

## **FIRST AMENDMENT TO LEASE**

This First Amendment to Lease is made and entered into this 13<sup>th</sup> day of June, 2017, by and between the CITY OF VENICE, a municipal corporation under the laws of the State of Florida, hereinafter called "Lessor" and SWIFT GROUP, INC., a Florida corporation, hereinafter called "Lessee."

WHEREAS, the Lessor and Lessee are parties to a Lease dated November 25, 2003, which commenced on December 1, 2003 (the "Lease"); and

WHEREAS, the term of the Lease does not expire until October 31, 2023; and

WHEREAS, the Lessor and Lessee have identified various provisions in the Lease, which the parties believe will be mutually beneficial to amend as set forth herein throughout the remaining term of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the Lease, the parties agree as follows:

1. The legal description attached hereto as Exhibit "A" describes the premises subject to the Lease as of the effective date of this Amendment and shall hereafter replace Exhibit "A" to the Lease and any and all references to Exhibit "A" contained in the Lease or this First Amendment to Lease.
2. Section 1 of the Lease "DESCRIPTION OF PREMISES" is replaced in its entirety by the following:

Lessor leases to Lessee and Lessee rents from Lessor, for the purpose of construction, operation, sales, leasing and subleasing of individual aircraft storage hangar bays, and the services related thereto, and for no other purpose, the following described Premises located in Venice, Florida:

Exhibit A attached hereto.

As used in this Lease, the term "Premises" refers to the real property described above and to any improvements located on the property from time to time during the term of this Lease.

All sales, leases, and subleases of any individual aircraft storage hangar bays shall be subordinate to this Lease. Lessee is required to have all documentation related to any sale, lease, or sublease of an individual aircraft storage hangar bay indicate that such transaction is subordinate to this Lease.

3. Section 2 of the Lease "TERM" is replaced in its entirety by the following:

The term of this Lease shall commence on December 1, 2003, and terminate on October 31, 2033. As used in this Lease, the expression "term of this Lease" refers to such Initial Term and to any renewal of the Lease as outlined herein.

4. Section 3 of the Lease "RENT" is replaced in its entirety by the following:

The Lessee shall pay rent in the amount of seven hundred fifteen dollars (\$715.00) per month, in advance, on the first day of each month, beginning on December 1, 2003, and continuing throughout the term of this Lease. The rent shall be paid to Lessor without notice or demand and without abatement, deduction or setoff. A late charge equal to five percent (5%) of the rent payment shall be assessed for each rent payment paid ten (10) or more days after its due date.

The rent specified herein shall be net to Lessor and all costs, expenses, and obligations of every kind related to the Premises which may arise or become due during the term of this Lease shall be paid by Lessee. Lessor shall be indemnified by Lessee against such costs, expenses, and obligations.

If the Lessee is in default on any payments under this Lease and any other person is subletting or occupying the Premises, or if the Lessee assigns this Lease, the Lessor may collect rent from the assignee, subtenant, or occupant. The Lessor may apply the net amount collected to the rent required under this Lease. The Lessor's collection of the rent does not waive the covenant against assignment and subletting under this Lease nor does it constitute the Lessor's acceptance of the assignee, subtenant, or occupant as a Lessee, nor the Lessor's waiver of the Lessee's further performance of the covenants contained in this Lease.

5. Section 7 of the Lease "WASTE AND NUISANCE PROHIBITED" is replaced in its entirety by the following:

Lessee shall 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, commit or suffer to be committed any waste on the Premises, or any nuisance.

6. Section 11 of the Lease "SUBLETTING AND ASSIGNMENT" is replaced in its entirety by the following:

Except for the sale, leasing, or subleasing of individual aircraft storage hangar bays as set forth in Section 1 of this Lease (as amended), Lessee shall not assign this Lease or any interest in

this Lease, or sublet the Premises or any part of the Premises, or assign any right or privilege appurtenant to the Lease, or allow any person other than Lessee and Lessee's agents and employees to occupy or use the Premises or any part of them, without first obtaining Lessor's written consent, which consent shall not be unreasonably withheld. Lessee shall provide at least forty-five (45) days written notice for a request of written consent from Lessor prior to the date intended for the assignment or sublet of the Premises. Lessee shall not assign this Lease, or any interest in this Lease, without first making payment of a five-hundred-dollar (\$500.00) administrative fee to Lessor.

Lessor's consent to one assignment, sublease, or use shall not be construed as consent to any subsequent assignment or sublease, or occupancy or use by another person. Any unauthorized assignment or sublease shall be void, and shall terminate this Lease at the Lessor's option. Lessee's interest in this Lease is not assignable by operation of law without Lessor's written consent.

If the Lessee makes any assignment, sublease, license, or grant of a concession with respect to the Lease, the Lessee will nevertheless remain unconditionally liable for the performance and financial obligations of all of the terms, conditions, and covenants of this Lease unless said liabilities and obligations are transferred, in writing, to the assignee, subtenant, licensee, or grantee. Any such transfer shall be subject to the express approval of Lessor, which shall not be unreasonably withheld.

Upon any assignment, sublease, license, or grant of a concession with respect to the Lease, the rent may be adjusted at Lessor's option.

7. Section 12 of the Lease "NOTICES" is replaced in its entirety by the following:

All notices, demands, or other writings in this Lease required to be given or made or sent, or which may be given or made or sent, by either party to this Lease to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

TO LESSOR: City of Venice  
c/o Venice Municipal Airport  
150 Airport Avenue East  
Venice, FL 34285

TO LESSEE: Swift Group, Inc.  
216 Airport Avenue East  
Venice, FL 34285

The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

8. Section 15 of the Lease "REPAIRS AND DESTRUCTION OF IMPROVEMENTS" is replaced in its entirety by the following:

Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the Premises, including all buildings and improvements of every kind that may be a part of the Premises, and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in good, sanitary, and neat order, condition and repair, and, except as specifically provided in this Lease, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any other buildings or improvements on it. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on the Premises, or any activity or condition on or in such Premises.

Within thirty (30) days of written notice by Lessor, Lessee must perform reasonable maintenance or repairs as directed by Lessor. If the maintenance or repairs cannot reasonably be

completed within thirty (30) days, Lessee shall commence the repairs within such period of thirty (30) days. In the event Lessee fails to promptly undertake and satisfy the obligations imposed herein within thirty (30) days of written notice, Lessor, in addition to the other remedies provided herein, shall have the right, but shall not be obligated to, enter on to the Premises and effect such maintenance or repairs and recover those costs and expenses from Lessee. If Lessee fails to reimburse Lessor for the cost of such maintenance or repairs, within thirty (30) days of the completion of such maintenance or repairs, Lessee's failure to pay Lessor shall be a default under this Lease.

The damage, destruction, or partial destruction of any building or other improvement that is part of the Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below in Section 51 of this Lease. In case of damage to or destruction of any such buildings or improvement, Lessee shall at its own expense promptly repair and restore the building or improvement to a condition as good as or better than that which existed prior to the damage or destruction. Without limiting such obligations of Lessee, it is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to Lessee for repair or replacement.

9. Section 18 of the Lease "INDEMNIFICATION OF LESSOR" is replaced in its entirety by the following:

Lessee agrees to protect, defend, reimburse, indemnify and hold Lessor, 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 Lessor by reason of any damage to property or the environment, including any contamination of Airport property such as the soil or stormwater by fuel, gas, chemicals or other substances deemed by the United States Environmental Protection Agency (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 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 Lessor as set forth herein.

10. Section 22 of the Lease “INSURANCE” is replaced in its entirety by the following:

Lessee shall procure and maintain at its own cost, during the life of the Lease, insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the Lessor and placed with insurance carriers approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial AM Best and Company rating of no less than A:VII. No changes are to be made to these specifications without prior written specific approval by the Lessor.

a. Commercial General Liability, providing coverage for Premises and operations including but not limited to bodily injury, property damage, contractual, products and completed operations (if applicable), collapse, underground and explosion, owner’s and contractor’s protective, and personal injury with limits of not less than one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) aggregate.

b. Airport Premises Liability, with limits of not less than one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) aggregate.

c. Property, for all buildings and improvements and Lessee’s personal property on the Premises and for all risks of loss included in Fire and Common “Special Form” perils with limits no less than current replacement value of buildings and improvements. Coverage must also include windstorm and flood with limits no less than current replacement value of buildings and improvements. Lessee is responsible for full replacement cost, including any deductibles. The term “replacement value” shall mean the actual replacement cost less depreciation. The replacement value shall be determined by Lessee by obtaining an appraisal whenever reasonably requested by Lessor.

d. Hangar Keepers’ Liability, if applicable, with limits equal to or greater than actual exposure.

e. Aircraft Liability, if applicable, with limits not less than one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) aggregate.

f. Automobile Liability, if applicable, including bodily injury and property damage for all vehicles owned, leased, hired and non-owned vehicles with limits of not less than one million

dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) aggregate.

g. Storage Tank Liability, if applicable, with limits not less than one million dollars (\$1,000,000) per occurrence, one million dollars (\$1,000,000) aggregate or equal to actual exposure.

h. Builders Risk, if applicable. During the term of this lease, Lessee shall, at its sole expense, procure and maintain Builders Risk Insurance for the construction of any improvements, alterations or new construction equal to or greater than \$100,000 in value on the Premises, naming Lessor as an additional insured. Said coverage shall be obtained with a limit of no less than one hundred percent (100%) of the completed replacement cost value issued on an All Risk form including Windstorm & Hail and Flood. Coverage should apply on a replacement cost basis.

i. Workers Compensation, if applicable: Workers compensation insurance in accordance with Florida statutory law and Employers Liability insurance with a limit of not less than one hundred thousand (\$100,000) each accident, one hundred thousand dollars (\$100,000) each disease/employee, five hundred thousand (\$500,000) each disease/maximum. A waiver of subrogation must be provided. Coverage should apply on a primary basis.

All policies required by this Lease, with the exception of Workers Compensation, or unless specific approval is given by Lessor, are to be written on an occurrence basis, and for liability policies shall name the City of Venice, its elected officials, officers, agents, and employees as additional insured as their interest may appear under this Lease. Insurer(s) shall agree to waive all rights of subrogation against the City of Venice, its elected officials, officers, agents, and employees.

Each insurance policy required by this Lease shall apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability;

All policies required by this Lease shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice to Lessor by certified mail, return receipt requested.

Lessor reserves the right to review, annually, coverage form/policy, and amount of insurance and revise the same as deemed reasonably necessary by Lessor by providing not less than thirty (30) days written notice to Lessee.

The procuring of required policies of insurance shall not be construed to limit Lessee's liability, nor to fulfill the indemnification provisions and requirements of this Lease.

The Lessee shall, at its sole cost, be responsible for payment of all premiums for insurance contributing to the satisfaction of this Lease and shall be solely responsible for the payment of any deductible and/or retention to which such policies are subject, whether or not Lessor is an insured

under the policy.

The Lessee shall, at its sole cost, comply with all requirements, pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease, covering any building and appurtenances at any time located on the Premises.

Certificates of insurance evidencing occurrence form coverage and conditions to this Lease are to be furnished to Lessor fourteen (14) days prior to commencement of Lease and prior to expiration of each insurance policy.

Notices of claims associated with this Lease shall be provided to the Lessee's insurance company and Lessor, as soon as practicable after notice to the Lessee.

Notwithstanding said insurance policies, Lessee shall be obligated for the full and total amount of any damages, injury, or loss caused by the negligence, recklessness, or intentional wrongful conduct of Lessee and persons employed or utilized by Lessee in connection with this Lease.

11. Section 25 "DEFAULT" of the Lease is replaced in its entirety by the following:

The happening of any one or more of the following events shall constitute a breach of this Lease on the part of Lessee:

- a. The filing by or on behalf of Lessee of any petition or pleading to declare Lessee bankrupt or the adjudication of Lessee as bankrupt.
- b. The appointment of a receiver or trustee for all or substantially all of Lessee's assets.
- c. The failure of Lessee to regularly, diligently, and efficiently operate the facilities on the Premises for the purposes for which said Premises are leased.
- d. The failure of Lessee to pay any rent or other obligation due under this Lease.
- e. Breach of any of the rules, regulations, laws, or ordinances regulating Lessee's performance of its duties and responsibilities hereunder.
- f. The failure of Lessee to fully and promptly perform any act required of it in the performance of this Lease or to otherwise comply with all of the terms and covenants and conditions hereof.
- g. The levy of execution or attachment of the leasehold interest of Lessee by process of law or otherwise in satisfaction or partial satisfaction of any judgment, debt, or claim; provided Lessee shall have the right to contest any such action against it and during the period of contest no breach shall occur as a result of any such action.

In the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights



or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee. Should Lessor elect to re-enter, as provided in this Lease, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease or it may from time to time, without terminating this Lease, re-let the Premises or any part of the Premises for such term or terms, which may be for a term extending beyond the term of this Lease, and at such rent or rents and on such other terms and conditions as Lessor in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. On each such re-letting:

1) Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than rent due under this Lease, the expenses of re-letting and of any alterations and repairs, incurred by Lessor, and the amount, if any, by which the rent reserved in this Lease for the period of re-letting, up to but not beyond the term of this Lease, exceeds the amount agreed to be paid as rent for the Premises for the period of re-letting; or

2) At the option of Lessor, rents received by Lessor from re-letting shall be applied, first, to the payment of any indebtedness, other than rent due under this Lease from Lessee to Lessor; second, to the payment of any expenses of re-letting and of any alterations and repairs; third, to the payment of rent due and unpaid under this Lease; and the remainder, if any, shall be held by Lessor and applied in payment of future rent as the rent may become due and payable under this Lease.

If Lessee has been credited with any rent to be received by re-letting under above option (1), and the rent shall not be promptly paid to Lessor by the new tenant, or if rentals received from re-letting under above option (2) during any month is less than that to be paid during that month by Lessor under this Lease, Lessee shall pay any deficiency to Lessor. The deficiency shall be calculated and paid monthly. No re-entry or taking possession of the Premises by Lessor shall be construed as an election on the part of Lessor to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination of the Lease is decreed by a court of competent jurisdiction.

Notwithstanding any re-letting without termination, Lessor may at any time after that elect to terminate this Lease for any previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then

reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

12. Section 29 of the Lease “DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE” is replaced in its entirety by the following:

All permanent improvements on the Premises 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 is part of the realty, heating and air-conditioning equipment, 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 Lessor, shall thereupon become and be deemed to be a part of the Premises and shall be and remain the property of Lessor at the expiration hereof, whether this Lease shall terminate by expiration of its term or by reason of default in the Lessee’s performance of all of the terms and conditions hereof.

Title to all personal property, furnishings and trade fixtures shall be held by and remain with Lessee and all such items shall be removed from the Premises in a timely manner, provided that Lessee is not then in default hereunder. Lessee shall pay to Lessor upon demand the cost of repairing any damage to the Premises caused by any such removal. If Lessee shall fail or refuse to remove any such property from the Premises within thirty (30) days after the expiration or sooner termination of this Lease, Lessee shall be conclusively presumed to have abandoned the same, and title thereto shall thereupon pass to Lessor without any cost either by set-off, credit, allowance or otherwise, and Lessor may at its option, accept the title to such property, or at Lessee’s expense, Lessor may (1) remove the same or any part thereof in any manner that Lessor shall choose, and/or (2) store, destroy or otherwise dispose of the same without incurring liability to Lessee or any other person.

13. Section 31 of the Lease “EFFECT OF LESSEE'S HOLDING OVER” is replaced in its entirety by the following:

Except as otherwise agreed in writing by Lessor and Lessee, any holding over after the expiration of the term of this Lease shall be construed to be a tenancy from month-to-month, at a rate of twice the monthly rent as required to be paid by Lessee for the period immediately prior to the expiration of the term of this Lease and shall otherwise be on the terms and conditions specified in this Lease, so far as applicable.

14. Section 37 of the Lease “PROPERTY RIGHTS RESERVED” is replaced in its entirety by the following:

This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Lessor acquired the Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from the Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Lessor pertaining to Venice Municipal Airport (“Airport”).

This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States Government or other governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the Airport, to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds.

15. Section 39 “SIGNS AND ADVERTISING” of the Lease is replaced in its entirety by the following:

Lessee shall not erect and will not allow to be erected any outdoor advertising, sign, or poster or any other advertising device of whatever kind or nature without prior written approval of Lessor, which written approval shall not be unreasonably withheld, provided the business to be advertised is the business of Lessee situated on the Premises and said sign does not violate the rules or regulations of Lessor, shall comply with applicable zoning regulations and shall be compatible in appearance with the adjacent facilities and improvements.

Upon the expiration or termination of the Lease, the Lessee shall remove, obliterate, or paint out, as the Lessor may direct at its sole discretion, any and 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 condition as existed prior to the placement of such signs or advertising. In the event of failure on the part of the Lessee to remove, obliterate, or paint out each and every sign or advertising and to restore the Premises to Lessor’s satisfaction, Lessor may perform the necessary work and Lessee shall be obligated to reimburse Lessor for any costs incurred by Lessor in performing said work.

16. All other terms and conditions of the Lease not specifically amended herein, remain in full force and effect.

17. In addition, the following Sections 40 through 67 are hereby added to the Lease as of the effective date of this First Amendment to Lease:

#### **40. OPTION TO RENEW**

Lessor grants to Lessee, subject to the conditions set forth below, the right and option to renew this Lease for a period of five years ("Renewal Term"), beginning on November 1, 2033, and expiring on October 31, 2038, at a rental rate determined as provided pursuant to Section 41.b. of this Lease, and otherwise subject to and on all of the terms and conditions herein contained. This option must be exercised by the giving to Lessor, at least one hundred eighty (180) days in advance, a written notice to exercise this option by Lessee, but Lessee shall in no event be entitled to renew the term of this Lease, even though notice is timely given, unless Lessee shall have timely performed all of its obligations under this Lease, and shall not be in default in the performance of any of its obligations, on the date of the expiration of the initial term of this Lease.

#### **41. RENT ADJUSTMENT**

a. Rent adjustment based on consumer price index. Except as provided below, monthly rent for each subsequent year of the term of this Lease shall be adjusted annually based on fluctuations in the Consumer Price Index for Urban Wage Earners and Clerical Workers ("Index") as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. Said adjustment shall be made on December 1 and shall be effective for the ensuing year. Each rental adjustment shall be the result obtained by multiplying the then existing total annual rent by a fraction, the numerator of which shall be the Index for the month preceding the month in which the adjustment is made and the denominator of which shall be the Index for the month one year preceding the month from which the Index used in the numerator was chosen.

It is the parties' intent that the monthly rent shall be increased by the same percent amount as the percent increase in the Index during the year preceding the adjustment.

Should the Bureau of Labor Statistics change the manner of computing the subject Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the new Index to the one previously in use, and adjustment to the new Index shall be made on the basis of such conversion factor. Should publication of the subject Index be discontinued by the Bureau of Labor Statistics, then whichever Index published by the United States Government most nearly approximating said discontinued Index shall

be used in making the adjustments provided for herein.

b. Rent adjustment based on appraisal. Additionally, the monthly rent shall be renegotiated prior to November 1, 2023, at the sole discretion of Lessor based upon an appraisal of the Premises obtained by the Lessor and prepared by a qualified MAI-designated ("MAI") appraiser, or equal, not more than one hundred and eighty days (180) prior to November 1, 2023, excluding any and all improvements that may currently exist or any future improvements that may be developed by Lessee during the term of this Lease.

This renegotiated monthly rent shall be calculated at a rate of not less than eight percent (8%) and not greater than twelve percent (12%) of the fair market value of the Premises. Determination of the exact percentage of fair market value rent within the aforementioned range shall be negotiated by the parties in good faith utilizing relevant market information.

Lessee may obtain, at its sole expense, a separate appraisal by a qualified MAI appraiser. Should the two appraisals differ by more than ten percent (10%), a third qualified MAI appraiser shall be selected by both Lessor and Lessee. The cost of the third appraiser will be shared equally by Lessor and Lessee. The third appraisal will be utilized to determine fair market value of the Premises based on a review of both Lessor and Lessee's appraisals.

This renegotiated monthly rent shall be effective on November 1, 2023. The rent adjustment based on the Index shall not apply for the period commencing on November 1, 2023, but shall be adjusted as described in Section 41.a. on December 1, 2024, and every year thereafter throughout the Initial Term of this Lease, except as otherwise provided for herein.

In no event shall the rent ever be decreased.

#### **42. SALES TAX**

Lessee shall pay to Lessor each month a sum equal to any sales tax, tax on rentals, and any other charges or taxes now in existence or hereafter imposed, based upon the privilege of renting the Premises, or upon the amount of rent collected therefore.

#### **43. RENT AS A SEPARATE COVENANT**

Lessee shall not for any reason withhold or reduce Lessee's required payments of rent and other charges unless provided for in this Lease, it being expressly understood and agreed by the parties that the payment of rent is a covenant by Lessee that is independent of the other covenants of the parties hereunder.

#### **44. SECURITY OF PAYMENT**

In consideration of Lessee's good and faithful performance of the terms and conditions of the Lease, Lessee shall not be required to provide security for payment. However, prior to the effective date

of the assignment of this Lease, or any interest in this Lease, as described in Section 11 of this Lease, the Assignee shall be required to secure the payment for the rent, taxes and assessments, charges, fees and/or other payments required hereunder ("Security Deposit"). In performance of such requirement, Assignee shall deposit an amount equal to three (3) months' rent in a non-interest bearing escrow account to Lessor.

In the event Assignee fails to perform the payment terms and conditions of this Lease, Lessor, in addition to any other rights and remedies available to Lessor, may at any time apply the Security Deposit or any part thereof toward the payment of Assignee's obligations under this Lease. In such event, not later than seven (7) days after notice, Assignee will restore the Security Deposit to its original amount.

Any release of liability of the Security Deposit required pursuant to this section will be conditioned on the satisfactory performance of all terms, conditions, and covenants contained herein throughout the entire term of this Lease. Notwithstanding the above, Security Deposit pursuant to the above section will at all times be current. Upon the expiration of this Lease, Lessor will return the remaining balance of the Security Deposit provided pursuant to this section within thirty (30) days, subject to payment of any outstanding rent, taxes and assessments, charges, fees and/or other payments due hereunder.

If at any time, Lessee shall become delinquent in any of its payments due under this Lease by thirty (30) days or more, Lessor reserves the right to reinstate the security for payment requirement by providing not less than thirty (30) days written notice to Lessee.

#### **45. PAYMENT**

Lessee shall pay all rents, fees, charges and billings required to be paid to Lessor under this Lease to the following address: City of Venice, 401 West Venice Avenue, Venice, FL 34285. The address to which payment shall be submitted may be changed by Lessor by providing not less than (30) days written notice to Lessee.

#### **46. "AS IS" CONDITION**

Lessee taking possession of the Premises shall be conclusive evidence that the Premises and all structures and buildings as well as all component parts and fixtures, if any, were in satisfactory condition and accepted as of the date of possession. No promises of the Lessor to alter the Premises and no representations respecting the condition of the Premises have been made by Lessor to Lessee other than as specifically set forth in this Lease.

#### **47. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES AND RULES**

During the term of this Lease, Lessee shall comply with all applicable federal, state and local laws, regulations, ordinances or rules affecting the Premises, whether existing or as may be updated from

time to time, including but not limited to permitted and restricted activities, security, parking, ingress and egress, environmental and stormwater regulations and any other matters related to the operation of the Airport. Lessee agrees to cooperate with any investigation, audit or inquiry by the Lessor or any governmental agency regarding possible violation of any law or regulation.

#### **48. PERMITS AND LICENSES**

Lessee shall be strictly liable, responsible and bear all costs of obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations in connection with the operation of its businesses on the Premises, however designated, as may be required at any time throughout the entire term of this Lease including any extensions by any federal, state, or local governmental entity or any court of law having jurisdiction over Lessee or Lessee's operations. Lessee shall furnish to Lessor, within seven (7) days, upon request in writing, copies of any such permits, certificates and licenses.

#### **49. BASED AIRCRAFT REPORT**

Lessee shall furnish to Lessor, within seven (7) days upon request in writing, a report of all aircraft located on the Premises. The report shall include, at a minimum, the following items: aircraft type, make, model, registration number and any other information as may reasonably be requested by Lessor.

#### **50. INSPECTION OF IMPROVEMENTS**

Lessor shall have the right, but not the obligation, at its expense, to have an inspection of the Premises prepared within the first one hundred and eighty (180) days of this Lease, and to provide a copy of such report to Lessee to establish a base line indicating the current condition of the Premises. Within one hundred eighty (180) days prior to October 31, 2033, Lessor shall have the right, but not the obligation, at its expense, obtain an inspection of the Premises, including any and all improvements, so as to determine the physical condition. Within the last one hundred eighty (180) days of expiration of the Renewal Term of this Lease, if exercised, or after Lease termination, Lessor shall have the right, but not the obligation, at its expense, obtain an inspection of the Premises, including any and all improvements, so as to determine the physical condition.

The inspection shall be conducted by an independent inspector acceptable to both Lessor and Lessee. The inspection shall specify all repairs that must be made by Lessee in order that the Premises be received by Lessor upon termination of this Lease in good order and condition, reasonable wear and tear excepted. The inspection shall examine, but not be limited to, the structural integrity of the improvements, as well as the condition of all electrical, plumbing and HVAC systems. The cost of all necessary repairs

identified by the inspection shall be borne by Lessee. All necessary repairs shall be completed, insofar as is possible, prior to the expiration of the Initial Term and Renewal Term of this Lease respectively as stated herein. If all necessary repairs are not completed prior to the expiration of the Initial Term and Renewal Term of this Lease respectively, in addition to any other damages, Lessee shall be responsible for payment of lost rent or lost use to Lessor.

These rights of inspection shall be in addition to Lessor's right of entry to the Premises for purposes of inspection as provided for in Section 9 herein.

#### **51. FORCE MAJEURE**

The parties shall be temporarily excused from performance under this Lease if an Event of Force Majeure directly or indirectly causes nonperformance. An "Event of Force Majeure": shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Lease and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Within five (5) days after the occurrence of an Event of Force Majeure, the nonperforming party shall deliver written notice to the other party describing the event in reasonably sufficient detail and how the event has precluded the nonperforming party from performing its obligations hereunder. The nonperforming party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the nonperforming party to return to normal business operations. If excused from performing any obligations under this Lease due to the occurrence of an Event of Force Majeure, the nonperforming party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Lease. During any such time period the nonperforming party shall keep the other party duly notified of its schedule and all other such actions required for it to be able to commence or resume performance of its obligations under this Lease.

#### **52. DEBRIS REMOVAL**

Lessee shall remove from the Premises or otherwise dispose of in a manner approved by Lessor all garbage, debris and other waste materials (whether solid or liquid) arising out of its occupancy of the Premises or out of its operations in a timely manner.

Lessee shall use extreme care when effecting removal of all waste and debris and shall not permit it to be stored or piled on or about the Premises.



### **53. ENVIRONMENTAL REGULATIONS**

Lessee agrees to comply with all applicable federal, state and local laws, regulations and ordinances protecting the environmental and natural resources and all rules and regulations promulgated or as amended from time to time and accepts full responsibility and liability for such compliance.

Lessee shall at all times maintain an accurate inventory list, including quantities, of all such hazardous, and other contaminated or polluted materials, whether stored, disposed of or recycled, available at all times for inspection at any time on the Premises by Lessor.

Lessee agrees that it will neither handle nor store any toxic waste materials on the Premises.

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.

If Lessee receives a notice of violation or similar enforcement action or notice of noncompliance, Lessee shall provide a copy of same to the Lessor within twenty-four (24) hours of receipt by Lessee. Any environmental violation of the provisions of this Lease shall be deemed to be a default under this Lease if not cured within fourteen (14) days of receipt of notice from the Lessor shall be grounds for termination of this Lease, and shall also provide the Lessor grounds for taking whatever other action it may have in addition to termination based upon default as provided for under this Lease.

If Lessor receives a notice from any governmental entity asserting a violation by Lessee of Lessee's covenants and agreements contained herein, or if Lessor otherwise has reasonable grounds upon which to believe that such a violation has occurred, Lessor shall have the right, but not the obligation, 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 Lessor.

Lessee agrees to cooperate with any investigation, audit, inquiry by Lessor or any governmental agency regarding possible violation of any environmental law, regulation or in response to any spill, leak or other emergency situation involving hazardous, toxic, flammable or other pollutants or contaminated materials.

With regard to 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 Lessor 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 Lessor.

#### **54. ENVIRONMENTAL INSPECTIONS**

Lessor shall have the right, but not the obligation, to have an environmental assessment of the Premises prepared within the first one hundred eighty (180) of the effective date of this Lease or any assignment thereof, and to provide a copy of such report to Lessee, to establish a base line indicating the current condition of the Premises.

Within the last one hundred eighty (180) days of expiration of the Lease or after Lease termination, Lessor shall have the right, but not the obligation, to have an environmental assessment performed to determine whether any hazardous substances or contamination have been generated, released, stored or deposited over, or presently exist beneath or on the Premises from any source.

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.

#### **55. SECURITY**

Lessee shall comply with all applicable regulations relating to Airport security, including but not limited to the Airport's security plan and access policy, whether existing or as may be updated from time to time, and shall control the premises in a manner acceptable to the Lessor, so as to prevent or deter unauthorized persons from obtaining access to the Airport.

Lessee shall permit Lessor and the agents and employees of Lessor to enter the Premises at all reasonable times for the purpose of installing, operating and maintaining security devices on the premises at the cost of the Lessor.

#### **56. USE OF AIRPORT FACILITIES**

Lessor does hereby grant to Lessee a non-exclusive right to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenant to the Airport, including the use of runways, taxiways, navigational aids, terminal facilities, aircraft parking areas, roadways and others as may be designated by Lessor.

Said right of ingress and egress and right of use shall inure to Lessee, its employees, customers, and its successors and assigns, but subject however to all reasonable rules and regulations promulgated by Lessor for the efficient operation of the Airport. Lessee's use shall in no way interfere with, prevent, or prohibit the use of said public areas by Lessor's other tenants, their customers, or members of the public.

## **57. AIRPORT DEVELOPMENT**

Lessor reserves the right to develop, improve, repair, and alter the Airport, its landing areas, runways, taxiways, navigational aids, terminal facilities aircraft parking aprons and roadways as it may deem appropriate, free from any and all liability to Lessee arising out of or connected to the making of such improvements, repairs, and alterations so long as a means of reasonably equivalent ingress and egress are concurrently made available to Lessee.

## **58. FEDERAL REVIEW**

Lessee acknowledges this Lease may be subject to the review and inspection of the federal government to determine satisfactory compliance with Lessor's obligations as described in Section 37. Lessee shall agree to modify any of the terms and conditions of this Lease which may be determined by the federal government to be in violation of existing laws, regulations, grant assurances or other requirements. In the event the parties are unable to agree to a reasonable modification of the terms and condition of this Lease in accordance with the requirements of the federal government, Lessor may rescind this Lease by providing thirty (30) days written notice to Lessee.

## **59. RADON GAS**

Florida law requires that the following notice be provided on at least one document, form, or application executed at the time of or prior to execution of a rental agreement for any building: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit".

## **60. 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 County, Florida. Unless otherwise stated herein, 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 County.

## **61. INVALIDITY OF CLAUSES**

The invalidity of any portion, article, Section, provision, or clause of this Lease shall have no effect upon the validity of any other part of portion this Lease.

## **62. 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 Lessor shall in no way be responsible for the duties and obligations of Lessee.

## **63. ENTIRE AGREEMENT**

This Lease constitute the entire agreement between the parties hereto and supersedes all prior written agreements and understandings, oral or written, between the parties relating to the subject matter hereof.

## **64. AMENDMENTS**

Unless otherwise specified herein, this Lease may only be amended or modified by written instrument executed by the parties hereto.

## **65. CORPORATE TENANCY**

If Lessee is a corporation, the undersigned officer of Lessee hereby warrants and certifies to the Lessor 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 Lessor. The undersigned officer of Lessee hereby further warrants and certifies to the Lessor 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. The Lessor, 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 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, then Lessee shall submit a current Sworn Statement on Public Entity Crimes to Lessor within thirty (30) days of such change. Furthermore, Lessee shall have an affirmative obligation to notify Lessor immediately of any such change.

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.

## **66. CONSTRUCTION OF IMPROVEMENTS**

Within two (2) years of the effective date of this Amendment, Lessee shall, at its sole cost and expense, build construct and complete the following improvements to the Premises:

- a. Replacement of the existing building's roof, in its entirety;
- b. Replacement of any and all heavily-damaged metal door panels and repair of those panels with minor damage. All work is to include painting so that the building has a uniform appearance upon completion;
- c. Replacement of any and all heavily-damaged wall panels, and repair of those panels with minor damage. All work is to include painting so that the building has a uniform appearance upon completion;
- d. Connection to the City of Venice water system and abandonment of the existing well in accordance with federal, state and local laws, regulations and ordinances and all applicable industry standards. Such construction of improvements shall be accomplished via directional bore underneath any existing pavement, and under no circumstance shall any existing pavement be adversely impacted;
- e. Replacement of exterior hangar lighting in accordance with a plan approved by Lessor; and
- f. Repaving of all hangar access aprons. Such paving shall be of at least the same standard as those hangar access aprons most recently constructed by Lessor, to the extent practicable.

Any and all required and/or proposed construction or facilities developed by Lessee shall be in accordance with plans and specifications approved by Lessor prior to commencement of permitting and construction and such approval shall not be unreasonably withheld.

Upon completion of construction, a complete set of as-built drawings shall be delivered to the Lessor within sixty (60) days in a media type and format acceptable for the permanent record of Lessor.

Any construction or installation shall be at the sole risk of Lessee and shall be in accordance with all applicable state and local codes and laws and subject to inspection by the Lessor. Prior to the commencement of any improvements by Lessee on the Premises, Lessee, at Lessee's expense, shall procure and provide Lessor with a copy of a Federal Aviation Regulation, Part 77 airspace study, approved by the Federal Aviation Administration, if applicable.

Lessee shall be responsible for extending any services such as pavement, taxiways, roadways and/or utility services to the site at Lessee's sole expense, unless otherwise negotiated by the City of Venice.

## 67. ACKNOWLEDGEMENT

The parties acknowledge that they have read this First Amendment to Lease, that they fully know, understand and appreciate its contents, that they have been advised by or have had an opportunity to consult with their counsel regarding its contents, and that they are executing the same and making the promises herein voluntarily, with authority, and of their own free will.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this First Amendment to Lease the day and year first above written.

CITY OF VENICE, FLORIDA

By: \_\_\_\_\_  
John W. Holic, Mayor

ATTEST:

\_\_\_\_\_  
Lori Stelzer, City Clerk

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

SWIFT GROUP, INC.

By:   
\_\_\_\_\_  
E. F. Hibner, Jr., Treasurer

Approved as to Form and Correctness

\_\_\_\_\_  
David Persson, City Attorney