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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/21/2017 12:02 PM Pg: 1 of 11

**This Document Prepared By
and After Recording Return to:**

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Address of Property:
1120 South Milwaukee Avenue, Wheeling, IL 60090

PIN Number(s):
03-13-400-050-8002

LOAN MODIFICATION AGREEMENT (SEPTEMBER 2017)

THIS LOAN MODIFICATION AGREEMENT (SEPTEMBER 2017) (the "Modification" or this "Agreement") is made effective as of September 29th, 2017 (the "Effective Date"), by and among HAWTHORNE FINANCE HOLDINGS LLC (the "Borrower"), HAWTHORNE GLOBAL AVIATION SERVICES LLC (hereinafter sometimes referred to as "Global Aviation"), and WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Lender").

RECITALS:

A. Reference is hereby made to each of the following:

(i) the loan (the "Loan") made by Lender to Borrower pursuant to and in connection with that certain Building Loan Agreement entered into by Borrower and Global Aviation in favor of Lender, dated as of April 25, 2013 (the "Original Loan Agreement"), as modified by that certain Loan Modification (May 2017) dated as of May 22, 2017 (the "May 2017 Modification"); as further modified by that certain Loan Modification (July 2017) dated as of July 7, 2017 (the "July 2017 Modification"; collectively, with the Original Loan Agreement and the May 2017 Modification, as the same may have been amended, restated, extended, supplemented or otherwise modified prior to the date hereof, the "Loan Agreement"); as evidenced by that certain Promissory Note dated as of April 25, 2013 made by Borrower to Lender and with a stated principal face amount of \$4,200,000.00 and a current principal balance of \$3,587,500.00, as

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modified by the May 2017 Modification and the July 2017 Modification (together with all extensions, renewals, replacements, restatements or modifications thereof, the "Note"), and capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement;

(ii) that certain Leasehold Mortgage and Assignment of Rents and Leases entered into by Global Aviation for the benefit of the Lender and for the purpose of securing the obligations of Borrower under and with respect to the Loan Agreement and Note, recorded on April 28, 2013 as Document No. 1311629029 in the land records of Cook County, Illinois, as modified by the May 2017 Modification and the July 2017 Modification (as the same may have been amended, restated, supplemented or otherwise modified prior to the date hereof, the "Mortgage");

(iii) that certain Third Party Security Agreement entered into by Global Aviation for the benefit of the Lender and for the purpose of securing the obligations of Borrower under and with respect to the Loan Agreement and Note, dated as of April 25, 2013, as modified by the May 2017 Modification and the July 2017 Modification;

(iv) that certain Third Party Security Agreement entered into by Guarantor for the benefit of the Lender and for the purpose of securing the obligations of Borrower under and with respect to the Loan Agreement and Note, dated as of April 25, 2013, as modified by the May 2017 Modification and the July 2017 Modification;

(v) that certain Guaranty entered into by Global Aviation for the benefit of the Lender and for the purpose of securing the obligations of Borrower under and with respect to the Loan Agreement and Note, dated as of April 25, 2013, as modified by the May 2017 Modification and the July 2017 Modification;

(vi) that certain Guaranty entered into by Guarantor for the benefit of the Lender and for the purpose of securing the obligations of Borrower under and with respect to the Loan Agreement and Note, dated as of April 25, 2013, as modified by the May 2017 Modification and the July 2017 Modification; and

(vii) the other Loan Documents, as modified by the May 2017 Modification and the July 2017 Modification (as defined in the Loan Agreement).

B. Borrower, Global Aviation, and Lender wish to modify the Loan and certain terms and provisions of the Loan Agreement, Note, Mortgage, and Guaranty as set forth herein including for the purpose of, among other things, extending the maturity of the Loan. The Lender is willing to make such modifications subject to the satisfaction of certain conditions precedent as set forth herein and subject to Borrower making the representations and assurances hereinafter set forth.

C. Borrower, Global Aviation, and Lender acknowledge and agree that, effective as of the date of this Modification, Excelaire, LLC has been released as a Guarantor. The Guaranty previously executed by Excelaire, LLC with respect to the Loan Agreement is of no further force or effect, is hereby deemed to be terminated, and Excelaire, LLC is deemed to have satisfied all of its obligations thereunder.

NOW, THEREFORE, in consideration of the recitals, the mutual representations and covenants contained in this Modification and other good consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Global Aviation, and Lender do hereby agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are made a part hereof.
2. **Loan Agreement.** The Loan Agreement is hereby amended in the following respect:
 - (a) Section 1.4 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

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"Maturity Date. The Maturity Date of the Loan shall be September 1, 2022."

- (b) The following is hereby added to Article 7 of the Loan Agreement as Section 7.13:

"7.13 REAPPRAISALS; ADDITIONAL COLLATERAL. Bank shall have the option from time to time during the term of the Term Loan commencing on September 1, 2020, at Borrower's cost, for the first appraisal in any 12-month period, to require new appraisals of the Property, which appraisals shall be issued by an appraiser or appraisers acceptable to Bank and shall be in form, substance and reflecting values satisfactory to Bank, in its discretion. If any such new appraisals obtained by Bank reflect a Loan to Value Ratio greater than 60%, then Borrower shall either:

(a) within 30 calendar days following written demand from Bank, prepay the outstanding principal balance of Term Loan in an amount sufficient to meet said Loan to Value Ratio; or

(b) pledge such additional collateral to Bank, of a type and pursuant to documentation in form and substance satisfactory to Bank, as Bank shall require to provide collateral support for the Term Loan that, in Bank's determination, is substantially equivalent to said Loan to Value Ratio.

For purposes hereof, the "Loan to Value Ratio" shall mean, as of any date of determination, the outstanding principal balance of Term Loan divided by the sum of the most recent appraised values of all Property acceptable to Bank."

- (c) Section 8.1 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"8.1 FINANCIAL STATEMENTS. The Borrower shall provide financial statements to the Bank as required pursuant to Section 3 of that certain Financial Covenants Agreement between Borrower and Bank dated as of July 7, 2017 as the same may be from time to time amended, restated, supplemented, or otherwise modified (the "Financial Covenants Agreement")."

- (d) The following loan document is hereby added to Exhibit "B" of the Loan Agreement as 1.14 under "Loan Documents":

"1.14 Loan Modification Agreement (September 2017) executed by Borrower, Global Aviation, Lender."

3. Note. The Note is hereby amended in the following respects:

Subsection (a) under the Repayment and Prepayment section in the Note is hereby deleted in its entirety and replaced with the following:

"(a) Repayment. Principal shall be payable on the first day of each month, commencing August 1, 2014, and continuing up to and including August 1, 2022 with a final installment consisting of all remaining unpaid principal and accrued interest due and payable in full on September 1, 2022. The monthly installments of principal due under this Note shall be Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500.00) each."

4. Mortgage. The Mortgage is hereby amended in the following respects:

Section 2.1(a) of the Mortgage is hereby deleted in its entirety and replaced with the following:

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“(a) payment to Mortgagee of all sums at any time owing and performance of all other obligations arising under or in connection with that certain promissory note (the “Note”) dated as of April 25, 2013, as amended by the Loan Modification Agreement (May 2017) with an effective date of May 22, 2017, the Loan Modification Agreement (July 2017) with an effective date of July 7, 2017 and the Loan Modification Agreement (September 2017) with an effective date of September 21st, 2017, in the maximum principal amount of Four Million Two Hundred Thousand and 00/100 Dollars (\$4,200,000.00), with interest as provided therein, executed by Hawthorne Finance Holdings, LLC (the “Borrower”) and payable to Mortgagee or its order on or before September 1, 2022, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Note, whether or not specifically referenced therein; and”

5. Loan Documents Generally. Each of the Loan Documents are hereby amended in the following additional respects (to the extent not already addressed above):

(a) All references to any Loan Document (including, without limitation, the Loan Agreement, the Note, the Mortgage and the Guaranty) are hereby deemed to be references to such documents as modified by this Modification and this Modification is hereby deemed to constitute a “Loan Document” as such term is used in each or any of the other Loan Documents.

(b) All references to the maturity of the Loan or the other obligations set forth in the Loan Documents are hereby deemed to be references to “September 1, 2022, or such earlier date on which the principal amount of the Loan has been declared or automatically has become due and payable (whether by acceleration or otherwise).”

6. Conditions Precedent. The effectiveness of the modifications and agreements set forth herein are conditioned upon the Lender’s receipt of the following documents, materials, confirmations and/or payments, each of which shall be in a form and substance satisfactory to the Lender:

(a) four (4) original counterparts from the Borrower, Global Aviation, and Lender of the duly executed Modification (together with all required acknowledgements by such parties), and the recordation of a fully executed original counterpart thereof in the land records of Cook County, Illinois;

(b) payment by Borrower of (i) any past-due interest with respect to the Loan; (ii) all other outstanding out of pocket fees and expenses of the Lender and the Lender’s counsel incurred in connection with the preparation, review, execution and delivery of this Modification and all other amendments, restatements, supplements or negotiations related to the Loan, and (iii) all other out of pocket fees, expenses or other amounts payable by Borrower related to the Loan or the Note which are due and payable on the date hereof;

(c) a duly executed Environmental Indemnity Agreement by and among Borrower, Global Aviation, and Bank;

(d) a certificate of “no change” from the Borrower certifying that such entity’s: (i) certificate of existence/good standing; and (ii) organizational documents have not been amended since the date of the closing of the Loan Agreement;

(e) a current Certificate of Existence/Good Standing for the Borrower issued by the jurisdiction in which such entity is organized;

(f) resolutions from the Borrower authorizing and approving the modification of the Loan and the other matters set forth herein; and

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(g) such other and further items, information or materials as the Lender shall reasonably require.

7. **Representations, Warranties and Acknowledgments of Borrower.** As an inducement to the Lender to enter into this Agreement, Borrower represents, warrants, covenants and acknowledges as follows (it being acknowledged by all parties that each such representation, warranty, covenant and acknowledgment relates to material matters upon which Lender has relied):

(a) Title to all collateral (including all real and personal property) in which Lender was given a lien or security interest pursuant to the Loan Documents is vested in the Borrower subject only to those matters specifically approved in writing by Lender or expressly permitted in the applicable Loan Document(s). No additional lien interests have been granted by the Borrower for any such collateral since the execution of the original Loan Documents.

(b) There are no defenses, offsets or counterclaims or other claims, legal or equitable, available to Borrower, Global Aviation or any other person or entity with respect to this Modification, the Loan Documents, or any other instrument, document and/or agreement described herein or therein, as modified and amended hereby, or with respect to the obligation of Borrower to repay the Loan, as the case may be.

(c) Each of the Borrower and Global Aviation has the right and power and has obtained all authorizations necessary to execute and deliver this Modification and to perform its respective obligations hereunder and the other Loan Documents in accordance with their respective terms. This Modification has been duly executed and delivered by a duly authorized officer of the Borrower and Global Aviation. This Modification and each of the Loan Documents (in each case as amended hereby, if applicable), is a legal, valid and binding obligation of the Borrower enforceable against the Borrower and Global Aviation in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations contained herein or therein may be limited by equitable principles generally.

(d) There are no actions, suits or proceedings pending or to Borrower's knowledge threatened against or affecting Borrower which, if adversely determined, could reasonably be expected to materially adversely affect the Borrower's ability to perform its obligations under the Loan Documents or challenge the validity of or enforceability of, or ability of Borrower to fulfill each of its obligations under this Modification, any of the Loan Documents, or any of the other instruments, documents or agreements described herein, as modified and amended hereby, or the priority of any lien thereof, in any court, at law or in equity, or before any administrative agencies or other governmental authority.

(e) The execution and delivery by the Borrower and Global Aviation of this Modification and the performance by the Borrower and Global Aviation of this Modification and each of the Loan Documents (in each case as amended hereby, if applicable) in accordance with their respective terms, does not and will not, by the passage of time, the giving of notice or otherwise: (i) require any approvals from any governmental authority or violate any requirements of law relating to the Borrower or Global Aviation; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Borrower or any indenture, agreement or other instrument to which the Borrower or Global Aviation is a party or by which they or any of their respective properties may be bound; or (iii) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the Borrower or Global Aviation, other than in favor of the Lender.

(f) After taking into account the changes pursuant to this Agreement, no default exists under the Loan Documents as of the date hereof and, as of the date hereof, all of the covenants, representations and warranties made by the Borrower and/or Global Aviation and contained in the Loan Documents are true and correct as of the date of this Modification (except to the extent any such representations or warranties expressly refer to an earlier date).

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8. **Reaffirmation of Borrower Representations and Warranties; Receipt of Modification.** The Borrower hereby acknowledges receipt of a copy of this Modification and hereby repeats and reaffirms all representations and warranties made by it to the Lender in the Loan Agreement (as amended hereby) and the other Loan Documents on and as of the date hereof (other than any representation or warranty expressly relating to an earlier date) with the same force and effect as if such representations and warranties were set forth in this Modification in full.

9. **Reserved.**

10. **Obligations Secured by Mortgage.** Each of the parties hereto hereby acknowledges and agrees that the Mortgage secures and shall continue to secure the obligations under the Loan Agreement, the Note, and the other Loan Documents.

11. **Future Delivery and Execution of Documents.** Borrower and/or Global Aviation will execute such additional documents as are reasonably requested by the Lender to reflect the terms and conditions of this Modification, and will cause to be delivered such additional certificates and other documents as are reasonably required by the Lender.

12. **Release.** In consideration of the modifications set forth in this Modification, Borrower and Global Aviation each hereby releases and holds harmless the Lender and its officers, employees and agents, from and against any claim, action, suit, demand, cost, expense or liability of any kind relating to the making of the Loan, the administration of it or any business communications and dealings between Borrower, on one hand, and the Lender, on the other, concerning the Loan.

13. **Defaults Under the Loan Agreement.** The failure of Borrower and/or Global Aviation to perform any of their respective obligations under this Modification or any of the other Loan Documents (following any applicable notice and cure periods) or the falsity of any representation or warranty made herein or the failure of Borrower and/or Global Aviation to advise Lender that a representation or warranty made herein is no longer true shall, at the option of the Lender after expiration of any applicable cure period, constitute a default under the Note.

14. **Effectiveness.** The Loan Documents and the terms and provisions thereof, as modified and amended hereby, and the liens and security interests created thereby shall constitute and remain in full force and effect as of the execution thereof. All of the terms of the Loan Documents, except to the extent modified herein or amended and restated in connection herewith, shall remain in full force and effect. The amendments contained herein shall be deemed to have prospective application only, unless otherwise specifically stated herein. Section headings in this Modification are included herein for convenience of reference only and shall not constitute a part of this Modification for any other purpose.

15. **Savings Clause.** If any provision of any of this Modification or of any Loan Document, as amended hereby, is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

16. **No Novation.** Borrower and Global Aviation intend for the amendments to the Loan Documents to evidence an amendment to the terms of the existing indebtedness of Borrower and Global Aviation to the Lender and do not intend for such amendments to constitute a novation in any manner whatsoever.

17. **Counterparts.** This Modification may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Modification to produce or account for more than one such counterpart for each of the parties hereto. Delivery by facsimile by any of the parties hereto of an executed counterpart of this Modification shall be as effective as an original executed counterpart hereof and shall be deemed a representation that an original executed counterpart hereof will be delivered. Each counterpart hereof shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

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18. **Fees and Expenses.** The Borrower hereby agrees that all fees, expenses and costs incurred by the Lender or its counsel in reviewing, negotiating, preparing and granting the amendment set forth herein shall, to the extent not paid or invoiced as of the date hereof, be paid by it upon demand.

19. **Amendments; Use of Terms.** This Modification may not be supplemented, changed, waived, discharged, terminated, modified or amended except in written form executed by all parties hereto. Wherever in this Modification any word or combination of words (including defined terms) connotes number or gender, such word or combination of words shall be deemed of such number (singular or plural) and such gender (masculine, neuter or feminine) as the context and circumstances may require. This Modification shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal and legal representatives, successors and assigns.

20. **Final Agreement.** This Modification represents the final agreement between the parties and supersedes all previous negotiations, discussions and agreements, contemporaneous or subsequent, between the parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary their terms. There are no promises, terms, conditions or obligations other than those contained in this Modification. There are no unwritten oral agreements between the parties.

21. **Binding Effect.** This Modification shall become effective as of the date set forth above upon satisfaction or waiver of all of the conditions set forth in Section 6 hereof and execution and delivery of this Modification by the Borrower and the Lender. Thereafter this Modification shall be binding upon and inure to the benefit of the Borrower, Global Aviator, the Lender, and their respective successors and assigns.

22. **Governing Law and Jurisdiction.** Except (a) as related to the Mortgage (in which case such provisions shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois) and (b) as may be otherwise expressly provided in any of the Loan Documents, this Modification and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

[remainder of page left intentionally blank – signature pages and acknowledgements to follow]

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

BORROWER:

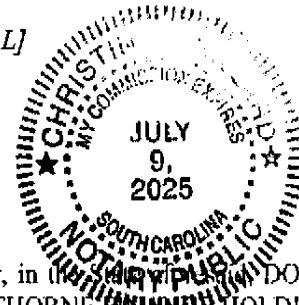
HAWTHORNE FINANCE HOLDINGS LLC

By: Will Horton
Name: Will Horton
Title: SVP-Development

[SEAL]

State of South Carolina

County of Charleston



I, Christina L. Millard, a notary public in and for said County, in the State of South Carolina DO HEREBY CERTIFY that Will Horton, the SVP-Development of HAWTHORNE FINANCE HOLDINGS LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me the day in person and acknowledged that he/she signed, sealed and delivered the said instrument on behalf of HAWTHORNE FINANCE HOLDINGS LLC, a Delaware limited liability company, as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 29th day of September.

Christina L. Millard
Notary Public

My commission expires: July 9, 2025

[Signatures Continue on Following Page]

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WITNESS OR ATTEST:

GLOBAL AVIATION:

**HAWTHORNE GLOBAL AVIATION SERVICES
LLC**

By: Will Horton
Name: Will Horton
Title: SVP - Development

STATE OF South Carolina)
) ss.
COUNTY OF Charleston)

On this the 29th day of September, 2017, before me, Christina L. Millard the undersigned officer, personally appeared Will Horton, who acknowledged himself/herself to be the SVP Development of HAWTHORNE GLOBAL AVIATION SERVICES LLC, and, on behalf of said entity, acknowledged that (s)he, as such SVP Development, being authorized so to do, executed the foregoing Instrument for the purposes therein contained, by signing the name of such entity by himself/herself as Will Horton.

In witness hereof, I hereunto set my hand and official seal

[Notarial Seal]



Christina L. Millard
Notary Public
My Commission expires: July 9, 2025
Address: 3955 Fable Place Dr. Ste 202
N Charleston, SC 29405

[Signatures Continue on Following Page]

UNOFFICIAL COPY**LENDER:****WELLS FARGO BANK, NATIONAL
ASSOCIATION**By: Guy M. Meares III [SEAL]Name: Guy M. Meares, III
Title: Senior Vice PresidentSTATE OF South Carolina §
§
COUNTY OF Charleston §

On this the 29th day of September, 2017, before me, Carmen McFadden the undersigned officer, personally appeared Guy M. Meares, III, who acknowledged himself/herself to be the Senior Vice President of Wells Fargo Bank, National Association, and, on behalf of said national banking association, acknowledged that (s)he, as such Senior Vice President, being authorized so to do, executed the foregoing Instrument for the purposes therein contained, by signing the name of the company by himself/herself as Guy M. Meares, III.

In witness hereof, I hereunto set my hand and official seal,

[Notarial Seal]

Carmen McFadden
Notary PublicMy Commission expires: 9/8/2019

Address:

177 Meeting Street
Charleston, SC 29401

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DESCRIPTION OF PROPERTY

Address of Property:

1120 South Milwaukee Avenue
Wheeling, IL 60090

PIN Number:

03-13-400-050-8002

That part of the southeast quarter of Section 13, Township 42 north, Range 11 east of the Third Principal Meridian described as follows: Commencing at the intersection of the center line of Milwaukee Avenue and the south line of said southeast quarter, thence N 24°26 '57" W along said center line, 1528.14 feet to the northerly line of that portion of the right-of-way of Milwaukee Avenue conveyed by Doc. 95701263; thence S 65°33 '03" along said northerly line, 64.0 feet to the westerly line of said right-of-way for a point of beginning; thence N 24°26 '57" E along said westerly line, 122.77 feet; thence N 65°33 '03" E along said westerly line, 9.0 feet; thence S 24°26 '57" E along said westerly line, 82.0 feet; thence S N 26°21 '42" E along said westerly line, 659.22 feet; thence S 24°26 '57" E along said westerly line, 424.50 feet; thence N 48°06 '36" W, 229.73 feet; thence N 62°06 '46" W, 474.30 feet; thence N 24°26 '57" W, 702.23 feet; thence N 65°33 '03" E, 351 feet to the point of beginning in Cook County, Illinois

Area 354,116.46 sq ft., 8.129 acres