UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Joliet Avionics, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	FAA Docket No. 16-24-06
	)	
City of Aurora, Illinois,	)	
	)	
Respondent.	)	

Complainant's Answer to Respondent's Motion to Dismiss
and
Complainant's Answer to Respondent's Motion for Summary Judgment

Complainant Joliet Avionics, Inc., by and through its attorneys, Amundsen Davis, LLC, files its Answer to Respondent's Motion to Dismiss and its Answer to Respondent's Motion for Summary Judgment pursuant to the Federal Aviation Administration's Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, 14 CFR Part 16 ("Part 16") and the FAA's Notice of Docketing[1].

Initially, Complainant notes Respondent has filed a Motion to Dismiss and a Motion for Summary Judgment. 14 CFR § 16.26 provides that "the respondent may file a motion to dismiss *or* a motion for summary judgment on the complaint."[2] § 16.26 does not provide for the filing of a joint motion under both a motion to dismiss *and* a motion for summary judgment.

14 CFR § 16.26(b)(1) provides that the movant shall file a concise statement of the reasons for seeking dismissal. 14 CFR § 16.26(c)(2) provides that the movant shall file a concise statement of material facts as to which the respondent contends there is no issue of material fact.

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[1] *Joliet Avionics, Inc v. City of Aurora,* FAA Docket No. 16-24-06, Notice of Docketing (May 20, 2024).
[2] 14 CFR 16.26(a) (emphasis added)

Respondent has included a section titled "Undisputed Material Facts" on pages 2 through 4 of its Response. It is unclear whether Respondent intends this section to serve as the required concise statements of the reasons for seeking dismissal under 14 CFR § 16.26(b)(1) and the concise statement of material facts as to which respondent contends there is no issue of material facts 14 CFR § 16.26(c)(2), or if Respondent intends this section to serve as the required concise statement of material facts under 14 CFR § 16.26(c)(2) and has failed to provide the required concise statements of the reasons for seeking dismissal under 14 CFR § 16.26(b)(1).

Without waiving this objection, Complainant addresses each point raised by Respondent and Answers as follows in the order presented:

Parties

Complainant acknowledges and agrees the City of Aurora ("City") is the owner and sponsor of the Aurora Municipal Airport ("Airport").

Complainant acknowledges and agrees at all relevant times there have been two FBOs occupying space and operating at the Airport, although prior to 2007, there had been only one FBO, Lumanair. It should also be noted Complainant has never requested to be the only FBO.

Complainant acknowledges and agrees JA has been operating at the Airport pursuant to a Lease dated November 27, 2007 and First Amendment to the Lease dated April 22, 2015.

Complainant acknowledges and agrees until 2021, JA had been operating alongside Lumanair, Inc., ("Lumanair").

Complainant does not agree Carver purchased the Lumanair business for $4 million, as the subject purchase contract has never been produced and on information and belief contained an earn-

out clause which was never achieved, resulting in a much lower actual purchase price paid by Carver for Lumanair.[3]

Complainant acknowledges and agrees on July 27, 2021, the City allowed Carver to assume Lumanair's new lease of August 1, 2020.

Complainant acknowledges and agrees the City and Carver subsequently negotiated and entered a new Lease on January 1, 2022.

Complainant further asserts neither Lumanair nor Carver were required to pay any amount to the City for occupancy of the Lumanair August 1, 2020 Leasehold for the first 7 years of the Lumanair Lease,[4] despite the fact the waiver of ground rent was conditioned upon Lumanair constructing an above-ground fuel farm and meeting all minimum standards by August 1, 2022.[5]

Complainant further asserts, after being assigned the Lumanair Lease on July 27, 2021,[6] the City entered into a new Lease with Carver on January 2, 2022,[7] which did not require Carver to install above-ground fuel tanks until July 1, 2024, or in the alternative to begin paying ground rent in the amount of $46,669.80 per year.[8] [9] [10] Therefore, from July 27, 2021 until at least July 1, 2024, under Carver's Lease, Carver was not required to pay any amount to the City for occupancy of its leasehold, while Complainant paid approximately $500,000[11] per year in rent equivalents,[12]approximately

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[3] *See* Affidavit of Bradley Zeman attached as Exhibit No. 28 hereto.
[4] Complainant's Exhibit No. 5, p. 3, ¶ 2.a.
[5] Complainant's Exhibit No. 5, p. 21, last paragraph
[6] Complainant's Exhibit No. 6
[7] Complainant's Exhibit No. 7
[8] Complainant's Exhibit No. 7, p. 22, ¶ 4
[9] Complainant's Exhibit No. 7: p. 3 (second to last paragraph)
[10] Complainant's Exhibit No. 7: p. 4, ¶ "b."
[11] Complainant's Exhibit No. 9: p. 11 and Exhibit No. 8, Pg. 2
[12] Complainant's Exhibit No. 1, p. 2, , ¶ 3)

$2,000,000 from August 1, 2020 when Lumanair was granted a new lease[13] through July 27, 2021 when Aurora allowed Carver to assume Lumanair's August 1, 2020 Lease[14] until July 1, 2024.

JA's 2007 Lease

Complainant acknowledges and agrees JA's leased premises include Hangars 5, 6 7 and the underlying real estate, and a parcel on which JA did construct an above-ground fuel farm, and the BP Hangar that JA purchased at a cost of $4,000,000[15] and immediately conveyed to the City to become part of JA's leasehold.

Complainant acknowledges and agrees the City also granted JA the option to lease the parcels located on either side of the BP Hangar.

Complainant denies Respondent's assertion the square footage under JA's lease is approximately 186,967, and asserts the total area under roof under the JA lease is 131,120 sq. ft. This compares to the total area under roof under the Carver Lease of 113,740.50.[16] In any event, the Complaint applies to the rate per square foot, not simply the total amounts paid for rent.

Complainant acknowledges and agrees the City agreed to the issuance of tax exempt facility revenue bonds in an amount not to exceed $10,000,000, and that the actual amount of the bond obtained by JA was $9,400,000.[17]

Complainant acknowledges and agrees the JA Lease provides JA shall pay all principal and interest on the bond in lieu of rent for Parcel 1, Hangars 5, 6, 7, and the BP Hangar for the duration of the lease term and any extensions.

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[13] Complainant's Exhibit No. 5
[14] Complainant's Exhibit No. 6
[15] *See* Affidavit of Brad Zeman, President of JA., Exhibit No. 28
[16] Complainant's Exhibit No. 7, pg. 3
[17] *See* Affidavit of Brad Zeman, President of JA., Exhibit No. 28

Complainant denies the subject lease does not require capital improvements, while acknowledging the JA Lease does not contain a separate construction rider *per se.* However, this is just a play on words, as the JA Lease does require that JA "*shall* negotiate to acquire" the BP Hangar and when acquired "shall convey said hangar" to the City.[18] The JA lease further provides the proceeds of bond "*shall*" be used by Tenant for construction of a fuel farm on Parcel 1, the improvement and renovation of Hangars 5, 6 and 7 in accord with the general description of improvements attached hereto as Exhibit C and as set forth in the bond documents."[19](emphasis added) Thus, it is disingenuous to suggest JA was not required to make any capital improvements pursuant to its Lease simply because the requirements were not delineated in a separate rider.

Complainant acknowledges and agrees the 2015 Amendment to JA's Lease did not alter any of the above-referenced terms.

Complainant denies the 2015 Amendment was entered as a means to settle and compromise certain "deficiencies in JA's non-payment of rent and fees owed to the City in order to assist JA in becoming financially sound." In fact, the 2015 Lease Amendment was negotiated to resolve JA's claim against the City arising out of the City's breach of the initial signed Lease of 2006, wherein the City was unable to provide funds promised under the 2006 Lease for installation of utilities and site improvements to allow JA to construct its own hangars and office building. The 2015 Lease Amendment was drafted to address the City's breach of the 2006 Lease which resulted in lost pre-construction costs and architectural fees expended by JA in an amount in excess of

[18] Complainant's Exhibit No. 1, p. 1, ¶ 2)
[19] Complainant's Exhibit No. 1, p. 2, ¶ 3)

$250,000[20] and to address additional rent payments withheld by JA to account for the City's breach of the 2006 Lease.[21]

Carver's 2022 Lease

Complainant acknowledges and agrees Carver's leased premises includes certain hangars and parcels identified in the Carver Lease as Hangars 1, 2, 3, 4 and 5[22] and parcels containing the Ramp, grass area, office Addition, and Existing Fuel Farm. Complainant asserts, however, that Carver's "Existing Fuel Farm" is an underground fuel farm with fiberglass containers more than 40 years old, [23] not an above-ground fuel farm as JA was required to construct in 2007 before operating as an FBO, to meet the City's 2006 Minimum Standards. This "existing fuel farm" is nominally and optionally required by Aurora to be constructed by Carver by July 1, 2024, or in the alternative Carver will have to begin paying ground rent.[24]In its observation of the intended site for the new fuel farm, Complainant has seen no evidence that work on the fuel farm has begun, much less completed by July 1, 2024.

Complainant acknowledges and agrees the square footage under Carver's leased premises totals 113,740.50.

Complainant denies the Carver Lease requires Carver to undertake a minimum $10,000,000 investment in the premises according to the terms of the January 1, 2022 Carver Lease and the terms of the Construction and Capital Improvements Rider to the Carver Lease (the "Carver Lease").[25] In fact, the terms of the Capital Improvements Rider are illusory and do not require

[20] *See* Affidavit of Brad Zeman attached hereto as Exhibit 28.
[21] *See* Respondent's Exhibit 13, at 204:17 – 207:21
[22] Not the same hangar 5 identified in the JA Lease
[23] *See* Affidavit of Brad Zeman attached hereto as Exhibit 28 to this Answer.
[24] Complainant's Exhibit No. 7, p. 22, ¶ 4.
[25] Complainant's Exhibit No. 7 and the Construction and Capital Improvements Rider, pp. 22 - 24

Carver to make any improvements at all. Specifically, the Construction and Capital Improvements Rider allows Carver the option to invest $3,000,000 in the first five years of its lease, and the option to invest $3,000,000 in the second five year period under its lease.[26] However, Carver, can avoid all investment and elect to pay ground rent only if Carver elects not to complete the installation of an above-ground fuel farm by July 1, 2024,[27] or elects not to meet the required level of construction and capital improvements by January 1, 2027.[28] In the event Carver elects not to construct an above-ground fuel farm or elects to postpone the expense of construction of an above-ground fuel farm and removal of the existing below-ground fuel farm, Carver will be required to pay only annual ground rent in the amount of $46,669.80, based on the total square footage under Carver's Lease being 113,740.5[29] and the stipulated ground rent, $0.41032 per sq. ft.[30] If Carver eventually begins to pay ground rent in July 2024 or January 2027, it would be paying only $46,669.80 *per year*, while JA has been paying and will continue to pay more than $500,000 *per year*[31] [32] in rent equivalents.[33] As of August 23, 2024, Carver had not installed an above-ground fuel farm or removed the existing below-ground fuel farm.[34] Further, Carver is not required to make a final investment in its leasehold of $4,000,000. Instead Carver can expend $4,000,000 on establishment of new additional tenancies or ownership of facilities by related entities or unrelated entities[35] in which case the final $4,000,000 investment will not be required in reference to Carver's leasehold at all. Still further, if Carver merely acts as the procurer of another tenant at the Airport,

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[26] Complainant's Exhibit No. 7, p. 22, ¶¶ 1 and 2.
[27] Complainant's Exhibit No. 7, p. 22, ¶ 4.
[28] Complainant's Exhibit No. 7, p. 23, ¶ B.
[29] Complainant's Exhibit No. 7: p. 3 (second to last paragraph)
[30] Complainant's Exhibit No. 7: p. 4, ¶ "b."
[31] *See* Affidavit of Bradley Zeman attached hereto as Exhibit No. 28 to this Answer
[32] Complainant's Exhibit No. 9: p. 11 and Exhibit No. 8, p. 2
[33] Complainant's Exhibit No. 1, p. 2, ¶ 3)
[34] *See* Affidavit of Brad Zeman attached hereto as Exhibit No. 28 to this Answer.
[35] Complainant's Exhibit No. 7: p. 22, 23 ¶ 5

Carver need not make the last $4,000,000 of its optional investment. Even if Carver elects to invest either $6,000,000 or $10,000,000 in its leasehold, it will have 12 years to do so,[36] while JA was required to make its entire investment before beginning to do business at the Airport.[37] Inherently, the cost of financing an initial $9,400,000 investment is far more expensive than financing a $6,000,000 to $10,000,000 investment incrementally over 12 years, if made at all.

Complainant denies up to $4,000,000 of Carver's "required" investment can be met only by its establishment of additional tenancies or ownership by *related* entities.[38] Paragraph 5 on page 22 and page 23 of Complainant's Exhibit No. 7 provides that "Tenant's role as the designated procurer of an additional tenancy or ownership of facilities at the Airport by an entity *unrelated* to or not under the control of Tenant shall also satisfy this requirement." (emphasis added) Thus, even if Carver elected to invest in its leasehold - rather than simply pay far less expensive ground rent - Carver has the option under its lease to direct $4,000,000 of its investment into an entirely separate business, thereby reducing even further the extent to which the competing FBO, Carver, would be responsible for payment of any portion of the optional investment it might choose to make. JA was provided no such option to expend 40% of its investment on a related or unrelated entity. Further, under the terms of Carver's lease, Carver can merely be the "procurer" of an unrelated entity that agrees to spend $4,000,000 over an undetermined period of time in order to reduce Carver's optional investment by $4,000,000.[39] Thus, Carver is not even required to spend its own money to reduce its optional investment by $4,000,000. Carver would then be able to complete its remaining optional

[36] Complainant's Exhibit No. 7: p. 22, ¶¶ 1, 2 and 3
[37] Complainant's Exhibit No. 7: p. 2
[38] Respondent's Motion, p. 4, last bullet point
[39] Complainant's Exhibit No. 7, pp. 23, 24, ¶ 5.

investment of $6,000,000 over a ten year period, unlike JA which was required to incur a $9,400,000 obligation before beginning to do business at the Airport.[40]

Complainant agrees that if Carver fails to meet the "required" level of construction and capital improvements in years one through five, it shall be required to pay ground rent for its total occupied facilities beginning January 1, 2027. Complainant agrees the Carver Lease provides that ground rent shall continue until the total amount of Investment during years one through five *added* to the total amount of Ground Rent reaches $3,000,000. However, this too is illusory because at Ground rent of $46,669.80 *per year*,[41] it would take more than 64 years before ground rent payments approached the amount of the optional investment of $3,000,000 to be made in years one through five. Thus, even the first portion of the optional investment would never reach $3,000,000 in the twenty years allowed under the lease.[42] This is to say nothing of the second $3,000,000 optional investment in years five through ten, much less the final $4,000,000 optional investment in years eleven through twelve.[43]

Complainant denies the assertion that ground rent will not be considered part of Carver's optional investment. This is only true for the first five year period under Carver's Lease. Paragraph "B." on page 23 of Complainant's Exhibit No. 7 provides that "If Carver fails to meet the required level of construction and capital improvements in years one (1) through five (5) of the lease, Tenant shall be required to pay Ground Rent for its total occupied facilities at the Airport, beginning on January 1, 2027. Tenant's payment of Ground rent shall continue until the total amount of Tenant's Investment during years one (1) through five (5) *added* to the total amount of Ground Rent paid by

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[40] Complainant's Exhibit No. 1, p. 2, ¶ 3)
[41] Complainant's Exhibit No. 7: p. 3 and Pg. 4, ¶ "b."
[42] Complainant's Exhibit No. 7, p. 5, ¶ 4. b. provides the lease term is reduced to 20 years if the optional investments are not made.
[43] Complainant's Exhibit No. 7, p. 22, ¶ A. 4.

Tenant reaches the amount of $3,000,000. This same condition shall apply to Tenant in years six (6) through ten (10) of the Lease with Tenant's Ground Rent payments continuing until Tenant expends a total of $6,000,000 in *combined* Tenant investment *and* Ground Rent paid to Landlord with Tenant receiving credit for all amount of Investment and Ground Rent paid during the Term of the Lease. This same condition shall apply during years eleven (11) and twelve (12) of the Lease with Tenant's Ground Rent payments continuing until Tenant expends a total of $10,000,000 in *combined* Tenant Investment *and* Ground Rent paid to the Landlord with Tenant receiving credit for *all amount* of Tenant Investment *and* Ground Rent paid during the Term of the Lease. [44] The City's description of the investment terms of the Carver Lease is incorrect and highly misleading.

First of all, the language of the Carver Lease is illusory. With Carver paying only $46,669.80 *per year* in ground rent, it would take 214 years for payment of ground rent to amount to $10,000,000. Thus, there is no penalty for Carver electing to pay ground rent rather than investing in the Airport, other than Carver's lease being reduced to 20 years instead of 30 years.[45] In fact, Carver would pay only $700,047 to $816,721.50 over 15 to 17.5 years – since ground rent would not begin until July 1, 2024 at the earliest, if Carver has not installed above-ground fuel tanks, which it has not done to date, or on January 1, 2027 if Carver has not met the "required" level of construction and capital improvements in years one (1) through five (5) of the Lease. During that same period of time, JA would be required to pay all principal and interest on its

[44] Complainant's Exhibit No. 7, Pg. 24, ¶ B. Complainant acknowledges that ¶ B. on p. 24 of Carver's lease does not allow credit for ground rent to be added to other investments for the first five year period. This is illusory, however, as payment of ground rent would never come close to payment of even the first $3,000,000 investment under Carver's lease.

[45] Complainant's Exhibit No. 7, p. 24, ¶ "C."

improvements "in lieu of rent"[46] required under JA's Lease in order to begin to do business at the airport. During that same 15 – 17.5 years, JA would be required to pay $7,500,000 to $8,750,000 at $500,000 per year under the terms of its Lease.

Thus, even if Carver paid Ground Rent for 20 years, at $46,669.80 *per year*,[47] rather than make a $10,000,000 investment over a 12 year period, Carver would pay only $933,396, compared to JA's payment of approximately $500,000 per year, or $10,000,000 over the same 20 year period of time.[48]

Complainant asserts the above discrepancy in the terms of the lease offered to Carver violate Grant Assurance 22(c) as each fixed-based operator at the airport is not subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities. Complainant also asserts the above discrepancies violate Grant Assurance 22(a) in that the Airport Sponsor has not made the airport available for public use on reasonable terms without discrimination.

Standard of Review

Complainant acknowledges and agrees the burden of proof is on the Complainant to show noncompliance with any Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act, pursuant to 14 CFR §16.23(k)(1). However, Respondent has filed a Motion to Dismiss and a Motion for Summary Judgment. 14 CFR §16.23(k)(2) provides the burden of proof in regard to a motion is on the proponent. Respondent has not filed an answer, but instead has filed a Motion to Dismiss and a Motion for Summary Judgment. At this stage, the burden of proof is on the Respondent.

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[46] Complainant's Exhibit No. 1, p. 2, ¶ 3)
[47] Complainant's Exhibit No. 7: p. 3 and p. 4, ¶ "b."
[48] Complainant's Exhibit No. 9: p. 11 and Exhibit No. 8, p. 2

In reference to Respondent's Motion to Dismiss, 14 CFR §16.23(b)(1)(i), (ii) and (iii) provide Respondent can assert lack of jurisdiction, failure to state a claim that warrants investigation or further action by the FAA, or that the Complainant lacks standing. Respondent has not asserted and could not assert lack of jurisdiction or lack of standing. Respondent's assertion of failure to state a claim is unsupportable. A claim of substantially different rates and terms imposed on two similar FBOs at an airport is a common claim of discrimination investigated by the FAA, and a basis for prior FAA findings of violation of Grant Assurance 22.

In reference to Respondent's Motion for Summary Judgment, 14 CFR §16.23(c)(1) provides that such a motion may be based upon the ground that there is no genuine issue of material fact for adjudication and that the complaint, when viewed in the light most favorable to the complainant, should be summarily adjudicated in favor of the respondent as a matter of law. Complainant asserts Respondent has not satisfied its burden of demonstrating there is no genuine issue of material fact, particularly when the allegations of the Complaint are viewed in the light most favorable to Complainant.

Complainant further asserts the Complaint and this Answer to Respondent's motions demonstrate there is more than sufficient evidence to warrant further investigation and action by the FAA.

Relevant Grant Assurances

Complainant acknowledges, agrees and asserts the owner or sponsor of an airport developed and supported with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination, pursuant to Grant Assurance 22(a).

Complainant acknowledges, agrees and asserts that Grant Assurance 22(c) requires that each fixed-based operator at an airport developed and supported with federal grant assistance be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

I. Answer Directed to Respondent's Motion to Dismiss

Argument

Compliance with 14 CFR §16.23

Respondent first argues Complainant has not provided documents necessary to substantiate its allegations in regard to Carver being required to pay substantially less for use of the airport than JA pays. (Respondent's Motions, pg. 6) However, Complainant has provided a copy of JA's 2007 Lease, [49] along with a copy of Carver's Lease[50] and the analysis and opinions of economist Robert Baade.[51] JA's Lease provides that JA must pay all principal and interest in rent equivalents ("in lieu of rent")[52] on the financing required to pay for the purchase of a corporate hangar, to be immediately conveyed to the City, and to pay for all improvements to City owned Hangars 5, 6 and 7, from the outset of its lease.[53] Economist, Robert Baade's reports provide a breakdown of the monthly payments made by JA from March 2008 through October 2020 to the present in the current amount of $42,505.00 per month.[54] Carver's Lease provides Carver pays no ground rent for the first 20 years of the lease[55] and that Carver has the option to make a $3,000,000 investment in its

[49] Complainant's Exhibit No. 1
[50] Complainant's Exhibit No. 7
[51] Complainant's Exhibits No. 9, 16
[52] Complainant's Exhibit No. 1, p. 2, ¶ 3)

[53] Complainant's Exhibit No. 1, pg. 2, ¶ 3)
[54] Complainant's Exhibit No. 9, pg. 11 and Exhibit No. 16, pg. 7
[55] Complainant's Exhibit No. 7, pg. 3, ¶ 2a.

leasehold over the first five years,[56] or in the alternative, to make no investment and begin paying ground rent in the amount of $46,669.80 *annually*[57] [58] [59] – compared to JA's obligation to purchase a large corporate hangar, immediately convey it to Aurora and pay all financing for that purchase and for all improvements to the airport sponsor's property in the amount of $42,505.00 *monthly*.[60]

Therefore, Respondent's assertion Complainant has not provided "any documentary evidence whatsoever" to show what Carver pays to use the Airport is without merit, particularly when the evidence is viewed in the light most favorable to Complainant.

Respondent next asserts Complainant has not considered any unknown debt incurred by Carver to finance its investment obligations or any amounts Carver has expended toward its investment required to date, and that "JA assumes – without any support – that Carver has paid and will continue to pay nothing until July 2024, at which point it will pay $46,669.80 per year for the duration of its lease term. (Respondent's Motions, pg. 7) However, without question, the Lumanair Lease assumed by Carver in July 2021[61] and the Lease entered into between Carver and Respondent on January 1, 2022 did not and does not require Carver to make any payment to the City until at least July 1, 2024, upon failure to "complete the installation of the fuel farm and meet all Minimum Standards as outlined in the Lease."[62] Carver has not completed the installation of an above-ground fuel farm, nor complied with the Minimum Standards.[63] JA was not given the opportunity to make no payments on its investment and/or to pay only ground rent to the City, a difference between paying approximately the same amount monthly in JA's case to what Carver is required to pay

[56] Complainant's Exhibit No. 7, pg. 22, ¶ A.1.
[57] Complainant's Exhibit No. 7, pg. 22, ¶ A.4
[58] Complainant's Exhibit No. 7, pg. 3 (second to last paragraph) and pg. 4, ¶ 2.b.
[59] Complainant's Exhibit No. 16, pg. 7
[60] Complainant's Exhibit No. 9, pg. 11 and Exhibit No. 16, pg. 7
[61] Complainant's Exhibit No. 6
[62] Complainant's Exhibit No. 7, pp. 3, ¶ 2a. and pg. 22 ¶ 4
[63] *See* Affidavit of Brad Zeman attached hereto as Exhibit No. 28 to this Answer.

annually.[64] Even if Carver had made any investment or completed installation of above-ground fuel tanks and complied with the Minimum Standards, which it has not,[65] since July 27, 2021, when Carver assumed Lumanair's lease,[66]Carver has had no obligation to pay any amount to the City for occupancy of its leasehold, while during the same period, JA has paid approximately $500,000 per year, approximately $1,500,000 in total.[67]

JA has provided more than sufficient documentation to raise a fair question of significant discrepancy between the amount charged to JA in comparison to the amount charged to another FBO at the same airport offering the same services. Providing one lease that allows one FBO to pay nothing for at least 3 years, while requiring another similarly situated FBO to pay approximately $1,500,000 during the same period of time to provide virtually identical aeronautical services to the public is not in compliance with Grant Assurance 22(c) because two FBOs cannot fairly compete paying a difference of approximately $500,000 per year to the City to offer the same services at the same Airport.

Further, Respondent argues that Complainant has not considered any unknown debt incurred by Carver to finance its investment obligations, presumably referring to Carver's costs of acquisition of Lumanair. However, Complainant is not referring to, and Respondent has not considered, the amount invested by Complainant in its leasehold equipment and machinery prior to initiation of its lease, or compared such amounts to any amount actually spent by Carver prior to initiation of its Lease. Even if cost of initial acquisition were relevant or considered, there is no documentation provided to substantiate any amount paid by Carver to acquire Lumanair. Although there is a

[64] Complainant's Exhibit No. 9, pg. 11 and Exhibit No. 16, p. 7
[65] *See* Affidavit of Brad Zeman attached hereto as Exhibit No. 28 to this Answer.
[66] Complainant's Exhibit No. 6, Aurora's approval of Carver's assumption of Lumanair's Lease
[67] Complainant's Exhibit No. 9, p. 10 and Exhibit No. 16, p. 15

reference to payment by Carver to Lumanair in the amount of $4,000,000, on information and belief, the purchase agreement between Carver and Lumanair included an "earn-out" clause, which was never achieved and therefore the potential acquisition cost was never paid in full.[68] In any event, the amounts invested in either FBO prior to initiation of their respective leases are not payments to the City.

Timeliness of JA's Complaint

Respondent next moves to Dismiss on the basis of its claim JA's Complaint is not ripe for adjudication. (Respondent's Motions, pg. 7). In support, Respondent asserts it is speculation whether Carver will or will not install above-ground fuel tanks and comply with the Minimum Standards by July 1, 2024. However, there is no speculation involved, as to date, well after July 1, 2024, Carver has not installed above-ground fuel tanks and is not in compliance with the Minimum Standards for an FBO.[69]

Respondent argues Complainant has alleged only that Carver *could* elect to pay ground rent in lieu of its investment requirement beginning on July 1, 2024. (Respondent's Motions, pg. 7) Aside from the fact July 1, 2024 has come and gone and Carver has not invested in a permanent installation of above-ground fuel tanks, the point is that Carver has the option of paying only ground rent and no similar option was offered to Complainant, a similarly situated FBO at the same Airport offering the same services to the public. Complainant acknowledges that lease terms may be different, but the ultimate cost to two similarly situated FBOs must be reasonably equitable.

[68] *See* Affidavit of Brad Zeman, Exhibit No. 28 hereto.
[69] *See* Affidavit of Brad Zeman attached hereto as Exhibit No. 28 to this Answer.

Respondent next argues JA has not considered the possibility that Carver will meet its investment requirements. But, in fact, Carver has not.[70] But even if Carver had met its obligations found at p. 22, ¶4 of its Lease, (Claimant's Exhibit No. 7) that would not cure the discriminatory nature of the two leases, as Carver's lease allowed it to operate (1) without any payment for its occupancy from July 1, 2021 to July 1, 2024 at the earliest; (2) Carver has the right under its lease to spread its optional incremental investment out over a twelve year period, resulting in much lower investment costs and carrying charges, whereas JA was required to make its entire investment before beginning to operate at the Airport and (3) Respondent drafted a lease between the City and Carver allowing Carver to use $4,000,000 of its optional investment to acquire an interest in an entirely separate business at the Airport – or to simply "procure" another unrelated tenant at the Airport and thereby reducing its optional investment by $4,000,000[71] - a significant benefit to Carver not provided to JA, dramatically reducing the optional investment that might be made by Carver; and (4) Carver can elect to make no investment at all or to make a partial investment and pay only modest ground rent beginning on July 1, 2024 or alternatively on January 2, 2027 in the event Carver elects to install above-ground fuel tanks at some point – which was required of Complainant under its Lease before beginning to operate its FBO, and installed by Complainant in 2007. While the FAA may not become involved in enforcement of airport minimum standards, the lack of uniformity in sponsor required compliance with established minimum standards can be evidence of unequal treatment in violation of Grant Assurance 22.

Respondent next asserts that Carver's payment of ground rent would be an additional charge and would "not count towards or excuse its minimum investment requirement."

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[70] *See* Affidavit of Brad Zeman attached hereto as Exhibit No. 28 to this Answer.
[71] Complainant's Exhibit No. 7: p. 22, 23 ¶ 5

(Respondent's Motions, pg. 8). Respondent's assertion is disingenuous as Respondent fails to note the contradictory language of the Carver Lease, Exhibit 7 at p. 23, ¶ B and the plain language of the Carver Lease that while payment of ground rent for failure to install above-ground fuel tanks by July 1, 2024, as provisionally or optionally required under the Carver Construction and Capital Improvements Rider (Complainant's Exhibit No. 7, p. 22 ¶ 4) does not reduce Carver's optional investment, all other payments of ground rent paid by Carver, if it elects to avoid any other optional investment under the Construction and Capital Improvements Rider, do count toward Carver's illusory and optional investment at the Airport. Specifically, Paragraph B on pages 22 and 23 of Carver's Lease[72]provides that all other payments of ground rent – rather than completing optional investments – shall be counted toward the optional investment until such time as Carver has paid a total of $10,000,000 in both ground rent and capital improvements combined. However at the rate of ground rent under Carver's lease, $46,669.80 annually,[73] even after 20 years, Carver would pay only $933,380. During the same period of time, JA would be required to pay more than $10,000,000.[74]

Grant Assurance 22

Complainant agrees it has the burden to establish the facts of its allegations and also that the Respondent has the burden of proof on the motions it has filed. The proponent of a motion, request, or order has the burden of proof. *Rick Aviation, Inc., Complainant v Peninsula Airport Commission*, 2007 FAA LEXIS 353, at *17. Thus, at this stage it is the burden of Respondent to show it is entitled to dismissal in reference to Complainant's Complaint. Complainant agrees it must show that another party similarly situated to Complainant has received preferential treatment denied to the Complainant in similar circumstances.

[72] Complainant's Exhibit No. 7
[73] Complainant's Exhibit No. 7, pg. 3 (second from the last paragraph) and pg. 4, ¶ 2b.
[74] Complainant's Exhibit No. 9, pg. 10 and Exhibit No. 16, pg. 15

The transcripts of the depositions of the City's Chief Management Officer,[75] Alex Alexandrou, clearly establish Complainant was not offered the same benefits as Lumanair[76] and that the City would not be willing to amend JA's Lease to make it more equitable with Carver's Lease.[77]

Respondent further asserts JA's Complaint fails to sufficiently allege that the two (JA and Carver) are similarly situated in the context of their leases. (Respondent's Motions, pg. 9). Respondent asserts Complainant's conclusion that the two FBOs are similarly situated is based "exclusively on a statement of Carver's CEO," but Respondent's statement is clearly not true. First of all, that statement by Carver's CEO is a significant admission in this regard. But more importantly, the Complaint clearly stated that the two FBOs are in the same business, have identical FBO operating rights under their leases, are located in adjacent facilities in the same area of the airport, and lease areas that are about 85% similar in size.

In attempting to show that the two FBOs are not similarly situated, Respondent cites *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 WL 1120745, at *11. That decision does not support Respondent's argument. The *Penobscot* decision did involve two FBOs, but the parties in that case differed in ways not applicable to JA and Carver. One FBO, Downeast Airlines, Incorporated, entered into a commercial aeronautical business at Knox County Airport, on April 1, 1979, to operate as a fixed base operator and air charter service for a term of 20 years, terminating on March 3, 1999. Downeast agreed to pay the airport sponsor, Knox County, a land rental in the amount of $2,000 per acre annually and a percentage of its gross sales in the

[75] Complainant's Exhibit No. 22, 04-26-2022 Deposition of Alex Alexandrou, at Pg. 13, lines 10 - 14
[76] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 250, lines 1 - 24
[77] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263, lines 2 - 7

amount of 1 ¼ %. *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 1997 FAA LEXIS 1528, *3.

On May 1, 1986, Knox County entered into a lease with Penobscot Air Service (PAS) to conduct a commercial aviation business and perform aeronautical activities at Knox County Airport for a term of 20 years terminating on April 30, 2006. PAS agreed to paying $3,281.95 per acre "(the baseline of $2,000.00 per acre wit CPI adjustment for 1987)" and 1 ¾ % of gross sales and services for the first five years and an additional ¾% which was deferred for ten years. *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 1997 FAA LEXIS 1529, *12.

In July 1986, PAS was prohibited from using mobile refuelers for the public sale of fuel until the company could construct permanent fuel storage on the airport. The minimum standards at the airport required an operator to possess fuel storage tanks. But, on July 11, 1990, PAS was granted fueling rights. *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, *12

On April 28, 1993, PAS was purchased by new owners, the Demmons. On July 2, 1993, PAS complained to the County about the issue of gross percentage rent disparity with Downeast. The County attorney declined to adjust the gross percentage rent indicating the County was under no obligation to revise either the Downeast agreement or the PAS agreement to eliminate rent disparity, noting the former owner of PAS "both proposed and accepted the type of lease terms that the new owners find discriminatory. PAS filed a formal complaint under 14 CFR Part 16 alleging that dissimilar rents and the failure to evenly enforce the minimum standards violated grant assurances. Knox County denied the allegations and stated there is no requirement that municipal leases negotiated at different times be identical and that PAS did not substantiate the

allegations concerning noncompliance with the minimum standards by similarly situated lessees. *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 1997 FAA LEXIS 1529, *18-19.

The FAA noted, "if the FAA determines that commercial aeronautical activities at an airport are making the same uses of identical airport facilities, then leases and contracts entered into by an airport owner subsequent to July 1, 1975, pursuant to the Airport and Airway Development Act of 1970, as amended, shall be subject to the same rates, fees, rentals and other charges. See Order, Sec. 4-14(a)(2)(d)."

Further, the FAA noted, "FAA policy further provides that, all leases with terms exceeding five years, should provide for periodic review and adjustment of the rates and charges based on an acceptable index. This periodic lease review is expected to facilitate parity of rates and charges between new commercial aeronautical tenants and long-standing tenants making the same or similar use of airport facilities and to assist in making the airport as self-sustaining as possible under the circumstances existing at the airport. See Order, Sec. 4-14(a)(2)(f)." *Penobscot* at pg. 11, 1997 1997 FAA LEXIS 1529, * 18. (emphasis added)

Although not specifically stated in the PAS decision, the FAA construed the PAS Complaint as alleging economic discrimination in charging PAS dissimilar lease payments from those charged to other similarly situated lessees. Knox County maintained that there is no requirement that municipal leases negotiated at different points in time be identical, when circumstances justify a higher lease rate at a later time. *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, *37

In summary, the FAA found that Downeast and PAS were not similarly situated in that Downeast had not operated or offered air taxi and charter services since 1987, noting that

Assurance 24, '"Fee and Rental Structures'" requires an airport sponsor of a federally obligated airport to maintain a fee and rental structure consistent with Assurance 22 and 23, for facilities and services being provided the airport user. Concurrently, The FAA noted, "The executive session of the Knox County Board of Commissioners of April 22, 1980 documents the county's reason for setting the 1.25% percentage rental rate for Downeast was to encourage its then only FBO in providing air service and their attempts to raise the fee after the minimum standards were revised. It should be noted that the current fee was established seven years prior to PAS's occupancy. The difference in rates in part is not just a reflection of time, but of an increase in costs and standard charges over time. **An airport, as an economic enterprise and to lessen the burden on the taxpayer has an obligation to increase its rates in order to maintain or achieve self-sustainability**." *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, *46. (emphasis added)

The FAA also noted, "To avoid a depressed rate scale for the future, the airport owner should be encouraged to provide the "incentive rate" only during the pioneer period. The pioneer period should be established for a specific period of time and ending on a specified date. Future operators coming on the airport following the pioneer period may be expected to pay the comparable standard rates and charges based on then current value." *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, *46

Finally, the FAA wrote, "It should be noted that even if PAS established the allegations of unjust discrimination, certain possible remedies could prove problematic. * * * a reduction in PAS' gross percentage rental rate to match Downeast's rate could raise the issue of a possible violation of Assurance 24, "Fee and Rental Structure" and whether the airport is operating a fee

and rental structure to make the airport as self-sustaining as possible." *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, *47.

Thus, there are multiple aspects of the *Penobscot* decision favorable to Complainant and there are multiple reasons the *Penobscot* decision does not stand for any proposition suggested by Respondent under the facts of this case. First, PAS was a subsequent renter/FBO complaining that its lease was marginally more expensive than the lease offered to Downeast years earlier, *i.e.,* PAS was required to pay 1 ¾ % of gross sales compared to Downeast, which was required to pay 1 ¼ % of gross sales. The FAA determined Downeast was the only fixed base operator on the airport at the time of its lease, and that its percentage rate was intentionally set low as an incentive for the company to service the airport and secure bank financing. *Penobscot* at pg. 14, 1997 FAA Lexis 1529. The difference between what JA is being charged to offer the same aeronautical services to the public is not minimal and, in fact, amounts to not less than $500,000 per year, and millions of dollars over the course of its Lease. Charging no hangar rent for the 30-year lease term cannot be justified as a reduced rate during a "pioneer period."

JA was the existing FBO at the field when, on July 27, 2021, Carver was allowed to assume Lumanair's August 1, 2020 Lease, and when the City entered into a new lease with Carver on January 1, 2022. In the present case, it was the *later* tenant, Carver, that entered into a lease 15 years after JA entered its lease, and yet Carver was provided substantially more favorable terms – up to $500,000 per year more favorable than the existing tenant.

Although the *Penobscot* decision reiterated the necessity that an airport sponsor establish a fee and rental structure to make the airport as self-sustaining as possible, the City declined to

rent all available space to Complainant or to any other third party, at $8.50 per sq. ft.[78] and instead allowed Carver to assume ownership of the hangars and office buildings under Lumanair's lease, despite the language of Lumanair's lease providing that Lumanair's hangars and office space would be surrendered to the City at the termination of Lumanair's lease[79] – and despite the fact the Airport had not been self-sustaining for many years.[80]

Although the *Penobscot* decision indicated that incentive rates should be provided only during the "incentive period" and that "Future operators coming on the airport following the pioneer period may be expected to pay the comparable standard rates and charges based on then current value," (*Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, *46) Carver's lease, no matter how it is interpreted, allows Carver to operate at far less than the costs imposed on JA – about which JA did not complain until a competing FBO was offered a lease involving substantially lower costs. Even if Carver made an investment of $6,000,000 or of $10,000,000, it would be allowed to do so incrementally over a period of 12 years, spreading out the cost of any such improvements over a much longer period of time, compared to JA which was required to obtain and pay for its financing before beginning to do business at the Airport, including the construction of an above-ground fuel farm, required by the Minimum Standards since 2006[81] – which Lumanair never installed and Carver has not installed even to the current

[78] Complaint at pg. 8; and Complainant's Exhibit No. 18: Multiple emails from Counsel for JA to Alex Alexandrou, Chief Management Officer for City of Aurora and to Counsel for City of Aurora and Correspondence from JA's principal to Aurora offering to pay $8.50 per sq. ft. to rent the subject space. And confirming email
[79] Complainant's Exhibit 5: Pg. 9, paragraph "b."
[80] Complainant's Exhibit No. 19: 07/25/2022 deposition of Alex Alexandrou, Chief Management Officer of City of Aurora, pgs. 245 – 248
[81] 2006 Minimum Standards attached hereto as Exhibit No. 29

time,[82] fifteen years after Complainant was required to expend over $1,000,000 to install above-ground fuel tanks in order to be in compliance with the Airport Minimum Standards of 2006.[83]

Respondent cites *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, for the proposition that "to sustain an allegation of unjust economic discrimination, the discrimination must be unjust; and it can only be unjust if the preferred party is similarly situated to the dis-preferred party. (Respondent's Motions, pg. 9). *Penobscot* is a poor example to cite for the issue of two FBOs being, or not being, similarly situated. The *Penobscot* decision was not based on similarity or lack of similarity of two competing FBOs.

Next, Respondent asserts JA has the burden of proof to show JA and Carver are similarly situated FBOs." (Respondent's Motions, pg. 9). Respondent at once asserts JA has provided no supporting evidence the two FBOs are similarly situated, and at the same time that Carver's CEO has specifically acknowledged both FBOs offer the same services and that JA has pled both FBOs conduct a full-service business at the Airport with essentially identical operating rights and responsibilities, are adjacent to each other, have similar hangars and other facilities, and offer the same rentals, flight training, maintenance, and charter services.[84] (Respondent's Motions, pp. 9, 10). Yet, without citation to authority, Respondent asserts the modest difference in the amount of space rented and the fact the leases were entered into 15 years apart is sufficient to find the two FBOs are not similarly situated. The *Penobscot* decision referenced by Respondent stands for the proposition that a lease entered later in time may properly be more costly than a lease entered earlier in time, not the other way around, such as in the present case where the later lease is far more favorable

[82] *See* affidavit of Bradley Zeman, Exhibit No. 28
[83] *See* affidavit of Bradley Zeman, Exhibit No. 28
[84] Complaint, p. 5 Exhibit No. 15: Transcript of deposition of CEO of Carver Aero, pgs. 37-38

than the lease entered into 15 years earlier. Fifteen years of inflation would support a higher cost recovery rate in 2021, not a lower one.

Respondent overlooks Complainant's argument that Complainant pays far more per square foot of leased space than Carver, regardless of the modest difference in the total square footage of the two leaseholds. (Complaint at pg. 14; and Complainant's Exhibit No. 16, pg. 7.) The modest difference in the size of the leaseholds is not enough to form a basis for a difference in the price per sq. ft. approaching a multiple of ten times. Perhaps, if one leasehold were double the size of another, there might be a market-based reason to charge the larger leasehold somewhat *less* per square foot for the larger leasehold. But in this case the difference in the size of the leaseholds is not significant and neither Complainant nor Respondent argues the size of the leaseholds should result in significantly different charges per square foot. Similarly, the record contains no reason Carver should be charged far less per square foot than Complainant for the space Carver occupies.

Further, Respondent, which bears the burden of proof in regard to both its motions, has cited no authority to suggest a modest difference in the size of two leaseholds is sufficient to make two FBOs dissimilar, despite the fact they offer the same services to the public on adjoining parcels at the same Airport.

Still further, the fact Carver's lease was entered into 15 years after JA's lease would strongly suggest the second lease should cost substantially more, and certainly not less. But, inexplicably, the later lease, the Carver Lease, costs substantially less, even if optional improvements are in fact made. As the report of Economist, Robert Baade, indicates, the consumer price index rose an average of 2.38% per year from 2008 to 2022,[85] yet Carver's lease allows it to occupy hangars and office buildings at the airport for far less than Complainant's cost of occupancy, and allows Carver to make

[85] Complainant's Exhibit No 9, pg. 16

little or no investment, if it chooses, for 20 – 30 years. Even if Carver elects to make some portion of its illusive investment, it will never incur the costs incurred by Complainant, as Carver can make the investments incrementally over 12 years, whereas Complainant was required to make its entire investment at the initiation of its lease, and Carver can elect to use 40% of its potential investment to purchase a related or unrelated business or Carver can simply be the "procurer" of another tenant at the airport and reduce its optional investment by $4,000,000.[86]

Respondent argues, due to the approximate 15% difference in the size of the footprint of Complainant and Carver, and due to the fact the leases were entered into 15 years apart, (Respondent's Motion, pg. 10) Complainant and Carver are not similarly situated. Notably, Respondent has not cited any decision to support that assertion and Complainant is not aware of any decision suggesting that either a modest difference in the size of a leasehold or the date of two FBO leases, *alone*, would be sufficient to determine two FBOs operating at the same airport on adjacent lots, offering the same services to the public are dissimilar.

Next, Respondent asserts "JA has not established that the City has taken any action to deny or interfere with its ability to provide services at or access the Airport." (Respondent's Motion, pg. 10). Respondent cites *Penobscot Air Service, Ltd., Id,* following that assertion. But the *Penobscot* decision was distantly related, at best, to the issue of ability to provide service or access to the airport. In fact, *Penobscot* stands much more for the proposition that a lease signed at a later date may understandably charge an FBO a higher occupancy rate than was charged to another FBO during the pioneer period. As noted on pages 19 – 20 above, in *Penobscot,* the competing FBO, Downeast Airlines entered a lease in 1979, and Downeast was the first FBO at the Knox County Airport.

[86] Complainant's Exhibit No. 7: Pg. 22, 23 ¶ 5

Downeast was charged $2,000 per occupied acre, to be adjusted annually indexed to the CPI, and intentionally charged a lower percentage rate of gross sales, 1 ¼ %, as an incentive for the company to service the airport and to secure bank financing. Approximately 7 years later (six years and eight months later), on January 8, 1986, the sponsor, Knox County negotiated a lease with Penobscot Air Service (PAS) whereby PAS would pay $3,281.95 per acre (the 1979 baseline of $2,000 with the CPI adjustment for 19870, to be adjusted annually indexed to the CPI, and 2 ½ % of all gross sales and services, broken down so that PAS would pay 1 ¾ % for the first five years, with the remaining ¾% deferred for ten years after which there would be a balloon payment to the County. Later, on April 28, 1993, PAS was sold to new owners, after which a complaint was made about the disparity between the gross percentage rent paid by Downeast and PAS. In short, the subsequent lessee, PAS, complained that it was being charged more than the first FBO that contracted with the County nearly seven years before PAS.

In March 1997, PAS filed a formal complaint under 14 CFR Part 16 alleging, among other things, the dissimilar gross percentage rates in the leases of PAS and Downeast. The FAA found that "the difference in rates was in part a reflection of time. An airport, as an economic enterprise and to lessen the burden on the taxpayer has an obligation to ***increase*** its rates in order to maintain or achieve self-sustainability." *Penobscot Air Serv., Ltd., Complainant,* No. 15-97-04, 1997 FAA LEXIS 1529, pg. 15. (emphasis added)

Thus, the *Penobscot* decision would hardly support the City's argument, as the *Penobscot* complainant involved a later lessee that was charged modestly more for its leasehold, presumably in order to "maintain or achieve self-sustainability." In the present matter, it is the much earlier FBO, JA, that contracted 15 years before Carver, which is being charged, in effect, substantially more than the new competitor. Further, in the present matter, the City's Chief

Management Officer, Alex Alexandrou, admitted under oath the Airport had been operating at a loss for many years.[87] Still further, and solely to demonstrate to the FAA the City knew the market value of hangar rent at the time, Respondent offered to lease all of Lumanair's hangars back to Lumanair for $8.50 per square foot, and all of Lumanair's office space back to Lumanair for $13.50 per square foot after Lumanair's lease expired[88] (and before Respondent entered into a new lease with Lumanair for the same space on the August 1, 2020), and Complainant offered to lease the same space now occupied by Carver for $8.50 per square foot,[89] which would have completely reversed the Airport's troublesome finances. **Complainant does not assert the City had an obligation to rent additional space to Complainant**. But, even though there was additional undeveloped space at the Airport, and leasing to Complainant would not have created an exclusive right, the City declined to accept the Complainant's offer, or solicit an offer to rent the space from a third party, and instead signed a lease with Carver that will likely never bring in appreciably more than $46,669.80 per year if Carver begins paying ground rent. If Carver does not begin to pay ground rent, the City will not receive any amount for Carver's occupancy for 20 years.

While Respondent is correct, the Grant Assurances prohibit only *unjust* discrimination, Respondent fails to explain how the current discriminatory lease provisions are somehow just in support of its Motion to Dismiss, on which it has the burden of proof.

Ownership of Facilities

[87] Complainant's Exhibit No. 19: 07/25/2022 deposition of Alex Alexandrou, Chief Management Officer of City of Aurora, pgs. 245 – 248

[88] *See* transcript of 04-26-22 deposition of Alex Alexandrou, pgs. 104 – 111; and Aurora's Response to JA's Second Request for Admission, at ¶ 41, Exhibit No. 32 hereto)

[89] Complainant's Exhibit No. 18: Multiple emails from Counsel for JA to Alex Alexandrou, Chief Management Officer for City of Aurora and to Counsel for City of Aurora and Correspondence from JA's principal to Aurora offering to pay $8.50 per sq. ft. to rent the subject space. And confirming email

Next, Respondent argues "JA's claims regarding alleged discrimination arising out of the City's decision to allow Carver to own its facilities at the Airport should be dismissed because JA refused the City's offer to acquire title to its leased premises." (Respondent's Motion, pg. 11) Respondent's argument is particularly misleading and plainly wrong. It is true, following a Part 13 Informal Complaint, the City offered to return ownership of only one facility in the JA leasehold, the BP Hangar, to Complainant. Previously, under the terms of JA's 2007 Lease, JA was required to purchase the BP Hangar, which it did at a cost of $4,000.000.00,[90] and then to deed it to the City at no cost to the City, make all improvements to the BP Hangar at JA's expense, and then lease back the BP Hangar from the City.[91] Thus, Respondent's assertion the City offered to allow Complainant to acquire title to its leased premises is misleading, at best, as the City offered to allow Complainant to take ownership of only one of the multiple buildings under JA's lease, which the City obtained free of charge to the City, at a cost of $4,000,000.00 to Complainant, in 2007. No such requirement was made of Carver. The City made no offer to adjust the indebtedness JA incurred under its lease to purchase the BP Hangar or to repay JA for the cost of acquiring the BP Hangar or the years of interest on JA's expenditure to acquire the BP Hangar or the cost of refurbishing the BP Hangar. If JA had accepted the ownership of the BP Hangar, without any reduction in its debt service for the amount paid for the BP Hangar – which accounted for approximately 42.5% of its $9,400,000 indebtedness under its lease – the fundamental problem, the discrepancy in the cost of operation for JA compared to the cost of operation for Carver, would not have been reduced at all.

[90] *See* Affidavit of Brad Zeman, Exhibit 28 hereto.
[91] Complainant's Exhibit No. 1, pg. 2, ¶ 3

Had the City offered to transfer all office space and hangars to JA and reimburse JA for the amounts spent to rehabilitate the facilities, JA would have been on similar footing with Carver, would have been able to use the buildings as collateral to reduce interest charges or could have sold the buildings, as did Lumanair to Carver. As offered, merely transferring ownership of one building to JA would have done nothing to change the underlying issue, the large discrepancy between what Carver is required to pay for access to the Airport compared to what JA is required to pay for the same access to the Airport, to offer the same services to the public, a current difference of approximately $500,000 per year.

This entire situation was created by the City. The Lumanair Lease of August 1, 2020 required Lumanair to surrender its buildings to the City at the termination of its lease.[92] The same terms were included in Lumanair's prior lease of March 1, 1982.[93] This provision was in clear conformance with the guidelines provided under FAA Order 5190.6B, section 12.3. b. 3., Review of Agreements, which provides:

> **Form of Lease or Agreement.** The type of document or written instrument used to grant airport privileges is the sole responsibility of the sponsor. In reviewing such documents, the FAA office should concentrate on determining the nature of the rights granted and whether granting those rights may be in violation of the sponsor's federal obligations. The most important articles of a lease to review include:
>
> * * *
>
> **(1). Term.** Does the term exceed a period of years that is reasonably necessary to amortize a tenant's investment? Does the lease provide for multiple options to the term with no increased compensation to the

[92] Complainant's Exhibit No. 5, pg. 9, ¶ b.
[93] See Complainant's Exhibit No. 30 attached hereto, Lumanair's 1982 Lease at p. 5, section "8. Care of Leased Premises"

> sponsor? Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant's initial financing and provide a reasonable return for the tenant's development of major facilities. Leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA offices should not consent to proposed lease terms that exceed 50 years.[94]

Yet, although Lumanair began its lease in 1982,[95] and although it terminated prior to Respondent entering into a new lease with Lumanair on August 1, 2020,[96] 38 years after Lumanair's lease began, Respondent elected not to take back the facilities occupied by Lumanair at the end of its 1982 lease, entered into an entirely new lease with Lumanair on August 1, 2020,[97] and allowed Carver to assume Lumanair's August 1, 2020 Lease[98] and entered into a new Lease with Carver on January 1, 2022[99], allowing Carver to maintain ownership of the hangars and office buildings it would occupy. Carver pays no occupancy charge whatsoever to the City for these hangars and office space, other than ground rent beginning on July 1, 2024 if Carver fails to install above-ground fuel tanks, or by January 1, 2027, if it does not meet other investment targets.[100] Thus, Respondent, which appears to take no responsibility for the current problem, is the entity that created the problem by failing to follow the clear guidelines of FAA Order 5190.6B, section 12.3. b. 3., in addition to FAA guidance on attempting to make Federally funded airports self-sustaining.

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[94] FAA Order 5190.6B, section 12.3. b. 3., Review of Agreements
[95] See Complainant's Exhibit No. 30 attached hereto, Lumaniar's 1982 Lease.
[96] Complainant's Exhibit No.5
[97] Complainant's Exhibit No. 5
[98] Complainant's Exhibit No. 6
[99] Complainant's Exhibit No. 7
[100] Complainant's Exhibit No. 7, pg. 22, ¶ A. 4. and p. 23, ¶ B

Carver has made no significant investment in its leasehold to date, making only minor cosmetic changes and procuring a portable fuel transfer system devoid of premixed FSII,[101] engaging in truck to truck transfer refueling going through a transfer pump system, apparently in lieu of constructing an above-ground fuel farm and removal of the underground fuel tanks on its leasehold, as purportedly required under its January 1, 2022 Lease.[102] During the same period of time from August 1, 2020 when Respondent entered into a new Lease with Lumanair[103] through July 27, 2021 when Carver was allowed to assume Lumanair's Lease[104] through July 1, 2024, JA has paid approximately $500,000 per year, approximately $2,000,000 from August 1, 2020 until July 1, 2024,[105] for access to the Airport in order to offer the same services to the public. Had Carver been required to pay fair market comparable rent, the two FBOs would have been on reasonably even footing and the City would have done what it is required to do to attempt to become self-sufficient.[106]

Contrary to Respondent's assertion on page 13 of its Motions, a preliminary determination pursuant to a Part 13 complaint is not a final decision, as the FAA made clear on the second page of its 12/22/21 correspondence to the City, Respondent's Exhibit No. 9. Moreover, for reasons detailed in the Complaint, the Part 13 preliminary determination was flawed in its application of FAA policy. To wit, the preliminary determination made the same logical disconnect found in Respondent's argument: if a sponsor charges two similar FBOs vastly different discriminatory

[101] Temporary fuel tank pictures, Complainant's Group Exhibit No. 31
[102] Complainant's Exhibit No. 7, p. 22, ¶ A.
[103] Complainant's Exhibit No. 5
[104] Complainant's Exhibit No. 6
[105] Complainant's Exhibit No. 9: P. 11 and Exhibit No. 8, Pg. 2
[106] *See* 10/23/19 email from Chad Oliver, Program Manager – Technical Lead, Chicago Airports District Office, attached hereto as Exhibit No. 33

rates for the use of the airport, that difference in rates means the otherwise similar FBOs are not similarly situated, and therefore the sponsor may charge the FBOs discriminatory rates.

Grant Assurance 25

Respondent asserts "there are no allegations or evidence of airport revenue being used to provide any incentives under an entirely unrelated redevelopment agreement." (Respondent's Motion, pg. 12) The City appears to be discounting Complainant's allegations on pg. 9 of its Part 16 Complaint asserting, "Oddly, shortly after entering into a vastly favorable lease with Carver in January 2022, the City passed a resolution agreeing to sell a building in the City of Aurora to Carver's owner's real estate development arm for $1.00 and provided a city forgivable/non-repayable loan to Carver's related entity in the amount of $900,000 to assist in redevelopment, along with other financial benefits including equity generated from tax credits in the amount of $1,600,000,[107] raising a question of compliance with Grant Assurance 25." Certainly, there is a good faith question of the timing of these two events and whether Carver's agreement to rehabilitate an abandoned building in the City of Aurora was related to the granting of extraordinarily favorable lease terms to Carver by the City. Federal and State Courts have often held the Court is not required to put on blinders. *Havoco of America, Ltd. v. Shell Oil Co.*, 626 F.2d 549, 551 (7th Cir. 1980); *Muniz v. Stober,* No. 18-4619, 2023 U.S. Dist. LEXIS 187763, at *1 (E.D. Pa. Oct. 19, 2023); *Muzquiz v. San Antonio*, 520 F.2d 993, 1008 (5th Cir. 1975) ("Courts do not put on blinders to avoid seeing what is apparent.) It is apparent that the City offered a lease to Carver that was extraordinary and allowed Carver to assume ownership of hangars and office buildings, paying little or no charge for occupancy, to no advantage of the Airport, at a time when the City was operating the Airport

[107] Exhibit No. 24, City of Aurora Resolution No. R23-064, pg. 2, paragraphs F. 1. through F. 6, and pages 13 – 16 of the Redevelopment Agreement attached to Exhibit 24.

at a significant loss and had been operating at a significant loss for many years,[108] ignoring Complainant's offer to lease the subject facilities at $8.50 per square foot.[109]

Conclusion in Reference to Respondent's Motion to Dismiss

Respondent moves to dismiss Complainant's 14 CFR Part 16 Complaint for failure to comply with 14 CFR §16.23, failure to provide sufficient documentation to substantiate its allegations. Complainant believes it has provided sufficient documentation for the FAA to make a determination of whether the Airport Sponsor, the Respondent, has acted in compliance with Grant Assurance 22(a) and 22(c). Further, "If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint." *Jim Martyn, Complainant v. Port of Anacortes, Washington, Respondent*, 2003 FAA LEXIS 162, *57. Complainant respectfully asserts it has provided sufficient documentation for the FAA to determine whether the Airport Sponsor is in compliance with Grant Assurances 22(a) and 22(c) and that there is more than a sufficient basis to warrant further investigation.

Complainant believes its Complaint is timely and ripe as years have passed with no appreciable investment by Carver that would nearly approximate the investment required of Complainant under its lease, including but not limited to the fact Carver has not installed above-ground fuel farms even to this day, which Complainant was required to do in 2007, and which the Airport Minium Standards have required since 2006.[110] JA's Complaint would have been timely at any time since the granting of Carver's Lease on January 1, 2022, if not since the date

[108] Complainant's Exhibit No. 19: 07/25/2022 deposition of Alex Alexandrou, Chief Management Officer of City of Aurora, pgs. 245 – 248

[109] Complainant's Exhibit No. 18: Multiple emails from Counsel for JA to Alex Alexandrou, Chief Management Officer for City of Aurora and to Counsel for City of Aurora and Correspondence from JA's principal to Aurora offering to pay $8.50 per sq. ft. to rent the subject space. And confirming email

[110] *See* Exhibit No. 29, 2006 Minimum Standards

Carver assumed Lumanair's Lease in July 2021. From the inception of Carver's Lease, the terms were so favorable to Carver and prejudicial to Complainant, that there was no realistic way to infer the Respondent entered into a lease with Carver that provided for essentially the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators, including Complainant.

Respondent asserts Complainant has not presented a case for unjust discrimination under Grant Assurance 22. Respondent asserts Complainant has not shown it has been unjustly discriminated against by denying JA a preference that it has provided to Carver in the context of being similarly situated. Complainant believes it has provided the two leases in question which (1) indicate on their face the substantially different terms provided to the two FBOs, and (2) explained why the two leases provide vastly more favorable terms to Carver than JA in practice and current reality. Complainant believes it has provided more than sufficient evidence to show the two FBOs are similarly situated and certainly that the two FBOs are "two users making the same or similar use of the airport." *Arlet Aviation, LLC, Complainant,* No. 16-17-17, 2018 WL 11191808, at *4. Finally, JA has demonstrated by the sworn testimony of Aurora's Chief Management Officer, Alex Alexandrou, that the sponsor, City of Aurora, will not agree to amend JA's lease terms to make them more equitable with the terms of the lease offered to Carver.[111] Further, Complainant has demonstrated that the difference in lease terms has resulted in significant economic affect and discrimination and resulted in an unjust advantage to Carver, demonstrated by Carver's ability to offer far lower fuel prices, due to the significant difference in

[111] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263, lines 2 - 7

overhead resulting from the terms of the two leases offered by Respondent to Complainant and Carver, two FBOs operating at the same airport, offering the same services to the public.[112]

Respondent urges the FAA to find that a difference in total area under lease, of approximately 15%, is sufficient to show the two FBOs are not similarly situated. But, Respondent provides no citation to authority that would substantiate that claim. It is probably true there are no two FBOs that are exactly the same physical size. If that were truly the relevant consideration, an airport sponsor could simply determine two competing FBOs at the same airport were marginally different in the size of their footprint and avoid Grant Assurance 22 altogether. There is no decision so holding.

Respondent asserts the difference in the lease terms offered to the two FBOs does not violate Grant Assurance 22, because Grant Assurance 22 only prohibits difference in treatment and rental rates as long as the differences are not unjust. (Respondent's Motion, pg. 10). Complainant asserts the advantages offered to Carver under its Lease and Construction and Capital Improvement Rider provide substantial benefits to Carver, not made available to JA, resulting in far less investment, if any, by Carver, while JA's lease provides no such benefits. This results in JA paying substantially more than Carver to occupy its leasehold, and has resulted in JA paying approximately $500,000 per year more than Carver since at least January 1, 2022, if not since July 2021. Thus, the difference in lease terms is not theoretical, and not without significant harm to Complainant. Real damage has been done and will continue to be done to the detriment of JA, until the unjust differences in the two leases are rectified.

Finally, in regard to Grant Assurance 22, Respondent argues that "The Director also recognized that airport sponsors must sometimes offer incentives such as reduced rental rates to

[112] *See* Complainant's Exhibit No. 27 and Affidavit of Bradley Zeman, Exhibit No. 28

obtain an FBO because the venture may not be profitable during the pioneer period." (Respondents' Motion, pg. 10) The year Respondent allowed Carver to assume Lumanair's August 1, 2020 Lease, and the year Respondent entered into a new lease with Carver, January 1,2022, were decades after the pioneer period, perhaps in 1982, when Respondent offered a lease to Lumanair. But, even that lease, entered into long before the JA Lease, required the surrender of all structures to Respondent at the termination of the lease, after which Respondent could rent the spaces for market comparable rent in order to assist in making the Airport self- sustaining. But, Respondent did not do so. All of these acts and omissions by Respondent have directly and substantially affected Complainant.

Respondent asserts that JA's claims regarding ownership should be dismissed as moot because JA refused an offer to acquire title to one hangar, the BP Hangar. Respondent ignores that it made no offer to reimburse JA for the amount spent to acquire and donate the BP Hangar to the City or to reimburse JA for the interest paid on the $4,000,000 spent to acquire the BP Hangar and immediately donate the BP Hangar to the City, and then to commence refurbishing the BP Hanger at no cost to the City. Thus, the simple transfer of title to the BP Hangar, and no other hangars or office space under JA's Lease would not have resolved the underlying substantial economic disparity resulting from the two leases in question. Respondent acknowledges that dismissal of a Part 13 Complaint does not preclude a Part 16 Complaint, but goes on to assert "Part 16 is intended to address current compliance and not punish past violations." (Respondent's Motion, pg. 11.) Complainant asserts the disparity in economic requirements created by the two leases is a present and ongoing issue and, by no means, an issue related to past resolved problems. While a successful action by the airport to cure any alleged or potential past violations of applicable federal obligations may be grounds for dismissal of that

portion of a claim, the present matter does not involve a successful action by the Airport sponsor related to past discrepancies.

Respondent goes on to assert "even assuming the decision to allow Carver to own its own facilities was discriminatory and constitutes a violation of Grant Assurance 22, it has been mooted by the City's 2021 offer and corrective action plan, which remains available to JA and would immediately and successfully cure this alleged violation upon JA's acceptance." (Respondent's Motion, pg. 12.) Nothing could be farther from the truth. First of all, Respondent did not offer to transfer ownership of all the hangars and office space under JA's Lease to the ownership of JA. Respondent only offered to transfer one large corporate hangar, the BP Hangar, to JA, which JA paid for at the inception of its lease, in the amount of $4,000,000 and then maintained and refurbished at JA's expense since 2007. But Respondent never offered to reimburse JA for the amounts spent by JA, to Respondent's benefit, or the interest on the purchase price since 2007. Carver, on the other hand, was allowed to retain all its hangars and office space under its own ownership, with little or no obligation to Respondent, other than to pay ground rent in the event it did not install above-ground fuel tanks by July 1, 2024 or elected not to make improvements to the leasehold by January 1, 2027. Accordingly, Carver could mortgage its buildings, or use them as collateral to reduce finance costs or sell them outright. None of those economic advantages are available to JA under its Lease.

Finally, Respondent argues Complainant has not presented sufficient proof of a violation of Grant Assurance 25. Respondent fails to note paragraph 3 on page 8 of JA's Part 16 Complaint, continuing on page 9, wherein JA cites deposition testimony of Aurora's Chief Management Officer, Alex Alexandrou, concerning his meeting with Carver's principal, shortly after which they toured a building in Aurora that so badly needed rehabilitation that Mr.

Alexandrou told Carver's principal Aurora would sell him the building for $1.00, (Complaint, page 9).[113] Complainant also provided a copy of Aurora's file-stamped Verified Fourth Amended Complaint,[114] a public record, seeking eviction of Lumanair. There was an about-face after Mr. Alexandrou met with Carver's principal, shortly after which the City gave Carver a tour of the downtown building in need of complete refurbishing, offering to sell the building to Carver for $1.00, shortly after which Lumanair's lease was renewed,[115] and shortly thereafter, assigned to Carver.[116] And shortly after that, Respondent offered Carver its current lease of January 1, 2022[117] providing extraordinarily favorable terms to the direct detriment of Complainant, as explained more fully herein. Certainly, the odd timing of the granting of an extraordinarily favorable lease to Carver near the same time as Carver or a Carver affiliate agreed to rehabilitate an abandoned building in Aurora, raises the implication that one favorable agreement was related to the other. Solid evidentiary proof of a relationship between these two unusual events would be difficult for Complainant to provide, absent subpoena power and the right to take depositions. Rarely would a sponsor admit to the relationship between these two temporally related, extraordinary coincidental, agreements. Respondent respectfully suggests the existence and timing of the two agreements raises enough question to warrant further investigation by the FAA.

However, even absent evidentiary proof of Respondent offering to discount the cost of operating an FBO at the Airport, questions are still raised under FAA Order 5190.6B, and section 15.13(i) which states:

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[113] Complainant's Exhibit No. 19, pgs. 229 - 235
[114] Complainant's Exhibit No. 21
[115] Complainant's Exhibit No. 5
[116] Complainant's Exhibit No. 6
[117] Complainant's Exhibit No. 7

"Prohibited Uses of Airport Revenue. Sponsor Aeronautical Use. Use of land for free or nominal rental rates by the sponsor for aeronautical purposes (e.g., a sponsor-owned fixed base operator) – except to the extent permitted under Revenue Use Policy section on the self sustaining requirement – is prohibited use of airport revenue." (*William Alfred Hicks*, 2016 FAA LEXIS 141, *39)

Thus, to the extent Respondent offered a Lease to Carver at a nominal rate, while refusing Complainant's offer, or an offer from any third party, to rent the same space at $8.50 per square foot, despite the Airport operating at a significant loss for years,[118] the question of compliance with Grant Assurance 25 is an issue worthy of further investigation by the FAA.

In conclusion, "A motion to dismiss a complaint must state the reasons for seeking dismissal of the entire complaint or of specified claims in the complaint. To prevail, the movant must show either (1) the complaint, on its face, is outside the FAA's jurisdiction; (2) the complaint, on its face does not state a claim that warrants an investigation or further FAA action; or (3) complainant lacks standing, under 14 CFR §§ 16.3 and 16.23, to file a complaint. (14 CFR § 16.26(b.)) *Arlet Aviation, LLC*, Complainant, No. 16-17-17 2018 WL 11191808, at *3.

Pursuant to 14 CFR 16.229(b), Respondent has the burden of proof as the proponent of its Motion to Dismiss. Respondent has not provided any basis under 14 CFR § 16.26(b.) for dismissal of the Complaint. Therefore, Respondent's Motion to Dismiss should be denied and Complainant seeks and requests denial of Respondent's Motion to Dismiss.

II. Answer Directed to Respondent's Motion for Summary Judgment

"A Motion for summary judgment may be based upon the ground that there is no genuine issue of material fact for adjudication and that the complaint, when viewed in the light most

[118] Complainant's Exhibit No. 20

favorable to the Complainant, should be adjudicated in favor of the respondent as a matter of law. A motion for summary judgment may seek dismissal of the entire complaint or dismissal of specified claims or issues in the complaint." 14 CFR CFR § 16.26(c)(1).

Complainant reasserts its objection that 14 CFR § 16.26(c)((2) provides that the movant shall file a concise statement of material facts as to which the respondent contends there is no issue of material fact.

Respondent has included a section titled "Undisputed Material Facts" on pages 2 through 4 of its Response. It is unclear whether Respondent intends this section to serve as the required concise statements of the reasons for seeking dismissal under 14 CFR § 16.26(b)(1) and the concise statement of material facts as to which respondent contends there is no issue of material facts 14 CFR § 16.26(c)(2), or if Respondent intends this section to serve as the required concise statement of material facts under 14 CFR § 16.26(c)(2) and has failed to provide the required concise statements of the reasons for seeking dismissal under 14 CFR § 16.26(b)(1).

Without waiving this objection, Complainant addresses each point raised by Respondent and Answers as follows in the order presented:

Parties

Complainant adopts and reasserts its answers to the section of Respondent's combined motions titled, "Parties", found on pages 3 – 4 above.

JA's 2007 Lease

Complainant adopts and reasserts its answers to the section of Respondent's combined motions titled, "JA's 2007 Lease", found on pages 5 – 6 above.

Carver's 2022 Lease

Complainant adopts and reasserts its answers to the section of Respondent's combined motions titled, "Carver's 2022 Lease", found on pages 6 – 12 above.

Standard of Review

Complainant adopts and reasserts its answers to the section of Respondent's combined motions titled, "Standard of Review", found on pages 12 – 13 above.

Relevant Grant Assurances

Complainant adopts and reasserts its answers to the section of Respondent's combined motions titled, "Relevant Grant Assurances", found on pages 13 above.

Argument

Complainant adopts and reasserts all of its arguments and positions stated above in answer to Respondent's Motion to Dismiss, and in addition thereto, in the order presented, answers as follows:

Despite all of the preceding, Respondent asserts there is no genuine issue of material fact for adjudication, and the Complaint, when viewed in the light most favorable to the complainant, should be determined summarily in favor of the Respondent as a matter of law.

Complainant asserts there are genuine issues of material fact that, when taken in the light most favorable to Complainant, prevent summary judgment in favor of Respondent and entitle Complainant to relief in the nature of further investigation by the FAA and enforcement of Grant Assurances consistent with the purposes of the Assurances to insure, among other forms of relief, that Respondent provides the same rates, fees, rentals and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

Specifically, Complainant argues the following:

1. Respondent asserts it is entitled to summary judgment because JA failed to put forth any evidence of non-compliance with Respondent's grant assurances. Complainant believes it has presented more than ample evidence of non-compliance with Grant Assurance 22 (a) and Grant Assurance 22 (c) in addition to raising a good faith question about compliance with Grant Assurance 25. The evidence presented by Complainant is sufficient to find Respondent in violation of Grant Assurances and, at a minimum, indicating a genuine issue of material fact warranting further investigation, precluding Respondent from summary judgment, particularly when viewed in the light most favorable to Complainant.
2. Respondent denies the two FBOs are similarly situated. Complainant has presented evidence that it and the other FBO at the Airport, Carver, are similarly situated physically and that they provide the same services to the public on adjacent and contiguous leaseholds. The difference in JA's and Carver's lease terms are not evidence of not being similarly situated; rather, these terms are simply clear evidence that the two similarly situated FBOs are allowed to conduct business at the Airport at substantially different costs. Complainant believes there is no basis in the record to assert the two FBOs are not similarly situated, and no prior decision supporting Respondent's assertion the two FBOs are not similarly situated, raising genuine issues of material fact warranting further investigation, precluding Respondent from summary judgment, particularly when viewed in the light most favorable to Complainant.
3. Respondent asserts JA never requested and was not denied similar lease terms. However, the City made clear to JA in 2007 that substantial investment in hangars and construction of a fuel farm were prerequisite conditions of conducting an FBO business

at the Airport; no terms similar to the Carver lease were offered to JA, either then or more recently.[119] Further, Respondent ignores the sworn testimony of its Chief Management Officer, Alex Alexandrou, who was specifically asked if he would amend JA's lease to make it more equitable with Carver's lease, and who testified he would not amend JA's lease, as he saw no business reason to do so.[120] In addition to Mr. Alexandrou's sworn testimony, the parties have engaged in two prior Part 13 informal complaints in attempt to resolve the present issues, with Respondent refusing to make any voluntary modifications to ameliorate the discriminatory economic effect caused by the lease entered into between Respondent and Carver, to the detriment of Complainant, JA. Complainant, through sworn testimony of Respondent's Chief Management Officer and other evidence has raised a genuine issue of material fact warranting further investigation, precluding Respondent from summary judgment, particularly when viewed in the light most favorable to Complainant.

4. Respondent asserts it was within its rights to negotiate and enter a lease with Carver. Complainant does not contest the City had a right to negotiate and enter into a lease with Carver. However, as demonstrated above and below, the lease with Carver, created by the City, provided Carver with extraordinarily favorable lease terms, vastly more favorable than the lease terms under which JA operates, to the economic benefit of Carver and detriment of JA. The lease between Respondent and Carver allows Carver to occupy its leasehold at a fraction of what is required under JA's lease to offer the same

[119] *See* the affidavit of Brad Zeman, President of JA, Exhibit No. 28 hereto.
[120] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263, lines 2 - 7

services to the public from adjacent and contiguous leaseholds on the same airport, raising at a minimum, a genuine issue of material fact warranting further investigation, precluding Respondent from summary judgment, particularly when viewed in the light most favorable to Complainant.

5. Lastly, the City asserts the FAA lacks jurisdiction allegedly because the two FBOs are not similarly situated and therefore Respondent is not required to provide "identical lease terms" (Respondent's Motion, pg. 26.) Complainant does not argue the leases should be "identical" but rather that they result in fair and reasonable terms for the use of the airport. Respondent's assertion that the two FBOs are not similarly situated is similar or identical to the argument first presented by the City, referenced in No. 1 above. Complainant has presented clear evidence the two FBOs are similarly situated, with virtually identical FBO privileges, virtually identical in the services offered to the public on adjacent and contiguous leaseholds at the same airport. Summary Judgment for the Respondent cannot be based on a finding the Complainant and Respondent are not similarly situated. precluding summary judgment in favor of Respondent. The City's decision to charge Carver a *lower* rate after 15 years of inflation, at a time when airport revenues were not covering Respondent's costs, does not render the two FBOs not similarly situated. The leases, even though entered into at different times, must still be equitable and should not provide an unreasonable economic advantage to either FBO. Complainant asserts the FAA has jurisdiction over this mater and that the evidence presented by Complainant raise genuine issues of material fact warranting further investigation, precluding Respondent from summary judgment, particularly when viewed in the light most favorable to Complainant.

Complainant will respond in the order of the arguments presented by Respondent:

A. Complainant has put forth sufficient evidence of noncompliance with grant assurance.

Respondent argues the proponent of a motion for summary judgment can prevail by showing that the other party has no evidence on an issue on which it has the burden of proof. The City next asserts the FAA should grant summary judgment in its favor because "JA failed to present substantial and probative evidence to show that the City was noncompliant with its grant assurances by unjustly discriminating against JA. (Respondent's Motion, pg. 13.) The City cites *Flightline Ground, Inc., v Louisiana Dept. of Tans. & Dev.,* FAA Docket No. 16-11-01, Final Decision at 28 (Jan. 15, 2015) which is a decision based on a completely different set of facts and circumstances and allegations, with no real bearing on the issues before the FAA on Complainant's case, other than the citing of general principles. Likewise, Respondent cites *Carter v. Am Oil Co.,* 139 F.3d 1158, 1163 (7th Vir. 1998) for the general proposition that Courts are not required to assume the truth of conclusory allegations. Complainant's allegations are not conclusory and are based on the solid written record presented to the FAA, particularly the terms of the leases entered into by the City with the two competing FBOs. Nonetheless, Respondent asserts, although the leases have been included in the record, that Complainant's claim is premised on nothing more than false, misleading, and unsupported allegations dispersed throughout JA's Complaint. (Respondent's Motion, pg. 14.) However, JA's Complaint is not based on "innuendos or general accusations."[121] JA's claims are based on the plain language of the leases involved, with no need for strained interpretations.[122]

[121] Respondent's Motion to Dismiss and Motion for Summary Judgment, pg. 14

[122] *See* Complainant's Exhibits Nos. 1 and 7, the two leases between the City and JA and the City and Carver

Respondent attempts to support its position by asserting JA's lease had no construction and capital improvements rider and JA had no obligation to obtain funding for construction and renovation of "its" facilities. (Respondent's Motion, pg. 14.) While it is true, JA's obligations under its Lease were not contained in a *separate rider*, this assertion or implication JA had no construction or capital improvement obligations is contrary to the plain language of JA's lease found at Exhibit No. 1, pgs. 1 and 2, ¶¶ 2) and 3). "Section 2) Additional Property", found on page 1 of Exhibit No. 1 plainly provides, "Tenant shall negotiate and acquire the hangar commonly referred to as the BP Hangar, and shown on Exhibit A, and if so acquired, Tenant shall convey said hangar building, exclusive of any personal property acquired in the sale, to Landlord." "Section 3) Issuance of Bonds and Rent", on page 2 of Exhibit No. 1, provides for financing and mandates that all financing "shall be used by Tenant for the construction of a fuel farm on Parcel 1, the improvements and renovations of hangars 5, 6 and 7 in accord with the general description of improvements attached hereto as Exhibit C and as set forth in the bond documents, and the acquisition of the BP Hangar and personal property contained therein." Thus, to assert JA had no obligation to make improvements to its leasehold is incorrect and misleading, at best.

Respondent next asserts JA was not forced to come to the Airport in 2007. Of course JA could decide not to accept an airport contract in 2007, but that does not allow an airport sponsor to impose draconian terms for access to its airport. Both FBOs are entitled to access to the Airport to conduct business, on fair and reasonable terms, under 49 U.S.C. § 47107(a)(1) and Grant Assurance 22. The JA contract was acceptable to JA in 2007, because JA could not have known that the City would later choose to allow a competing FBO to conduct the same kind of business at a fraction of airport costs, with no relief to JA to keep the FBOs on comparable terms. The question is whether, upon being allowed to operate FBOs at the Airport, both JA and Carver were reasonably subject to

the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

Next, Respondent asserts "JA's claimed discrepancy in the "occupancy" rent paid by each FBO is unfounded because it omits the fact that Carver owns its buildings and office space and that Carver paid $4,000,000 for the purchase of its facilities." (Respondent's Motion, pg. 15.) Although the record contains an indication Carver purchased the Lumanair business for $4,000,000, there has been no confirmation that $4,000,000 was ever actually paid, and on information and belief, the purchase agreement contained an earn-out clause which was never met and therefore the maximum purchase price of $4,000,000 was never paid.[123] And certainly, whatever was paid for Lumanair was not paid to the City. Conversely, Complainant was required to *donate a $4,000,000 building to Respondent* at the outset of its lease. JA does not complain about the terms of its lease. JA complains that a lease granted to Carver 15 years later provides terms much more favorable resulting in a huge economic advantage to Carver which in effect is violative of Grant Assurance 22. In essence, Carver's purported payment to Lumanair is analogous to investments JA made in equipment and other resources for its FBO business, which are not payments to the City and not the subject of the Complaint. However, the issue before the FAA is not what either FBO paid to establish its initial leasehold and to purchase its required trucks and equipment.[124] The issue in this case is the amount two FBOs are required to pay to the City in order to provide virtually identical services to the public, and in order to help the Airport become and stay self-sustaining, and whether those amounts are reasonably uniform and equitable, not what either FBO invested in its business before entering a lease with the City. The issue before the FAA is the inordinate and discriminatory difference in what

[123] *See* Exhibit No. 28, Affidavit of Brad Zeman, Presidente of JA, at ¶ 3.
[124] Carver's Lease, Exhibit No. 7 at pg. 23, ¶ 8. provides that "Tenant's acquisition of the Lumanair business operations and Leased Premises are specifically excluded from the required investment."

the City is charging Carver for occupancy of its leasehold compared to the obligations required of JA for occupancy of its leasehold, in order to offer the same services to the public on adjacent contiguous leaseholds at the same Airport.

Respondent also asserts Carver owns its buildings and office space. That is true. However, Carver's ownership of its buildings and office space is the foundation and cause of the current problem. The City clearly required the surrender of Lumanair's buildings and office space to the City at the termination of its leases,[125] [126] and in fact was in the process of evicting Lumanair for multiple reasons.[127] But the City reversed its course after meeting with Carver's principal[128] and granted Lumanair a new lease dated August 1, 2020,[129] allowed Carver to assume the Lumanair lease on July 27, 2021[130] and entered into a new lease with Carver on January 1, 2022.[131] This newest lease allows Carver to retain ownership of the hangars and office space previously leased to Lumanair, rather than taking back the buildings and charging market comparable rent. This is particularly discriminatory and to the economic disadvantage of Complainant and contrary to Respondent's obligation to attempt to make the Airport as self-sustaining as possible, particularly in light of Respondent's unexplained refusal to accept Complainant's offer to lease the subject hangars and office space at market comparable rates[132] or to seek market comparable rates from Carver or a third party. **To be clear, Complainant does not assert Respondent had an obligation to lease additional space to Complainant.** Complainant's point is that failure to take back the subject space

[125] Complainant's Exhibit No. 5, pg. 9, ¶ b.
[126] See Complainant's Exhibit No. 28 attached hereto, Lumaniar's 1982 Lease.
[127] Complainant's Exhibit No. 21
[128] Complainant's Exhibit No. 19, pgs. 229 - 235
[129] Complainant's Exhibit No. 5
[130] Complainant's Exhibit No. 6
[131] Complainant's Exhibit No. 7
[132] Complaint at pg. 8; and Complainant's Exhibit No. 18: Multiple emails from Counsel for JA to Alex Alexandrou, Chief Management Officer for City of Aurora and to Counsel for City of Aurora and Correspondence from JA's

and failure to lease the subject space at market comparable rates, whether to Complainant or to Carver or to a third party, is what caused the current significant imbalance in the net costs to Complainant and Carver, resulting in rates, fees, rentals and other charges that are not uniformly applicable to all other fixed-based operators. This in turn resulted in actual, direct and substantial economic harm to Complainant, contrary to the text and intent of Grant Assurance 22(c), and contrary to Respondent's obligation to attempt to make the Airport as reasonably self-sustaining as possible.

Respondent, however, claims "Carver's lease specifically provides that it is required to undertake a minimum $10,000,000 investment according to the terms and schedule set forth in the Rider." (Respondent's Motion, pg. 15) This assertion belies that plain text of Carver's lease. Carver's Lease, pursuant to the Construction and Capital Improvements Rider[133] provides:

> Pg. 22, A. "Carver shall undertake a minimum $10,000,000 investment ("Tenant Investment") in Premises including but not limited to capital improvements to the Premises, the actual amount to be determined in accordance with this Rider. Tenant investment shall include but not be limited to the costs to complete installation of a new fuel farm with one or more aboveground fuel tanks, removal of all of Tenant's existing underground fuel storage tanks, the demolition, remodeling and refurbishing as reasonably necessary of all areas comprising its fixed base operation including its offices, lobby, hangars, interior and exterior signage, building façade and cladding, lighting, parking lot, landscaping and surface beautification. **Tenant's costs related to its acquisition of additional facilities at the Airport may be attributed to the minimum required expenditures, as denoted below.** Tenant shall complete the following amounts of Tenant Investment pursuant to the following schedule:

[133] Complainant's Exhibit No. 7, pgs. 222, 23 and 24

Pg. 22, A. 1. Tenant shall expend a minimum of $3,000,000 in construction and capital improvements within the first five years of the Lease (i.e., on or before December 31, 2026). At the end of the first five (5) years, the parties shall confer and Landlord and Tenant shall agree to and determine what additional remodeling or refurbishing is reasonably necessary.

Pg. 22, A. 2. Tenant shall expend the minimum amount of $3,000,000 in construction and capital improvements within years six through ten of this Lease (i.e., on or before December 31, 2031).

Pg. 22, A. 3. Tenant shall expend the minimum amount of $4,000,000 in construction and capital improvements within years eleven through twelve of this Lease (i.e. on or before December 31, 2033).

Pg. 22, A. 4. Tenant shall have until July 1, 2024 to complete the installation of the fuel farm and meet all Minimum Standards as outlined in the Lease, which any amounts expended shall count towards the total amount of Tenant Investment required by this Rider. **If Tenant fails to complete this installation and meet the Minimum Standards by July 1, 2024, Tenant shall immediately be required to pay ground rent[134] for its total occupied facilities at the Airport** as liquidated damages for this breach, until Landlord can confirm that Tenant has installed the fuel farm and has met all Minimum Standards as outlined by the Lease. Landlord shall not be precluded from pursuing any other remedy in response to Tenant's breach, under law or equity. Tenant's payment of ground rent under this provision

[134] $46,669.80 per Complainant's Exhibit No. 7: Pg. 3 (second to last paragraph) and Complainant's Exhibit No. 7: Pg. 4, ¶ "b."

shall not count towards the amount of the minimum Tenant's Investment as is allowed under Section B. of this Rider. (emphasis added)

Pg. 22, 23 A. 5. The expenditures related to Tenant's establishment of new or additional tenancies or ownership of facilities **by related entities under the control or having common ownership or management of Tenant** at the Airport shall be applicable and count towards the total amount of Tenant Investment required by this Rider. Tenant's role as the designated procurer of an additional tenancy or ownership of facilities at the Airport **by an entity unrelated to or not under the control of Tenant** shall also satisfy this requirement. The City must be able to confirm the total amount of investment made by the new tenant or facility owner that was procured by the Tenant to establish that this requirement has been satisfied. **Any use of outside investment as a means for Tenant to meet the required minimum Tenant investment shall be limited to a maximum amount of $4,000,000.** Said outside investment shall only be utilized to apply to the overall amount of the remaining required Tenant Investment in years 6 through 12 of the Lease. The party by which an outside investment is made must remain a tenant at the Airport for a minimum of 5 years in a manner no less than its original tenancy or ownership at the Airport. Tenant must advise Landlord of Tenant's intent to utilize an amount of outside investment to meet this requirement prior to the investment being made by an outside entity and Landlord must provide consent to tenant in writing of the acceptance of this investment. Tenant's inability to utilize an outside investment until years 6 through 12 of the Lease shall not preclude Tenant presenting to Landlord an investment from an outside entity during years 1 through 5 of the Lease. If the investment is approved by Landlord during years 1 through 5 of the Lease, the investment may only be utilized towards the remaining Tenant Investment in years 6 through 12.

Pg. 23, A. 6. Upon Landlord's request, Tenant shall provide written documentation, including receipts, bills, invoices, check stubs, etc., demonstrating capital expenditures required of Tenant in this Rider.

Pg. 23, A. 7. If Tenant expends more than the target amounts denoted in the periods referenced above in Subsections A(ii) through A(iii), [sic] then the overage shall count towards the overall total amount of Tenant's Investment required by this Rider.

Pg. 23, A. 8. Tenant's expenditures incurred after the assignment of the Lumanair Lease for the Leased Premises on July 23, 2021 shall be considered applicable expenditures for purposes of this Rider. However, Tenant's acquisition of the Lumanair business operations and Leased Premises are specifically excluded from this required investment.

Pg. 23, 24, B. **If Tenant fails to meet the required level of construction and capital improvements in years one (1) through five (5) of the Lease, Tenant shall be required to pay Ground Rent for its total occupied facilities at the Airport, beginning on January 1, 2027. Tenant's payment of Ground Rent shall continue until the total amount of Tenant Investment during years one (1) through five (5) added to the total amount of Ground Rent paid by Tenant reaches the amount of $3,000,000. This same condition shall apply to Tenant in years six (6) through ten (10 of the Lease with Tenant's Ground Rent payments continuing until Tenant expends a total of $6,000,000 in combined Tenant Investment and Ground Rent paid to Landlord with Tenant receiving credit for all amount of Tenant Investment and Ground rent paid during the Term of the Lease. This same condition shall apply to Tenant in years eleven (11) through twelve (12) of the Lease, with Tenant's Ground Rent payments continuing until Tenant expends a total of $10,000,000 in**

combined Tenant Investment and Ground Rent paid to Landlord with Tenant receiving credit for all amount of Tenant Investment and Ground Rent paid to Landlord then to the extent Ground Rent was due by Tenant pursuant to this Section B the payment of Ground Rent will cease through the expiration of the Rent Abatement Period. Any Ground Rent paid by Tenant as liquidated damages under Section A(4) of this Rider shall not satisfy any delinquency in the required Tenant investment.

Pg. 24, C. Absolutely no renewal of this Lease will be authorized or allowed after December 31, 2041 unless all conditions of the Construction and Capital Improvements Rider are fully completed to the satisfaction of Landlord, including the completion of $10,000,000 in Tenant Investments, or payment of Ground Rent in the amount of $10,000,000 or combination of both."

(emphasis added)

Carver's Construction and Capital Improvements Rider clearly gives Carver the option of making actual investments in its leasehold – *or in the alternative* – beginning to pay Ground Rent in the comparatively minimal amount of $46,669.80 per year.[135] [136] If Carver actually had to install above-ground fuel tanks by July 1, 2024 and actually had to invest $3,000,000 in the first five years of its lease, it still would not match JA's obligation to pay debt service on $9,400,000, approximately $500,000 per year,[137] from the *first day of its lease*, not some part of, or no part of, $3,000,000 over the first five years. Nor would that ameliorate the fact, due to the terms of the leases granted to Carver by Respondent, JA has had to pay more than $1,500,000 since Carver assumed Lumanair's lease on July 27, 2021, while Carver has not been required to pay any actual amount

[135] Complainant's Exhibit No. 7: Pg. 3 (second to last paragraph)
[136] Complainant's Exhibit No. 7: Pg. 4, ¶ "b."
[137] The amount fluctuating periodically due to interest rate variations

over the same period of time, much less debt service on $9,400,000. This economic advantage to Carver has resulted in Carver undercutting JA's fuel prices at Respondent's Airport, offering fuel prices well below the prices offered by Carver at nearby airports serviced by Carver.[138]

Once again, Respondent asserts Complainant completely omits the amount Carver paid to buy Lumanair and any information about its financing.[139] (Respondent's Motion, pg. 16). However, this argument is a *red herring*, as Carver's Lease specifically excludes Carver's cost of acquisition of Lumanair from its optional investment amount.[140] Further, even if that argument were to be pursued, Respondent has omitted the substantial costs expended by Complainant to acquire the equipment and machinery required to operate its business prior to initiation of its lease. Neither Carver's pre-lease costs nor JA's pre-lease costs are known or referenced under either lease and should not be considered in any determination. Nonetheless, Respondent insists Carver's acquisition costs should be considered by the FAA, (Respondent's Motion, pg. 17) even though such costs incurred by Carver and incurred by Complainant were not paid to the City and not relevant to compliance with Grant Assurances. Moreover, the investment "required" of Carver is all to property Carver continues to own, while JA's required investment was and continues to be all to City-owned property.

B. Complainant and Carver are similarly situated.

Respondent begins by citing well-known factors that may justify differences in two leases,

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[138] *See* Complainant's Exhibit No. 27

[139] Respondent's claim Carver paid $4,000,000 for Lumanair is not substantiated and, on information and belief, is not true, as it is believed in good faith Carver's purchase agreement with Lumanair contained an earn-out clause which was never achieved.

[140] Carver's Lease, Exhibit No. 7 at pg. 23, ¶ 8. provides that "Tenant's acquisition of the Lumanair business operations and Leased Premises are specifically excluded from the required investment."

including the lease period, business plan proposed, location of facilities, level of service and amenities, scope of services, investment, market conditions, and reasonable actions by the sponsor to promote and protect its ability to continue to serve the interests of the public in civil aviation, including the enlistment of prudent business practices that may change over time, citing *Richard M. Grayson & Gate 9 Hangar LLC, Complainant,* FAA Docket No. 16-05-13, 2006 FAA Lexis 846 *22, *23. Respondent goes on cite *Wilson Air Ctr., LLC v. Memphis and Shelby Cnty. Airport Auth.,* FAA Docket No. 16-99-10 for the principle that "lease terms executed at different points in time can be justified by the market conditions present at the time of lease execution." (Respondent's Motion, pg. 18).

Respondent, which bears the burden of proof on its motion for summary judgment, asserts (1) JA failed to meet its burden of proof that it is similarly situated; (2) the leases were executed decades apart; (3) for different sized leaseholds; (4) offering different amenities; and (5) under significantly different business and/or economic circumstances. (Respondent's Motion, pg. 18).

First, Respondent asserts Complainant and Respondent are not similarly situated. While implicitly acknowledging both have charter operations and both have flight schools, Respondent asserts they "offer different types of charter services" and "their flight schools are governed by different federal regulations." (Respondent's Motion, pg. 18). In support, Respondent cites the deposition transcript of D. Kirk Shaffer, City's Exhibit 10, at 12:7 – 13:2. On those pages Mr. Shaffer acknowledges both Carver and JA offer charter services, but notes the charter service utilize different aircraft. One uses turbojet aircraft while the other uses turboprop aircraft. Respondent cites to no FAA decision indicating that a difference in type of aircraft used by two FBO charter operations is sufficient to determine the two are not similarly situated. Likewise, Mr. Shaffer acknowledges that both FBOs offer flight training, but notes that one of the two FBOs operates its

school under Part 141, while the other operates under Part 61. Flight training is an optional auxiliary service that may be offered by an FBO. Again, Respondent fails to cite any FAA decision suggesting that flight training under Part 141 versus flight training under Part 61 is sufficient to make a determination that two FBOs operating at the same airport offering virtually the same services are not similarly situated.

It is true the subject leases were entered 15 years apart. The FAA has determined in prior decisions that later rates can be higher than in earlier contracts, based on market conditions at the time. However, Respondent has not elaborated or explained how it would be justified in charging Carver even the same rate, much less a lower rate than JA for occupancy of its leasehold, when entering a lease with Carver 15 years after entering a lease with JA. It is common knowledge the cost of land and leaseholds increased dramatically between 2007 - when JA entered its lease with Respondent - and 2022 when Respondent offered the current lease to Carver. This fact is documented in the report of Economist, Robert Baade, in Complainant's Revised Part 16 Complaint.[141] Under the Carver lease, Carver has the option to pay as little as $46,669.80, based on the total square footage under Carver's Lease being 113,740.5[142] and the stipulated ground rent, $0.41032 per sq. ft.[143] If Carver eventually began to pay ground rent in July 2024 or January 2027, it would be paying only $46,669.80 per year, while JA has been paying and will continue to pay more than $500,000[144] per year in rent equivalents to occupy Aurora's hangars, office space and the BP Hangar purchased by JA and immediately transferred to Aurora, pursuant to JA's Lease.[145] Thus, even

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[141] Complainant's Exhibit No. 16: January 30, 2023 Rebuttal Report of Economist, Robert Baade, Pg. 21, (first paragraph)

[142] Exhibit No. 7: Pg. 3

[143] Exhibit No. 7: Pg. 4, paragraph "b."

[144] Exhibit No. 9: Pg. 11 and Exhibit No. 8, Pg. 2

[145] Exhibit No. 1, pg. 2, paragraph "3)"

if Carver began to pay ground rent of $46,669.80 per year, that would only amount to approximately 9.3% of what JA must pay to the same airport sponsor to offer the same services to the public at the same airport. To make matters worse, neither Lumanair under its August 1, 2020 Lease,[146] assumed by Carver in July 2021, nor Carver under its 2022 Lease[147] has been required to pay any amount whatsoever to Aurora since August 1, 2020 for occupancy of hangars and office space. During that four year period, JA has been required to make debt service payments of more than $500,000 per year. Since Carver assumed Lumanair's Lease in July 2021, JA has been required to pay nearly $1,500,000 more than Carver for the same privileges to offer the same aeronautical services at the same airport to the flying public. Respondent, which bears the burden of proof, offers no explanation why Carver would be granted a lease with net terms so vastly favorable to Respondent.

Further, the prohibition of unjust economic discrimination does not prevent a sponsor from accepting differing lease rates resulting from differing time frames of lease terms. A sponsor does not have an obligation to equalize the terms of use, but can **pursue agreements with the more recent leaseholders that more nearly serve the interests of the public and provide for more professional business practices**. The FAA does not require that a sponsor maintain equal lease rates over time between competing FBOs. See *Penobscot Air Services LTD v. FAA 164 F3d 713 (1st Cir. 1999)**30, *31 (emphasis added) Nonetheless, Grant Assurances and multiple FAA decisions repeat the directive that differing rates should be equitable and reasonable and that an airport sponsor should revise leases periodically to make sure competing users of federally funded airports are being treated reasonably and equitably. The City had several opportunities to negotiate

[146] Exhibit No. 5: Pg. 3, paragraph 2. a.
[147] Exhibit No. 6 and Exhibit No. 7: Pg. 3, paragraph 2. a.

a current lease that both recognized current market conditions and made the two FBO leases more equitable, but in every case chose not to.

Respondent does not elaborate on its assertion that the leaseholds are different sizes. Although there is no decision cited by Respondent, and none known to Complainant, that would find a 15% difference in the size of the two leaseholds would be sufficient to determine the two FBOs are not similarly situated. In fact the difference in the size of two leaseholds was one of several factors in determining two FBOs were not similarly situated, reported in *Truman Arnold Companies d/b/a TAC Air Complainant v Chattanooga Metropolitan Airport Authority, Respondent*, FAA Docket 16-11-08, 2013 Lexis 315. There, however, the difference in the size of leaseholds was 80%, not 15%, with one FBO leasing 1,239,809 square feet, while the other was leasing 234,000 square feet. (*Truman Arnold Companies at* *47), among several other significant differing characteristics.

Respondent does not expand or elaborate on the assertion the amenities under the two leases are somehow different. To the knowledge of Complainant, both FBOs work with essentially the same amenities.

Lastly, Respondent asserts the leases were negotiated under significantly different business and/or economic circumstances. But Respondent does not elaborate on that point, what the difference was or how it would explain the difference in the terms of the leases. Respondent asserts Carver owns and occupies buildings purchased from Lumanair, whereas JA did not construct the buildings and hangars it occupies. (Respondent's Motion, pg. 18) But, Respondent ignores JA paid $4,000,000 for a large corporate hangar, the "BP Hanger", and pursuant to the terms of its lease, was required to donate the BP Hangar immediately to the City and then lease it back.[148] Carver was not required to donate any structure to the Respondent or required to pay Respondent for the buildings it occupies.

[148] Complainant's Exhibit No. 1, pgs. 1, 2, ¶¶ 2) and 3)

Respondent asserts JA was required to build its own fuel farm, while Carver was able to use Lumanair's existing fuel farm, with underground fuel tanks more than 40 years old. But Respondent ignores that the Minimum Standards required all FBOs to install above-ground fuel tanks since 2006.[149] The simple fact is there was no compliant fuel farm available when Carver entered into a lease with Aurora. But, Carver was allowed to continue using underground fuel storage tanks in violation of the Minimum Standards, while JA had to construct a fuel farm, at a cost in excess of $1,000,000, before it could begin doing business.

Respondent argues JA financed its FBO through a special facility bond and agreed to pay all principal and interest on the debt in lieu of rent. Respondent fails to note JA's obligation to pay for all financing began on the first day of its lease, whereas Carver, at its option, could pay nothing for years, or only ground rent beginning no sooner than July 1, 2024. If Carver elected to invest in its leasehold, it could do so incrementally over a period of twelve years, if at all. Common economic principle dictates that Carver, or any business, would utilize the least expensive option to operate its business.[150] JA had no such option.

Respondent asserts JA "had the option to use a portion of the funds to purchase the BP Hangar." (Respondent's Motion, pg. 19) JA's lease specifically provided the funds obtained through a special facility bond were to be used to purchase the BP Hangar. JA's lease absolutely required JA to convey the BP Hangar to the City upon its purchase. Respondent's suggestion that purchase of the BP Hangar was optional is contradicted by the clear wording of the Lease.[151]

Respondent asserts "the City insisted on a minimum $10,000,000 investment with penalty provisions requiring that Carver pay ground rent to reach that amount if it did not make the required

[149] Exhibit No. 29 hereto, 2006 Minimum Standards
[150] Complainant's Exhibit No. 9, pg 18
[151] Complainant's Exhibit No. 1, pgs. 1, 2, ¶¶ 2) and 3)

investment." (Respondent's Motion, pg. 19) The City interprets its own lease in a manner not supported by the plain wording of the lease. First of all, the lease does not require a minimum investment of $10,000,000. There is no minimum required investment. If Carver elects to avoid installing an above-ground fuel farm, it can begin paying modest ground rent of $46,669.80 per year, based on the total square footage under Carver's Lease being 113,740.5[152] and the stipulated ground rent, $0.41032 per sq. ft.[153] Second, there is no penalty. Requiring Carver to pay $46,669.80 per year for the privilege of operating an FBO adjacent and contiguous to Complainant, which pays approximately $500,000 per year,[154] is not a penalty. It is an unearned gift at the expense of Complainant and any hope Complainant may have to be competitive with Carver in light of the extraordinarily favorable lease given to Carver 15 years after Respondent entered into a lease with Complainant. Third, under no known mathematics would Carver ever be required to invest or pay $10,000,000 by payment of $46,669.80 per year in ground rent. Carver's lease provides that the lease term shall be reduced from 30 years to 20 years if Carver has not complied with the Construction and Capital Improvements Rider. (Complainant's Exhibit No. 7, at pg. 5, ¶ 4.b.) Therefore, even if Carver began paying Ground Rent in the amount of $46,669.80 on the earliest date required under its lease, July 1, 2024, (Complainant's Exhibit No. 7, at pg. 22, ¶ 4.), in the remaining 18 years of its Lease, Carver would only be required to pay $840,056. During that same time, the cost of JA's lease, with debt servicing costs of $500,000 per year in lieu of rent, would equal $9,000,000. Respondent knew that when it elected not to take back the hangars and office space at the end of Lumanair's lease, refused Complainant's offer to rent all available space at the market rate, at that time of $8.50 per sq. ft., failed to seek market comparable rent from a third party, and granted Carver a most favorable lease.

[152] Exhibit No. 7: Pg. 3
[153] Exhibit No. 7: Pg. 4, paragraph "b."
[154] Complainant's Exhibit No. 9, pg. 10 and Exhibit No. 16, pg. 15

Respondent was well aware of the claimed discrepancies between Carver's Lease and Complainant's lease as the Respondent has acknowledged in the last paragraph of its Motion on pg. 19. Respondent's assertion it "insisted on a minimum $10,000,000 investment" (Respondent's Motion at pg. 19) is simply and demonstrably false per a plain reading of Carver's lease.[155]

Respondent next asserts it was concerned that any purchaser would likely be unable to meet a $10 million initial investment and build-out threshold in order to earn its first dollar at the Airport, given that the construction alone could take years in the struggling economic climate and on the heels of the COVID-10 [sic] pandemic." (Respondent's Motion, pg. 20). First, no construction was required for Carver to begin doing business, as Carver purchased an existing, operating FBO, Lumanair. Second, Carver's "Construction and Capital Improvements Rider" contemplates no specific actual construction other than installation of an above-ground fuel farm[156] and removal of existing underground fuel storage tanks.[157] All other potential "demolition, remodeling or refurbishing" is only vaguely required if "reasonably necessary".[158] Third, Respondent ignores the report of economist, Robert Baade, who wrote concerning the economic conditions at the time Respondent entered a Lease with JA:

> "In December of 2007, the U.S. economy officially entered a significant economic downturn popularly identified as the "Great Recession", the most significant downturn in economic activity since the Great Depression of the 1930s. The evidence indicated that JA signed its lease with the City of Aurora on November 27, 2007; a time during which the unemployment rate in the U.S. had already started to increase.[159] Once again, it is unclear the role that the conduct of the U.S. economy played or could have played in explaining the approximate ten-

[155] Complainant's Exhibit No. 7. pgs. 22 – 24, as detailed on pages 49 – 54 above
[156] Complainant's Exhibit No. 7, pg. 22, ¶ 4.
[157] Complainant's Exhibit No. 7, pg. 22, ¶ A.
[158] Complainant's Exhibit No. 7, pg. 22, ¶ A.
[159] See https://www.nber.org/research/business-cycle-dating.

fold difference in costs identified in the lease terms and their enforcement between the City of Aurora and LA and JA." (Complainant's Exhibit No. 16, at pg. 7)

Third, despite challenging circumstances in 2007, Complainant was required to make its entire investment before beginning business at the Airport, not optionally or incrementally over a 12 year period, if at all. Respondent made no allowance under the JA Lease in the event Complainant would be unlikely or unable to meet its investment and requirement to complete the required "renovations and improvements to the City owned Hangars, 5, 6 and 7, and acquiring the BP Hangar"[160] and service $9,400,000 in debt "in lieu of rent"[161] from the first day of its Lease "before it was able to earn its first dollar at the Airport." (Respondent's Motion, pg. 20) If Respondent had taken back the buildings occupied by Lumanair and charged Carver market comparable rent, both FBOs would have been operating on a reasonably equivalent basis,[162] and this Part 16 Complaint would never have been filed.

Respondent again insists without evidence Carver paid $4,000,000 for Lumanair and assets Carver would own, while Complainant was required to spend $4,000,000 to purchase the BP Hangar and convey it to Respondent and spend the remainder of its $9,400,000 obligation to install above-ground fuel tanks and complete renovations and improvements to Respondent's hangars 5, 6 and 7.[163]

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[160] Complainant's Exhibit No. 1, p. 2, ¶ 3)
[161] Complainant's Exhibit No. 1, p. 2 ¶ 3)
[162] *See* 10/23/19 email from Chad Oliver, Program Manager – Technical Lead, Chicago Airports District Office, attached hereto as Exhibit No. 33
[163] Complainant's Exhibit No. 1, p. 2, ¶ 3)

The prohibition of unjust economic discrimination does not prevent a sponsor from accepting differing lease rates resulting from differing time frames of lease terms. A sponsor may charge different rates to similar users of the airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable. *Wilson Air Center, LLC Complainant v Memphis and Shelby County Airport Authority Respondent,* FAA Docket No. 16-99-10, 2001 Lexis 567 at *28. Here, the effective differences in the lease terms cannot be justified as nondiscriminatory and the charges are not substantially comparable.

Respondent cites *Asheville Jet, Inc., v Asheville Reg'l Airport Auth., et al,* FAA Docket No. 16-08-02 for the proposition that because of differences in timing, circumstances, investment, and size of the respective leases, "and because each lease was the product of individualized negotiations between the City and each entity based on their needs at the time," JA cannot establish it is similarly situated to Carver. (Respondent's Motion, pg. 20) While the general proposition quoted is valid, Respondent's reliance on *Asheville Jet* is mistaken.

Asheville Jet entered a lease with the Asheville Regional Airport Authority in 1993, while its competitor entered its lease 14 years later in 2007.[164] This is similar to the current matter, in which JA was granted a lease in 2007 and Carver assumed Lumanair's lease approximately 14 years later on July 27, 2021[165] and entered into a new lease approximately 15 years later on January 1, 2022.[166] However, that is where *Ashville's* similarity ends:

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[164] *Asheville Jet, Inc.,* FAA Docket No. 16-08-02, *72
[165] Complainant's Exhibit No. 6
[166] Complainant's Exhibit No. 7

- Asheville Jet leased 33.6 acres, compared to its competitor, Encore, which leased only 9 acres, a difference in size of approximately 73%.[167] The difference in the size of JA's leasehold and Carver's leasehold is approximately 15%.
- Ashville's rental rate of $135,000 per year for 24 years totaled $3,240,000. Asheville's competitor's required investment totaled $3,500,000 over a 30 year period, plus $.25 per square foot for unimproved land rent and $.30 per square foot for preferential use of an airport apron.[168] In the present matter, JA pays approximately $500,000 per year in debt service under its lease,[169] while Carver's only firm obligation is to pay ground rent in the amount of $46,669.80 per year,[170] [171] and then only beginning on July 1, 2024 if Carver does not elect to install above-ground fuel tanks.[172] If Carver does install above-ground fuel tanks by July 1, 2024, which it has not yet done,[173] Carver could avoid all further investment in its leasehold and pay ground rent only beginning on January 1, 2027.[174]
- In Asheville Jet, the Complainant, a longer term tenant, was required to pay 5% of fuel sales to the Authority, while its competitor was required to pay only $.05 per gallon of fuel sold, although Asheville Jet was not required to pay $.25 per square foot of unimproved land or $.30 per square foot for preferential use of an Airport apron.[175] In the present matter, it is undisputed both FBOs pay $.05 Aurora per gallon of fuel sold.

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[167] *Asheville Jet, Inc.*, FAA Docket No. 16-08-02, *72
[168] *Asheville Jet, Inc.*, FAA Docket No. 16-08-02, *72
[169] Complainant's Exhibit No. 9: Pg. 11 and Exhibit No. 8, Pg. 2
[170] Complainant's Exhibit No. 7: Pg. 3 (second to last paragraph)
[171] Complainant's Exhibit No. 7: Pg. 4, ¶ "b."
[172] Complainant's Exhibit No. 7: Pg. 22, ¶ 4.
[173] *See* Affidavit of Brad Zeman, Exhibit No. 28 hereto
[174] Complainant's Exhibit No. 7: Pg. 23, ¶ B.

[175] *Asheville Jet, Inc.*, FAA Docket No. 16-08-02, *72

Thus, in Asheville Jet, it can be seen that both FBOs were treated approximately the same by the Authority. The case is a good example of an airport sponsor using different terms in FBO leases at different dates, but at the same time making an effort to ensure that the resulting costs for both FBOs were similar and equitable. In the present case, there is little difference in the spaces occupied by the two FBOs which are adjacent to each other on contiguous leaseholds and offer the same services to the public. In the present case, it can be seen Complainant has been treated materially differently and has been and is directly and substantially affected by Respondent's different and far more favorable treatment of Carver under the terms of its lease compared to the obligations of Complainant under the terms of its lease. Yet, Respondent argues "even when aeronautical tenants propose the same or similar uses of the airport, if the level of financial investment is dissimilar, the FAA may find the users are not similarly situated," again quoting *Asheville* (Respondent's Motion at pg. 20), although Respondent argues throughout its Motion that the respective levels of investment required *are* similar.

However, FAA Order 5190.6B Sections 9.2 a., 9.2 c. and 9.2 d. describe the FAA's position on the responsibilities of an airport sponsor under Grant Assurance 22, *Economic Nondiscrimination*, assumed by the owners of public-use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or *similar* use of the airport, and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* Order FAA Order 5190.6B Sections 9.2 a., 9.2 c. and 9.2 d.]; *BMI Salvage Corporation & Bluebird Services, Inc. Complainants*, FAA Docket 16-05-16, 2011 Lexis 370 at *40, *41.

Specifically, FAA Order 5190.6B, section 9.5.d, Terms and Conditions Applied to Tenants Offering Aeronautical Services, provides:

> "**Differences of Value and Use.** The FAA may consider factors such as minimum investment requirements, demand, location, capital investment risk, ownership of facilities, time remaining on contract terms, and condition of facilities as reasons that may justify differing rates. For example, a sponsor may establish two classes of FBO, one serving primarily high performance aircraft and another that caters to piston powered aircraft. However, the varying rates must be justified by the differing circumstances, and should not arbitrarily confer an advantage on one category of operator over another."

No part of FAA guidance suggests that two FBOs can be considered dissimilar solely because the sponsor created two leases with discriminatory lease terms applicable to the two FBOs that are otherwise similarly situated.

In the present matter, the level of investment actually required on both FBOs is discriminatory on the face of the leases and in effect. Complainant was required to make its entire initial investment before beginning to do business, before earning its first dollar. If Carver elects to make any investment in its leasehold it can do so incrementally over a twelve year period, or it can simply choose to pay ground rent of less than 10% annually in comparison to Complainant's contractual annual debt service payments under its lease.

The affect of the discriminatory discrepancy in the terms of the two FBO leases is not merely hypothetical. As demonstrated by Complainant's Exhibit No. 27, Carver has been able to take advantage of the huge difference in cost of operations, created by the

lease terms granted to Carver by Respondent, to attempt to starve out JA by reducing Carver's fuel prices to $1.44 less than Carver charges at nearby surrounding airports. Respondent created this opportunity for Carver to the discriminatory detriment of JA. **Carver and Respondent know well that fuel service is typically the life blood of a general aviation FBO. Respondent, by the discriminatory terms of the lease granted to Carver has given Carver the ability to choke Complainant's fuel business, raising additional questions of exclusive access to the airport.**

Respondent asserts "JA's claim that the City violated Grant Assurance 22 fails as a matter of law." (Respondent's Motion, pg. 20) However, Respondent does not elaborate on that statement or indicate how JA's claim fails as a matter of law.

C. JA did seek and was denied similar Lease terms

Respondent next makes three arguments: First that Complainant has not shown that Carver received preferential treatment; second that Complainant has not shown it was denied a similar benefit enjoyed by Carver; and third, that JA provides no evidence it requested a similar investment when it negotiated its lease in 2007. (Respondent's Motion, pg. 21)

In regard to Respondent's first argument, this entire Answer to Respondent's combined Motion to Dismiss and Motion for Summary Judgment has detailed the discriminatory effect of the preferential lease terms granted to Carver by Respondent, which have affected and continue to affect Complainant directly and substantially. In summary, under Carver's lease terms it can elect to pay nothing between inception of its lease on January 1, 2022 and July 1, 2024, or alternatively between January 1, 2022 and January 1, 2027 when it can choose to make investments in its leasehold or it can elect to pay ground rent in the amount of approximately $46,669.80, based on the total square

footage under Carver's Lease being 113,740.5[176] and the stipulated ground rent, $0.41032 per sq. ft.[177] For the years between July 27, 2021 when Carver was allowed by Respondent to assume Lumanair's lease[178] through January 1, 2022 when Respondent entered into the current lease with Carver,[179] through the present time, Complainant has paid and will continue to pay approximately $500,000 per year for the privilege of operating its FBO at the Airport, while Carver has been required to pay nothing, resulting in a loss of approximately $1,500,000 since July 27, 2021.

In regard to Respondent's second argument, Respondent ignores the sworn testimony of Chief Management Officer, Alex Alexandrou,[180] who, long before Complainant's Part 16 Complaint was filed, responded with a flat "No." when specifically asked if Respondent would be willing to amend Complainant's Lease to make it more equitable with Carver's lease. Mr. Alexandrou went on to testify that the City has not been given a good reason to amend JA's lease. [181] The fact that JA and Carver enjoy similar FBO rights does not end the "benefit" issue; JA pays substantially more than Carver for the same rights, a direct violation of Grant Assurance 22.

In regard to Respondent's third argument, that JA did not request the favorable terms granted to Carver in 2022, when JA negotiated its lease in 2007, the absurdity appears obvious. JA could not have known 15 years earlier that such incredibly generous terms would be offered to a competing FBO a decade and a half in the future. Shortly after Complainant became aware of the terms of Carver's lease, Complainant met with representatives of Respondent and explained how damaging and discriminatory the Carver lease was to Complainant's business[182] and also formally

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[176] Complainant's Exhibit No. 7: Pg. 3 (second to last paragraph)
[177] Complainant's Exhibit No. 7: Pg. 4, ¶ "b."
[178] Complainant's Exhibit No. 6
[179] Complainant's Exhibit No. 7
[180] Complainant's Exhibit No. 22, 04-26-2022 Deposition of Alex Alexandrou, at Pg. 13, lines 10 - 14
[181] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263
[182] *See* Affidavit of Brad Zeman attached hereto as Exhibit No. 28.

asked Respondent's Chief Management Officer if Respondent would amend Complainant's lease to make it more equitable with Carver's lease.[183] But to no avail, as Respondent had determined it was going to do business with Carver, whose affiliate was going to rehabilitate one of Respondent's buildings in the City of Aurora. Respondent was simply not going to do anything to offend Carver,[184] regardless of any Grant Assurances. Instead, Respondent would simply argue that the terms of the leases are similar and equitable, despite the plain wording of the leases and the despite the demonstrated direct and ongoing discriminatory effect of the lease granted to Carver, to the substantial and direct detriment of Complainant.[185]

Respondent also refers to the JA Lease Amendment of 2015. However, the 2015 Amendment (1) was negotiated seven years before Carver entered into its January 1, 2020 lease; and (2) the 2015 Amendment was not related in any way to the issues before the FAA at this time. Specifically, the 2015 Lease Amendment was negotiated to resolve JA's claim against the City arising out of the City's breach of the initial signed Lease of 2006, wherein the City was unable to provide funds promised under the 2006 Lease for installation of utilities and site improvements to allow JA to construct its own hangars and office building. The 2015 Lease Amendment was drafted to address the City's inability to provide funding required under the 2006 Lease which resulted in lost pre-construction costs and architectural fees expended by JA in an amount in excess of $250,000[186] and to address additional rent payments withheld by JA to account for the lost pre-construction costs and architectural fees.[187]

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[183] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263
[184] Exhibit No. 24, City of Aurora Resolution No. R23-064, pg. 2, paragraphs F. 1. through F. 6, and pages 13 – 16 of the Redevelopment Agreement attached to Exhibit 24.
[185] Complainant's Exhibit No. 27
[186] *See* Affidavit of Brad Zeman attached as Exhibit No. 28 hereto
[187] *See* Respondent's Exhibit 13, at 204:17 – 207:21

Respondent goes on to admit the language of Carver's lease, allowing Carver to satisfy $4,000,000 of its optional potential investment in its leasehold by purchasing another business owned by Carver or owned by another entity or by procuring another tenant for the Airport, thereby reducing Carver's optional potential investment to $6,000,000 over a period of ten years (Respondent's Motion at pg. 21) – compared to Complainant's requirement to pay all principal and interest in lieu of rent on its $9,400,000 investment at the inception of its lease.

Respondent further continues to assert Carver spent $4,000,000 to purchase the Lumanair business – not just hangars and office space - an assertion that has never been substantiated and, on information and belief, is not true, as it is believed the purchase agreement between Carver and Lumanair had an earn-out clause which was never satisfied.[188] Even if Carver had paid $4,000,000 for the purchase of Lumanair's assets, Respondent ignores the amounts paid by Complainant for all its assets when it accepted Respondent's offer to transfer its operation from DuPage Airport to Aurora Municipal Airport. Respondent also ignores the plain language of the Carver Lease which provides: "However, Tenant's acquisition of the Lumanair business operations and Leased Premises are specifically excluded from this required investment."[189] Respondent further ignores that any amounts paid by either FBO for the formation of their businesses were not paid to the airport sponsor.

Despite all the evidence to the contrary, Respondent asserts that "incidental or isolated failings to treat all users *exactly* the same are not sufficient to determine that the Sponsor is in noncompliance,"[190] (Respondent's Motion at pg. 22) as though a difference of $500,000 a year in the cost of offering identical services to the public is incidental or somehow not quite *exactly* the same in

[188] *See* Affidavit of Brad Zeman attached as Exhibit No. 28 hereto
[189] Complainant's Exhibit No. 7, pgs. 23, 24, ¶ B.
[190] Respondent's Motion, pg. 22

some minimal way. Complainant suggests Respondent's view of its obligations under applicable Grant Assurances is not consistent with the wording or spirit of the Grant Assurances and not in conformance with FAA case decisions and the guidance within FAA compliance orders. Complainant suggests, like Federal Courts, that the FAA is not required to put on blinders. *Havoco of America, Ltd. v. Shell Oil Co.*, 626 F.2d 549, 551 (7th Cir. 1980); *Muniz v. Stober,* No. 18-4619, 2023 U.S. Dist. LEXIS 187763, at *1 (E.D. Pa. Oct. 19, 2023); *Muzquiz v. San Antonio*, 520 F.2d 993, 1008 (5th Cir. 1975) ("Courts do not put on blinders to avoid seeing what is apparent.)

D. The City was within its rights to negotiate and enter a lease with Carver

Under this heading, Respondent makes the following arguments: (Respondents' Motion, pg. (23)

(i) There is no support for JA's claims the City's grossly favorable treatment of Carver is intentional and entirely arbitrary and no support for JA's claim the City failed to use the opportunity with regard to Carver's 2022 lease to even the playing field; (Respondent's Motion, pg. 23)

(ii) There is no evidence the City negotiated in bad faith, and to the extent Carver negotiated a better deal, it does not make out a grant assurance violation; (Respondent's Motion, pg. 24)

(iii) Allowing competition at the Airport does not constitute unjust discrimination. (Respondent's Motion, pg. 25)

Contrary to Respondent's assertions, it is clear Respondent knew of the problems created by the lease provided to Lumanair and assumed by Carver before entering a lease with Carver.

Respondent specifically refers to prior Part 13 complaints raising similar issues. Certainly the City knew it had the right to reclaim the hangars occupied by Lumanair and charge hangar rent to any future tenant. (*See* Respondent's Exhibits Nos. 8, 9, outlining issues similar to those contained in Complainant's Part 16 Complaint.) Yet, for no observable reason, other than a possible external relationship with a Carver affiliate that had agreed to rehabilitate an abandoned building in the City of Aurora, Respondent entered into a vastly favorable lease with Carver. That lease allowed Carver to make, or not make, optional investments in its leasehold, in comparatively modest amounts incrementally over a period of twelve years, compared to the debt service in lieu of rent required of JA,[191] which was required to take on its entire debt before beginning to do business at the Airport. The Carver lease also allowed the rent-free use of hangars for the entire lease term. Yet, despite the plain reading of both leases, Respondent asserts there is no support for JA's claim the City failed to use the opportunity with regard to Carver's 2022 lease to reasonably level the playing field.

Respondent could have entered the new lease with Carver on more equitable terms, charging market comparable rent[192] or agreed to amend Complainant's lease to avoid any issue under Grant Assurances. There were multiple ways in which Respondent could have made the situation between the two FBOs more equitable, including but not limited to returning to JA the amount paid for the building Complainant was required to purchase, $4,000,000, which JA was then required to immediately convey to Respondent and then lease back from Respondent, and return the remainder of JA's $9,400,000 investment required under the terms of JA's lease to

[191] Complainant's Exhibit No. 1, p. 2, ¶ 3)
[192] *See* 10/23/19 email from Chad Oliver, Program Manager – Technical Lead, Chicago Airports District Office, attached hereto as Exhibit No. 33

use to renovate and make improvements to City owned hangars and office space[193] and paying to JA the interest paid on the $9,400,000 used to purchase the BP Hangar and make improvements and renovations to the City's property. Any of those options could have ameliorated the debt service and rent equivalents payable by Complainant, thereby making it more difficult for Carver to use its Respondent-created advantage to intentionally undercut Complainant's fuel prices by charging $1.44 less per gallon of fuel than Carver charged at nearby surrounding airports,[194] thereby causing direct and substantial harm to Complainant – which is inescapable due to the advantageous terms of Carver's lease. Carver can afford to undercut JA's fuel prices and starve out JA because Carver has no obligation to pay any amount to Respondent for occupancy of its leasehold. If and when Carver is required to pay any amount for occupancy of its leasehold, it will be required to pay only $46,669.80 per year, as detailed above, compared to JA which must pay approximately $500,000 per year, as also detailed above.

Respondent asserts there is no evidence the City negotiated in bad faith (Respondent's Motion at pg. 24) and to the extent Carver negotiated a better deal, it does not make out a grant assurance violation. Respondent seems to ignore the quote it placed on page 23 of its Motion, providing the City "may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." (Respondent's Motion, pg. 23). Complainant has asserted through these pages and by reference to the leases themselves, the lease granted to Carver is not reasonable in comparison to the requirements of Complainant's lease and is, in effect, unjustly discriminatory.

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[193] Complainant's Exhibit No. 1, p. 2, ¶ 3)

[194] *See* Complainant's Exhibit No. 27

Respondent goes on to assert the grant assurances are not intended to protect FBOs from inherent business risks associated with an FBO's decision to implement a certain business plan at a certain point in time in competition with other FBOs. However, the grant assurances are designed, on their face, to protect all similarly situated airport tenants from unjust economic discrimination [*See* Order 5190.6A, Secs. 4-14(a)(2) and 3-1. and Order 5190.6B Sections 9.2 a., 9.2 c. and 9.2 d.] Complainant asserts that allowing a new, similarly situated, FBO to operate at a fraction of the cost of Complainant does constitute unjust economic discrimination.

Complainant agrees the grant assurances do not protect FBOs from the inherent business risks associated with an FBO's decision to implement a certain business plan at a certain point in time in competition with other FBOs. However, in this case the business risk was not the result of competition based on efficiency. The unjust discrimination in this case was the result of an extraordinarily favorable lease granted by Respondent to a new FBO, an advantage that will last at least 20 years and does nothing to help make the Airport self sustaining. Complainant cannot create an efficiency that would neutralize an advantage of as much as $500,000 per year provided to Carver, as a practical matter, under the terms of its lease.

Respondent argues, "simply allowing competition at the Airport does not constitute discrimination." (Respondent's Motion, pg. 25) If that was all that happened in this case, there would be no Part 16 Complaint. However, Respondent's difficult-to-explain grant of an extraordinary lease to Carver went much farther than supporting societally beneficial competition, as detailed above. Respondent goes on to acknowledge Complainant offered $8.50 per square foot to lease all space given to Carver at no occupancy cost other than any amount Carver chose to invest in the leasehold and improvement of buildings it was arbitrarily allowed to own. Respondent

does not contest the fact it gave up revenue at the Airport of not less than $900,000 annually, by refusing Complainant's offer to lease the space, or by seeking a market based offer from Carver or a third party. Instead, Respondent offered the space to Carver with no payment to the City for occupancy at any time in the next 20 – 30 years, despite the Airport operating at a loss for many years,[195] contrary to the guidance of FAA Order 5190.6B, section 17.4

Respondent next argues that Complainant has not provided any evidence to show that it was financially capable of undertaking such an investment at that time. (Respondent's Motion, pg. 25) Respondent overlooks the testimony of Aurora Chief Management Officer, Alex Alexandrou, affirming under oath he received Complainant's offer to lease all available space previously occupied by Lumanair, but never responded or asked for any financial information to confirm Complainant's ability to pay as offered. **This is despite the fact Respondent – before meeting with Carver's principal - had offered to lease all of Lumanair's hangars back to Lumanair for $8.50 per square foot, and all of Lumanair's office space back to Lumanair for $13.50 per square foot after Lumanair's lease expired.**[196] That is the same Lumanair the City sought to evict[197] before meeting with Carver's principal, after which Respondent offered a new lease to Lumanair, giving Lumanair hangars and office space, suddenly allowing Lumanair to occupy the hangars and office space for $0 rent under the new lease, which was assumed by Carver with the City's approval on July 27, 2021.[198]

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[195] Complainant's Exhibit No. 19: 07/25/2022 deposition of Alex Alexandrou, Chief Management Officer of City of Aurora, pgs. 245 – 248

[196] *See* transcript of 04-26-22 deposition of Alex Alexandrou, pgs. 104 – 111; and Aurora's Response to JA's Second Request for Admission, at ¶ 41, Exhibit No. 32 hereto)

[197] Complainant's Exhibit No. 21

[198] Complainant's Exhibit No. 6, Aurora's approval of Carver's assumption of Lumanair's Lease

Contrary to Respondent's unsupported allegation, although Lumanair had been the only FBO at the Airport for many years, Complainant never requested to be the exclusive FBO at the Airport and Respondent's failure to substantiate that assertion or implication should be disregarded by the FAA.

E. Respondent's claim the FAA lacks jurisdiction over JA's claims

Respondent next asserts "Because they are not similarly situated, the City is not required to provide identical lease terms – particularly where the leases are negotiated 15 years apart." (Respondents Motion at pg. 26) Respondent cites *Aerodynamics of Reading, Inc., v Reading Reg'l Airport Auth.*, FAA Docket No. 16-00-03 in support of its contention. However, *Aerodynamics of Reading* does not support any aspect of Respondent's position. In fact, *Aerodynamics of Reading* is exactly the opposite of this matter. In *Aerodynamics of Reading,* Complainant, which entered into a lease in 1991 complained because it perceived the terms of its 1991 lease were more costly than a lease granted to another FBO ***13 years earlier*** in 1978, and amended on 1983 and 1986. *Aerodynamics* at *25. In this case before the FAA,

> Complainant asserts it is the later lease, provided by Respondent to Carver, that is far less costly

than the earlier lease entered into 15 years before the Carver lease began.

Further, FAA Order 5190.6B, section 9.2 Rental Fees and Charges: General, at 9.2.c. and 9.2.d. offers guidance and provides:

> **c. Fixed-Base Operators (FBOs).** The sponsor must impose the same rates, fees, rentals, and other charges on similarly-situated Fixed-Based Operators (FBOs) that use the airport and its facilities in the *same or similar* manner. However, FBOs under different types of sponsor agreements may have different fees and rentals. For example, an FBO leasing a sponsor-owned

aeronautical facility may pay more in rent than an FBO that builds and finances its own facility. In the first case, the FBO is not servicing debt while in the second case, the FBO is servicing debt. (with a footnote referring to *Penobscot Air Service, LTD, v County of Knox Board of Commissioners*, FAA Docket No. 16-97-04, Final Agency Decision (January 20, 1997, pp 7-8).) (Emphasis added)

d. Changes in Rates Over Time. A sponsor may revise its rental rate structure from time to time. An airport sponsor does not engage in unjust discrimination simply by imposing different lease terms on carriers and users whose leases have expired. FAA also recognizes rate differences based on differences in other lease terms and facilities. Ideally, a new rate should be imposed at a time when the rates can be changed for all similarly situated tenants to avoid any claims of unjust discrimination. In some cases, however, the sponsor will have reason to revise rates even though existing contracts at lower rates have not yet expired. *In such cases, the sponsor should make every effort to provide terms for new contracts that will support any difference in rates between new tenants and existing tenants.* The sponsor should also consider limiting the term of new agreements to expire when existing agreements expire in order to bring all similarly situated tenants under a common rate structure at one time. While circumstances may allow differences in rental rates among tenants, landing fee schedules generally must be applied uniformly to all similarly situated users at all times. (with a footnote referring to *Alaska Airlines, Inc., et al. v. Los Angeles World Airports, et al.*, Order 2007-6-8, No. OST-2007-27331 (June 15, 2007, pp 62-65).) (Emphasis added)

Section 9.2.c. provides that "an FBO leasing a sponsor-owned aeronautical facility may pay more in rent than an FBO that builds and finances its own facility. In the first case, the FBO is not servicing debt while in the second case, the FBO is servicing debt." However, in this case, Complainant ***was servicing debt and was required to pay all interest and principal*** for the

renovation and improvements to the City's Hangars 5, and 7 and to acquire the BP Hangar at a cost of $4,000,000.00 – and immediately convey the BP Hangar to Respondent.[199] Further, ***Carver did not build its own facilities***, though presumably it purchased the assets of Lumanair for an undisclosed and unsubstantiated amount. Therefore the example provided in Section 9.2.c. does not fit the situation presented here.

Respondent might argue the two FBOs are being treated reasonably equally because Carver is required to pay somewhere between $6,000,000 and $10,000,000 for improvements. However, that is not what Carver's lease requires. The plain wording of the Construction and Capital Improvements Rider to Carver's Lease provides Carver can elect to pay only ground rent in the amount of $46,669.80 per year.[200] Even if Carver did pay $6,000,000 over the first ten years, and incurred the associated principal and interest costs, Complainant was required to incur far greater expense from the first day of its lease. Further, Carver can use $4,000,000 of its optional investment to invest in an entirely separate business venture, or Carver can simply procure another tenant for the Airport and never pay the last $4,000,000 of its optional investment[201] – an option not allowed to the much earlier lessee, Complainant herein. When Respondent was asked point-blank if it would make accommodations to attempt to make the two leases more equitable, Respondent's Chief Management Officer responded with a flat "No."[202]

Respondent cites *Penobscot Air Service, LTD, v County of Knox Board of Commissioners*, FAA Docket No. 16-97-04. But *Penobscot* is not instructive in this current

[199] Complainant's Exhibit No. 1, pgs. 1, 2, ¶¶ 2) and 3)
[200] Complainant's Exhibit No. 7, pgs. 23, 24, at ¶ B.
[201] Complainant's Exhibit No. 7, pgs. 22, 23, at ¶ 5.
[202] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263

matter, as the Complainant in *Penobscot* was a later lessee, complaining that it was paying more for its lease than an earlier lessee. The instant action is just the opposite.

Following the guidance within FAA Order 5190.6B, section 9.2.d. could have been sufficient to avoid the current problem had Respondent followed its guidelines, providing that "Ideally, a new rate should be imposed at a time when the rates can be changed for all similarly situated tenants." If Respondent had complied with Grant Assurances 24 and followed the guidance of FAA Order 5190.6B, including but not limited to section 17.4 Self-sustaining Principal, this Part 16 Complaint might never have been filed. Instead, Respondent failed to take back the hangars and rent them to Complainant or to Carver or some other third-party at market comparable rates to help make the Airport self-sustaining. Rather, Respondent elected to allow Carver to purchase Lumanair's business and gave Carver the buildings under a lease that would pay Respondent $46,669.80 per year, at most, rather than renting out the 113,740.50 square feet at a market comparable rate of approximately $8.50 per square foot which would have raised more than $966,794 for the Airport each year.

Respondent again asserts Complainant is not similarly situated with Carver, to which Complainant refers the FAA to pages 17, 22-23, 31 and 45 -46 above. Complainant believes there is no question that the two FBOs are similarly situated in all material respects. Even if Respondent's Motion for Summary Judgment were considered in the light most favorable to Respondent – the opposite of the standard contained in § 16.26(c)(1) – there is a good faith question of fact as to whether the two FBOs are sufficiently similarly situated to defeat Respondent's Motion for Summary Judgment. Multiple decisions have noted the issue is whether

two FBOs are *similarly* situated, i.e., directly comparable, in all material respects.[203] Respondent's citation to *Rick Aviation, Inc., Complainant,* No. 16-05-18, is not instructive, as differing lease terms were granted to the later lessee, Mercury Air Center, on substantially different terms which *required* the later lessee, Mercury, to provide significant infrastructure improvements and monthly rent." *Rick Aviation, Inc., Complainant v. Peninsula Airport Commission, Respondent,* FAA No. 16-05-18. 2007 Lexis at *71. Specifically, the lease granted to the later lessee, Mercury, *required* Mercury to make significant infrastructure improvements *and* to pay monthly facility rents. *Rick Aviation* at *78. Mercury was required to pay $10,416 per month in facility rent, with annual CPI adjustment through year six of the lease, after which the monthly facility rent would be set by market analysis that Complainant was not required to pay. Rick Aviation was not required to pay any facility rent. (*Rick Aviation* at *79, *80) The Mercury lease required no ground rent for the first five years, after which the ground rent would be set by market analysis. (*Rick Aviation* at *80). Most significantly, Mercury was required – not given an option – to make a significant investment in its leasehold, including construction of a new general aviation terminal building of not less than 5200 square feet adequate to house an office, pilot's lounge, telephone and public restroom facilities, line service area, customer service counter, flight planning area, lobby with adequate seating for passengers, break and vending areas and conference room to meet reasonable demand. (*Rick Aviation* at *86). The evidence did not show that the airport sponsor required Rick Aviation to make any improvements. (*Rick Aviation* at *89). The evidence also showed that Mercury was constructing a $1.6 million corporate aviation

[203] "Further, to be "similarly situated," she and her comparators must be "*prima facie* identical in all relevant respects or directly comparable ... in all material respects." *United States v. Moore*, 543 F.3d 891, 896 (7th Cir. 2008) (quoting *Racine Charter One, Inc. v. Racine Unified Sch. Dist.*, 424 F.3d 677, 680 (7th Cir. 2005)); *D.S. v. East Porter County School Corp.*, 799 F.3d 793, 799 (7th Cir. 2015)

terminal facility scheduled to open at the airport. (*Rick Aviation* at *91). If anything, *Rick Aviation* was an example of a later tenant paying more for the privilege of offering flight services to the public, not an earlier lessee being required to pay much more than a later lessee, as in this case. Thus, *Rick Aviation* is hardly instructive in this matter. Parenthetically, it should also be noted Rick Aviation was offered the opportunity to amend its lease to adopt the perceived more favorable terms of the Mercury lease, including the right to pay a flat regular payment in lieu of paying a percentage of gross receipts, which would have been much easier to manage by the airport authority. But Rick Aviation declined to do so. In this matter, Aurora flatly refused to make any adjustments to JA's lease to make it more equitable.[204]

Respondent next argues "Grant Assurance 22 does not require that an airport adhere to any particular methodology for letting or assigning leases, citing *Signature Flight Support Corp., Complainants,* No. 16-17-02. (Respondent's Motion, p. 26). This is of course true. However, the grant assurances do require an airport sponsor to make its airport available as an airport for public use on fair and reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical uses, allowing for the establishment of such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. (Assurance 22(a) and 22(h))[205] Note that the allowance for differing rate methodologies and for treating dissimilar operators differently are both FAA policies intended to adapt legal requirements to the wide variety of financial and operating conditions at U.S. airports. Those policies do not, and could not cancel or override the prohibition on unjust

[204] Complainant's Exhibit No. 19, 07-25-2022 Deposition of Alex Alexandrou, at Pg. 263
[205] *National Airlift Support Corporation Colorado Springs, CO v. Fremont County Board of Commissioners Canon City, Colorado*, FAA Docket No. 16-98-18 at *11

discrimination in 49 U.S.C. § 47107(a)(1) and the City's obligations under Grant Assurances 22.a. and 22.c.

Next Respondent argues JA cannot sustain a claim against the City based on enforcement of Carver's lease terms. (Respondent's Motion, pp. 26, 27) This is also of course true. However, JA does not ask the FAA to require the City to enforce it lease terms under Carver's lease. First of all, Carver's lease terms, unlike the lease in *Rick Aviation*, do not actually require Carver to do anything other than pay ground rent beginning on either July 1, 2024 or January 1, 2027.[206] JA's complaint is that the lease terms as written and as executed provide an insurmountable advantage to a later lessee, Carver, with which JA cannot compete. *See* for example, Complainant's exhibit No. 27.

Complainant is well aware "Grant Assurance #22 is not intended to protect FBOs from the inherent business risks associated with an FBOs decision to implement a certain business plan at a certain point in time in competition with other FBOs." *Rick Aviation, Inc., Complainant v. Peninsula Airport Commission, Respondent*, FAA No. 16-05-18. 2007 Lexis at *75. However, in this matter the business risk has been created by the airport sponsor, the City of Aurora, not by the efficiencies of a competing FBO, but by the City's nearly inexplicable grant of a lease to a later lessee when the City (1) declined to take back the buildings under the Lumanair lease; (2) declined to seek market rate rental income to make the Airport self-sustaining; (3) provided lease terms that allow the competitor to utilize its leasehold with no payment to the benefit of the Airport for at least five years; and (4) thereafter allowed the competitor – by the terms of its lease – to pay only ground rent of approximately $46,669.80 annually, compared to Complainant's annual obligation of approximately $500,000 per year; (5) allowed the competitor - if it elects to make any improvements

[206] Complainant's Exhibit No. 7, pg. 22, ¶ A. 4. and pg 23, ¶ B

– to make them incrementally over a 12 year period; (6) allowed the competitor - if it elects to make any investment – to divert 40% of any possible investment to an entirely separate business; or () allowed the competitor to avoid 40% of its optional investment by simply procuring another tenant for the airport – which would do nothing to enhance Carver's leasehold, and (7) denied JA the opportunity to amend its lease to make it more equitable and stay in business.

Lastly, Respondent asserts JA's claim is not ripe as it has not been harmed. (Respondent's Motion, pg. 27) Complainant's Exhibit No. 27 provides the FAA with undeniable proof the competing FBO is using its advantage to substantially undercut JA's fuel prices at Aurora Airport only, while charging market comparable fuel prices at the other nearby airports serviced by Carver/Revv Aviation.

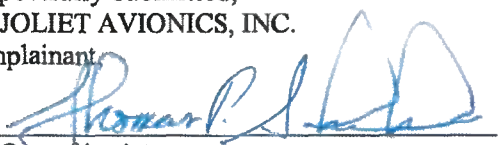
Still further, as of August 8, 2024, Carver has been able to gain the exclusive endorsement of the Corporate Aircraft Association by underbidding JA on jet fuel prices, all due to the extraordinarily favorable lease granted to Carver by Aurora – not due to Carver's business efficiencies or business practices - but solely due to the advantage provided to Carver by the Airport Sponsor, the City of Aurora, to a later lessee for reasons known only to Aurora and Carver[207] in clear violation of the text and the spirit of Grant Assurances.

Conclusion

Respondent/Movant is entitled to summary judgment only if the matters presented to the FAA, when taken in the light most favorable to the complainant, clearly show there is no genuine issue of material fact for adjudication. Complainant respectfully suggests the issues presented herein above demonstrate there are genuine issues of material fact that clearly warrant an investigation and further action on the Complaint by the FAA.

[207] *See* Affidavit of Brad Zeman, Exhibit No. 28 hereto.

Respectfully submitted,
By: JOLIET AVIONICS, INC.
Complainant

By: 
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COMPLAINANT'S EXHIBIT INDEX

Exhibit No.	Description
	Exhibits Attached to Complainant's Complaint
1.	November 27, 2007 Lease between City of Aurora and JA
2.	April 22, 2015 Amendment to Lease between City of Aurora and JA
3.	Corrected Amended Complaint filed by JA against City of Aurora
4.	Answer of City of Aurora to Corrected Amended Complaint filed by JA against City of Aurora
5.	August 1, 2020 Lease between City of Aurora and Lumanair Inc.
6.	July 27, 2021 City of Aurora Resolution allowing Carver Aero to assume Lumanair's Lease
7.	January 1, 2022 Lease between City of Aurora and Carver Aero
8.	April 18, 2022 Report of Michael A. Hodges, MAI
9.	August 27, 2022 Report of Economist, Robert Baade
10.	April 1, 2019 Initial Part 13 Complaint filed by JA
11.	March 1, 1982 Lease between City of Aurora and Lumanair, Inc.
12.	July 3, 2021 FAA Part 13 Notice of Potential Noncompliance
13.	September 9, 2022 Second Part 13 Complaint filed by JA
14.	August 4, 2023 FAA Part 13 Notice of Potential Noncompliance
15.	July 1, 2021 transcript of deposition of Guy Lieser, CEO of Carver Aero
16.	January 30, 2023 Rebuttal report of Economist, Robert Baade
17.	City of Aurora's Response to JA's Second Request to Admit
18.	Multiple offers from JA to City of Aurora to rent all available space for $8.50/sq. ft.
19.	July 25, 2022 transcript of continued deposition of Aurora chief of staff, Alex Alexandrou
20.	Listing of annual average operating losses at Aurora Municipal Airport (ARR)
21.	City of Aurora's Verified Fourth Amended Complaint for eviction of Lumanair
22.	April 26, 2022 transcript of initial deposition of Aurora Chief of Staff, Alex Alexandrou
23.	May 24, 2022 transcript of deposition of Carver's principal's Chief Financial Officer
24.	February 28, 2023 City of Aurora Resolution granting Carver a building in the City of Aurora for $1.00 and providing a non-repayable loan for $900,000.00
25.	March 9, 2023 Correspondence from JA to local RAD
26.	March 27, 2023 Correspondence from JA to local RAD
27.	Independent recording of prices for Jet A fuel by Carver Aero a/k/a Revv Aviation for fuel prices, selling fuel at ARR for $1:15 – $1:44 less at ARR than at surrounding Midwest airports
	Additional Exhibits in Reference to Complainant's Answer to Respondent's Motion to Dismiss and Motion for Summary Judgment
28.	**Affidavit of Bradley Zeman**
29.	**2006 Minimum Standards for Commercial Activities at the Aurora Municipal Airport**

30.	**1982 Lease between Lumanair, Inc. and the City of Aurora**
31.	**Photos of temporary fuel skids used by Carver**
32.	**JA's Second Request for Admission to City of Aurora in Federal Lawsuit**
33.	**10/23/19 email from Chad Oliver, Program Manager – Technical Lead, Chicago Airports District Office**

*exhibits 1 – 27 are attached to the Complaint

*exhibits 28 – 33 are attached hereto

CERTIFICATE OF SERVICE

I hereby certify that I have on this day, August 23, 2024, served via email the foregoing Complainant's Answer to Respondent's Motion to Dismiss and Complainant's Answer to Respondent's Motion for Summary Judgment on the following persons at the following email addresses:

Respondent:
Colleen M. Shannon
Counsel for Respondent, City of Aurora, Illinois
Klein, Thorpe & Jenkins, Ltd.
cmshannon@ktjlaw.com

Electronically Delivered to:
FAA Part 16 Airport Proceedings Docket
9-AWA-AGC-Part-16@faa.gov

Thomas P. Scherschel
Counsel for Complainant, Joliet Avionics, Inc.
Amundsen Davis LLC
tscherschel@amundsendavislaw.com

EXHIBIT NO. 28

Affidavit of Bradley Zeman

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

Joliet Avionics, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	FAA Docket No. 16-24-06
	)	
City of Aurora, Illinois,	)	
	)	
Respondent.	)	

Affidavit of Bradley Zeman
President of Complainant, Joliet Avionics, Inc.

I, Bradley Zeman, being knowledgeable of the facts contained herein and being competent to testify thereto, if called at trial would state as follows:

1. I am the President of Complainant, Joliet Avionics, Inc. ("JA")

2. Joliet Avionics paid $4,000,000 for the BP Hangar and immediately conveyed the BP Hangar to the City of Aurora as the Airport Sponsor of the Aurora Municipal Airport pursuant to the terms of the 2007 lease between the City of Aurora ("City") and JA.

3. In addition to purchasing the BP Hangar, JA spent over $1,000,000 to install above ground fuel tanks required under its 2007 Lease, in compliance with the Airport Minimum Standards of 2006, before it could begin doing business at the Aurora Municipal Airport.

4. On information and belief, the purchase agreement between Carver Aero and Lumanair contained an "earn out" clause, which conditioned a portion of the payout to Lumanair on the achievement of a certain sales volume, which was never achieved.

5. The total square footage of the JA leasehold is 131,120 sq ft., not 186,967 asserted by Respondent.

6. The apron and canopy referenced in Respondent's Exhibit No. 7 at pg. 2 of the Exhibit incorrectly suggests the apron is used exclusively by JA. The enclosure above the apron was erected at JA's expense, but neither the apron nor the canopy is part of JA's leasehold and is available for use by all aircraft, and has been used by every commercial operator at the Airport.

7. The actual amount of the Special Facility Bond issued by the City of Aurora for the use of JA in the renovation and improvements to Hangars 5, 6 and 7 and for acquiring the BP Hangar, pursuant to JA's Lease, was $9,400,000.

8. JA and the City were under a lease in 2006 for land on which JA was to construct its own hangars and office buildings. However, the City could not provide the funds, as agreed under the 2006 lease to complete the infrastructure necessary to build and operate the FBO hangars and office space. Accordingly, because the City could not provide the agreed infrastructure funding, JA and the City agreed to enter into the 2007 Lease. The purpose of the 2015 Amendment to the JA 2007 lease was to finalize the arrangements to satisfy the pre-construction costs and architectural fees lost by JA as a result of the City's inability to perform under the 2006 Lease.

9. Carver's underground fiberglass fuel tanks are more than 40 years old.

10. As of the date of filing this Answer to Respondent's Motion to Dismiss and Motion for Summary Judgment, Carver has not installed an above-ground fuel farm or removed the existing below-ground fuel farm. Accordingly, Carver is not in compliance with the Minimum Standards for an FBO.

11. In fact, no construction has begun for the installation of Carver's above-ground fuel tanks or the removal of Carver's underground fuel tanks.

12. JA's 2007 Lease required installation of above-ground fuel tanks and JA was

required to incur its entire $9,400,000 debt obligation, and fully comply with the Minimum Standards of 2006 before beginning to do business as an FBO.

13. Exhibit No. 29 to JA's Answer is a true and accurate copy of the Minimum Standards in effect at the Aurora Municipal Airport in 2006.

14. Exhibit No. 30 is a true and accurate copy of the 1982 Lease between Lumanair and the City of Aurora.

15. Group Exhibit No. 31 are true and accurate and current photos of temporary fuel skids being used by Carver, which contain no pre-mixed FSII. Carver is engaging in truck to truck refueling going through a transfer pump system.

16. Exhibit No. 32 is a true and accurate copy of JA's Second Request for Admission directed to Aurora in Federal Court.

17. Exhibit No. 33 is a true and accurate copy of an email dated 10/23/19 from Chad Oliver, Program Manager – Technical Lead, Chicago Airports District Office

18. Before being allowed to do business at the Airport, the City required JA to be in complete compliance with all existing Minimum Standards, including, but not limited to the construction of an above-ground fuel farm.

19. JA met with senior representatives of the City of Aurora and its Chief Management Officer multiple times to explain the problem and discriminatory affects that had been created by the extraordinarily favorable lease granted to Lumanair and assumed by Carver.

20. Although JA had been the selected service provider for the Corporate Aircraft Association for 16 years, JA recently lost that designation, as Carver/Revv was able to offer fuel prices significantly below JA's fuel prices. Carver/Revv was not able to undercut JA's fuel prices due to efficiencies on the part of Carver/Revv, but rather due to Carver's drastically lower overhead

as a result of the discriminatory lease granted to Carver by Respondent, allowing Carver to pay no amount for occupancy of its leasehold, while JA must pay approximately $500,000 per year in debt service payments in lieu of rent.

21. Carver sells aviation fuel at all other airports serviced by Carver/Revv at market rate prices. It is only at Aurora Municipal Airport that Carver has sold fuel significantly below market prices due to the favorable lease granted to Carver by Respondent.

Further affiant sayeth naught

Bradley Zeman
President, Joliet Avionics, Inc.

ANDREA J. KRUK
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
March 23, 2025

SUBSCRIBED AND SWORN
to before me this 23rd day of
August, 2024

Notary Public

EXHIBIT NO. 29

2006 Minimum Standards for Commercial Activities at the Aurora Municipal Airport

tenancy.res
10/09/06

CITY OF AURORA
RESOLUTION NO. R06-556
DATE OF PASSAGE December 19, 2006

RESOLUTION AMENDING THE MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES AT THE AURORA MUNICIPAL AIRPORT.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City of Aurora owns, operates and maintains the Aurora Municipal Airport; and

WHEREAS, there presently exists a document known as "The Minimum Standards for Commercial Activities at the Aurora Municipal Airport" that sets forth base level requirements for commercial business to locate and operate on the Airport that was approved by the City Council of the City of Aurora on September 22, 1998, and amended January 28, 2003; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, that the City Council of the City of Aurora does hereby amend the "Minimum Standards for Commercial Activities for the Aurora Municipal Airport".

PASSED AND APPROVED by the City Council of the City of Aurora, Illinois on Dec. 19, 2006.

AYES 12 NAYS 0 ABSTAIN ____

ATTEST:

City Clerk

Mayor

PLAINTIFF'S EXHIBIT 125

RECOMMENDATION

At the July 17, 2006 Aurora Municipal Airport Advisory Board meeting, it was unanimously recommended that the City Council approve the amendment to the Minimum Standards for Commercial Activities for the Aurora Municipal Airport.

_____ _____

Date Denny Komes, Chairman

RULES AND REGULATIONS
ESTABLISHING
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES AND TENANTS
AT THE
AURORA MUNICIPAL AIRPORT

GENERAL REQUIREMENTS:

All commercial or related aeronautical services or activities, or combinations thereof, or any other commercial activity shall only be performed according to the terms and conditions of a properly executed written lease agreement or other written agreement with the City of Aurora, the airport owner. For the privilege of operating on the Aurora Municipal Airport, fees will be charged as a provision of the agreement. The fee schedule, though dependent upon individual characteristics, shall be equitable with respect to the fees charged to other businesses on the field. All businesses that require the Airport appurtenances for the operation of the activity shall be required to have a lease with the City of Aurora to conduct this activity and, if necessary, a lease or sublease for any property that is owned by the City of Aurora.

Building space requirements may be provided in one building, attached buildings, or a combination of separate buildings. All buildings and structures are subject to the approval of the City of Aurora prior to construction. The City of Aurora has the right and authority to dictate the height (including door opening height), type of construction, location and appearance of any structure. No structure may be occupied by a tenant or lessee, nor may any business activity commence in a structure, until all direct and indirect items of construction are completed. Direct and indirect items of construction include, by are not limited to, building construction, drainage, paving, landscaping, adjacent land restoration, erosion control and lighting. No existing building may be leased, or subleased, or occupied without written approval from the City of Aurora or its authorized agent.

All lessee personnel that are required to hold applicable FAA certificates and ratings shall maintain such certificates and ratings throughout the term of relevant lease and at the request of the City of Aurora or its authorized agent will provide proof thereof.

Leases granted by the City of Aurora to businesses and individuals to conduct business on the Aurora Municipal Airport will be classified as: "Direct Aviation Oriented Businesses," "Indirect Aviation Oriented Businesses," or "Other."

Leases granted by the City of Aurora to conduct business or provide services on the airport premises will do so by inclusively naming the approved activity in the lease. Activities not specifically named in the lease will be forbidden.

"Direct Aviation Oriented Businesses" shall be defined as a lessee that has a lease with the City of Aurora and is permitted under said lease or a separate written agreement with the City of Aurora to provide one or more of the following activities:

1. Transporting of freight or passengers for hire;
2. Sales of aircraft, aircraft parts or accessories;
3. Flight instruction;
4. Aircraft rental;
5. Airport maintenance;
6. Dispensing or aviation fuels;

7. Avionics servicing or installation;
8. Aircraft painting and interior servicing;
9. Engine or airframe manufacturing, remanufacturing or overhaul.

"Indirect Aviation Oriented Businesses" shall be defined as a lessee that has a lease with the City of Aurora and is permitted under said lease or a separate written agreement with the City of Aurora to provide one or more of the following activities:

1. Construct and/or own hangar units for sale and/or lease;
2. Operate a flight department and its related activities as an ancillary division of a business when its sole purpose is for the transport of its product, personnel and customers on a "not-for-hire" basis;
3. Retail store;
4. Restaurant;
5. General office/warehouse;
6. Hotel;
7. Off-Airport services;
8. Car rental, limousine, bus or taxi services.

"Other" businesses shall be defined as all activities that are not aviation oriented. Such activities shall be compatible with the prime function of the airport. Since it is not the intent of this document to cover every business or service that may desire to locate on the airport, business activities not specifically addressed in this document will, of necessity, be considered on a case-by-case basis.

It is the intent and duty of the City of Aurora to encourage and promote free enterprise and the development of the airport to support the needs of the aviation community. It is the responsibility of the City of Aurora to protect its tenants from unreasonable or unfair competition. To this end, when two or more businesses are currently providing essentially the same services, any new petitioners shall be required to provide a suitable market analysis, or other evidence, showing the justification for locating their business on airport property.

The City of Aurora will permit additional leases for the operating privilege of either storing or dispensing retail aviation fuels at the Aurora Municipal Airport to a "Direct Aviation Oriented Business," as described herein, subject to the Lessee meeting or exceeding all of the parameters that define a Fixed Based Operator (FBO) on Attachment "A" which is made a part of this document.

Flight Departments of an "Indirect Aviation Oriented Business," as described herein, may be granted self-fueling privileges provided that: 1) the flight department meets the definition of an "Indirect Aviation Oriented Business"; 2) fuel may only be used in the aircraft owned by the company and may not be sold, loaned or given to any other party or entity; 3) fuel dispensed under these terms shall be subject to twice the existing fuel flowage charge, as adopted by the City of Aurora and as may be amended from time-to-time; 4) violations of any provision of the conditions listed above will constitute a forfeiture of those privileges and a surrendering of the fuel installation to the City of Aurora at no cost; 5) all fuel farms shall be in the location designated by the City of Aurora. Further, all facilities and equipment to be used for the purposes of corporate self-fueling shall meet all the provisions that follow:

1) Location: Fuel farms shall be located at a site specified by the airport. This site is currently being acquired.

Should the land for the fuel farm not be owned by the City when a request is made for a self-fueling location, the City will approve a

temporary fuel farm location subject to the site meeting all FAA, State and Fire Marshal regulations. Further, a temporary self-fuel farm location would be granted subject to the petitioner agreeing to re-locate the entire facility to the specified fuel farm location, as referenced above, within nine months of being notified by the City and at the petitioner's sole cost. All temporary fuel farms shall meet all other specifications and operating restrictions as listed herein. The petitioner shall also agree to restore the temporary location to its original condition including any required environmental clean up.

2) Size: Fuel farms shall be no less than 20,000 U.S. gallons and be above ground storage tanks. These tanks shall be considered build storage facilities.

- Fuel farms shall be built for aviation purposes.
- Tanks shall be Fireguard, per State Fire Marshal regulations.
- Tanks shall be equipped with high level alarms.
- Tanks shall be equipped with aviation suitable filters.
- Jet tanks shall be epoxy coated.
- Tanks shall have water drains.

3) Construction: Above ground storage tanks are to be double-walled for secondary containment. They are also to be fireproof.

4) Signage: Fuel farms shall not be labeled as to the brand of fuel that is being used by the operator. The tanks shall be clearly marked in accordance with all appropriate State and Federal requirements for type and fire safety.

5) Reports: Prior to approval of any bulk storage fuel farm, per 40 CFR of the Clean Water Act of 1990, a Draft Spill Prevention, Control, and Countermeasures SPCC Plan, illustrating all proposed operating, maintenance and product control issues shall be presented to the City. The SPCC Plan shall be prepared under the direction of a licensed Professional Engineer (P.E.). Further, an approved Emergency Disaster and Preparedness Plan shall be prepared for the facility(s). Within 30 days after completion of the fuel system installation, a Final SPCC Plan, certified by a licensed P.E. shall be provided to the City. Once the site has been approved and installed monthly reports shall be required to be presented to the City listing all deliveries, maintenance and cleaning of the facility(s) and to document payment of flowage fees.

6) Training: All personnel that operate the fuel farm (which includes accepting the delivery of fuel) and any fuel truck shall be trained and certified in said operation. All individuals shall also have annual recertification of said training. The owner of the facility shall present to the airport a list of all persons that have been trained and certified to operate any component of the fuel system on an annual basis, and the training basis use. Training basis shall be recognized training system or curriculum in the aviation industry.

7) Insurance: With the application to install and operate a private or corporate bulk storage fuel farm evidence of a $15,000,000 environmental and liability insurance policy shall be presented. All such insurance policies shall be issued by companies approved by the City of Aurora.

8) Environmental Reports: Prior to the City of Aurora approving any bulk storage fuel farm the petitioner shall present to the City a Phase I Environmental Site Assessment (ESA) and Phase II ESA that is certified by a licensed professional engineer identifying the existing conditions of the area to be leased. The Phase I and Phase II ESAs shall be completed in accordance with ASTM Standards E-1527 and E-1903, respectively.

9) NPDES Permit: Prior to the approval for the installation and operation of any bulk storage fuel farm the petitioner shall present, and maintain for the life of the lease, an appropriate means of meeting the Airport National Pollutant Discharge Elimination System (NPDES) Permit for discharge of any materials into the ground water system. The operator of the fuel farm must pay any fees or charges to maintain the NPDES Permit.

10) Security: The petitioner shall present to the City a plan, acceptable to the City, that provides for the security of a bulk storage fuel farm. This plan shall include perimeter controls, access and active monitoring of the fuel farm.

11) Deliveries: The operator of any bulk storage fuel farm shall agree and certify that there will be no unattended deliveries of any fuel product to the site throughout the life of the lease agreement.

12) Removal of Fueling Facilities: The petitioner shall agree, at the discretion of the city, to completely remove any bulk storage fuel facility and all appurtenances at the termination of the lease. Additionally, the petitioner shall agree to restore the site to its original condition including all environmental remediation that is required at their sole cost. The City may request an irrevocable letter of credit form the operator of the fuel farm to insure that adequate funds are available for removal and clean up of any fuel farm.

13) Co-Oping Fuel Farms: In accordance with FAA guidelines, no private or corporate fuel farm may be co-oped with other entities. The petitioner shall acknowledge and agree that the fuel farm will be solely used for their own aircraft and that co-oping with other flight departments or individuals will not qualify them to have their own fuel farm.

14) All jet fueling operations shall require fuel trucks of no less than 2000 U.S. gallons and all avgas fueling operations shall require fuel trucks of no less than 1000 U.S. gallons. All trucks shall be metered in accordance with all State and FAA regulations.

- Fuel truck shall be built and equipped for aviation use.
- Truck shall have a high level alarm.
- Truck shall have brake interlocks.
- Truck shall have proper aviation fuel filters.
- Truck shall have differential pressure gauge for filters.

15) Maintenance of Fuel Farm

- Water shall be drained from fuel farm on a regular basis and disposed according to law.
- Filters shall be changed per manufacturers recommendation or due to pressure differentials.
- Fire extinguishers shall be properly maintained (NPFA 407)

16) Maintenance of Fuel Truck

- Water shall be drained daily from truck and filters.
- Filters shall be changed per manufacturers recommendation or due to pressure differentials.
- Fire extinguishers shall be properly maintained.

17) Fuel farm shall be in compliance with the Illinois Office of the State Fire Marshal (OSFM) rules, the Clean Water Act and have proper spill control. All construction drawing and design must be approved by a licensed professional engineer.

18) Operator shall obtain all permits and approvals for the fuel farm and truck, not limited to State Fire Marshal, local Fire Marshal, FAA, local Building code, and City of Aurora Risk Manager.

19) Tenants who operate a fuel farm shall post with the City of Aurora a bond, irrevocable letter of credit, or other instrument as approved by the City in the amount of $300,000.00 that may be used at the discretion of the City to remedy items of non-compliance with the lease and any specific issues regarding the operation, maintenance or environmental clean up of a fuel related issue.

The city of Aurora reserves the right to grant or withhold a lease or lease extension based upon the terms contained in these Minimum Standards.

Businesses or individuals attempting to conduct a commercial activity without a written agreement or lease will be deemed in violation of these Minimum Standards and are subject to a find of not less than $250.00 per day or more than $1,000.00 per day.

Businesses or individuals conducting activities not authorized in their agreement or lease with the City of Aurora will be deemed to be in breach of contract and are subject to such remedies as may be set forth in their agreement or lease and/or a find of not less than $10.00 per day nor more than $250.00 per day.

The City of Aurora reserves the right to make changes to this document without republishing. Any such changes will be made available to the public upon request.

GENERAL CONDITIONS

Pursuant to FAA and State of Illinois requirements, the City of Aurora reserves the right to refuse to issue a lease to any firm or individual if either of the following conditions are present:

1. It would be unreasonably costly, burdensome or impractical for more than on business or individual to provide such services; or

2. If allowing more businesses and individuals to provide such services would require the reduction of space leased pursuant to an existing agreement between other tenants and the airport.

The requirements as set forth for each type of activity defined in this document shall also apply to any sublessee that engages in any commercial activity as part of its operation.

MANDATORY AIRPORT LEASE CLAUSES

All airport leases with tenants will be required to contain, at minimum, the following language:

1. For aeronautical leases involving services to the public; each lease must be in conformance with Section 308 of the Federal Aviation Act of 1958:

   "It is hereby agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature."

2. All leases involving services to the public must contain the assurances required by Title IV of the Civil Rights Act of 1964, and by Part 21 of the regulations of the Office of the Secretary of Transportation:
   "The lessee for himself, his personal representatives, successors in interest and assigns as part of the considerations hereof, does hereby covenant and agree that: 1) No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities; 2) In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and 3) The lessee shall use the premises in compliance with all the other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title IV of the Civil Rights Act of 1964, and as said regulations shall be amended."

3. All leases for aeronautical activities involving services to the public must contain the provisions of paragraph 4b of the Project Application for Airport Improvements:

   "The lessee agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates and other similar types of price reductions to volume purchasers."

None of the above shall be required for farm leases or for any lease not involving service to the public.

LEASE PROPOSAL REQUIREMENTS

The City of Aurora will not accept an original request for a lease agreement unless the petitioner presents, in writing, a proposal that describes the scope of the activity and operation including, but not limited to, the following:

1. The services or activities proposed to be offered;
2. The amount of land required;
3. The amount of building space required;
4. The types and configurations of all buildings to be constructed, leased or subleased;
5. The number and types of aircraft the operation will be using, if any;
6. The proposed number of persons to be employed;
7. The hours of operation of the activity;
8. Evidence and types of insurance;
9. Evidence of the probably noise impact and environmental impact on the Airport and surrounding communities from the proposed activity;
10. The names and addresses of the owners and/or stockholders of the proposed activity;
11. Evidence of the financial capability of the petitioner to provide and perform the proposed endeavor;
12. Three (3) business references attesting to the character and financial capability of the business and its owners.

APPROVALS FOR PERMITS

Prior to the issuance of a building permit for the construction of a facility to be located at the Aurora Municipal Airport or the initiation of any site preparation, the lessee shall present the Airport Director two (2) detailed sets of plans for the project. Additionally, an irrevocable letter of credit or other acceptable form of security shall be placed on file with the City of Aurora to assure completion of the construction. The plans shall include, but are not limited to, details of all utilities and their access point to the project, any utility easements, pavement and building elevations and construction vehicle ingress and egress routes. The plans shall also include at least one (1) ground rod to be installed in the approach apron to every hangar door. After construction is complete, the City shall issue a Temporary Occupancy Permit until two (2) sets of "as built" plans are presented to the Airport Director. A final occupancy permit shall be issued upon acceptance and approval of the "as built" plans by the City's Division of Inspections and Permits.

SPECIAL TYPES OF USES

I. AIRCRAFT SALES:

Any lessee desiring to engage in the sale of new or used aircraft must comply with the following minimum requirements:

A. FACILITIES:

There must be at least 10,000 square feet of land leased and a building constructed of at least 4,000 square feet, or a subleased facility of these dimensions, for an office and public lounge as well as a public use telephone.

B. PERSONNEL:
One person having a current commercial pilot certificate with ratings appropriate for the types of aircraft to be sold.

C. DEALERSHIPS:
New aircraft dealers shall hold an authorized factory dealership.

D. AIRCRAFT:
A dealer of new aircraft shall have available, or on call, at least on current model demonstrator. The maximum number of aircraft (new, used or on consignment) to be on the field at any one time shall be not greater than one per 1,000 square feet of hangar space or one aircraft per tiedown space rented from the City of Aurora.

E. SERVICES:
The lessee must provide for adequate servicing of aircraft and accessories during warranty periods.

F. HOURS OF OPERATION:
The normal operating hours will be at the operator's discretion; however, the lessee should be reasonable available to the public.

G. INSURANCE COVERAGE:
The lessee shall carry property insurance on real property and liability insurance in companies and with amounts of coverage to be approved by the City of Aurora and shall name the City of Aurora as an additional insured. This insurance coverage requirement also applies to aircraft that are being held for sale by the lessee, whether or not owned by the lessee.

II. AIRFRAME AND POWER PLANT REPAIR:
Any lessee desiring to engage in airframe and/or power plant repair must comply with the following minimum requirements:

A. FACILITIES:
There must be at least 10,000 square feet of land leased and a building constructed of at least 4,000 square feet, or a subleased facility of these dimensions, for an office and public lounge as well as a public use telephone.

B. PERSONNEL:
All personnel must be trained in the proper use and safety procedures for all agents and equipment used in the operation of the business and shall have all FAA licenses required for the work being performed.

C. EQUIPMENT:
Sufficient equipment and supplies and availability of parts and subparts to perform maintenance on aircraft. Such equipment shall meet all applicable OSHA safety regulations.

D. INSURANCE COVERAGE:
The lessee shall carry property insurance on real property and liability insurance in companies and with amounts of coverage to be approved by the City of Aurora and shall name the City as an additional insured.

III. AIRCRAFT FUELS AND OIL RETAIL DISPENSING SERVICE:
Any lessee desiring to dispense aviation fuels and oils must be a "Direct Aviation Oriented Business" (and FBO as defined according to Attachment "A") and must comply with the following minimum requirements that are in addition to the standards required for fuel farms:

A. PERSONNEL:
All personnel must be trained in the proper use and safety procedures for all agents and equipment used in the operation of the business and shall have all FAA licenses required for the work being performed.

B. INSURANCE COVERAGE:
The lessee shall carry property insurance on real property and liability insurance, including environmental liability insurance, covering sudden and accidental, as well as gradual, pollution, as required by the City of Aurora and shall name the City as an additional insured.

C. FUEL FARMS:
All fuel farms shall comply with the following provisions.

1) Location: Fuel farms shall be located at a site specified by the airport. This site is currently being acquired.

Should the land for the fuel farm not be owned by the City when a request is made for a self-fueling location, the City will approve a temporary fuel farm location subject to the site meeting all FAA, State and Fire Marshal regulations. Further, a temporary self-fuel farm location would be granted subject to the petitioner agreeing to re-locate the entire facility to the specified fuel farm location, as referenced above, within nine months of being notified by the City and at the petitioner's sole cost. All temporary fuel farms shall meet all other specifications and operating restrictions as listed herein. The petitioner shall also agree to restore the temporary location to its original condition including any required environmental clean up.

2) Size: Fuel farms shall be no less than 20,000 U.S. gallons and be above ground storage tanks. These tanks shall be considered build storage facilities.

- Fuel farms shall be built for aviation purposes.
- Tanks shall be Fireguard, per State Fire Marshal regulations.
- Tanks shall be equipped with high level alarms.
- Tanks shall be equipped with aviation suitable filters.
- Jet tanks shall be epoxy coated.
- Tanks shall have water drains.

3) Construction: Above ground storage tanks are to be double-walled for secondary containment. They are also to be fireproof.

4) Signage: Fuel farms shall not be labeled as to the brand of fuel that is being used by the operator. The tanks shall be clearly marked in accordance with all appropriate State and Federal requirements for type and fire safety.

5) Reports: Prior to approval of any bulk storage fuel farm, per 40 CFR of the Clean Water Act of 1990, a Draft Spill Prevention, Control, and Countermeasures SPCC Plan, illustrating all proposed operating, maintenance and product control issues shall be presented to the City. The SPCC Plan shall be prepared under the direction of a licensed Professional Engineer (P.E.). Further, an approved Emergency Disaster and Preparedness Plan shall be prepared for the facility(s). Within 30 days after completion of the fuel system installation, a Final SPCC Plan, certified by a licensed P.E. shall be provided to the City. Once the site has been approved and installed monthly reports shall be required to be presented to the City listing all deliveries, maintenance and cleaning of the facility(s) and to document payment of flowage fees.

6) Training: All personnel that operate the fuel farm (which includes accepting the delivery of fuel) and any fuel truck shall be trained and certified in said operation. All individuals shall also have annual recertification of said training. The owner of the facility shall present to the airport a list of all persons that have been trained and certified to operate any component of the fuel system on an annual basis, and the training basis use. Training basis shall be recognized training system or curriculum in the aviation industry.

7) Insurance: With the application to install and operate a private or corporate bulk storage fuel farm evidence of a $15,000,000 environmental and liability insurance policy shall be presented. All such insurance policies and the companies that underwrite said policies shall be approved by the City of Aurora.

8) Environmental Reports: Prior to the City of Aurora approving any bulk storage fuel farm the petitioner shall present to the City a Phase I Environmental Site Assessment (ESA) and Phase II ESA that is certified by a licensed professional engineer as approved by the City of Aurora identifying the existing conditions of the area to be leased. Prior to initiating, any required Phase II site assessment shall be approved by the City of Aurora Environmental Legal Counsel as to areas to be tested and conditions tested for. The Phase I and Phase II ESAs shall be completed in accordance with ASTM Standards E-1527 and E-1903, respectively and subject to the further approval of the City of Aurora's Environmental Legal Counsel.

9) NPDES Permit: Prior to the approval for the installation and operation of any bulk storage fuel farm the petitioner shall present, and maintain for the life of the lease, an appropriate means of meeting the Airport National Pollutant Discharge Elimination System (NPDES) Permit for discharge of any materials into the ground water system. The operator of the fuel farm must pay any fees or charges to maintain the NPDES Permit.

10) Security: The petitioner shall present to the City a plan, acceptable to the City, that provides for the security of a bulk storage fuel farm. This plan shall include perimeter controls, access and active monitoring of the fuel farm.

11) Deliveries: The operator of any bulk storage fuel farm shall agree and certify that there will be no unattended deliveries of any fuel product to the site throughout the life of the lease agreement.

12) Removal of Fueling Facilities: The petitioner shall agree, at the discretion of the city, to completely remove any bulk storage fuel facility and all appurtenances at the termination of the lease. Additionally, the petitioner shall agree to restore the site to its original condition including all environmental remediation that is required at their sole cost. The City may request an irrevocable letter of credit from the operator of the fuel farm in an amount as determined in the sole discretion of the City of Aurora to insure that adequate funds are available for removal and clean up of any fuel farm.

13) Co-Oping Fuel Farms: In accordance with FAA guidelines, no private or corporate fuel farm may be co-oped with other entities or aircraft owners or operators. The petitioner shall acknowledge and agree that the fuel farm will be solely used for their own aircraft and that co-oping with other flight departments or individuals will not qualify them to have their own fuel farm.

14) All jet fueling operations shall require fuel trucks of no less than 2000 U.S. gallons and all avgas fueling operations shall require fuel trucks of no less than 1000 U.S. gallons. All trucks shall be metered in accordance with all State and FAA regulations including but not limited to the following;

   a. Fuel truck shall be built and equipped for aviation use.
   b. Truck shall have a high level alarm.
   c. Truck shall have brake interlocks.
   d. Truck shall have proper aviation fuel filters.
   e. Truck shall have differential pressure gauge for filters.

15) Maintenance of Fuel Farm

   a. Water shall be drained from fuel farm on a regular basis and disposed according to law.
   b. Filters shall be changed per manufacturers recommendation or due to pressure differentials.
   c. Fire extinguishers shall be properly maintained (NPFA 407)

16) Maintenance of Fuel Truck

   a. Water shall be drained daily from truck and filters.
   b. Filters shall be changed per manufacturers recommendation or due to pressure differentials.
   c. Fire extinguishers shall be properly maintained.

17) Fuel farm shall be in compliance with the Illinois Office of the State Fire Marshal (OSFM) rules, the Clean Water Act and have proper spill control. All construction drawing and design must be approved by a licensed professional engineer.

18) Operator shall obtain all permits and approvals for the fuel farm and truck, not limited to State Fire Marshal, local Fire Marshal, FAA, local Building code, and City of Aurora Risk Manager.

19) Tenants who operate a fuel farm shall post with the City of Aurora a bond, irrevocable letter of credit, or other instrument as approved by the City in the amount of $300,000.00 that may be used at the discretion of the City to remedy items of non-compliance with the lease and any specific issues regarding the operation, maintenance or environmental clean up of a fuel related issue.

20) Failure to have approved security posted with the City or to comply with other minimum standards in force and effect by the City of Aurora governing the maintenance and operation of the fuel farm shall result in immediate revocation of the right to maintain and operate the fuel farm.

IV. RADIO, INSTRUMENT OR PROPELLER REPAIR SERVICE

Any lessee desiring to provide a radio, instrument or propeller repair service must hold an FAA Repair Station Certificate and ratings for same, and must comply with the following minimum requirements:

A. FACILITIES:
There must be at least 10,000 square feet of land leased and a building constructed of at least 4,000 square feet, or a subleased facility of these dimensions, for an office and public lounge as well as a public use telephone.

B. PERSONNEL:
All personnel must be trained in the proper use and safety procedures for all agents and equipment used in the operation of the business and shall have all FAA licenses required for the work being performed.

C. INSURANCE COVERAGE:
The lessee shall carry property insurance on real property and liability insurance in companies and with amounts of coverage to be approved by the City of Aurora, but in no event shall be less than $1 million combined single limit and shall name the City as an additional insured.

V. FLIGHT SCHOOLS:

Any lessee desiring to provide a flight school or flight instruction only, must comply with the following minimum requirements:

A. FACILITIES
There must be at least 10,000 square feet of land leased and a building constructed of at least 4,000 square feet, or a subleased facility of these dimensions, for an office and public lounge as well as a public use telephone.

B. PERSONNEL:
Instructors must hold the appropriate FAA ratings and the company must hold appropriate FAA certificates for the type(s) of instruction to be given.

C. INSURANCE COVERAGE:
The lessee shall carry property insurance on real property and liability insurance in companies and with amount of coverage to be approved by the City of Aurora and shall name the City as an additional insured.

VI. PAINTING AND UPHOLSTERY SHOPS:
Any lessee desiring to engage in the painting and/or upholstering of aircraft must comply with the following minimum requirements:

A. FACILITIES:
There must be at least 12,000 square feel of land leased and a building constructed of at least 9,000 square feel, or a subleased building of these dimensions, for an office and public lounge as well as a public use telephone. The facility must be of a size that permits all painting and stripping to be performed indoors.

B. EQUIPMENT:
Sufficient equipment and supplies and availability of parts or subparts to perform painting and upholstery services for aircraft. Such equipment shall meet all applicable OSHA safety regulations.

C. PERSONNEL:
All personnel must be trained in the proper use and safety procedures for all agents and equipment used in the operation of the business and shall have all FAA licenses required for the work being performed.

D. INSURANCE COVERAGE:
The lessee shall carry property insurance on real property and liability insurance in companies and with amounts of coverage to be approved by the City of Aurora and shall name the City as an additional insured.

VII. SKY DIVING:
Sky diving is regulated at the Aurora Municipal Airport per City Council Ordinance No. 099-58.

VIII. DISASTER AND PREPAREDNESS PLAN:
The Aurora Municipal Airport has a disaster and preparedness plan on file, and updated from time to time, that shall become a part of these Rules and Regulations.

Attachment "A"

Define FBO – Retail Fuel Privileges

General Items/Task	Units
Flight instruction – primary/advanced	6 planes
General public lounge	3500 s.f.
Corporate pilot lounge	500 s.f.
Flight planning area	2000 s.f.
Hangar (storage)	40,000 s.f.
Jet fuel trucks	2 @ 2,000 gallons
Avgas fuel trucks	2 @ 1,000 gallons
Fuel storage	20,000 gallons jet, 12,000 gallons Avgas
Tugs	2
Jet and piston maintenance	15,000 s.f.
Office space/rental	5,000 s.f.
Hours of operation	5 days @ 24 hours/2 days @ 14 hours
Charter certificate	Required
Pilot supply shop	100 s.f.
Flight training area	350 s.f.
Parts room	800 s.f.
Service office and research area	350 s.f.
Canteen with vending machines	250 s.f.
Crew cars	2
De-icing	1
Forklift	1
Lav cart	1
Ground power unit	2
Tow bar	2 capable of servicing entire GA fleet
Conference/meeting center	600 s.f.
FAA Certified 145 Repair Station with Avionics and Instrument authorization	Required

EXHIBIT NO. 30

1982 Lease between Lumanair, Inc. and the City of Aurora

This Instrument Prepared By
and After Recording Return To:
G. Alexander McTavish
Ruddy, Myler, Ruddy & Fabian
111 West Downer Place
Aurora, Illinois 60506

LUMANAIR LEASE

LEASE OF REAL ESTATE AT AURORA MUNICIPAL AIRPORT

This indenture made this 1st day of March, 1982, between the CITY OF AURORA, a municipal corporation, ("Landlord"), and LUMANAIR, INC., a Delaware corporation, ("Tenant"),

WITNESSETH:

1. Legal Description of Leased Premises

The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the following described real estate, being part of the Aurora Municipal Airport, Sugar Grove Township, Kane County, Illinois, to-wit:

PARCEL 1

Beginning at the Northeast corner of the Southwest quarter of Section 17, Township 38 North, Range 7 East of the Third Principal Meridian in Kane County, Illinois; thence Southerly along the East line of the Southwest quarter of said Section 17, a distance of 1500.0 feet; thence South 89° 41' West, a distance of 1079.79 feet for a point of beginning; thence South 0° 19' East, a distance of 100.0 feet; thence South 89° 41' West, a distance of 106.0 feet; thence North 0° 19' West, a distance of 100.0 feet; thence North 89° 41' East, a distance of 106.0 feet to the point of beginning, containing 10,600 square feet more or less.

PARCEL 1 (a)

Beginning at the Northeast corner of the Southwest quarter of Section 17, Township 38 North, Range 7 East of the Third Principal Meridian in Kane County, Illinois; thence Southerly along the East line of the Southwest quarter of said Section 17, a distance of 1500.0 feet; thence South 89° 41' West, a distance of 1079.79 feet for a point of beginning; thence Northeasterly and on the arc of a circle for 270° and having a radius of 50.0 feet, the center point of said circle being located North 89° 41' East, a distance of 50.0 feet from the point of beginning; for a distance of 235.62 feet; thence South 89° 41' West, a distance of 50.0 feet; thence North 0° 19' West a distance of 50.0 feet to the point of beginning, containing 8390.5 square feet more or less.

PARCEL 1 (b)

Beginning at the northwest corner of the southwest quarter of Section 17, Township 38, Range 7 east of the Third Principal Meridian in Kane County, Illinois; thence southerly along the east line of the southwest quarter of Section 17, a distance of 1550 feet; thence south 89° 41' west a distance of 1044.79 feet for a point of beginning; thence south 0° 19' East a distance of 50'; thence South 89° 41' west, a distance of 35 feet, thence North 0° 19' west a distance of 50 feet: thence North 89° 41' east a distance of 35 feet to the point of beginning, containing 1750 square feet, more or less.

1826823

FILED FOR RECORD
KANE COUNTY, ILL.
1982 MAR -6 AM 10 00

1826823

Spencer E. Jungles
RECORDER

(12)

G. Alexander McTavish
111 W. Downer Pl.
Aurora Il 60506

COA Production 000078

PLAINTIFF'S EXHIBIT 91

PARCEL 2

Beginning at the Northwest corner of the Southwest quarter of Section 17, Township 38 North, Range 7 East of the Third Principal Meridian in Kane County, Illinois; thence Southerly along the East line of the Southwest quarter of said Section 17, a distance of 1500.0 feet, thence South 89° 41' West, a distance of 1,185.79 feet for a point of beginning; thence South 0° 19' East, a distance of 100.0 feet; thence South 89° 41' West, a distance of 98.0 feet; thence North 0° 19' West, a distance of 100.0 feet; thence North 89° 41' East, a distance of 98.0 feet to the point of beginning, containing 9800 square feet more or less.

PARCEL 3

Beginning at the Northeast corner of the Southwest quarter of Section 17, Township 38 North, Range 7 East of the Third Principal Meridian, in Kane County, Illinois; thence Southerly along the East line of the Southwest quarter of Section 17, a distance of 1500.0 feet; thence South 89° 41' West, a distance of 1369.79 feet for a point of beginning; thence South 0° 19' East, a distance of 100.0 feet; thence South 89° 41' West, a distance of 86.0 feet; thence North 0° 19' West, a distance of 100.0 feet; thence North 89° 41' East, a distance of 86.0 feet to the point of beginning, containing 8600 square feet more or less.

PARCEL 4

Beginning at the Northwest corner of the Southwest quarter of Section 17, Township 38 North, Range 7 East of the Third Principal Meridian, in Kane County, Illinois; thence Southerly along the East line of the Southwest quarter of Section 17, a distance of 1600 feet; thence South 89° 41' West, a distance of 1044.79 feet for a point of beginning; thence South 0° 19' East, a distance of 20 feet; thence South 89° 41' West, a distance of 325 feet; thence North 0° 19' West, a distance of 20.0 feet; thence North 89° 41' East, a distance of 325 feet; to the point of beginning, containing 6500 square feet more or less.

2. Ground Rent

(a) The Tenant will pay to the Landlord an annual ground rent of Four Thousand Four Hundred Seventy Eight and 18/100 ($4,478.18) Dollars for Parcels 1, 2 and 3 hereunder which ground rent may, at the option of the Tenant, be paid annually on the anniversary of this lease or in equal monthly installments of Three Hundred Seventy Three and 18/100 ($373.18) Dollars payable on the first day of March, 1982 and on the first day of each succeeding month until the termination of this lease. Said ground rent is based upon multiplying the square footage of said Parcels (29,000 square feet) by an amount of 15.442¢ per square foot, and shall be adjusted

annually on the first day of December in accordance with the terms of the Cost of Living Rider attached hereto and by this reference incorporated herein.

(b) The Tenant shall pay to the Landlord an annual ground rent of $2.00 for Parcels 1 (a) and 1 (b), payable on the anniversary date of this lease.

(c) The Tenant shall pay to Landlord an annual ground rent of $1.00 for Parcel 4 until building permits are issued thereon or thirty-six (36) months have elapsed, whichever earlier occurs, at which time said annual ground rent shall be computed by multiplying the square footage of said Parcel (6500 square feet) by the amount per square foot being imposed at that current time under paragraph (a) hereof, and said ground rent shall be adjusted annually on the first day of December in accordance with the terms of the Cost of Living Rider attached hereto and by this reference incorporated herein.

3. Additional Rent

In addition to the ground rent reserved in Paragraph 2 hereof, the Tenants shall pay to Landlord as additional rent for the use of the leased premises, an amount equal to one and one-half (1.5%) per cent of the gross receipts derived by the Tenants from the business conducted on the leased premises during the calendar month next preceding the date said rent is payable. Gross receipts shall be defined as the revenue derived from the sale of aircraft accessories, parts and fuel, hangar rentals and the performance of services. Revenue derived from the sale of aircraft is specifically excluded from the definition of gross receipts contained herein. Said additional monthly rent shall be paid no later than 45 days after the end of the month for which it is assessed, until the termination of this lease. In no event shall said additional rent annually be smaller than $10,881.62, which shall be adjusted annually on the first day of December in accordance with the terms of the Cost of Living Rider attached hereto and by this reference incorporated herein.

4. Lease Term

The term of this lease shall begin on the date hereof and shall run for a period of twenty (20) years until February 28, 2002. The Tenant shall have the option to renew this lease for an additional term not to extend beyond February 2, 2009; provide that, at time of such renewal, any party hereto may require the renegotiation of the amounts of ground rent and/or additional rent under Paragraphs 2 and 3 hereof, such negotiated amounts being determined by arbitration in accordance with the Rules of the American Arbitration Association if the parties hereto are themselves unable to agree thereupon; and further provided that at the time of Tenant's exercise of said option it is not then in default of the terms and provisions hereof. Tenant shall give Landlord six (6) months prior notice of its intent to exercise the option granted herein.

5. Use of Premises

Tenants agree that the use of the premises will be limited to the sale, service, repair, rental and storage of aircraft, aircraft parts and accessories and related items, office space, flight instruction and the sale of aircraft fuel, according to the most recent Rules and Regulations of the Aurora Airport as adopted by the Aurora City Council.

6. Non discrimination

The Tenants for themselves, their personal representatives, successors in interest and assigns, as part of the consideration hereof, do hereby covenant and agree that:

(a) No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities located on the leased premises;

(b) In the construction of any improvements on, over or under the leased premises and in the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in denied the benefits of, or otherwise be subjected to discrimination;

(c) The Tenants shall use the leased premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title IV of the Civil Rights Act of 1964, and as said Regulations may be amended.

(d) In the event of breach of any of the above discrimination covenants, the City of Aurora shall have the right to terminate the Lease and to re-enter and re-possess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

(e) The Tenant agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types or price reductions to volume purchasers.

7. Use of Airport Facilities

The Tenant shall have free use of the Aurora Municipal Airport, including, but not by way of limitation, the landing areas, aprons, taxiways and vehicle parking areas. Nothing in this lease, however, shall be construed to convey to the Tenant the exclusive use of any part of the Aurora Municipal Airport except those premises

4

described in Paragraph 1 hereof and it is hereby specifically understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308 (a) of the Federal Aviation Act of 1958, as amended, and the Landlord reserves the right to lease to any other party any portion of the Aurora Municipal Airport not described in Paragraph 1 hereof other than public facilities and to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.

8. Care of Leased Premises

At the termination of this lease or of any extension or renewal thereof, Tenant shall surrender the leased premises, including all buildings and site improvements constructed or installed by the Tenant thereon, in good condition, reasonable wear and tear and damage by fire, explosion, windstorm, or any other casualty excepted. All such buildings and improvements shall thereupon become the sole property of the Landlord and regardless of the time when such termination occurs, or the or the reason therefor, the Landlord shall have no obligation to account for or pay the value or cost of such buildings or improvements to the Tenant.

9. Care of Airport Facilities

The Landlord will maintain the facilities of the Aurora Municipal Airport, excluding the leased premises, in good repair including, but not by way of limitation, the runways, taxiways, parking areas, roadways and power and electrical equipment.

10. Insurance

(a) Liability

Tenants agree to hold Landlords harmless of and from any loss or demand of whatever nature made by or on behalf of any person or persons for any wrongful act or omission arising out of the use of the Aurora Municipal Airport on the part of the Tenants, their agents, servants, invitees and employees, and for such purpose Tenants agree to provide $1,000,000 combined single limit insurance coverage naming the Landlord, its officers and employees, as additional parties insured. Landlord reserves the right to increase insurance requirements as required by current Rules and Regulations of the Aurora Airport as adopted by the Aurora City Council.

(b) Property Damage

Tenants further agree to insure, for the term of this lease, all

buildings and other permanent improvements located on the leased premises against loss by fire; explosion, windstorm and any other casualties. Said policy of insurance shall name the Landlord, its officers and employees as additional insureds and shall be in the full insurable amount of said buildings and other permanent improvements.

Tenants shall file a certificate of insurance with the Landlord evidencing that the insurance coverages required hereunder have been procured and that the same will not be cancelled without ten (10) days prior written notice to the Landlord.

11. Assessments

It is understood and agreed that the Landlord may from time to time assess against the leased premises a portion of its costs of furnishing, installing, maintaining and renewing various utility services. The assessment against the leased premises shall be a fraction of the total assessment, the numerator of which is 45,640.5 square feet and the denominator of which is the total square footage of land available for lease at the Aurora Municipal Airport. The Tenant shall be responsible for any and all taxes assessed against the leased premises during the term of the lease.

12. Subordination

(a) State and Federal Law

This lease is subject to all articles and conditions of the grant agreements entered into between the Landlord and the Federal Aviation Administration and the Department of Aeronautics of the State of Illinois and nothing contained herein shall be construed to prevent the Landlord from making such further commitments as it desires to the Federal Government or to the State of Illinois so as to qualify for the expenditure of federal or state funds upon the Aurora Municipal Airport.

(b) Local Ordinances

This lease shall be subject and subordinate to all ordinances of the City of Aurora and all rules and regulations of the Aurora Municipal Airport as the same may be in effect from time to time.

13. Condemnation

If it be in the interest of the public, the Landlord, City of Aurora, shall have the power of eminent domain to condemn this leasehold even though the Landlord is, itself, a party hereto.

14. Right of Access

The Landlord hereby reserves the right to enter upon the leased premises at reasonable times for the purpose of making inspections to determine if the conditions and requirements of this lease are being fully complied with. Should the buildings on the leased premises become deficient in maintenance or in need of repair, Tenant hereby agrees to repair the same within thirty (30) days after receipt of notice from the Landlord. Failure to comply shall be considered a breach of this lease.

15. Storage of Damaged Aircraft

No damaged or rebuilt aircraft shall be stored in view of the general public.

16. Tenant's Personnel

All personnel employed by the Tenant on the leased premises shall be schooled, trained and competent for their assigned duties and shall be of good moral character.

17. Examinations and Audits

The Tenant at all times during the terms of this lease shall keep at the leased premises accurate books, accounts, records and receipts in a manner acceptable to a Certified Public Accountant showing the true status of all business conducted on the leased premises and preserve the same until they have been audited by Landlord's auditor and make them available at any time to Landlord for examination or audit. Further, Tenant shall annually present to Landlord a copy of Tenant's annual fiscal audit report.

18. Relocation of Utilities

All utilities (sewer, water, electrical) other than private services and/or connections for the Tenant that conflict with any construction on Parcels 1 (a), 1 (b) or 4 hereunder shall be relocated outside of the leased premises to the satisfaction of the Landlord and at Tenant's expense.

19. Delays in Enforcement

No delay on the part of either party in enforcing any of the provisions of this lease shall be construed as a waiver thereof. No waiver on the part of any party of a breach of any of the provisions of this lease shall be construed as a waiver of any subsequent breach.

20. Assignment of Lease

This lease may not be assigned without the prior written consent of the Landlord.

21. Notices

All notices required hereunder shall be in writing and shall be deemed to have been delivered if deposited in the United States mail, certified mail, return receipt requested, with postage prepaid and addressed, if to the Landlord at:

City of Aurora
44 East Downer Place
Aurora, Illinois 60507

and if to the Tenant at:

Lumanair, Inc.
P.O. Box 1046
Aurora, Illinois 60507

22. Successors and Assigns

Except as may herein be otherwise provided, the terms, covenants and conditions of this lease shall be binding upon and inure to the benefit of the successors of the parties hereto.

23. Interpretation

(a) Severability

It is the intention of both of the parties hereto that the provisions of this lease shall be severable in respect to a declaration of invalidity of any provision hereof.

(b) Headings

The paragraph headings are for convenience only and do not define, limit or describe the contents.

(c) Governing Law

The laws of the State of Illinois shall govern the validity, performance and enforcement of this lease.

(d) Amendments

No amendments, modifications of or supplements to this lease shall be effective unless in writing, executed and delivered by Landlord and Tenant.

This lease is executed in duplicate originals.

IN WITNESS WHEREOF, the Landlord has caused this lease to be executed by its Mayor and attested by its City Clerk, and its corporate seal hereto affixed, and the Tenant has caused this lease to be executed by its President and attested by its Secretary and its corporate seal hereto affixed, the day and year first above written.

LANDLORD: CITY OF AURORA, a municipal corporation,

BY: _____
Mayor

ATTEST:

_____
City Clerk

TENANT: LUMANAIR, INC., a Delaware corporation

BY: _____
President

LUMANAIR, INC. Corporate Seal DELAWARE ATTEST

_____
Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JACK HILL, personally known to me to be the Mayor of the CITY OF AURORA, and ELIZABETH F. PIETKIEWICZ, personally known to me to be the City Clerk, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument as Mayor and City Clerk of the CITY OF AURORA, and caused the corporate seal to be affixed thereto, pursuant to authority, given by the City Council of the CITY OF AURORA, as their free and voluntary act, and as the free and voluntary act and deed of the CITY OF AURORA, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 1st day of March, 1982.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ROBERT F. LUMAN, personally known to me to be the President of LUMANAIR, INC., and JOSEPHINE L. LUMAN, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 1st day of March, 1982.

Notary Public

COST OF LIVING ADJUSTMENT RIDER

1. As used herein:

(a) "Index" shall mean the "Revised 1967 Consumer Price Index (for Urban Wage Earners 1967 = 100) for all Items for Chicago, issued by the Bureau of Labor Statistics of the United States Department of Labor";

(b) "Lease Date" shall mean the date of this lease;

(c) "Anniversary Date" shall mean the first anniversary of the commencement of the term of this lease and each anniversary thereafter; and

(d) "Percentage Increase" shall mean the percentage of increase or decrease in the Index on each Anniversary Date equal to a fraction, the numerator of which shall be the Index on such Anniversary Date less the Index on the Lease Date and the denominator of which shall be the Index on the Lease Date.

2. The annual ground rent reserved herein shall be increased on each Anniversary Date by an amount equal to the annual ground rent payable immediately prior to such Anniversary Date (but excluding therefrom any amount included therein as a result of prior adjustments thereof pursuant to the provisions of this Rider) multiplied by the Percentage Increase for such Anniversary Date, less the amounts, if any, included in the annual ground rent as a result of prior adjustments thereof pursuant to the provisions of this Rider, such increase to be payable commencing on such Anniversary Date in the same manner and at the same time or times as is the annual ground rent provided for in the lease to which this Rider is attached. If such Anniversary Date shall not be the first day of the month, the increase shall be prorated and shall be payable commencing on the first day of the month next following the Anniversary Date.

3. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc. or any other nationally recognized publisher of similar statistical information. In the event the Index shall cease to be published, then, for the purposes of this Rider, there shall be substituted for the Index such other index as Landlord and Tenant shall agree upon and, if they are unable to agree within ninety (90) days after the Index ceases to be published, such matters shall be determined by arbitration in accordance with the Rules of the American Arbitration Association.

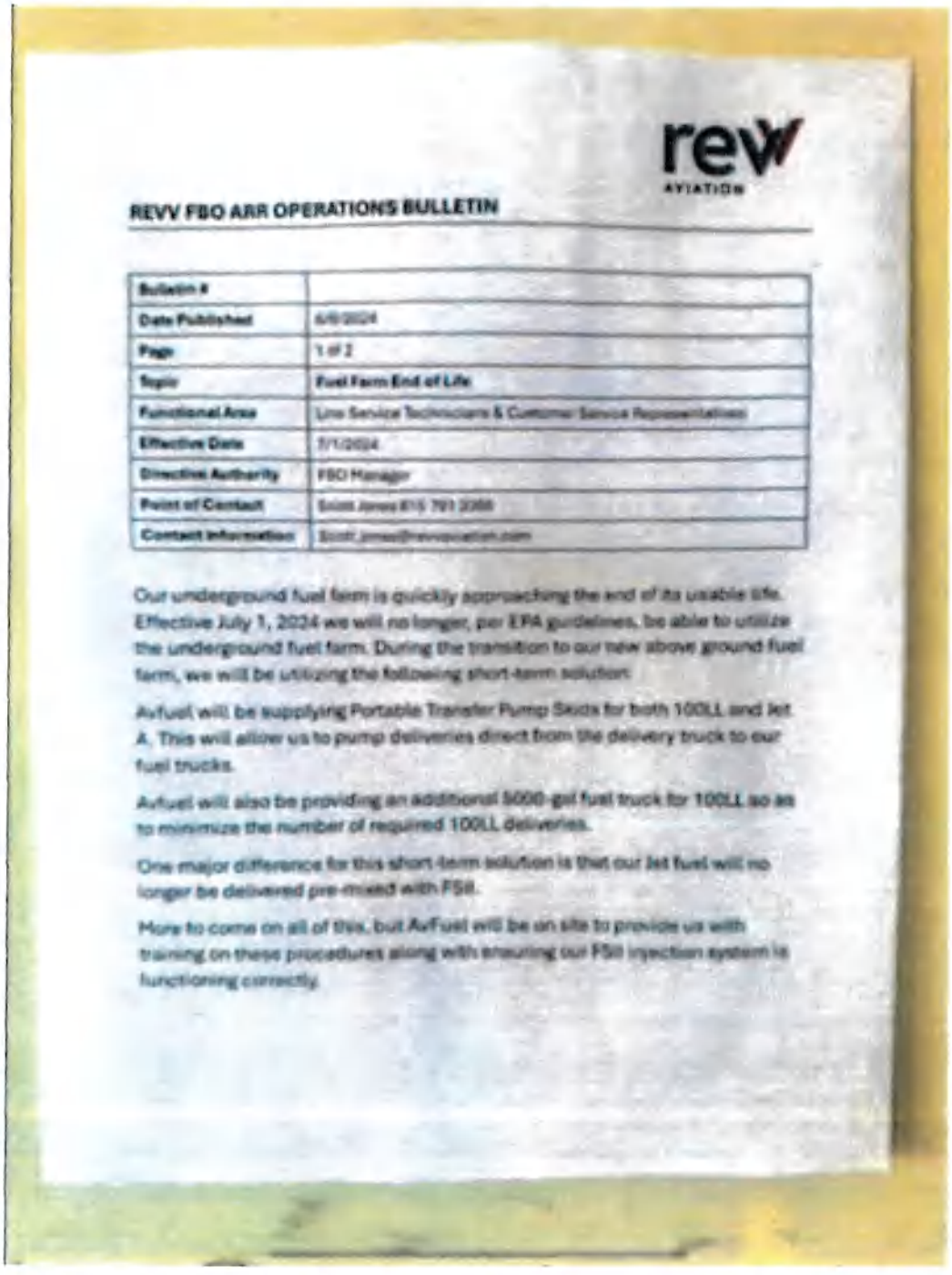
EXHIBIT NO. 31

Photos of temporary fuel skids used by Carver


JET A
1863


MOKING

Jet A transfer skid



REVV FBO ARR OPERATIONS BULLETIN

Bulletin #	
Date Published	6/6/2024
Page	1 of 2
Topic	**Fuel Farm End of Life**
Functional Area	Line Service Technicians & Customer Service Representatives
Effective Date	7/1/2024
Directive Authority	FBO Manager
Point of Contact	Scott Jones 615 791 2068
Contact Information	Scott_jones@revvaviation.com

Our underground fuel farm is quickly approaching the end of its usable life. Effective July 1, 2024 we will no longer, per EPA guidelines, be able to utilize the underground fuel farm. During the transition to our new above ground fuel farm, we will be utilizing the following short-term solution:

Avfuel will be supplying Portable Transfer Pump Skids for both 100LL and Jet A. This will allow us to pump deliveries direct from the delivery truck to our fuel trucks.

Avfuel will also be providing an additional 5000-gal fuel truck for 100LL so as to minimize the number of required 100LL deliveries.

One major difference for this short-term solution is that our Jet fuel will no longer be delivered pre-mixed with FSII.

More to come on all of this, but AvFuel will be on site to provide us with training on these procedures along with ensuring our FSII injection system is functioning correctly.

Truck to truck refueling going through the transfer pump system....

EXHIBIT NO. 32

Aurora's Response to JA's Second Request for Admission in Federal Lawsuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOLIET AVIONICS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 19 CV 8507
	)	
CITY OF AURORA,	)	Judge Matthew F. Kennelly
	)	
Defendant.	)	

DEFENDANT'S RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS TO ADMIT DIRECTED TO CITY OF AURORA

Defendant CITY OF AURORA (the "City"), by and through its attorneys, KLEIN, THORPE AND JENKINS, LTD. and ODELSON, STERK, MURPHEY, FRAZIER AND MCGRATH, LTD., responds to Plaintiff's Second Set of Requests to Admit Directed to City of Aurora as follows:

Requests for Admission

1. Admit that the attached Plaintiffs Exhibit No. 50 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Complaint filed by City of Aurora in Case No. 15 LM 508.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine copy of the Complaint filed by the City in Case No. 15 LM 508, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document or whether it has been altered from the original.

2. Admit that the attached Plaintiffs Exhibit No. 51 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Amended Complaint filed by City of Aurora in Case No. 2015 MR 68.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine copy of the Amended Complaint filed by the City in Case No. 15 LM 508, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document or whether it has been altered from the original.

3. Admit that the attached Plaintiffs Exhibit No. 54 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Second Amended Complaint filed by City of Aurora in Case No. 2015 MR 68.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine copy of the Second Amended Complaint filed by the City in Case No. 15 LM 508, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document or whether it has been altered from the original.

4. Admit that the attached Plaintiffs Exhibit No. 56 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Third Amended Complaint filed by City of Aurora in Case No. 2015 MR 68.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine copy of the Third Amended Complaint filed by the City in Case No. 15 LM 508, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document or whether it has been altered from the original.

5. Admit that the attached Plaintiff's Exhibit No. 57 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of correspondence from Carmen Forte to Alexander McTavish, dated February 20, 2018.

RESPONSE: The City admits that the substance of the exhibit identified in this request appears to be a genuine, true and accurate representation of the correspondence from Carmen Forte to Alexander McTavish dated February 20, 2018, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document. In addition, the document contains a sticker marking it as "Exhibit 7" that was not part of the original letter.

6. Admit that the attached Plaintiff's Exhibit No. 58 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of correspondence from Carmen Forte to Lumanair, Inc., dated March 8, 2018.

RESPONSE: The City admits that the substance of the exhibit identified in this request appears to be a genuine, true and accurate representation of the correspondence from Carmen Forte to Lumanair dated March 8, 2018, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document. In addition, the document contains a sticker marking it as "Exhibit H" and yellow highlighting that were not part of the original letter.

7. Admit that the attached Plaintiff's Exhibit No. 59 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Third Amended Complaint filed by City of Aurora in Case No. 2015 MR 68.

RESPONSE: Deny.

8. Admit that the attached Plaintiff's Exhibit No. 60 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of correspondence from the City of Aurora to Lumanair, Inc., dated November 13, 2018.

RESPONSE: The City admits that the substance of the exhibit identified in this request appears to be a genuine, true and accurate representation of the correspondence from Carmen Forte to Lumanair dated November 13, 2018, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document. In addition, the document contains yellow highlighting that was not part of the original letter.

9. Admit that the attached Plaintiff's Exhibit No. 61 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of a Notice of Violation from the Office of the Illinois State Fire Marshall dated 3/27/2019.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The document identified herein is not bates-stamped, was authored by a third party and directed to Lumanair, and produced by Plaintiff in this action. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley v. Como Inn, Inc.*, No. 99-cv-1486, 2003 WL 1989607, at *2 (N.D. Ill. Apr. 28, 2003). An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

10. Admit that the attached Plaintiff's Exhibit No. 62 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of correspondence from Thomas P. Scherschel to Alex Alexandrou dated October 3, 2019.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The correspondence identified herein was authored by Plaintiff's counsel and produced by Plaintiff in this action. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a

reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

11. Admit that the attached Plaintiffs Exhibit No. 63 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of an email from Thomas P. Scherschel to Alex Alexandrou dated October 4, 2019.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The email identified herein was authored by Plaintiff's counsel and produced by Plaintiff in this action. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the email identified in this request.

12. Admit that the attached Plaintiffs Exhibit No. 64 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of an email from Scott England to Alex Alexandrou and others dated October 17, 2019.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The email identified herein was authored by Plaintiff's representative and produced by Plaintiff in this action. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

__. Admit that the attached Plaintiffs Exhibit No. 66 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of an email from Thomas P. Scherschel to Richard Veenstra and others dated June 30, 2020.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The email identified herein was authored by Plaintiff's counsel and produced by Plaintiff. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

13. Admit that the attached Plaintiffs Exhibit No. 67 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of an email from Carmen Forte to Thomas Scherschel correspondence of September 11, 1992 from Steven L. Kadden to Mayor David Pierce.

RESPONSE: Deny.

14. Admit that the attached Plaintiffs Exhibit No. 68 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of correspondence from Bernie C. Klotz to Mayor Richard C. Irvin and Alex Alexandrou dated July 8, 2020.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The correspondence identified herein was authored by Plaintiff's representative and produced by Plaintiff. In addition, the document contains yellow highlighting, and it is unknown to the City whether this highlighting was part of the original correspondence. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

15. Admit that the attached Plaintiffs Exhibit No. 69 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of correspondence form Carmen P. Forte, Jr. to Thomas P. Scherschel dated July 13, 2020.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine, true and accurate representation of the correspondence from Carmen Forte to Thomas Scherschel dated July 13, 2020, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document or whether it has been altered from the original.

16. Admit that the attached Plaintiff's Exhibit No. 70 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of City of Aurora Resolution No. R20-151 and a genuine, true and accurate copy of the Amended and Restated Ground Lease of Real Estate at the Aurora Municipal Airport between the City of Aurora and Lumanair, Inc., a Delaware corporation, dated August 1, 2020.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine, true and accurate representation of Resolution No. R20-151 and the Amended and Restated Ground Lease of Real Estate at the Aurora Municipal Airport between the City of Aurora and Lumanair, Inc., a Delaware corporation, dated August 1, 2020, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the documents referenced herein or whether they have been altered from the originals.

17. Admit that the attached Plaintiff's Exhibit No. 71 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of City of Aurora Resolution No. R21-205 dated July 27, 2021 authorizing Lumanair, Inc., to assign its Amended and Restated Ground Lease of Real Estate at the Aurora Municipal Airport between the City of Aurora and Lumanair, Inc., to Carver Aero, LLC.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine, true and accurate representation of Resolution No. R21-205, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the document referenced herein or whether it has been altered from the original.

18. Admit that the attached Plaintiffs Exhibit No. 72 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of City of Aurora Resolution No. R22-006 dated January 11, 2022 approving a lease between the City of Aurora and Carver Aero, LLC and a genuine, true and accurate copy of City of the Lease between the City of Aurora and Carver Aero, LLC, an Iowa Limited Liability Company dated in the first paragraph January 1, 2022.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine, true and accurate representation of Resolution No. R22-006 and the Lease between the City of Aurora and Carver Aero, LLC, an Iowa Limited Liability Company, dated January 1, 2022, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the documents referenced herein or whether they have been altered from the originals.

19. Admit that the attached Plaintiff's Exhibit No. 88 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Illinois Secretary of State Corporation File Detail Report, File No. 55037973, in reference to U Development Corp.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The document identified herein is not bates-stamped, was authored by a third party, and produced by Plaintiff in this action. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

20. Admit that the attached Plaintiff's Exhibit No. 91 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the March 1, 1982 lease of Real Estate at the Aurora Municipal Airport between the City of Aurora and Lumanair, Inc., a Delaware corporation.

RESPONSE: Admit.

21. Admit that the attached Plaintiff's Exhibit No. 94 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the September 22, 1998 Third Amendment to the March 1, 1992 lease between the City of Aurora and Lumanair, Inc. in reference to a Lease for Real Estate at the Aurora Municipal Airport.

RESPONSE: The City admits only that the document bates-stamped COA Production 000100 is a genuine, true, and accurate copy of the September 22, 1998 Third Amendment to the March 1, 1992 lease between the City of Aurora and Lumanair, Inc.

22. Admit that the attached Plaintiff's Exhibit No. 96 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the February 23, 1999 Fourth Amendment to March 1, 1982 lease between the City of Aurora and Lumanair, Inc. in reference to a Lease for Real Estate at the Aurora Municipal Airport.

RESPONSE: Admit.

23. Admit that the attached Plaintiff's Exhibit No. 105 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the Meeting Minutes—Final of the City of Aurora City Council dated April 14, 2015 noting the approval of the First Amended Lease of Real Estate at the Aurora Municipal Airport to Joliet Avionics.

RESPONSE: The City admits that the exhibit identified herein is a genuine, true and accurate copy of the Final Meeting Minutes of the City of Aurora City Council dated April 14, 2015, which notes an ordinance approving the First Amendment to Lease of Real Estate at the Aurora Municipal Airport to Joliet Avionics.

24. Admit that the attached Plaintiff's Exhibit No. 108 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the City of Aurora Finance Committee Meeting Minutes dated March 24, 2015 containing a reference to approval of the First Amendment to the Lease of Real Estate at the Aurora Municipal Airport in reference to Joliet Avionics.

RESPONSE: The City admits that the exhibit identified herein contains a genuine, true and accurate copy of the City of Aurora Finance Committee Meeting Minutes dated March 24, 2015 containing a reference to an ordinance approving the First Amendment to Lease of Real Estate at the Aurora Municipal Airport to Joliet Avionics.

25. Admit that the attached Plaintiff's Exhibit No. 109 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the First Amendment to the November 27, 2007 Lease of Real Estate at the Aurora Municipal Airport, and Estoppel Certificate, between the City of Aurora and Joliet Avionics, Inc., an Illinois corporation.

RESPONSE: Admit.

26. Admit that the attached Plaintiff's Exhibit No. 111 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the City of Aurora Building, Zoning, and Economic Development Committee Meeting Minutes dated July 15, 2020 (COA 000609-000611).

RESPONSE: Admit.

27. Admit that the attached Plaintiff's Exhibit No. 112 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the City of Aurora Committee of the Whole Meeting Minutes—Final dated July 21, 2020 which includes the Report of the Building, Zoning and Economic Development Committee to the Committee of the Whole, referencing A Resolution approving a lease agreement with Lumanair, Inc. for certain real property located at the Aurora Municipal Airport.

RESPONSE: Admit.

28. Admit that the attached Plaintiff's Exhibit No. 113 to the deposition of Alex Alexandrou is a genuine, true and accurate copy of the City of Aurora City Council Meeting Minutes—Final dated July 28, 2020.

RESPONSE: Admit.

29. Admit that the attached Plaintiffs Exhibit No. 114 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of the City of Aurora Resolution R20-151 dated July 28, 2020 and the August 1, 2020 Lease between the City of Aurora and Lumanair, Inc.

RESPONSE: The City admits that the exhibit identified in this request appears to be a genuine, true and accurate representation of Resolution No. R20-151 and the Amended and Restated Ground Lease of Real Estate at the Aurora Municipal Airport between the City of Aurora and Lumanair, Inc. dated August 1, 2020, but denies the remaining allegations in this paragraph. This exhibit is not bates-stamped, was not produced by the City through discovery in this action, and the City does not know the origin of this exact copy of the documents referenced herein. In addition, portions of the exhibit have been altered by yellow highlighting.

30. Admit that the attached Plaintiff's Exhibit No. 118 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of the FAA Airport Assurances effective 3/2014.

RESPONSE: The City objects to this request as overbroad, unduly burdensome, and improper. The exhibit identified herein was produced by the FAA, not the City. The City cannot authenticate documents produced by a third party, and is not required to question the FAA about the genuineness of its production. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a

reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

31. Admit that the attached Plaintiff's Exhibit No. 120 to the deposition of Alex Alexandrou contains a genuine, true and accurate copy of the Amended Deposition Notice and Deposition Rider in reference to the deposition of Alexa Alexandrou set for April 26, 2022.

RESPONSE: The City objects to this request as overbroad and improper. The exhibit identified herein was authored by Plaintiff's counsel and produced by Plaintiff in this matter, and the City is not required to question Plaintiff's counsel about the genuineness of this copy. While an answering party is obligated to undertake a "reasonable inquiry," that obligation is usually "limited to review and inquiry of those persons and documents that are within the responding party's control." *Hanley*, 2003 WL 1989607, at *2. An answering party "is not generally required to question unsworn third parties," and "is certainly not required to ask plaintiffs about the genuineness of the documents they produced." *Id.* Subject to and without waiving these objections, and after a reasonable inquiry, the City is unable to admit or deny the genuineness of the documents identified in this request.

32. Admit the genuineness of the documents contained on pages COA 000001 through COA 000839 of Aurora's document production and that said documents are kept by Aurora in the ordinary course of business.

RESPONSE: Admit.

33. Admit the genuineness of the documents contained on pages COA 005701 through COA 009403 of Aurora's document production and that said documents are kept by Aurora in the ordinary courses of business.

RESPONSE: The City admits that documents bates-stamped COA 005701-009403 are genuine, and that documents bates-stamped COA 005701-005785, COA 006038-006048, and COA 006227-009403 are kept by the City in the ordinary course of business. The City denies that documents bates-stamped COA 005786-06037 and COA 006049-006226 are kept by the City in the ordinary course of business.

In the event Aurora admits Requests Nos. 32 and 33 above, there is no need to respond to Requests Nos. 34-39 below.

34. Admit the genuineness of the attached documents contained on pages 005842 through 005862 of Aurora's document production and that said documents are kept by Aurora in the ordinary course of business.

RESPONSE: The City admits that documents bates-stamped COA 005842-005862 are genuine, but denies that they are kept by the City of Aurora in the ordinary course of business.

35. Admit the genuineness of the attached documents contained on pages 005870 through 005890 Aurora's document production and that said documents are kept by Aurora in the

ordinary course of business and reflect the terms of the Amended and Restated Ground Lease between the City of Aurora and Lumanair, Inc., dated August 1, 2020.

RESPONSE: The City admits the genuineness of documents bates-stamped COA 005870-005890 and that the documents reflect the terms of the August 1, 2020 lease, but denies that these exact documents are kept by the City of Aurora in the ordinary course of business.

36. Admit the genuineness of the attached documents contained on pages 006281 through 006296 Aurora's document production and that said documents are kept by Aurora in the ordinary course of business.

RESPONSE: Admit.

37. Admit the genuineness of the attached documents contained on pages 006335 through 006367 of Aurora's document production and that said documents are kept by Aurora in the ordinary course of business.

RESPONSE: Admit.

38. Admit the genuineness of the attached documents contained on pages 006377 through 006405 of Aurora's document production and that said documents are kept by Aurora in the ordinary course of business.

RESPONSE: Admit.

39. Admit the genuineness of the attached documents contained on pages 006407 through 006433 of Aurora's document production and that said documents are kept by Aurora in the ordinary course of business.

RESPONSE: Admit.

41. Admit that the City of Aurora offered to lease hangar space to Lumanair, Inc., in 2019 for $8.50 per sq. ft.

RESPONSE: The City admits that it offered to lease hangar space to Lumanair, Inc. for $8.50 per sq. ft. in 2020, but denies the remaining allegations in this paragraph.

Respectfully submitted,

CITY OF AURORA

By: */s Colleen M. Shannon*
Colleen M. Shannon

Lance C. Malina (lcmalina@ktjlaw.com)
Carmen P. Forte, Jr. (cpforte@ktjlaw.com)
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Odelson, Sterk, Murphey, Frazier & McGrath, Ltd.
3318 West 95th Street
Evergreen Park, Illinois 60805

CERTIFICATE OF SERVICE

The undersigned certifies that on July 15, 2022, the above and foregoing document, *Defendant's Responses to Plaintiff's Second Set of Requests to Admit Directed to City of Aurora*, was served on counsel for Plaintiff via email at the addresses listed below:

Thomas P. Scherschel
SmithAmundsen LLC
TScherschel@salawus.com

/s Colleen M. Shannon

EXHIBIT NO. 33

10/23/19 email from Chad Oliver, Program Manager – Technical Lead, Chicago Airports District Office

From: Oliver, Chad (FAA) <Chad.Oliver@faa.gov>
Sent: Wednesday, October 23, 2019 11:55 AM
To: Scott England <scottengland@jaair.com>; Bartell, Deb (FAA) <deb.bartell@faa.gov>
Cc: Esquivel, Rob (FAA) <Rob.Esquivel@faa.gov>
Subject: RE: Clarification of Grant Assurances

Good morning Scott,

I believe that the best term to use for the rent per square foot for an aeronautical use is "market comparable". "Fair market" has other definitions for the FAA and does not apply to aeronautical uses on an airport, we only require airports to receive fair market value for non-aeronautical uses.

The answer is 'Yes', the City of Aurora should charge Lumanair a comparable rent to what JA Air pays. Even if JA Air wasn't located at ARR, the City should still charge Lumanair a market comparable rate for rent. This rate could be determined (probably by an appraiser) by looking at aeronautical lease rates at other similarly situated airports (other reliever airports in the Chicago area). That way at least the City would have something to base the rate upon.

Chad Oliver
Program Manager - Technical Lead
Chicago Airports District Office (CHI-ADO)
chad.oliver@faa.gov
847-294-7199

From: Scott England <scottengland@jaair.com>
Sent: Wednesday, October 23, 2019 9:38 AM
To: Bartell, Deb (FAA) <deb.bartell@faa.gov>; Oliver, Chad (FAA) <Chad.Oliver@faa.gov>
Cc: Esquivel, Rob (FAA) <Rob.Esquivel@faa.gov>
Subject: RE: Clarification of Grant Assurances

Thanks for your response Deb, I look forward to hearing from Chad.

Kind regards,
Scott

Scott C. England

J.A. Air Center - Celebrating 54 Years in General Aviation!

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Aurora Municipal Airport
43W730 US Rt. 30
Sugar Grove, IL 60554
Office - 630-549-2130
Cell - 630-842-6745

www.jaair.com
scottengland@jaair.com

From: Bartell, Deb (FAA) <deb.bartell@faa.gov>
Sent: Wednesday, October 23, 2019 9:11 AM
To: Scott England <scottengland@jaair.com>; Oliver, Chad (FAA) <Chad.Oliver@faa.gov>

Cc: Esquivel, Rob (FAA) <Rob.Esquivel@faa.gov>
Subject: RE: Clarification of Grant Assurances

Hello Scott,

Chad please get back with Scott on this.

Thanks,

Deb Bartell
Manager, Chicago Airports District Office
Federal Aviation Administration
847-294-7335

From: Scott England <scottengland@jaair.com>
Sent: Friday, October 18, 2019 3:16 PM
To: Bartell, Deb (FAA) <deb.bartell@faa.gov>
Subject: Clarification of Grant Assurances

Good afternoon Deb,

I hope you are enjoying the nice fall weather. Following up to our meeting from a few weeks ago, we were hoping that you could provide some further clarification for us in regards to #22.c. of the Grant Assurances: *"Each fixed-based operator at the airport shall be subject to the same rates, fees. rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities."* As you know, this has not been the case over the last 11 years at the Aurora Airport.

Going forward, does the City of Aurora have to and have the right to subject Lumanair to a "market comparable" or "fair market" rental charge per square foot? And, if so, does this apply to both a new lease for Lumanair and/or a renewal of their expired lease?

The FAA has been very clear with the City that the Minimum Standards must be enforced. We just want to be clear that Grant Assurance #22.c. must also be enforced, and that whatever lease the City offers Lumanair must not be unjustly discriminatory to JA going forward as well.

Thank you very much for taking the time to weigh in on this for us,

Kind regards,
Scott

Scott C. England

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J.A. Air Center

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Aurora Municipal Airport
43W730 US Rt. 30
Sugar Grove, IL 60554
Office - 630-549-2130
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Walenga, Pat (FAA)

From: Cockream, Melissa <MCockream@amundsendavislaw.com>
Sent: Friday, August 23, 2024 12:56 PM
To: 9-AWA-AGC-Part-16 (FAA)
Cc: Colleen M. Shannon; Carmen P. Forte Jr.; Scherschel, Thomas
Subject: 16-24-06 - Joliet Avionics, Inc. v. City of Aurora - FILING [IWOV-Active.FID1882057]
Attachments: Complainant's Answer to Respondent's Motion to Dismiss and Complainant's Answer to Respondent's Motion for Summary Judgment.PDF; Complainant Exhibit 28.PDF; Complainant Exhibit 29.PDF; Complainant Exhibit 30.PDF; Complainant Group Exhibit 31.PDF; Complainant Exhibit 32.PDF; Complainant Exhibit 33.PDF

Follow Up Flag: Follow up
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Good Morning –

Attached please find Complainant's Answer to Respondent's Motion to Dismiss and Complainant's Answer to Respondent's Motion for Summary Judgment along with Complainant's exhibits 28-33.

Thank you

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August 23, 2024

Office of the Chief Counsel Attention: FAA Part 16 Docket Clerk, AGC-600
Federal Aviation Administration
800 Independence Avenue SW.
Washington, DC 20591

RE: 14 CFR Part 16 Formal Complaint
Answer to Respondent's Motion to Dismiss and Answer to Respondent's Motion for Summary Judgment

Complainant: Joliet Avionics, Inc.
Respondent: City of Aurora, a municipal corporation
Docket No.: FAA Docket No. 16-24-06