

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT is made on the \_\_\_\_ day of \_\_\_\_\_ 2021 by and between the Arapahoe County Public Airport Authority (hereinafter referred to as the “**Authority**”) and APA Hangars, LLC, a Delaware limited liability company (hereinafter referred to as “**COMPANY**”).

RECITALS

WHEREAS, the Authority has leased to SunBorne XVI, Ltd. (“**LANDLORD**”), certain parcels of land (the “**Land**”) located at Centennial Airport in the County of Arapahoe, State of Colorado, under the Ground Lease and Agreement dated March 1, 2007 and effective March 1, 2007, as amended by the First Amendment dated May 8, 2008 and effective June 1, 2008, and the Second Amendment dated May 13, 2010 and effective May 1, 2010, and the Third Amendment dated July 31, 2012 and effective August 1, 2012, and the Fourth Amendment dated December 13, 2018 and effective November 1, 2018, and the Fifth Amendment dated February 11, 2021 and effective February 1, 2021, and the Sixth Amendment dated \_\_\_\_\_, 2021 and effective \_\_\_\_\_, 2021 (altogether, the “**Prime Lease**”); and

WHEREAS, **LANDLORD** and **COMPANY** have entered into a Ground Sublease dated December 1, 2020 as amended by the First Amendment dated \_\_\_\_\_, 2021 (altogether, the “**Sublease**”) whereby **COMPANY** subleases that portion of the **Land** (the “**Subleased Land**”) described on the legal description provided under the Sublease’s First Amendment; and

WHEREAS, **COMPANY** desires that the Authority consent to the Sublease and provide assurances to **COMPANY** that its possession of the Subleased Land will not be disturbed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. CONFIRMATION. The Authority hereby confirms the following:

- (a) The Land is owned by the Authority. The Land is leased by **LANDLORD** pursuant to the Prime Lease and is subject to easements created by, through or under the Authority. No consent or approval of any other person or entity is

required in order for the Authority to enter into, or as a condition to the effectiveness of, this Agreement.

(b) The Prime Lease has not been amended or modified in any respect, and the Prime Lease is presently in full force and effect.

2. NON-DISTURBANCE. The Authority agrees that, so long as no uncured event or default has occurred under the Sublease by the COMPANY and during any cure periods provided by the Sublease or this Agreement, the Authority will not disturb COMPANY's possession of the Subleased Land or disturb any other rights of COMPANY under the Sublease.

Under the Authority's exercise of its remedies under the Prime Lease as a result of an event of default by LANDLORD with respect to the Prime Lease, or upon the voluntary termination of the Prime Lease by LANDLORD, the Authority will not terminate the Sublease and will not join the COMPANY in eviction or other proceedings, and the Authority agrees to assume LANDLORD'S rights and obligations under the Sublease as if the Sublease and the terms of the Prime Lease that have been expressly incorporated into the Sublease relating to the Subleased Land were a direct obligation between the Authority and the COMPANY, upon all of the terms and conditions of the Sublease for the term of the of the Sublease and the Authority acknowledges that the COMPANY has the right to use all taxi lanes, taxiways and runways necessary to make full use of the airport facilities. Accordingly, COMPANY will attorn to the Authority as its lessor, immediately upon the termination of LANDLORD's interest in the Prime Lease and the Authority will recognize the COMPANY as its tenant (the "Attornment Date"). In such event, COMPANY and Authority agree that the annual rental rates for the land rent is set forth in Section 3 of the Sublease.

3. LIMITATIONS ON OBLIGATIONS. If Authority succeeds to LANDLORD's interest in the Prime Lease with respect to the Subleased Land, Authority will not be:
- (i) Liable for any act or omission of its predecessors in interest to the Sublease;
  - (ii) Subject to any offsets or defenses that the COMPANY may have against its predecessors in interest to the Sublease;

- (iii) Bound by any amendment or modification of the Sublease which pertains to the Subleased Land made without its consent and written approval;
  - (iv) Liable for the default, act or omissions of parties who have preceded the Authority's interest in the Sublease; or
  - (v) Liable to perform any obligations of sublessor under the Sublease which can only be performed by a fixed base operator.
4. SUBORDINATION. The Sublease now is, and will be, subject and subordinate to the Prime Lease.
  5. NOTICE AND CURE RIGHTS. The Authority agrees that it shall provide COMPANY, The Bank of New York Mellon (the "Master Trustee) as a holder of a leasehold mortgage on COMPANY's interest in the Subleased Land, and any future holder of a mortgage which gives written notice of its mortgage to the Authority with notice (sent in the manner set forth in paragraph 10 below) of any defaults under the Prime Lease at the same time it gives notice thereof to the tenant under the Prime Lease. The Authority agrees that, for purposes of Section 2 hereof, cure by the Master Trustee or any future holder of a mortgage of any default by COMPANY under the Sublease shall be effective as a cure of such default for purposes hereof.
  6. USE OF SUBLEASED LAND. Neither COMPANY nor anyone claiming by, through or under COMPANY shall use the Subleased Land or improvements thereon for any purpose other than those set forth in the Sublease.
  7. CONSENT. Whenever the consent of the Authority is required under the Prime Lease or the Sublease, with respect to actions of COMPANY, such consent will not be unreasonably withheld or delayed.
  8. AMENDMENTS AND BINDING EFFECT. This Agreement may be modified only by an agreement in writing signed by the parties hereto. This Agreement will inure to the benefit of and will be binding upon the Authority, COMPANY and their successors and assigns.
  9. COUNTERPARTS. This Agreement may be executed in counterpart, and, when executed by the Authority and COMPANY will constitute one agreement, binding upon them, even though they are not signatories to the original or same counterpart.

10. NOTICES. All notices under this Agreement will be in writing and will be considered properly given if mailed by first class United States mail, postage prepaid, registered, or certified with return receipt requested, or if personally delivered to the intended addressee. Notice by mail will be effective two (2) days after deposit in the United States mail. Notice personally delivered will be effective when received by the addressee. For the purpose of notices, the addresses of the Authority and COMPANY are:

Authority:                   Arapahoe County Public Airport Authority  
7565 South Peoria Street, Unit #D9  
Englewood, CO 80112  
Attn: Executive Director

COMPANY:                   APA Hangars, LLC  
767 Fifth Avenue, 21<sup>st</sup> Floor  
New York, NY 10153  
Attn: Tim Johnson

Master Trustee:           The Bank of New York Mellon  
2001 Bryan Street, 10<sup>th</sup> Floor  
Dallas, Texas 75201  
Attn: Corporate Trust

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first above written.





## LESSOR'S ESTOPPEL CERTIFICATE

**Lessor:** ARAPAHOE COUNTY PUBLIC AIRPORT AUTHORITY

**Lessor's Address:** 7565 S. Peoria Street, Unit D9  
Englewood, Colorado 80112

**Lessee:** SUNBORNE XVI, LTD

**Lessee's Address:** 8001 South Interport Blvd, Suite 300, Englewood CO 80112

**Lease:** Ground Lease and Agreement Between Lessor and Lessee dated March 1, 2007, as amended by: First Amendment, dated May 8, 2008 and effective June 1, 2008, Second Amendment, dated May 13, 2010 and effective May 1, 2010, Third Amendment, dated July 31, 2012, and effective August 1, 2012, Fourth Amendment dated December 13, 2018 and effective November 1, 2018, Fifth Amendment dated February 11, 2021 and effective February 1, 2021, and Sixth Amendment dated \_\_\_\_\_, 2021

A full copy of the Lease is attached hereto as Exhibit 1.

**Lease Term:** Commenced on March 1, 2007 and expires on February 28, 2062.

**Options to Extend:** One (1) 15-year option from March 1, 2062 to February 28, 2077; and one (1) 20-year option from March 1, 2077 to February 28, 2097.

**Leased Premises:** See Exhibit 2 for applicable Legal Descriptions of Leased Premises includes the following parcels: Isbill Drive & Cul-De-Sacs, Wallace Court, FBO 16, Parcel 1, FBO 15, FBO 4E, and SunBorne Taxilane Sierra 2.

**Leased Premises Total SF:** 1,300,598 Square Feet (SF)

**Leased Land Rent:** \$.05 per SF per year for 1,041,098 SF only plus Percentage Rent.

Percentage Rent starts effective 3/1/2027 at 7.5% of Annual Gross Income received by Lessee and continues through 2/28/2037.

Effective 3/1/2037, the Percentage Rent rate increases to 10% of Annual Gross Income received by Lessee through the end of the Lease Term, including any options to extend.

(No land rent or percentage rent assessed for Wallace Court and Isbill Road & Cul-De-Sacs Parcels.)

**Sublessee:** APA HANGARS, LLC

**Subleased Premises:** A portion of the Leased Premises referred to as Parcel 1 comprised of 833,321 square feet. See Exhibit 3.

Lessor represents and confirms to Sky Harbour Group and The Bank of New York Mellon Trust Company, N.A., the following information related to the Lease:

1. The Lease is in full force and effect and has not been canceled, assigned, extended or modified except as stated herein.
2. To the best of our knowledge, no defaults exist under the Lease and that no other events currently exist which with the passage of time would constitute a default under the Lease by Lessee.
3. To the best of our knowledge, Lessee has not mortgaged the Leased Premises nor has the Lessor been notified in writing pursuant to Paragraph 16 by Lessee of any lender or mortgagee that any such mortgages exist.
4. There are no lease deposits and/or prepaid rents.
5. Lessor is the owner in fee of the real property on which the Leased Premises are located.
6. The Lease represents the entire agreement between Lessor and Lessee and there are no other agreements, oral or written, between the Lessor and Lessee except as stated herein.

**[Signature page to follow]**



DATED this \_\_\_\_ day of \_\_\_\_\_ 2021.

**Arapahoe County Public Airport Authority**

\_\_\_\_\_  
Nancy Sharpe, Chair

ATTEST:

\_\_\_\_\_  
Jeff Baker, Clerk

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**EXHIBIT 1**

**To Lessor's Estoppel Certificate**

*{Ground Lease and Agreement along with 6 Amendments}*

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**EXHIBIT 2**

**To Lessor's Estoppel Certificate**

*{Leased Premises – Legal Description and Drawings}*

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**EXHIBIT 3**

**To Lessor's Estoppel Certificate**

*{Subleased Premises – Parcel 1 Legal Description}*

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