, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Tenant understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between Authority and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

#### **Article 25 – Non-Discrimination**

25.01 Non-Discrimination in Authority Contracts. Tenant warrants and represents to Authority that all its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Tenant has submitted to Authority a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Tenant does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to Authority affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

25.02 Federal Non-Discrimination Covenants.

- (A) Tenant, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a

covenant running with the land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - (2) No person on the ground of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Authority property, including, but not limited to, the Premises.
  - (3) In the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the ground of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
  - (4) Tenant will use the Premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Authorities.
- (B) In the event of breach of any of the above nondiscrimination covenants, Authority shall have the right to terminate this Lease and to enter, re-enter, and repossess the Premises, and hold the same as if this Lease had never been made or issued. This Lease shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.
- (C) For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally Assisted Programs at the Federal Aviation Administration, as may be amended.

#### **Article 26 - Failure of Utility Systems**

Authority shall not be responsible or liable to Tenant for any claims for compensation or any losses, damages or injury whatsoever sustained by Tenant including, but not limited to, those resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of Authority. All personal property placed on or moved on to the Premises shall be at the sole

041122SMAA

risk of Tenant and Authority shall not be liable for any loss or damage thereto, except to the extent such loss or damage was caused by the negligence of the Authority, as limited or otherwise affected by section 768.28, Florida Statutes. Authority shall not be liable for any damage or loss of any personal property placed or moved on to the Premises.

**Article 27 - Subordination to Bond Resolution**

From time to time the Authority may participate in obtaining financing through the issuance of bonds whereby a bond resolution is adopted ("Bond Resolution.") Authority reserves the right to enter such bond financing. When this occurs, the lands of the Authority may be pledged or assigned to support the financing transaction. This Lease and all rights granted to Tenant hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Authority in the Bond Resolution, and Authority and Tenant agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of Authority hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Tenant and Authority with the terms and provisions of this Lease and Bond Resolution.

**Article 28 - Waiver of Jury Trial**

The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Authority and Tenant, Tenant's use or occupancy of the Premises and/or building, and/or claim or injury or damage. In the event Authority commences any proceeding to enforce this Lease or Authority/Tenant relationship between the parties or for nonpayment of rent (of any nature whatsoever) or additional monies due Authority from Tenant under this Lease, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings. In the event Tenant must, because of applicable court rules, interpose any counterclaim or other claim against Authority in such proceedings, Authority and Tenant covenant and agree that, in addition to any other lawful remedy of Authority, upon motion of Authority, such counterclaim or other claim asserted by Tenant shall be severed out of the proceedings instituted by Authority and the proceedings instituted by Authority may proceed to final judgement in the Circuit Court of the 12th Judicial Circuit separately and apart from and without consolidation with or reference to the status of each counterclaim or any other claim asserted by Tenant.

**Article 29 - Miscellaneous**

29.01 Force Majeure. Any delay in or a failure of performance by Tenant in the performance of its obligation under this Lease to construct the Required Improvements shall not constitute a default under this Lease to the extent that such delay or failure of performance could not be prevented by Tenant's exercise of reasonable diligence and results from: (a) acts of God, (b) fire or other casualty, (c) war, (d) public disturbance, (e) failure of the Authority, FAA or other governmental entity with oversight over the Premises to issue or deliver any permit, license or consent needed for the construction of the Required Improvements through no fault, delay, action, or inaction of Tenant, (f) and/or strikes or other labor disturbances or material/supply shortages affecting the Sarasota/Manatee area not attributable to the failure of Tenant to perform its obligations under any applicable labor contract or law and directly and

041122SMAA

adversely affecting Tenant (any, a "Force Majeure Event"). In no event shall the inability to obtain financing be deemed to be a Force Majeure Event.

29.02 Waiver. The failure of Authority to insist on a strict performance of any of the agreements, terms, covenants, and conditions hereof shall not be deemed a waiver of any rights or remedies that Authority may have for any subsequent breach, default, or non-performance, and Authority's right to insist on strict performance of this Lease shall not be affected by any previous waiver or course of dealing.

29.03 Easement. Nothing in this Lease shall impair any existing utility easements, nor impair the Authority's right of access to any existing utility lines. Authority reserves the right to grant utility easements, licenses, and rights-of way to others over, under, through, across, or on the Premises If the grant or the use of any easement, license, or right of way issued by Authority interferes with Tenant's existing operations, or any planned or ongoing construction approved by Authority as required by this Lease, or reduces the value of the Required Improvements approved by Authority as required herein, Authority shall reimburse Tenant in a timely manner for any direct costs incurred by Tenant specifically attributable thereto, which costs shall not include any time or overhead charges attributable to Tenant. Tenant shall furnish Authority with original source documentation of said direct costs, which documentation shall be used by Authority and Tenant as the sole means to determine the amount of reimbursement due.

29.04 Independent Contractor. Tenant or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority shall in no way be responsible therefor.

29.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit the Authority's governmental authority as a body politic of the State of Florida to regulate Tenant or its operations. The Authority's obligations under this Lease are made in a proprietary capacity rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair the Authority's governmental functions, including, but not limited to, the Authority's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the Authority's governmental authority.

29.06 Consent and Action. Whenever this Lease calls for an approval, consent or authorization by the Authority or Authority, such approval, consent, or authorization shall be evidenced by the written approval of the CEO/President or his or her designee. In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the reasonable discretion of Authority or Authority.

29.07 Rights Reserved to the Authority. All rights not specifically granted Tenant by this Lease are reserved to Authority.

29.08 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause, or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion

041122SMAA

hereof.

29.09 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

29.10 Venue. Venue in any action or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Sarasota or Manatee County, Florida.

29.11 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused, or the notice designated by the postal authorities as non-deliverable. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Authority:  
Chief Executive Officer  
Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, FL, 34243

With a copy to:  
Properties Department  
Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, FL, 34243

Tenant:  
Todd Anderson, A. A. E.  
Chief Operating Officer  
Sheltair Aviation  
319 N. Crystal Lake Drive, Suite #105  
Orlando, Florida 32803

With a copy to:  
Damaso W. Saavedra, Esq.  
Saavedra | Goodwin  
888 S.E. 3<sup>rd</sup> Ave., Suite #500  
Fort Lauderdale, Florida 33316

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon ten (10) days prior written notice to the other party.

29.12 Paragraph Headings. The heading of the various articles and sections of this Lease, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

29.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Authority without the Authority's consent. Notwithstanding the foregoing, the Authority hereby consents to the recording at Tenant's expense of a Memorandum of Lease in a form substantially like the one attached hereto as Exhibit D.

29.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.

29.15 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. If any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

29.16 No Broker. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease and further agrees to indemnify, defend, and hold harmless Authority from and against any claims or demands of any such salesperson, agent, finder, or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses, and fees, including reasonable attorney's fees at trial and all appellate levels, expended, or incurred in the defense of any such claim or demand.

29.17 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Authority of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

29.18 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Authority determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

29.19 Budgetary Funding. Any obligations of Authority that require financial funding are subject to and contingent upon annual budgetary funding and appropriations by the Sarasota Manatee Airport Authority Board.

29.20 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded, or otherwise altered except by written instrument executed by the parties hereto.

29.21 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by such reference.

29.22 Radon. 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.

041122SMAA



Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from Authority's public health unit.

29.23 No Third-Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Lease, including, but not limited to, any citizen or employees of Authority and/or Tenant.

29.24 Time of the Essence. Time is of the essence of this Lease; and in case Tenant shall fail to perform the covenants or conditions on its part to be performed at the time fixed for the performance of such respective covenants or conditions by the provisions of this Lease, Authority may declare Tenant to be in default of such Lease.

29.25 Survival. Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

29.26 Rights Reserved. Rights not specifically granted to Tenant by this lease are expressly and independently reserved to Authority. Authority expressly reserves the right to prevent any use of the described Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

29.27 Rent a Separate Covenant. Tenant shall not for any reason withhold or reduce Tenant's required payments of rent and other charges provided in this Lease, it being expressly understood and agreed by the parties that the payment of rent and additional rent is a covenant by Tenant that is independent of the other covenants of the parties hereunder.

29.28 Corporate Tenancy. If Tenant is a corporation or other organizational entity, the undersigned officer of Tenant hereby warrants and certifies to Authority that Tenant is an entity in good standing and is authorized to do business in the State of Florida and shall provide proof of good standing to Authority. The undersigned officer of Tenant hereby further warrants and certifies to Authority that he or she, as such officer, is authorized and empowered to bind the entity to the terms of this Lease by his or her signature thereto. Authority, before it accepts and delivers this Lease, shall require Tenant to supply it with a Sworn Statement on Public Entity Crimes, attached hereto and incorporated herein as Exhibit C, and a certified copy of the entity resolution authorizing the execution of this Lease by Tenant.

(Continued on next page).

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease as of the day and year first above written.

041122SMAA

**ATTEST:**

**SARASOTA MANATEE AIRPORT AUTHORITY,  
a body politic and corporate existing under the laws of  
the State of Florida**

By: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
President & CEO

**Signed, sealed, and delivered  
in the presence of two witnesses  
for Tenant:**

**TENANT:  
SHELTAIR AVIATION SRQ, LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

(SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_

**EXHIBIT A-1  
PREMISES**

041122SMAA

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease as of the day and year first above written.

**ATTEST:**

**SARASOTA MANATEE AIRPORT AUTHORITY,  
a body politic and corporate existing under the laws of  
the State of Florida**

By: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

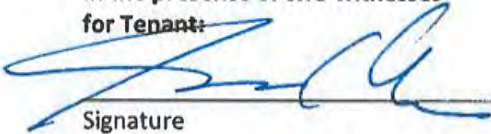
**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
President & CEO

**Signed, sealed, and delivered  
in the presence of two witnesses  
for Tenant:**

**TENANT:  
SHELTAIR AVIATION SRQ, LLC**

  
Signature

  
Signature

TODD ANDERSON  
Print Name

Lisa Holland  
Print Name

COO  
Title

(SEAL)

  
Signature

Susan Kaidor-Salyers  
Print Name

Properties & Development  
Coordinator

041122SMAA

TENANT:  
SHELTAIR AVIATION SRQ, LLC

By: Lisa Holland  
Name: Lisa Holland  
Title: President

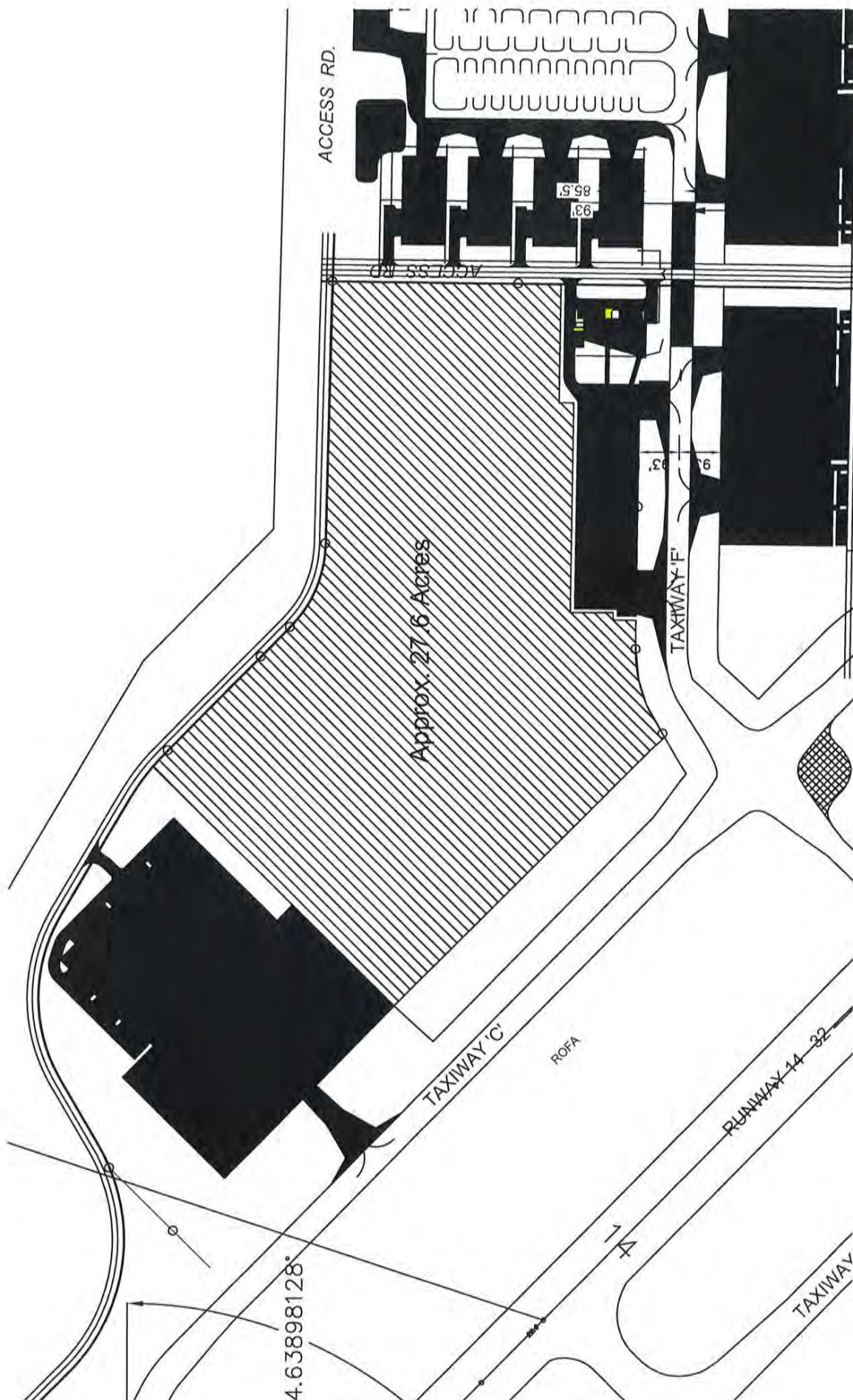
The foregoing instrument was acknowledged before me by means of  physical presence or \_\_\_  
online notarization, this 11 day of April, 2022 by  
Lisa Holland (name) as President (title) of  
Sheltair Aviation SRQ, LLC, a Florida limited liability company, on behalf of the company, who is  
personally known to me or who has produced \_\_\_\_\_ (type of identification) as  
identification.



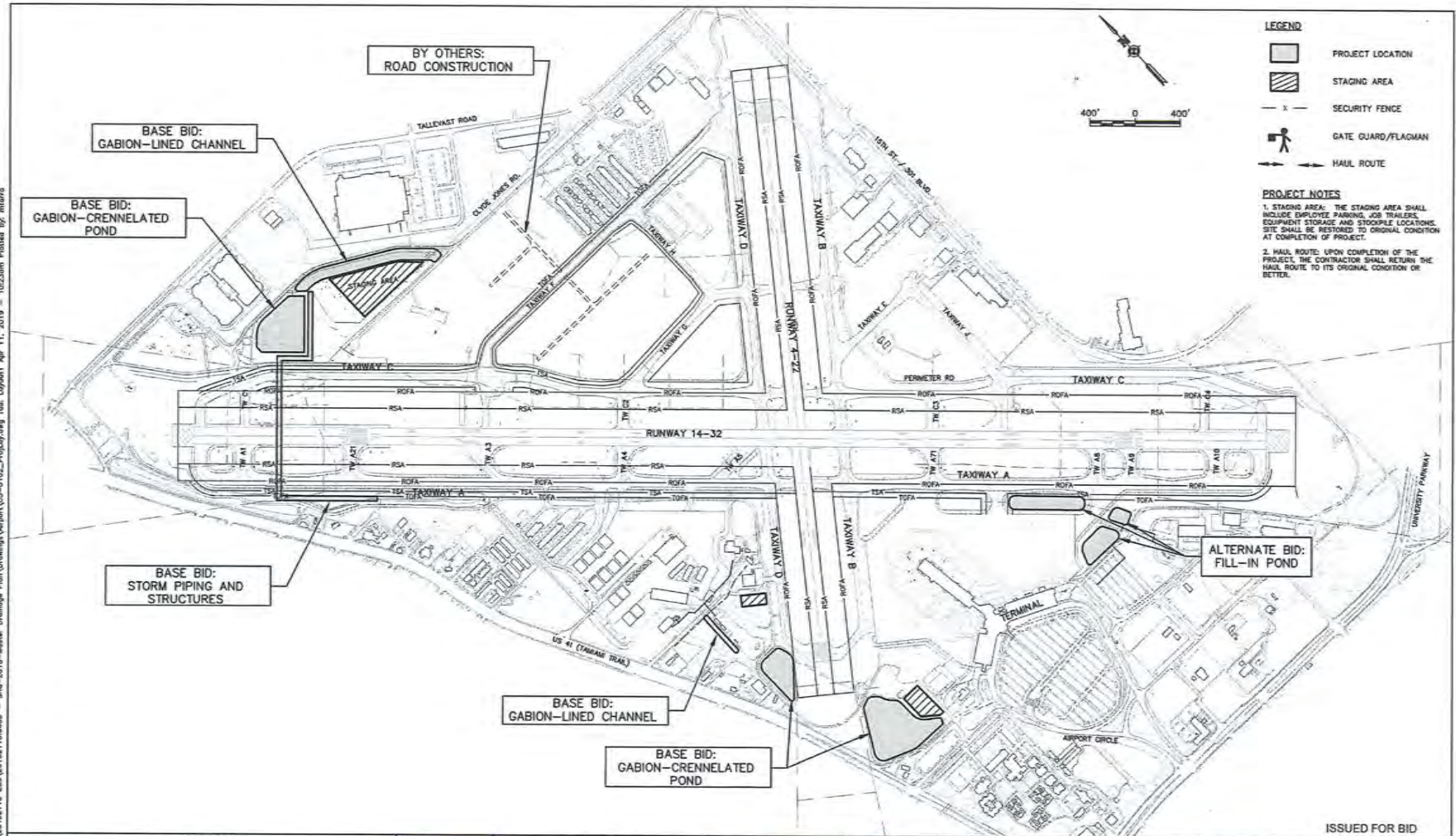
NOTARY SEAL

Susan Kaidor-Salyers  
Signature - NOTARY PUBLIC  
STATE OF FLORIDA AT LARGE  
Susan Kaidor-Salyers  
(Name typed, printed, or stamped)  
HH 172367  
(Serial number, if any)

EXHIBIT A-1



# EXHIBIT A-2



REV. NO.	DATE	REVISIONS: DESCRIPTION	ECR



MASTER DRAINAGE IMPROVEMENTS  
SARASOTA BRADENTON INTERNATIONAL AIRPORT  
SARASOTA, FL

3015 Town Center Parkway Suite 106  
Lakewood Ranch, Florida 34202  
Phone: 941-567-1622 Fax: 941-567-1622  
FL Cert. No.: 39206

PASSERO ASSOCIATES  
engineering architecture  
4730 Coosa Cole Way  
Suite 206  
St. Augustine, Florida  
32095  
Phone: 941-757-6106

JOB NO:	14542301
DRAWN:	MWF
DESIGN:	STB
CHECKED:	BW
DATE:	04/11/2019

ISSUED FOR BID  
PROJECT LAYOUT PLAN  
**G-102**

262

I:\Projects\2018-2019\Master Drainage Plan\Drawings\Master Drainage Plan\Drawings\G-102-PA.dwg Tab: Layout1 Apr 11, 2019 - 10:53am Plotted by: mferas

April 25, 2022 Board Meeting - Items Needing Action

**EXHIBIT B  
PERMITTED USES**

Tenant shall use the Premises solely as a Fixed Base Operator and Aircraft Maintenance and Repair Operator as defined in Article 13 and Article 14 of the Sarasota Manatee Airport Authority's Minimum Standards for Aeronautical Activities at Sarasota Bradenton International Airport, dated March 26, 2018, and the Rules and Regulations for Sarasota Bradenton International Airport, dated May 20, 2019, as now or hereafter amended.

041122SMAA

EXHIBIT C

**SWORN STATEMENT PURSUANT TO SECTION 287.122(3)(A) FLORIDA STATUTE, PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to SARASOTA MANATEE AIRPORT AUTHORITY

by: \_\_\_\_\_  
(print individual's name and title)

for: \_\_\_\_\_  
(print name of entity submitting sworn statement)

whose business address is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and, (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_  
(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement) \_\_\_\_\_

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, because of a jury verdict, nonjury trial, or entry of a plea of guilty of nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  - (1) A predecessor or successor of a person convicted of a public entity crime; or
  - (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months is considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

041122SMAA



- 6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate by placing a check (☐) in front of the appropriate statement. **(Check only one statement)**

\_\_\_\_\_ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989.

\_\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989. However, there was a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings, and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY, AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY, PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE AFFECTING THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS SWORN STATEMENT.

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Printed Name)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_ who is  personally known to me or  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

041122SMAA

**EXHIBIT D  
MEMORANDUM OF LEASE**

UPON RECORDING, PLEASE RETURN TO:

Damaso W. Saavedra Esq.  
Saavedra|Goodwin  
888 S.E. 3<sup>rd</sup> Ave., Suite #500  
Fort Lauderdale, Florida 33316

**MEMORANDUM OF LEASE**

**STATE OF FLORIDA  
COUNTY OF MANATEE**

This MEMORANDUM OF LEASE (this "Memorandum"), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2022, is made by and between the Sarasota Manatee Airport Authority, a body politic and corporate existing under the laws of the State of Florida ("Authority"), and Sheltair Aviation SRQ, LLC, a limited liability company organized under the laws of the State of Florida, ("Tenant").

WITNESSETH:

The Authority as lessor and the Tenant as lessee have entered into a Fixed Base Operator Development and Operating Lease Agreement dated the 25th day of April, 2022 (the "Lease") with respect to certain real property as described therein, being a total of approximately \_\_\_\_\_ acres of land more or less, being located at Sarasota Bradenton International Airport as more fully described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Property");

1. Said Lease sets forth the above names of the parties thereto, together with their respective addresses as set forth hereinbelow.
2. The Term of said Lease is twenty (20) years from the Commencement Date as defined in the Lease and shall thereafter be subject to one possible and conditional further extension of ten (10) years.
3. This Memorandum of Lease is automatically terminated and of no further force or effect as of the Expiration Date of this Lease.
4. The purpose of this Memorandum of Lease is to give constructive notice of the Lease and of all terms, conditions, and provisions thereof to the same extent as if said Lease was fully set forth herein.

(Continued on next page).

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Lease to be executed as of the day and year first above written, for the purpose of providing an instrument for recording in the Manatee County, Florida Public Records.

Signed, sealed, and delivered  
in the presence of:

**LANDLORD**

**ATTEST:**

**SARASOTA MANATEE AIRPORT AUTHORITY,  
a body politic and corporate existing under the laws of  
the State of Florida**

By: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
President & CEO

NOTARIAL ACKNOWLEDGMENT AS TO AUTHORITY:

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_  
online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by  
\_\_\_\_\_ (name) as \_\_\_\_\_ (title) of Sarasota  
Manatee Airport Authority, a body politic and corporate existing under the laws of the State of Florida  
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

041122SMAA

**TENANT:**  
**SHELTAIR AVIATION SRQ, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of Sheltair Aviation SRQ, LLC, a Florida 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



**SRQ PROPOSED FBO**

**SHELTAIR**

**SHELTAIR** | [sheltairaviation.com](http://sheltairaviation.com)



SRQ PROPOSED HANGARS C, D & E

**SHELTAIR**

**SHELTAIR**

sheltairaviation.com



SRQ PROPOSED HANGARS A & B

**SHELTAIR**

## **AGENDA ITEM NO. 6.8**

**SARASOTA MANATEE AIRPORT AUTHORITY  
April 25, 2022, REGULAR MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL:  
LEASE AND DEVELOPMENT AGREEMENT WITH DJG SRQ HANGAR, LLC, FOR AIRCRAFT HANGAR  
DEVELOPMENT**

---

---

**EXECUTIVE SUMMARY: Requesting Approval of a Lease and Development Agreement with DJG SRQ Hangar, LLC, for approximately 1.72 Acres of Land at the Airport for Private Aircraft Hangar Development.**

---

---

**NARRATIVE:** DJG SRQ Hangar, LLC ("DJG"), currently stores and operates its private aircraft at and from a hangar located at the Ross Aviation FBO on the east side of the Airport. DJG has requested to lease land at the Airport for aircraft hangar development to store its private aircraft. The proposed location is approximately 74,910 square feet, or approximately 1.72 acres, which includes approximately 65,139 SF of land for development plus the equivalent of approximately 9,771 SF of land for the nonexclusive use of the Airport's offsite stormwater management facilities. The proposed site is "shovel ready" with infrastructure improvements, including roads, taxiways, utilities, storm water drainage, and rough graded.

The proposed initial term of the Lease is twenty (20) years with one ten-year renewal term that may be exercised by DJG, subject to compliance with all terms, covenants, and conditions of the lease. The proposed initial rental rate is 0.65/SF, or approximately \$48,692.00 per year, subject to adjustment based on the CPI every three years throughout the term of the lease. The proposed initial term is twenty (20) years with one ten (10) year renewal term, commencing on the earlier of (a) the date of substantial completion of the improvements as evidenced by a certificate of occupancy; (b) the date Lessee commences using the premises (or any part thereof) for the storage of Aircraft (other than construction); or 24 months following effective date of the lease.

The proposed improvements include a minimum of 20,000 SF of aircraft hangar storage, 20,000 SF of aircraft apron, and a required taxi lane connector. Based on the terms of the proposed Lease, ownership of the improvements will convert to the Airport Authority at the end of the initial term, and improvement rent will be assessed thereafter based on the appraisal value of the improvements.

Based on the proposed terms and conditions presented, the President and CEO recommends approval of the Lease and Development Agreement with DJG SRQ Hangar, LLC, as presented.

---

---

**RECOMMENDATION: It is hereby recommended that the Sarasota Manatee Airport Authority Board approve the Lease and Development Agreement with DJG SRQ Hangar, LLC.**

---

---

**ATTACHMENT:** Proposed Lease and Development Agreement with DJG SRQ Hangar, LLC



**LEASE AND DEVELOPMENT AGREEMENT  
BETWEEN  
SARASOTA MANATEE AIRPORT AUTHORITY  
AND  
DJG SRQ HANGAR, LLC**

THIS LEASE AND DEVELOPMENT AGREEMENT (this "Lease") is made and entered into by and between the **SARASOTA MANATEE AIRPORT AUTHORITY**, a body politic and corporate existing under the laws of the State of Florida ("Authority"), and **DJG SRQ HANGAR, LLC**, a **limited liability company** organized under the laws of the State of Florida ("Lessee").

**WITNESSETH:**

**WHEREAS**, Authority, owns and operates the Sarasota Bradenton International Airport ("Airport"), located in Sarasota County and Manatee County, Florida; and

**WHEREAS**, Authority is permitted to negotiate a lease of airport land and facilities pursuant to the Florida Statutes, and Lessee desires to use the real property leased to Lessee under this Lease solely for the storage of Private Aircraft; and

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

**Article 1 - Recitals/Effective Date**

The foregoing recitals are true and correct and are hereby incorporated herein by reference. This Lease shall become effective when approved by the Sarasota Manatee Airport Authority Board and signed by all parties ("Effective Date").

**Article 2 - Definitions**

The following words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms, and phrases.

2.01 "Adjustment Date" has the meaning set forth in Section 5.05.

2.02 "Airport" means the Sarasota Bradenton International Airport located in Sarasota and Manatee Counties, Florida.

2.03 "Airport Common Areas" includes, but are not limited to certain, aircraft movement areas, aprons, taxiway, taxi lanes, roadways, parking lots, sidewalks, lighting, fencing, security gates, drainage pipes, retention systems, retention ponds, landscaping, signage, utilities, and other related facilities, equipment, and infrastructure not located on the Premises, available for use in common with others on the Airport, necessary for Lessee's use of the Premises.

2.04 "Airport Rules and Regulations" means the Rules and Regulations for Sarasota Bradenton International Airport, dated March 20, 2019, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport.

2.05 "Appraisal Adjustment Date" has the meaning set forth in Section 5.05.

2.06 "Base Rental" means (a) the initial annual Land Rent provided in Section 5.01; and (b) the initial annual Improvement Rent established on the dates provided in Section 5.02 for the Improvements. The Base Rental shall be adjusted as provided in Section 5.04 and 5.05 on the Appraisal Adjustment Dates.

2.07 "Base Year" For all rental adjustments occurring before the first Appraisal Adjustment Date, Base Year means the initial twelve-month period of the Lease starting with the Commencement Date. After the first Appraisal Adjustment Date, the Base Year shall be the lease year that began on the most recent Appraisal Adjustment Date.

2.08 "Board" means the Board of the Sarasota Manatee Airport Authority, Florida.

2.09 CEO/President means the CEO/President of the Sarasota Manatee Airport Authority.

2.10 "Commencement Date" has the meaning set forth in Section 3.01.

2.11 "Consumer Price Index" has the meaning set forth in Section 5.04.

2.12 "Damages" has the meaning set forth in Article 17.

2.13 "Derelict Aircraft" means an aircraft, stored in the open, that:

- (A) Does not hold a current and valid airworthiness certificate issued by the FAA, or other appropriate aircraft certifying authority, together with necessary aircraft registration and maintenance records with a current endorsement by an appropriately rated certificate holder that the aircraft is in an airworthy condition; or
- (B) Has been issued a condition notice by the FAA or other appropriate aircraft certification authority that specifies that the aircraft has one or more conditions which render it not airworthy; or
- (C) Has had major components, accessories, flight controls, portions of the airframe or engines removed to render the aircraft not airworthy.

2.14 "Derelict Vehicle" means a vehicle designed for use on the roadways that is in a wrecked, dismantled or partially dismantled condition, or which is in an inoperable condition.

2.15 "Effective Date" shall have the meaning set forth in Article 1.

2.16 "Environmental Laws" means all applicable federal, state, or local laws, statutes, ordinances, rules, regulations, and governmental restrictions relating to the protection of the environment, human health, welfare, or safety, or to the emission, discharge, seepage, or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater, or land, or otherwise relating to the handling of such Hazardous Substances.

2.17 "FAA" means the Federal Aviation Administration.

2.18 "Hazardous Substances" means any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.

2.19 "Improvements" has the meaning set forth in Section 6.01.

2.20 "Improvement Rent" has the meaning set forth in Section 5.02.

2.21 "Initial Term" has the meaning set forth in Section 3.01.

2.22 "Inspection Period" has the meaning set forth in Section 3.03(B).

2.23 "Inspections" means any inspections and tests that Lessee deems appropriate with respect to the Premises, including, but not limited to, the following: (a) physical inspection of the Premises; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities, and site planning studies.

2.24 "Land Rent" is the rent payable by Lessee for the ground being leased by Authority to Lessee. See Section 5.01.

2.25 "Lease" means this Lease as now or hereafter amended, and all exhibits attached hereto, which are incorporated herein by reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.

2.26 "Leasehold Mortgage" has the meaning set forth in Section 13.01.

2.27 "Letter of Credit" has the meaning set forth in Section 5.08.

2.28 "Minimum Standards" means the Minimum Standards for Aeronautical Activities for Sarasota Bradenton International Airport adopted by the Authority on March 26, 2018, as now or hereafter amended, and any successor minimum standards for aeronautical activities adopted for the Authority.

2.29 "Non-Discrimination Authorities" has the meaning set forth in Section 23.02(C).

2.30 "Person" includes a partnership, joint venture, association, corporation, limited liability company, trust, or other entity, or, where the context so permits or requires, a natural person.

2.31 "Plans" has the meaning set forth in Section 6.04.

2.32 "Pre-existing Environmental Condition" means the presence of Hazardous Substances in violation of Environmental Laws on, in or under the Property (including soil, groundwater, and soil vapor) because of the discharge, release, disposal, storage, treatment, migration or any other activities occurring prior to the Effective Date of this Lease.

2.33 "Premises" means the Property described on Exhibit A and all Improvements now or hereafter constructed thereon, subject to easements, rights-of-way, and any other encumbrances of record.

2.34 "Private Aircraft" means aircraft privately-owned and non-commercially operated by the owner or owners, or an entity related to the owner and operated under Part 91 of the Federal Aviation Regulations ("FARs"); or an aircraft used by the owner or an entity related to the owner and operated under Part 91 of the FARs, in connection with an owner's business, comparable to an owner's business use of his private automobile; or an aircraft owned and operated by a company or corporation for the free transportation of its or other personnel and/or products;

2.35 "Property" means the real property described on Exhibit "A", subject to easements, rights-of-way, and any other encumbrances of record, excluding any existing improvements constructed thereon.

2.36 "Renewal Term" has the meaning set forth in Section 3.02.

2.37 "Security Deposit" has the meaning set forth in Section 5.08.

2.38 "Lessee Parties" means Lessee and its sublessees, contractors, suppliers, employees, officers, licensees, agents, and invitees.

2.39 "Term" means the Initial Term and any Renewal Term.

2.40 "TSA" means the Transportation Security Administration of the Authority of Homeland Security and its authorized successors.

### **Article 3 - Commencement Date/Term**

3.01 Initial Term. The initial term of this Lease shall commence on the first of the following event to occur: (a) the date of substantial completion of the Improvements as evidenced by a certificate of occupancy; (b) the date Lessee commences using the Premises (or any part thereof) for the storage of Private Aircraft (other than construction); or c) twenty-four (24) months immediately following the Effective Date of this Lease (collectively, the "Commencement Date"), and shall terminate twenty (20) years after the Commencement Date ("Initial Term"), unless sooner terminated pursuant to the terms of this Lease. As used herein, "Lease Year" shall mean the period beginning on the Commencement Date and ending on the last day of the previous calendar month one year later; successive Lease Years shall be the annual periods immediately succeeding the end of the first Lease Year.

3.02 Renewal Term. Provided Lessee is not in default beyond any applicable cure period as to any of the terms or conditions of this Lease, Lessee shall have the option to renew this Lease for one (1) additional period of ten (10) years ("Renewal Term") by notifying Authority in writing of Lessee's intent to exercise its option to renew not later than one hundred eighty (180) days prior to the expiration of the Initial Term. During a Renewal Term all provisions of the Lease shall remain in full force and effect except as specifically set forth herein. The renewal term is limited to those described in this Article 3.02.

3.03 Inspections.

- (A) From and after the Effective Date and up to the Commencement Date, Lessee shall have the right to use and occupy the Premises for the installation and construction of the Improvements subject to the terms and conditions of this Lease.
- (B) From and after the Effective Date and expiring ninety (90) days thereafter ("Inspection Period"), Lessee may conduct any Inspections that Lessee deems appropriate with respect to the Premises. All Inspections performed hereunder shall be conducted at Lessee's sole cost and expense and shall be performed by licensed Persons dealing in the respective areas or matters. Lessee agrees to indemnify Authority from and against all losses, damages, costs, expenses and/or liability of whatsoever nature arising from or out of a Lessee Party's entry upon and inspection of the Premises. Lessee's obligation to indemnify Authority pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Lessee shall provide Authority with one (1) complete copy of all written reports detailing the results of the Inspections obtained by Lessee hereunder.
- (C) If the results of any of such inspections, analyses or reviews made or caused to be made by Lessee are, for any reason, in Lessee's reasonable discretion, unsatisfactory to Lessee or if environmental assessment(s) reveal the presence of a Pre-existing Environmental Condition not acceptable to Lessee, Lessee may elect to terminate this Lease upon written notice to Authority on or before the expiration of the Inspection Period. In the event Lessee fails to properly exercise its right to terminate this Lease pursuant this Section, Lessee shall be deemed to have waived such right and accepted the Premises "As Is" in its then existing condition, subject to all defects, latent or patent, if any; provided, however, that Lessee's acceptance of the Premises will not limit Authority's obligations with respect to any Pre-existing Environmental Condition for which Authority has taken responsibility pursuant to Section 3.03 (D). In the event Lessee terminates this Lease pursuant to this Section, Lessee, at its sole cost and expense, shall repair any damage resulting from the Inspections and restore the Premises to the condition in which it existed prior thereto, using materials of like kind and quality.
- (D) Authority has provided Lessee with a Phase I environmental audit, dated January 4, 2022, prepared by Enviro-Audit & Compliance, Inc. which states the condition of the Premises on the effective date of the report ("Environmental Baseline Report").

Lessee understands that it is accepting the condition of the Premises as described in the Environmental Baseline Report.

- (E) Lessee may elect to have its own environmental inspections. If the Inspections of Lessee reveal a Pre-existing Environmental Condition that is not acceptable to Lessee, Lessee shall immediately notify Authority in writing during the Inspection Period of the Pre-existing Environmental Condition with a copy of the Inspection report(s). Authority may give written notice to Lessee within thirty (30) days of the expiration of the Inspection Period of its election to a) terminate this Lease or b) to assume the full responsibility and cost to remedy the identified Pre-existing Environmental Condition in accordance with Environmental Laws. If Authority provides written notice to Lessee of its election to remedy the identified Pre-existing Environmental Condition, concurrent therewith Authority shall further notify the Lessee in writing of the time required to remedy the Pre-existing Environmental Condition. Following notification by the Authority of the time required to remedy the Pre-existing Environmental Condition, Lessee may further elect to terminate this Lease upon thirty (30) days written notice to Authority.
- (F) The parties agree that there shall be a rebuttable presumption that any condition of the Premises identified after the expiration of the Inspection Period is not a Pre-existing Environmental Condition, and it shall be Lessee's burden to demonstrate such condition is a Pre-existing Environmental Condition. The parties acknowledge and agree that the means and methods of remedying any Pre-existing Environmental Condition shall be within the sole control and discretion of Authority. If Authority fails to provide written notice of its election to either terminate the Lease or to remedy the Pre-Existing Condition, the Lease shall be deemed terminated.
- (G) If a notice of termination is timely given by either party pursuant to this Section, or if the Lease is deemed terminated pursuant to this Section, the parties shall be relieved of all further liabilities and obligations under this Lease except for Lessee's indemnification obligations under Section 3.03(B) and Lessee's obligation to restore the Premises under Section 3.03(C).

#### **Article 4 - Premises and Privileges**

4.01 **Description of Premise.** Authority hereby demises and leases to Lessee, and Lessee hereby rents from Authority the Premise depicted on the attached Exhibit A, subject to all terms, conditions, and covenants set forth in the Lease. The parties hereto acknowledge and agree that Lessee shall obtain a survey (the "Survey") of the Premises, at Lessee's expense, and Lessee shall provide the Survey to Authority, and thereafter, Exhibit A annexed hereto shall be substituted with the Survey.

4.02 **Rights and Privileges.** The rights granted hereunder are expressly limited to the construction, development, maintenance, and operation of the Premises for the storage of Private Aircraft pursuant to the terms of this Lease and Lessee shall have the obligations to adhere to the Minimum Standards for Aeronautical Activities and the Rule and Regulations for Sarasota Bradenton International

Airport.

4.03 Prohibited Uses. Lessee agrees that the Premises shall be utilized solely for the storage of Private Aircraft as described in the Rule and Regulations for Sarasota Bradenton International Airport, general non-commercial office space and storage space, including the storage of aircraft replacement parts, materials and for no other purpose whatsoever. Lessee agrees that it shall not provide any commercial products or services without the prior approval of the Authority. Violation of the requirements of this Article may result in suspension or revocation of Lessee access to the Premise, including the suspension or revocation of airport security badges issued to Lessee.

4.04 Additional Rights and Privileges. In addition to the rights and privileges granted by Article 4.02, above, Authority grants to Lessee the non-exclusive right and privilege to ingress, egress, and use in common with the Airport Common Areas of, which Airport Common Areas and the use by Lessee shall be subject to all terms, conditions, and covenants of this Lease.

Except as expressly set forth in this Section, nothing in this Lease shall be construed to grant or convey to Lessee the right to use any other area improved or unimproved outside of the Airport Common Areas which is leased to or under contractual control of a third party, or which Authority has not leased herein. Authority may at any time temporarily or permanently close, consent to or request the closing of any Common Area or other area on the Airport presently or hereafter used by Lessee or others, so long as a reasonable means of ingress and egress to the Premises is made available to Lessee. Lessee hereby releases and discharges Authority, its successors, and assigns, of and from all claims, demands or causes of action which Lessee may now or at any time hereafter have against Authority arising or alleged to arise out of the closing of any Common Area or other area on the Airport presently or hereafter used by Lessee or others so long as a means of ingress and egress to the Premises is made available to Lessee.

4.05 Compliance with Minimum Standards and Rules and Regulations. Lessee agrees to comply with the requirements set forth in the Minimum Standards for Aeronautical Activities and Airport Rules and Regulations for Sarasota Bradenton International Airport applicable to Lessee's tenancy throughout the Term of this Lease. In the event of a conflict between this Lease and the Minimum Standards or Rules and Regulations, Lessee acknowledges and agrees that the more stringent requirement shall apply to Lessee's operations hereunder.

4.06 Condition and Use of Premises. Subject to Lessee's rights to complete Inspections pursuant to Section 3.03 and any obligations of the Authority with respect to Pre-existing Environmental Conditions, Lessee accepts the Premises in its "AS IS CONDITION" and "WITH ALL FAULTS," together with all defects, latent and patent, if any. Lessee further acknowledges that Authority has made no representations or warranties of any nature whatsoever regarding the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any existing improvements located thereon; the value of the Premises or existing improvements; the zoning of the Premises; the suitability of the Premises or any improvements for Lessee's intended use; or Lessee's legal ability to use the Premises for Lessee's intended use

4.07 Grant of Right of Away. The parties recognize that there will be some utilization over certain portions of the Premises located outside the building to be located on the Premises by Authority and Authority's tenants located immediately adjacent, or in proximity to the Premises, for the sole

purpose of temporary aircraft and vehicle movement that may occur at any time throughout the Term of this Lease, as may be amended. In consideration thereof, Lessee grants to Authority and Authority's tenants a limited right of way across all exterior paved surfaces located on the Premises, including aircraft aprons, taxiway connectors, taxi lanes, vehicle roadways, vehicle parking lots, and pedestrian sidewalks located thereon (the "Outside Premises"), for the sole purpose of the movement of aircraft, vehicles, and individuals across the Outside Premises, it being the intent that such right of way be used for traversing, arriving and departing and not for purposes of parking, repairing or refueling of aircrafts or vehicles unless in an emergency. Lessee further acknowledges and agrees to not obstruct or in any other way prevent at any time, except momentarily, the movement of aircraft, vehicles, or individuals across the Outside Premises. Lessee may at any time momentarily prevent access any portion of the Outside Premises to Authority or its tenants, so long as alternate means of ingress and egress over the Outside Premises is made available to Authority or its tenants. Except as expressly set forth herein, nothing in this Lease shall be construed in any way to grant or convey to Authority or Authority's tenants the right or privilege across any other portion of the Premises, except as provided for in this Lease.

#### **Article 5 - Rental, Fees, and Charges**

5.01 Land Rent. The Property being leased to Lessee is approximately 74,910 square feet, which includes approximately 65,139 square feet of land for development plus the equivalent of approximately 9,771 square feet for the nonexclusive usage of offsite stormwater management land and facilities. Beginning on the Commencement Date, Lessee shall pay Authority annual rent amount equivalent to Sixty-Five Cents (\$0.65) per square foot per annum ("Rental Rate") as Land Rent.

5.02 Improvement Rent.

- (A) Beginning on the first day of the twenty first (21<sup>st</sup>) Lease Year, Lessee shall commence payment of rent for the use of all Improvements ("Improvement Rent") constructed or placed upon the Premises. Accordingly, in the 21<sup>st</sup> Lease Year, if the Lessee has renewed the Lease, the Lessee shall pay both Land Rent and Improvement Rent.
- (B) Prior to the commencement of Improvement Rent, Authority shall cause a survey of the Improvements to be prepared for the purpose of determining their square footage. The survey shall be prepared by a professional surveyor licensed in the State of Florida in accordance with the minimum technical standards for surveys within the State of Florida. Rent shall be established based on the total square footage of the Improvements as determined by such survey.
- (C) Improvement Rent to be paid by Lessee pursuant to this Section shall be determined by a fair market value appraisal. Authority may utilize the appraisal process set forth in Section 5.06 or may, at its sole option, elect to cause a separate appraisal of the Improvements, utilizing the same methodology for appraisals obtained pursuant to Section 5.06 to be performed, which may occur on a different date than the Adjustment Date; provided that the appraiser shall be an independent qualified M.A.I. appraiser, licensed in the State of Florida, with demonstrated experience in appraising comparable aviation real estate.



Improvement Rent established pursuant to this Section shall be adjusted in accordance with Section 5.06. Any delay in establishing rents pursuant to this Section shall not constitute a waiver of or in any way impair the continuing obligation of Lessee to pay rent for the Improvements from the date provided in this Section.

5.03 Common Area Maintenance. The parties recognize that there will be some utilization throughout the Term of this Lease, as may be amended, by Lessee of certain facilities, equipment, and infrastructure not located on the Premise that is maintained by Authority, including, but not limited to, the maintenance of the Airport Common Areas ("Common Area Maintenance"). In consideration thereof, Lessee shall pay to Authority an amount equivalent to five percent (5%) of the then present Land Rent plus applicable sales tax as a contribution towards the Common Area Maintenance ("Common Area Maintenance Fee"). The Common Area Maintenance Fee shall be due and payable by Lessee to Authority monthly in twelve equal monthly installments which shall be submitted by Lessee to Authority concurrent with the Monthly Installments of Land Rent as stipulated in Article 5.04, below, and adjusted concurrently with the Adjustment of Rental Rate stipulated in Article 5.05, below.

5.04 Monthly Installments. Land Rent as defined shall be payable in equal monthly installments, in advance, without demand and without any deduction, holdback or set off whatsoever, by the first day of each month, as adjusted in accordance with Section 5.04 and Section 5.05 together with applicable sales tax. Any payment due hereunder for a fractional month shall be calculated and paid on a per diem basis, calculated based on the actual number of days in the month. Annual Land Rent shall be \$48,692.00 payable in monthly installments of \$4,057.67 subject to periodic adjustment as provided for in this Lease. All sums due hereunder shall be delivered to the Sarasota Manatee Airport Authority, Finance Department, at 6000 Airport Circle, Sarasota, Florida 34243, or at such other address as may be directed in writing by Authority from time to time.

5.05 Adjustment of Rental Rate by CPI. Commencing on the first day of the Fourth (4<sup>th</sup>) Lease Year and every three years thereafter including any Renewal Term ("Adjustment Date") the Rental Rate shall be adjusted to reflect the cost-of-living increase based upon the Consumer Price Index. At the time the calculation is being made the monthly index figure for the third calendar month immediately prior to such Lease Year (the "Adjustment Level") shall be used. The monthly index figure for the same month in the twelve-month period immediately preceding the Base Year shall be referred to as the "Base Level." The new Rental Rate shall be computed by multiplying the Base Rental Rate of the Base Year by a fraction, the numerator of which shall be the Adjustment Level, and the denominator of which shall be the Base Level. Stated as a mathematical formula, the adjusted rent shall be computed as follows:

$$\text{Adjusted Rental Rate} = \frac{\text{Base Rental Rate of the Base Year} \times \text{Adjustment Level}}{\text{Base Level}}$$

In no event shall the Rental Rate in effect be decreased because of such adjustment. The annual Rent shall not increase by more than 9% percent over the annual Rent payable during the preceding three-year period, except on the Appraisal Adjustment Dates. This 9% cap shall not be applicable when Rent is being adjusted by appraisal. The Rental Rate following the adjustment shall remain in effect until the next Adjustment Date or Appraisal Adjustment Date. The cost-of-living index referred to herein shall be the Consumer Price Index (CPI) of all Urban Consumers, distributed by the Bureau of Labor Statistics of the U.S.

Department of Labor. In the event said index ceases to be prepared and published, then the rental shall be adjusted in accordance with the most comparable index then in existence.

5.06 Adjustment of Rental Rate by Appraisal. Upon the first day of the Sixteenth (16th) Lease Year, and at the Commencement of any Renewal Term, (each such date an "Appraisal Adjustment Date"), the annual Land Rent and Improvement Rent, set forth in Sections 5.01 and 5.02, respectively, shall be adjusted and new annual Rent shall be determined as hereinafter set forth. Prior to each Adjustment Date, Authority shall select a qualified M.A.I. appraiser with demonstrated experience in appraising comparable aviation real estate, selected by the Authority, who shall appraise the Premises to determine its fair market rental value using comparable aviation facilities. The Authority shall submit to Lessee a written statement of the then current fair market rental values as established by the appraisal and annual Rental Rates provided for herein shall be adjusted to an amount equal to the values set forth in the appraisal. The adjusted annual Rental Rates shall be payable commencing on the Adjustment Date. (The parties acknowledge that under this Lease the Improvement Rent does not commence until the Renewal Term commences, and therefore only the Land Rent shall be adjusted by appraisal during the Initial Term of this Lease.)

This Lease shall automatically be considered amended, without formal amendment hereto, upon written notification by Authority of the Rental Rates established pursuant to this Section. Any delay or failure of Authority in computing the adjustment in Rental Rates, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Lessee to pay such adjusted annual Rental Rates from the applicable adjustment date. Notwithstanding any provision of this Lease to the contrary, annual Rental Rates shall not be adjusted to an amount less than the annual Rental Rates payable during the Lease Year immediately preceding the Rental Rate adjustment date.

The CPI adjustment as set forth in 5.04 above shall occur on the third anniversary of the Appraisal Adjustment Date, and every three years thereafter until the next Adjustment Date. After an Appraisal Adjustment Date, the CPI adjustment shall occur every three years after such Appraisal Adjustment Date.

5.07 Interest on Late Payments. Lessee shall pay to Authority interest at the maximum rate permitted by law, but not more than one and one-half percent (1½ %) per month or eighteen percent (18%) per annum, on any late payments commencing ten (10) days after Rent is due. To the extent permitted by law, Lessee agrees that acceptance of late payments by Authority shall not constitute a waiver of Lessee's default by Authority with respect to such overdue amount, nor prevent Authority from terminating this Lease for default beyond applicable cure periods in the payment of rentals, fees, or charges due to Authority pursuant to this Lease or from enforcing any other provisions, rights, or remedies granted herein, or conferred by law. In the event Lessee delivers a worthless check or draft to Authority in payment of any obligation arising under this Lease, Lessee shall incur a service charge of One Hundred Dollars (\$100.00) or five percent (5%) of the face amount of such check, whichever is greater; or if Florida Statute section 832.07 is amended, such other fee as shall be set by said statute.

5.08 Security Deposit. Thirty (30) days prior to the Commencement Date, Lessee shall post a non-interest-bearing security deposit with Authority equal to twelve (12) monthly installments of Rent ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to Authority and shall also secure the performance of all obligations of Lessee to Authority. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety

Bond ("Bond") in form and substance reasonably satisfactory to Authority. In the event of any failure by Lessee to pay any Rents or other fees and charges when due or upon any other failure to perform any of its obligations or other default under this Lease beyond applicable cure periods, then in addition to any other rights and remedies available to Authority at law or in equity, Authority shall be entitled to draw on the Security Deposit and apply same to all amounts owed.

Upon notice of any such draw, Lessee shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. Upon the request of Authority, Lessee shall increase the amount of the Security Deposit to reflect any increases in the sums payable hereunder within thirty (30) days after notification by Authority of any such increase. The Security Deposit shall be kept in full force and effect throughout the Term of this Lease and any extension thereof and for a period of six (6) months after the termination of this Lease. Not less than forty-five (45) calendar days prior to any expiration date of a Letter of Credit or Bond, Lessee shall submit evidence in form satisfactory to Authority that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this Section shall constitute a default of this Lease entitling Authority to all available remedies. The Security Deposit shall not be returned to Lessee or released by Authority until all obligations under this Lease are performed and satisfied. Prior to consent from Authority to any assignment of this Lease by Lessee, Lessee's assignee shall be required to provide a Security Deposit to Authority in accordance with the terms and conditions of this Section.

5.09 Absolute Net Lease. This Lease shall be deemed to be "absolute net" without cost or expense to Authority of any kind, including, but not limited to, cost and expenses relating to taxes, insurance, operation and maintenance of all Improvements and infrastructure located on the Premises.

5.10 Additional Remedies. Authority shall have the same rights to enforce due and timely payment by Lessee of all sums of money or charges required to be paid by Lessee under this Lease as are available to Authority with regards to Rent.

5.11 Taxes, Licenses and Fees. Lessee shall pay, on or before their respective due dates, all federal, state and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises and the Improvements or the estate hereby granted, or upon Lessee, or upon the business conducted on the Premises, or upon any of Lessee's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes (based upon Lessee's pro rata share according to the area of the Premises if the Premises do not have their own separate tax bill), and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Lessee; provided, however, that Lessee shall have the right to contest or protest with the taxing authority any of the foregoing in accordance with applicable legal requirements. Authority agrees to reasonably cooperate with Lessee in such contest or protest. Authority also agrees to deliver to Lessee, promptly after receiving the same, but in any event at least thirty (30) days prior to the date such bills are due, any tax bills that Authority receives with respect to the Premises. Lessee shall maintain current all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. It is further provided that Lessee shall pay in full any tax or assessment which arose by reason of Lessee's use or occupancy of the Premises at any time after the Effective Date, including monthly payments to Authority for any sales, use, or other tax imposed pursuant to Florida Statutes, or any imposition in lieu thereof, now or hereinafter imposed upon

the Rents or other payments due under this Lease, notwithstanding the fact that the statute, ordinance, or enactment imposing the same may endeavor to impose the tax upon Authority as Landlord, to the extent as applicable.

5.12 Accord and Satisfaction. In the event Lessee pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Authority may accept any check or payment without prejudice to Authority's right to recover the balance due or to pursue any other remedy available to Authority pursuant to this Lease or under law.

#### **Article 6 - Construction of Alterations and Improvements**

6.01 Lessee's Improvements. Lessee shall construct, at its sole cost and expense, including all direct and indirect costs, the Improvements as set forth in Exhibit B, including all related infrastructure, buildings and facilities, aircraft and vehicle pavements, fixtures, furnishings and equipment, improvements and alterations, of any kind, including not less than 20,000 square foot of aircraft hangar and 20,000 square feet of aircraft apron, aircraft taxi lane connector, adequate paved vehicle parking, utilities lines and connections, stormwater drainage, perimeter security fencing, lighting, landscaping, and all safety or security measures required by law (hereinafter collectively referred to as the "Improvements"). Construction of the Improvements shall be completed no later than) twenty-four (24) months immediately following the Effective Date, unless otherwise approved in writing by Authority, which approval shall not be unreasonably withheld, conditioned, or delayed for reasons beyond the control of Lessee. All aircraft apron to be constructed on the Premises, shall be designed in accordance with FAA Advisory Circular 150/5320-6 Airport Pavement Design and Evaluation, as now or hereafter amended.

- (A) Tenant shall, at its sole expense, design and construct structural aircraft pavement from the Premises to Taxiway F, generally as depicted on the North Quadrant Development Phase C & D Concepts drawing, dated March 29, 2022, and install any Authority required fencing (collectively, the "Aircraft Taxi Lane Connector"), which Aircraft Taxi Lane Connector shall be completed by Tenant no later than twenty-four (24) months immediately following the Effective Date of this Lease.
- (B) Concurrently with the commencement of construction of the Aircraft Taxi Lane Connector, the Authority shall grant Lessee a nonexclusive license to improve, and access, such part of the Airport Common Areas needed by Tenant for the Aircraft Taxi Lane Connector ("Access Permit Area"). Tenant and Authority shall coordinate during Tenant's design phase for the Aircraft Taxi Lane Connector to determine the scope and breadth of the Access Permit Area. Upon completion thereof, the Aircraft Taxi Lane Connector shall be deemed part of the Airport Common Areas maintained by the Authority.
- (C) After the completion of the Aircraft Taxi Lane Connector, as defined in Article 6.01 below, Lessee shall provide copies of paid written invoices to the Authority of the actual expenses thereof "Aircraft Taxi Lane Connector Expenses"). Thereafter, in the future, when the Authority enters into a lease of Parcel B, the Authority will require that the contiguous lessee of Parcel B reimburse Lessee for twenty-five percent (25%)

of the Aircraft Taxi Lane Connector Costs, the time and method of payment thereof to be determined by the Authority.

6.02 Construction Process. Lessee shall submit all conceptual design drawings, final design drawings, and construction drawing to the Authority for review and approval prior to commencing the construction of any Improvements on the Premises. In addition, Lessee shall not commence the construction of any Improvements on the Premises without the prior written consent of the Authority's President/CEO. After approval granted by Authority to Lessee to construct the Improvements, Lessee shall comply with all tenant -permitting and construction processes and procedures established by the Authority, as may be amended from time-to-time, including but not limited to the following:

- (A) Lessee shall obtain all required permits and licenses and comply with applicable zoning laws, building codes and other laws or regulations of any appropriate governing body, whether it be state, county, city, or Authority.
- (B) Prior to any construction within the Premises, all contractors, and subcontractors to perform work must be approved by Authority, and such contractors and subcontractors will be required to execute an indemnification agreement in favor of Authority, and to provide evidence of insurance satisfactory to Authority (in at least the same amounts and form required for Lessee).
- (C) Lessee shall advance an estimate of costs necessary along with a construction schedule to complete Lessee's work and shall provide future cost estimates on the Improvements to the Premises upon written consent of Authority to authorize said Improvements.
- (D) Prior to commencement of construction, Lessee shall post with Authority a performance and payment bond in an amount equal to the estimated cost of the Improvements to be delivered to Authority under the provisions above. Said amount is established to account for potential cost overruns, contingencies, and cost estimate errors.
- (E) Lessee covenants and agrees to accept and pay all financial obligations associated with costs necessary to complete Authority-approved Improvements. During construction, Lessee shall coordinate and incur the costs for the necessary and applicable inspections per local and industry requirements.
- (F) Lessee agrees throughout the term of this Lease to maintain at its expense the Premises and all Improvements on the Premises in a good state of repair and preservation. Lessee shall also be responsible for the cost of repair for any damage to the Premises or the adjacent lands or improvements thereon, caused by Lessee, its owners, agents, employees, or guests. Authority shall have the right to inspect the Premises and Improvements at any reasonable time for the purpose and to the extent necessary to protect the Authority's rights and interests, to provide for periodic inspection of said Premises provided the exercise of such right shall not unreasonably interfere with Lessee's use of the Premises.

6.03 Construction Standards. All Improvements constructed or placed on the Premises shall comply with all applicable federal, state, and local laws, rules, regulations, and orders. All Improvements shall adhere to acceptable industry design standards and construction methods applicable to the use and location of the Improvements, including all requirements of this Article. The Improvements shall include an attractive design, and first-class materials fixtures, finishes, landscaping, and construction.

6.04 Construction Approval. Except as otherwise provided for herein, prior to constructing the Improvements, Lessee, without cost to Authority, shall prepare detailed preliminary design and construction plans and specifications for the Improvements (hereinafter collectively referred to as the ("Plans")) in accordance with standards established by the Authority and deliver the preliminary Plans to the Authority for review, comment, and adjustment. The Authority shall review the preliminary Plans and provide a written response to Lessee within thirty (30) days after receipt of the preliminary Plans; provided, in the event the preliminary Plans are subject to review by another governmental authority with jurisdiction over the Airport, including, but not limited to the FAA, the timeframe for review may be extended by the amount of time necessary for such authority to complete its review. In the event the Authority does not approve the preliminary Plans, Lessee will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Lessee may then resubmit modified Plans to the Authority.

Within one hundred eighty (180) days of Lessee's receipt of a certificate of occupancy or certificate of completion for the Improvements constructed pursuant to this Article, Lessee, at its sole cost and expense, shall have prepared and delivered to the Authority one (1) complete set of as-built drawings in a PDF or other electronic format approved by the Authority, and one (1) complete set of Auto CADD files in the latest version acceptable by the Authority.

6.05 No Liens. Authority's interest in the Premises shall not be subject to any construction, mechanics, materialman's, tax, laborers, or any other lien, whether Authority has given its written approval for the Improvements or otherwise, and Lessee shall hold Authority and its interest in the Premises harmless from any such lien or purported lien. Lessee agrees that nothing contained in this Lease shall be construed as consent by Authority to subject the estate of Authority to liability under the Construction Lien Law of the State of Florida and understands that Authority's estate shall not be subject to such liability. Lessee shall notify all parties or entities performing work or providing materials relating to the Improvements made by Lessee of this provision of this Lease. If so, requested by Authority, Lessee shall file a notice satisfactory to Authority in the Official Public Records of Authority, stating that Authority interest shall not be subject to liens for the Improvements made by Lessee. If a construction lien is filed against the Premises or other Authority property in connection with any work performed by or on behalf of Lessee, Lessee shall satisfy such claim, or transfer same to security, within ten (10) days from the date of filing. If Lessee fails to transfer or satisfy such claim within ten (10) day period, Authority may do so and thereafter Lessee shall reimburse Authority without delay all costs incurred by Authority in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Lessee shall promptly pay to Authority all such costs upon demand, as additional rent.

#### **Article 7 - Obligations of Lessee and Authority**

7.01 Rules and Regulations. Lessee covenants and agrees to observe and obey, and to require

Lessee Parties to observe and obey all rules and regulations of the Authority (including amendments and supplements thereto) regulating the conduct and operations of Lessee and others on the Premises as may from time to time be promulgated. The obligation of Lessee to require such observance and obedience on the part of its sublessees, guests, invitees, and business visitors shall pertain only while such Persons are on or in occupancy of any portion of the Premises.

7.02 Conduct of Operations. Lessee shall conduct its aircraft and vehicle operations hereunder in a safe, secure, orderly, and reasonable manner, compliant with all applicable rules and regulations applicable thereto, considering the nature of such operations so as not to unreasonably interfere with the operations of the Authority other lessees at the Airport.

7.03 Noise and Vibrations. Lessee shall comply with the reasonable noise mitigation measures established by the Authority to mitigate noise impacts of Lessee's aircraft operations outside the boundaries of the Airport, such as utilizing designated areas for aircraft engine run-up activities.

7.04 Conduct of Lessee Parties. Lessee shall control the conduct, demeanor, and appearance of all Lessee's owners, employees, agents, visitors, and guests at the Premises, and upon objection from Authority concerning the conduct, demeanor, or appearance of any such persons, shall immediately take all reasonable steps necessary to remove the cause of objection.

7.05 Disposal of Waste. Lessee shall remove from the Premises or otherwise promptly dispose of in a manner approved by Authority all garbage, debris, and other waste materials (whether solid or liquid) arising out of the use or occupancy of the Premises or out of any operations conducted thereon. Garbage, debris, and other non-hazardous waste materials may be temporarily stored on the Premises in suitable garbage and waste receptacles made of metal and equipped with tight fitting covers and designed to contain whatever material safely and properly may be placed therein.

7.06 Nuisances. Lessee shall not commit any physical nuisance on the Premises and shall not do or permit any of its sublessees to do anything which would result in the creation, commission, or maintenance of such nuisance on the Premises. Lessee shall not create nor permit to be caused or created upon the Airport of the Premises any obnoxious odor, smoke or noxious gases or vapors. The creation of exhaust fumes by the operation of internal combustion engines or engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this Lease.

7.07 Vehicular Parking. Lessee shall not allow Lessee's owners, employees, agents, visitors, or guests to park vehicles within the grassed areas of the Premises or in other areas of the Airport that are not leased to Lessee without the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole discretion.

7.08 Accessibility of Utilities. Lessee shall not unreasonably interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Premises that are also used by other occupants, customers, or users of the Airport. This provision shall in no event require Lessee to modify or relocate any utilities systems that are approved by the Authority as part of the Improvements.

7.09 Overloading Paved Areas. Lessee shall not overload any aircraft hangar floor, aircraft apron, aircraft taxi lane, vehicle roadway, vehicle parking surface, office floor, sidewalk, or any other

paved area on the Premises, and shall repair any paved surface and subsurface of any paved area damaged by overloading.

7.10 Hazardous Operations. Lessee shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate any insurance policies covering the Premises or the Airport; or
- (B) Constitutes a hazardous condition considering the risks normally attendant upon the operations permitted by this Lease.

7.11 Storage of Flammable Liquids. All flammable liquids that are kept or stored at the Premises must always be handled, stored, and used in accordance with all applicable federal, state, and local laws.

7.12 Testing of Fire Systems. From time to time and as often as reasonably required by Authority or any governmental authority having jurisdiction, Lessee shall conduct pressure, water flow, and all other appropriate tests of the fire extinguishing system and apparatus that are located on the Premises.

7.13 Vending Machines. Except as specifically authorized by this Lease, Lessee shall not place any coin or token operated vending machine or similar device (including, but not limited to, beverage or food machines, or other commodities) upon the exterior of any of the Improvements on the Premises, without the prior written consent of Authority.

7.14 Derelict Aircraft. Lessee shall not permit the temporary or permanent storage (without an open work order being actively pursued) on the Premises or Outside Premises of any Derelict Aircraft. Derelict Aircraft shall be removed from the Airport within a period of thirty (30) days after written notice from Authority. Notwithstanding the foregoing, Authority may make written request to Lessee to demonstrate that an open work order is being actively pursued. If Lessee fails to provide Authority with satisfactory evidence that an open work order is being actively pursued within three (3) business days of the date requested, then such Derelict Aircraft shall be removed from the Premises within thirty (30) days from the date Authority makes its written request for proof that an open work order is being actively pursued.

7.15 Derelict Vehicles. Lessee shall not permit the temporary or permanent storage at the Premises of any Derelict Vehicles. Lessee shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from Authority.

7.16 Hurricane Plans. Within thirty (30) days of request from Landlord, Lessee shall provide Authority with emergency evacuation and hurricane plans consistent with Authority's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Lessee and its sublessees if an evacuation need or hurricane alert warning is present. Hurricane plans are to be annually updated, if requested by Authority.



**Article 8 - Maintenance and Repair**

8.01 Maintenance of Premises. Lessee shall, throughout the Term and any extension thereof, be responsible for all repairs and maintenance of the Premises, which shall include, but shall not be limited to Improvements thereon, whether such repair or maintenance be ordinary or extraordinary, structural, or otherwise. Authority shall not be liable for, or required to make, any repairs or perform any maintenance upon the Premises. Maintenance and repairs shall be in quality and class comparable to the original work, to preserve the Premises and all apparatuses thereon in good order, well repaired, clean, and in first-class condition. Lessee shall be required to keep all the Premises and all Improvements thereon in clean, good, fit, fully maintained and attractive condition throughout the Initial Term, as may be amended. Without limiting the generality thereof, Lessee shall:

- (A) Keep painted without signs of chipping or cracking all the exterior and interior of the Premises, repair and maintain all roofs, doors, windows, exterior walls, pavements, equipment, lighting, furnishings, fixtures, and structural support systems.
- (B) Keep the Premises at all times in a clean and orderly condition and appearance and all the fixtures, equipment and personal property which are in any part of the Premises that is open to or visible by the public.
- (C) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution, or regulation of any applicable governmental authority.
- (D) Repair any damage to the aircraft apron areas, paving or other surface of the Premises caused by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.
- (E) Take anti-erosion measures, including, but not limited to, the planting and replanting of landscape with respect to all portions of the Premises not paved or built upon.
- (F) Be responsible for the maintenance and repair of all utilities that are now or subsequently located within the Premises and are exclusively used by Lessee or any of its sublessees, including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers, and storm sewers.
- (G) Make no use of any portion of the Premises in a manner that causes or results in excessive dust, debris, or waste of any kind to be blown about or raised to be ingested by aircraft.
- (H) Be responsible for the maintenance, repair, cleaning, and landscaping of the entrance and exit roadways, sidewalks and signage serving the Premises, which

Lessee acknowledges may be located outside of the Premises.

8.02 Inspections of Premises. Except for the need to address any emergency or other similar exigency, Authority, with forty-eight (48) hours prior notice to Lessee, shall have the right to enter the Premises at reasonable times to inspect the Premises and the Improvements thereon for the purpose of determining whether Lessee is following the requirements of this Lease. In the event Lessee is not in compliance with this Lease, as reasonably determined by Authority, Authority shall provide Lessee with written notice of such noncompliance. Lessee shall commence corrective action to remedy such noncompliance to the satisfaction of Authority promptly after receipt of the notice of noncompliance. If corrective action is not initiated within thirty (30) days and pursued in a diligent manner to completion, Authority may, but shall not be obligated, to cause the same to be accomplished. Lessee agrees that Lessee shall assume and be liable to Authority for payment of all reasonable costs incurred by Authority, plus a fifteen percent (15%) administrative overhead fee, which costs, and administrative overhead fee shall constitute additional rent hereunder and shall be due and payable within thirty (30) days of the date of Authority's written notice.

8.03 Airport Common Areas. The Authority shall maintain the Airport Common Areas in good order and repair.

#### Article 9 - Utilities

9.01 Utility Costs. Lessee shall pay for all electric, water, garbage, communications, and other utilities charges for the Premises. The metering devices installed by Lessee for such utilities shall be installed at the sole cost of Lessee and shall become the property of Authority upon installation, unless owned by a third-party utility provider. Extension of utility mains or services to meet the needs of Lessee on the Premises shall be at the expense of Lessee and shall become the property of Authority upon installation unless otherwise agreed upon by the parties to this Lease.

9.02 Utility Access and Easements. During the term of this Lease, Authority shall provide Lessee with non-exclusive access and easements to, over, under or through such portions of the Airport Common Areas and/or contiguous property owned or controlled by Authority that are necessary to service the Premises, including, but not limited to access and easements necessary to provide water, sewer, electric, telephone, high speed internet, cable, stormwater drainage, and other related and customary facilities, systems and infrastructure.

During the Term of this Lease, Authority shall also provide Lessee with non-exclusive access and easements to, over, under or through such portions of the Airport Common Areas and/or contiguous property owned or controlled by Authority that are necessary to complete the Improvements, including specifically, such portions of the Airport Common Areas and/or contiguous property owned or controlled by Authority that are necessary to construct and maintain the aircraft Taxi Lane Connector, approved by the authority, required for aircraft access to the Premises. Similarly, during the term of this Lease, Authority reserves for itself and its utility suppliers, and Lessee agrees to furnish to Authority, access and easements to, over, under or through such portions of the Premises as Authority deems necessary to furnish and maintain utilities to or on any Airport property, including, but not limited to access and easements necessary to provide water, sewer, electric, telephone, high speed internet, cable, stormwater

drainage, and other related and customary facilities, systems and infrastructure.

9.03 Water, Industrial and Sanitary Sewage. Lessee acknowledges that certain properties and uses of properties within the Airport or on Authority owned land are subject to Federal storm water regulations as set forth in 40 CFR Part 122. Lessee agrees to observe and abide by said regulations as applicable to its property and use. Lessee will take all steps necessary to apply for or obtain a storm water discharge permit as may be required by applicable regulations for Lessee's operations at the Airport. Additionally, Lessee, at Lessee's expense, will take all steps necessary to properly connect to the storm water discharge system for which the Authority has already obtained a permit.

Notwithstanding any other provisions or terms of this Lease, including Lessee's right to quiet enjoyment, Authority and Lessee both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that it may be necessary to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Lessee, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."

Authority will provide Lessee with written notice of those storm water discharge permit requirements, that are in Authority's storm water permit, that Lessee will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples for analysis of such samples for contamination; preparation of storm water pollution prevention or similar plans; implementation of Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee within seven (7) days of receipt of such written notice, shall notify Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed to assent to undertake such requirements. If Lessee provides Authority with timely written notice that it disputes such storm water discharge permit requirements, Authority and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to written notice from Authority for purposes of delay or avoiding compliance.

Lessee agrees to undertake those storm water discharge permit requirements for which it has received written notice from any governmental entity charged with enforcement of storm water regulations. Lessee acknowledges that time is of the essence and will make every effort to meet all deadlines that may be imposed on it. Authority agrees to provide Lessee, at its request, with any nonprivileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations. Authority will give Lessee written notice of any breach by Lessee of Authority's storm water discharge permit or the provisions of this section. If such a breach is material, and, if of a continuing nature, Authority may terminate this Lease. Lessee agrees to cure promptly any breach caused by Lessee or as a direct result of Lessee's operation.

Lessee agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. In addition, Lessee agrees to participate in Authority's Environmental Compliance Program and is subject to and agrees to periodic inspections conducted by Airport staff to monitor the management, handling, storage, and disposal practices associated with any petroleum substances, hazardous substances, or waste materials.

All such remedies of Authority regarding environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Lease.

Lessee shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage or disposal of all pollutants or contaminated materials, as same are defined by law, by Lessee or by Lessee's employees, invitees, suppliers or service or providers of materials or any other person whomsoever, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Lessee pursuant to the terms of this Lease.

#### **Article 10 - Airport Security**

Lessee agrees to observe and abide by all federal, state, and local laws, rules, and safety and security requirements applicable to Lessee's operations, as now or hereafter promulgated.

#### **Article 11 - Insurance Requirements**

Lessee shall, at its sole expense, maintain in full force and effect, beginning on the Commencement Date, always during the Term and any extension thereof, the insurance coverages and endorsements required herein. Neither the requirements contained in this Article nor Authority's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Lessee under this Lease. If the Minimum Standards or Airport Rules and Regulations impose more strenuous requirements, the Lessee shall comply with the Minimum Standards and Airport Rules and Regulations for the Airport.

**11.01 Commercial General Liability.** Lessee shall maintain Commercial General Liability Insurance policy, or upon Lessee's request subject to Authority's sole discretion, an Aviation General Liability Policy, with limits of not less than Ten Million Dollars (\$10,000,000) each occurrence with limits of liability not less than Ten Million Dollars (\$10,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Contractual Liability, Personal/Advertising Injury, and Cross Liability. This coverage shall be provided on a primary basis.

**11.02 Aircraft Liability.** Lessee shall and shall cause any related entity Private Aircraft owner or Part 91 Private Aircraft operator that uses the Premises to maintain Aircraft Liability Insurance providing coverage for property damage to said Aircraft owned, leased, or otherwise controlled aircraft while in the care, custody, or control of Lessee or Lessee's related entity or Part 91 Private Aircraft operator when such aircraft are on the Premises, in an amount not less than Ten Million Dollars (\$10,000,000) any one aircraft and Ten Million Dollars (\$10,000,000) any one occurrence.

**11.03 Automobile Liability.** Lessee shall maintain Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, leased, and hired automobiles. This coverage shall be provided on a primary basis.

**11.04 Workers' Compensation and Employers Liability.** If applicable, Lessee shall maintain Workers' Compensation and Employers Liability as required by state and federal law. This coverage shall

be provided on a primary basis.

11.05 Property, Wind and Flood Insurance. Lessee shall maintain:

- (A) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the Improvements, including, but not limited to, those made by or on behalf of Lessee, as well as Lessee's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (B) The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (C) Flood insurance, if within the 100-year flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the Improvements, including, but not limited to, those made by or on behalf of Lessee, as well as Lessee's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (D) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the Improvements, including, but not limited to, those made by or on behalf of Lessee, as well as Lessee's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis. This coverage shall be provided on a primary basis.

11.06 Additional Insured Endorsement. Lessee shall endorse Authority as an "Additional Insured" on each liability insurance policy required to be maintained by Lessee, except for Worker's Compensation and Auto Liability policies. The CG 2011 Additional Insured - Managers or Lessors of Premises or its equivalent, shall be an endorsement to the Commercial General Liability policy. Other policies, when required, shall provide a standard "Additional Insured" endorsement offered by the insurer. The "Additional Insured" endorsements shall provide coverage on a primary basis. "Additional Insured" endorsements shall read "Sarasota Manatee Airport Authority Board, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243".

11.07 Loss Payee Endorsement. Lessee shall endorse Authority as a "Loss Payee" on the Property, Flood, and Windstorm insurance policies. "Loss Payee" endorsements shall provide coverage on a primary basis and shall read "Sarasota Manatee Airport Authority Board, c/o Sarasota Manatee Airport Authority, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o 6000 Airport Circle, Sarasota, Florida 34243".

11.08 Evidence of Insurance. Prior to the Commencement Date, Lessee shall provide Authority with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed during the Term or any extension thereof, Lessee shall provide Authority a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Sarasota Manatee Airport Authority Board, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o Sarasota Manatee Airport Authority, Properties Department, 6000 Airport Circle, Sarasota, Florida 34243.

11.09 Waiver of Subrogation. By entering this Lease, Lessee agrees to a Waiver of Subrogation for each policy required to be maintained or maintained by Lessee pursuant to or in connection with this Lease. When required by the insurer or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Lessee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Lessee enter into such an agreement on a pre-loss basis.

11.10 Premiums and Proceeds. Lessee shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood, or wind insurance policies. Lessee shall be responsible for all premiums, including increases, for property, flood, and wind insurance policies. Subject to the terms of any Leasehold Mortgage or financing arrangement entered by Lessee, Lessee agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the Improvements, including, but not limited to, those made by or behalf of Lessee.

11.11 Deductibles, Coinsurance and Self-Insurance. Lessee shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

11.12 Right to Review or Adjust Insurance. The Authority may review, modify, reject, or accept any required policies of insurance, including, but not limited to, limits, coverages, or endorsements, required by this Article from time to time throughout the Term and any extension thereof. Authority may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Authority shall provide Lessee a written notice of rejection, and Lessee shall comply within thirty (30) days of receipt of the notice.

11.13 No Representation of Adequacy. Lessee acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for Authority. Lessee agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect Lessee against any loss exposures, whether because of this Lease or otherwise.

**Article 12- Damage, Destruction or Condemnation of Premises**

12.01 Removal of Debris. If the Premises, or any portion thereof, are damaged by fire, the elements or other casualty, Lessee shall promptly remove all debris resulting from such damage from the Premises and shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of Persons entering upon the Premises. If Lessee fails to promptly comply with the provisions of this Section, Authority may, take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Lessee agrees that Lessee shall fully assume and be liable to Authority for payment of any costs incurred by Authority, plus a fifteen percent (15%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Authority within thirty (30) days from the date of written notice provided by Authority.

12.02 Lessee's Obligations. Lessee assumes full responsibility for the condition of the Premises and the character, acts and conduct of all Persons admitted to the Premises by or with the actual or constructive consent of Lessee or with the consent of any person acting for or on behalf of Lessee. If the Premises, or any portion thereof, is damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of Lessee, or a Lessee Party or any other Person, Lessee shall at its sole cost and expense restore the Premises to the condition existing prior to such damage. Lessee shall commence restoration within sixty (60) days and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 8; provided, that if the nature of the damage is such that more than sixty (60) days are reasonably required Lessee shall commence restoration as soon as reasonably practicable under the circumstances taking into consideration the extent of the damage. All repairs and restoration shall be made by Lessee at Lessee's sole cost and expense, in accordance with the construction requirements contained herein. If Lessee fails to restore the Premises as required by this Section, Authority shall have the right, but not the obligation, to enter the Premises and perform the necessary restoration. Lessee agrees that Lessee shall fully assume and be liable to Authority for payment of the reasonable costs of restoration plus a fifteen percent (15%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Authority within thirty (30) days from the date of the written notice provided by Authority.

12.03 Insurance Proceeds. Except as otherwise provided for herein, upon receipt by Lessee of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account approved by Authority to be available to pay for the cost of any required repair, replacement, or rebuilding. The proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of all damaged Improvements, Lessee shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is more than the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Lessee.

12.04 Condemnation. If the whole or any material portion of the Leased Premises is acquired by a condemning authority, either by sale in lieu of condemnation or by the exercise of the power of eminent domain rendering use of the remaining Leased Premises commercially infeasible, then in and as a direct result of that event, this Lease will terminate from the date of sale or title vesting, and Lessee will have no claim whatsoever, including claims of apportionment, against Authority either for the value of any

unexpired term of this Lease or for the value of the Improvements. However, nothing in this provision will limit or destroy any right of Lessee to separately claim moving costs or business loss solely against the condemning authority where statutes or other applicable law apply.

If a portion of the Leased Premises is acquired by a condemning authority, either by sale in lieu of condemnation or by the exercise of the power of eminent domain rendering use of the remaining Premises commercially feasible, then in and as a direct result of that event, this Lease will terminate from the date of sale or title vesting as to the portion so condemned only, with the Rents reduced by the proportionate reduction in square footage, and Lessee will have no claim whatsoever, including claims of apportionment, against Authority either for the value of any unexpired term of this Lease or for the value of the Improvements taken. However, nothing in this provision will limit or destroy any right of Lessee to separately claim moving costs or business loss solely against the condemning authority where statutes or other applicable law apply.

Notwithstanding any of the foregoing to the contrary, if the condemning authority is the Authority, then Lessee reserves the right to pursue a claim against the Authority for Tenant's unamortized original investment, determined by the Tenant's total original investment at the Commencement Date of this Lease amortized on a straight-line basis with no residual value over the Term (Initial Term and Renewal Term) of this Lease.

#### **Article 13 - Rights of Leasehold Mortgagees**

13.01 Right to Mortgage. Lessee may encumber its leasehold estate by granting a mortgage or other similar instrument creating a mortgage lien against the Lessee's leasehold interest during the Term and any extension thereof, provided that, Authority shall not be obligated to, nor deemed to have subjected or subordinated Authority's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated the Authority's interest in this Lease to such Leasehold Mortgage. Authority's interests in the fee and in this Lease are and shall always remain superior and prior in right to any Leasehold Mortgage. Any such instrument which creates a first mortgage lien shall hereinafter be referred to as "Leasehold Mortgage", and the holder thereof shall hereinafter be referred to as "Leasehold Mortgagee"

13.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Authority, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Authority, Authority upon serving Lessee with any notice of default under this Lease, shall also serve a copy of that notice of default upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Lessee. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Authority.

13.03 Estoppel Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time,



or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge.

#### **Article 14 - Title to Improvements**

14.01 **Title to Improvements.** Lessee shall be deemed to be the owner of all Improvements constructed by Lessee upon the Premises during the Initial Term. Upon expiration of the Initial Term or the earlier termination of this Lease as provided herein, all Improvements constructed or placed upon the Premises by Lessee except for any Fuel System, title to which has not previously vested in Authority hereunder, shall become the absolute property of Authority, and Authority shall have every right, title, and interest therein, free, and clear of any liens, mortgages, and other encumbrances. Upon the request of Authority, Lessee shall provide Authority with a bill of sale or other evidence of the transfer of ownership of the Improvements together with evidence satisfactory to Authority that the Improvements are free from liens, mortgages, and other encumbrances.

14.02 **Removal of Improvements.** Notwithstanding any provision of this Lease to the contrary, Lessee may be required to remove any Improvements made by Lessee during the Term of this Lease upon the expiration or earlier termination of this Lease.

14.03 **Survival of Article.** The provisions of this Article 14 shall survive expiration or earlier termination of this Lease.

#### **Article 15 - Expiration, Default and Remedies**

15.01 **Expiration.** This Lease shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 3.02. In the event this Lease is renewed, this Lease shall automatically terminate at the end of the applicable Renewal Term.

15.02 **Default by Lessee.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee or Authority:

- (A) The failure of Lessee to construct Lessee's Improvements in accordance with the terms, covenants, and conditions of this Lease. Notwithstanding, if the nature of Lessee's breach in this regard is such that more than thirty (30) days after written notice from Authority to Lessee is required to complete performance, then Lessee shall not be in default if Lessee commences performance within such thirty (30) day period and continues thereafter without interruption to diligently prosecute an absolute cure to completion. This provisional extension of time to cure shall not apply to any other event or form of breach by Lessee.
- (B) The abandonment (as that term is defined under applicable law) of the Premises by Lessee.

- (B) The failure by Lessee to make payment of rent or any other payment required to be made by Lessee hereunder as and when due, where such failure shall continue for a period of ten (10) days after written notice from Authority that such payment is due.
- (C) The failure by Lessee to maintain in full force and effect, the insurance limits, coverages, and endorsements required by this Lease.
- (D) The failure by Lessee to observe or perform any other covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where such failure continues for a period of thirty (30) days after written notice thereof from Authority.
- (E) To the extent permitted by law, (a) the making by Lessee or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Lessee, the same is dismissed within ninety (90) days; (c) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within ninety (90) days; or (d) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within ninety (90) days.
- (F) A material default by Lessee of any other agreement, permit or lease between Authority and Lessee, which default has not been cured within the applicable cure period provided in such agreement, permit, or lease.

In the event of the Lessee default, Authority shall have the right to pursue any remedy now or hereafter available to Authority under the laws of the state of Florida, including, but not limited to, the right to terminate this Lease.

15.03 Remedies. Pursuant to Section 15.02, in the event of any material default or breach by Lessee, Authority may at any time thereafter, with notice or demand and without limiting any other right or remedy which Authority may have under the law by reason of such default or breach, elect to exercise any one of the following remedies while concurrently taking all reasonable steps to mitigate all its damages:

- (A) Declare the entire rent for the balance of the Initial Term, Renewal Term, or any part thereof due and payable while subtracting any rent that it has received or will receive through another Lessee on the same Premises forthwith.
- (B) Terminate Lessee's right to possession of the Premises by any lawful means and reenter and retake possession of the Premises for the account of Lessee, in which

case the rent and other sums hereunder shall be accelerated and due in full and Lessee shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Authority is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by Lessee. Upon such reletting, all rentals received by Authority shall be applied, first to the payment of any indebtedness other than rent due hereunder from Lessee; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Authority due to Lessee's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by Authority relating to the unexpired Term of this Lease; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be paid to Lessee.

- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of Authority, thereby terminating any further liability under this Lease on the part of Lessee and Authority. Notwithstanding the foregoing, Authority shall have a cause of action to recover any rent remaining unpaid when Authority retakes possession of the Premises for the account of Authority.
- (D) Pursue any other remedy now or hereinafter available to Lessor under the laws of the State of Florida and including revoking and all badges issued per the Rules and Regulations for Sarasota Bradenton International Airport.
- (E) Notwithstanding any provision of this Lease to the contrary, Authority shall have the right to bring an action for its damages upon the occurrence of a default by Lessee and Authority reserves all rights which laws of the State of Florida confer upon a landlord against a Lessee in default. In the event legal action is required hereunder to enforce the rights of the parties pursuant to this Lease the prevailing party in such action shall be entitled to recover costs and attorney's fees, including appellate fees.

15.04 Default by Authority. Authority shall not be in default unless Authority fails to perform obligations imposed upon Authority hereunder within thirty (30) days after written notice by Lessee to Authority, specifying wherein Authority has failed to perform such obligations; provided, that if the nature of Authority's obligations is such that more than thirty (30) days are required for performance then Authority shall not be in default if Authority commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of the Authority's default, Lessee shall have the right to pursue any remedy now or hereafter available to Lessee under the laws of the state of Florida, including, but not limited to, the right to terminate this Lease.

15.05 Surrender of Premises. Lessee expressly agrees that it shall immediately surrender the Premises to Authority in working order, good condition, and in compliance with all then applicable laws, rules, and regulations, upon expiration or termination of this Lease, depreciation, and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Lessee shall

holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Lessee shall be liable to Authority for all damages, and in addition thereto, Lessee shall also be strictly liable to pay to Authority during the entire time of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Lessee shall remove all its personal property from the Premises prior to the expiration or earlier termination of this Lease. Any personal property of Lessee not removed by Lessee shall become the property of Authority.

**Article 16 - Assignment, Transfer and Subletting**

Lessee shall not assign or sublet this Lease either in whole or in part, without prior written consent of Authority. No request for, or consent to, such assignment shall be considered unless Lessee shall have paid all rentals, fees, and charges which have accrued in favor of Authority and Lessee shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Lease or as this Lease may be subsequently amended or modified. Authority reserves the right to investigate the financial capacity of the proposed assignee prior to making its decision. No capital stock of any Lessee and no partnership or membership interest of any partnership or limited liability entity can be assigned, sold, or transferred without Landlord's consent, which shall not unreasonably be withheld. Notwithstanding, Lessee may freely assign less than a controlling interest to a related corporate entity (defined as sharing some commonality of direct or indirect ownership interest with Lessee).

**Article 17 - Indemnification**

Lessee shall protect, defend, reimburse, indemnify and hold Authority and its elected officers, employees and agents and each of them free and harmless at all times from and against any and all liability, losses, expenses, costs, suits, claims, judgments, fines and damages (including reasonable attorney fees at trial and appellate levels) and causes of action of every kind and character (hereinafter collectively referred to as, "Damages"), or in which Authority is named or joined, arising out of Lessee's or a Lessee Party's use or occupancy of the Premises or Airport by Lessee or a Lessee Party, including, but not limited to, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third party or other Person whomsoever, or any governmental agency, arising out of or incident to or in connection with the condition of the Premises caused by Lessee, Lessee's or a Lessee Party's acts, omissions or operations at the Airport, or the performance, non-performance or purported performance of Lessee or any breach by Lessee or any Lessee Party of the terms of this Lease. Each party shall give to the other reasonable notice of any such claims or actions. Lessee recognizes the broad nature of this indemnification and hold-harmless clause and acknowledges that Authority would not enter into this Lease without the inclusion of such clause, and voluntarily make this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

**Article 18 - Signage Outside of Premises**

No signs, posters, or similar devices shall be erected, displayed, or maintained by Lessee outside the Premises on other areas of the Airport or on the Premises that are visible in any way off the Premises without the written consent of Authority, which consent may be granted or withheld in Authority's sole

and absolute discretion. All signs not approved by Authority shall be promptly removed at the sole cost and expense of Lessee upon written demand therefore by Authority.

**Article 19 - Laws, Regulations and Permits**

19.01 General. Lessee agrees that throughout the Term and any extension thereof, Lessee shall always remain in compliance with all applicable federal, state, and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature, as now or hereafter amended or promulgated, including, but not limited to, FAA Advisory Circulars, Orders and Directives, and the Airport Rules and Regulations.

19.02 Permits and Licenses. Lessee agrees that it shall, at its sole cost and expense, obtain, comply with, and maintain current all permits, licenses and other governmental authorizations required for its operations and activities on the Premises. Upon the written request of Authority, Lessee shall provide Authority with copies of all permits and licenses requested by Authority pursuant to this Section.

19.03 Air and Safety Regulation. Lessee shall conduct its operations and activities under this Lease in a safe manner and shall comply with all safety regulations and standards imposed by applicable federal, state, and local laws and regulations and shall require the observance thereof by Lessee Parties and all other Persons transacting business with or for Lessee resulting from, or in any way related to, the conduct of Lessee's business on the Premises. Lessee shall procure and maintain such fire prevention and extinguishing devices as required by Authority and by law and shall always be familiar and comply with the fire regulations and orders of Authority. Lessee agrees that neither Lessee, nor its employees or contractors or any person working for or on behalf of Lessee, shall require any personnel engaged in the performance of Lessee's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as now or hereafter amended, as well as all applicable State and local laws, regulations, and orders relative to occupational safety and health.

19.04 Environmental and Natural Resource Regulations.

- (A) Notwithstanding any other provision of the Lease to the contrary, Lessee hereby expressly covenants, warrants, guarantees and represents to Authority, upon which Authority expressly relies, that Lessee is knowledgeable of, and shall comply with, all Environmental Laws applicable to Lessee and its operations hereunder.
- (B) Lessee acknowledges and understands that its operations performed pursuant to this Lease may involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, which are, or may be, subject to regulation under applicable Environmental Laws. Lessee further expressly covenants, warrants, guarantees, and represents that it is fully qualified to handle and to arrange disposal of all such Hazardous Substances, in a manner which is both safe and in full compliance with all applicable Environmental Laws.
- (D) Lessee hereby expressly assumes and accepts full responsibility and liability for

compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Lessee's operations conducted on the Premises and Lessee shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter thereof. Lessee further represents, warrants, guarantees and covenants to Authority, upon which Authority hereby expressly relies, that Lessee, its employees, agents, contractors, and those Persons that are required to be so trained working for, or on behalf of, Lessee have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.

- (E) Lessee shall provide to Authority satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by Authority.
- (E) If Lessee is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - (1) Lessee shall obtain an EPA identification number and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in compliance with Environmental Laws.
  - (2) Lessee shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, or, in the alternative, copies of hazardous waste manifests, available always for inspection upon reasonable advance notice at any time on the Premises by Authority.
  - (3) Lessee shall notify the Authority, and such other appropriate agencies as Authority may from time to time designate, of all hazardous waste activities occurring at the Premises so that it shall be included as an Authority Generator of such waste.
  - (4) Lessee shall provide to the Authority, and to all appropriate governmental entities having jurisdiction thereover, the name and telephone number of Lessee's emergency coordinator in case of any spill, leak, or other emergency involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Lessee shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal,

restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by the Lessee Parties on or from the Premises. All such remedies of Authority about environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.

- (G) Lessee agrees to protect, defend, reimburse, indemnify, and hold Authority, its agents, employees, and elected officers harmless from and against all Damages arising from, resulting out of or in any way caused by or connected to the Lessee Parties' failure to comply with all applicable Environmental Laws. Lessee understands that this indemnification is in addition to and is a supplement of Lessee's indemnification agreement set forth in Article 19. Lessee acknowledges the broad nature of this indemnification and hold-harmless clause and that Authority would not enter this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease.

**19.05 Environmental Assessment.** At least thirty (30) days, but no more than ninety (90) days, prior to the expiration or earlier termination of the Lease, Lessee shall cause a Phase I environmental assessment ("Phase I ESA") of the Premises to be prepared and delivered to Authority. If the Phase I ESA indicates that there is a potential that an environmental condition may exist on the Premises or the adjacent property based on activities that have occurred or are occurring on the Premises, Lessee shall promptly cause a Phase II environmental assessment ("Phase II ESA") of the Premises to be prepared and delivered to Authority. The Phase I ESA and Phase II ESA shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to Authority, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Premises. The Phase I ESA and Phase II ESA shall state that Authority is entitled to rely on the information set forth therein. The Phase I ESA and Phase II ESA shall be prepared and delivered to Authority at Lessee's sole cost and expense. The Phase II ESA must address any potential environmental conditions or areas of contamination identified in the Phase I ESA. To the extent the environmental conditions and/or contamination identified in the environmental assessments are a result of Lessee Parties' activities or operations on the Premises, Lessee shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of the Lease relating to the condition of the Premises and shall survive the termination or expiration of the Lease.

#### **Article 20 - Americans with Disabilities Act**

Lessee shall comply with the applicable requirements of the Americans with Disabilities Act and the State of Florida Accessibility Requirements Manual, and applicable implementing regulations, and any similar or successor laws, ordinances, rules, and regulations, including cooperation with Authority,

concerning the same subject matter.

**Article 21 - Disclaimer of Liability**

AUTHORITY HEREBY DISCLAIMS, AND LESSEE HEREBY RELEASES AUTHORITY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY LESSEE PARTIES DURING THE TERM OF THIS LEASE OR ANY EXTENSION HEREOF FOR LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF LESSEE PARTIES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES. FURTHERMORE, LESSEE ACKNOWLEDGES AND AGREES THAT ITS RELIANCE OR USE OF ANY INFORMATION PROVIDED BY AUTHORITY, WHETHER PREPARED OR PROVIDED BY AUTHORITY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS LEASE WAS AT ITS SOLE RISK. UNDER NO CIRCUMSTANCE SHALL AUTHORITY BE LIABLE FOR SPECIAL OR EXEMPLARY DAMAGES OR FOR LOSS OF REVENUE OR ANTICIPATED PROFITS.

**Article 22 - Governmental Restrictions**

22.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes, for a period more than ninety (90) consecutive days then this Lease shall terminate, and Authority shall be released and fully discharged from all liability hereunder. Lessee's obligation to pay rent shall cease upon termination; however, nothing herein shall be construed as relieving Lessee from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

22.02 Federal Review. Lessee acknowledges this Lease may be subject to review or inspection by the FAA to determine satisfactory compliance with federal law or grant assurances and agrees that this Lease shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Lease which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.

22.03 Authority Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of Authority, as a political subdivision of the State of Florida, or any of the public officials of Authority, City of Sarasota, Sarasota County, Florida, or Manatee County, Florida, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Lessee.

22.04 Height Restriction. Lessee expressly agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height to comply with Title 14, Part 77 of the Code of Federal Regulations, as now or hereafter amended.

22.05 Right of Flight. Authority reserves unto 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 said airspace such noise as may be inherent in the operations



of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.

22.06 Operation of Airport. Lessee expressly agrees for itself, its sublessees, successors and assigns to prevent any use of the Premises that would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard; provided that the operation of the Premises for the uses permitted under this Lease in accordance with the terms and conditions of this Lease and the Minimum Standards shall not be deemed to interfere with or adversely affect the operation, maintenance of development of the Airport or otherwise constitute an Airport hazard.

22.07 Release. Lessee acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases Authority from all liability relating to the same.

22.08 Nonexclusive Rights. Notwithstanding any provision of this Lease to the contrary, Lessee understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that Authority may grant similar privileges to another Lessee or other Lessees on other parts of the Airport.

22.09 Hazardous Wildlife Attractants. Lessee acknowledges that water detention and retention areas are considered wildlife attractants and shall request the approval of Authority prior to constructing a water detention or retention area within the Premises. If approved by Authority, water detention or retention areas shall follow the siting, design, and construction requirements of the Authority. Lessee further agrees to comply with the provisions of Federal Aviation Administration Advisory Circular No. 150/5200-33B, as now or hereafter amended, as such circular is interpreted by the Authority.

22.10 Subordination to Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which Authority acquired the land or any improvement thereon, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Lessee understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between Authority and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

#### **Article 23 - Non-Discrimination**

23.01 Non-Discrimination in Authority Contracts. Lessee warrants and represents to Authority that all its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Lessee has submitted to Authority a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Lessee does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to Authority affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

23.02 Federal Non-Discrimination Covenants.

- (A) Lessee, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- (1) In the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - (2) No person on the ground of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Authority property, including, but not limited to, the Premises.
  - (3) In the construction of the Improvements on, over, or under the Premises and the furnishing of services thereon, no person on the ground of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
  - (4) Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Authorities.
- (B) In the event of breach of any of the above nondiscrimination covenants, Authority shall have the right to terminate this Lease and to enter, re-enter, and repossess the Premises, and hold the same as if this Lease had never been made or issued. This Lease shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.
- (C) For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally Assisted Programs at the Federal Aviation Administration, as may be amended.

**Article 24 - Failure of Utility Systems**

Authority shall not be responsible or liable to Lessee for any claims for compensation or any

losses, damages or injury whatsoever sustained by Lessee including, but not limited to, those resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of Authority. All personal property placed on or moved on to the Premises shall be at the sole risk of Lessee. Authority shall not be liable for any damage or loss of any personal property placed or moved on to the Premises

**Article 25 - Subordination to Bond Resolution**

From time to time the Authority may participate in obtaining financing through the issuance of bonds whereby a bond resolution is adopted ("Bond Resolution.") Authority reserves the right to enter into such bond financing. When this occurs, the lands of the Authority may be pledged or assigned to support the financing transaction. This Lease and all rights granted to Lessee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Authority in the Bond Resolution, and Authority and Lessee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of Authority hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Lessee and Authority with the terms and provisions of this Lease and Bond Resolution.

**Article 26 - Waiver of Jury Trial**

The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Authority and Lessee, Lessee's use or occupancy of the Premises and/or building, and/or claim or injury or damage.

**Article 27 - Miscellaneous**

27.01 Force Majeure. Any delay in or a failure of performance by Lessee in the performance of its obligation under this Lease to construct the Improvements shall not constitute a default under this Lease to the extent that such delay or failure of performance could not be prevented by Lessee's exercise of reasonable diligence and results from: (a) acts of God, (b) fire or other casualty, (c) war, (d) public disturbance, (e) failure of the Authority, FAA or other governmental entity with oversight over the Premises to issue or deliver any permit, license or consent needed for the construction of the Improvements through no fault, delay, action, or inaction of Lessee, (f) and/or strikes or other labor disturbances in the Sarasota/Manatee area not attributable to the failure of Lessee to perform its obligations under any applicable labor contract or law and directly and adversely affecting Lessee (any, a "Force Majeure Event"). In no event shall the inability to obtain financing be deemed to be a Force Majeure Event.

27.02 Waiver. The failure of either party to insist on a strict performance of any of the agreements, terms, covenants, and conditions hereof shall not be deemed a waiver of any rights or remedies that the non-defaulting party may have for any subsequent breach, default, or non-performance, and the non-defaulting party's right to insist on strict performance of this Lease shall not be

affected by any previous waiver or course of dealing.

27.03 Easement. Nothing in this Lease shall impair any existing utility easements, nor impair the Authority's right of access to any existing utility lines. Authority reserves the right to grant utility easements, licenses, and rights-of way to others over, under, through, across or on the Premises; provided, however, that such grant or the use of any easement, license, or right of way does not interfere with Lessee's operations or reduce the value of the Improvements. Authority shall restore the Property and the Premises to its condition prior to the date Authority granted any such easement, license, or right-of-way if any construction is performed in connection with any of the foregoing.

27.04 Independent Contractor. Lessee or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority shall in no way be responsible therefor.

27.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit the Authority's governmental authority as a body politic of the State of Florida to regulate Lessee or its operations. The Authority's obligations under this Lease are made in a proprietary capacity rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair the Authority's governmental functions, including, but not limited to, the Authority's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the Authority's governmental authority.

27.06 Consent and Action. Whenever this Lease calls for an approval, consent or authorization by the Authority or Authority, such approval, consent, or authorization shall be evidenced by the written approval of the CEO/President or his or her designee. In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the reasonable discretion of Authority or Authority.

27.07 Rights Reserved to the Authority. All rights not specifically granted Lessee by this Lease are reserved to Authority.

27.08 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause, or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

27.09 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

27.10 Venue. Venue in any action or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Sarasota or Manatee County, Florida.

27.11 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States

Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused, or the notice designated by the postal authorities as non-deliverable. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Authority:

Chief Executive Officer  
Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, FL, 34243

With a copy to:

Properties & Legal Affairs  
Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, FL, 34243

Lessee:

DJG SRQ HANGAR, LLC  
Attn. David J. Grain, Mgr  
100 N. Washington Blvd, Ste 301  
Sarasota, FL 34236

With a copy to:

Hendee, McKernan, Schroeder,  
Wilkerson & Hendee, P.A.  
Attn. Lisa H. Wilkerson, Esq.  
1700 South MacDill Ave. Suite 200  
Tampa, FL 33629

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon ten (10) days prior written notice to the other party.

27.12 Paragraph Headings. The heading of the various articles and sections of this Lease, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

27.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Authority without the Authority's consent.

27.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.

27.15 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. If any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

27.16 No Broker. Lessee represents and warrants that Lessee has not dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease and further agrees to indemnify, defend, and hold harmless Authority from and against any claims or demands of any such salesperson, agent, finder, or broker claiming to have dealt with Lessee. The foregoing indemnification shall include all costs, expenses, and fees, including reasonable attorney's fees at trial and all appellate levels,

expended, or incurred in the defense of any such claim or demand.

27.17 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Lessee certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Authority of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

27.18 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Lessee certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Authority determines, using credible information available to the public, that a false certification has been submitted by Lessee, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

27.19 Budgetary Funding. Any obligations of Authority that require financial funding are subject to and contingent upon annual budgetary funding and appropriations by the Sarasota Manatee Airport Authority Board.

27.20 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded, or otherwise altered except by written instrument executed by the parties hereto.

27.21 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by such reference.

27.22 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 Florida. Additional information regarding radon and radon testing may be obtained from Authority's public health unit.

27.23 No Third-Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Lease, including, but not limited to, any citizen or employees of Authority and/or Lessee.

27.24 Time of the Essence. Time is of the essence of this Lease; and in case Lessee shall fail to perform the covenants or conditions on its part to be performed at the time fixed for the performance of such respective covenants or conditions by the provisions of this Lease, Authority may declare Lessee to be in default of such Lease.

27.25 Survival. Notwithstanding any early termination of this Lease, Lessee shall remain

obligated hereunder to perform any duty, covenant or obligation imposed upon Lessee hereunder arising prior to the date of such termination.

27.26 Rights Reserved. Rights not specifically granted to Lessee by this lease are expressly and independently reserved to Authority. Authority expressly reserves the right to prevent any use of the described Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

27.27 Rent a Separate Covenant. Lessee shall not for any reason withhold or reduce Lessee's required payments of rent and other charges provided in this Lease, it being expressly understood and agreed by the parties that the payment of rent and additional rent is a covenant by Lessee that is independent of the other covenants of the parties hereunder.

27.28 Corporate Tenancy. If Lessee is a corporation or other organizational entity, the undersigned officer of Lessee hereby warrants and certifies to Authority that Lessee is an entity in good standing and is authorized to do business in the State of Florida and shall provide proof of good standing to Authority. The undersigned officer of Lessee hereby further warrants and certifies to Authority that he or she, as such officer, is authorized and empowered to bind the entity to the terms of this Lease by his or her signature thereto. Authority, before it accepts and delivers this Lease, shall require Lessee to supply it with a Sworn Statement on Public Entity Crimes, attached hereto and incorporated herein, and a certified copy of the entity resolution authorizing the execution of this Lease by Lessee.

(Continued on next page).

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

ATTEST:

SARASOTA MANATEE AIRPORT AUTHORITY,  
a body politic and corporate existing under the  
laws of the State of Florida

By: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
President & CEO

Signed, sealed, and delivered  
in the presence of two witnesses

LESSEE:  
DJG SRQ HANGAR, LLC, a Florida limited liability  
company

For Lessee:  
Margaret L. Gladstone  
Signature

[Signature] 4/12/2022  
Signature

Margaret L. Gladstone  
Print Name

\_\_\_\_\_  
David J. Grain

Executive Assistant  
Title

\_\_\_\_\_  
Manager

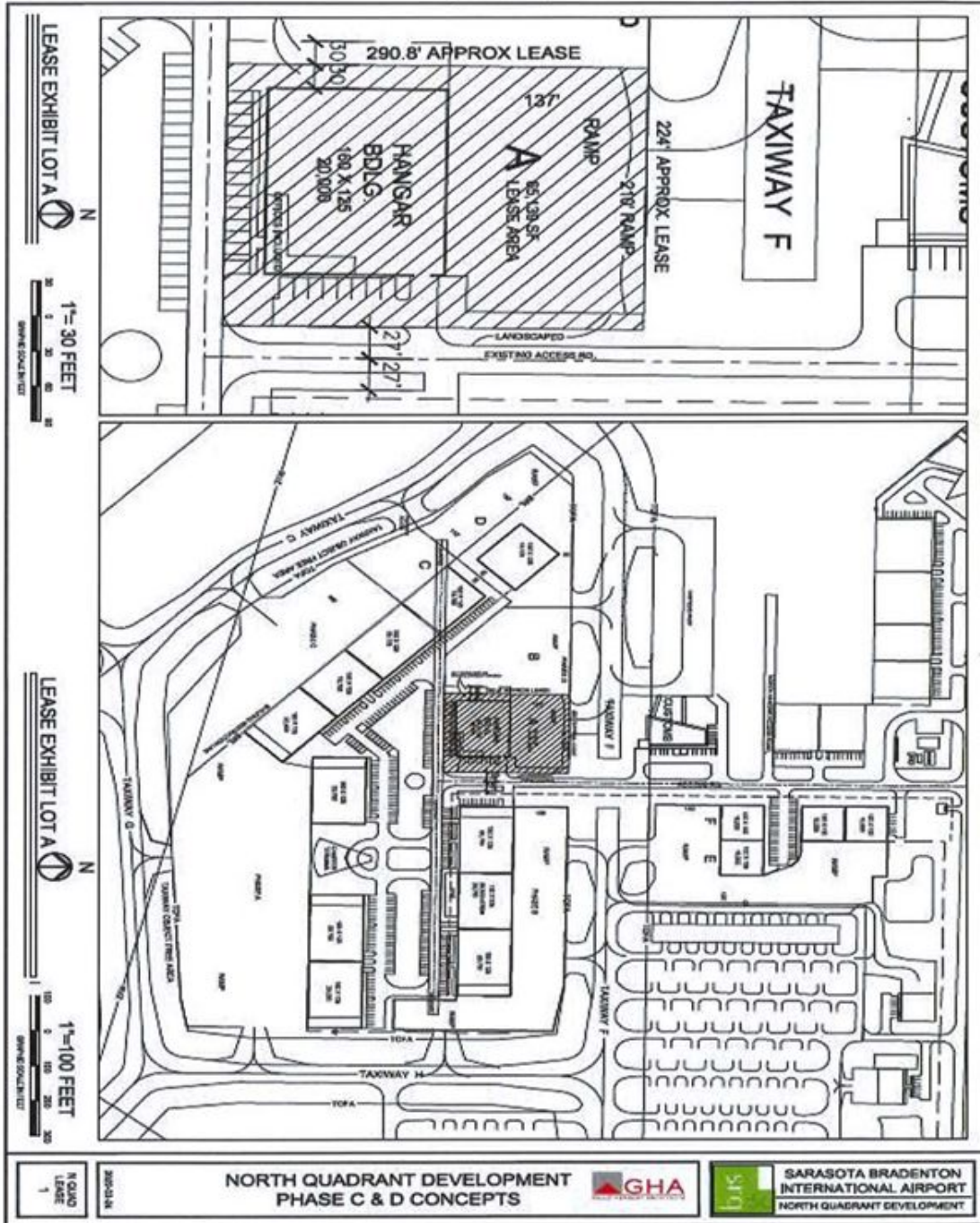
For Lessee:  
Donna DeFusco  
Signature

Donna DeFusco  
Print Name

Director of Property Management  
Title



**EXHIBIT A  
PREMISES**



**EXHIBIT B**  
**IMPROVEMENTS**

INSERTED TENANT CONSTRUCTION PERMIT WITH PLANS AND SPECS WHEN APPROVED BY AUTHORITY

**EXHIBIT C**

**SWORN STATEMENT PURSUANT TO SECTION 287.122(3)(A) FLORIDA STATUTE, PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to SARASOTA MANATEE AIRPORT AUTHORITY

by: David J. Grain  
(print individual's name and title)

for: DJG SRQ Hangar LLC  
(print name of entity submitting sworn statement)

whose business address is: 100 N Washington Blvd. #201  
Sarasota, FL 34236

and, (if applicable) its Federal Employer Identification Number (FEIN) is 88-0560356

(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement) \_\_\_\_\_

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, because of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

- (1) A predecessor or successor of a person convicted of a public entity crime; or
- (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months is considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate by placing a check (☐) in front of the appropriate statement. **(Check only one statement)**)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989. However, there was a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings, and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of final order)

(Continued on next page).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY, AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY, PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE AFFECTING THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS SWORN STATEMENT.

(Signature) 4/12/2022  
(Date)

David J. Grain  
(Printed Name)

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 12th day of April 2022, 2021 by David J. Grain who is  personally known to me or  has produced PK as identification.

Margaret L. Gladstone  
Signature of Notary Public

Margaret L. Gladstone  
Printed Name of Notary Public

My Commission Expires: 5/5/2022



## AGENDA ITEM NO. 6.9

**SARASOTA MANATEE AIRPORT AUTHORITY  
April 25, 2022, REGULAR MEETING  
STAFF NARRATIVE**

**REQUEST FOR APPROVAL:  
LEASE AND DEVELOPMENT AGREEMENT WITH SRQ HANGAR, LLC, FOR AIRCRAFT HANGAR DEVELOPMENT,  
AIRCRAFT SALES AND AIRCRAFT STORAGE**

---

---

**EXECUTIVE SUMMARY: Requesting Approval of a Lease and Development Agreement with SRQ Hangar, LLC, for approximately 2.01 Acres of Land at the Airport for Aircraft Hangar Development, Aircraft Sales, and Aircraft Storage.**

---

---

**NARRATIVE:** SRQ Hangar, LLC, ("SRQ Hangar) currently conducts aircraft sales and stores its private aircraft at and from a hangar and office located at the Dolphin Aviation FBO on the west side of the Airport. SRQ Hangar has requested to lease land at the Airport for aircraft hangar development to conduct aircraft sales and to store its private aircraft. The proposed location is approximately 100,554 SF, or approximately 2.01 acres, which includes approximately 87,438 SF of land for development plus the equivalent of approximately 13,116 SF of land for the nonexclusive usage of the Airport's offsite stormwater management facilities. The proposed site is "shovel ready" with infrastructure improvements, including roads, taxiways, utilities, storm water drainage, and rough graded.

The proposed initial term of the Lease is twenty (20) years with one ten-year renewal term that may be exercised by SRQ Hangar, subject to compliance with all terms, covenants, and conditions of the Lease. The proposed initial rental rate is 0.65/SF, or approximately \$65,360.10 per year, subject to adjustment based on the CPI every three years throughout the term of the Lease. The proposed initial term is twenty (20) years with one ten (10) year renewal term, commencing on the earlier of (a) the date of substantial completion of the improvements as evidenced by a certificate of occupancy; (b) the date Lessee commences using the premises (or any part thereof) for the storage of Aircraft (other than construction); or 24 months following effective date of the lease.

The proposed improvements include a minimum of 20,000 SF of aircraft hangar storage, 20,000 SF of aircraft apron, and a required taxi lane connector. Based on the terms of the proposed Lease, ownership of the improvements will convert to the Airport Authority at the end of the initial term, and improvement rent will be assessed thereafter based on the appraisal value of the improvements.

Based on the proposed terms and conditions presented, the President and CEO recommends approval of the Lease and Development Agreement with SRQ Hangar, LLC, as presented.

---

---

**RECOMMENDATION: It is hereby recommended that the Sarasota Manatee Airport Authority Board approve the Lease and Development Agreement with SRQ Hangar, LLC.**

---

---

**ATTACHMENTS:** Proposed Lease and Development Agreement with SRQ Hangar, LLC.

**LEASE AND DEVELOPMENT AGREEMENT  
BETWEEN  
SARASOTA MANATEE AIRPORT AUTHORITY  
AND  
SRQ HANGAR, LLC**

THIS LEASE AND DEVELOPMENT AGREEMENT (this "Lease") is made and entered into by and between the **SARASOTA MANATEE AIRPORT AUTHORITY**, a body politic and corporate existing under the laws of the State of Florida ("Authority"), and **SRQ HANGAR, LLC**, a Limited Liability Company organized under the laws of the State of Florida ("Lessee").

**WITNESSETH:**

**WHEREAS**, Authority, owns and operates the Sarasota Bradenton International Airport ("Airport"), located in Sarasota County and Manatee County, Florida; and

**WHEREAS**, Authority is permitted to negotiate the lease of land and facilities at the Airport pursuant to the Florida Statutes, and

**WHEREAS**, Lessee desires to enter into a lease with Authority for use of land at the Airport for Aircraft Sales, as defined in the Minimum Standards for Aeronautical Activities at the Airport, and for the storage of Lessee's Private Aircraft, as defined in the Rules and Regulations for the Airport;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

**Article 1 - Recitals/Effective Date**

The foregoing recitals are true and correct and are hereby incorporated herein by reference. This Lease shall become effective when approved by the Sarasota Manatee Airport Authority Board and signed by all parties ("Effective Date").

**Article 2 - Definitions**

The following words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms, and phrases.

2.01 "Adjustment Date" has the meaning set forth in Section 5.05.

2.02 "Airport" means the Sarasota Bradenton International Airport located in Sarasota and Manatee Counties, Florida.

2.03 "Airport Common Areas" includes, but are not limited to certain, aircraft movement areas, aprons, taxiway, taxi lanes, roadways, parking lots, sidewalks, lighting, fencing, security gates, drainage pipes, retention systems, retention ponds, landscaping, signage, utilities, and other related facilities, equipment, and infrastructure not located on the Premises, available for use in common with others on the Airport, necessary for Lessee's use of the Premises.

2.04 "Airport Rules and Regulations" means the Rules and Regulations for Sarasota Bradenton International Airport, dated March 20, 2019, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport.

2.05 "Appraisal Adjustment Date" has the meaning set forth in Section 5.05.

2.06 "Base Rental" means (a) the initial annual Land Rent provided in Section 5.01; and (b) the initial annual Improvement Rent established on the dates provided in Section 5.02 for the Improvements. The Base Rental shall be adjusted as provided in Section 5.04 and 5.05 on the Appraisal Adjustment Dates.

2.07 "Base Year" For all rental adjustments occurring before the first Appraisal Adjustment Date, Base Year means the initial twelve-month period of the Lease starting with the Commencement Date. After the first Appraisal Adjustment Date, the Base Year shall be the lease year that began on the most recent Appraisal Adjustment Date.

2.08 "Board" means the Board of the Sarasota Manatee Airport Authority, Florida.

2.09 "CEO/President" means the CEO/President of the Sarasota Manatee Airport Authority.

2.10 "Commencement Date" has the meaning set forth in Section 3.01.

2.11 "Consumer Price Index" has the meaning set forth in Section 5.04.

2.12 "Damages" has the meaning set forth in Article 17.

2.13 "Derelict Aircraft" means an aircraft, stored in the open, that:

- (A) Does not hold a current and valid airworthiness certificate issued by the FAA, or other appropriate aircraft certifying authority, together with necessary aircraft registration and maintenance records with a current endorsement by an appropriately rated certificate holder that the aircraft is in an airworthy condition; or
- (B) Has been issued a condition notice by the FAA or other appropriate aircraft certification authority that specifies that the aircraft has one or more conditions which render it not airworthy; or
- (C) Has had major components, accessories, flight controls, portions of the airframe or engines removed to render the aircraft not airworthy.



2.14 "Derelict Vehicle" means a vehicle designed for use on the roadways that is in a wrecked, dismantled or partially dismantled condition, or which is in an inoperable condition.

2.15 "Effective Date" shall have the meaning set forth in Article 1.

2.16 "Environmental Laws" means all applicable federal, state, or local laws, statutes, ordinances, rules, regulations, and governmental restrictions relating to the protection of the environment, human health, welfare, or safety, or to the emission, discharge, seepage, or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater, or land, or otherwise relating to the handling of such Hazardous Substances.

2.17 "FAA" means the Federal Aviation Administration.

2.18 "Hazardous Substances" means any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.

2.19 "Improvements" has the meaning set forth in Section 6.01.

2.20 "Improvement Rent" has the meaning set forth in Section 5.02.

2.21 "Initial Term" has the meaning set forth in Section 3.01.

2.22 "Inspection Period" has the meaning set forth in Section 3.03(B).

2.23 "Inspections" means any inspections and tests that Lessee deems appropriate with respect to the Premises, including, but not limited to, the following: (a) physical inspection of the Premises; (b) soil investigation; (c) environmental assessment; (d) topographic studies; and (e) engineering, utilities, and site planning studies.

2.24 "Land Rent" is the rent payable by Lessee for the ground being leased by Authority to Lessee. See Section 5.01.

2.25 "Lease" means this Lease as now or hereafter amended, and all exhibits attached hereto, which are incorporated herein by reference. Words such as "herein," "hereafter," "hereof," "hereby" and "hereunder" when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.

2.26 "Leasehold Mortgage" has the meaning set forth in Section 13.01.

2.27 "Letter of Credit" has the meaning set forth in Section 5.08.

2.28 "Minimum Standards" means the Minimum Standards for Aeronautical Activities for Sarasota Bradenton International Airport adopted by the Authority on March 26, 2018, as now or hereafter amended, and any successor minimum standards for aeronautical activities adopted for the Authority.

- 2.29 "Non-Discrimination Authorities" has the meaning set forth in Section 23.02(C).
- 2.30 "Person" includes a partnership, joint venture, association, corporation, limited liability company, trust, or other entity, or, where the context so permits or requires, a natural person.
- 2.31 "Plans" has the meaning set forth in Section 6.04.
- 2.32 "Pre-existing Environmental Condition" means the presence of Hazardous Substances in violation of Environmental Laws on, in or under the Property (including soil, groundwater, and soil vapor) because of the discharge, release, disposal, storage, treatment, migration or any other activities occurring prior to the Effective Date of this Lease.
- 2.33 "Premises" means the Property described on Exhibit A and all Improvements now or hereafter constructed thereon, subject to easements, rights-of-way, and any other encumbrances of record.
- 2.34 "Private Aircraft" means aircraft privately-owned and non-commercially operated by the owner or owners, or an entity related to the owner and operated under Part 91 of the Federal Aviation Regulations ("FARs"); or an aircraft used by the owner or an entity related to the owner and operated under Part 91 of the FARs, in connection with an owner's business, comparable to an owner's business use of his private automobile; or an aircraft owned and operated by a company or corporation for the free transportation of its or other personnel and/or products;
- 2.35 "Property" means the real property described on Exhibit "A", subject to easements, rights-of-way, and any other encumbrances of record, excluding any exiting improvements constructed thereon.
- 2.36 "Renewal Term" has the meaning set forth in Section 3.02.
- 2.37 "Security Deposit" has the meaning set forth in Section 5.08.
- 2.38 "Lessee Parties" means Lessee and its sublessees, contractors, suppliers, employees, officers, licensees, agents, and invitees.
- 2.39 "Term" means the Initial Term and any Renewal Term.
- 2.40 "TSA" means the Transportation Security Administration of the Authority of Homeland Security and its authorized successors.

### Article 3 - Commencement Date/Term

3.01 Initial Term. The initial term of this Lease shall commence on the first of the following event to occur: (a) the date of substantial completion of the Improvements as evidenced by a certificate of occupancy; (b) the date Lessee commences using the Premises (or any part thereof) for the storage of Private Aircraft (other than construction); or c) twenty-four (24) months immediately following the

Effective Date of this Lease (collectively, the "Commencement Date"), and shall terminate twenty (20) years after the Commencement Date ("Initial Term"), unless sooner terminated pursuant to the terms of this Lease. As used herein, "Lease Year" shall mean the period beginning on the Commencement Date and ending on the last day of the previous calendar month one year later; successive Lease Years shall be the annual periods immediately succeeding the end of the first Lease Year.

3.02 Renewal Term. Provided Lessee is not in default beyond any applicable cure period as to any of the terms or conditions of this Lease, Lessee shall have the option to renew this Lease for one (1) additional period of ten (10) years ("Renewal Term") by notifying Authority in writing of Lessee's intent to exercise its option to renew not later than one hundred eighty (180) days prior to the expiration of the Initial Term. During a Renewal Term all provisions of the Lease shall remain in full force and effect except as specifically set forth herein. The renewal term is limited to those described in this Article 3.02.

3.03 Inspections.

- (A) From and after the Effective Date and up to the Commencement Date, Lessee shall have the right to use and occupy the Premises for the installation and construction of the Improvements subject to the terms and conditions of this Lease.
- (B) From and after the Effective Date and expiring ninety (90) days thereafter ("Inspection Period"), Lessee may conduct any Inspections that Lessee deems appropriate with respect to the Premises. All Inspections performed hereunder shall be conducted at Lessee's sole cost and expense and shall be performed by licensed Persons dealing in the respective areas or matters. Lessee agrees to indemnify Authority from and against all losses, damages, costs, expenses and/or liability of whatsoever nature arising from or out of a Lessee Party's entry upon and inspection of the Premises. Lessee's obligation to indemnify Authority pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Lessee shall provide Authority with one (1) complete copy of all written reports detailing the results of the Inspections obtained by Lessee hereunder.
- (C) If the results of any of such inspections, analyses or reviews made or caused to be made by Lessee are, for any reason, in Lessee's reasonable discretion, unsatisfactory to Lessee or if environmental assessment(s) reveal the presence of a Pre-existing Environmental Condition not acceptable to Lessee, Lessee may elect to terminate this Lease upon written notice to Authority on or before the expiration of the Inspection Period. In the event Lessee fails to properly exercise its right to terminate this Lease pursuant this Section, Lessee shall be deemed to have waived such right and accepted the Premises "As Is" in its then existing condition, subject to all defects, latent or patent, if any; provided, however, that Lessee's acceptance of the Premises will not limit Authority's obligations with respect to any Pre-existing Environmental Condition for which Authority has taken responsibility pursuant to Section 3.03 (D). In the event Lessee terminates this Lease pursuant to this Section, Lessee, at its sole cost and expense, shall repair any damage resulting from the

Inspections and restore the Premises to the condition in which it existed prior thereto, using materials of like kind and quality.

- (D) Authority has provided Lessee with a Phase I environmental audit, dated January 4, 2022, prepared by Enviro-Audit & Compliance, Inc. which states the condition of the Premises on the effective date of the report ("Environmental Baseline Report"). Lessee understands that it is accepting the condition of the Premises as described in the Environmental Baseline Report.
- (E) Lessee may elect to have its own environmental inspections. If the Inspections of Lessee reveal a Pre-existing Environmental Condition that is not acceptable to Lessee, Lessee shall immediately notify Authority in writing during the Inspection Period of the Pre-existing Environmental Condition with a copy of the Inspection report(s). Authority may give written notice to Lessee within thirty (30) days of the expiration of the Inspection Period of its election to a) terminate this Lease or b) to assume the full responsibility and cost to remedy the identified Pre-existing Environmental Condition in accordance with Environmental Laws. If Authority provides written notice to Lessee of its election to remedy the identified Pre-existing Environmental Condition, concurrent therewith Authority shall further notify the Lessee in writing of the time required to remedy the Pre-existing Environmental Condition. Following notification by the Authority of the time required to remedy the Pre-existing Environmental Condition, Lessee may further elect to terminate this Lease upon thirty (30) days written notice to Authority.
- (F) The parties agree that there shall be a rebuttable presumption that any condition of the Premises identified after the expiration of the Inspection Period is not a Pre-existing Environmental Condition, and it shall be Lessee's burden to demonstrate such condition is a Pre-existing Environmental Condition. The parties acknowledge and agree that the means and methods of remedying any Pre-existing Environmental Condition shall be within the sole control and discretion of Authority. If Authority fails to provide written notice of its election to either terminate the Lease or to remedy the Pre-Existing Condition, the Lease shall be deemed terminated.
- (G) If a notice of termination is timely given by either party pursuant to this Section, or if the Lease is deemed terminated pursuant to this Section, the parties shall be relieved of all further liabilities and obligations under this Lease except for Lessee's indemnification obligations under Section 3.03(B) and Lessee's obligation to restore the Premises under Section 3.03(C).

#### **Article 4 - Premises and Privileges**

4.01 **Description of Premise.** Authority hereby demises and leases to Lessee, and Lessee hereby rents from Authority the Premise depicted on the attached Exhibit A, subject to all terms, conditions, and covenants set forth in the Lease. The parties hereto acknowledge and agree that Lessee shall obtain a

survey (the "Survey") of the Premises, at Lessee's expense, and Lessee shall provide the Survey to Authority, and thereafter, Exhibit A annexed hereto shall be substituted with the Survey.

4.02 Rights and Privileges. The rights granted hereunder are expressly limited to the construction, development, maintenance, and operation of the Premises for Aircraft Sales, as defined in the Minimum Standards for Aeronautical Activities for Sarasota Bradenton International Airport, dated March 26, 2018, as may hereafter be amended by Authority, and for storage of Lessee's Private Aircraft, as defined in the Rule and Regulations for Sarasota Bradenton International Airport, dated May 20, 2019, as may be amended hereafter by Authority, and pursuant to the terms, covenants, and conditions of this Lease. Lessee shall have the obligation to adhere to said Minimum Standards for Aeronautical Activities, Rule and Regulations, and terms, covenants, and conditions of this Lease at all times.

4.03 Prohibited Uses. Lessee agrees that the Premises shall be utilized solely for Aircraft Sales, as defined in the Minimum Standards for Aeronautical Activities for Sarasota Bradenton International Airport, dated March 26, 2018, as may hereafter be amended by Authority, and for storage of Lessee's Private Aircraft, as defined in the Rule and Regulations for Sarasota Bradenton International Airport, dated May 20, 2019, as may be amended hereafter by Authority. Lessee agrees that it shall not provide any commercial products or services without the prior approval of the Authority. Violation of the requirements of this Article 4 may result in suspension or revocation of Lessee access to the Premise, suspension or revocation of Airport security badges issued to Lessee, or termination of this Lease.

4.04 Additional Rights and Privileges. In addition to the rights and privileges granted by Article 4.02, above, Authority grants to Lessee the non-exclusive right and privilege to ingress, egress, and use in common with the Airport Common Areas of, which Airport Common Areas and the use by Lessee shall be subject to all terms, conditions, and covenants of this Lease.

Except as expressly set forth in this Section, nothing in this Lease shall be construed to grant or convey to Lessee the right to use any other area improved or unimproved outside of the Airport Common Areas which is leased to or under contractual control of a third party, or which Authority has not leased herein. Authority may at any time temporarily or permanently close, consent to or request the closing of any Common Area or other area on the Airport presently or hereafter used by Lessee or others, so long as a reasonable means of ingress and egress to the Premises is made available to Lessee. Lessee hereby releases and discharges Authority, its successors, and assigns, of and from all claims, demands or causes of action which Lessee may now or at any time hereafter have against Authority arising or alleged to arise out of the closing of any Common Area or other area on the Airport presently or hereafter used by Lessee or others so long as a means of ingress and egress to the Premises is made available to Lessee.

4.05 Compliance with Minimum Standards and Rules and Regulations. Lessee agrees to comply with the requirements set forth in the Minimum Standards for Aeronautical Activities and Airport Rules and Regulations for Sarasota Bradenton International Airport applicable to Lessee's tenancy throughout the Term of this Lease. In the event of a conflict between this Lease and the Minimum Standards or Rules and Regulations, Lessee acknowledges and agrees that the more stringent requirement shall apply to Lessee's operations hereunder.

4.06 Condition and Use of Premises. Subject to Lessee's rights to complete Inspections pursuant to Section 3.03 and any obligations of the Authority with respect to Pre-existing Environmental Conditions, Lessee accepts the Premises in its "AS IS CONDITION" and "WITH ALL FAULTS," together with all defects, latent and patent, if any. Lessee further acknowledges that Authority has made no representations or warranties of any nature whatsoever regarding the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any existing improvements located thereon; the value of the Premises or existing improvements; the zoning of the Premises; the suitability of the Premises or any improvements for Lessee's intended use; or Lessee's legal ability to use the Premises for Lessee's intended use

4.07 Grant of Right of Away. The parties recognize that there will be some utilization over certain portions of the Premises located outside the building to be located on the Premises by Authority and Authority's tenants located immediately adjacent, or in proximity to the Premises, for the sole purpose of temporary aircraft and vehicle movement that may occur at any time throughout the Term of this Lease, as may be amended. In consideration thereof, Lessee grants to Authority and Authority's tenants a limited right of way across all exterior paved surfaces located on the Premises, including aircraft aprons, taxiway connectors, taxi lanes, vehicle roadways, vehicle parking lots, and pedestrian sidewalks located thereon (the "Outside Premises"), for the sole purpose of the movement of aircraft, vehicles, and individuals across the Outside Premises, it being the intent that such right of way be used for traversing, arriving and departing and not for purposes of parking, repairing or refueling of aircrafts or vehicles unless in an emergency. Lessee further acknowledges and agrees to not obstruct or in any other way prevent at any time, except momentarily, the movement of aircraft, vehicles, or individuals across the Outside Premises. Lessee may at any time momentarily prevent access any portion of the Outside Premises to Authority or its tenants, so long as alternate means of ingress and egress over the Outside Premises is made available to Authority or its tenants. Except as expressly set forth herein, nothing in this Lease shall be construed in any way to grant or convey to Authority or Authority's tenants the right or privilege across any other portion of the Premises, except as provided for in this Lease.

#### **Article 5 - Rental, Fees, and Charges**

5.01 Land Rent. The Property being leased to Lessee is approximately 100,554 square feet, which includes approximately 87,438 square feet of land for development plus the equivalent of approximately 13,116 square feet for the nonexclusive usage of offsite stormwater management land and facilities. Beginning on the Commencement Date, Lessee shall pay Authority annual rent amount equivalent to Sixty-Five Cents (\$0.65) per square foot per annum ("Rental Rate") as Land Rent.

5.02 Improvement Rent.

- (A) Beginning on the first day of the twenty first (21<sup>st</sup>) Lease Year, Lessee shall commence payment of rent for the use of all Improvements ("Improvement Rent") constructed or placed upon the Premises. Accordingly, in the 21<sup>st</sup> Lease Year, if the Lessee has renewed the Lease, the Lessee shall pay both Land Rent and Improvement Rent.
- (B) Prior to the commencement of Improvement Rent, Authority shall cause a survey

of the Improvements to be prepared for the purpose of determining their square footage. The survey shall be prepared by a professional surveyor licensed in the State of Florida in accordance with the minimum technical standards for surveys within the State of Florida. Rent shall be established based on the total square footage of the Improvements as determined by such survey.

- (C) Improvement Rent to be paid by Lessee pursuant to this Section shall be determined by a fair market value appraisal. Authority may utilize the appraisal process set forth in Section 5.06 or may, at its sole option, elect to cause a separate appraisal of the Improvements, utilizing the same methodology for appraisals obtained pursuant to Section 5.06 to be performed, which may occur on a different date than the Adjustment Date; provided that the appraiser shall be an independent qualified M.A.I. appraiser, licensed in the State of Florida, with demonstrated experience in appraising comparable aviation real estate. Improvement Rent established pursuant to this Section shall be adjusted in accordance with Section 5.06. Any delay in establishing rents pursuant to this Section shall not constitute a waiver of or in any way impair the continuing obligation of Lessee to pay rent for the Improvements from the date provided in this Section.

5.03 Common Area Maintenance. The parties recognize that there will be some utilization throughout the Term of this Lease, as may be amended, by Lessee of certain facilities, equipment, and infrastructure not located on the Premise that is maintained by Authority, including, but not limited to, the maintenance of the Airport Common Areas ("Common Area Maintenance"). In consideration thereof, Lessee shall pay to Authority an amount equivalent to five percent (5%) of the then present Land Rent plus applicable sales tax as a contribution towards the Common Area Maintenance ("Common Area Maintenance Fee"). The Common Area Maintenance Fee shall be due and payable by Lessee to Authority monthly in twelve equal monthly installments which shall be submitted by Lessee to Authority concurrent with the Monthly Installments of Land Rent as stipulated in Article 5.04, below, and adjusted concurrently with the Adjustment of Rental Rate stipulated in Article 5.05, below.

5.04 Monthly Installments. Land Rent as defined shall be payable in equal monthly installments, in advance, without demand and without any deduction, holdback or set off whatsoever, by the first day of each month, as adjusted in accordance with Section 5.04 and Section 5.05 together with applicable sales tax. Any payment due hereunder for a fractional month shall be calculated and paid on a per diem basis, calculated based on the actual number of days in the month. Annual Land Rent shall be \$65,360.16 payable in monthly installments of \$5,446.68 subject to periodic adjustment as provided for in this Lease. All sums due hereunder shall be delivered to the Sarasota Manatee Airport Authority, Finance Department, at 6000 Airport Circle, Sarasota, Florida 34243, or at such other address as may be directed in writing by Authority from time to time.

5.05 Adjustment of Rental Rate by CPI. Commencing on the first day of the Fourth (4<sup>th</sup>) Lease Year and every three years thereafter including any Renewal Term ("Adjustment Date") the Rental Rate shall be adjusted to reflect the cost-of-living increase based upon the Consumer Price Index. At the time the calculation is being made the monthly index figure for the third calendar month immediately prior to

such Lease Year (the "Adjustment Level") shall be used. The monthly index figure for the same month in the twelve-month period immediately preceding the Base Year shall be referred to as the "Base Level." The new Rental Rate shall be computed by multiplying the Base Rental Rate of the Base Year by a fraction, the numerator of which shall be the Adjustment Level, and the denominator of which shall be the Base Level. Stated as a mathematical formula, the adjusted rent shall be computed as follows:

$$\text{Adjusted Rental Rate} = \frac{\text{Base Rental Rate of the Base Year} \times \text{Adjustment Level}}{\text{Base Level}}$$

In no event shall the Rental Rate in effect be decreased because of such adjustment. The annual Rent shall not increase by more than 9% percent over the annual Rent payable during the preceding three-year period, except on the Appraisal Adjustment Dates. This 9% cap shall not be applicable when Rent is being adjusted by appraisal. The Rental Rate following the adjustment shall remain in effect until the next Adjustment Date or Appraisal Adjustment Date. The cost-of-living index referred to herein shall be the Consumer Price Index (CPI) of all Urban Consumers, distributed by the Bureau of Labor Statistics of the U.S. Department of Labor. In the event said index ceases to be prepared and published, then the rental shall be adjusted in accordance with the most comparable index then in existence.

5.06 Adjustment of Rental Rate by Appraisal. Upon the first day of the Sixteenth (16th) Lease Year, and at the Commencement of any Renewal Term, (each such date an "Appraisal Adjustment Date"), the annual Land Rent and Improvement Rent, set forth in Sections 5.01 and 5.02, respectively, shall be adjusted and new annual Rent shall be determined as hereinafter set forth. Prior to each Adjustment Date, Authority shall select a qualified M.A.I. appraiser with demonstrated experience in appraising comparable aviation real estate, selected by the Authority, who shall appraise the Premises to determine its fair market rental value using comparable aviation facilities. The Authority shall submit to Lessee a written statement of the then current fair market rental values as established by the appraisal and annual Rental Rates provided for herein shall be adjusted to an amount equal to the values set forth in the appraisal. The adjusted annual Rental Rates shall be payable commencing on the Adjustment Date. (The parties acknowledge that under this Lease the Improvement Rent does not commence until the Renewal Term commences, and therefore only the Land Rent shall be adjusted by appraisal during the Initial Term of this Lease.)

This Lease shall automatically be considered amended, without formal amendment hereto, upon written notification by Authority of the Rental Rates established pursuant to this Section. Any delay or failure of Authority in computing the adjustment in Rental Rates, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Lessee to pay such adjusted annual Rental Rates from the applicable adjustment date. Notwithstanding any provision of this Lease to the contrary, annual Rental Rates shall not be adjusted to an amount less than the annual Rental Rates payable during the Lease Year immediately preceding the Rental Rate adjustment date.

The CPI adjustment as set forth in 5.04 above shall occur on the third anniversary of the Appraisal Adjustment Date, and every three years thereafter until the next Adjustment Date. After an Appraisal Adjustment Date, the CPI adjustment shall occur every three years after such Appraisal Adjustment Date.

5.07 Interest on Late Payments. Lessee shall pay to Authority interest at the maximum rate



permitted by law, but not more than one and one-half percent (1½ %) per month or eighteen percent (18%) per annum, on any late payments commencing ten (10) days after Rent is due. To the extent permitted by law, Lessee agrees that acceptance of late payments by Authority shall not constitute a waiver of Lessee's default by Authority with respect to such overdue amount, nor prevent Authority from terminating this Lease for default beyond applicable cure periods in the payment of rentals, fees, or charges due to Authority pursuant to this Lease or from enforcing any other provisions, rights, or remedies granted herein, or conferred by law. In the event Lessee delivers a worthless check or draft to Authority in payment of any obligation arising under this Lease, Lessee shall incur a service charge of One Hundred Dollars (\$100.00) or five percent (5%) of the face amount of such check, whichever is greater; or if Florida Statute section 832.07 is amended, such other fee as shall be set by said statute.

5.08 Security Deposit. Thirty (30) days prior to the Commencement Date, Lessee shall post a non-interest-bearing security deposit with Authority equal to twelve (12) monthly installments of Rent ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to Authority and shall also secure the performance of all obligations of Lessee to Authority. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance reasonably satisfactory to Authority. In the event of any failure by Lessee to pay any Rents or other fees and charges when due or upon any other failure to perform any of its obligations or other default under this Lease beyond applicable cure periods, then in addition to any other rights and remedies available to Authority at law or in equity, Authority shall be entitled to draw on the Security Deposit and apply same to all amounts owed.

Upon notice of any such draw, Lessee shall immediately replace the Security Deposit with a new Letter of Credit or Bond in the full amount of the Security Deposit required hereunder. Upon the request of Authority, Lessee shall increase the amount of the Security Deposit to reflect any increases in the sums payable hereunder within thirty (30) days after notification by Authority of any such increase. The Security Deposit shall be kept in full force and effect throughout the Term of this Lease and any extension thereof and for a period of six (6) months after the termination of this Lease. Not less than forty-five (45) calendar days prior to any expiration date of a Letter of Credit or Bond, Lessee shall submit evidence in form satisfactory to Authority that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this Section shall constitute a default of this Lease entitling Authority to all available remedies. The Security Deposit shall not be returned to Lessee or released by Authority until all obligations under this Lease are performed and satisfied. Prior to consent from Authority to any assignment of this Lease by Lessee, Lessee's assignee shall be required to provide a Security Deposit to Authority in accordance with the terms and conditions of this Section.

5.09 Absolute Net Lease. This Lease shall be deemed to be "absolute net" without cost or expense to Authority of any kind, including, but not limited to, cost and expenses relating to taxes, insurance, operation and maintenance of all Improvements and infrastructure located on the Premises.

5.10 Additional Remedies. Authority shall have the same rights to enforce due and timely payment by Lessee of all sums of money or charges required to be paid by Lessee under this Lease as are available to Authority with regards to Rent.

5.11 Taxes, Licenses and Fees. Lessee shall pay, on or before their respective due dates, all

federal, state and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises and the Improvements or the estate hereby granted, or upon Lessee, or upon the business conducted on the Premises, or upon any of Lessee's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes (based upon Lessee's pro rata share according to the area of the Premises if the Premises do not have their own separate tax bill), and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Lessee; provided, however, that Lessee shall have the right to contest or protest with the taxing authority any of the foregoing in accordance with applicable legal requirements. Authority agrees to reasonably cooperate with Lessee in such contest or protest. Authority also agrees to deliver to Lessee, promptly after receiving the same, but in any event at least thirty (30) days prior to the date such bills are due, any tax bills that Authority receives with respect to the Premises. Lessee shall maintain current all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. It is further provided that Lessee shall pay in full any tax or assessment which arose by reason of Lessee's use or occupancy of the Premises at any time after the Effective Date, including monthly payments to Authority for any sales, use, or other tax imposed pursuant to Florida Statutes, or any imposition in lieu thereof, now or hereinafter imposed upon the Rents or other payments due under this Lease, notwithstanding the fact that the statute, ordinance, or enactment imposing the same may endeavor to impose the tax upon Authority as Landlord, to the extent as applicable.

5.12 Accord and Satisfaction. In the event Lessee pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Authority may accept any check or payment without prejudice to Authority's right to recover the balance due or to pursue any other remedy available to Authority pursuant to this Lease or under law.

#### **Article 6 - Construction of Alterations and Improvements**

6.01 Lessee's Improvements. Lessee shall construct, at its sole cost and expense, including all direct and indirect costs, the Improvements as set forth in Exhibit B, including all related infrastructure, buildings and facilities, aircraft and vehicle pavements, fixtures, furnishings and equipment, improvements and alterations, of any kind, including not less than 20,000 square foot of aircraft hangar and 20,000 square feet of aircraft apron, aircraft taxi lane connector, adequate paved vehicle parking, utilities lines and connections, stormwater drainage, perimeter security fencing, lighting, landscaping, and all safety or security measures required by law (hereinafter collectively referred to as the "Improvements"). Construction of the Improvements shall be completed no later than) twenty-four (24) months immediately following the Effective Date, unless otherwise approved in writing by Authority, which approval shall not be unreasonably withheld, conditioned, or delayed for reasons beyond the control of Lessee. All aircraft apron to be constructed on the Premises, shall be designed in accordance with FAA Advisory Circular 150/5320-6 Airport Pavement Design and Evaluation, as now or hereafter amended.

- (A) Tenant shall, at its sole expense, design and construct structural aircraft pavement from the Premises to Taxiway F, generally as depicted on the North Quadrant Development Phase C & D Concepts drawing, dated March 29, 2022, and install any Authority required fencing (collectively, the "Aircraft Taxi Lane Connector"), which Aircraft Taxi Lane

Connector shall be completed by Tenant no later than twenty-four (24) months immediately following the Effective Date of this Lease.

- (B) Concurrently with the commencement of construction of the Aircraft Taxi Lane Connector, the Authority shall grant Lessee a nonexclusive license to improve, and access, such part of the Airport Common Areas needed by Tenant for the Aircraft Taxi Lane Connector ("Access Permit Area"). Tenant and Authority shall coordinate during Tenant's design phase for the Aircraft Taxi Lane Connector to determine the scope and breadth of the Access Permit Area. Upon completion thereof, the Aircraft Taxi Lane Connector shall be deemed part of the Airport Common Areas maintained by the Authority.

6.02 Construction Process. Lessee shall submit all conceptual design drawings, final design drawings, and construction drawing to the Authority for review and approval prior to commencing the construction of any Improvements on the Premises. In addition, Lessee shall not commence the construction of any Improvements on the Premises without the prior written consent of the Authority's President/CEO. After approval granted by Authority to Lessee to construct the Improvements, Lessee shall comply with all tenant-permitting and construction processes and procedures established by the Authority, as may be amended from time-to-time, including but not limited to the following:

- (A) Lessee shall obtain all required permits and licenses and comply with applicable zoning laws, building codes and other laws or regulations of any appropriate governing body, whether it be state, county, city, or Authority.
- (B) Prior to any construction within the Premises, all contractors, and subcontractors to perform work must be approved by Authority, and such contractors and subcontractors will be required to execute an indemnification agreement in favor of Authority, and to provide evidence of insurance satisfactory to Authority (in at least the same amounts and form required for Lessee).
- (C) Lessee shall advance an estimate of costs necessary along with a construction schedule to complete Lessee's work and shall provide future cost estimates on the Improvements to the Premises upon written consent of Authority to authorize said Improvements.
- (D) Prior to commencement of construction, Lessee shall post with Authority a performance and payment bond in an amount equal to the estimated cost of the Improvements to be delivered to Authority under the provisions above. Said amount is established to account for potential cost overruns, contingencies, and cost estimate errors.
- (E) Lessee covenants and agrees to accept and pay all financial obligations associated with costs necessary to complete Authority-approved Improvements. During construction, Lessee shall coordinate and incur the costs for the necessary and applicable inspections per local and industry requirements.

- (F) Lessee agrees throughout the term of this Lease to maintain at its expense the Premises and all Improvements on the Premises in a good state of repair and preservation. Lessee shall also be responsible for the cost of repair for any damage to the Premises or the adjacent lands or improvements thereon, caused by Lessee, its owners, agents, employees, or guests. Authority shall have the right to inspect the Premises and Improvements at any reasonable time for the purpose and to the extent necessary to protect the Authority's rights and interests, to provide for periodic inspection of said Premises provided the exercise of such right shall not unreasonably interfere with Lessee's use of the Premises.

6.03 Construction Standards. All Improvements constructed or placed on the Premises shall comply with all applicable federal, state, and local laws, rules, regulations, and orders. All Improvements shall adhere to acceptable industry design standards and construction methods applicable to the use and location of the Improvements, including all requirements of this Article. The Improvements shall include an attractive design, and first-class materials fixtures, finishes, landscaping, and construction.

6.04 Construction Approval. Except as otherwise provided for herein, prior to constructing the Improvements, Lessee, without cost to Authority, shall prepare detailed preliminary design and construction plans and specifications for the Improvements (hereinafter collectively referred to as the "Plans") in accordance with standards established by the Authority and deliver the preliminary Plans to the Authority for review, comment, and adjustment. The Authority shall review the preliminary Plans and provide a written response to Lessee within thirty (30) days after receipt of the preliminary Plans; provided, in the event the preliminary Plans are subject to review by another governmental authority with jurisdiction over the Airport, including, but not limited to the FAA, the timeframe for review may be extended by the amount of time necessary for such authority to complete its review. In the event the Authority does not approve the preliminary Plans, Lessee will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Lessee may then resubmit modified Plans to the Authority.

Within one hundred eighty (180) days of Lessee's receipt of a certificate of occupancy or certificate of completion for the Improvements constructed pursuant to this Article, Lessee, at its sole cost and expense, shall have prepared and delivered to the Authority one (1) complete set of as-built drawings in a PDF or other electronic format approved by the Authority, and one (1) complete set of Auto CADD files in the latest version acceptable by the Authority.

6.05 No Liens. Authority's interest in the Premises shall not be subject to any construction, mechanics, materialman's, tax, laborers, or any other lien, whether Authority has given its written approval for the Improvements or otherwise, and Lessee shall hold Authority and its interest in the Premises harmless from any such lien or purported lien. Lessee agrees that nothing contained in this Lease shall be construed as consent by Authority to subject the estate of Authority to liability under the Construction Lien Law of the State of Florida and understands that Authority's estate shall not be subject to such liability. Lessee shall notify all parties or entities performing work or providing materials relating to the Improvements made by Lessee of this provision of this Lease. If so, requested by Authority, Lessee shall file a notice satisfactory to Authority in the Official Public Records of Authority, stating that Authority

interest shall not be subject to liens for the Improvements made by Lessee. If a construction lien is filed against the Premises or other Authority property in connection with any work performed by or on behalf of Lessee, Lessee shall satisfy such claim, or transfer same to security, within ten (10) days from the date of filing. If Lessee fails to transfer or satisfy such claim within ten (10) day period, Authority may do so and thereafter Lessee shall reimburse Authority without delay all costs incurred by Authority in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Lessee shall promptly pay to Authority all such costs upon demand, as additional rent.

#### **Article 7 - Obligations of Lessee and Authority**

7.01 **Rules and Regulations.** Lessee covenants and agrees to observe and obey, and to require Lessee Parties to observe and obey all rules and regulations of the Authority (including amendments and supplements thereto) regulating the conduct and operations of Lessee and others on the Premises as may from time to time be promulgated. The obligation of Lessee to require such observance and obedience on the part of its sublessees, guests, invitees, and business visitors shall pertain only while such Persons are on or in occupancy of any portion of the Premises.

7.02 **Conduct of Operations.** Lessee shall conduct its aircraft and vehicle operations hereunder in a safe, secure, orderly, and reasonable manner, compliant with all applicable rules and regulations applicable thereto, considering the nature of such operations so as not to unreasonably interfere with the operations of the Authority other lessees at the Airport.

7.03 **Noise and Vibrations.** Lessee shall comply with the reasonable noise mitigation measures established by the Authority to mitigate noise impacts of Lessee's aircraft operations outside the boundaries of the Airport, such as utilizing designated areas for aircraft engine run-up activities.

7.04 **Conduct of Lessee Parties.** Lessee shall control the conduct, demeanor, and appearance of all Lessee's owners, employees, agents, visitors, and guests at the Premises, and upon objection from Authority concerning the conduct, demeanor, or appearance of any such persons, shall immediately take all reasonable steps necessary to remove the cause of objection.

7.05 **Disposal of Waste.** Lessee shall remove from the Premises or otherwise promptly dispose of in a manner approved by Authority all garbage, debris, and other waste materials (whether solid or liquid) arising out of the use or occupancy of the Premises or out of any operations conducted thereon. Garbage, debris, and other non-hazardous waste materials may be temporarily stored on the Premises in suitable garbage and waste receptacles made of metal and equipped with tight fitting covers and designed to contain whatever material safely and properly may be placed therein.

7.06 **Nuisances.** Lessee shall not commit any physical nuisance on the Premises and shall not do or permit any of its sublessees to do anything which would result in the creation, commission, or maintenance of such nuisance on the Premises. Lessee shall not create nor permit to be caused or created upon the Airport of the Premises any obnoxious odor, smoke or noxious gases or vapors. The creation of exhaust fumes by the operation of internal combustion engines or engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this Lease.

7.07 Vehicular Parking. Lessee shall not allow Lessee's owners, employees, agents, visitors, or guests to park vehicles within the grassed areas of the Premises or in other areas of the Airport that are not leased to Lessee without the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole discretion.

7.08 Accessibility of Utilities. Lessee shall not unreasonably interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Premises that are also used by other occupants, customers, or users of the Airport. This provision shall in no event require Lessee to modify or relocate any utilities systems that are approved by the Authority as part of the Improvements.

7.09 Overloading Paved Areas. Lessee shall not overload any aircraft hangar floor, aircraft apron, aircraft taxi lane, vehicle roadway, vehicle parking surface, office floor, sidewalk, or any other paved area on the Premises, and shall repair any paved surface and subsurface of any paved area damaged by overloading.

7.10 Hazardous Operations. Lessee shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate any insurance policies covering the Premises or the Airport; or
- (B) Constitutes a hazardous condition considering the risks normally attendant upon the operations permitted by this Lease.

7.11 Storage of Flammable Liquids. All flammable liquids that are kept or stored at the Premises must always be handled, stored, and used in accordance with all applicable federal, state, and local laws.

7.12 Testing of Fire Systems. From time to time and as often as reasonably required by Authority or any governmental authority having jurisdiction, Lessee shall conduct pressure, water flow, and all other appropriate tests of the fire extinguishing system and apparatus that are located on the Premises.

7.13 Vending Machines. Except as specifically authorized by this Lease, Lessee shall not place any coin or token operated vending machine or similar device (including, but not limited to, beverage or food machines, or other commodities) upon the exterior of any of the Improvements on the Premises, without the prior written consent of Authority.

7.14 Derelict Aircraft. Lessee shall not permit the temporary or permanent storage (without an open work order being actively pursued) on the Premises or Outside Premises of any Derelict Aircraft. Derelict Aircraft shall be removed from the Airport within a period of thirty (30) days after written notice from Authority. Notwithstanding the foregoing, Authority may make written request to Lessee to demonstrate that an open work order is being actively pursued. If Lessee fails to provide Authority with satisfactory evidence that an open work order is being actively pursued within three (3) business days of the date requested, then such Derelict Aircraft shall be removed from the Premises within thirty (30) days from the date Authority makes its written request for proof that an open work order is being actively

pursued.

7.15 Derelict Vehicles. Lessee shall not permit the temporary or permanent storage at the Premises of any Derelict Vehicles. Lessee shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from Authority.

7.16 Hurricane Plans. Within thirty (30) days of request from Landlord, Lessee shall provide Authority with emergency evacuation and hurricane plans consistent with Authority's plans for the Airport. These plans shall be detailed procedures of actions to be taken by Lessee and its sublessees if an evacuation need or hurricane alert warning is present. Hurricane plans are to be annually updated, if requested by Authority.

#### **Article 8 - Maintenance and Repair**

8.01 Maintenance of Premises. Lessee shall, throughout the Term and any extension thereof, be responsible for all repairs and maintenance of the Premises, which shall include, but shall not be limited to Improvements thereon, whether such repair or maintenance be ordinary or extraordinary, structural, or otherwise. Authority shall not be liable for, or required to make, any repairs or perform any maintenance upon the Premises. Maintenance and repairs shall be in quality and class comparable to the original work, to preserve the Premises and all apparatuses thereon in good order, well repaired, clean, and in first-class condition. Lessee shall be required to keep all the Premises and all Improvements thereon in clean, good, fit, fully maintained and attractive condition throughout the Initial Term, as may be amended. Without limiting the generality thereof, Lessee shall:

- (A) Keep painted without signs of chipping or cracking all the exterior and interior of the Premises, repair and maintain all roofs, doors, windows, exterior walls, pavements, equipment, lighting, furnishings, fixtures, and structural support systems.
- (B) Keep the Premises at all times in a clean and orderly condition and appearance and all the fixtures, equipment and personal property which are in any part of the Premises that is open to or visible by the public.
- (C) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution, or regulation of any applicable governmental authority.
- (D) Repair any damage to the aircraft apron areas, paving or other surface of the Premises caused by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.
- (E) Take anti-erosion measures, including, but not limited to, the planting and replanting of landscape with respect to all portions of the Premises not paved or built upon.

- (F) Be responsible for the maintenance and repair of all utilities that are now or subsequently located within the Premises and are exclusively used by Lessee or any of its sublessees, including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers, and storm sewers.
- (G) Make no use of any portion of the Premises in a manner that causes or results in excessive dust, debris, or waste of any kind to be blown about or raised to be ingested by aircraft.
- (H) Be responsible for the maintenance, repair, cleaning, and landscaping of the entrance and exit roadways, sidewalks and signage serving the Premises, which Lessee acknowledges may be located outside of the Premises.

8.02 Inspections of Premises. Except for the need to address any emergency or other similar exigency, Authority, with forty-eight (48) hours prior notice to Lessee, shall have the right to enter the Premises at reasonable times to inspect the Premises and the Improvements thereon for the purpose of determining whether Lessee is following the requirements of this Lease. In the event Lessee is not in compliance with this Lease, as reasonably determined by Authority, Authority shall provide Lessee with written notice of such noncompliance. Lessee shall commence corrective action to remedy such noncompliance to the satisfaction of Authority promptly after receipt of the notice of noncompliance. If corrective action is not initiated within thirty (30) days and pursued in a diligent manner to completion, Authority may, but shall not be obligated, to cause the same to be accomplished. Lessee agrees that Lessee shall assume and be liable to Authority for payment of all reasonable costs incurred by Authority, plus a fifteen percent (15%) administrative overhead fee, which costs, and administrative overhead fee shall constitute additional rent hereunder and shall be due and payable within thirty (30) days of the date of Authority's written notice.

8.03 Airport Common Areas. The Authority shall maintain the Airport Common Areas in good order and repair.

#### Article 9 - Utilities

9.01 Utility Costs. Lessee shall pay for all electric, water, garbage, communications, and other utilities charges for the Premises. The metering devices installed by Lessee for such utilities shall be installed at the sole cost of Lessee and shall become the property of Authority upon installation, unless owned by a third-party utility provider. Extension of utility mains or services to meet the needs of Lessee on the Premises shall be at the expense of Lessee and shall become the property of Authority upon installation unless otherwise agreed upon by the parties to this Lease.

9.02 Utility Access and Easements. During the term of this Lease, Authority shall provide Lessee with non-exclusive access and easements to, over, under or through such portions of the Airport Common Areas and/or contiguous property owned or controlled by Authority that are necessary to service the Premises, including, but not limited to access and easements necessary to provide water, sewer, electric, telephone, high speed internet, cable, stormwater drainage, and other related and



customary facilities, systems and infrastructure.

During the Term of this Lease, Authority shall also provide Lessee with non-exclusive access and easements to, over, under or through such portions of the Airport Common Areas and/or contiguous property owned or controlled by Authority that are necessary to complete the Improvements, including specifically, such portions of the Airport Common Areas and/or contiguous property owned or controlled by Authority that are necessary to construct and maintain the aircraft Taxi Lane Connector, approved by the authority, required for aircraft access to the Premises. Similarly, during the term of this Lease, Authority reserves for itself and its utility suppliers, and Lessee agrees to furnish to Authority, access and easements to, over, under or through such portions of the Premises as Authority deems necessary to furnish and maintain utilities to or on any Airport property, including, but not limited to access and easements necessary to provide water, sewer, electric, telephone, high speed internet, cable, stormwater drainage, and other related and customary facilities, systems and infrastructure.

9.03 Water, Industrial and Sanitary Sewage. Lessee acknowledges that certain properties and uses of properties within the Airport or on Authority owned land are subject to Federal storm water regulations as set forth in 40 CFR Part 122. Lessee agrees to observe and abide by said regulations as applicable to its property and use. Lessee will take all steps necessary to apply for or obtain a storm water discharge permit as may be required by applicable regulations for Lessee's operations at the Airport. Additionally, Lessee, at Lessee's expense, will take all steps necessary to properly connect to the storm water discharge system for which the Authority has already obtained a permit.

Notwithstanding any other provisions or terms of this Lease, including Lessee's right to quiet enjoyment, Authority and Lessee both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that it may be necessary to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Lessee, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."

Authority will provide Lessee with written notice of those storm water discharge permit requirements, that are in Authority's storm water permit, that Lessee will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples for analysis of such samples for contamination; preparation of storm water pollution prevention or similar plans; implementation of Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee within seven (7) days of receipt of such written notice, shall notify Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed to assent to undertake such requirements. If Lessee provides Authority with timely written notice that it disputes such storm water discharge permit requirements, Authority and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to written notice from Authority for purposes of delay or avoiding compliance.

Lessee agrees to undertake those storm water discharge permit requirements for which it has received written notice from any governmental entity charged with enforcement of storm water regulations. Lessee acknowledges that time is of the essence and will make every effort to meet all deadlines that may be

imposed on it. Authority agrees to provide Lessee, at its request, with any nonprivileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations. Authority will give Lessee written notice of any breach by Lessee of Authority's storm water discharge permit or the provisions of this section. If such a breach is material, and, if of a continuing nature, Authority may terminate this Lease. Lessee agrees to cure promptly any breach caused by Lessee or as a direct result of Lessee's operation.

Lessee agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport. In addition, Lessee agrees to participate in Authority's Environmental Compliance Program and is subject to and agrees to periodic inspections conducted by Airport staff to monitor the management, handling, storage, and disposal practices associated with any petroleum substances, hazardous substances, or waste materials.

All such remedies of Authority regarding environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Lease.

Lessee shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage or disposal of all pollutants or contaminated materials, as same are defined by law, by Lessee or by Lessee's employees, invitees, suppliers or service or providers of materials or any other person whomsoever, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Lessee pursuant to the terms of this Lease.

#### **Article 10 - Airport Security**

Lessee agrees to observe and abide by all federal, state, and local laws, rules, and safety and security requirements applicable to Lessee's operations, as now or hereafter promulgated.

#### **Article 11 - Insurance Requirements**

Lessee shall, at its sole expense, maintain in full force and effect, beginning on the Commencement Date, always during the Term and any extension thereof, the insurance coverages and endorsements required herein. Neither the requirements contained in this Article nor Authority's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Lessee under this Lease. If the Minimum Standards or Airport Rules and Regulations impose more strenuous requirements, the Lessee shall comply with the Minimum Standards and Airport Rules and Regulations for the Airport.

11.01 **Commercial General Liability.** Lessee shall maintain Commercial General Liability Insurance policy, or upon Lessee's request subject to Authority's sole discretion, an Aviation General Liability Policy, with limits of not less than Ten Million Dollars (\$10,000,000) each occurrence with limits of liability not less than Ten Million Dollars (\$10,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Contractual Liability, Personal/Advertising Injury, and Cross Liability. This coverage shall be provided on a primary basis.

11.02 Aircraft Liability. Lessee shall and shall cause any related entity Private Aircraft owner or Part 91 Private Aircraft operator that uses the Premises to maintain Aircraft Liability Insurance providing coverage for property damage to said Aircraft owned, leased, or otherwise controlled aircraft while in the care, custody, or control of Lessee or Lessee's related entity or Part 91 Private Aircraft operator when such aircraft are on the Premises, in an amount not less than Ten Million Dollars (\$10,000,000) any one aircraft and Ten Million Dollars (\$10,000,000) any one occurrence.

11.03 Automobile Liability. Lessee shall maintain Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, leased, and hired automobiles. This coverage shall be provided on a primary basis.

11.04 Workers' Compensation and Employers Liability. If applicable, Lessee shall maintain Workers' Compensation and Employers Liability as required by state and federal law. This coverage shall be provided on a primary basis.

11.05 Property, Wind and Flood Insurance. Lessee shall maintain:

- (A) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the Improvements, including, but not limited to, those made by or on behalf of Lessee, as well as Lessee's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (B) The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (C) Flood insurance, if within the 100-year flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the Improvements, including, but not limited to, those made by or on behalf of Lessee, as well as Lessee's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (D) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the Improvements, including, but not limited to, those made by or on behalf of Lessee, as well as Lessee's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis. This coverage shall be provided on a primary basis.

11.06 Additional Insured Endorsement. Lessee shall endorse Authority as an "Additional Insured" on each liability insurance policy required to be maintained by Lessee, except for Worker's

Compensation and Auto Liability policies. The CG 2011 Additional Insured - Managers or Lessors of Premises or its equivalent, shall be an endorsement to the Commercial General Liability policy. Other policies, when required, shall provide a standard "Additional Insured" endorsement offered by the insurer. The "Additional Insured" endorsements shall provide coverage on a primary basis. "Additional Insured" endorsements shall read "Sarasota Manatee Airport Authority Board, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243".

11.07 Loss Payee Endorsement. Lessee shall endorse Authority as a "Loss Payee" on the Property, Flood, and Windstorm insurance policies. "Loss Payee" endorsements shall provide coverage on a primary basis and shall read "Sarasota Manatee Airport Authority Board, c/o Sarasota Manatee Airport Authority, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o 6000 Airport Circle, Sarasota, Florida 34243".

11.08 Evidence of Insurance. Prior to the Commencement Date, Lessee shall provide Authority with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein. All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed during the Term or any extension thereof, Lessee shall provide Authority a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Sarasota Manatee Airport Authority Board, a Political Subdivision of the State of Florida, its Officers, Employees, Agents and Volunteers, c/o Sarasota Manatee Airport Authority, Properties Department, 6000 Airport Circle, Sarasota, Florida 34243.

11.09 Waiver of Subrogation. By entering this Lease, Lessee agrees to a Waiver of Subrogation for each policy required to be maintained or maintained by Lessee pursuant to or in connection with this Lease. When required by the insurer or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Lessee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Lessee enter into such an agreement on a pre-loss basis.

11.10 Premiums and Proceeds. Lessee shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood, or wind insurance policies. Lessee shall be responsible for all premiums, including increases, for property, flood, and wind insurance policies. Subject to the terms of any Leasehold Mortgage or financing arrangement entered by Lessee, Lessee agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the Improvements, including, but not limited to, those made by or behalf of Lessee.

11.11 Deductibles, Coinsurance and Self-Insurance. Lessee shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

11.12 Right to Review or Adjust Insurance. The Authority may review, modify, reject, or accept any required policies of insurance, including, but not limited to, limits, coverages, or endorsements, required by this Article from time to time throughout the Term and any extension thereof. Authority may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Authority shall provide Lessee a written notice of rejection, and Lessee shall comply within thirty (30) days of receipt of the notice.

11.13 No Representation of Adequacy. Lessee acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for Authority. Lessee agrees that it will not rely upon the requirements of this Article when assessing the extent or determining appropriate types or limits of insurance coverage to protect Lessee against any loss exposures, whether because of this Lease or otherwise.

#### Article 12- Damage, Destruction or Condemnation of Premises

12.01 Removal of Debris. If the Premises, or any portion thereof, are damaged by fire, the elements or other casualty, Lessee shall promptly remove all debris resulting from such damage from the Premises and shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of Persons entering upon the Premises. If Lessee fails to promptly comply with the provisions of this Section, Authority may, take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Lessee agrees that Lessee shall fully assume and be liable to Authority for payment of any costs incurred by Authority, plus a fifteen percent (15%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Authority within thirty (30) days from the date of written notice provided by Authority.

12.02 Lessee's Obligations. Lessee assumes full responsibility for the condition of the Premises and the character, acts and conduct of all Persons admitted to the Premises by or with the actual or constructive consent of Lessee or with the consent of any person acting for or on behalf of Lessee. If the Premises, or any portion thereof, is damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of Lessee, or a Lessee Party or any other Person, Lessee shall at its sole cost and expense restore the Premises to the condition existing prior to such damage. Lessee shall commence restoration within sixty (60) days and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 8; provided, that if the nature of the damage is such that more than sixty (60) days are reasonably required Lessee shall commence restoration as soon as reasonably practicable under the circumstances taking into consideration the extent of the damage. All repairs and restoration shall be made by Lessee at Lessee's sole cost and expense, in accordance with the construction requirements contained herein. If Lessee fails to restore the Premises as required by this Section, Authority shall have the right, but not the obligation, to enter the Premises and perform the necessary restoration. Lessee agrees that Lessee shall fully assume and be liable to Authority for payment of the reasonable costs of restoration plus a fifteen percent (15%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to Authority within thirty (30) days from the date of the written notice provided by Authority.

12.03 Insurance Proceeds. Except as otherwise provided for herein, upon receipt by Lessee of

the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account approved by Authority to be available to pay for the cost of any required repair, replacement, or rebuilding. The proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of all damaged Improvements, Lessee shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is more than the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Lessee.

12.04 Condemnation. If the whole or any material portion of the Leased Premises is acquired by a condemning authority, either by sale in lieu of condemnation or by the exercise of the power of eminent domain rendering use of the remaining Leased Premises commercially infeasible, then in and as a direct result of that event, this Lease will terminate from the date of sale or title vesting, and Lessee will have no claim whatsoever, including claims of apportionment, against Authority either for the value of any unexpired term of this Lease or for the value of the Improvements. However, nothing in this provision will limit or destroy any right of Lessee to separately claim moving costs or business loss solely against the condemning authority where statutes or other applicable law apply.

If a portion of the Leased Premises is acquired by a condemning authority, either by sale in lieu of condemnation or by the exercise of the power of eminent domain rendering use of the remaining Premises commercially feasible, then in and as a direct result of that event, this Lease will terminate from the date of sale or title vesting as to the portion so condemned only, with the Rents reduced by the proportionate reduction in square footage, and Lessee will have no claim whatsoever, including claims of apportionment, against Authority either for the value of any unexpired term of this Lease or for the value of the Improvements taken. However, nothing in this provision will limit or destroy any right of Lessee to separately claim moving costs or business loss solely against the condemning authority where statutes or other applicable law apply.

Notwithstanding any of the foregoing to the contrary, if the condemning authority is the Authority, then Lessee reserves the right to pursue a claim against the Authority for Tenant's unamortized original investment, determined by the Tenant's total original investment at the Commencement Date of this Lease amortized on a straight-line basis with no residual value over the Term (Initial Term and Renewal Term) of this Lease.

### **Article 13 - Rights of Leasehold Mortgagees**

13.01 Right to Mortgage. Lessee may encumber its leasehold estate by granting a mortgage or other similar instrument creating a mortgage lien against the Lessee's leasehold interest during the Term and any extension thereof, provided that, Authority shall not be obligated to, nor deemed to have subjected or subordinated Authority's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated the Authority's interest in this Lease to such Leasehold Mortgage. Authority's interests in the fee and in this Lease are and shall always remain superior and prior in right to any Leasehold Mortgage. Any such instrument which creates a first mortgage lien shall hereinafter be referred to as "Leasehold Mortgage", and the holder thereof shall hereinafter be referred to as "Leasehold Mortgagee"

13.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold

Mortgage in the same manner and at the same address as required by this Lease for notices delivered to Authority, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to Authority, Authority upon serving Lessee with any notice of default under this Lease, shall also serve a copy of that notice of default upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Lessee. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to Authority.

13.03 Estoppel Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Section may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge.

#### Article 14 - Title to Improvements

14.01 Title to Improvements. Lessee shall be deemed to be the owner of all Improvements constructed by Lessee upon the Premises during the Initial Term. Upon expiration of the Initial Term or the earlier termination of this Lease as provided herein, all Improvements constructed or placed upon the Premises by Lessee except for any Fuel System, title to which has not previously vested in Authority hereunder, shall become the absolute property of Authority, and Authority shall have every right, title, and interest therein, free, and clear of any liens, mortgages, and other encumbrances. Upon the request of Authority, Lessee shall provide Authority with a bill of sale or other evidence of the transfer of ownership of the Improvements together with evidence satisfactory to Authority that the Improvements are free from liens, mortgages, and other encumbrances.

14.02 Removal of Improvements. Notwithstanding any provision of this Lease to the contrary, Lessee may be required to remove any Improvements made by Lessee during the Term of this Lease upon the expiration or earlier termination of this Lease.

14.03 Survival of Article. The provisions of this Article 14 shall survive expiration or earlier termination of this Lease.

#### Article 15 - Expiration, Default and Remedies

15.01 Expiration. This Lease shall automatically terminate at the end of the Initial Term, unless renewed in accordance with Section 3.02. In the event this Lease is renewed, this Lease shall automatically terminate at the end of the applicable Renewal Term.

15.02 Default by Lessee. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee or Authority:

- (A) The failure of Lessee to construct Lessee's Improvements in accordance with the terms, covenants, and conditions of this Lease. Notwithstanding, if the nature of Lessee's breach in this regard is such that more than thirty (30) days after written notice from Authority to Lessee is required to complete performance, then Lessee shall not be in default if Lessee commences performance within such thirty (30) day period and continues thereafter without interruption to diligently prosecute an absolute cure to completion. This provisional extension of time to cure shall not apply to any other event or form of breach by Lessee.
- (B) The abandonment (as that term is defined under applicable law) of the Premises by Lessee.
- (B) The failure by Lessee to make payment of rent or any other payment required to be made by Lessee hereunder as and when due, where such failure shall continue for a period of ten (10) days after written notice from Authority that such payment is due.
- (C) The failure by Lessee to maintain in full force and effect, the insurance limits, coverages, and endorsements required by this Lease.
- (D) The failure by Lessee to observe or perform any other covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where such failure continues for a period of thirty (30) days after written notice thereof from Authority.
- (E) To the extent permitted by law, (a) the making by Lessee or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Lessee, the same is dismissed within ninety (90) days; (c) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within ninety (90) days; or (d) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within ninety (90) days.
- (F) A material default by Lessee of any other agreement, permit or lease between Authority and Lessee, which default has not been cured within the applicable cure period provided in such agreement, permit, or lease.



In the event of the Lessee default, Authority shall have the right to pursue any remedy now or hereafter available to Authority under the laws of the state of Florida, including, but not limited to, the right to terminate this Lease.

15.03 Remedies. Pursuant to Section 15.02, in the event of any material default or breach by Lessee, Authority may at any time thereafter, with notice or demand and without limiting any other right or remedy which Authority may have under the law by reason of such default or breach, elect to exercise any one of the following remedies while concurrently taking all reasonable steps to mitigate all its damages:

- (A) Declare the entire rent for the balance of the Initial Term, Renewal Term, or any part thereof due and payable while subtracting any rent that it has received or will receive through another Lessee on the same Premises forthwith.
- (B) Terminate Lessee's right to possession of the Premises by any lawful means and reenter and retake possession of the Premises for the account of Lessee, in which case the rent and other sums hereunder shall be accelerated and due in full and Lessee shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Authority is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by Lessee. Upon such reletting, all rentals received by Authority shall be applied, first to the payment of any indebtedness other than rent due hereunder from Lessee; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Authority due to Lessee's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by Authority relating to the unexpired Term of this Lease; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be paid to Lessee.
- (C) Treat this Lease as terminated and re-enter and re-take possession of the Premises for the account of Authority, thereby terminating any further liability under this Lease on the part of Lessee and Authority. Notwithstanding the foregoing, Authority shall have a cause of action to recover any rent remaining unpaid when Authority retakes possession of the Premises for the account of Authority.
- (D) Pursue any other remedy now or hereinafter available to Lessor under the laws of the State of Florida and including revoking and all badges issued per the Rules and Regulations for Sarasota Bradenton International Airport.
- (E) Notwithstanding any provision of this Lease to the contrary, Authority shall have the right to bring an action for its damages upon the occurrence of a default by Lessee and Authority reserves all rights which laws of the State of Florida confer

upon a landlord against a Lessee in default. In the event legal action is required hereunder to enforce the rights of the parties pursuant to this Lease the prevailing party in such action shall be entitled to recover costs and attorney's fees, including appellate fees.

15.04 Default by Authority. Authority shall not be in default unless Authority fails to perform obligations imposed upon Authority hereunder within thirty (30) days after written notice by Lessee to Authority, specifying wherein Authority has failed to perform such obligations; provided, that if the nature of Authority's obligations is such that more than thirty (30) days are required for performance then Authority shall not be in default if Authority commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of the Authority's default, Lessee shall have the right to pursue any remedy now or hereafter available to Lessee under the laws of the state of Florida, including, but not limited to, the right to terminate this Lease.

15.05 Surrender of Premises. Lessee expressly agrees that it shall immediately surrender the Premises to Authority in working order, good condition, and in compliance with all then applicable laws, rules, and regulations, upon expiration or termination of this Lease, depreciation, and wear from ordinary use for the purpose for which the Premises were leased being excepted. In the event Lessee shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Lessee shall be liable to Authority for all damages, and in addition thereto, Lessee shall also be strictly liable to pay to Authority during the entire time of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Lessee shall remove all its personal property from the Premises prior to the expiration or earlier termination of this Lease. Any personal property of Lessee not removed by Lessee shall become the property of Authority.

#### **Article 16 - Assignment, Transfer and Subletting**

Lessee shall not assign or sublet this Lease either in whole or in part, without prior written consent of Authority. No request for, or consent to, such assignment shall be considered unless Lessee shall have paid all rentals, fees, and charges which have accrued in favor of Authority and Lessee shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Lease or as this Lease may be subsequently amended or modified. Authority reserves the right to investigate the financial capacity of the proposed assignee prior to making its decision. No capital stock of any Lessee and no partnership or membership interest of any partnership or limited liability entity can be assigned, sold, or transferred without Landlord's consent, which shall not unreasonably be withheld. Notwithstanding, Lessee may freely assign less than a controlling interest to a related corporate entity (defined as sharing some commonality of direct or indirect ownership interest with Lessee).

#### **Article 17 - Indemnification**

Lessee shall protect, defend, reimburse, indemnify and hold Authority and its elected officers, employees and agents and each of them free and harmless at all times from and against any and all liability, losses, expenses, costs, suits, claims, judgments, fines and damages (including reasonable attorney fees at trial and appellate levels) and causes of action of every kind and character (hereinafter collectively referred to as, "Damages"), or in which Authority is named or joined, arising out of Lessee's

or a Lessee Party's use or occupancy of the Premises or Airport by Lessee or a Lessee Party, including, but not limited to, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third party or other Person whomsoever, or any governmental agency, arising out of or incident to or in connection with the condition of the Premises caused by Lessee, Lessee's or a Lessee Party's acts, omissions or operations at the Airport, or the performance, non-performance or purported performance of Lessee or any breach by Lessee or any Lessee Party of the terms of this Lease. Each party shall give to the other reasonable notice of any such claims or actions. Lessee recognizes the broad nature of this indemnification and hold-harmless clause and acknowledges that Authority would not enter into this Lease without the inclusion of such clause, and voluntarily make this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

#### **Article 18 - Signage Outside of Premises**

No signs, posters, or similar devices shall be erected, displayed, or maintained by Lessee outside the Premises on other areas of the Airport or on the Premises that are visible in any way off the Premises without the written consent of Authority, which consent may be granted or withheld in Authority's sole and absolute discretion. All signs not approved by Authority shall be promptly removed at the sole cost and expense of Lessee upon written demand therefore by Authority.

#### **Article 19 - Laws, Regulations and Permits**

19.01 **General.** Lessee agrees that throughout the Term and any extension thereof, Lessee shall always remain in compliance with all applicable federal, state, and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature, as now or hereafter amended or promulgated, including, but not limited to, FAA Advisory Circulars, Orders and Directives, and the Airport Rules and Regulations.

19.02 **Permits and Licenses.** Lessee agrees that it shall, at its sole cost and expense, obtain, comply with, and maintain current all permits, licenses and other governmental authorizations required for its operations and activities on the Premises. Upon the written request of Authority, Lessee shall provide Authority with copies of all permits and licenses requested by Authority pursuant to this Section.

19.03 **Air and Safety Regulation.** Lessee shall conduct its operations and activities under this Lease in a safe manner and shall comply with all safety regulations and standards imposed by applicable federal, state, and local laws and regulations and shall require the observance thereof by Lessee Parties and all other Persons transacting business with or for Lessee resulting from, or in any way related to, the conduct of Lessee's business on the Premises. Lessee shall procure and maintain such fire prevention and extinguishing devices as required by Authority and by law and shall always be familiar and comply with the fire regulations and orders of Authority. Lessee agrees that neither Lessee, nor its employees or contractors or any person working for or on behalf of Lessee, shall require any personnel engaged in the performance of Lessee's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted

pursuant to the Occupational Safety and Health Act of 1970, as now or hereafter amended, as well as all applicable State and local laws, regulations, and orders relative to occupational safety and health.

19.04 Environmental and Natural Resource Regulations.

- (A) Notwithstanding any other provision of the Lease to the contrary, Lessee hereby expressly covenants, warrants, guarantees and represents to Authority, upon which Authority expressly relies, that Lessee is knowledgeable of, and shall comply with, all Environmental Laws applicable to Lessee and its operations hereunder.
- (B) Lessee acknowledges and understands that its operations performed pursuant to this Lease may involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, which are, or may be, subject to regulation under applicable Environmental Laws. Lessee further expressly covenants, warrants, guarantees, and represents that it is fully qualified to handle and to arrange disposal of all such Hazardous Substances, in a manner which is both safe and in full compliance with all applicable Environmental Laws.
- (C) Lessee hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Lessee's operations conducted on the Premises and Lessee shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter thereof. Lessee further represents, warrants, guarantees and covenants to Authority, upon which Authority hereby expressly relies, that Lessee, its employees, agents, contractors, and those Persons that are required to be so trained working for, or on behalf of, Lessee have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.
- (D) Lessee shall provide to Authority satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by Authority.
- (E) If Lessee is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
  - (1) Lessee shall obtain an EPA identification number and shall comply with all requirements imposed upon a generator of hazardous waste, including, but not limited to, ensuring that the appropriate

transportation and disposal of such materials are conducted in compliance with Environmental Laws.

- (2) Lessee shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, or, in the alternative, copies of hazardous waste manifests, available always for inspection upon reasonable advance notice at any time on the Premises by Authority.
  - (3) Lessee shall notify the Authority, and such other appropriate agencies as Authority may from time to time designate, of all hazardous waste activities occurring at the Premises so that it shall be included as an Authority Generator of such waste.
  - (4) Lessee shall provide to the Authority, and to all appropriate governmental entities having jurisdiction thereover, the name and telephone number of Lessee's emergency coordinator in case of any spill, leak, or other emergency involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Lessee shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of Hazardous Substances by the Lessee Parties on or from the Premises. All such remedies of Authority about environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.
- (G) Lessee agrees to protect, defend, reimburse, indemnify, and hold Authority, its agents, employees, and elected officers harmless from and against all Damages arising from, resulting out of or in any way caused by or connected to the Lessee Parties' failure to comply with all applicable Environmental Laws. Lessee understands that this indemnification is in addition to and is a supplement of Lessee's indemnification agreement set forth in Article 19. Lessee acknowledges the broad nature of this indemnification and hold-harmless clause and that Authority would not enter this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section shall survive the expiration or earlier termination of this Lease.

19.05 Environmental Assessment. At least thirty (30) days, but no more than ninety (90) days, prior to the expiration or earlier termination of the Lease, Lessee shall cause a Phase I environmental assessment ("Phase I ESA") of the Premises to be prepared and delivered to Authority. If the Phase I ESA

indicates that there is a potential that an environmental condition may exist on the Premises or the adjacent property based on activities that have occurred or are occurring on the Premises, Lessee shall promptly cause a Phase II environmental assessment ("Phase II ESA") of the Premises to be prepared and delivered to Authority. The Phase I ESA and Phase II ESA shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to Authority, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Premises. The Phase I ESA and Phase II ESA shall state that Authority is entitled to rely on the information set forth therein. The Phase I ESA and Phase II ESA shall be prepared and delivered to Authority at Lessee's sole cost and expense. The Phase II ESA must address any potential environmental conditions or areas of contamination identified in the Phase I ESA. To the extent the environmental conditions and/or contamination identified in the environmental assessments are a result of Lessee Parties' activities or operations on the Premises, Lessee shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of the Lease relating to the condition of the Premises and shall survive the termination or expiration of the Lease.

**Article 20 - Americans with Disabilities Act**

Lessee shall comply with the applicable requirements of the Americans with Disabilities Act and the State of Florida Accessibility Requirements Manual, and applicable implementing regulations, and any similar or successor laws, ordinances, rules, and regulations, including cooperation with Authority, concerning the same subject matter.

**Article 21 - Disclaimer of Liability**

AUTHORITY HEREBY DISCLAIMS, AND LESSEE HEREBY RELEASES AUTHORITY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY LESSEE PARTIES DURING THE TERM OF THIS LEASE OR ANY EXTENSION HEREOF FOR LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF LESSEE PARTIES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES. FURTHERMORE, LESSEE ACKNOWLEDGES AND AGREES THAT ITS RELIANCE OR USE OF ANY INFORMATION PROVIDED BY AUTHORITY, WHETHER PREPARED OR PROVIDED BY AUTHORITY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS LEASE WAS AT ITS SOLE RISK. UNDER NO CIRCUMSTANCE SHALL AUTHORITY BE LIABLE FOR SPECIAL OR EXEMPLARY DAMAGES OR FOR LOSS OF REVENUE OR ANTICIPATED PROFITS.

**Article 22 - Governmental Restrictions**

22.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes, for a period more than ninety (90) consecutive days then this Lease shall terminate, and Authority shall be released and fully discharged from all liability hereunder. Lessee's obligation to pay rent

shall cease upon termination; however, nothing herein shall be construed as relieving Lessee from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

22.02 Federal Review. Lessee acknowledges this Lease may be subject to review or inspection by the FAA to determine satisfactory compliance with federal law or grant assurances and agrees that this Lease shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Lease which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.

22.03 Authority Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of Authority, as a political subdivision of the State of Florida, or any of the public officials of Authority, City of Sarasota, Sarasota County, Florida, or Manatee County, Florida, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Lessee.

22.04 Height Restriction. Lessee expressly agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height to comply with Title 14, Part 77 of the Code of Federal Regulations, as now or hereafter amended.

22.05 Right of Flight. Authority reserves unto 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 said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.

22.06 Operation of Airport. Lessee expressly agrees for itself, its sublessees, successors and assigns to prevent any use of the Premises that would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard; provided that the operation of the Premises for the uses permitted under this Lease in accordance with the terms and conditions of this Lease and the Minimum Standards shall not be deemed to interfere with or adversely affect the operation, maintenance or development of the Airport or otherwise constitute an Airport hazard.

22.07 Release. Lessee acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases Authority from all liability relating to the same.

22.08 Nonexclusive Rights. Notwithstanding any provision of this Lease to the contrary, Lessee understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that Authority may grant similar privileges to another Lessee or other Lessees on other parts of the Airport.

22.09 Hazardous Wildlife Attractants. Lessee acknowledges that water detention and retention areas are considered wildlife attractants and shall request the approval of Authority prior to constructing

a water detention or retention area within the Premises. If approved by Authority, water detention or retention areas shall follow the siting, design, and construction requirements of the Authority. Lessee further agrees to comply with the provisions of Federal Aviation Administration Advisory Circular No. 150/5200-33B, as now or hereafter amended, as such circular is interpreted by the Authority.

22.10 Subordination to Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which Authority acquired the land or any improvement thereon, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Lessee understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between Authority and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

### **Article 23 - Non-Discrimination**

23.01 Non-Discrimination in Authority Contracts. Lessee warrants and represents to Authority that all its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Lessee has submitted to Authority a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Lessee does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to Authority affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

#### 23.02 Federal Non-Discrimination Covenants.

- (A) Lessee, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
  - (1) In the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - (2) No person on the ground of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or



- be otherwise subjected to discrimination in the use of Authority property, including, but not limited to, the Premises.
- (3) In the construction of the Improvements on, over, or under the Premises and the furnishing of services thereon, no person on the ground of race, color, national origin, gender, religion, or age will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
  - (4) Lessee will use the Premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Authorities.
- (B) In the event of breach of any of the above nondiscrimination covenants, Authority shall have the right to terminate this Lease and to enter, re-enter, and repossess the Premises, and hold the same as if this Lease had never been made or issued. This Lease shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including, the exercise or expiration of appeal rights.
- (C) For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally Assisted Programs at the Federal Aviation Administration, as may be amended.

#### **Article 24 - Failure of Utility Systems**

Authority shall not be responsible or liable to Lessee for any claims for compensation or any losses, damages or injury whatsoever sustained by Lessee including, but not limited to, those resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of Authority. All personal property placed on or moved on to the Premises shall be at the sole risk of Lessee. Authority shall not be liable for any damage or loss of any personal property placed or moved on to the Premises

#### **Article 25 - Subordination to Bond Resolution**

From time to time the Authority may participate in obtaining financing through the issuance of bonds whereby a bond resolution is adopted ("Bond Resolution.") Authority reserves the right to enter into such bond financing. When this occurs, the lands of the Authority may be pledged or assigned to support the financing transaction. This Lease and all rights granted to Lessee hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by Authority in the Bond Resolution, and Authority and Lessee agree that to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives shall exercise any and all rights of Authority hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Lessee and Authority with the terms and provisions of this Lease and Bond

Resolution.

**Article 26 - Waiver of Jury Trial**

The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease, the relationship of Authority and Lessee, Lessee's use or occupancy of the Premises and/or building, and/or claim or injury or damage.

**Article 27 - Miscellaneous**

27.01 **Force Majeure.** Any delay in or a failure of performance by Lessee in the performance of its obligation under this Lease to construct the Improvements shall not constitute a default under this Lease to the extent that such delay or failure of performance could not be prevented by Lessee's exercise of reasonable diligence and results from: (a) acts of God, (b) fire or other casualty, (c) war, (d) public disturbance, (e) failure of the Authority, FAA or other governmental entity with oversight over the Premises to issue or deliver any permit, license or consent needed for the construction of the Improvements through no fault, delay, action, or inaction of Lessee, (f) and/or strikes or other labor disturbances in the Sarasota/Manatee area not attributable to the failure of Lessee to perform its obligations under any applicable labor contract or law and directly and adversely affecting Lessee (any, a "Force Majeure Event"). In no event shall the inability to obtain financing be deemed to be a Force Majeure Event.

27.02 **Waiver.** The failure of either party to insist on a strict performance of any of the agreements, terms, covenants, and conditions hereof shall not be deemed a waiver of any rights or remedies that the non-defaulting party may have for any subsequent breach, default, or non-performance, and the non-defaulting party's right to insist on strict performance of this Lease shall not be affected by any previous waiver or course of dealing.

27.03 **Easement.** Nothing in this Lease shall impair any existing utility easements, nor impair the Authority's right of access to any existing utility lines. Authority reserves the right to grant utility easements, licenses, and rights-of way to others over, under, through, across or on the Premises; provided, however, that such grant or the use of any easement, license, or right of way does not interfere with Lessee's operations or reduce the value of the Improvements. Authority shall restore the Property and the Premises to its condition prior to the date Authority granted any such easement, license, or right-of-way if any construction is performed in connection with any of the foregoing.

27.04 **Independent Contractor.** Lessee or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority shall in no way be responsible therefor.

27.05 **Governmental Authority.** Nothing in this Lease shall be construed to waive or limit the Authority's governmental authority as a body politic of the State of Florida to regulate Lessee or its operations. The Authority's obligations under this Lease are made in a proprietary capacity rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or

eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair the Authority's governmental functions, including, but not limited to, the Authority's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the Authority's governmental authority.

27.06 Consent and Action. Whenever this Lease calls for an approval, consent or authorization by the Authority or Authority, such approval, consent, or authorization shall be evidenced by the written approval of the CEO/President or his or her designee. In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the reasonable discretion of Authority or Authority.

27.07 Rights Reserved to the Authority. All rights not specifically granted Lessee by this Lease are reserved to Authority.

27.08 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause, or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

27.09 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

27.10 Venue. Venue in any action or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Sarasota or Manatee County, Florida.

27.11 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused, or the notice designated by the postal authorities as non-deliverable. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

Authority:  
Chief Executive Officer  
Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, FL, 34243

With a copy to:  
Properties Department  
Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport  
6000 Airport Circle  
Sarasota, FL, 34243

Lessee:  
\_\_\_\_\_  
\_\_\_\_\_  
SRA Hangar, LLC

With a copy to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1307 S. Tamiami Trail  
Osprey, FL 34229

\_\_\_\_\_  
\_\_\_\_\_

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon ten (10) days prior written notice to the other party.

27.12 Paragraph Headings. The heading of the various articles and sections of this Lease, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

27.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Authority without the Authority's consent.

27.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.

27.15 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. If any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

27.16 No Broker. Lessee represents and warrants that Lessee has not dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease and further agrees to indemnify, defend, and hold harmless Authority from and against any claims or demands of any such salesperson, agent, finder, or broker claiming to have dealt with Lessee. The foregoing indemnification shall include all costs, expenses, and fees, including reasonable attorney's fees at trial and all appellate levels, expended, or incurred in the defense of any such claim or demand.

27.17 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Lessee certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Authority of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

27.18 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Lessee certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If Authority determines, using credible information

available to the public, that a false certification has been submitted by Lessee, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

27.19 Budgetary Funding. Any obligations of Authority that require financial funding are subject to and contingent upon annual budgetary funding and appropriations by the Sarasota Manatee Airport Authority Board.

27.20 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded, or otherwise altered except by written instrument executed by the parties hereto.

27.21 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by such reference.

27.22 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 Florida. Additional information regarding radon and radon testing may be obtained from Authority's public health unit.

27.23 No Third-Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Lease, including, but not limited to, any citizen or employees of Authority and/or Lessee.

27.24 Time of the Essence. Time is of the essence of this Lease; and in case Lessee shall fail to perform the covenants or conditions on its part to be performed at the time fixed for the performance of such respective covenants or conditions by the provisions of this Lease, Authority may declare Lessee to be in default of such Lease.

27.25 Survival. Notwithstanding any early termination of this Lease, Lessee shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Lessee hereunder arising prior to the date of such termination.

27.26 Rights Reserved. Rights not specifically granted to Lessee by this lease are expressly and independently reserved to Authority. Authority expressly reserves the right to prevent any use of the described Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

27.27 Rent a Separate Covenant. Lessee shall not for any reason withhold or reduce Lessee's required payments of rent and other charges provided in this Lease, it being expressly understood and agreed by the parties that the payment of rent and additional rent is a covenant by Lessee that is independent of the other covenants of the parties hereunder.

27.28 Corporate Tenancy. If Lessee is a corporation or other organizational entity, the undersigned officer of Lessee hereby warrants and certifies to Authority that Lessee is an entity in good standing and is

authorized to do business in the State of Florida and shall provide proof of good standing to Authority. The undersigned officer of Lessee hereby further warrants and certifies to Authority that he or she, as such officer, is authorized and empowered to bind the entity to the terms of this Lease by his or her signature thereto. Authority, before it accepts and delivers this Lease, shall require Lessee to supply it with a Sworn Statement on Public Entity Crimes, attached hereto and incorporated herein, and a certified copy of the entity resolution authorizing the execution of this Lease by Lessee.

(Continued on next page).

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

ATTEST:

SARASOTA MANATEE AIRPORT AUTHORITY,  
a body politic and corporate existing under the  
laws of the State of Florida

By: \_\_\_\_\_

By: \_\_\_\_\_

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
President & CEO

Signed, sealed, and delivered  
in the presence of two witnesses

LESSEE: SRQ HANGAR, LLC

for Lessee:

  
\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

Mark W. Mitchell  
\_\_\_\_\_

Print Name

\_\_\_\_\_

Print Name

Manager  
\_\_\_\_\_

Title

\_\_\_\_\_

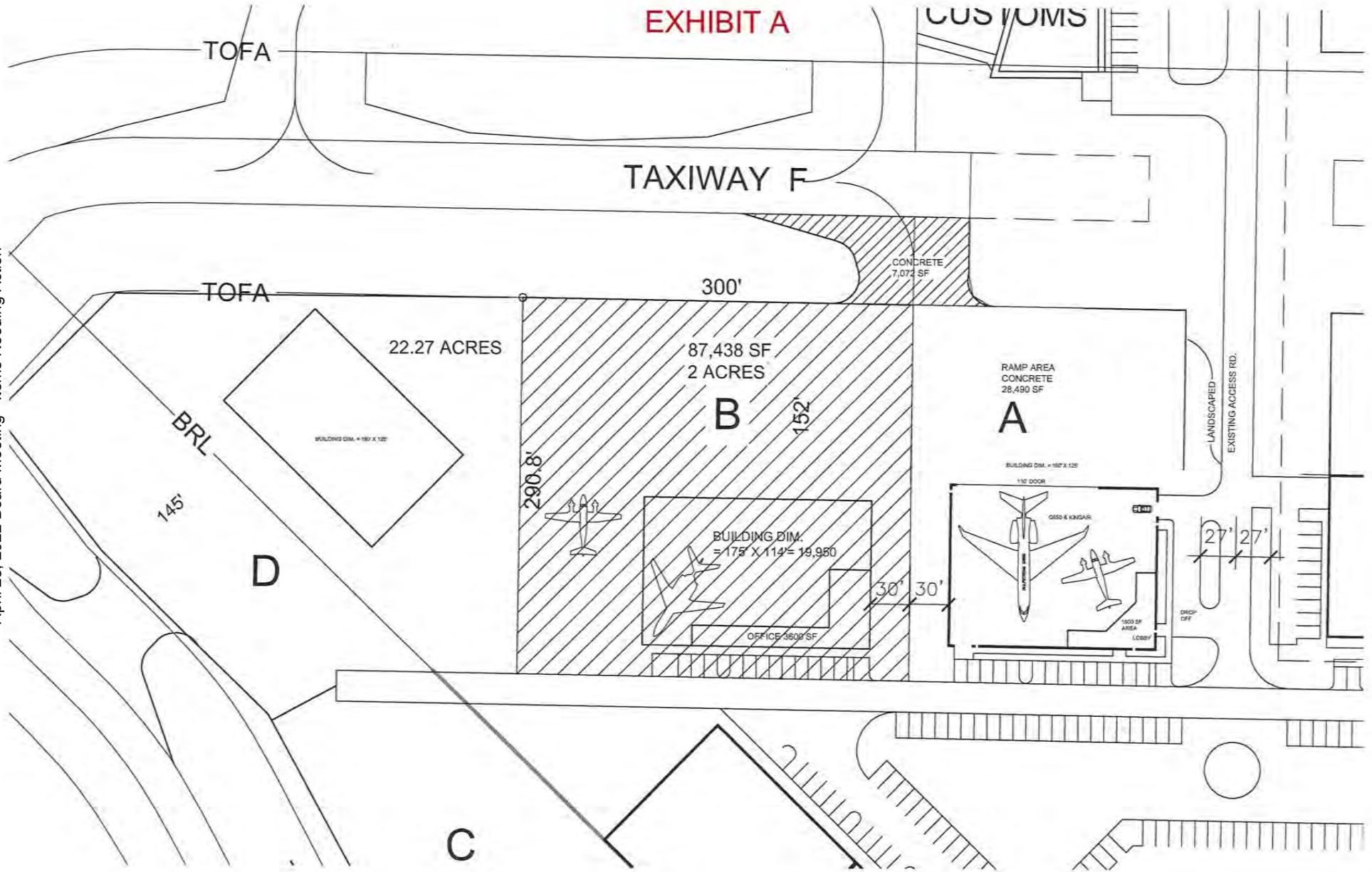
Manager

**EXHIBIT A**  
**PREMISES**

041222MAA

42





**EXHIBIT B**  
**IMPROVEMENTS**

INSERTED TENANT CONSTRUCTION PERMIT WITH PLANS AND SPECS WHEN APPROVED BY AUTHORITY

**EXHIBIT C**

**SWORN STATEMENT PURSUANT TO SECTION 287.122(3)(A) FLORIDA STATUTE, PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to SARASOTA MANATEE AIRPORT AUTHORITY

by: Mark Mitchell, Manager  
(print individual's name and title)

for: SEQ Hangar, LLC  
(print name of entity submitting sworn statement)

whose business address is: 1307 S. Tamiami Trail  
Osprey FL 34229

and, (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_

(if the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement) 506-72-6267

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, because of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
- (1) A predecessor or successor of a person convicted of a public entity crime; or
  - (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding thirty-six (36) months is considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes

those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate by placing a check (☐) in front of the appropriate statement. **(Check only one statement)**)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity was charged with and convicted of a public entity crime after July 1, 1989. However, there was a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings, and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of final order)

(Continued on next page).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY, AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY, PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO, OF ANY CHANGE AFFECTING THE CORRECTNESS OF THE INFORMATION CONTAINED IN THIS SWORN STATEMENT.

MM 4/13/2022  
(Signature) (Date)  
Mark Mitchell  
(Printed Name)

STATE OF Florida  
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 13 day of April, 2022 by Mark Mitchell who is  personally known to me or  has produced \_\_\_\_\_ as identification.

Heather Maldonado  
Signature of Notary Public  
Heather Maldonado  
Printed Name of Notary Public

My Commission Expires:

(SEAL)



## AGENDA ITEM NO. 7.1

SARASOTA MANATEE AIRPORT AUTHORITY  
APRIL 25, 2022 MEETING  
STAFF NARRATIVE

REQUEST FOR APPROVAL: CONSTRUCTION CONTRACT AWARD TO AJAX PAVING  
INDUSTRIES OF FLORIDA, LLC  
FOR THE TAXIWAY CHARLIE - FOXTROT REHABILITATION PROJECT

---

---

**EXECUTIVE SUMMARY:** Two bids were received for the Taxiway Charlie - Foxtrot Rehabilitation project on March 9, 2022. The bids were evaluated by the airport's consultant, and both were determined to be responsive. The bid submitted by AJAX Paving Industries of Florida, LLC with a base bid amount of \$5,783,281.44 and additive alternate 1 bid amount of \$316,251.00 was determined to be the low responsive bid. Staff is recommending approval of both the base and additive alternate 1 bid for a total construction cost of \$6,099,532.44.

---

---

**NARRATIVE:** Taxiway Charlie pavement is 20-years old and has sections that have been determined to be in fair condition from a recent pavement management investigation. Taxiway Foxtrot pavement is also approximately 20-years old and has sections that have been determined to be in poor condition, including cracking, shoving, and raveling. The Taxiway Charlie - Foxtrot Rehabilitation project will mill the existing asphalt, correct grades, and overlay Taxiway Charlie with new asphalt and reconstruct portions of Foxtrot. The middle section of Foxtrot will be removed to allow development of the North Quad Area. The project will also mill and overlay the taxiway connectors to Runway 14-32 from Charlie and will install an FAA approved sealcoat for the length of Charlie and Foxtrot. The project will replace the taxiway edge lights, homerun circuit, and several taxiway signs.

Hanson Professional Services and staff evaluated the two (2) bids received and determined that they were responsive. The low bid received from AJAX Paving Industries was within 3-percent of the engineer's opinion of probable construction costs. Therefore, staff recommends award of the project to the low responsive bidder with a price of \$6,099,532.44 for both the base bid and additive alternate 1.

The contract allows a 260-calendar day duration for project completion. An FAA discretionary grant and FDOT funding have been applied for to cover up to 95-percent of project costs.

---

---

**RECOMMENDATION:** It is hereby recommended that the Board authorize the Chairman to execute a construction contract with AJAX Paving Industries of Florida, LLC, pending receipt of grant from FAA, for the project in the amount up to \$6,099,532.44 with a 10% contingency for a total budget of \$6,709,486.00.

---

---

**ATTACHMENTS:** Consultant letter of recommendation for the low, responsive bidder  
Bid Tabulation  
Attorney's letter of review and concurrence



Hanson Professional Services Inc.  
6230 University Parkway Suite 202  
Sarasota, FL 34240  
(941) 342-6321

[www.hanson-inc.com](http://www.hanson-inc.com)

March 10, 2022

Mr. Kent Bontrager, P.E.  
Sr. Vice President, Engineering, Planning & Facilities  
Sarasota Manatee Airport Authority  
6000 Airport Circle  
Sarasota, Florida 34243-4271

RE: Sarasota Bradenton International Airport  
Construction of Taxiway Charlie & Foxtrot  
**RECOMMENDATION OF AWARD**

Dear Mr. Bontrager,

Hanson Professional Services Inc. has completed the tabulation and analysis of bids received March 9, 2022, for the referenced project. Two bids were received for the project, both of which were deemed responsive. Briefly, the low bidder for the project is Ajax Paving Industries of Florida, LLC, with a base bid amount of \$5,783,281.44 and an additive bid amount of \$316,251.00, for a total bid amount of \$6,099,532.44. The second bid received for the project was from Cobb Site Development, Inc., with a base bid amount of \$8,399,364.49 and an additive bid amount of \$425,181.90, for a total bid amount of \$8,824,546.39. Both bids were considered regular or having minor irregularities that can be corrected. The low bid amount was consistent with the Engineer's Opinion of Probable Construction Cost for the project. A summary of the bids received and a bid tabulation accompanies this letter.

We recommend award to Ajax Paving Industries of Florida, LLC, contingent upon availability of funding for the project.

We further recommend that the bid bonds for both bidders be held until Ajax Paving Industries of Florida, LLC, is awarded and executes a contract for the work with the Sarasota Manatee Airport Authority and supplies all necessary bonds and insurance.

Hanson Professional Services Inc. is pleased to be of continuing service on this project. Please contact me if there are any questions or concerns.

Sincerely,

HANSON PROFESSIONAL SERVICES INC.

A handwritten signature in black ink, appearing to read "Michael Harris", is written over the printed name.

Michael Harris  
Project Manager

Enclosures as Noted



CONSTRUCTION OF  
TAXIWAY CHARLIE & FOXTROT REHABILITATION  
SARASOTA BRADENTON INTERNATIONAL AIRPORT  
BID TABULATION

Item No.	Spec. No.	Item Description	Quantity	Unit	AJAX PAVING INDUSTRIES OF FLORIDA, LLC		COBB SITE DEVELOPMENT, INC.		ENGINEER'S ESTIMATE	
					Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
<b>BASE BID</b>										
1	C-100	CONTRACTOR QUALITY CONTROL PROGRAM (CQCP)	1	LS	\$71,188.34	\$71,188.34	\$64,118.57	\$64,118.57	\$30,000.00	\$30,000.00
2	C-102.5.1a	TEMPORARY INLET PROTECTION	16	EA	\$190.71	\$3,051.36	\$200.13	\$3,202.08	\$500.00	\$8,000.00
3	C-102.5.1b	SOIL TRACKING PREVENTION DEVICE	3	EA	\$4,474.41	\$13,423.23	\$3,633.37	\$10,900.11	\$2,500.00	\$7,500.00
4	C-102.5.1c	INSTALLATION AND REMOVAL OF SALT FENCE	1,000	LF	\$3.81	\$3,810.00	\$5.35	\$5,350.00	\$5.00	\$5,000.00
5	C-105	MOBILIZATION	1	LS	\$609,921.91	\$609,921.91	\$1,061,715.28	\$1,061,715.28	\$510,000.00	\$510,000.00
6	P-101-5.1	ASPHALT PAVEMENT REMOVAL	16,626	SY	\$3.53	\$58,689.78	\$3.65	\$60,684.90	\$8.00	\$133,008.00
7	P-101-5.6	COLD MILLING (PROFILE MILLING - 2" NOMINAL DEPTH)	69,120	SY	\$3.30	\$229,296.00	\$2.97	\$205,286.40	\$4.00	\$276,480.00
8	P-152-4.1	UNCLASSIFIED EXCAVATION	3,844	CY	\$12.90	\$49,587.60	\$12.96	\$49,818.24	\$20.00	\$76,880.00
9	P-152-4.4	SHOULDER ADJUSTMENT	16,626	SY	\$4.51	\$75,894.26	\$2.49	\$41,901.72	\$2.50	\$42,070.00
10	P-160-5.1	SUBGRADE STABILIZATION	12,444	SY	\$8.16	\$101,543.04	\$5.59	\$69,561.96	\$3.50	\$43,554.00
11	P-211-5.1	LIMEROCK BASE COURSE (10")	2,767	SY	\$47.42	\$131,211.14	\$51.77	\$143,247.59	\$30.00	\$83,010.00
12	P-211-5.2	LIMEROCK BASE COURSE (12")	9,183	SY	\$54.54	\$500,840.82	\$59.55	\$546,847.65	\$35.00	\$321,405.00
13	P-401-8.1	ASPHALT SURFACE COURSE	10,960	TON	\$193.27	\$2,118,306.50	\$282.36	\$3,091,842.00	\$175.00	\$1,916,250.00
14	PDOT 334	SUPERPAVE ASPHALTIC CONCRETE, 12.5 MM, TRAFFIC LEVEL C, PG 76-22	580	TON	\$180.84	\$104,887.20	\$257.46	\$148,326.80	\$140.00	\$81,200.00
15	P-602-5.1	EMULSIFIED ASPHALT PRIME COAT	4,100	GAL	\$2.74	\$11,234.00	\$3.90	\$15,990.00	\$5.00	\$20,500.00
16	P-603-5.1	EMULSIFIED ASPHALT TACK COAT	9,200	GAL	\$3.26	\$29,992.00	\$4.64	\$42,688.00	\$5.00	\$46,000.00
17	P-620-5.1a	REMOVE EXISTING MARKINGS	1,000	SF	\$6.81	\$6,810.00	\$5.15	\$5,150.00	\$4.00	\$4,000.00
18	P-620-5.2b	PERMANENT PAINTED PAVEMENT MARKING, WITH REFLECTIVE MEDIA	19,400	SF	\$3.33	\$64,602.00	\$2.68	\$51,992.00	\$2.50	\$48,500.00
19	P-620-5.3c	PERMANENT PAINTED PAVEMENT MARKING, WITHOUT REFLECTIVE MEDIA	27,900	SF	\$1.20	\$33,712.00	\$1.10	\$30,690.00	\$1.50	\$41,850.00
20	P-620-5.4d	TEMPORARY PAINTED PAVEMENT MARKING, WITHOUT REFLECTIVE MEDIA	19,400	SF	\$3.33	\$64,602.00	\$3.77	\$73,136.00	\$1.25	\$24,250.00
21	D-705-5.4	6 INCH PIPE UNDERDRAIN, COMPLETE, INCLUDING PORDUS BACKFILL AND FILTER FABRIC	2,250	LF	\$35.57	\$80,032.50	\$30.90	\$69,525.00	\$15.00	\$33,750.00
22	D-751-5.4	UNDERDRAIN INSPECTION HOLE	2	EA	\$3,201.04	\$6,402.08	\$6,966.95	\$13,933.90	\$1,000.00	\$2,000.00
23	D-751-5.5	UNDERDRAIN CLEANOUTS	4	EA	\$1,994.48	\$7,977.92	\$3,715.22	\$14,860.88	\$1,000.00	\$4,000.00
24	D-751-5.6	MANHOLE OR INLET ADJUSTMENT	3	EA	\$2,969.27	\$8,877.81	\$654.55	\$1,963.65	\$800.00	\$2,400.00
25	T-904-5.1	RODDING	42,150	SY	\$2.96	\$124,764.00	\$3.45	\$147,103.50	\$3.50	\$147,525.00
26	L-108-5.2	NO. 8 AWG, 5KV, L&N, TYPE C CABLE, INSTALLED IN TRENCH, DUCT BANK OR CONDUIT	78,780	LF	\$1.48	\$116,594.40	\$1.82	\$142,179.60	\$2.75	\$216,645.00
27	L-108-5.3	NO. 2 AWG, SOLID, TINNED COPPER COUNTERPOISE WIRE, INSTALLED IN TRENCH, INCLUDING GROUND RODS, GROUND CONNECTORS AND TERMINATIONS	3,200	LF	\$4.14	\$13,248.00	\$4.51	\$14,432.00	\$3.50	\$11,200.00
28	L-109-7.4	INSTALLATION OF EQUIPMENT WITHIN EXISTING VAULT IN PLACE	1	LS	\$203,005.68	\$203,005.68	\$221,613.11	\$221,613.11	\$175,000.00	\$175,000.00
29	L-109-7.5	CABLE AND CONSTANT CURRENT REGULATOR TESTING AND CALIBRATION PROCEDURES	1	LS	\$5,918.53	\$5,918.53	\$6,462.74	\$6,462.74	\$8,000.00	\$8,000.00
30	L-110-5.1	NON-ENGAGED, ELECTRICAL CONDUIT, 1-WAY, 2-INCH C	3,200	LF	\$7.10	\$22,720.00	\$7.77	\$24,864.00	\$12.50	\$40,000.00
31	L-115-5.2	ELECTRICAL JUNCTION STRUCTURE, L-6870 BASE CAN	1	EA	\$1,893.93	\$1,893.93	\$2,103.36	\$2,103.36	\$1,250.00	\$1,250.00
32	L-125-5.1	AIRFIELD ELECTRICAL DEMOLITION	1	LS	\$41,429.73	\$41,429.73	\$45,239.17	\$45,239.17	\$150,000.00	\$150,000.00
33	L-125-5.2	L-8611(L) LED TAXIWAY EDGE LIGHT, COMPLETE	48	EA	\$2,130.07	\$102,272.16	\$2,305.44	\$111,621.12	\$2,200.00	\$105,600.00
34	L-125-5.3	L-8611(L) LED TAXIWAY EDGE LIGHT, FIXTURE AND TRANSFORMER REPLACEMENT ON EXISTING BASE CAN	331	EA	\$581.85	\$192,610.35	\$645.21	\$212,895.51	\$1,400.00	\$463,400.00
35	L-125-5.4	L-804(L) ELEVATED RUNWAY GUARD LIGHT, FIXTURE AND TRANSFORMER REPLACEMENT ON EXISTING BASE CAN	14	EA	\$4,142.97	\$58,001.58	\$4,526.72	\$63,374.08	\$5,000.00	\$70,000.00
36	L-125-5.5	UNLIGHTED INFORMATION SIGN, SIZE 3	1	EA	\$3,551.12	\$3,551.12	\$3,858.04	\$3,858.04	\$5,000.00	\$5,000.00
37	L-125-5.6	TAXI GUIDANCE SIGN SIZE 1, STYLE 2 & 3, CLASS 2, 3-MODULE	1	EA	\$7,102.24	\$7,102.24	\$7,716.08	\$7,716.08	\$6,995.00	\$6,995.00
38	L-125-5.7	TAXI GUIDANCE SIGN SIZE 2, STYLE 2 & 3, CLASS 2, 1-MODULE	1	EA	\$5,326.68	\$5,326.68	\$5,836.07	\$5,836.07	\$6,996.00	\$6,996.00
39	L-125-5.8	TAXI GUIDANCE SIGN SIZE 2, STYLE 2 & 3, CLASS 2, 3-MODULE	5	EA	\$6,273.05	\$31,365.25	\$6,838.74	\$34,193.70	\$6,997.00	\$34,985.00
40	L-125-5.9	TAXI GUIDANCE SIGN SIZE 2, STYLE 2 & 3, CLASS 2, 3-MODULE	2	EA	\$8,049.20	\$16,098.40	\$8,767.76	\$17,535.52	\$6,998.00	\$13,996.00
41	L-125-5.10	TAXI GUIDANCE SIGN SIZE 2, STYLE 2 & 3, CLASS 2, 4-MODULE	1	EA	\$9,232.91	\$9,232.91	\$10,070.11	\$10,070.11	\$6,999.00	\$6,999.00
42	L-125-5.11	TAXI GUIDANCE SIGN SIZE 3, STYLE 2 & 3, CLASS 2, 1-MODULE	6	EA	\$5,918.53	\$35,511.18	\$6,462.74	\$38,776.44	\$7,000.00	\$42,000.00
43	L-125-5.12	TAXI GUIDANCE SIGN SIZE 3, STYLE 2 & 3, CLASS 2, 3-MODULE	17	EA	\$6,510.39	\$110,676.63	\$7,100.94	\$120,715.98	\$8,000.00	\$136,000.00
44	L-125-5.13	TAXI GUIDANCE SIGN SIZE 3, STYLE 2 & 3, CLASS 2, 3-MODULE	6	EA	\$8,265.95	\$49,595.70	\$9,034.76	\$54,208.56	\$9,000.00	\$54,000.00
45	L-125-5.14	TAXI GUIDANCE SIGN SIZE 3, STYLE 2 & 3, CLASS 2, 4-MODULE	6	EA	\$9,489.05	\$56,934.30	\$10,353.45	\$62,120.70	\$10,000.00	\$60,000.00
46	L-125-5.15	REMOVE AND REPLACE ALL SIGN PANEL(S) IN EXISTING SIGN FRAME 2-MODULE	11	EA	\$1,735.56	\$19,091.16	\$1,933.47	\$21,268.17	\$1,500.00	\$16,500.00
47	L-125-5.16	REMOVE AND REPLACE ALL SIGN PANEL(S) IN EXISTING SIGN FRAME 3-MODULE	6	EA	\$2,959.27	\$17,755.62	\$3,231.37	\$19,388.22	\$3,000.00	\$18,000.00
48	L-125-5.17	REMOVE AND REPLACE ALL SIGN PANEL(S) IN EXISTING SIGN FRAME 4-MODULE	1	EA	\$3,551.12	\$3,551.12	\$3,956.06	\$3,956.06	\$4,500.00	\$4,500.00
49	L-125-5.18	RELOCATE TAXI GUIDANCE SIGN	1	EA	\$3,551.12	\$3,551.12	\$3,956.06	\$3,956.06	\$5,000.00	\$5,000.00
50	SP-1	ARRIVAL	5	EA	\$1,480.39	\$7,401.95	\$1,701.81	\$8,509.05	\$10,000.00	\$50,000.00
51	SP-2.1	PIPE REPAIRS	1	LS	\$32,551.93	\$32,551.93	\$684,245.84	\$684,245.84	\$50,000.00	\$50,000.00
52	SP-2.2	FILL AND ABANDON EXISTING PIPE	1	LS	\$23,966.46	\$23,966.46	\$50,962.47	\$50,962.47	\$12,000.00	\$12,000.00
<b>BASE BID TOTAL =</b>					<b>\$5,783,281.44</b>		<b>\$8,399,364.49</b>		<b>\$5,673,198.00</b>	
<b>ADDITIVE BID NO. 1</b>										
A1-1	P-608-8.1	ASPHALT SURFACE TREATMENT	117,130	SY	\$2.70	\$316,251.00	\$3.63	\$425,181.90	\$2.00	\$234,260.00
<b>ADDITIVE BID NO. 1 TOTAL =</b>					<b>\$316,251.00</b>		<b>\$425,181.90</b>		<b>\$234,260.00</b>	
<b>TOTAL BID =</b>					<b>\$6,099,532.44</b>		<b>\$8,824,546.39</b>		<b>\$5,907,458.00</b>	





**Charles D. (Dan) Bailey, Jr.**  
Attorney at Law  
dbailey@williamsparker.com  
T: (941) 329-6609  
F: (941) 954-3172

March 24, 2022

Kent Bontrager, P.E.  
Sr. Vice President of Engineering, Planning & Facilities  
6000 Airport Circle  
Sarasota, FL 34243

**Re: Construction of Taxiway Charlie & Foxtrot  
Bid Review/Contract Award Recommendation**

Dear Kent:

You have solicited my review and recommendation regarding the bids received on March 9, 2022, for the above-referenced project. In that connection, I have reviewed the letter of March 10, 2022, from Michael Harris, Project Manager for Hanson Professional Services, Inc., addressed to you, which provides a bid tabulation and recommendation of award.

There were two bidders and Ajax Paving Industries of Florida, LLC submitted the low Base Bid of \$5,783,281.44 and an additive bid amount of \$316,251.00, for a total bid amount of \$6,099,532.44. Mr. Harris' letter indicates that Ajax' bid was considered regular or had only minor irregularities that can be corrected. He further notes that the bid amount was consistent with the Engineer's Opinion of Probable Construction Cost, exceeding it by only about 1 (one) percent.

Accordingly, I concur with Mr. Harris' findings that Ajax Paving Industries of Florida, LLC is indeed the lowest and best bidder, and I recommend that it be awarded the contract based on its Base Bid of \$5,783,281.44 and an additive bid amount of \$316,251.00, for a total bid amount of \$6,099,532.44.

If I can assist in any other way, please advise.

Respectfully submitted,

Charles D. (Dan) Bailey, Jr.  
For the Firm

cc: Michael Harris, Project Manager  
7060628.v1

WilliamsParker.com  
200 South Orange Avenue Sarasota, Florida 34236

## AGENDA ITEM NO. 7.2

SARASOTA MANATEE AIRPORT AUTHORITY  
APRIL 25, 2022 MEETING  
STAFF NARRATIVE

**REQUEST FOR APPROVAL: CONSTRUCTION PHASE PROFESSIONAL SERVICES CONTRACT WITH HANSON PROFESSIONAL SERVICES FOR TAXIWAY CHARLIE-FOXTROT REHABILITATION PROJECT**

---

---

**EXECUTIVE SUMMARY:** Based upon the most recent Pavement Conditions Report, Taxiway Charlie and Foxtrot need to be rehabilitated. Hanson Professional Services designed the rehabilitation of the pavement, and it was advertised for bidding. The low responsive bidder for the project was AJAX Paving Industries of Florida, LLC., and Hanson Professional Services will provide construction phase services to support the construction. The negotiated fee for the Construction Phase Services is \$467,154.00.

---

---

**NARRATIVE:** Taxiway Charlie pavement is 20-years old and has sections that have been determined to be in fair condition from a recent pavement management investigation. Taxiway Foxtrot pavement is also approximately 20-years old and has sections that have been determined to be in poor condition including cracking, shoving, and raveling. The Taxiway Charlie - Foxtrot Rehabilitation project will mill the existing asphalt, correct grades, and overlay with new asphalt the Taxiway Charlie and will reconstruct portions of Foxtrot. The middle section of Foxtrot will be removed to allow development of the Northquadrant Area. The project will also mill and overlay the taxiway connectors to Runway 14-32 from Charlie and will install a FAA approved sealcoat for the length of Charlie and Foxtrot. The project will replace the taxiway edge lights, the homerun circuit, and several taxiway signs.

Hanson Professional Services will provide the construction phase services throughout the 260-calendar day construction duration at a cost of \$467,154.00. The project is funded up to 95% with FDOT and FAA grants.

---

---

**RECOMMENDATION:** It is hereby recommended that the Board authorize the Chairman to execute a construction phase services contract with Hanson Professional Services in the amount of \$467,154.00, with a 10% contingency for a total budget of \$513,869.00.

---

---

**ATTACHMENTS:** Contract, scope & fee

**FIRST AMENDMENT  
TO  
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES  
FOR THE  
TAXIWAY C & F REHABILITATION PROJECT  
BETWEEN  
THE SARASOTA MANATEE AIRPORT AUTHORITY  
AND  
HANSON PROFESSIONAL SERVICES, INC.**

**RE: Construction Phase Services**

This Amendment entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Sarasota Manatee Airport Authority, hereinafter referred to as the "AUTHORITY", and HANSON PROFESSIONAL SERVICES, INC., hereinafter, referred to as "the Consultant". The Contract is effective on the date of execution by the Authority.

**WITNESSETH**

WHEREAS, the AUTHORITY has entered into an Agreement for Professional Engineering Services, dated May 17, 2021; and

WHEREAS, it is the intent of the AUTHORITY and the CONSULTANT to amend the Scope of Services on March 30, 2022 to provide additional construction phase services;

NOW, THEREFORE, in consideration of the foregoing and the covenants hereinafter contained, it is agreed as follows:

1. Incorporation of Prior Documents: The Agreement for Professional Engineering Services, dated May 17, 2021 is made a part hereof by reference and hereinafter collectively referred to as the "Agreement."
2. Scope of Services: The scope and services are amended to incorporate the additional work set forth in Attachment "A" and is made a part hereof by reference and hereinafter collectively referred to as the "Agreement."
3. Compensation: The total amount of compensation for additional services as described in Attachment "A" is **four hundred sixty-seven thousand, one hundred fifty-four dollars and no cents (\$467,154.00)**.

The maximum fee shall be increased to **\$802,825.43**.

4. Provision for Payment of Additional Services: Payment shall be in an amount equal to the estimated percentage of completion for that task during each billing period on the project times the lump sum fee established for that task.
5. Effect of Amendment: Except as expressly amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, this First Amendment to the Agreement for Professional Engineering Services has been executed in duplicate, by the respective parties hereto. A facsimile or electronic (including "pdf") copy of this Contract, and any amendments thereto, and any signatures thereon, shall be considered for all purposes as an original. Alternatively, such documents may be executed by electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

WITNESSED:

**SARASOTA MANATEE AIRPORT AUTHORITY**

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
By: \_\_\_\_\_ By: Kent D. Bontrager, C.M., P.E.  
As: Sr. V.P., Engineering, Planning & Facilities

WITNESSED:

**HANSON PROFESSIONAL SERVICES, INC.**

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
By: \_\_\_\_\_ By: Blake Swafford  
As: Vice President

**FIRST AMENDMENT TO THE  
ENGINEERING SERVICES AGREEMENT  
FOR THE  
TAXIWAY C & F REHABILITATION PROJECT  
BETWEEN  
THE SARASOTA MANATEE AIRPORT AUTHORITY  
Sarasota Bradenton International Airport  
AND  
HANSON PROFESSIONAL SERVICES, INC.**

**FEE SUMMARY OF CHANGES**

Original Contract (May 24, 2021)	\$ 335,671.43
<b>Amend No. 1, Construction Phase Services (March, 2022)</b>	<b>\$ 467,154.00</b>
<b>TOTAL:</b>	<b>\$ 802,825.43</b>

**COST PROPOSAL FOR DESIGN AND BIDDING PHASE SERVICES**

Hanson Professional Services Inc.

03/12/21

Sarasota Bradenton International Airport

Project Title: Taxiways C and F Rehabilitation

Hanson Project No.: 20A0103

DIRECT LABOR PROPOSED HOURLY RATE	Senior Pr. Mgr \$88.90	PM/ Sr. Proj. Engineer \$58.67	Pr. Eng. \$49.88	Sr. Elec. Eng. \$68.71	Designer \$31.25	Sr. Tech. \$35.07	Admin \$31.25	TOTAL HOURS	TOTAL COST	
<b>PART I - BASIC SERVICES</b>										
<b>1.0 Preliminary Project Engineering Activities</b>										
1.1 Collect and Review Existing Data		8	8	4	4			24	\$ 1,269.00	
1.2 Conduct Visual Site Reconnaissance and Vault Survey	8	16		16				40	\$ 2,749.20	
1.3 Coordinate Design Survey Program	4	12	8				4	28	\$ 1,584.42	
1.4 Coordinate Design Geotechnical Program	2	8	4				2	16	\$ 909.54	
1.5 Pre-Design/Kickoff Meeting	4	8		4				16	\$ 1,099.76	
<b>2.0 Schematic Design (30%)</b>										
2.1 Project Management	2	8					4	14	\$ 772.12	
2.2 Construction Plans	8	20	30	4	60	30		152	\$ 6,585.84	
2.3 Airport/FAA Coordination	8	16		8				32	\$ 2,199.52	
2.4 Project Manual and Specifications	2	8	12	12	8		8	50	\$ 2,571.40	
2.5 Schematic Opinion of Probable Construction Cost	2	8	10	8	16			44	\$ 2,196.60	
2.6 Quality Assurance Review	4	4	4	4				16	\$ 1,065.02	
2.7 Schematic Design Review Meeting	4	8		4				16	\$ 1,099.76	
<b>3.0 Preliminary Design (60%)</b>										
3.1 Project Management	4	30					8	42	\$ 2,365.55	
3.2 Construction Plans	8	48	64	40	120	80		360	\$ 16,029.84	
3.3 Project Manual and Specifications	2	16	40	24	16		16	114	\$ 5,764.68	
3.4 Engineer's Report	4	4	8	4	4		4	24	\$ 1,389.94	
3.5 Quality Assurance Review	4	8	4	4				20	\$ 1,299.68	
3.6 Preliminary Design Review Meeting	4	8						12	\$ 824.92	
<b>3.0 Final Design (100%)</b>										
3.1 Project Management	4	30					8	42	\$ 2,365.55	
3.2 Construction Plans	8	64	88	40	160	80		440	\$ 19,418.00	
3.3 Project Manual and Specifications	2	16	40	24	16		16	114	\$ 5,764.68	
3.4 Final Opinion of Probable Construction Cost	4	8	16	4	16	8		56	\$ 2,680.00	
3.5 Prepare Modifications of Standard Design/Specifications	2	2	4				1	9	\$ 526.30	
3.6 Engineer's Report	2	4	8	4	8		4	30	\$ 1,462.14	
3.7 Quality Assurance Review	4	10	4	4				22	\$ 1,417.01	
3.8 Final Design Review Meeting	4	8						12	\$ 824.92	
<b>4.0 Bidding</b>										
4.1 Project Management	4	4					1	9	\$ 621.51	
4.2 Prepare Bid Documents	1	4	8			4	1	18	\$ 894.93	
4.3 Attend Pre-bid Conference		8						8	\$ 469.32	
4.4 Prepare Bidding Addenda	2	8	4	4	4		1	23	\$ 1,278.13	
4.5 Prepare Bid Tabulation and Recommendation of Award	2	4	4				2	12	\$ 674.88	
<b>PART 2 - ADDITIONAL SERVICES</b>										
5.1 Design Surveys (Outside Services - See Below)								0	\$ -	
5.2 Subsurface Geotechnical (Outside Services - See Below)								0	\$ -	
5.3 Construction Safety and Phasing Plan Preparation/Coordination	1	12	24		40			77	\$ 3,242.40	
5.4 Stormwater Permitting Coordination	1	12	8					21	\$ 1,192.72	
5.5 Video Inspection of Storm Drain (Outside Services - See Below)								0	\$ -	
	115	432	400	216	468	202	80	1,913	\$ 94,609.28	
<b>DIRECT SALARY COSTS</b>	<b>\$10,223.50</b>	<b>\$25,343.28</b>	<b>\$19,992.00</b>	<b>\$14,841.36</b>	<b>\$14,625.00</b>	<b>\$7,084.14</b>	<b>\$2,500.00</b>		<b>\$ 94,609.28</b>	
								Average Rate per Hour	\$ 49.46	
<b>LABOR AND GENERAL AND ADMINISTRATIVE OVERHEAD<sup>1</sup></b>								APPROVED RATE:	156.67%	\$ 148,224.36
<b>PROFIT</b>								RATE	15.00%	\$ 36,425.05
<b>SUBTOTAL (DIRECT SALARIES + OVERHEAD + PROFIT)</b>										\$ 279,258.68
<b>BURDENED LABOR AT MULTIPLIER</b>									2.9517	\$ 279,258.68
<b>DIRECT NONSALARY EXPENSES (excluded from profit)</b>										
Lodging					2	NT @	\$ 200.00	per NT	\$ 400.00	
Meals/Per Diem					3	DY @	\$ 36.00	per DY	\$ 108.00	
Transportation - Mileage					160	MI @	\$ 0.575	per MI	\$ 92.00	
Transportation - Airfare					1	LS @	\$ 500.00	per LS	\$ 500.00	
Transportation - Other (Rental Car)					3	DY @	\$ 50.000	per DY	\$ 150.00	
Materials and Supplies					1	LS @	\$ 100.00	per LS	\$ 100.00	
Printing					1	LS @	\$ 100.00	per LS	\$ 100.00	
Other Costs (excluding outside services)					0	LS @	\$ -	per LS	\$ -	
<b>SUBTOTAL FOR DIRECT NONSALARY EXPENSES</b>										\$ 1,450.00
<b>OUTSIDE SERVICES - Survey/Hyatt Surveying Services (DBE)</b>										\$ 29,986.00
<b>OUTSIDE SERVICES - Geotechnical/Ardaman and Associates</b>										\$ 7,784.00
<b>OUTSIDE SERVICES - Video Inspection</b>										\$ 17,192.75
<b>TOTAL AMOUNT NOT TO EXCEED</b>										<b>\$ 335,671.43</b>

**NOTES:**

1. FDOT letter dated June 17, 2020

**SCOPE OF SERVICES  
FOR  
DESIGN AND BIDDING SERVICES  
FOR  
TAXIWAY "C" AND TAXIWAY "F" REHABILITATION  
FOR  
SARASOTA MANATEE AIRPORT AUTHORITY  
SARASOTA BRADENTON INTERNATIONAL AIRPORT (SRQ)**

---

The following entities are referred to: AIRPORT (Sarasota Manatee Airport Authority/Sarasota Bradenton International Airport); CONSULTANT (Hanson Professional Services Inc.); FAA (Federal Aviation Administration); FDOT (Florida Department of Transportation-Aviation Division).

---

**SCOPE OF SERVICES**

---

**Project Description**

The project provides professional engineering services associated with the rehabilitation of Taxiways C and F at Sarasota Bradenton International Airport. The approximate limits of the pavements to be rehabilitated is shown in the attached Figure 1.

The project is anticipated to include a mill and overlay of the existing pavements. Some pavements will require full or partial depth reconstruction due to subgrade or base failures, specifically pavements on Taxiway F. Widening of taxiway intersection fillets to comply with current or revised FAA Advisory Circular (AC) 150/5300-13 will be reviewed with FAA. The project will also include replacement of existing taxiway edge lighting with new, LED taxiway edge lights, including installation of new homerun cables to the electrical vault. Replacement of the respective constant current regulator(s) and associated vault modifications is included. Existing signs will be replaced or have existing panels replaced depending on existing condition. Taxiway designation changes to comply with current FAA guidance in AC 150/5340-18 will also be reviewed with FAA and updated if required. Signage and marking locations within the project area will be evaluated for compliance with applicable FAA standards. The project design scope also includes a video inspection and evaluation of existing storm drain crossings within the project limits to determine if any repair or replacement is required.

See specific scope of services below.

**Part I - Basic Services**

**Preliminary Project Engineering Activities**

1. Collect and Review existing Data

Level of Service:

Coordinate with SMAA staff and other sources to obtain existing drawings, maps, CAD files, record drawings, geotechnical reports, surveys and other data to be used during the design process.

Deliverables:

Collected data will be incorporated into other deliverables.

2. Conduct Visual Site Reconnaissance and Vault Survey

Level of Service:

A site visit will be conducted by members of the design team to review and document existing field conditions. The site visit will include a review of the proposed horizontal alignments, pavement tie-in locations, electrical connections, duct bank markers and above ground features. The site visit will also include a vault survey by the airfield lighting engineer. Photographs and notes will be recorded.

---

Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport – Rehabilitate Taxiways C and F

---

The task anticipates site visits by the Sr. Project Manager/EOR (1 day), Project Manager (2 days), and Electrical Engineer (2 days).

Deliverables:

Electronic PDF versions of the field notes and photographs will be submitted to the Airport.

3. Coordinate Design Survey and Storm Video Inspection Program

Level of Service:

The Project Manager will coordinate with the survey and storm pipe video subconsultants to finalize agreements, insurance submittals, scope of work and fee. In addition, access to the site, contact information and lines of communication will be established.

Deliverables:

Electronic PDF versions of the agreement package for each sub will be submitted to the Airport.

4. Coordinate Design Geotechnical Program

Level of Service:

The Project Manager will coordinate with the geotechnical subconsultant to finalize the agreements, insurance submittals, scope of work and fee. In addition, access to the site, contact information and lines of communication will be established.

Deliverables:

Electronic PDF versions of the agreement package for each sub will be submitted to the Airport.

5. Pre-Design/Kickoff Meeting

Level of Service:

Coordinate meeting with Airport, FAA and FDOT. Prepare meeting materials, conduct and attend Pre-design conference at the Airport.

Deliverables:

Electronic PDF versions of the meeting sign-in sheet, agenda, and notes will be submitted to the Airport, FAA and FDOT.

**Schematic Design (30% Design)**

1. Project Management

Level of Service

Develop a project management plan, which includes tools for monitoring and controlling scope, schedule and budget. These tools will be used to track the schedule, monitor budget, and document progress during the project. In addition, this task includes client coordination, project status updates, and general contract management during this phase of the project.

2. Construction Plans

Level of Service:

Develop the schematic geometric layouts, electrical vault plan, taxiway edge lighting and signage layouts, and typical pavement sections to a 30% stage submittal level as applicable for each component. The construction plans will be developed following applicable FAA Advisory Circulars and Specifications. These drawings will be utilized for coordination with FAA.

The schematic design construction plans will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the final design construction plans.

Deliverables:

Electronic PDF versions of the preliminary construction plans will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the final design/bidding

---



documents.

3. Airport/FAA Coordination

Level of Service:

Coordinate with FAA and Airport regarding schematic design elements. This task anticipates one meeting with the Orlando ADO to review design elements that require FAA coordination, including taxiway intersection/fillet design, taxiway designations, signage and marking to comply with recent FAA guidance for taxiways that pass through approach/departure areas.

Deliverables:

Electronic PDF versions of the notes will be submitted to the Airport, FAA and FDOT.

4. Project Manual and Specifications

Level of Service:

The project manual and specifications will be prepared to in outline format using the standard specifications of FAA Advisory Circular 150/5370-10, latest change, adapted to the project including all FAA and/or FDOT approved deviations to standards. The project manual will also include standard specifications provided by the Airport to incorporate into the project manual.

A project manual and specifications document will be compiled to include unedited to partial-edited sections and provisions applicable to the project specific. The sections and provision are not final and will require further refinement during the subsequent design stage.

Staff will compile the preliminary project manual and specification and format the documents with specific project information. The expected table of contents is as follows:

- General Provisions
- FAA Mandatory Requirements
- SMAA Specifications
- Contract Forms
- Construction Safety and Phasing Plan
- Special Provisions
- Technical Provisions for Earthwork, Base Course, Surface Course, Drainage, Turfing, Signage, Lighting and Markings.

Deliverables:

Electronic PDF versions of the outline project manual and specifications document will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the design/bidding documents.

5. Schematic Opinion of Probable Construction Cost

Level of Service:

Prepare the opinion of probable construction cost based on the schematic design. The Airport recognizes and agrees that Hanson does not have control over Contractor's pricing strategies or costs and that estimate may vary from actual bid or construction costs. The Airport also recognizes and agrees that the estimate is based on schematic, not complete plans and that quantities and items will likely change as design progresses.

Deliverables:

Electronic PDF versions of the opinion of probable construction cost estimate will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the final design/bidding documents.

6. Conduct a Quality Assurance Review

---

---

Level of Service

The design team shall conduct a technical and plan sheet coordination review before submittal of the schematic design deliverables items.

Deliverables:

Electronic PDF versions of the meeting note comments and markup notes will be submitted to the Airport.

7. Schematic Design Review Meeting

Level of Service

The design team shall participate in a design review with Airport staff to review the schematic design plans and documents.

Deliverables:

Electronic PDF versions of the meeting note comments will be submitted to the Airport.

**Preliminary Design (60% Design)**

1. Project Management

Level of Service

Track project schedule, monitor budget, and document progress during this phase of the project. This task also includes client coordination, regular project status updates and communication, and general contract management during this phase of the project.

2. Construction Plans

Level of Service:

Develop the geometric layouts, edge lighting and signage layouts, paving and grading concepts, typical sections with pavement and base designs to a 60% stage submittal level as applicable to each individual sheet. The construction plans will be developed following applicable FAA Advisory Circulars and Specifications. The anticipated construction plan sheets to be generated are as follows:

- Cover Sheet
- Summary of Quantities and Index to Sheets
- Scope of Work
- Construction Safety and Phasing Plans
- Typical Sections
- Paving Plan
- Plan and Profile
- Cross Sections
- Proposed Electrical Plan
- Airfield Lighting Notes
- Airfield Light Fixture Details
- Cable Splice Details Sheet
- Counterpoise Plan Details
- Duct Bank Details and Notes
- Handhole and Duct Bank Details
- Electrical Notes
- Electrical Legend and Abbreviations
- Existing High Voltage Wiring Schematics
- Proposed High Voltage Wiring Schematics
- Legend Plate Schedules
- Grounding Notes

The preliminary construction plans will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the final design construction plans.

Deliverables:

Electronic PDF versions of the preliminary construction plans will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the final design/bidding documents.

3. Project Manual and Specifications

Level of Service:

The project manual and specifications will be prepared using the standard specifications of FAA Advisory Circular 150/5370-10, latest change, adapted to the project including all FAA and/or FDOT approved deviations to standards.

During this phase, the project manual and specifications document will be revised and updated to approximately a 60% level. The sections and provision are not final and will require further refinement during the final design stage.

Deliverables:

Electronic PDF versions of the project manual and specifications document will be submitted to the Airport, FAA and FDOT for review and comment. Comments will be incorporated into the final design/bidding documents.

4. Conduct a Quality Assurance Review

Level of Service

The design team shall conduct a technical and plan sheet coordination review before submittal of the preliminary design deliverables items.

Deliverables:

Electronic PDF versions of the meeting note comments and markup notes will be submitted to the Airport.

5. Engineer's Report

Level of Service:

Prepare the draft of the Engineer's Report for the project. The report will discuss design criteria, specific design solutions, modifications to standards, copies of design calculations, construction time and cost estimates, and information used to estimate liquidated damages.

Deliverables:

Electronic PDF versions of the engineer report will be submitted to the Airport, FAA and FDOT.

6. Preliminary (60%) Design Review Meeting

Level of Service

The design team shall participate in a design review with Airport staff to review the 60% design plans and documents.

Deliverables:

Electronic PDF versions of the meeting note comments will be submitted to the Airport.

**Final Design**

1. Project Management

---

---

Level of Service

Track project schedule, monitor budget, and document progress during this phase of the project. This task also includes client coordination, regular project status updates and communication, and general contract management during this phase of the project.

2. Construction Plans

Level of Service:

Incorporate review comments from the preliminary submittal, finalize the design and prepare the construction plans for bidding. Finalize the geometric layouts, edge lighting and signage layouts, paving plans, typical sections, and add applicable detail sheets and notes to a 100% stage submittal. The construction plans will be developed following applicable FAA Advisory Circulars and Specifications. The anticipated construction plan sheets to be generated are as follows:

- Cover Sheet
- Summary of Quantities and Index to Sheets
- Scope of Work
- Construction Safety and Phasing Plans
- Construction Safety Notes and Details
- Typical Sections
- Horizontal & Vertical Control Plan
- Existing Site Plan
- Removal Plan
- Paving Plan
- Paving Details
- Plan and Profile
- Stormwater Pollution Prevention Plans - Temporary
- Stormwater Pollution Prevention Plan - Permanent
- Stormwater Pollution Prevention Plan - Notes and Details
- Cross Sections
- Pavement Marking Plan
- Pavement Marking Details
- Airfield Signage Plan and Details
- Proposed Electrical Plan
- Airfield Lighting Notes
- Airfield Light Fixture Details
- Cable Splice Details Sheet
- Counterpoise Plan Details
- Duct Bank Details and Notes
- Handhole and Duct Bank Markers
- Electrical Notes
- Electrical Legend and Abbreviations
- Existing High Voltage Wiring Schematics
- Proposed High Voltage Wiring Schematics
- Legend Plate Schedules
- Grounding Notes
- Electrical Vault Plan and Details

Deliverables:

- Electronic PDF versions of the bidding construction plans will be submitted to the Airport, FAA and FDOT.

Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport – Rehabilitate Taxiways C and F

3. Project Manual and Specifications

Level of Service:

Incorporate review comments from the preliminary submittal, finalize the project manual and specifications for bidding. The project manual and specifications will be prepared using the standard specifications of FAA Advisory Circular 150/5370-10, latest change, adapted to the project including all FAA and/or FDOT approved deviations to standards.

The design team will complete edits to the specifications and technical provisions and finalize method and measurement of payment items. In addition, specifications will be reviewed against the plans for consistency.

The expected table of contents is as follows and will include all applicable technical provisions:

- General Provisions
- FAA Mandatory Requirements
- SMAA Specifications
- Contract Forms
- Construction Safety and Phasing Plan
- Special Provisions
- Technical Provisions for Earthwork, Base Course, Surface Course, Drainage, Turfing, Signage, Lighting and Markings.

Deliverables:

- Electronic PDF versions of the bidding project manual and specifications document will be submitted to the Airport, FAA and FDOT.

4. Final Opinion of Probable Construction Cost

Level of Service:

Finalize the opinion of probable construction cost based on the preliminary review comment and the final design. The Airport recognizes and agrees that Hanson does not have control over Contractor's pricing strategies or costs and that estimate may vary from actual bid or construction costs. The Airport also recognizes and agrees that the estimate is based on preliminary, not complete plans and that quantities and items will likely change as design progresses.

Deliverables:

Electronic PDF versions of the opinion of probable construction cost estimate will be submitted to the Airport, FAA, and FDOT.

5. Prepare Modifications of Standard Design/Specifications

Level of Service:

Prepare a list of modifications to FAA/FDOT design or specification standards that are known or anticipated. Provide a justification for each and coordinate with FAA/FDOT on the request for deviations as applicable.

Deliverables:

Electronic PDF versions of the list of modifications will be submitted to the Airport, FAA and FDOT as appropriate.

6. Engineer's Report

Level of Service:

Finalize the Engineer's Report for the project. The report will discuss design criteria, specific design solutions, modifications to standards, copies of design calculations, construction time and cost estimates, and information used to estimate liquidated damages.

Deliverables:

Electronic PDF versions of the engineer report will be submitted to the Airport, FAA and FDOT.

7. Conduct Quality Assurance reviews for coordination. These reviews will be done prior to document submittal.

Level of Service

The design team shall conduct a half-day technical and plan sheet coordination review before submittal of the final design deliverables items.

Deliverables:

Electronic PDF versions of the meeting note comments and markup notes will be submitted to the Airport.

8. Final Design Review Meeting

Level of Service

The design team shall participate in a design review with Airport staff to review the 60% design plans and documents.

Deliverables:

Electronic PDF versions of the meeting note comments will be submitted to the Airport.

**BIDDING PHASE SERVICES**

1. Project Management

Level of Service

Track project schedule, monitor budget, and document progress during this phase of the project. This task also includes client coordination, regular project status updates and communication, and general contract management during this phase of the project.

2. Prepare Bid Documents

Level of Service

Provide final bid documents in electronic formats. Includes the creating of PDF files of the Contract Documents and Project Specifications and the Construction Plans, transmittal to Airport for posting to online planroom for bidding.

Deliverables:

Electronic versions (PDF format) of the construction plans and project specifications.

3. Attend a pre-bid conference.

Deliverables:

Prepare for and attend pre-bid meeting.

Level of Service:

Meeting will be conducted with participation by consultant following general guidance of the Advisory Circulars. The meeting notes and sign in sheet will be kept by the airport and electronically distributed by SMAA for inclusion in the bidding documents within seven (7) calendar days following the pre-bid conference.

4. Prepare bidding addenda.

Deliverables:

Issue up to two (2) addenda packages and clarification letters including responses to bidder questions

---

Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport – Rehabilitate Taxiways C and F

and revisions to applicable construction plans and specifications shall be coordinated with and sent to SMAA to post to bidding website.

Level of Service:

Up to two (2) addenda packages and clarification letters shall be submitted in electronic format.

5. Prepare a tabulation of bids and recommendation of award letter.

Level of Service:

A tabulation of bids shall be prepared in a spreadsheet format. The tabulation of bids and bidder submittal items will be reviewed. The recommendation of award letter will comment on the responsiveness and regularity of the bidders' submittal items.

Deliverables:

An electronic version (xls and pdf) of the tabulation of bids and recommendation of award letter will be submitted to SMAA.

**Additional Services**

1. Design Surveys

Level of Service:

Conduct design topographical surveys of the project limits under the direction of a Florida Licensed Surveyor. Scope of services for survey attached.

Deliverables:

- One (1) original signed and sealed set of the existing conditions survey will be submitted to the Airport.
- Electronic PDF versions of the existing conditions survey will be submitted to the Airport.

2. Subsurface Geotechnical Exploration

Level of Service:

Conduct design geotechnical exploration for the pavement design. Scope of services for geotechnical exploration attached.

Deliverables:

- One (1) hard copy original signed geotechnical report will be submitted to the Airport.
- Electronic PDF versions of the geotechnical report will be submitted to the Airport.
- Information will be included in the respective deliverables.

3. Construction Safety and Phasing Plan Preparation and Coordination

Level of Service:

Prepare a Construction Safety and Phasing Plan (CSPP) for inclusion in the project documents. The Construction Safety and Phasing Plan will be provided to the Airport for review and comment during the preliminary design phase. The revised CSPP, incorporating Airport comments, will be provided to SMAA for upload to FAA OE/AAA website for FAA approval.

Deliverables:

Completed preliminary and final CSPP in PDF format.

4. Stormwater Permitting Coordination

Level of Service:

Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport – Rehabilitate Taxiways C and F

---

Coordinate with Southwest Florida Water Management District (SWFWMD) via meeting on the project impacts. It is anticipated that the project impacts will be minimal and no SWFWMD permit will be required. Permitting, if required, will be completed as an additional service.

Deliverables:

Documentation from outcome of coordination with SWFWMD.

5. Video Inspection of Storm Drain Pipes

Level of Service:

Complete video inspection of existing storm drainage pipes under Taxiway C. Existing length of pipe to be inspected is estimated to be 4500 linear feet (10 crossings), as depicted on attached figure. Pipe inspection will require subcontractor to complete minimal plugging and dewatering pipes (assumes completion in dry season), followed by light cleaning (desilting) and inspection. Video inspection data will be evaluated to determine if any remediation to drainage pipes is required. If needed, design for pipe lining or other repair will be completed as an additional service.

Deliverables:

Results of video inspection in suitable electronic format and memo documenting pipe condition and recommendations.

**Part III - Excluded Services**

1. Wetland identification, delineations, mapping, permitting, mitigation design.
2. Endangered species surveys.
3. Environmental Assessments beyond categorical exclusion evaluation.
4. Stormwater drainage modifications or environmental resource permitting.
5. Hazardous materials studies or assistance.
6. Construction phase services.





**Florida Department of Transportation**

RON DESANTIS  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

KEVIN J. THIBAUT, P.E.  
SECRETARY

March 10, 2020

Ernest Cox III, Senior Vice President  
ARDAMAN & ASSOCIATES, INC.  
8008 South Orange Avenue  
Orlando, Florida 32809

Dear Mr. Cox:

The Florida Department of Transportation has reviewed your application for prequalification package and determined that the data submitted is adequate to technically prequalify your firm for the following types of work:

Group 9 - Soil Exploration, Material Testing and Foundations

- 9.1 - Soil Exploration
- 9.2 - Geotechnical Classification Laboratory Testing
- 9.3 - Highway Materials Testing
- 9.4.1 - Standard Foundation Studies
- 9.4.2 - Non-Redundant Drilled Shaft Bridge Foundation Studies
- 9.5 - Geotechnical Specialty Laboratory Testing

Group 10 - Construction Engineering Inspection

- 10.3 - Construction Materials Inspection

Your firm is now technically prequalified with the Department for Professional Services in the above referenced work types. The overhead audit has been accepted, and your firm may pursue projects in the referenced work types with fees of any dollar amount. This status shall be valid until March 31, 2021 for contracting purposes.

Approved Rates

Home/ Branch Overhead	Field Overhead	Facilities Capital Cost of Money	Premium Overtime	Reimburse Actual Expenses	Home Direct Expense	Field Direct Expense	Published Fee Schedule
177.08%	156.66%	0.377%	Reimbursed	No	16.19%	7.93%*	Yes

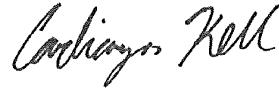
\*Rent and utilities excluded from field office rate. These costs will be directly reimbursed on contracts that require the consultant to provide field office.

**Per Title 23, U.S. Code 112, there are restrictions on sharing indirect cost rates. Refer to Code for additional information.**

*Safety, Mobility, Innovation*  
www.fdot.gov

Should you have any questions, please feel free to contact me by email at [carliayn.kell@dot.state.fl.us](mailto:carliayn.kell@dot.state.fl.us) or by phone at 850-414-4597.

Sincerely,

A handwritten signature in cursive script that reads "Carliayn Kell".

Carliayn Kell  
Professional Services  
Qualification Administrator

Ardaman Billing Rates Calculation

Last Name	First Name	Job Classification	Hourly Rate (from payroll)	Billing rates based on averages x Multiplier
Eggleston	Michael	CONSTRUCTION SERVICES MANAGER	24.75	78.86
Oberhoff	Christoph	SENIOR LABORATORY TECHNICIAN	19.75	62.93
Kuehn	Jerry	SENIOR PROJECT ENGINEER	49.28	157.03
Roman-Echevarria	Sofia	STAFF ENGINEER	30.77	98.05
Vasquez	Joshua	TECHNICAL DRAFTSMAN	20.00	63.73
Williams	Susan	TECHNICAL SECRETARY	26.00	82.85

Multiplier Breakdown:

Overhead	177.08%
Labor	100.00%
Subtotal	277.08%
Operating Margin/Profit (15%)	41.56%

**Total Multiplier: 3.1864**

## **AGENDA ITEM NO. 7.3**

**SARASOTA MANATEE AIRPORT AUTHORITY  
APRIL 25, 2022 MEETING  
STAFF NARRATIVE**

**RE APPROVAL: INCREASE CONTRACT SCOPE FOR CONSTRUCTION OF PARKING LOT EXPANSION  
PROJECT WITH MAGNUM BUILDERS OF SARASOTA**

---

---

**EXECUTIVE SUMMARY:** Staff requests authorization from the Board to approve an increase in contract scope for the Parking Lot Expansion Phase 2 Project with Magnum Builders of Sarasota, Inc. The additional scope is for improvements of the Remote Economy Parking Lot to accommodate the holiday overflow parking anticipated in 2022.

---

---

**NARRATIVE:** At the January 2021 Board meeting, the Authority awarded the low responsive bidder, Magnum Builders of Sarasota, Inc (Magnum), a contract to expand the Long-Term Parking Lot add pave the Shade Overflow parking area. The project also included replacement of the shuttle kiosks, adds additional lighting, extending fiber optics conduit and cable to new security camera locations, removed the return loop road, and provided security fencing with landscaping to the southern boundary of the Long-Term Lot.

In this change order request, staff is requesting an increase in scope to Magnum's contract to allow for improvements to the Remote Economy Parking Lot that will be located at the corner of University Parkway and Old Bradenton Road. The improvements will include paving the lot, adding shuttle shelters, revenue control, security cameras, lighting, fencing and other improvements. With the potential loss of other overflow lots due to various construction projects, the Remote Economy lot is critical for holiday overflow parking. Staff has evaluated this change order and has found it to be in conformance with current construction costs.

Staff is requesting an increase to Magnum's contract of \$3,626,291.47 and an additional 120 - calendar days to complete these improvements. Funding for this scope increase will come from Airport Capital Reserves.

---

---

**RECOMMENDATION:** It is hereby recommended that the Sarasota Manatee Airport Authority approve the increase in contract scope and fee of \$3,626,291.47 with Magnum Builders to improve the Remote Economy Parking Lot. Staff also requests authorization to prepare all documents necessary to implement this action.

---

---

**ATTACHMENTS:** Contract Change Order

**SARASOTA BRADENTON INTERNATIONAL AIRPORT  
SARASOTA MANATEE AIRPORT AUTHORITY  
6000 AIRPORT CIRCLE  
SARASOTA, FLORIDA 34243**



Project Title:	Parking Lot Expansion Phase 2 Project	Date Prepared:	April 20, 2022
Project Description:	Expansion of various airport parking areas.	AIP No.	N/A
		FDOT Fin. Proj. No.	N/A
Contractor:	Magnum Builders of Sarasota, Inc.	G.L. Acct. No.	17515-00-000
Address:	4545 Northgate Court Sarasota, FL 34243	<b>Change Order: 10</b>	

ORIGINAL CONTRACT AMOUNT:	\$	2,027,774.09
COST OF PREVIOUS CHANGE ORDERS:	\$	2,281,139.29
COST OF THIS CHANGE ORDER	\$	3,626,291.47
REVISED CONTRACT AMOUNT:	\$	7,935,204.85

DESCRIPTION OF CHANGE	QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
<b>Additional Scope for Remote Economy Parking Lot as below:</b>				
Mobilization	1.0	LS	\$429,834.83	\$429,834.83
Maintenance of Traffic and Permitting (NPDES Permit & Plans change fees for shop drawings Only - all other permits by SRQ)	1.0	LS	\$8,987.01	\$8,987.01
Temporary Pollutant Discharge and Erosion Control Protection	1.0	LS	\$13,446.00	\$13,446.00
Clearing and Grubbing	8.0	AC	\$12,366.00	\$98,928.00
Demolish Chain Link Fence	2,088.0	LF	\$7.02	\$14,657.76
Oak Tree (8"-12") Demolish	6	EA	\$847.80	\$5,086.80
Oak Tree (13"-17") Demolish	2	EA	\$1,242.00	\$2,484.00
Oak Tree (18"-22") Demolish	1	EA	\$1,566.00	\$1,566.00
Oak Tree (<22") Demolish	4	EA	\$1,965.60	\$7,862.40
Palm Tree (8"-12") Demolish	114	EA	\$405.00	\$46,170.00
Palm Tree (13"-17") Demolish	5	EA	\$561.60	\$2,808.00
Regular Excavation	9,324.0	CY	\$7.83	\$73,006.92
12" Type B Stabilization LBR 40	22,320.0	SY	\$5.13	\$114,501.60
6" Crushed Concrete Base Material LBR 100	21,255.0	SY	\$12.78	\$271,562.38
Superpave Asphaltic Concrete (Type SP-9.5 Traffic Level C)	1,636.0	TON	\$124.20	\$203,191.20
Superpave Asphaltic Concrete (Type SP-12.5 Traffic Level C)	884.0	TON	\$126.14	\$111,511.30
Emulsified Asphalt Prime Coat	1,945.0	GAL	\$9.72	\$18,905.40
Emulsified Asphalt Tack Coat	1,945.0	GAL	\$9.72	\$18,905.40
Concrete Curb, Type F	8,823.0	LF	\$25.59	\$225,780.57
ADA Curb Ramp	27	LF	\$25.59	\$690.93
Concrete Sidewalk and Driveways, 4"	1,602.0	SY	\$53.55	\$85,787.10
Traffic Separator	651.0	SF	\$18.19	\$11,841.69
Concrete Sidewalk at Shuttle Dropoff, 4"	65.0	SY	\$95.85	\$6,230.25
Chain-link Fence - 6-ft with 1-ft Double 'V' Barbed Wire (8-ft total)	550.0	LF	\$54.51	\$29,979.72
Rolling Cantilever Electric Gate (Controls and Motor supplied by owner)	1.0	LS	\$7,560.00	\$7,560.00
Topsoil (Obtained on Site) & Grading	16,040.0	SY	\$15.12	\$242,524.80
Performance Turf, Argentine Bahia	7,717.0	SY	\$3.33	\$25,697.61
Seeding	1.8	AC	\$16,129.65	\$28,226.88
Sign-Single Post Sign, F&I Ground Mount up to 12 SF	8	EA	\$498.96	\$3,991.68

Reflective Tubular markers	10	EA	\$124.20	\$1,242.00
Truncated Dome ADA Mats	61	EA	\$438.48	\$26,747.28
Painted Pavement Markings, Standard, White, Solid for Stop Line, 24"	188.0	LF	\$3.83	\$720.79
Painted Pavement Markings, Standard, White, Solid, 6"	7,920.0	LF	\$0.65	\$5,132.16
Painted Pavement Markings, Standard, Blue, Solid, 6"	180.0	LF	\$0.65	\$116.64
Painted Pavement Markings, Standard, White, Arrows	39	EA	\$113.40	\$4,422.60
Painted Pavement ADA Markings, Standard, White,	14	EA	\$135.00	\$1,890.00
Painted Pavement Markings, Chevron	1	LS	\$189.00	\$189.00
Painted Pavement Markings, Crosswalks	9	EA	\$248.40	\$2,235.60
Painted Pavement Marking, Standard White, Message (STOP)	13	EA	\$118.80	\$1,544.40
Bus Shelters, concrete foundation design and engineering, installed (6" thick SOG w/ W.W.M. only per Brasco Engineering- not per plan details)	6.0	EA	\$21,990.72	\$131,944.30
Dual Pedestal Canopy with Attached Bench, Thermoplastic Coated with Powder Coated Frame, Perforated Pattern, In-ground Mount, Color TBD. Basis of Design: Belson Outdoors Model #321-P6. Installed, Complete with Footing.	10.0	EA	\$8,804.28	\$88,042.84
Elliptical Concrete Pipe - 11" X 18"	715.0	LF	\$59.40	\$42,471.00
18-inch Reinforced Concrete Pipe (Class V)	757.0	LF	\$75.60	\$57,229.20
24-inch Reinforced Concrete Pipe (Class V)	354.0	LF	\$109.08	\$38,614.32
30-inch Reinforced Concrete Pipe (Class V)	99.0	LF	\$172.80	\$17,107.20
11" x 18" Mitered End Section - ELIPTICAL CONCRETE PIPE	2	EA	\$2,808.00	\$5,616.00
18" Mitered End Section	2	EA	\$2,808.00	\$5,616.00
24" Mitered End Section	1	EA	\$3,024.00	\$3,024.00
30" Mitered End Section	1	EA	\$4,320.00	\$4,320.00
CURB INLET TYPE 8 MODIFIED	6	EA	\$17,280.00	\$103,680.00
CURB INLET TYPE 2	6	EA	\$16,200.00	\$97,200.00
Bollards - 6" diam X 6'-0"	82	EA	\$811.08	\$66,508.56
Relocate (on SRQ property) existing parking bumpers	300	EA	\$64.80	\$19,440.00
<b>Civil Subtotal</b>				<b>\$2,836,780.13</b>
Purchase And Install - 30' Pole/ Double Led Light Fixture	7.0	EA	\$15,120.00	\$105,840.00
Purchase And Install - 30' Pole/ Single Led Light Fixture	9.0	EA	\$14,580.00	\$131,220.00
Purchase And Install CCTV Camera Install Only	7.0	EA	\$356.40	\$2,494.80
Purchase And Install CCTV Camera Pole	2.0	EA	\$4,860.00	\$9,720.00
Purchase And Install Emergency Telephone Station	6.0	EA	\$5,581.93	\$33,491.56
Purchase And Install - Emergency Intercom Station	6.0	EA	\$3,357.01	\$20,142.04
Coordinate And Pay FPL For New Transformer, Materials, And Connection Required By FPL Allowance	1.0	LS	\$21,600.00	\$21,600.00
Purchase And Install - Electrical Rack & Equipment - Consists Of Equipment Rack, Electrical Panel, And Disconnect Switch	1.0	LS	\$17,820.00	\$17,820.00
Purchase And Install - CCTV Rack & Equipment - Consists Of Equipment Rack and CCTV Cabinet With Equipment	1.0	LS	\$25,650.00	\$25,650.00
Purchase And Install - Detector Loops, Receptacles, J-Boxes At Exit/Entry Lanes; Prep For Pay Station Contractor	1.0	LS	\$10,260.00	\$10,260.00
Pullbox - 12"X24"X18" 10000 lb	6.0	EA	\$2,160.00	\$12,960.00
Pullbox - 24"X36"X24" 10000 lb	4.0	EA	\$3,240.00	\$12,960.00
Purchase And Install - Conduit-Pvc Sch40 4.0"				
Purchase And Install - Conduit-Pvc Sch40 2.0"	2,780.0	LF	\$12.16	\$33,804.80
Purchase And Install - Conduit-PVC SCH40 1.5"	720.0	LF	\$10.34	\$7,444.80
Purchase And Install - Conduit-Pvc Sch40 1.25"		LF		
Purchase And Install - Conduit-Pvc Sch40 1"	5,685.0	LF	\$8.64	\$49,118.40
Purchase And Install - Conduit-Pvc Sch40 3/4"				
Purchase And Install - Conductors Power 3#1/0 Awg	675.0	LF	\$19.44	\$13,122.00

April 25, 2022 Board Meeting - Items Needing Action - Over \$325,000 Threshold

Purchase And Install - Conductors Power 3#8 Awg	2,500.0	LF	\$9.28	\$23,200.00
Purchase And Install - Conductors Power 3#10 Awg	1,250.0	LF	\$4.86	\$6,075.00
Purchase And Install - Conductors Power 4#10 Awg	625.0	LF	\$6.48	\$4,050.00
Purchase And Install - Single Mode Fibers & Misc. (2 Strands)	350.0	LF	\$7.55	\$2,642.50
Purchase And Install - Single Mode Fibers & Misc. (6 Strands)	650.0	LF	\$8.17	\$5,310.50
Purchase And Install - Single Mode Fibers & Misc. (24 Strands)	1,650.0	LF	\$11.95	\$19,717.50
Purchase And Install - Single Mode Fibers & Misc. (48 Strands)	3,000.0	LF	\$11.42	\$34,260.00
Purchase And Install - Category 6a Ethernet Cables	3,300.0	LF	\$3.24	\$10,692.00
Purchase And Install - Category 6a Ethernet Cables (Game Changer Type)	1,260.0	LF	\$6.52	\$8,215.20
Purchase And Install - Conductors -Communications 12 Pair #22	50.0	LF	\$9.44	\$472.00
Purchase And Install - Maxcell Innerduct 2" 3 cell	2,880.0	LF	\$6.30	\$18,144.00
Boring For Electrical Conduits	100.0	LF	\$16.36	\$1,636.00
Trenching For Electrical Conduits	6,975.0	LF	\$9.67	\$67,448.25
<b>Electrical Subtotal</b>				<b>\$709,511.35</b>
Irrigation	1.0	AL	\$20,000.00	\$20,000.00
Visual Landscaping Barriers	1.0	AL	\$60,000.00	\$60,000.00
<b>Landscape Subtotal:</b>				<b>\$80,000.00</b>
<b>TOTAL CONSTRUCTION COST:</b>				<b>\$3,626,291.47</b>

Subject to the conditions set forth below, an equitable adjustment is established as follows:

The contract price is ...		The contract time to complete work is ...	
	not changed.		not changed.
X	Increased	X	Increased <b>120-days</b>
The foregoing is in accordance with your contract dated <u>April 10,2020</u> and as listed below:			
A. The aforementioned change and work affected thereby are subject to all contract stipulations and covenants.			
B. The rights of the Owner are not prejudiced; and			
C. All claims against the Owner which are incidental to or as a consequence of the aforementioned change are satisfied.			
SIGNATURE		TITLE	DATE
Owner Representative:		Chairman, SMAA	
Contractor		Magnum Builders	
Design Consultant		AID, Inc.	
FAA: (if applicable)	N/A		
FDOT (if applicable)	N/A		

DISTRIBUTION: Copy for Each Signatory Party, SMAA Finance, SMAA Project File

SRQ Parking Lot Expansion  
 Remote Parking Lot (Bradenton Ave and University Parkway)  
 Engineer's Estimate of Probable Costs



**MAGNUM**  
 BUILDERS



No.	Description	Estimated Quantity	Unit	Unit Price	Total Cost
1	Mobilization	1.0	LS	\$429,834.83	\$429,834.83
2	Maintenance of Traffic and Permitting (NPDES Permit & Plans change fees for shop drawings Only - all other permits by SRQ)	1.0	LS	\$8,987.01	\$8,987.01
3	Temporary Pollutant Discharge and Erosion Control Protection	1.0	LS	\$13,446.00	\$13,446.00
4	Clearing and Grubbing	8.0	AC	\$12,366.00	\$98,928.00
5	Demolish Chain Link Fence	2,088.0	LF	\$7.02	\$14,657.76
6	Oak Tree (8"-12") Demolish	6	EA	\$847.80	\$5,086.80
7	Oak Tree (13"-17") Demolish	2	EA	\$1,242.00	\$2,484.00
8	Oak Tree (18"-22") Demolish	1	EA	\$1,566.00	\$1,566.00
9	Oak Tree (<22") Demolish	4	EA	\$1,965.60	\$7,862.40
9	Palm Tree (8"-12") Demolish	114	EA	\$405.00	\$46,170.00
10	Palm Tree (13"-17") Demolish	5	EA	\$561.60	\$2,808.00
11	Regular Excavation	9,324.0	CY	\$7.83	\$73,006.92
12	12" Type B Stabilization LBR 40	22,320.0	SY	\$5.13	\$114,501.60
13	6" Crushed Concrete Base Material LBR 100	21,255.0	SY	\$12.78	\$271,562.38
14	Superpave Asphaltic Concrete (Type SP-9.5 Traffic Level C)	1,636.0	TON	\$124.20	\$203,191.20
15	Superpave Asphaltic Concrete (Type SP-12.5 Traffic Level C)	884.0	TON	\$126.14	\$111,511.30
16	Emulsified Asphalt Prime Coat	1,945.0	GAL	\$9.72	\$18,905.40
17	Emulsified Asphalt Tack Coat	1,945.0	GAL	\$9.72	\$18,905.40
18	Concrete Curb, Type F	8,823.0	LF	\$25.59	\$225,780.57
19	ADA Curb Ramp	27	LF	\$25.59	\$690.93
20	Concrete Sidewalk and Driveways, 4"	1,602.0	SY	\$53.55	\$85,787.10
21	Traffic Separator	651.0	SF	\$18.19	\$11,841.69
22	Concrete Sidewalk at Shuttle Dropoff, 4"	65.0	SY	\$95.85	\$6,230.25
22	Chanlink Fence - 6-ft with 1-ft Double 'V' Barbed Wire (8-ft total)	550.0	LF	\$54.51	\$29,979.72
23	Rolling Canteleaver Electric Gate (Controls and Motor supplied by owner)	1.0	LS	\$7,560.00	\$7,560.00
24	Topsoil (Obtained on Site) & Grading	16,040.0	SY	\$15.12	\$242,524.80
25	Performance Turf, Argentine Bahia	7,717.0	SY	\$3.33	\$25,697.61
26	Seeding	1.8	AC	\$16,129.65	\$28,226.88
27	Sign-Single Post Sign, F&I Ground Mount up to 12 SF	8	EA	\$498.96	\$3,991.68
28	Reflective Tubular markers	10	EA	\$124.20	\$1,242.00
29	Truncaated Dome ADA Mats	61	EA	\$438.48	\$26,747.28
30	Painted Pavement Markings, Standard, White, Solid for Stop Line, 24"	188.0	LF	\$3.83	\$720.79
31	Painted Pavement Markings, Standard, White, Solid, 6"	7,920.0	LF	\$0.65	\$5,132.16
32	Painted Pavement Markings, Standard, Blue, Solid, 6"	180.0	LF	\$0.65	\$116.64
33	Painted Pavement Markings, Standard, White, Arrows	39	EA	\$113.40	\$4,422.60
34	Painted Pavement ADA Markings, Standard, White,	14	EA	\$135.00	\$1,890.00
35	Painted Pavement Markings, Chevron	1	LS	\$189.00	\$189.00
35	Painted Pavement Markings, Crosswalks	9	EA	\$248.40	\$2,235.60
36	Painted Pavement Marking, Standard White, Messege (STOP)	13	EA	\$118.80	\$1,544.40
37	Bus Shelters, concrete foundation design and engineering, installed (6" thick SOG w/ W.W.M. only per Brasco Engineering- not per plan details)	6.0	EA	\$21,990.72	\$131,944.30
38	Dual Pedestal Canopy with Attached Bench, Thermoplastic Coated with Powder Coated Frame, Perforated Pattern, In-ground Mount, Color TBD. Basis of Design: Belson Outdoors Model #321-P6. Installed, Complete with Footing.	10.0	EA	\$8,804.28	\$88,042.84
39	ELLIPTICAL CONCRETE PIPE - 11" X 18"	715.0	LF	\$59.40	\$42,471.00
40	18-inch Reinforced Concrete Pipe (Class V)	757.0	LF	\$75.60	\$57,229.20
41	24-inch Reinforced Concrete Pipe (Class V)	354.0	LF	\$109.08	\$38,614.32
42	30-inch Reinforced Concrete Pipe (Class V)	99.0	LF	\$172.80	\$17,107.20
43	11" x 18" Mitered End Section - ELLIPTICAL CONCRETE PIPE	2	EA	\$2,808.00	\$5,616.00
44	18" Mitered End Section	2	EA	\$2,808.00	\$5,616.00
45	24" Mitered End Section	1	EA	\$3,024.00	\$3,024.00



SRQ Parking Lot Expansion  
 Remote Parking Lot (Bradenton Ave and University Parkway)  
 Engineer's Estimate of Probable Costs



**MAGNUM**  
 BUILDERS



46	30" Mitered End Section	1	EA	\$4,320.00	\$4,320.00
47	CURB INLET TYPE 8 MODIFIED	6	EA	\$17,280.00	\$103,680.00
48	CURB INLET TYPE 2	6	EA	\$16,200.00	\$97,200.00
49	Bollards - 6" diam X 6'-0"	82	ea	\$811.08	\$66,508.56
50	Relocate (on SRQ property) existing parking bumpers	300	ea	\$64.80	\$19,440.00
<i>C-Sum</i>	<i>Civil Subtotal</i>				\$2,836,780.13
E-1	PURCHASE AND INSTALL - 30' POLE/ DOUBLE LED LIGHT FIXTURE	7.0	EA	\$15,120.00	\$105,840.00
E-2	PURCHASE AND INSTALL - 30' POLE/ SINGLE LED LIGHT FIXTURE	9.0	EA	\$14,580.00	\$131,220.00
E-3	PURCHASE AND INSTALL - CCTV CAMERA INSTALL ONLY	7.0	EA	\$356.40	\$2,494.80
E-4	PURCHASE AND INSTALL CCTV CAMERA POLE	2.0	EA	\$4,860.00	\$9,720.00
E-5	PURCHASE AND INSTALL EMERGENCY TELEPHONE STATION	6.0	EA	\$5,581.93	\$33,491.56
E-6	PURCHASE AND INSTALL - EMERGENCY INTERCOM STATION	6.0	EA	\$3,357.01	\$20,142.04
E-7	COORDINATE AND PAY FP&L FOR NEW TRANSFORMER, MATERIALS, AND CONNECTION REQUIRED BY FP&L. Allowance	1.0	LS	\$21,600.00	\$21,600.00
E-8	PURCHASE AND INSTALL - ELECTRICAL RACK & EQUIPMENT - CONSISTS OF EQUIPMENT RACK, ELECTRICAL PANEL, AND DISCONNECT SWITCH	1.0	LS	\$17,820.00	\$17,820.00
E-9	PURCHASE AND INSTALL - CCTV RACK & EQUIPMENT - CONSISTS OF EQUIPMENT RACK AND CCTV CABINET WITH EQUIPMENT	1.0	LS	\$25,650.00	\$25,650.00
E-10	PURCHASE AND INSTALL - DETECTOR LOOPS, RECEPTACLES, JBOXES AT EXIT/ENTRY LANES; PREP FOR PAY STATION CONTRACTOR	1.0	LS	\$10,260.00	\$10,260.00
E-11	PULLBOX - 12"X24"X18" 10000LB	6.0	EA	\$2,160.00	\$12,960.00
E-12	PULLBOX - 24"X36"X24" 10000LB	4.0	EA	\$3,240.00	\$12,960.00
E-13	PURCHASE AND INSTALL - CONDUIT-PVC SCH40 4.0"				
E-14	PURCHASE AND INSTALL - CONDUIT-PVC SCH40 2.0"	2,780.0	LF	\$12.16	\$33,804.80
E-15	PURCHASE AND INSTALL - CONDUIT-PVC SCH40 1.5"	720.0	LF	\$10.34	\$7,444.80
E-16	PURCHASE AND INSTALL - CONDUIT-PVC SCH40 1.25"		LF		
E-17	PURCHASE AND INSTALL - CONDUIT-PVC SCH40 1"	5,685.0	LF	\$8.64	\$49,118.40
E-18	PURCHASE AND INSTALL - CONDUIT-PVC SCH40 3/4"				
E-19	PURCHASE AND INSTALL - CONDUCTORS POWER 3#1/0 AWG	675.0	LF	\$19.44	\$13,122.00
E-20	PURCHASE AND INSTALL - CONDUCTORS POWER 3#8 AWG	2,500.0	LF	\$9.28	\$23,200.00
E-21	PURCHASE AND INSTALL - CONDUCTORS POWER 3#10 AWG	1,250.0	LF	\$4.86	\$6,075.00
E-22	PURCHASE AND INSTALL - CONDUCTORS POWER 4#10 AWG	625.0	LF	\$6.48	\$4,050.00
E-23	PURCHASE AND INSTALL - SINGLE MODE FIBERS & MISC. (2 STRANDS)	350.0	LF	\$7.55	\$2,642.50
E-24	PURCHASE AND INSTALL - SINGLE MODE FIBERS & MISC. (6 STRANDS)	650.0	LF	\$8.17	\$5,310.50
E-25	PURCHASE AND INSTALL - SINGLE MODE FIBERS & MISC. (24 STRANDS)	1,650.0	LF	\$11.95	\$19,717.50
E-26	PURCHASE AND INSTALL - SINGLE MODE FIBERS & MISC. (48 STRANDS)	3,000.0	LF	\$11.42	\$34,260.00
E-27	PURCHASE AND INSTALL - CATEGORY 6A ETHERNET CABLES	3,300.0	LF	\$3.24	\$10,692.00
E-28	PURCHASE AND INSTALL - CATEGORY 6A ETHERNET CABLES (GAME CHANGER TYPE)	1,260.0	LF	\$6.52	\$8,215.20
E-29	PURCHASE AND INSTALL - CONDUCTORS -COMMUNICATIONS 12 PAIR #22	50.0	LF	\$9.44	\$472.00
E-30	PURCHASE AND INSTALL - MAXCELL INNERDUCT 2" 3CELL	2,880.0	LF	\$6.30	\$18,144.00
E-31	BORING FOR ELECTRICAL CONDUITS	100.0	LF	\$16.36	\$1,636.00
E-32	TRENCHING FOR ELECTRICAL CONDUITS	6,975.0	LF	\$9.67	\$67,448.25
<i>E-Sum</i>	<i>Electrical Subtotal</i>				\$709,511.35
L-1	Irrigation	1.0	AL	\$20,000.00	\$20,000.00
L-2	Visual Landscaping Barriers	1.0	AL	\$60,000.00	\$60,000.00

SRQ Parking Lot Expansion  
 Remote Parking Lot (Bradenton Ave and University Parkway)  
 Engineer's Estimate of Probable Costs



**MAGNUM**  
 BUILDERS



<i>L-Sum</i>	<i>Landscape Subtotal</i>			\$80,000.00
<b>TOTAL BASE BID ESTIMATED CONSTRUCTION COST:</b>				<b>\$3,626,291.47</b>

**AGENDA ITEM NO. 8.1**

**Sarasota Manatee Airport Authority  
Balance Sheet  
March 31, 2022**

**Assets***Current Assets*

Cash & Investments	\$50,770,668
Accounts Receivable	1,989,925
Grants Receivable	874,937
Accrued Interest Receivable	36,349
Inventory	309,354
Prepaid Insurance	49,535
Prepaid Expense & Other Assets	859,015
<i>Total Current Assets</i>	<u>54,889,783</u>

*Non-Current Assets*

<i>Customer Facility Funds</i>	10,135,793
<i>Passenger Facility Funds</i>	774,680
Airport Facilities & Equipment	333,141,749
Accumulated Depreciation	(200,327,138)
Intangible Assets, net	117,479
Construction in Progress	41,783,311
<i>Total Non-Current Assets</i>	<u>185,625,874</u>

**Total Assets****\$240,515,657****Deferred Outflow of Resources - Pension****1,058,636****Liabilities and Net Position***Current Unrestricted Liabilities*

Accounts Payable	1,268,474
Unearned Income	38,689
Accrued Expenses & Other Liabilities	1,076,954
<i>Total Unrestricted Liabilities</i>	<u>2,384,116</u>

*Non-Current Liabilities*

Net Pension Liabilities	3,723,725
<i>Total Non-Current Liabilities</i>	<u>3,723,725</u>

**Total Liabilities****6,107,841****Deferred Inflow of Resources - Pension****1,277,223****Net Position**

Net Assets	218,674,740
Current Profit Account	15,514,489

**Total Net Position****234,189,229**

Sarasota Manatee Airport Authority  
Budget/Year to Date Actual  
For the Period Ending March 31, 2022

	<i>This Month This Year</i>	<i>Total Budget</i>	<i>Year to Date This Year</i>	<i>Budget Less Actual YTD</i>	<i>Actual YTD %</i>
<b>Airline Rentals, Fees and Charges</b>					
Landing Fees - Signatory	\$82,526	\$759,862	\$368,211	\$391,651	48.5%
Landing Fees - Nonsignatory	2,491	59,612	12,010	47,602	20.1%
Landing Fees - Nonscheduled	(254)	0	1,892	(1,892)	0.0%
Preferential Apron Fees	22,880	274,106	137,278	136,828	50.1%
Concourse Circulation	292,225	3,510,739	1,669,952	1,840,787	47.6%
Baggage Claim Area	74,530	843,486	402,539	440,947	47.7%
Gate Use Fees - Signatory	26,565	197,530	111,826	85,704	56.6%
Terminal and Gate Fees - Nonsignatory	46,628	696,776	178,264	518,512	25.6%
Airline Terminal Rent - Signatory	120,537	1,442,509	704,084	738,425	48.8%
Airline Terminal Rent - Nonsignatory	3,924	46,292	21,448	24,844	46.3%
<b>Total Airline Revenues</b>	<b>672,051</b>	<b>7,830,912</b>	<b>3,607,504</b>	<b>4,223,408</b>	<b>46.1%</b>
<b>Non-Airline Revenue</b>					
Air Cargo Facility	14,088	100,000	84,525	15,475	84.5%
<b>Subtotal</b>	<b>14,088</b>	<b>100,000</b>	<b>84,525</b>	<b>15,475</b>	<b>84.5%</b>
<b>Airfield</b>					
Fuel Flowage Fees	57,159	321,000	300,056	20,945	93.5%
Ground Lease Airfield	15,213	180,000	90,081	89,919	50.0%
T-Hangar Facilities	79,394	951,500	476,345	475,155	50.1%
Fixed Base Operators - Rent	59,222	724,500	355,332	369,168	49.0%
Fuel Service - ASIG	6,913	83,000	38,449	44,551	46.3%
<b>Subtotal</b>	<b>217,902</b>	<b>2,260,000</b>	<b>1,260,264</b>	<b>999,737</b>	<b>55.8%</b>
<b>Terminal Building</b>					
RAC Counter Space	14,500	174,000	86,998	87,002	50.0%
Other Terminal Rents	23,375	252,000	140,250	111,750	55.7%
Advertising	31,280	300,000	229,021	70,979	76.3%
Restaurant Services	110,930	1,003,000	593,206	409,794	59.1%
Gift Shop	93,296	911,000	477,947	433,053	52.5%
Miscellaneous	140	900	748	152	83.2%
Vending	1,448	12,000	7,861	4,139	65.5%
<b>Subtotal</b>	<b>274,970</b>	<b>2,652,900</b>	<b>1,536,030</b>	<b>1,116,870</b>	<b>57.9%</b>
<b>Terminal Area</b>					
Car Rental %	1,264,386	8,995,000	5,285,164	3,709,836	58.8%
Auto Parking	711,170	5,220,000	4,005,343	1,214,657	76.7%
Ground Transportation	46,778	360,000	249,748	110,252	69.4%
Fuel Flowage Fees - Menzies	96,666	425,000	447,059	(22,059)	105.2%
RAC Ready Car Spaces	4,620	58,000	27,720	30,280	47.8%
Parking Stickers/Hang Tags	4,720	80,000	64,739	15,261	80.9%
Taxi Cab Service	10,682	105,000	55,006	49,994	52.4%
RAC Buildings Land Rent	45,945	550,000	271,729	278,271	49.4%
<b>Subtotal</b>	<b>2,184,967</b>	<b>15,793,000</b>	<b>10,406,508</b>	<b>5,386,492</b>	<b>65.9%</b>
<b>Non-Aviation Area</b>					
University Self Storage Income	61,769	550,000	350,017	199,983	63.6%
Buildings - Non-Aviation	33,056	315,000	135,837	179,163	43.1%
Common Area Maint - Comm Parke	500	4,500	1,500	3,000	33.3%
Land - Non-Aviation	39,007	535,000	247,123	287,877	46.2%
<b>Subtotal</b>	<b>134,332</b>	<b>1,404,500</b>	<b>734,477</b>	<b>670,023</b>	<b>52.3%</b>
<b>Total Operating Revenue</b>	<b>3,498,309</b>	<b>30,041,312</b>	<b>17,629,308</b>	<b>12,412,004</b>	<b>58.7%</b>
<b>Investment Income + Other Income</b>					
<b>Investment Income</b>					
Interest Earned - Operating	9,059	80,000	40,404	39,596	50.5%
Interest Earned - Other	0	0	0	0	0.0%
<b>Subtotal</b>	<b>9,059</b>	<b>80,000</b>	<b>40,404</b>	<b>39,596</b>	<b>50.5%</b>
<b>Other Income</b>					
Passenger Facility Charges	1,412,343	8,002,229	3,493,236	4,508,993	43.7%
Customer Facility Charges	919,477	7,000,000	3,978,517	3,021,484	56.8%
Grant Revenue - Other	0	0	62,127	(62,127)	0.0%
Grant Revenue - FAA	61,076	0	8,879,784	(8,879,784)	0.0%
Grant Revenue - FDOT	221,549	0	221,549	(221,549)	0.0%
Miscellaneous Income	166	10,000	10,123	(123)	101.2%
Miscellaneous Income - LEO	3,720	0	7,320	(7,320)	0.0%
I.D. Badges	2,928	30,000	17,040	12,960	56.8%
Profit/Loss on Disposal	980	15,000	35,649	(20,649)	237.7%
Extraordinary Items	0	0	0	0	0.0%
Asset Writedown/Up on Investments	(308,220)	0	(635,835)	635,835	0.0%
<b>Subtotal</b>	<b>2,314,017</b>	<b>15,057,229</b>	<b>16,069,509</b>	<b>(1,012,280)</b>	<b>106.7%</b>
<b>Subtotal Investment Income &amp; Other</b>	<b>2,323,077</b>	<b>15,137,229</b>	<b>16,109,913</b>	<b>(972,684)</b>	<b>106.4%</b>
<b>Total Revenues</b>	<b>5,821,386</b>	<b>45,178,541</b>	<b>33,739,221</b>	<b>11,439,320</b>	<b>74.7%</b>

**Sarasota Manatee Airport Authority  
Budget/Year to Date Actual  
For the Period Ending March 31, 2022**

	<i>This Month This Year</i>	<i>Total Budget</i>	<i>Year to Date This Year</i>	<i>Budget Less Actual YTD</i>	<i>Actual YTD %</i>
<b>Utilities</b>					
Electric-Utility	69,237	699,000	299,907	399,093	42.9%
Refuse Collection	5,117	103,500	11,409	92,091	11.0%
Water and Sewer	15,419	129,800	89,723	40,077	69.1%
<b>Subtotal</b>	<b>89,772</b>	<b>932,300</b>	<b>401,039</b>	<b>531,261</b>	<b>43.0%</b>
<b>Personnel</b>					
Salary/Wages	966,823	10,159,801	5,406,549	4,753,252	53.2%
Health Insurance	184,255	2,575,830	1,110,571	1,465,259	43.1%
Retirement	133,678	1,884,999	1,044,578	840,421	55.4%
Social Security	55,406	609,682	303,729	305,953	49.8%
Medicare	13,421	147,317	76,344	70,973	51.8%
Disability	119	6,200	716	5,484	11.6%
Unemployment	0	40,199	0	40,199	0.0%
Worker's Compensation	27,530	302,679	165,181	137,498	54.6%
Employment Expenses	110	10,000	3,320	6,680	33.2%
<b>Subtotal</b>	<b>1,381,343</b>	<b>15,736,707</b>	<b>8,110,988</b>	<b>7,625,719</b>	<b>51.5%</b>
<b>Administration</b>					
Advertising	4,300	152,420	71,262	81,158	46.8%
Bad Debts Expense	1,260	5,000	1,260	3,740	25.2%
CEO Auto Expenses	1,315	20,000	8,654	11,346	43.3%
Public Relations	0	45,000	15,901	29,099	35.3%
Customs	(30,830)	200,000	111,821	88,179	55.9%
Data Processing	47,261	135,000	145,327	(10,327)	107.6%
Software Licenses/Annual Support	0	187,450	85,345	102,105	45.5%
Dues and Subscriptions	75	119,971	84,302	35,669	70.3%
Employee Service Awards	75	6,200	935	5,265	15.1%
Entertainment	868	10,000	11,212	(1,212)	112.1%
Insurance - Property	58,466	666,962	332,444	334,518	49.8%
Insurance - General Liability	6,354	80,413	38,123	42,291	47.4%
Insurance - Surety Bonds	4,024	44,312	24,816	19,496	56.0%
Insurance - Vehicles	6,627	73,371	39,764	33,608	54.2%
Legal Expense	4,002	400,000	205,865	194,135	51.5%
Loss & Safety Program	0	200	0	200	0.0%
Marketing Trade Show Registration	1,560	30,200	9,159	21,042	30.3%
Miscellaneous	5,111	77,700	52,708	24,992	67.8%
Office Supplies and Equipment	3,058	99,125	58,499	40,626	59.0%
Postage	591	5,200	2,036	3,164	39.1%
Professional Services	40,373	581,825	186,523	395,302	32.1%
Records Retention	0	1,500	791	709	52.7%
Sponsored Events	84	5,400	1,738	3,662	32.2%
Taxes	0	35,200	28,389	6,811	80.6%
Telephone Service	28,874	291,720	146,751	144,969	50.3%
Training	382	107,860	27,955	79,905	25.9%
Travel	4,416	211,200	18,670	192,530	8.8%
Uniforms	8,668	85,600	50,282	35,318	58.7%
<b>Subtotal</b>	<b>196,915</b>	<b>3,678,829</b>	<b>1,760,531</b>	<b>1,918,298</b>	<b>47.9%</b>
<b>Operations</b>					
Air Conditioning	2,432	47,000	31,552	15,448	67.1%
Carpentry	2,458	35,000	15,844	19,156	45.3%
Common Area Maint - Comm Parke	600	10,000	3,275	6,725	32.8%
Electrical	5,441	61,000	16,740	44,260	27.4%
Equipment Rental	0	23,000	6,724	16,276	29.2%
Equipment Repair	4,977	109,200	78,128	31,072	71.5%
Loading Bridge Repair	25,107	48,000	60,205	(12,205)	125.4%
Conveyor & Belts	0	24,000	33,130	(9,130)	138.0%
Terminal Audio & Paging Repairs	0	19,000	0	19,000	0.0%
Repairs Generator	2,490	14,000	3,316	10,684	23.7%
FAA Mandated Security Measures	0	500	0	500	0.0%
Fence and Gate Repair	3,850	18,000	8,037	9,963	44.7%
Interior Planting	0	1,200	32	1,168	2.7%
Irrigation System	72	11,000	3,080	7,920	28.0%
Janitorial Service	155,256	1,228,677	809,706	418,971	65.9%
Landscape Maintenance	2,315	54,700	10,748	43,953	19.6%
Miscellaneous Construction	8,832	79,400	61,250	18,150	77.1%
Paint and Markings	34,585	69,000	76,330	(7,330)	110.6%
Permits & Licenses	0	3,800	247	3,553	6.5%
Paving and Pavement Repairs	0	69,500	151	69,349	0.2%
Plumbing	1,659	41,300	23,833	17,467	57.7%
Radio Equipment Repairs	1,088	3,500	1,088	2,412	31.1%
Service Contracts	20,908	960,264	569,852	390,412	59.3%
Shuttle Service	883	11,000	10,732	268	97.6%
Vehicle Repairs	7,793	73,200	34,835	38,365	47.6%
<b>Subtotal</b>	<b>280,748</b>	<b>3,015,241</b>	<b>1,858,834</b>	<b>1,156,407</b>	<b>61.6%</b>

Sarasota Manatee Airport Authority  
 Budget/Year to Date Actual  
 For the Period Ending March 31, 2022

	<i>This Month This Year</i>	<i>Total Budget</i>	<i>Year to Date This Year</i>	<i>Budget Less Actual YTD</i>	<i>Actual YTD %</i>
<b>Supplies</b>					
Fabrication Supplies	447	18,500	2,641	15,859	14.3%
Extinguishing Agent	0	15,000	0	15,000	0.0%
First Aid Supplies	683	4,000	5,079	(1,079)	127.0%
Gas & Fuel	16,944	90,000	54,177	35,823	60.2%
Identification	507	14,500	9,782	4,718	67.5%
Janitorial Supplies	31,374	183,800	129,456	54,345	70.4%
Lighting	118	24,800	9,371	15,429	37.8%
Lighting - Airfield	2,011	50,800	34,690	16,110	68.3%
Miscellaneous Supplies	471	10,000	2,372	7,628	23.7%
Miscellaneous Terminal Furnishings	599	8,000	599	7,401	7.5%
Non-Capital Equipment	9,307	122,450	122,029	421	99.7%
Safety Supplies	0	2,500	1,690	810	67.6%
Shop Supplies	4,035	13,000	11,644	1,356	89.6%
Signage	4,395	52,500	12,631	39,869	24.1%
Small Tools and Equipment	2,327	35,800	20,463	15,337	57.2%
Vegetation Control	8,816	17,000	11,441	5,559	67.3%
Ammunition/Wildlife Disbursement	1,237	9,750	2,693	7,057	27.6%
<b>Subtotal</b>	<b>83,270</b>	<b>672,400</b>	<b>430,758</b>	<b>241,642</b>	<b>64.1%</b>
<b>Total Operating Expenses</b>	<b>2,032,048</b>	<b>24,035,477</b>	<b>12,562,151</b>	<b>11,473,326</b>	<b>52.3%</b>
<b>Profit (Loss) from Operations</b>	<b>3,789,338</b>	<b>21,143,064</b>	<b>21,177,070</b>	<b>(34,006)</b>	<b>100.2%</b>
<b>Depreciation and Amortization</b>					
Amortization	6,287	69,869	37,721	32,147	54.0%
Depreciation	843,344	10,170,794	5,078,059	5,092,734	49.9%
<b>Total Depreciation and Amortization</b>	<b>849,631</b>	<b>10,240,662</b>	<b>5,115,781</b>	<b>5,124,882</b>	<b>50.0%</b>
<b>Other Expenses</b>					
Marketing	135,399	1,150,000	546,800	603,200	47.5%
<b>Total Other Expenses</b>	<b>135,399</b>	<b>1,150,000</b>	<b>546,800</b>	<b>603,200</b>	<b>47.5%</b>
<b>Net Profit (Loss)</b>	<b>\$2,804,308</b>	<b>\$9,752,402</b>	<b>\$15,514,489</b>	<b>(\$5,762,087)</b>	<b>159.1%</b>

**Sarasota Manatee Airport Authority  
Investment Portfolio  
For the month of March 2022**

<u>Description</u>	<u>Cusip/Invest</u>	<u>Coupon</u>	<u>Par Value</u>		<u>Acquisition Cost</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Int. Rec'd</u>	<u>Market Value</u>	<u>Yield @ Market</u>
			<u>Orig Face</u>	<u>Yield</u>						
1 US Treasury Note	91282CDA6	0.250	10,000,000	(1) 0.306	9,989,063	10/8/2021	9/30/2023	(2) 2,083	(3) <b>9,722,300</b>	<b>0.26</b>
2 US Treasury Note	91282CBG5	0.125	8,000,000	0.504	7,968,750	1/18/2022	1/31/2023	833	<b>7,905,280</b>	0.13
3 US Treasury Note	91282CCN9	0.125	8,000,000	0.766	7,921,875	1/18/2022	7/31/2023	833	<b>7,798,480</b>	0.13
4 US Treasury Note	91282CDR9	0.750	8,000,000	0.789	7,974,688	1/18/2022	12/31/2023	5,000	<b>7,792,480</b>	<b>0.77</b>
Total Investments			<u>34,000,000</u>	<u>0.574</u>	<u>33,854,375</u>			<u>8,750</u>	<u><b>33,218,540</b></u>	

(1) Yield to Maturity.

(2) Interest on Notes is paid semi-annually, accrued monthly.

(3) Market value on non-restricted funds are provided by the Custodian, US Bank.

**Sarasota Manatee Airport Authority  
Investment Analysis - Portfolio Activity Report  
For the month of March 2022**

<u>Transaction Date</u>	<u>Maturity Date</u>	<u>Description</u>	<u>Cusip/Invest</u>	<u>Coupon Yield</u>	<u>Original Face Purchase price</u>	<u>Sales Price Market Price</u>	<u>Gain or (Loss) on Sale</u>
-------------------------	----------------------	--------------------	---------------------	---------------------	-------------------------------------	---------------------------------	-------------------------------

Securities Purchased:

Securities Closed:



## AGENDA ITEM NO. 8.3

SARASOTA MANATEE AIRPORT AUTHORITY  
FINANCE & ADMINISTRATION STAFF REPORT  
APRIL 25, 2022 REGULAR MEETING

**FINANCE**

**MARCH 2022**

---

**Budget/Financial Information:**

Included in the Board packet are the unaudited financial statements for **March**. Summary information contained therein for **March** is as follows: Operating revenues were approximately **17.4%** higher than anticipated in the FY 22 budget. Operating expenses were approximately **4.6% higher**.

As part of the ongoing development of investment policies and procedures, reports have been developed based on information provided by Sarasota County Clerk of the Court. The current disclosure reflects an Investment Portfolio Analysis, along with a Portfolio Activity Report. Staff continues to work closely with the Clerk's office.

**Passenger Facility Charge (PFC):** A separate detail which reflects PFC collections for the month of **March** and cumulative to date.

**Grant Administration:** Attached.

Sarasota Manatee Airport Authority  
Sarasota Bradenton International Airport (SRQ)  
PFC Collections by Carrier

Carrier	Mar-22	Collected since inception	Carrier	Mar-22	Collected since inception	Carrier	Mar-22	Collected since inception
Aces Airlines		24.86	Czech Airlines (Aviation Industry Consultants)		2,516.42	Olympic Airways		165.43
Aer Lingus	8.78	1,359.12	Delta Air Lines	300,009.97	30,845,117.77	Pan American		5.84
Aero California		8.64	El Al Israel Airlines	12.62	1,301.49	Panamena De Aviacion		4.39
Aero Costa Rico		2.92	Elite		61,345.86	Paradise Island		28.80
Aeroflot - Russian Airlines	8.78	961.09	Emirates	83.30	4,033.39	PenAir (Penninsula Airways)		13.17
Aeromexico	30.73	4,272.98	Empire		757.44	Philippine Air	4.39	179.99
AeroPeru		19.02	Eva Airways		739.73	Private Jet		3,719.95
Aeropostal Venezuela		17.52	ERA Aviation		84.84	Qantas	8.78	3,801.82
Air Aruba		11.68	Etihad Airways	39.51	386.32	Qatar	159.13	2,522.81
Air Canada		1,020,619.12	Express One		8,387.70	Reno Air		35,332.00
Air France	116.88	32,284.64	Falcon Express		1,454.16	Republic Airlines		3,612.86
Air India		2.88	Faucett		8.76	Royal Air Maroc		69.66
Air New Zealand		1,973.36	Finnair	79.02	448.97	Royal Aviation		10,170.36
Air Pacific Ltd.		135.81	Florida Coastal Airlines		8,516.60	Royal Jordanian		29.20
Air Portugal		308.10	Front Page Tours		245.28	Sabena		393.92
Air Serbia	57.07	399.49	Frontier Airlines	17,475.90	537,686.55	SAHSA		5.28
Air Sunshine		109,075.76	G-P Express		89.28	SAS (Scandivavian)	17.56	3,995.51
Air Trans At		144,133.51	Gold Transportation Services		26,702.01	Saudi Arabian Airlines		7.31
AirTran Airways		5,850,221.51	Great Lakes Aviation		44.06	Sevicios Avensa		280.28
Alaska Airlines	13.17	6,209.51	Hahn Air		2,956.82	Silver Airways Corp		114.14
Alitalia		3,974.22	Hawaiian Airlines		978.53	Singapore	17.56	2,953.03
All Nippon Airways (ANA)		509.46	Iberia	8.78	1,229.16	Skyservice		9,903.84
Allegiant Air	370,726.72	3,561,939.57	Island Air		30.73	South African Airways		4,309.11
Aloha		46.64	Insel Air		4.39	Southeast Airlines		6,234.20
America West		116,500.91	JAL (Japan Airlines)		879.19	Southwest	183,534.74	2,545,484.20
American (AMR)	202,719.15	5,243,520.30	Jet Airways		114.14	Sun Country	12,313.95	291,825.80
ATA Airlines, Inc.		2,527,486.80	Jet Blue	99,219.93	5,357,230.84	Sun Pacific Int'l (HMHF)		3,612.04
Asiana Airlines		668.85	JetsGo		6,418.18	Sunworld Int'l Airlines		224.84
ATA Leisure Corp.		90,614.78	Kenya		57.17	SwissAir	48.29	5,341.07
Austrian Airlines	26.34	687.84	KLM	138.17	7,427.01	Taca Int'l Air		348.76
AV Atlantic		1,027.84	Korean Air	39.56	16,841.43	TAM Airlines (Aviation Industry Consultants)		1,030.22
Avelo Airlines	12,528.17	20,987.30	Kuwait Airways		2.92	TAP Air Portugal		220.87
Avensa		43.20	Lacsa		36.54	Tower Air		17.52
Avianca		118.00	Laker Airways		803.00	Trans Brasil Airlines		20.44
Aviateca, S.A.		5.84	Lan Airlines		21.95	Trans World Airways		781,609.36
Big Sky		2.92	Lan Argentina		4.39	Turk Hava (Turkish)		1,285.54
British Airways	52.24	11,091.42	Lan Chile	162.43	320.04	Ultrair		2.88
Brussels Airlines	4.39	92.08	Lan Peru		21.95	United	212,383.69	3,576,765.51
BWIA		78.84	LATAM Airlines Group		74.63	US Air Shuttle		2.92
Canada 3000		100,572.36	Leisure Air		33,007.40	US Airways		8,883,648.83
Canadian Airlines		64,977.45	Lineas Aereas Privadas Argentinas		11.68	USA 3000		79,178.04
Canair		20,334.88	Lone Star		69.52	V Australia (Virgin Blue)		386.32
CanJet		120,295.00	Lot Polish Airlines		1,463.16	Varig		668.53
Cape Air / Hyannis Air Service		242.90	LTU		74.88	Vietnam Airlines		83.41
Carnival Air Lines		1,883.40	Lufthansa	70.13	7,210.61	Virgin Atlantic	215.00	5,421.84
Casino Air Link		887.68	Malaysia		406.88	Viscount Air Service		2,006.04
Casino Express		8,389.66	Malev Hungarian		241.88	Viscount Air Tours		353.32
Cathay Pacific		3,145.87	Mark Travel Corp.		10,856.56	Vision		2,809.60
Cayman Airways		101.96	Mesa Airlines		132.20	WestJet		59,525.15
Champion Air (MLT, Inc.)		9,343.96	Compania Mexicana		438.74	World Airways		35.04
China Airlines		2,336.20	MGM Grand Air		302.40	Total	1,412,334.83	77,970,100.52
Colgan Air, Inc.		151.86	Miami Air Int'l		5,515.47	PFC checking Interest	1.37	1,742,741.44
ComAir		21,805.38	Midway Airlines		601.52	PFC investment Interest		1,526,893.55
Compania		33.75	Midwest		1,922.08	Securities-bought		32,071,184.66
Conquest		5.76	Mountain West		11.68	Securities-sold		32,058,520.85
Continental Airlines		3,580,174.07	National Airlines		5.84	Securities interest		224,518.18
Continental Micronesia		44.05	Nicaraguense de Aviacion		5.84	Service charges		6,970.26
Copa		11.56	North American Airlines		443.39	Expenditures	860,000.00	80,669,939.82
Croatia Airlines		13.17	Northwest		1,996,108.91	Balance		<u>774,679.80</u>

Sarasota Manatee Airport Authority  
PFC Monthly Status Report - Revenue and Expenditures  
Month ended March 31, 2022

Charge effective date: 9/1/1992  
Total Collection Authority: \$ 92,349,299

Approved applications	Expiration	Approved Impose	Approved Use	Current Revenue Mar-22	Interest Mar-22	Total Collections	Total Interest	Total Revenue		
Appl. 1	92-01-I-00/08-SRQ	Completed	13,944,391.00	-		12,126,777	1,817,614	13,944,391		
Appl. 2	95-02-U-00/05-SRQ	Completed	-	5,947,682.00						
Appl. 3		Completed	750,061.00	8,746,770.00		675,673	74,388	750,061		
Appl. 4	10/3/2000 2/22/2002 7/23/2009 12/7/2017	00-04-C-00-SRQ 00-04-C-01-SRQ 00-04-C-02-SRQ 00-04-C-03-SRQ	36,126,915.00 2,368,148.00 22,194,884.00 (887,886.00)	36,126,915.00 2,368,148.00 22,194,884.00 (887,886.00)						
Appl. 4	00-04-C-00/03-SRQ	Completed	59,802,061.00	59,802,061.00		58,234,308	1,567,753	59,802,061		
Appl. 5	5/7/2019	19-05-C-00-SRQ	10/1/2022	8,817,424.00	8,817,424.00	1,412,334.83	1.37	6,933,342	14,764	6,948,106
Appl. 6	9/8/2021	21-06-C00-SRQ	4/1/2024	9,035,362.00	9,035,362.00					
			<u>92,349,299.00</u>	<u>92,349,299.00</u>	<u>1,412,335</u>	<u>1</u>	<u>77,970,101</u>	<u>3,474,519</u>	<u>81,444,620</u>	

Project number	Description	Use Appl. #	Estimated Implementation Date	Total Approved to Use	Expenditures Month end Mar-22	Total Expended to Date	Balance to Use	Status
	Various Projects	Total	2	5,947,682	-	5,947,682	-	Project complete
	Various Projects	Total	3	8,746,770	-	8,746,769	-	Project complete
118	Terminal development debt service Amendment	4	10/1/2000	60,689,947		59,802,061	-	
		4		(887,886)				
				<u>59,802,061</u>	<u>-</u>	<u>59,802,061</u>	<u>-</u>	Project complete 4/21
5.01	Passenger Loading Bridge	5	12/1/2022	2,579,924		2,579,924	-	
5.02	Administration Cost Reim	5	11/30/2021	44,700		44,700	-	Project complete
5.03	Air Traffic Control Tower	5	12/1/2022	6,192,800	860,000	3,548,803	2,643,997	
	Total			<u>8,817,424</u>	<u>860,000</u>	<u>6,173,427</u>	<u>2,643,997</u>	Amount budgeted for FY 2022 is \$8,002,229
6.01	RIM Project	6	5/21/2019	120,805			120,805	
6.02	Master Drainage Plan	6	5/1/2019	651,983			651,983	
6.03	Stormwater System Imp	6	11/1/2020	411,102			411,102	
6.04	Ticket Wing Bag Belt Ext	6	10/30/2019	577,190			577,190	
6.05	Runway 14 Evaluation & Rehab	6	10/30/2019	142,716			142,716	
6.06	Wildlife Hazard Assessment	6	10/12/2019	2,969			2,969	
6.07	ARFF Truck Replacement	6	7/18/2019	99,423			99,423	
6.08	Access Control & Security Enhancements	6	12/20/2020	995,819			995,819	
6.09	Obstruction Survey	6	8/15/2018	252,966			252,966	
6.10	Design & Rehab ARFF Facility	6	9/15/2020	349,271			349,271	
6.11	Master Plan Update w/ Boundary Survey	6	12/15/2020	48,878			48,878	
6.12	Taxiway Bravo North Rehab	6	12/15/2020	152,846			152,846	
6.13	PFC Administration	6	8/30/2021	81,859			81,859	
6.14	Hearing Loop System	6	12/10/2019	62,838			62,838	
6.15	Terminal Curbside Renovations	6	10/1/2022	3,250,000			3,250,000	
6.16	Blast Fence Project Gate B2	6	10/15/2020	750,000			750,000	
6.17	Baggage Handling System Design	6	10/15/2022	200,000			200,000	
6.18	Security Checkpoint Modifications	6	9/30/2020	384,697			384,697	
6.19	Waypoint Sign Project	6	6/1/2022	500,000			500,000	
				<u>9,035,362</u>	<u>-</u>	<u>-</u>	<u>9,035,362</u>	
Total all applications				<u>92,349,299</u>	<u>\$860,000</u>	<u>80,669,940</u>	<u>11,679,359</u>	

**Sarasota Manatee Airport Authority**  
 Finance Department  
 March 31, 2021  
 Grant Administration

**FEDERAL AVIATION ADMINISTRATION**

AIP-55	<u>ARFF Station Construction &amp; Taxiway B North Rehab Design</u> <b>Grant amount: \$1,480,253 (90% reimbursement)</b> Total project costs to date: Grant funds requested: Executed: July 31, 2019	<b>CLOSED 1/2022</b> \$ 2,017,259.34 \$ 1,364,553.27
AIP-56	<u>Update Airport Master Plan</u> <b>Grant amount: \$879,803 (90% reimbursement)</b> Total project costs to date: Grant funds requested: Executed: July 31, 2019	 \$ 1,074,629.93 \$ 791,822.70
AIP-57	<u>Stormwater Systems Improvements</u> <b>Grant amount: \$7,399,829 (90% reimbursement)</b> Total project costs to date: Grant funds requested: Executed: July 31, 2019	<b>CLOSED 2/2022</b> \$ 8,897,611.29 \$ 7,399,829.00
AIP-58	<u>Rehabilitate Taxiway B Construction Phase</u> <b>Grant amount: \$2,326,045 (100% reimbursement)</b> Total project costs to date: Grant funds requested: Executed: June 16, 2020	 \$ 2,303,407.19 \$ 2,093,440.50
AIP-60	<u>Rehabilitate Taxiway C &amp; F Design</u> <b>Grant amount: \$341,171 (100% reimbursement)</b> Total project costs to date: Grant funds requested: Executed: June 4, 2021	 \$ 329,094.88 \$ 175,019.54
AIP-63	<u>Airport Rescue Plan Grant (ARPA)</u> <b>Grant amount: \$8,818,708 (100% reimbursement)</b> Grant funds requested: Executed: November 8, 2021	<b>CLOSED 2/2022</b> \$ 8,818,708.00
AIP-64	<u>Airport Concessions</u> <b>Grant amount: \$837,446</b> Grant funds requested: Executed: March 31, 2021	 \$ -

**TRANSPORTATION SECURITY ADMINISTRATION - OTHER TRANSACTION AGREEMENT**

70T04021T7672N010	<u>Baggage Handling System Optimization</u> <b>Grant amount: \$849,752.63</b> Grant funds requested: Executed: March 1, 2021 Expires: March 31, 2024	 \$ 396,165.16
-------------------	--	-------------------

**FLORIDA DEPARTMENT OF TRANSPORTATION**

		<b>CLOSED 2/2022</b>
437061-1-94-01	<u>North Quad Access Road</u> <b>Grant amount: \$2,279,518 (50% reimbursement)</b> Grant funds requested: Executed: April 13, 2017 Expires: June 30, 2021	\$ 2,206,540.55
440648-1-94-01	<u>Air Center Aprons</u> <b>Grant amount: \$500,000 (50% reimbursement)</b> Grant funds requested: Executed: August 20, 2019 Expires: June 30, 2023	\$ 1,082.75
441791-1-94-01	<u>Master Plan Update</u> <b>Grant amount: \$48,878 (5% reimbursement)</b> Grant funds requested: Executed: August 20, 2019 Expires: June 30, 2022	\$ 42,682.03
444247-1-94-01	<u>Security Enhancement</u> <b>Grant amount: \$887,500.00 (50% reimbursement)</b> Grant funds requested: Executed: March 27, 2019 Expires: June 30, 2022	\$ 807,518.46
444678-1-94-01	<u>Ground Transportation Curbside Improvement</u> <b>Grant amount: \$433,790 (50% reimbursement)</b> Grant funds requested: Executed: May 7, 2021 Expires: June 30, 2027	\$ -
444680-1-94-01	<u>Way Point Sign</u> <b>Grant amount: \$610,064 (50% reimbursement)</b> Grant funds requested: Executed: August 20, 2019 Expires: June 30, 2022	\$ 436,437.95
445152-1-94-01	<u>Fuel Farm Expansion</u> <b>Grant amount: \$2,449,159 (50% reimbursement)</b> Grant funds requested: Executed: February 7, 2019 Expires: June 30, 2022	\$ 1,801,765.50
446350-1-94-01	<u>Stormwater System Improvements</u> <b>Grant amount: \$411,102 (5% reimbursement)</b> Grant funds requested: Executed: September 10, 2019 Expires: June 30, 2023	\$ 362,059.82

**HUMAN RESOURCES**

**MARCH 2022**

**HUMAN RESOURCES DEPARTMENT  
ACTIVITY FOR THE MONTH OF MARCH 2022**

**OPEN POSITIONS**

POSITION	NUMBER OF POSITIONS	NUMBER OF APPLICANTS	POSITIONS FILLED	APPLICANT(S) HIRED	STARTING DATE
Traffic Control Specialist	6	31	3	Ron Pellonari Terry Dowdy Russell Prinzi	3/1/2022 3/24/2022 3/28/2022
Property Leasing Assistant	1	9	1	Charles Davis	3/14/2022
HR Assistant	1	9	1	Tiffany Dodd	3/7/2022
IT Systems Technician	6	4			
Network Administrator	1	1	1	Jose Yengle	3/7/2022
Technical Support Specialist	1	12	1	David Kiszak JR	3/21/2022
Police Officer - FT	2	3	2	Brian Turner Ricardo Scharon	3/7/2022 3/7/2022
Police Officer - PT	3	2	1	Robert Shaw	3/9/2022
Floor Maintenance Technician	3	6			
Mechanic	1	7			
Firefighter	1	23	1	Jorden McPherson	3/31/2022
HVAC Mechanic	1	5			
Baggage Handling System	3	4			
Deputy Fire Chief	1	3			
Horticultural Specialist	1	4			
<b>TOTALS</b>	<b>32</b>	<b>92</b>	<b>11</b>		

**SEPERATION**

NAME	HIRE DATE	SEPERATION DATE	POSITION
Mary Malloy	2/26/2009	3/4/2022	Network Administrator
Maceo Woodside	8/26/2021	3/4/2022	Baggage Handling System Technician
Ralph Contreras	10/12/2021	3/11/2022	Traffic Control Specialist
Brian MacDermott	9/7/2021	3/11/2022	Traffic Control Specialist

The following positions(s) are funded in the FY 22 Budget, but have not been authorized to fill at this time.

POSITION	NUMBER OF POSITIONS	DEPARTMENT
Director, Human Resources	1	Finance & HR
Janitorial & Compliance Supervisor	1	Facilities
Communications Specialist PT	1	Operations

**PURCHASING****FEBRUARY 2022****BIDS/QUOTES:**

Work has started on the new Air Cargo Roof, and we expect completion by the end of April.

We are working with Properties and our Parking Management Company on the need for additional Shuttle Buses to service the three new parking lots that come online before the Holidays. As with all vehicles, there is an extremely long lead time for the Shuttle Manufacturers to receive the needed chassis for the buses. We are also looking into upgrading the Parking Access and Revenue System (PARCS) to bring in license plate reading and modernize the credit card machines to improve the performance and increase the technology, so our passengers have a much better experience.

ITS has started working with our new Managed Network Service. We have purchased new equipment through them at very favorable pricing. The new WIFI system is installed and so far, seems to be meeting all expectations. The new DAS system is installed, and we expect the first company, ATT to be up and running by June. Our expectation is that both Verizon and T-Mobile will join the system before the end of the calendar year.

Informal written quotes requested from prospective suppliers to provide airport lighting/lamps, artificial plants, batteries, computer hardware, technical support and software related items, electrical fixtures, extinguishing agents, firefighting gear, landscaping supplies, loading bridge repairs and supplies, industrial supplies, MRO items, office chairs, paint and paint supplies, promotional and advertising novelties, rental equipment, tires, tractor, uniforms, etc. and other misc. repairs and services.

**WAREHOUSE:**

The Warehouse continues to add and delete items stocked in inventory and to generate purchase orders to replenish stock based on monitoring of inventory levels: **0** new items added, and we have reduced the number of items in the warehouse by **0**. Purchasing is reviewing all stock items to further reduce non-usage/slow moving items as needed.

On-line auction activity through GovDeals for surplus/obsolete items: There were \$2,394.00 of sales in the month of March 2022.

**DEPARTMENT PROJECTS:**

We have seen an increase of usage for our supply of Mask for use in the terminal. Our supplies of PPE items are at good levels and should have enough supply to get us through the new extension of May 3rd date set by TSA/CDC for airports.

We have placed a handicapped toilet in the new TNC parking area at New College and added an additional unit at the cellphone lot to handle increased volumes we are experiencing at both lots. This seems to have helped with customer service.

**CONTRACTS ISSUED:** None.

**SUMMARY OF DEPARTMENT ACTIVITY FOR THE MONTH:**

**PURCHASING:**

- Purchase Orders Issued: 129
- Blanket Purchase Orders Issued: 3
- Emergency Purchase Orders Issued: 0
- Change Orders Issued: 0

**WAREHOUSE/RECEIVING:**

- Inventory Stock Transactions: 802
- Courier Activity: 574 miles for month

**NOTICE TO THE BOARD:** Per the Purchasing Policy, all purchases between \$35,000 - \$65,000 require at least three informal quotes. All purchases between \$65,000 to \$150,000 value shall be publicly noticed and made on the basis of competitive sealed bids, competitive sealed proposals, or competitive sealed replies. All exceptions shall be noted to the Authority at its next regular meeting. The following are exceptions to this policy for **March 2022: None.**



## **AGENDA ITEM NO. 8.4**

### **SARASOTA MANATEE AIRPORT AUTHORITY REAL ESTATE DEVELOPMENT & PROPERTIES STAFF REPORT APRIL 25, 2022 REGULAR MEETING**

**Southwest Airlines:** Southwest has obtained building permits for the additional space below the Concourse at Gate B-10. Southwest and SMAA completed a preconstruction meeting and Southwest to commence with the buildout.

**Allegiant:** Properties amended the lease exhibit and rents for the Allegiant additional space in the lower concourse area.

**American Airlines:** Construction of additional space for American is complete in the lower level of the Concourse, American is in the process of moving in and Properties to amend lease exhibits and rents.

**Breeze Airways:** Breeze Airways and SMAA have executed a Non-Signatory Agreement and preparations are underway. Breeze will start service at SRQ in June of this year.

**Property #7/NEC and #12 NWC University & Bradenton Rd:** SMAA application for DRI termination and rezoning in process. A portion Property 7 is also planned to be utilized temporary for an economy parking lot to accommodate overflow parking needs while various projects are constructed. Property 7 is in for construction permits with the city for the parking lot.

**Rental Car/Status:** Development of a consolidated QTA lot/facility is in design and Properties to negotiate new lease/operating agreements with all three car companies, including lease extensions. The expansion of the ready/return lot is nearly complete, however final work has been delayed to provide full use of the lot during the current peak season.

**Airport Hotel #3:** The ground rent tenant is participating in the DRI/rezoning. A temporary license continues to be in place with this tenant to allow the airport to utilize the vacant hotel lot for overflow parking.

#### **North Quad Development:**

**Sheltair FBO:** Properties completed a lease and development agreement with Sheltair, this agreement is on the Board Agenda for consideration/approval.

**DJG SRQ Hangar, LLC:** Properties completed a lease and development agreement with DJG SRQ Hangar for private aircraft storage, this agreement is on the Board Agenda for consideration/approval.

**SRQ Hangar, LLC:** Properties completed a lease and development agreement with SRQ Hangar for Aircraft Sales and aircraft storage, this agreement is on the Board Agenda for consideration/approval.

**EAA:** Properties completed a lease agreement with EAA for a hangar and administration building, this agreement is on the Board Agenda for consideration/approval.

**GA FIS:** The GA FIS facility is in process and design, Properties to negotiate/complete a lease for the property/building.

Additional interest from potential tenants for hangar development remains strong and discussions/negotiations continue.

**Team Success:** The Tenants sitework and buildings are underway, and the opening of the school will be fall of 2022. Team Success has requested additional lands to expand its campus and an amendment of the lease is under consideration. The amendment to the lease has been prepared and sent to the FAA for review/approval. Provided the FAA finds no issue with the amendment, the amendment will be at the following Board meeting for consideration/approval.

**Property 5 and 6:** Property 5/6 are contemplated to be utilized as Park N Fly lots, SMAA has started the process to zone/design/permit.

**Concessions:** Redevelopment of retail, food and beverage concessions throughout the Terminal/Concourse, strategy, and plan to expand/redevelop is in process. This project will be a phased project over the next several years once implemented.

In the interim, Properties requested presentations from the existing concessions operators as to adding an island bar/limited food concession at the north end of the concourse. Only one response was received and is in review. Provided a suitable agreement can be achieved, the proposed use/agreement will be submitted to the Board for consideration. HMS Host is in design for the contemplated Island Bar.

**Mitchell Management of Florida, Inc.:** The Jimmy Johns franchisee (Tenant) is preparing the space for construction and is anticipating opening in the second quarter of 2022.

**Property #10/M-lot:** Construction of all sitework, the maintenance hangar and extensive remodel of the former Agape hangar are all nearly complete.

**Manatee Technical College:** Properties is nearly complete with a lease agreement with Manatee Technical College for hangars, classrooms and administration building, this agreement is planned to be on the Board Agenda for consideration/approval.

Properties is in discussions/negotiations with various other tenants for both remaining hangars.

**Property #2/Tallevast:** Properties continues discussions/negotiations with Industrial development group as to a joint development of this property.

**Parking:** Parking demand increased dramatically and continues. Various other properties are under development to increase parking capacity to meet the high demand. In addition, the current Parking service agreement expires early next year, therefore an RFP/Q will be necessary to advertise and select a parking service and is in process.

**FBO Expansion:** Additional hangars are contemplated at Dolphin and permits have been obtained with construction to start within 30 days. Ross Aviation is also proposing an expansion of hangars within the N Quad area. Ross has submitted concept plans and discussions are underway regarding phasing/construction.

**Southern Light, LLC:** This tenant has completed its telecommunications facility and is now running fiber to the terminal.

**Minimum Standards:** SMAA is in process of updating the airports Minimum Standards, with several of the airport departments participating. Completion is anticipated by the third quarter of this year.

**General:** Insurance notices, tenant inquiries, showing of properties, construction permits, meetings with surveyors, appraisers, contractors and engineering consultants, collections and past due notices, notices of insurance renewals and compliance, loss prevention committee, meetings with insurance claimants, planning and staff meetings.

**General Aviation:**

- Compliments: **0**
- Complaints: **0**
- Maintenance Requests: **2**
- Total number of tenants: **165**
- Total rentable spaces: **167**
- **105** tenants using auto credit card method of payment.
- **J2-116 vacating end of March 2022.**
- **Co-tenant from J2-112 leasing J2-116 April 2022.**
- **D1-107 vacating April 15. New lease expected April 15.**
- **J2-112, J4-102 & J4-107 seeking co-tenants for May-November.**
- **Facilities beginning annual preventative maintenance on T-hangar electric bi-fold doors.**

**T-HANGAR MONTHLY STATUS REPORT  
For the Month of March 2022**

Item	Qty.	No. Leased	Wait List	Leased %	Monthly Rate	Monthly Rent	Annual Rent
T-Hangars							
51'5 W Oversize	4	4	39	100%	\$1,700.00	\$6,800.00	\$81,600.00
48' W Large	27	27	74	100%	\$602.00	\$16,254.00	\$195,048.00
42' W Standard w/additional 176 sq. ft. storage	4	4	2	100%	\$545.00	\$2,180.00	\$26,160.00
42' Standard (42' wide)	121	121	119	100%	\$440.00	\$53,240.00	\$638,880.00
42' W Standard Discounted rate for CAP & EAA	2	2		100%	\$250.00	\$500.00	\$6,000.00
Storage Rooms	7	3		43%	\$100.00	\$300.00	\$3,600.00
Storage Rooms (Discounted rate for CAP & EAA)	2	2		100%	\$10.00	\$20.00	\$240.00
<b>TOTALS</b>	<b>167</b>	<b>163</b>	<b>234</b>			<b>\$79,294.00</b>	<b>\$951,528.00</b>

## **AGENDA ITEM NO. 8.5**

### **SARASOTA MANATEE AIRPORT AUTHORITY ARFF, OPERATIONS & POLICE DEPARTMENTS APRIL 25, 2022**

#### **OPERATIONS DEPARTMENT - PROJECT/ACTIVITY/INCIDENT REPORT FOR THE MONTH OF MARCH**

##### **Projects and Activities**

- Worked with Facilities and IT Departments on installation of additional CCTV cameras in the Shade Parking Lot.
- On two occasions Ops corrected issues with the loading bridges.
- Operations conducted multiple vehicle and aircraft escorts throughout the month.
- Operations conducted multiple "drivers training" sessions on the airfield
- Operations responded to multiple wildlife and FOD calls throughout the month.
- Ops responded to the FBOs on multiple occasions to grant after-hours access to transient pilots.
- 3/1 & 3/2 – RWY 14/32 closed midnight to 5:30AM for rubber removal.
- 3/6 - TWY E closed from 0830L - 0915L so aircraft can be re-positioned on Ross South ramp.
- 3/15, 23, 29, & 30 – RWY 14/32 Closed midnight to 5:00AM for painting.
- 3/31 – At approximately 6:00PM, FAA issued Ground Stop for all northbound flights due to weather. Ops coordinated gate assignments for delayed/cancelled flights.

##### **Alerts and Incidents**

- 3/1 – AIRCOM observed, via CCTV, a vehicle crash by gate 15S. ARFF, APD, & Ops dispatched. Driver may have had a medical issue which caused the crash.
- 3/4 - C-172 disabled on RY14 near TWY D with a flat left main tire. Ops and ARFF responded. Ops escorted Cirrus Aviation mechanics to the aircraft to change the tire.
- 3/4 - ATCT advises JetBlue #347 (EWR - SRQ) is reporting a nose wheel steering issue and requests to be towed off RY after landing (ETA 1503). Notified Swissport and ARFF (possible Alert 2). Ops staged at R4 with Swissport tug. Aircraft (A320) landed RY14 safely at 1458 (stopped between A7 & A8) and was towed clear of the RY at 1510 (RY re-opened). Aircraft towed to B5.
- 3/9 – Alert II: C-414 inbound with smoke in cockpit. Aircraft landed safely and after exiting RY14, shutdown. Ops escorted tug to aircraft for tow to Dolphin.
- 3/10 - Ops assisted APD with a two-vehicle crash at the intersection of Airport Auditorium Lane & Bradenton Connector. Ops pulled the pickup involved off the crash rail with Ops truck to clear the roadway.
- 3/10 – Alert I: ATCT reported an inbound Citation with minimal fuel. Ops & ARFF on standby; aircraft landed safely.
- 3/15 – Alert II: Cessna Citation XL with smoke in the cockpit. Aircraft landed safely.
- 3/18 – TBM blew main tire landing RY14 and stopped at TWY A/D. Ops escorted mechanics & tug to aircraft. ARFF assisted in keeping strut compressed so failed tire was high enough to place Ops dolly below. Aircraft towed to Dolphin.
- 3/20 – Alert II: Piper Meridian with an unsafe gear indication. Ops observed fly-by and advised ATCT gear appeared to be down. Aircraft landed safely.
- 3/31 – Alert II: ATCT reported an inbound Archer that lost its alternator and radios. ARFF and OPS responded to RWY 22 for aircraft's arrival. Aircraft landed safely and taxied to UFS.

**OPERATIONS DEPARTMENT  
APRIL 2022**

**Miscellaneous Activities**

- 42 NOTAMs were issued during the month of March.
- AIRCOM dispatched & Ops responded to 39 Medical Runs (14 requiring SCFD response).
- AIRCOM dispatched two Fire Calls: vehicle fire at University Self Storage (Mutual Aid with Southern Manatee Fire Rescue) and a sparking outlet on the concourse.
- 8 Notice of Violations (NOVs) were issued for various Safety/Security infractions by tenant employees.
- 136 CHRC (fingerprint checks) were conducted.
- 153 new I.D. badges were issued and 140 were renewed.
- 425 Security Threat Assessments were completed.
- 659 Computer Based Training Classes were conducted during the month.

**FIRE DEPARTMENT  
APRIL 2022**

<b>FIRE DEPARTMENT ACTION REPORT March 2022</b>			
<b>SAFETY INCIDENT/RESPONSES</b>			
<b>TYPE OF RESPONSE</b>	<b>AREA OF RESPONSE</b>	<b>NUMBER OF RESPONSES</b>	<b>TOTAL YEAR TO DATE</b>
EMT FIRST AID RESPONSES:	Ticket wing	1	15
	Main	1	4
	Baggage Wing	2	7
	Escalator	1	1
	Curbside	5	7
	2nd Floor	2	6
	3rd Floor		0
	TSA Checkpoint	2	5
	Walk-in		1
	Restaurant		2
	Concourse 1st		0
	Concourse 2nd	12	26
	Ramp	1	1
	Aboard Aircraft	10	25
	Parking lot	6	10
	Toll Booth		0
Airfield	1	9	
	<b>TOTAL EMT FIRST AID:</b>	<b>44</b>	<b>119</b>
FIRE RESPONSES:	Aircraft Fire		0
	Structural Fire	1	2
	Vegetation Fire		0
	Vehicle Fire	1	1
	Trash Fire		0
FIRE ALARM RESPONSES:	Fire Alarms	1	3
	Bomb Scare		0
	<b>TOTAL FIRE / ALARM:</b>	<b>3</b>	<b>6</b>
HAZARDOUS MATERIALS RESPONSES:	Fuel Spill		0
	Chemical Spill		0
	Other		2
	<b>TOTAL HAZARDOUS MATERIAL:</b>	<b>0</b>	<b>2</b>
AIRCRAFT EMERGENCY RESPONSES:	Alert I	1	2
	Alert II	4	6
	Alert III	1	3
	Stand By/Hot Fuel	2	3
	<b>TOTAL AIRCRAFT EMERGENCY:</b>	<b>8</b>	<b>14</b>
SUPPLEMENT REPORT			0
	<b>TOTAL RESPONSES</b>	<b>55</b>	<b>141</b>

**POLICE DEPARTMENT  
APRIL 2022**

**POLICE ACTIVITIES MARCH 2022**

<b>CRIMES</b>	
ASSAULT/BATTERY	0
BOMB THREATS	0
GRAND THEFT AUTO	1
DAMAGE TO PROPERTY	0
DISORDERLY CONDUCT	21
FIELDS INTERVIEWS	4
DOMESTIC VIOLENCE	0
NARCOTICS	0
PERSONAL PROPERTY THEFT	0
RECOVER GRAND THEFT AUTO	1
SUSPICIOUS PERSON	4
SUSPICIOUS VEHICLE	6
TRESPASS	4
OTHER CRIMES	1
<b>TOTAL:</b>	<b>42</b>
<b>PATROLS</b>	
AOA	122
CONCOURSE PATROL	178
SECURITY CHECKPOINT	229
GROUND TRANS	43
PARKING LOTS	159
PERIMETER (INSIDE)	35
ROADWAY	169
BAGGAGE AREA PATROL	148
TACTICAL PATROLS	23
SECURITY PATROLS	404
<b>TOTAL:</b>	<b>1510</b>
<b>CHECKPOINTS</b>	
AOA BREACH	0
ASSIST TRINITY MISC.	0
CHECKPOINT BREACH	0
DOOR ALARMS	13
DRUGS-NARCOTICS	0
EXIT LANE ALARM	6
EXIT LANE BREACH	0
HOLD BAGGAGE CALLS	0
NO FLY LIST	0
OTHER PROHIBITED ITEMS	0
SUSPICIOUS ITEMS	0
OTHER	0
<b>TOTAL</b>	<b>19</b>

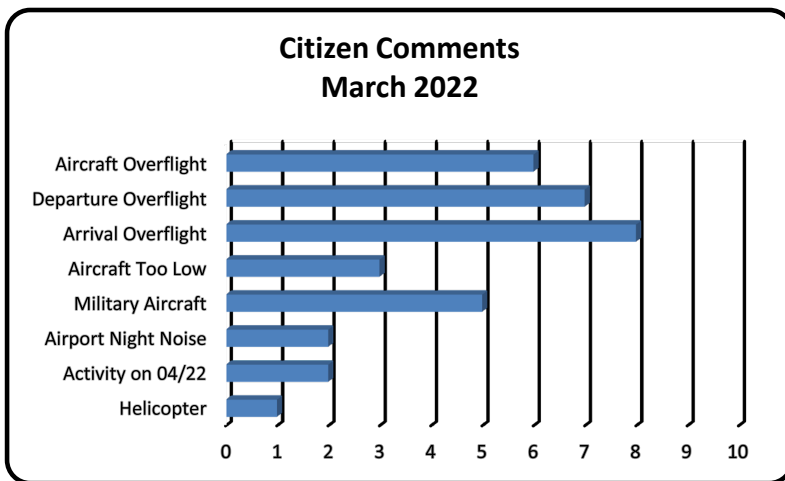
<b>INSPECTIONS</b>	
COMMERCIAL INSPECTION	84
GATE INSPECTION	149
GT INSPECTION	470
SIDA CHECK	204
OTHER INSPECTIONS	0
<b>TOTAL:</b>	<b>907</b>
<b>TRAFFIC</b>	
DISABLED VEHICLE/TOWING	0
PARKING TICKETS	6
TRAFFIC CRASHES	12
TRAFFIC CITATIONS	8
WARNINGS	0
OTHER TRAFFIC	8
<b>TOTAL:</b>	<b>34</b>
<b>ASSISTANCE</b>	
BAKER/MARCHMAN ACT	2
CUSTOMERS	41
MOTORISTS	5
OUTSIDE AGENCIES	7
SMAA EMPLOYEE/DEPT	0
TENANTS	32
MEDICAL CALLS	41
LOST & FOUND LOGGED	81
LOST & FOUND RETURNED	31
LOST & FOUND INQUIRIES	332
<b>TOTAL:</b>	<b>572</b>
<b>WEAPONS</b>	
EXPLOSIVES	0
FIREARM PARTS/AMMO	0
FIREARMS AT CHECKPOINT	0
UNDECLARED WEAPONS	0
OTHER WEAPONS	2
<b>TOTAL:</b>	<b>2</b>
<b>ARRESTS</b>	
ARRESTS FELONY	0
ARRESTS JUVENILE	0
ARRESTS MISD	2
E-WARRANTS	0
SAO REFERRAL	0
NOTICE TO APPEAR	0
OTHER ARRESTS	0
<b>TOTAL:</b>	<b>2</b>

**OPERATIONS  
APRIL 2022**

**NOISE MONITORING AND FLIGHT TRACKING FOR THE MONTH OF MARCH**

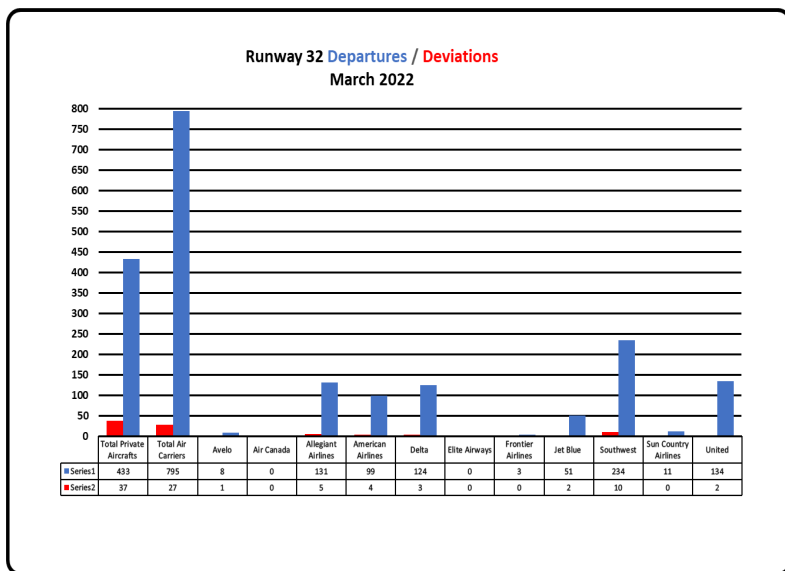
→ The chart to the right displays the distributions of noise complaints for the month of **March 2022**. There were **31 calls and 4 emails which generated 34 complaints** by the Noise Abatement Hotline or by the Operations Department.

Of the total complaints, **44% were from Sarasota County and 56% from Manatee**. The average number of calls received for the month were **1.09 calls per day**.



→ Flight Tracking & Runway 32 Deviation data is for **March 2022**. There were **27 air carrier and 37 private jet deviations** observed during this period.

In **March 2022, Southwest (SWA) had 10 deviations, Allegiant (AAY) had 5 deviation, American (AAL) had 4 deviations, Delta (DAL) had 3 deviations, JetBlue (JBU) had 2 deviations, United (UAL) had 2 deviations and Avelo (VXP) had 1 deviation**. This office continues to work with representatives from the airlines, private jets and the SRQ ATCT to ensure compliance with SRQ Five & SRKUS Four Departure Procedures (NADP for Runway 32).



**RUNWAY UTILIZATION**

The overall runway utilization for the month of **MARCH 2022** is distributed as follows:

Operations	Runway 04	Runway 22	Runway 14	Runway 32
Arrivals	2%	5%	49%	43%
Departures	9%	7%	48%	36%



# **ACTIVITY REPORT**

## **MARCH 2022**

**ACTIVITY REPORT**  
**SARASOTA-MANATEE AIRPORT AUTHORITY**  
**SARASOTA BRADENTON INTERNATIONAL AIRPORT**

ACTIVITY MONTH: MARCH

	2022			2021			12 MONTHS ACTIVITY THRU MARCH		
	2022	2021	% CHANGE	2022 YEAR TO DATE	2021 YEAR TO DATE	% CHANGE	2022	2021	% CHANGE
<b>AIRCRAFT OPERATIONS</b>									
<b>ITINERANT</b>									
AIRLINES	3,450	3,072	12.30%	9,474	6,900	37.30%	34,945	16,234	115.26%
AIR TAXI	1,494	1,431	4.40%	4,318	3,701	16.67%	13,925	10,461	33.11%
GENERAL AVIATION	7,558	7,018	7.69%	21,225	19,016	11.62%	75,732	60,180	25.84%
MILITARY	400	271	47.60%	787	871	-9.64%	3,026	2,562	18.11%
<b>TOTAL ITINERANT</b>	<b>12,902</b>	<b>11,792</b>	<b>9.41%</b>	<b>35,804</b>	<b>30,488</b>	<b>17.44%</b>	<b>127,628</b>	<b>89,437</b>	<b>42.70%</b>
GENERAL AVIATION (Local)	2,152	2,571	-16.30%	7,035	7,191	-2.17%	34,996	30,951	13.07%
<b>TOTAL OPERATIONS</b>	<b>15,054</b>	<b>14,363</b>	<b>4.81%</b>	<b>42,839</b>	<b>37,679</b>	<b>13.69%</b>	<b>162,624</b>	<b>120,388</b>	<b>35.08%</b>
<b>TOTAL PASSENGERS:</b>									
ON	221,497	133,824	65.51%	542,722	277,393	95.65%	1,848,565	582,851	217.16%
OFF	221,349	143,766	53.96%	542,778	286,673	89.34%	1,836,412	606,751	202.66%
<b>TOTAL</b>	<b>442,846</b>	<b>277,590</b>	<b>59.53%</b>	<b>1,085,500</b>	<b>564,066</b>	<b>92.44%</b>	<b>3,684,977</b>	<b>1,189,602</b>	<b>209.77%</b>



SARASOTA BRADENTON INTERNATIONAL AIRPORT  
TOTAL YOY PASSENGER COMPARISON - BY MONTH

	2022				2021				YOY	
JAN	160,119	141,562	508	302,189	JAN	88,497	37,983	224	126,704	138.5%
FEB	173,945	166,165	355	340,465	FEB	99,526	60,006	240	159,772	113.1%
MAR	244,551	198,131	164	442,846	MAR	160,206	117,072	312	277,590	59.5%
APR	0	0	0	0	APR	177,077	116,762	326	294,165	-100.0%
MAY	0	0	0	0	MAY	167,314	120,748	489	288,551	-100.0%
JUNE	0	0	0	0	JUNE	169,587	143,015	307	312,909	-100.0%
JULY	0	0	0	0	JULY	173,122	153,403	422	326,947	-100.0%
AUG	0	0	0	0	AUG	118,183	125,072	594	243,849	-100.0%
SEPT	0	0	0	0	SEPT	98,879	89,384	553	188,816	-100.0%
OCT	0	0	0	0	OCT	146,681	128,076	572	275,329	-100.0%
NOV	0	0	0	0	NOV	155,898	164,638	1,107	321,643	-100.0%
DEC	0	0	0	0	DEC	175,135	171,335	798	347,268	-100.0%
<b>TOTAL:</b>	<b>578,615</b>	<b>505,858</b>	<b>1,027</b>	<b>1,085,500</b>	<b>TOTAL:</b>	<b>1,730,105</b>	<b>1,427,494</b>	<b>5,944</b>	<b>3,163,543</b>	<b>-65.7%</b>

SARASOTA BRADENTON INTERNATIONAL AIRPORT  
 TOTAL PASSENGERS - MARCH 2022  
 MONTH / YEAR-TO-DATE COMPARISON

AIRLINES	MONTH			YEAR-TO-DATE			YTD MKT SHARE	
	2022	2021	% CHG	2022	2021	% CHG	2022	2021
<b>[MAJOR CARRIERS]</b>								
AIR CANADA	0	0	0.0%	0	0	0.0%	0.0%	0.0%
ALLEGIANT	88,461	48,604	82.0%	195,428	124,152	57.4%	20.0%	27.4%
AVELO	3,431	0	100.0%	7,309	0	100.0%	0.8%	0.0%
DELTA	84,154	48,957	71.9%	201,841	113,836	77.3%	20.6%	25.1%
ELITE AIRWAYS	0	0	0.0%	200	0	100.0%	0.0%	0.0%
FRONTIER	3,157	10,785	-70.7%	9,473	18,451	-48.7%	1.0%	4.1%
JETBLUE	26,548	21,846	21.5%	65,260	40,092	62.8%	6.7%	8.8%
UNITED	27,324	22,051	23.9%	88,940	37,133	139.5%	9.1%	8.2%
AMERICAN	34,016	24,915	36.5%	87,682	39,148	124.0%	9.0%	8.6%
SOUTHWEST	124,510	52,739	136.1%	302,821	68,225	100.0%	31.0%	15.0%
SUN COUNTRY	8,215	5,099	61.1%	18,931	12,550	50.8%	1.9%	2.8%
<b>MAJOR TOTAL:</b>	<b>399,816</b>	<b>234,996</b>	<b>70.1%</b>	<b>977,885</b>	<b>453,587</b>	<b>115.6%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>(AFFILIATE AIRLINES)</b>								
MESA AIRLINES-United Express	1,145	3,794	-69.8%	7,382	13,345	-44.7%	6.9%	12.2%
PSA AIRLINES -American	10,956	11,010	-0.5%	30,415	27,671	9.9%	28.5%	25.2%
REPUBLIC-American	0	4,479	-100.0%	749	13,382	-94.4%	0.7%	12.2%
Republic - United	21,119	8,713	142.4%	38,282	16,760	128.4%	35.9%	15.3%
Republic-Delta	1,279	4,297	-70.2%	7,535	8,979	-16.1%	7.1%	8.2%
SKY WEST - United	3,813	217	1657.1%	10,147	217	4576.0%	9.5%	0.2%
ENDEAVOR-Delta	0	0	0.0%	0	411	-100.0%	0.0%	0.4%
ENVOY-American	4,554	9,772	-53.4%	12,278	28,938	-57.6%	11.5%	26.4%
<b>REGIONAL TOTAL:</b>	<b>42,866</b>	<b>42,282</b>	<b>1.4%</b>	<b>106,788</b>	<b>109,703</b>	<b>-2.7%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>[DOMESTIC-CHTR]</b>								
SUN COUNTRY	164	312	-47.4%	827	776	6.6%	0.8%	100.0%
<b>SUBTOTAL:</b>	<b>164</b>	<b>312</b>	<b>-47.4%</b>	<b>827</b>	<b>776</b>	<b>6.6%</b>	<b>0.8%</b>	<b>100.0%</b>
<b>CHARTER TOTAL:</b>	<b>164</b>	<b>312</b>	<b>-47.4%</b>	<b>827</b>	<b>776</b>	<b>6.6%</b>	<b>0.1%</b>	<b>0.1%</b>
<b>GRAND TOTAL:</b>	<b>442,846</b>	<b>277,590</b>	<b>59.5%</b>	<b>1,085,500</b>	<b>564,066</b>	<b>92.4%</b>	<b>100.0%</b>	<b>100.0%</b>

## **AGENDA ITEM NO. 8.6**

### **SARASOTA MANATEE AIRPORT AUTHORITY DEVELOPMENT/COMMUNITY RELATIONS & ACTIVITY REPORT APRIL 25, 2022**

#### **SRQ AMBASSADORS**

In March, the SRQ Ambassadors volunteered 717 hours. Our Ambassadors gave 4 guided tours with 121 participants during the month.

#### **MEDIA RELATIONS**

Met with or contacted this month by reporters from the Sarasota Herald-Tribune, the Bradenton Herald, ABC7, SNN TV, Bay News 9 and News Channel 8.

#### **Mark Stuckey, Executive Vice President, Chief of Staff: March 21 – April 15, 2022**

- 03/22 Meeting with United Ground Express station manager
- 03/24 Teleconference: BACVB and Arrivalist
- 03/29 Attended event with BACVB and Avelo Airlines in Pittsburgh, PA
- 03/31 Attended event with BACVB and Sun Country Airlines in Minneapolis, MN
- 04/07 Teleconference with BACVB and Aqua Marketing
- 04/11 Meeting and airport tour provided to possible future airline
- 04/14 Attended inaugural flight event for Allegiant nonstop service to AUS

#### **Fredrick Piccolo, President, CEO: March 24 – April 15, 2022**

- 03/30 Board Meeting – Manatee Chamber of Commerce
- 03/31 Interview/Photos – USF Magazine Article
- 03/31 Board of Directors Meeting – Bradenton Area EDC
- 04/04 ACI-NA Political Affairs Subcommittee Monthly Meeting
- 04/07 Meeting – Benderson Park Sponsorship

Mr. Piccolo participates in various impromptu media interviews throughout the month

## **AGENDA ITEM NO. 8.7**

### **SARASOTA MANATEE AIRPORT AUTHORITY ENGINEERING, PLANNING & FACILITIES ACTIVITY REPORT April 25, 2022**

#### **ENGINEERING**

##### ➔ **SRQ Parking Lot Modifications**

Staff has bid the expansion portion to the long-term and overflow lot due to recent increase in airline traffic. The Authority awarded the low-responsive bidder at the January 2021 Board meeting, and staff conducted pre-construction meeting. An NTP was issued in March 2021. The long term and shade lots are substantially complete. Contractor has begun construction in the Ready Return Lot to expand parking and install covered sidewalk to terminal from Long-term. A CO was issued to design and permit a Remote Lot and Park and Ride Lots. Design is at 90% and City permit applications will be submitting in late March.

##### ➔ **Taxiway Bravo North Rehabilitation**

The Taxiway Bravo Project will rehabilitate Taxiway Bravo north of Runway 14-32 to Runway 22. Kimley-Horn (KH) was ranked first at the March Board meeting. KH has completed the final design plans and the project was bid. The Board approved AJAX Paving as the low responsive bidder at the May 2020 Board meeting. Staff issued an NTP on September 17<sup>th</sup>, 2020. Project is substantially complete, and contractor has completed all punchlist items except for one low point. Contractor, Engineer, and staff have determined a change to address the low area and work should be complete in early April.

##### ➔ **Access Control Project**

The Access Control Project will replace the current access control resulting in a unified security system with fully integrated video surveillance, physical access control, and access credential media issuance capabilities. AVCON has completed design, project was advertised for construction bids, and approval of the low responsive bidder was approved at the November Board meeting. A preconstruction meeting was conducted on January 23<sup>rd</sup> and an NTP was issued February 3<sup>rd</sup>. Contractor is substantially complete with original scope. Contractor is replacing airfield fiber optics approved as a change order at the May Board meeting. Contractor is substantially complete and is working on punchlist items.

##### ➔ **Wayfinding Sign Project**

The Wayfinding Sign project will replace and upgrade the signage around Airport Circle, along with the Bradenton Connector, General Spaatz Boulevard, Rental Car Road, Air Cargo Avenue, Air Cargo Road, and Old Bradenton Road. Signs will be upgraded to include latest international symbols, and their format will be similar to the new signage recently installed in the Gateway Entrance Project. Project was advertised and the Authority awarded the contract to the low responsible bidder at the January Board meeting. The Project contract has been executed and staff conducted a pre-construction meeting. An NTP was issued March 15<sup>th</sup>, 2021. The contractor is nearing substantial completion. Several roadside signs were installed incorrectly, and contractor will be relocating over the next two weeks. Contractor is completing painting and electrical items and expects to be complete in early April.

##### ➔ **Baggage Handling System Project**

The Baggage Handling System Project will consolidate the three-existing mini-inline systems into one fully inline system. This project will allow all bag belts in ticketing to feed to one checked baggage inspection room and will allow for redundant screening machines. Vic Thompson Company (VTC) was ranked first at the August Board meeting and a contract was executed for the work. VTC has completed design plans and TSA has approved them. Construction funding originally scheduled for March of 2023, has been accelerated to September of 2022. Project is currently out for construction bidding and staff anticipates bringing the low responsive bidder to the May Board meeting. Project budget is currently \$40 million.

##### ➔ **Consolidated Rental Car Facility Project**

The Consolidated Rental Car Facility project will relocate all three rental car families to one lot to perform maintenance, fueling, cleaning, and storage. The Project will allow for future development of property along University Parkway and will improve efficiency of the Rental Car's Quick turn-around

process. Project was advertised for architectural/engineering qualifications, and the Authority selected PGAL to design, permit, and bid the project. Project design is complete and is being permitted with the City of Sarasota and Manatee County. The project will be bid in three separate projects including the Cell Lot, Storage Lot, and the QTA project. The Cell Lot has been advertised for bids, and staff anticipates bringing the low responsive bidder to the May Board Meeting.

➔ **Ground Transportation Center Project**

The Ground Transportation Center project will reconfigure and expand the ground transportation area at the west end of baggage claim. The Project will improve efficiency and space for ground transportation including TNCs, taxis, bus, and limos. Project was advertised for architectural/engineering qualifications, and the Authority selected AVCON to design, permit and bid the project. A design kickoff meeting was conducted on July 24, 2021, and the consultant completed preliminary field investigations, 30-percent drawings, and is now working on 60-percent design drawings for review.

➔ **15<sup>th</sup> Street Observation Area Project**

The 15<sup>th</sup> Street Observation Area will improve the area off 15<sup>th</sup> Street East that is currently utilized for parking and aircraft viewing. Improvements will include a seating area, shade, lighting, pavement parking, landscape, and other enhancements. Project was advertised for architectural/engineering qualifications, and the Board selected Sweet Sparkman as the number one ranked firm to complete the design, bidding and permitting for the project. Staff has negotiated the scope and fees and approval was received at the November Board meeting. Execution of contract is pending execution of joint funding agreement with Manatee County.

➔ **Commercial Apron Expansion Project**

The Commercial Apron Expansion project will expand the commercial apron to the East to allow for additional Remain Over Night (RON) parking and overflow hardstand parking for commercial aircraft. This project will address capacity restraints caused by inclement weather and will allow additional growth from existing airlines. Project was advertised for architectural/engineering qualifications, three firms selected by staff made presentations to Board in May. EG Solutions was selected as the number one ranked firm and a contract was executed for the design, bidding, and permitting of this project. EG Solutions has prepared design plans, and the project has been advertised for bids. Staff anticipates bringing the low responsive bidder to the May Board Meeting

➔ **Terminal Concourse Expansion Project**

The Terminal Concourse Expansion project will expand existing Concourse B to provide increased holding rooms areas, concession areas and support facilities, airline podium upgrades, and upgrade escalators within terminal. Project will also begin design and permitting for a new Concourse A as a separate design package. Project was advertised for architectural/engineering qualifications, and three firms selected by staff made presentations to Board in May. The Board ranked Gresham Smith (GS) number one, and staff negotiated a scope and fee, which was approved at the November 2020 Board meeting. GS has prepared concept plans for decluttering Concourse B and is preparing escalator improvement package. Schematic design drawings for the Ground Loading Facility will be submitted to Staff in February. Staff continues to meet weekly with design team to expedite design and prepare early release packages. Staff is preparing funding request for Terminal BIL funds and will submit to FAA in late March.

➔ **General Aviation FIS (GAF) Project**

The GAF project will design, permit, and construct a new General Aviation Federal Inspection Facility for CBP. The project will allow CBP to clear GA aircraft through a facility in the North Quad, allowing Southwest to continue to operate from Gate B8. Project was advertised for architectural/engineering qualifications, and the Board selected C&S Engineers. C&S has submitted 60-percent design plans and is now preparing 90-percent plans. Staff is working with FDOT to partially fund this project.

➔ **Taxiway Charlie & Foxtrot Rehabilitation Project**

The Taxiway C & F rehab project will design, permit and rehabilitate Taxiways Charlie and Foxtrot. Project will also include airfield lighting and sign replacement as needed. The Board awarded the contract to Hanson Professional Services, Inc. at their January meeting and a design kick-off meeting was held June 11<sup>th</sup>. Initial surveying has been completed and Hanson has submitted 100% design plans for review. This project was bid and staff anticipates bring the low responsive bidder to the April Board meeting. The project is partially funded by an FAA and FDOT grants.

## PLANNING

### ➔ **Master Plan Update**

FAA has approved the ALP and accepts the MPU. The project is in closeout.

### ➔ **Boundary Survey**

The Board selected AID at the November Board meeting to conduct a boundary survey and update the Exhibit A for the Airport Layout Plan (ALP). Staff has conducted a negotiation meeting and finalized scope/fees, and Board approved at the May Board meeting. The contract has been executed and AID is completing title work, has completed 95% of the field survey, and submitted a preliminary map. Staff has submitted Boundary Survey/Exhibit A to FAA for their approval.

### ➔ **2022 FAA Pre-Application for AIP Funding**

Staff has submitted a pre-application for 2022 FAA AIP funding. FY 22 request will include the Terminal Expansion, Commercial Apron Expansion, and construction of Taxiway Charlie and Foxtrot projects. Staff is seeking Terminal BIL Funds for the Terminal Expansion project. The BIL funds allocate \$5 Billion to terminal work, but grants are discretionary, and Airport Sponsors must compete for these funds.

### ➔ **2022 FDOT JACIP**

Staff is updating the FDOT JACIP for FY 2022-2026, based upon recent increase in traffic and project priorities.

## FACILITIES

### ➔ **PROJECTS:** The Facilities Department is working on multiple projects and maintenance items: Ticket counter redesign, parking of cars, ARFF building repairs, baggage handling.

- **ATCT:** Planning for IR inspection. Planning cleanup of mechanical room and flush of cooling loop. Installing replacement water heaters.
- **GRAPHICS:** Continuing to assist all departments and tenants with various signage projects and CAD requests. Overflow parking signage and vehicle lettering. Working on multiple Marketing requests for signage/banners. Fabricating curbside and rental car signage.
- **LOADING BRIDGES:** Monitoring for issues seven days a week due to increased usage. Cleaning interiors. Spot painting of exterior for rust repairs underway.
- **PUBLIC WORKS:** Mowing and landscape maintenance for all SMAA properties increasing. Pressure washing terminal covered walks and observation completed. Forming foundations for various concrete projects. Installing fence fabric.
- **AIRFIELD:** Part 139 inspection deficiency repairs nearing completion. Repainting portions of lead ins this week. Coordinating with OPS on several issues. Ramp marking improvements/additions. Adding safety lines to B-10 and B-12. Airfield generator radiator replaced.
- **CONVEYOR COVERAGE:** Integrating part time personnel into crew. Covering 17 hours minimum daily. Eighteen personnel now hired and on schedule, scheduling interviews for applicants.
- **INDUSTRIAL MECHANICS:** Sand and paint rust spots on loading bridges. T-Hangar PMs are underway. Fabricating gate 46S replacement. Modifying shade cover for ticket spitter at shade lot.
- **HVAC:** Filter changes. Coordinating repair of HVAC controls for head end, plant and 3<sup>rd</sup> floor. Tower cleaning completed. Coordinating replacement of checkpoint AHU.
- **ELECTRONIC SYSTEMS:** Various cabling projects. Replacing cameras. Meeting room upgrades. Jimmy Johns space fire proofing. REEF Parking system analysis, repair planning. Planning for gate 46S relocation/replacement.



- **ELECTRICAL:** Electrical PM's. Lamp replacements. Working with contractors/engineers to aid design of terminal expansion. Escort for DAS. Evaluating for back-up generation at AF Vault/ARFF. Wiring for Fleet Garage fans. Installed lighting at shade lot pay stations.
- **CARPENTRY:** Working on storage area. BSO for Allegiant complete. Multiple plumbing repairs. Creating workstation for OPS personnel. Painting fuel tank.
- **VEHICLE FLEET:** Shuttle bus, fire truck and fleet vehicle repairs/cleaning/maintenance in preparation for spring season. Shuttle bus repairs for unit damaged in shade structure collision. Training/observation of new hire. Readying of mowing equipment for season. John Deere tractor PTO repair and installation of new deck.
- **JANITORIAL:** Moved to split 3 and 2 shift with 7 day a week coverage for floors. Hired one, one resigned. Existing crew working well. Using Facilities trades staff and others to form teams to do deep floor cleaning at night as possible.

**TOTAL WORK ORDERS: 608**

VEHICLE MAINTENANCE/EQUIPMENT REPAIR – 32 PMs, 43 work orders

SIGN/CAD – 10 PMs, 49 work orders

AIRSIDE (Airfield) - 25 PMs, 13 work orders

LANDSIDE (Landscape, Equip Operators, Public Works) – 78 PMs, 32 work orders

INDUSTRIAL TRADES – 123 PMs, 200 work orders

## AGENDA ITEM NO. 8.8

### SARASOTA MANATEE AIRPORT AUTHORITY INTERNAL AUDIT/RECORDS RETENTION DEPARTMENT AND INVESTMENT COMPLIANCE REPORT APRIL 25, 2022 REGULAR MEETING

The following is a recap of Internal Audit Department projects and activities during March 2022:

**ACI NA Financial Benchmarking Survey:** Annually, Airports Council International – North America accumulates financial information from individual airports allowing it to compile benchmark statistics for use by the industry. The Authority consistently participates in this extensive survey by providing detailed financial information for SRQ. This financial information also serves as the basis for the generation of the Annual Operating and Financial Summary on FAA Form 5100-127. Work on this survey for FY 2021 continued during March.

**Monthly Investment Activity Compliance Report:** There were no additions, sales, maturities or calls in the investment portfolio during March.

**Solicitation for Insurance Brokerage Services** – Reviewed submittals received in response to our RFQ/RFP for qualified insurance brokers for the Authority's property damage, equipment breakdown, and terrorism insurance coverages. Participated with selection committee in approving recommendation of the Arthur Gallagher firm for consideration by the CEO. Worked with representatives of the Gallagher firm to identify viable insurance proposals, refined same, and presented to CEO.

**Parking:** Parking operations are reviewed and tested monthly by Internal Audit. A total of 275 all-day parking stickers or passes were distributed to the Badge Office, Executive Office and Marketing Departments.

**Records Requests:** The Records Department received and processed 15 external/public record requests and 1 internal record request during March.

**Management of Paper Records:** The Records Department received and logged in 12 central file records to the Authority's electronic records inventory software. Received and processed 17 boxes of inactive records of which 9 boxes were entered in Laserfiche and 8 were moved to the records center storage area. Thirteen bags of documents equaling 19.5 cubic feet of non-record material (duplicates, drafts, or obsolete/superseded) were shredded per Authority directives and in accordance with Government-in-the-Sunshine regulations.

**Continuing Education:** The Department attended IT Security Training and webinars concerning DBE goal setting, ARPA concessions grant, and funding under the Bipartisan Infrastructure Law.

## AGENDA ITEM NO. 8.9

SARASOTA MANATEE AIRPORT AUTHORITY  
INFORMATION TECHNOLOGY DEPARTMENT  
April 2022

### **System upgrades and implementation:**

- Evaluation to determine redundancy and environmental needs for Network Operation Centers- Planning implementation of new server cabinets with new AC and fire suppression technologies- Airside complete. Evaluate 3<sup>rd</sup> floor vs 1<sup>st</sup> floor NOC.
- Hardware refresh of computer systems- 170+ systems upgraded. Ongoing
- Security Awareness online training- Renewed/ Ongoing.
- Anti-phishing solution to improve email security – monitoring.
- Datacenter backup solution upgrade- in progress
- Maintenance Connection Upgrade- Evaluate timing for Phase 2 mobility- On hold.

### **Common Use:**

- Install Common Use equipment at empty Ticket Counters- in progress
- Working with SWA on continual support for Ticket/Gate operations- ongoing
- Evaluate use of common use mobile carts for expanded gate capacity- In progress.
- Upgrade all the Common Use network switches- in progress
- New airline Breeze starting in June- In progress
- Allegiant Airlines Common Use migration- in progress

### **Phone System:**

- Evaluation of replacement of pay phones with Courtesy phones- Complete.
- ShoreTel phones will continue their upgrade to new Mitel phones- Ongoing.
- Install new conference room phones to improve calls/Teams meetings-Complete

### **SRQ Web Page:**

- Ongoing updates- Website refresh including Home screen updates, Updated pictures and content- Go Live planned for June

### **IT Assessment**

- Ongoing: Updating policies and procedure to comply with NIST, CJIS and CIS frameworks.

### **Training:**

- Network +\ MCP Certification- In progress
- CCNA Certification- Complete
- MCA Training- in progress
- MCE Training- Complete
- CJIS Training- Complete

### **Project Coordination:**

- Conversion to digital record with Internal Audit- working with Purchasing and Internal Audit for scanning of documents including CAD files.
- FOTS cabinet upgrades- identify replacement UPS/ Cooling options- In progress.
- Distributed Antenna System (DAS) install by Crown Castle- In progress
- New Airport Wide WIFI system upgrades- In progress
- Working with Facilities to setup new NOC to support growth of TC1- in progress.
- Working with Facilities and vendor to install copper/fiber for new WIFI- Complete
- New Managed Network Services provider- implementation in progress
- Coordinate with new airline Breeze- In progress
- Coordinate with Allegiant Airlines for Common Use- In progress

## AGENDA ITEM NO. 9



### **Sarasota Manatee Airport Authority Board Meeting Dates for 2022**

*All Regular Meetings begin at 1:00 pm*

*Dan P McClure Auditorium, 6000 Airport Circle, Sarasota FL 34243*

**~~Monday, January 31, 2022~~  
Tuesday, February 15, 2022 @ 11:00 am**

**~~Monday, March 28, 2022~~  
April 25, 2022**

**Monday, May 23, 2022**  
(Includes Evaluation Workshop, 11am)

**Monday, August 29, 2022**  
(Includes Budget Workshop, 11am)

**Monday, September 26, 2022**

**Tuesday, November 22, 2022**

**Approved 11-22-21**



SARASOTA MANATEE AIRPORT AUTHORITY

Pursuant to Section 189.417 FL Statutes, the SMAA hereby gives notice of its schedule of meetings for the year 2022.

REGULAR MEETINGS OF THE SARASOTA MANATEE AIRPORT AUTHORITY shall be held at the Sarasota Bradenton International Airport in the Dan P. McClure Auditorium, 6000 Airport Circle, 1<sup>st</sup>. floor at east end of Ticketing, on the following dates:

Calendar Year 2022 Regular Meetings Commence at 1:00 pm

**Monday, JANUARY 31 (changed to February 15)**

**Monday, MARCH 28 (changed to April 25)**

**Monday, MAY 23**

**Monday, AUGUST 29**

**Monday, SEPTEMBER 26**

**Tuesday, NOVEMBER 22**

In accordance with Authority by-laws, The Board will hold a Workshop meeting on May 23 at 11:00 a.m. to assess the performance of the President, Chief Executive Officer. The Authority will hold a Budget Workshop on August 29 at 11:00 a.m. **According to the by-laws, if necessary, the Board shall schedule a second Budget Workshop for the first Wednesday after Labor Day: Wednesday, September 7.**

We invite the public to attend. If a person decides to appeal any decision made by the Airport Authority with respect to any matter considered at these public meetings, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Pursuant to the Americans with Disabilities Act, persons needing assistance to participate in any of these meetings should contact Dori Guzman, Executive Assistant at 359-2770 ext. 4216 or email at [dori.guzman@srq-airport.com](mailto:dori.guzman@srq-airport.com).

Any Regular or Workshop meeting of the board may be recessed to be later reconvened on a date certain. There may be other workshops and special meetings scheduled throughout the year. Notices of those meetings shall be published at least seven days prior to the meeting occurrence. Notices of any other meetings conducted under the auspices of the Authority, which are required to be noticed under s. 286.011, F.S., shall be posted on the first floor of the Airport terminal in the display case near the main elevators, for a minimum of seven days, or, in the case of an emergency, two days, in advance of the meeting. You may obtain any formal request for proposal/solicitation by Airport Authority on-line at [www.demandstar.com](http://www.demandstar.com), [www.srq-airport.com](http://www.srq-airport.com) under Airport Business/Bid Announcements, or by contacting DemandStar by Onvia toll free 1-800-711-1712 and requesting current solicitation.