

FOUST PERSONAL GUARANTY

This Personal Guaranty ("Guaranty") dated as of December ____, 2021, is entered into between Jacklyn Foust ("Guarantor") in favor of City Of Watsonville, a municipal corporation ("City") (collectively referred to as the "Parties").

RECITALS

WHEREAS, City has entered into a lease ("Lease") dated December ____, 2021 with Strawberry Aviation, Inc., a California corporation ("Company") for the premises located at 150 Aviation Way, Suite 8, at the Watsonville Municipal Airport (Airport) in the City of Watsonville, County of Santa Cruz, State of California, more particularly described on Exhibit "A" and depicted on Exhibit "A" of said Lease, on the terms and subject to the conditions as hereinafter set forth.

WHEREAS City will consent to the Lease only upon receiving the personal guaranty from the Guarantor guaranteeing the obligations of Company under the Lease.

ACCORDINGLY, in consideration of the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

1. Guaranty.

1.1 *Guaranty of Obligations.* Guarantor unconditionally, absolutely, and irrevocably guarantees and promises to pay to City, on demand, in lawful money of the United States of America and in immediately available funds, any and all indebtedness and obligations (hereinafter collectively, the "Guaranteed Obligations") of Company to City under the Lease or agreement, or other document or instrument entered into by Company (hereinafter collectively, the "Documents") or otherwise. The term "Guaranteed Obligations" is used herein in its most comprehensive sense and includes any and all debts, obligations and liabilities of Company to City (including, without limitation, any and all attorneys' fees, expenses, costs, premiums, charges and accrued and unpaid interest, including interest that, but for the filing of a petition in bankruptcy, would have accrued on the Guaranteed Obligations) now existing or hereafter incurred or created, whether voluntarily or involuntarily, and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether Company may be liable individually or jointly with others, whether recovery upon such indebtedness may be or hereafter becomes barred by any statute of limitations or whether such indebtedness may be or hereafter becomes otherwise unenforceable, and includes Company's prompt, full and faithful performance, observance and discharge of each and every term, condition, agreement, representation, warranty, undertaking and provision to be performed by Company under the Documents or otherwise. Guarantor agrees that this Guaranty constitutes a guaranty of payment when due and not of collection.

1.2 *Continuing Guaranty.* This Guaranty is a continuing guaranty of the Guaranteed Obligations, including any and all Guaranteed Obligations which are renewed, extended, compromised, refinanced, or restructured from time to time. This Guaranty shall remain effective until the Guaranteed Obligations have been fully paid,

performed, and discharged as provided in Section 8 and City has given written notice of that fact to Guarantor.

1.3 Independent Obligations. Guarantor agrees that she is directly and primarily liable to City, that her obligations hereunder are independent of the Guaranteed Obligations and that a separate action or actions may be brought and prosecuted against Guarantor, whether action is brought against Company or whether Company is joined in any such action or actions. Guarantor agrees that any releases which may be given by City to Company, or any other guarantor or endorser shall not release it from this Guaranty.

2. Indemnity.

2.1 Indemnity. In addition to the payment of expenses pursuant to Section 9.1, Guarantor agrees to indemnify, defend, exonerate, pay and hold City (the "Indemnitee") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel and expert witness fees and disbursements) for such Indemnities in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitee shall be designated a party thereto, that may be imposed on, incurred by or asserted against such Indemnitee, in any manner relating to or arising out of or in connection with this Guaranty (the Indemnified Liabilities). Notwithstanding the foregoing, Indemnified Liabilities shall not include liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses, and disbursements to the extent caused by or resulting from the willful misconduct or gross negligence of such Indemnitee.

2.2 Notice. Indemnitee will promptly notify Guarantor of each event of which it has knowledge that may give rise to a claim under this Section 2.

2.3 Defense of Actions. If any investigative, judicial or administrative proceeding arising in connection with any of the Indemnified Liabilities is brought against any Indemnitee indemnified or intended to be indemnified pursuant to this Section 2, Guarantor, to the extent and in the manner directed by the Indemnitee or intended Indemnitee, will resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Guarantor (which counsel shall be satisfactory to the Indemnitee or intended Indemnitee). Each Indemnitee will use its best efforts to cooperate in the defense of any such action, suit or proceeding. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Guarantor shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law.

3. Consents by Guarantor.

3.1 **Consents.** Guarantor hereby authorizes City, without notice or demand and without affecting Guarantor's liability hereunder, from time to time to:

- (a) *Changes in Terms.* Renew, compromise, extent, refinance, accept partial payments, accelerate, or restructure the Guaranteed Obligations or otherwise change the term for payment or the terms of any of the Guaranteed Obligations, or any part thereof, including, without limitation, increasing or decreasing the rate of interest thereof.
- (b) *Amendment of Documents.* Enter into any waiver, amendment, rescission, or modification of any of the terms or provisions of the Documents or any agreement or document executed in connection therewith concerning City's rights with respect to Company under the Lease or other documents.
- (c) Waive, amend, or fail to enforce any other provision of the Lease.
- (d) *Liquidation of Guaranteed Obligations.* Settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations, or any part thereof, and any security or collateral therefor in any manner as City may determine in its sole discretion.
- (e) *Collateral.* Take and hold collateral to secure the payment of the Guaranteed Obligations and exchange, enforce, waive, and release any such collateral, and apply such collateral and direct the order or manner of sale thereof as City in its sole discretion may determine.
- (f) *Releases.* Release or substitute any one or more endorser(s) or other guarantor(s); and
- (g) *Assignment.* Assign, without notice, this Guaranty in whole or in part and City's rights hereunder to any one at any time.

3.2 **Non-Release of Guarantor.** Guarantor agrees that City may do any or all of the foregoing in such manner, upon such terms, and at such times as City, in its sole discretion, deems advisable, without, in any way or respect, impairing, affecting, reducing, or releasing Guarantor from its undertakings hereunder and Guarantor hereby consents to each and all of the foregoing acts, events and occurrences.

4. Waivers

4.1 **Defenses.** Guarantor hereby waives any right to assert against City as a defense, counterclaim, setoff or cross-claim, any defense (legal or equitable), counterclaim, setoff or cross-claim which Guarantor may now or at any time hereafter have under applicable law, rule, arrangement or relationship against Company, City or any other party. Guarantor waives all defenses, counterclaims and setoffs of any kind or nature arising, directly or indirectly, from the present or future lack of perfection,

sufficiency, validity or enforceability of the Documents or any security interest thereunder.

4.2 Election of Remedies. Guarantor hereby waives any defense arising by reason of any claim or defense based upon an election of remedies by City, which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Company for reimbursement, or any other rights of Guarantor to proceed against any other person or security, including, but not limited to, any defense based upon an election of remedies by City under the provisions of Section 580(d) of the California Code of Civil Procedure, or any similar law of California or of any other state, or of the United States.

4.3 Presentment, Demand and Notice. Except for the notice described in Section 2.2, Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protests, notices of dishonor, notices of default, notice of acceptance of this Guaranty, diligence, and notices of the existence, creation or incurrence of the Guaranteed Obligations or of new or additional Guaranteed Obligations incurred or created after the date of this Guaranty, and all other notices or formalities to which Guarantor may be entitled under applicable law.

4.4 Remedies Against Company. As a condition to payment or performance by Guarantor under this Guaranty, City shall not be required to, and Guarantor hereby waives any and all rights to require City to, prosecute or seek to enforce any remedies against Company or any other party liable to City on account of the Guaranteed Obligations or to require City to seek to enforce or resort to any remedies with respect to any security interests, liens or encumbrances granted to Company by City or any other party on account of the Guaranteed Obligations. This waiver includes but is not limited to an express waiver of the rights created by Section 2845 and relevant case law.

4.5 Subrogation Rights. Guarantor shall have no right of subrogation, reimbursement, exoneration, contribution, or any other rights that would result in Guarantor being deemed a creditor of Company under the federal Bankruptcy Code or any other law. Guarantor irrevocably waives all such rights, the right to assert any such rights and any right to enforce any remedy which City now or may hereafter have against Company and hereby irrevocably waives any benefit of and any right to participate in, any security now or hereafter held by City, whether any of the foregoing rights arise in equity, at law or by contract.

5. Subordination.

Any and all present and future debts and obligations of Company to Guarantor are hereby postponed in favor of and subordinated to the full payment and performance of all present and future debts and obligations of Company to City. Any instruments now or hereafter evidencing any indebtedness of Company to Guarantor shall be marked with a legend that the same are subject to this Guaranty and, if City so

requests, shall be delivered to City. Upon the liquidation, bankruptcy, or distribution of any of Company's assets, Guarantor shall assign to the City all of Guarantor's claims on account of such indebtedness so that City shall receive all dividends and payments on such indebtedness until payment in full of the Guaranteed Obligations. This Section 5 shall constitute such an assignment if Guarantor fails to execute and deliver such an assignment. All monies or other property of Guarantor at any time in City's possession may be held by City as security for any and all obligations of Guarantor to City, now existing or hereafter arising, whether absolute or contingent, whether due or to become due, and whether under this Guaranty or otherwise. Guarantor also agrees that City's books and records showing the account between City and Company shall be admissible in any action or proceeding and shall be binding upon Guarantor for the purpose of establishing the terms set forth therein and shall constitute prima facie proof thereof.

6. Financial Condition of Company.

Guarantor is presently informed of the financial condition of Company and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Guaranteed Obligations. Guarantor hereby covenants that it will continue to keep itself informed of Company's financial condition and of all other circumstances which bear upon the risk of nonpayment. Absent a written request for such information by Guarantor to City, Guarantor hereby waives its right, if any, to require, and City is relieved of any obligation or duty to disclose to Guarantor any information which City may now or hereafter acquire concerning such condition or circumstances.

7. Representations and Warranties.

Guarantor represents and warrants to City that the following statements are true, correct, and complete as of the date of this Guaranty:

- (a) *Authorization.* This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid, and binding obligation of Guarantor enforceable in accordance with its terms.
- (b) *No Conflict.* Neither the execution and delivery of this Guaranty nor the fulfillment of or compliance with the terms and conditions of this Guaranty conflicts with or shall result in a breach of the terms, conditions or provisions of any agreement or instrument to which Guarantor is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Guarantor under the terms of any instrument or agreement or violates any provision of law or any order of any court or other agency of government.
- (c) *No Actions or Proceedings.* There is no pending or threatened suit or proceeding affecting Guarantor before any court, governmental agency, or

arbitrator which might affect the enforceability of this Guaranty or the business, operations, assets, or condition of Guarantor.

- (d) **Adequate Consideration.** The consideration given or provided, or to be given or provided, by City in connection with this Guaranty is adequate and satisfactory in all respects to support this Guaranty and Guarantor's obligations hereunder.

8. Termination of Guaranty.

Guarantor's obligations under this Guaranty shall continue in full force and effect and this Guaranty shall not terminate until the Guaranteed Obligations are fully paid, performed, and discharged and City gives Guarantor written notice of that fact. The Guaranteed Obligations shall not be considered fully paid, performed, and discharged unless and until all payments by Company to City are no longer subject to any right on the part of any person whomsoever, including, but not limited to, Company, Company as a debtor-in-possession, or any trustee or receiver in bankruptcy, to set aside such payments or seek to recoup the amount of such payments, or any part thereof. The foregoing shall include, by way of example and not by way of limitation, all rights to recover preferences voidable under Title 11 of the United States Code. In the event that any such payments by Company to City are set aside after the making thereof, in whole or in part, or settled without litigation, to the extent of such settlement, all of which is within City's discretion, Guarantor shall be liable for the full amount City is required to repay plus costs, interest, attorneys' fees and any and all expenses which City paid or incurred in connection therewith.

9. Miscellaneous.

9.1 **Expenses.** Guarantor agrees to pay all attorneys' fees and all other costs and out-of-pocket expenses which may be incurred by City in the enforcement or collection of this Guaranty and the Guaranteed Obligations, whether or not suit is filed.

9.2 **Interest.** All amounts required to be paid to City by Guarantor pursuant to the provisions of this Guaranty (including, without limitation, pursuant to Sections 2 and 9.1 hereof) shall bear interest from and including the date upon which such amounts are due, to and excluding the date of payment thereof, at the rate of ten percent (10%) per annum. All payments of such amounts by Guarantor shall include any such accrued interest.

9.3 **Headings.** The Section and other headings contained in this Guaranty are for reference purposes only and shall not affect in any way the meaning or interpretation of this Guaranty.

9.4 **Governing Law.** The validity, construction and performance of this Guaranty shall be governed by the laws, without regard to the laws as to choice or conflict of laws, of the State of California.

9.5 **Entire Agreement.** This Guaranty embodies the entire agreement and understanding between the parties pertaining to the subject matter of this Guaranty, and supersedes all prior agreements, understandings, negotiations, representations, and discussions, whether verbal or written, of the parties, pertaining to that subject matter.

9.6 **Assignment.** Neither this Guaranty nor any rights under this Guaranty may be assigned by Guarantor without the prior written consent of City.

9.7 **Binding Effect.** The provisions of this Guaranty shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, issue, estate, trusts, successors, and assigns, permitted or by operation of law.

9.8 **Parties in Interest.** Nothing in this Guaranty, expressed or implied, is intended to confer on any person or entity other than the parties any right or remedy under or by reason of this Guaranty.

9.9 **Notices.** Any notice or communication required or permitted by this Guaranty shall be deemed sufficiently given if in writing and, if delivered personally, when it is delivered or if deposited with the U.S. Postal Service, postage prepaid, and addressed to the party to receive it at the address set forth in the first paragraph of this Guaranty, 48 hours after such deposit as registered or certified mail.

9.10 **Amendment and Waiver.** This Guaranty may be amended, modified, or supplemented only by a writing executed by each of the parties. Any party may in writing waive any provision of this Guaranty to the extent such provision is for the benefit of the waiving party. No action taken pursuant to this Guaranty, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by that party of its or any other party's compliance with any representations or warranties or with any provisions of this Guaranty. No waiver by any party of a breach of any provision of this Guaranty shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by another party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

9.11 **Prompt Action.** Time is of the essence with respect to each provision of this Guaranty.

9.12 **Severability.** The invalidity or unenforceability of any particular provision of this Guaranty shall not affect the other provisions, and this Guaranty shall be construed in all respects as if any invalid or unenforceable provision were omitted.

9.13 **Further Action.** Each party agrees to perform any further acts and to execute and deliver any other documents which may be reasonably necessary to effect the provisions of this Guaranty.

9.14 **Survival of Representations and Warranties.** All representations and warranties of Guarantor contained in this Guaranty shall survive the execution and

delivery of this Guaranty and shall continue until any and all Guaranteed Obligations have been fully paid, performed, and discharged in full.

9.15 ***Preparation of Guaranty.*** This Guaranty was prepared by The Grunsky Law Firm PC., Attorneys at Law, on behalf of the City. Guarantor has not been represented by or received legal advice from The Grunsky Law Firm PC. concerning this Guaranty and acknowledges that it either has been represented by an attorney in this matter or has been advised to do so and has had the opportunity to do so.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty to be duly executed as of the date and year first above written.

Jacklyn Foust, Personal Guarantor

Dated: December _____, 2021

City of Watsonville, a municipal corporation

Guarantor

By: _____
Matthew D. Huffaker, City Manager

Name: _____
Title: _____

Attest: _____

Dated: _____

Beatriz V. Flores, City Clerk

Approved As To Form:

Alan J. Smith, City Attorney