Aircraft Purchase Agreement

**Aircraft Purchase** **Agreement**, dated October 30, 20X2, between Supersonic Wings Corp., a Delaware corporation (the “**Seller**”) and Fly-by-Night Aviation, Inc., a New York corporation (the “**Buyer**”).

This Agreement provides for the Seller’s sale to the Buyer of the Seller’s Icarus Aerospace Corporation I-800 aircraft.

[Accordingly, in consideration of the mutual promises stated in this Agreement, the parties agree as follows:]

[Accordingly, the parties agree as follows:]

# —Definitions

## **Defined Terms**. As used in this Agreement, terms defined in the preamble and recitals of this Agreement have the meanings set forth therein, and the following terms have the meanings set forth below:

“**Agreement**” means this Aircraft Purchase Agreement and all its Schedules and Exhibits hereto, as each may be amended from time to time.

“**Aircraft**” means the Airframe, equipped with the Engines, together with all appliances, avionics, furnishings, and other components, equipment, and property incorporated in or otherwise related to the Airframe or Engines.

“**Airframe**” means the Icarus Aerospace Corporation I-800 aircraft, bearing United States Registration No. N765BW and Manufacturer’s Serial No. 8181.

“**Assigned Contracts**” means the Maintenance Agreement and the Pilot Agreement.

“**Assumed Liabilities**” means the amount that is equal to the sum of

(a) all the Seller’s liabilities and obligations that arise under the Maintenance Agreement on or after the Closing Date *plus*

(b) all the Seller’s liabilities and obligations that arise under the Pilot Agreement on or after the Closing Date.

“**Aviation Fuel**” means the gas or liquid that is used to create power to propel the Aircraft.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York, New York are authorized or required by law to close.

“**Buyer’s Notice of Grounds for Termination**” has the meaning specified in Section 9.3(a)

“**Closing**” means the closing of the sale of the Aircraft contemplated by this Agreement in New York, New York on the Closing Date.

“**Closing Date**” has the meaning specified in Section 2.3.

“**Consent**” means any, license, permit, consent of, approval of, authorization of, notice to, or designation, registration, declaration, or filing with, any Person.

“**Contract**” means, with respect to any Person, any contract, lease, agreement, license, arrangement, commitment, or understanding to which that Person is a party or by which it or any of its properties or assets may be bound or affected.

“**Engines**” means the two Rolls-Royce engines, Model No. BR710, bearing Serial Nos. 72725 and 72726.

“**Escrow Agreement**” means the Escrow Agreement, dated August 30, 20X2, between the Seller, the Buyer, and Harold C. Astor & Associates, an Oklahoma partnership, as escrow agent.

**“Escrow Amount”** means $300,000.

“**Escrow Interest**” means the interest that has accrued on the Escrow Amount in accordance with the Escrow Agreement through the date of its disposition.

“**Escrow Notice**” means a notice substantially in the form of Exhibit A to the Escrow Agreement.

“**GreaseMonkeys Lien**” means the Lien against the Aircraft.

“**Grounds for Termination Notice**” has the meaning assigned in Section

“**Laws**” means all federal, state, local, or foreign laws, rules, and regulations.

“**Lien**” means any lien, charge, encumbrance, security interest, mortgage, or pledge.

“**Litigation**” refers to all of the following, whether individually or one or more:

### Any action, suit, or proceeding before any court or any governmental or regulatory authority that has been commenced and is still pending.

### Any investigation by any governmental or regulatory authority that has been commenced and is still pending.

### Any action, suit, or proceeding by any governmental or regulatory authority that has been threatened against the Seller or the Buyer.

“**Maintenance Agreement**” means the Maintenance Agreement, dated as of April 3, 20X0, between Greasemonkeys, Inc., and the Seller, as amended to the date of this Agreement.

“**Necessary Funds”** means funds[, at a commercially reasonable rate,] sufficient to satisfy the Buyer’s monetary obligations to the Seller under this Agreement.

“**Order**” means, with respect to any Person, any judgment, award, order, writ, injunction or decree issued by any federal, state, local, or foreign authority, court, tribunal, agency, or other governmental authority, or by any arbitrator, to which that Person or its assets are subject.

“**Person**” means any individual, partnership, joint venture, corporation, trust, unincorporated organization, government (and any of its departments or agencies), or other entity.

“**Pilot Agreement**” means the Pilot Agreement between the Seller and Ace Pilots, Inc., dated as of May 12, 20X1, as amended to the date of this Agreement.

“**Seller’s Notice of Grounds for Termination**” has the meaning specified in Section 9.2(a)

# —Purchase and Sale

## **Sale of the Aircraft**.

**Version 1**

At the Closing, the Seller shall sell, and the Buyer shall buy, the Aircraft.

**Version 2**

At the Closing, the Seller shall sell the Aircraft, and the Buyer shall buy [it] [the Aircraft].

## **Purchase Price**. The purchase price for the Aircraft is

### $21 million, consisting of

#### $16 million in funds immediately available in New York City and

#### a $5 million promissory note payable to the order of the Seller, substantially in the form of **Exhibit A** (the “**Note**”) *plus*

### the Buyer’s assumption of the Assumed Liabilities.

## **Time and Place of Closing**. The Closing is to take place on November 25, 20X2 at the offices of Workhard & Playlittle LLP, 1133 Avenue of the Americas, New York, New York, [10:00 A.M. local time], or [on another date] [at another time and date] as to which the parties agree (the [time and] date of the Closing, the “**Closing Date**”).

## **Closing Deliveries**.

### **Seller’s Deliveries**.

#### **Delivery of the Aircraft**. On the Closing Date, the Seller shall deliver the Aircraft to the Buyer at Reagan National Airport in Washington, D.C. or another reasonable and mutually convenient location that the Buyer designates.

#### **Delivery of Conveyancing Documents**. At the Closing, the Seller shall execute and deliver to the Buyer

##### a bill of sale for the Aircraft, the bill of sale to be substantially in the form of **Exhibit B**; [FAA bill of sale]

##### an assignment of the Assigned Contracts, the assignment to be substantially in the form of **Exhibit C**; and

##### any other instrument of transfer that is necessary or appropriate to vest in the Buyer good title to the Aircraft and the Assigned Contracts.

### **Buyer’s Deliveries**. At the Closing, the Buyer shall

#### deliver or cause to be delivered to the Seller wire transfers aggregating $16 million in funds immediately available in New York City;

#### execute and deliver the Note to the Seller; and

#### execute and deliver to the Seller an assumption with respect to the Assumed Liabilities, the assumption to be substantially in the form of **Exhibit C**.

### **Joint Delivery of Notice to the Escrow Agent**. At the Closing, the Seller and the Buyer shall execute and deliver to the Escrow Agent an Escrow Notice instructing the Escrow Agent to pay by wire transfer

#### the Escrow Amount to the Seller; and

#### the Escrow Interest to the Buyer.

### **Joint Delivery of Notice to the Escrow Agent**. At the Closing, the Seller and the Buyer shall execute and deliver to the Escrow Agent a notice substantially in the form of Exhibit A to the Escrow Agreement. In that notice, the parties shall instruct the Escrow Agent to pay by wire transfer

#### the Escrow Amount to the Seller; and

#### the Escrow Interest to the Buyer.

### **Joint Delivery of Notice to the Escrow Agent**. At the Closing, the Seller and the Buyer shall execute and deliver to the Escrow Agent an Escrow Notice, instructing the Escrow Agent to pay by wire transfer

#### the Escrow Amount to the Seller; and

#### the Escrow Interest to the Buyer.

# —Representations and Warranties of the Seller

The Seller represents and warrants to the Buyer as follows:

## **Organization; Good Standing**. The Seller

### is a corporation duly organized, validly existing and in good standing under the laws Delaware;

### has all requisite corporate power and authority to own, operate and lease its properties, and to carry on its business as now being conducted; and

### does not conduct business or the own property in any jurisdiction that would require it to qualify.

## **Authority**.The Seller has

### full corporate power, authority, and legal right to execute and deliver, and to perform its obligations under this Agreement and to consummate the transactions this Agreement contemplates; and

### has taken all necessary action to authorize

#### the sale in accordance with the provisions of this Agreement; and

#### the execution, delivery, and performance of this Agreement.

## **Enforceability**. The Seller has duly executed and delivered this Agreement, and it constitutes the Seller’s legal, valid, and binding obligation enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by either or both of the following:

### Applicable bankruptcy, insolvency, or other similar laws from time to time in effect, which affect the enforcement of creditors’ rights in general.

### By general principles of equity regardless of whether enforceability is considered in a proceeding in equity or at law.

## **Noncontravention**.Neither the Seller’s execution and the delivery of this Agreement nor the consummation of the transactions it contemplates will do any one or more of the following:

### Conflict with or violate the Seller’s certificate of incorporation or the bylaws.

### Violate any Law or Order applicable to the Seller or the Aircraft, assuming that Seller obtains the Consent of its stockholders.

### Conflict with, result in the breach of (with or without notice or lapse of time or both), or constitute a default under (with or without notice or lapse of time or both), any Contract to which the Seller is a party or to which the Seller or the Aircraft is subject.

## **Governmental and Other Consents, etc**.No Consent on the part of the Seller is required in connection with the execution or delivery of this Agreement or the consummation of the transactions this Agreement contemplates, except for the Consent of the Seller’s stockholders.

## **Ownership of the Aircraft and Liens**.

### **Sole Asset**. The Aircraft is the sole asset that the Seller owns.

### **Lien against the Aircraft**. The Seller owns the Aircraft, subject to no Liens, except for the $250,000 Greasemonkeys Lien against the Aircraft arising from the Seller’s default under the Maintenance Agreement.

## **Contracts**. **Schedule 3**.**7** lists and briefly describes every Contract to which the Seller is a party. Each Contract that Schedule 3.7 lists is valid and effective in accordance with its terms. Except for the Seller’s default under the Maintenance Agreement, there are no existing defaults or events which with notice or lapse of time or both would constitute defaults under any other Contract that Schedule 3.7 lists.

## **Condition of the Aircraft**. The Aircraft is in good condition, except for

### ordinary wear and tear; and

### the Engines.

### The Engine with Serial Number 72725 is not working properly, and the Engine with Serial Number 72726 is only in adequate condition.

## **Characteristics of the Aircraft**. The Aircraft’s maximum range with four passengers and eight crew-members is 7,200 nautical miles at Mach 85.

## **Law Compliance**.The Seller has complied with and is not in default under any Laws the violation of which could have a material adverse effect on the Aircraft or the transactions that this Agreement contemplates.

## **Aviation Fuel**. Since the time the Seller purchased the Aircraft, the Seller has caused the Aircraft’s tanks to be filled only with the Aviation Fuel appropriate for the Aircraft. To the Seller’s knowledge, during the period before the Seller’s purchase, its owners caused the Aircraft’s tanks to be filled only with the Aviation Fuel appropriate for the Aircraft.

## **Brokers**.

### **Wright Aviation LLC**. Sam Samson, on behalf of the Seller, spoke with one or more representatives of Wright Aviation LLC, aircraft brokers, in connection with the Aircraft’s sale. Despite these conversations, the Seller did not hire Wright Aviation LLC.

### **Other Persons**. The Seller has not communicated with any Person in connection with the Aircraft’s sale (other than Wright Aviation LLC) and has not hired any Person in connection with the Aircraft’s sale.

# —Representations and Warranties of the Buyer

The Buyer represents and warrants to the Seller as follows:

## **Organization and Good Standing**. The Buyer

### is a corporation duly incorporated, validly existing and in good standing under the laws of New York ;

### has all requisite corporate power and authority and legal right to own, operate, and lease its properties and assets and to carry on its business as now being conducted; and

### does not conduct business or the own property in any jurisdiction that would require it to qualify.

## **Authority**. The Buyer has

### full corporate power, authority, and legal right to execute and deliver, and to perform its obligations under this Agreement and to consummate the transactions this Agreement contemplates; and

### has taken all necessary action to authorize

#### the purchase of the Aircraft in accordance with the provisions of this Agreement; and

#### the execution, delivery and performance of this Agreement.

## **Enforceability**. The Buyer has duly executed and delivered this Agreement, and it constitutes the Buyer’s legal, valid, and binding obligation enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by either or both of the following:

### Applicable bankruptcy, insolvency, or other similar laws from time to time in effect, which affect the enforcement of creditors’ rights in general.

### By general principles of equity regardless of whether such enforceability is considered in a proceeding in equity or at law.

## **Noncontravention**. Neither the Buyer’s execution and the delivery of this Agreement nor the consummation of the transactions this Agreement contemplates will do any one or more of the following:

### Conflict with or violate or constitute a default under any term of the Buyer’s certificate of incorporation or bylaws.

### Conflict with, violate or constitute a default under any Law or Contract by which the Buyer is, or its properties or assets, are bound.

## **Financing**. The Buyer does not have the Necessary Funds, but it is negotiating with three banks for all monies or appropriate binding commitments to provide it with the Necessary Funds. The Buyer has submitted full applications to First National Bank of Lex and to Lex Banking, N.A. [and intends to continue to negotiate in good faith with the third bank].

## **Brokers**. The Buyer has not hired any Person in connection with the Aircraft’s sale. In addition, no representative of the Buyer has communicated with any aircraft broker or other Person in connection with the Aircraft’s sale.

# —Covenants of the Seller

The Seller agrees that from the date the parties execute and deliver this Agreement until the Closing, the Seller shall perform as follows:

## **Cooperation**. The Seller shall use its commercially reasonable efforts to cause the sale that this Agreement contemplates to be consummated. Without limiting the generality of the preceding sentence, the Seller shall use commercially reasonable efforts to obtain the Consents that may be necessary or reasonably required for the Seller to effect the transactions that this Agreement contemplates.

## **Maintenance of the Aircraft**. The Seller shall cause

### the Aircraft to be maintained and repaired in accordance with the FAA Approved Maintenance and Inspection Program; and

### the Engines to be repaired so that they are in good working order, ordinary wear and tear excepted.

## **Logbooks and Maintenance Records**. The Seller shall keep the Aircraft’s logbook and other flight maintenance records accurate, complete, and current.

## **Access to the Aircraft and Records**. The Seller shall give the Buyer and its representatives access during normal business hours (on reasonable prior notice) to

### copies of all of the Seller’s Contracts;

### the originals of the Aircraft’s logbooks and flight maintenance records; and

### all other documents and information with respect to the Aircraft as the Buyer may reasonably request from time to time.

## **Liens**. The Seller shall cause the Greasemonkeys Lien against the Aircraft to be removed and, at Closing, shall deliver the Aircraft free of all Liens.

## **Ordinary Course**. The Seller shall not do any one or more of the following:

### Sell, transfer, or otherwise dispose of the Aircraft.

### Amend or waive any provision of either of the Assigned Contracts;

### Enter into any transaction outside of the ordinary course of business, including without limitation, any transaction that might affect the Aircraft or the transactions that this Agreement contemplates.

### Declare or pay any dividend or other distribution in respect of shares of capital stock.

## **Compliance with Laws**. The Seller shall comply in all material respects with any Law the violation of which could have a material adverse effect on the Aircraft or the transactions that this Agreement contemplates.

# —Covenants of the Buyer

The Buyer agrees that from the date the parties execute and deliver this Agreement until the Closing, the Buyer shall perform as follows:

## **Cooperation**. The Buyer shall use its commercially reasonable efforts to cause the sale that this Agreement contemplates to be consummated. Without limiting the generality of the previous sentence, the Buyer shall use commercially reasonable efforts

### to obtain the Consents that may be necessary or reasonably required for the Buyer to effect the transactions that this Agreement contemplates; and

### to provide the Buyer with the Necessary Funds.

# —Conditions to the Seller’s Obligations

The Seller is obligated to consummate the transactions that this Agreement contemplates only if each of the following conditions has been satisfied or waived on or before the Closing Date.

## **Buyer’s Representations and Warranties**. The Buyer’s representations and warranties stated in this Agreement

### must have been true on the day that this Agreement was executed and delivered; and

### must be true as of the Closing Date[, except as affected by transactions that this Agreement contemplates or permits].

## **Buyer’s** **Covenants**. The Buyer must have performed all its covenants stated in this Agreement to be performed by the Buyer on or before the Closing Date.

## **Buyer’s Closing Certificate**. The Seller must have received a certificate of the Buyer, certifying to the truth of the statements in Sections 7.1 and 7.2.

## **No** **Litigation**. There must be no Litigation that does one or more of the following:

### Seeks to restrain, prevent, or change the transactions that this Agreement contemplates.

### Questions the validity or legality of the transactions that this Agreement contemplates.

### If resolved adversely against the Seller, would materially and adversely affect the Aircraft or the Seller’s ability to consummate the transactions that this Agreement contemplates.

### If resolved adversely against the Buyer, would materially and adversely affect its financial condition or its ability to consummate the transactions that this Agreement contemplate.

### ”

## **Stockholders’ Consent**. The Seller’s stockholders must have consented in accordance with Delaware law to the transactions that this Agreement contemplates.

## **Documentation**. All matters and proceedings taken in connection with the transactions that this Agreement contemplates, including forms of instruments and matters of title, must be reasonably satisfactory to the Seller and to its counsel.

# —Conditions to the Buyer’s Obligations

The Buyer is obligated to consummate the transactions that this Agreement contemplates only if each of the following conditions has been satisfied or waived on or before the Closing Date.

## **Seller’s** **Representations** **and** **Warranties**. The Seller’s representations and warranties stated in this Agreement

### must have been true on the date that this Agreement was executed and delivered; and

### must be true on and as of the Closing Date, except as affected by transactions that this Agreement contemplates or permits

## **Seller’s** **Covenants**. The Seller must have performed all of its covenants stated in this Agreement to be performed on or before the Closing Date.

## **Seller’s Closing Certificate**. The Buyer must have received a certificate of the Seller, certifying to the truth of the statements in Sections 8.1 and 8.2.

## **No** **Litigation**. No action, suit, or proceeding before any court or any governmental or regulatory authority shall have been commenced and still be pending, no investigation by any governmental or regulatory authority shall have been commenced and still be pending, and no action, suit, or proceeding by any governmental or regulatory authority shall have been threatened against the Seller or the Buyer (i) seeking to restrain, prevent, or change the transactions contemplated hereby or questioning the validity or legality of any of such transactions or (ii) which if resolved adversely to such party, would materially and adversely affect the financial condition, business, property, assets, or prospects of any such Person.

## **Financing**. The Buyer must have obtained the Necessary Funds.

## **Engine with Serial Number 72725**. The Buyer’s mechanic must have determined that the Engine with Serial Number 72725 is in good working order, ordinary wear and tear excepted.

## **Fly-by-Night Logo**. The Fly-by-Night logo must have been painted on the Aircraft’s tail in a manner reasonably acceptable to the Buyer.

## **Stockholders’ Consent**. The Seller’s stockholders must have consented in accordance with Delaware law to the transactions that this Agreement contemplates.

## **Documentation**. All matters and proceedings taken in connection with the transactions that this Agreement contemplates, including forms of instruments and matters of title, must be reasonably satisfactory to the Buyer and to its counsel.

# —Termination

## **Written Agreement**. The parties may terminate this Agreement at any time by written agreement.

## **Termination by the Seller**.

### **Grounds for Termination**. The Seller may notify the Buyer that it has grounds for this Agreement’s termination (a “**Seller’s Notice of Grounds for Termination**”) if any one or more of the following events has occurred on or before the Closing Date:

#### **Misrepresentations and Breaches of Warranty**. The condition stated in Section 7.1 has not been satisfied or waived.

#### **Breach of Covenants**. The condition stated in Section 7.2 has not been satisfied or waived.

#### **The Buyer’s Closing Certificate**. The condition stated in Section 7.3 has not been satisfied or waived.

#### **Litigation**. The condition stated in Section 7.4 has not been satisfied or waived.

#### **Documentation**. The condition stated in Section 7.5 has not been satisfied or waived.

### **Termination under Any One or More of Sections 9.2(a)(i), (ii), and (iii)**. If the Seller sends a Seller’s Notice of Grounds for Termination citing any one or more of Sections 9.2(a)(i), (ii), and (iii) as grounds for termination, then the following provisions apply:

#### **Termination Fee**. The Buyer shall

##### pay or cause to be paid to the Seller a $3 million termination fee by wire transfer; and

##### cause that termination fee to be received no later than three Business Days after the Buyer’s receipt of the Seller’s Notice of Grounds for Termination.

##### The $3 million termination fee is liquidated damages and is the Seller’s sole remedy for termination based on any one or more of the grounds for termination cited in Sections 9.2(a)(i), (ii), and (iii).

#### **Payment of Escrow Amount and Escrow Interest**.The Buyer and the Seller shall jointly deliver an Escrow Notice to the Escrow Agent no later than three Business Days after the Buyer’s receipt of the Seller’s Notice of Grounds for Termination. In the Escrow Notice, the Buyer and the Seller shall instruct the Escrow Agent

##### to pay

###### to the Seller by wire transfer an amount equal to the Escrow Amount and

###### to the Buyer by wire transfer the amount equal to the Escrow Interest;

##### to cause the amount being wire transferred to be received by the appropriate party no later than one Business Day after the Escrow Agent’s receipt of the Escrow Notice.

#### **Effective Date of Termination**. This Agreement terminates on the date that the last payment required under Section 9.2(b) is received.

#### **Consequences of Termination**.On termination of this Agreement under Section 9.2(b), neither party has any further rights or obligations under this Agreement.

### **Termination under Either or Both of Sections 9.2(a)(iv) and (v)**. If the Seller sends the Buyer a Seller’s Notice of Grounds for Termination citing either or both of Sections 9.2(a)(iv) and (v) as grounds for termination, then the following provisions apply:

#### **Entitlement to Escrow Amount and Escrow Interest**.The Buyer is entitled to the Escrow Amount and the Escrow Interest.

#### **Payment of Escrow Amount and Escrow Interest**.The Buyer and the Seller shall jointly deliver an Escrow Notice to the Escrow Agent no later than three Business Days after the Buyer’s receipt of the Seller’s Notice of Grounds for Termination. In the Escrow Notice, the Buyer and the Seller shall instruct the Escrow Agent

##### to pay the Buyer by wire transfer an amount equal to the sum of the Escrow Amount *plus* the Escrow Interest; and

##### to cause that sum to be received no later than the Business Day after the Escrow Agent’s receipt of the Escrow Notice.

#### **Effective Date of Termination**. This Agreement terminates when the Buyer has received the payments that Sections 9.2(c)(i) and (ii) require.

#### **Consequences of Termination**. On termination of this Agreement under Section 9.2(c), neither party has any further rights or obligations under this Agreement.

## **Termination by the Buyer**.

### **Grounds for Termination**. The Buyer may notify the Seller that it has grounds for this Agreement’s termination (a “**Buyer’s Notice of Grounds for Termination**”) if any one or more of the following events has occurred on or before the Closing Date:

#### **Misrepresentations and Breaches of Warranty**. The condition stated in Section 8.1 has not been satisfied or waived.

#### **Breach of Covenants**. The condition stated in Section 8.2 has not been satisfied or waived.

#### **The Seller’s Closing Certificate**. The condition stated in Section 8.3 has not been satisfied or waived.

#### **Litigation**. The condition stated in Section 8.4 has not been satisfied or waived.

#### **Financing**. The condition stated in Section 8.5 has not been satisfied or waived, except that this Section 9.3(a)(v) is not grounds for termination if either or both of the following events has occurred:

##### The Buyer misrepresented the facts and breached the warranty in Section 4.5.

##### The Buyer breached the covenant in Section 6.1(b).

#### **Non-working Engine**. The condition stated in Section 8.6 has not been satisfied or waived.

#### **Fly-by-Night Logo**. The condition stated in Section 8.7 has not been satisfied or waived.

#### **Stockholders’ Consent.** The condition stated in Section 8.8 has not been satisfied or waived.

#### **Documentation**. The condition stated in Section 8.9 has not been satisfied or waived.

### **Void Notice**. Every Buyer’s Notice of Grounds for Termination that the Buyer sends to the Seller is void if both of the following are true:

#### The notice cites Section 9.3(a)(v) as grounds for termination.

#### Either or both of the exceptions stated in Section 9.3(a)(v) apply.

### **Termination under Any One or More of Sections 9.3(a)(i), (ii), and (iii)**. If the Buyer sends the Seller a Buyer’s Notice of Grounds for Termination citing any one or more of Sections 9.3(a)(i), (ii), and (iii) as a ground for termination, then the following provisions apply.

#### **Entitlement to Escrow Amount and Escrow Interest**. The Buyer is entitled to the Escrow Amount and the Escrow Interest.

#### **Payment of Escrow Amount and Escrow Interest**.The Buyer and the Seller shall jointly deliver an Escrow Notice to the Escrow Agent no later than three Business Days after the Seller’s receipt of the Buyer’s Notice of Grounds for Termination. In the Escrow Notice, the Buyer and the Seller shall instruct the Escrow Agent

##### to pay the Buyer by wire transfer an amount equal to the sum of the Escrow Amount *plus* the Escrow Interest; and

##### to cause that sum to be received no later than the Business Day after the Escrow Agent’s receipt of the Escrow Notice.

#### **Effective Date of Termination**. This Agreement terminates when the Buyer receives the last of the payments that Sections 9.2(c)(i) and (ii) require.

#### **Consequences of Termination**.If this Agreement terminates in accordance with Section 9.3(c)(iii), neither party has any further rights or obligations under this Agreement, except for the Buyer’s rights and the Seller’s obligations arising from any one or more of the Seller’s misrepresentations, breaches of warranty, and breaches of covenants.

### **Termination under One or More of Sections 9.3(a)(iv), (v), (vi) and (vii)**. If the Seller receives a Buyer’s Notice of Grounds for Termination citing one or more of Sections 9.3(a)(iv), (v), (vi) and (vii) as a ground for termination, then the following provisions apply.

#### **Entitlement to Escrow Amount and Escrow Interest**.The Buyer is entitled to the Escrow Amount and the Escrow Interest.

#### **Payment of Escrow Amount and Escrow Interest**.The Buyer and the Seller shall jointly deliver an Escrow Notice to the Escrow Agent no later than three Business Days after the Seller’s receipt of the Buyer’s Notice of Grounds for Termination. In the Escrow Notice, the Buyer and the Seller shall instruct the Escrow Agent

##### to pay the Buyer by wire transfer the amount equal to the sum of the Escrow Amount *plus* the Escrow Interest;

##### cause that sum to be received by the Buyer no later than the Business Day after the Escrow Agent’s receipt of the Escrow Notice.

#### **Effective Date of Termination**. This Agreement terminates when the Buyer receives the last of the payments that Sections 9.3(d)(i) and (ii) require.

#### **Consequences of Termination**. If this Agreement terminates in accordance with Section 9.3(d)(iii), then neither party has any further rights or obligations under this Agreement.

# —General Provisions

## **Computation of Amount of Escrow Interest**. The parties are to compute the amount of Escrow Interest to be paid in accordance with any provision in this Agreement

### as of the day the Escrow Agent receives the applicable Escrow Notice instructing the Escrow Agent to pay the Escrow Interest; and

### with respect to each Escrow Notice instructing the Escrow Agent to pay the Escrow Interest.

## **Merger**. This Agreement constitutes the final, exclusive agreement between the parties on the matters stated in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters stated in this Agreement are expressly merged into and superseded by this Agreement.

## **Severability**.If any provision of this Agreement is determined to be illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential provisions of this Agreement for each party remain legal and enforceable.

## **Assignment and Delegation**. The Buyer shall not assign its rights or delegate its performance under this Agreement. Any purported assignment or delegation in violation of this provision is void.

## **Amendments**. The parties may amend this Agreement only by the parties’ written agreement that identifies itself as an amendment to this Agreement.

To evidence the parties’ agreement to this Agreement, they have executed and delivered it on the date stated in the preamble.

Seller

Supersonic Wings Corp.

By:

Sam Samson, President

Buyer

Fly-by-Night Aviation, Inc.

By:

# Horatio Flighty, President