

15. Termination of Standard Sublease Agreement for Buildings 868, 868A, 869 and 835 by and between the Southern California Logistics Airport Authority and Overair, Inc.

Recommendation:

That the Southern California Logistics Airport Authority ("SCLAA") Board of Directors ratify the termination of a Standard Sublease Agreement for Buildings 868, 868A, 869 and 835 ("Agreement"), by and between the SCLAA and Overair, Inc., ("Overair").



Item Number: 15

City Council / Board of Directors

Written Communications

Meeting of: February 4, 2025

Submitted By:

C. Eric Ray, Airport Director

Subject:

Termination of Standard Sublease Agreement for Buildings 868, 868A, 869 and 835 by and between the Southern California Logistics Airport Authority and Overair, Inc.

Recommendation:

That the Southern California Logistics Airport Authority ("SCLAA") Board of Directors ratify the termination of a Standard Sublease Agreement for Buildings 868, 868A, 869 and 835 ("Agreement"), by and between the SCLAA and Overair, Inc., ("Overair").

Fiscal Impact:

The Termination Agreement presented herein for ratification will result in a reduction of revenue to Building 868 Complex Lease Occupancy account 4501175A-45200 in the amount of \$101,556.15 for fiscal year 2024-2025, \$247,797 for fiscal year 2025-2026, and \$83,276.04 for fiscal year 2026-2027. Additionally, a reduction to revenue of less than \$1,000 will occur in Building 868 Complex Utilities Reimbursement account 4501175A-47220 for the remaining fiscal year.

Considering the current insolvency of Overair, this budgeted revenue is highly unlikely to be collected regardless of whether the Termination Agreement is ratified.

Building 868 Lease Occupancy Revenue		
FY 2024-25 (February 25 – June 25)	FY 2025-26 (July 25 – June 26)	FY 2026-27 (July 26 – October 26)
\$101,556.15	\$247,797	\$83,276.04

Strategic Plan Goal:

The City of Victorville Strategic Plan 2023-2026 identifies multi-year strategic goals and various strategies to work toward achieving those goals. Goal A fosters fiscal health through disciplined long-term planning, cost control, increased revenues, and cost recovery. The termination of this Sublease will allow Staff to market the building to other tenants whilst potentially avoiding lengthy time delays and costly legal fees for the duration of the bankruptcy proceedings, which can take several years.

Background:

Overair's primary business model was to develop and market an electric air taxi that could shuttle up to 5 passengers roughly 100 miles. Aircraft design occurred at Overair's Santa Ana, CA. location and flight and equipment testing occurred at Southern California Logistics Airport ("SCLA").

Overair previously entered into a Sublease Agreement for a certain cluster of properties at the SCLA described as Buildings 868, 868A, 869, and 835, known as Building 868 Complex, as described in the Sublease Agreement. Because of economic conditions beyond the control of Overair, its business operations went into liquidation, and it executed an Assignment for the Benefit of Creditors in favor of Insolvency Services Group, a California corporation ("ISG").

Discussion:

Overair is now seeking to terminate the Sublease and vacate the premises in return for the Authority's willingness to forego collection of any rent otherwise due and owing under the Sublease. To the extent Overair vacates the premises by January 31, 2025, and to the extent ISG relinquishes all of its rights under the Sublease or its Assignment for the Benefit of Creditors, the SCLAA is willing to return to Overair any security deposit previously deposited by Overair with the SCLAA and release Overair of their Sublease payment obligations.

Termination of the Sublease with Overair is beneficial to the SCLAA. The SCLAA will avoid litigation costs related to unlawful detainer actions by terminating the Sublease with Overair. Overair's departure and Sublease termination of the Building 868 Complex will allow Airport staff to prepare and market the building to potential tenants. One Airport tenant has made a verbal commitment to Airport staff to begin a Sublease Agreement for the Building 868 Complex as of March 01, 2025, should the space become available. Failure to terminate the Sublease with Overair would potentially take the building off of the market for an extensive period of time while court proceedings take place. Acting now to ratify the Termination Agreement is a demonstration of fiscal efficiency and prudence.

Therefore, staff requests that the SCLAA Board of Directors ratify the termination of a Standard Sublease Agreement for Buildings 868, 868A, 869 and 835 by and between the SCLAA and Overair, Inc.

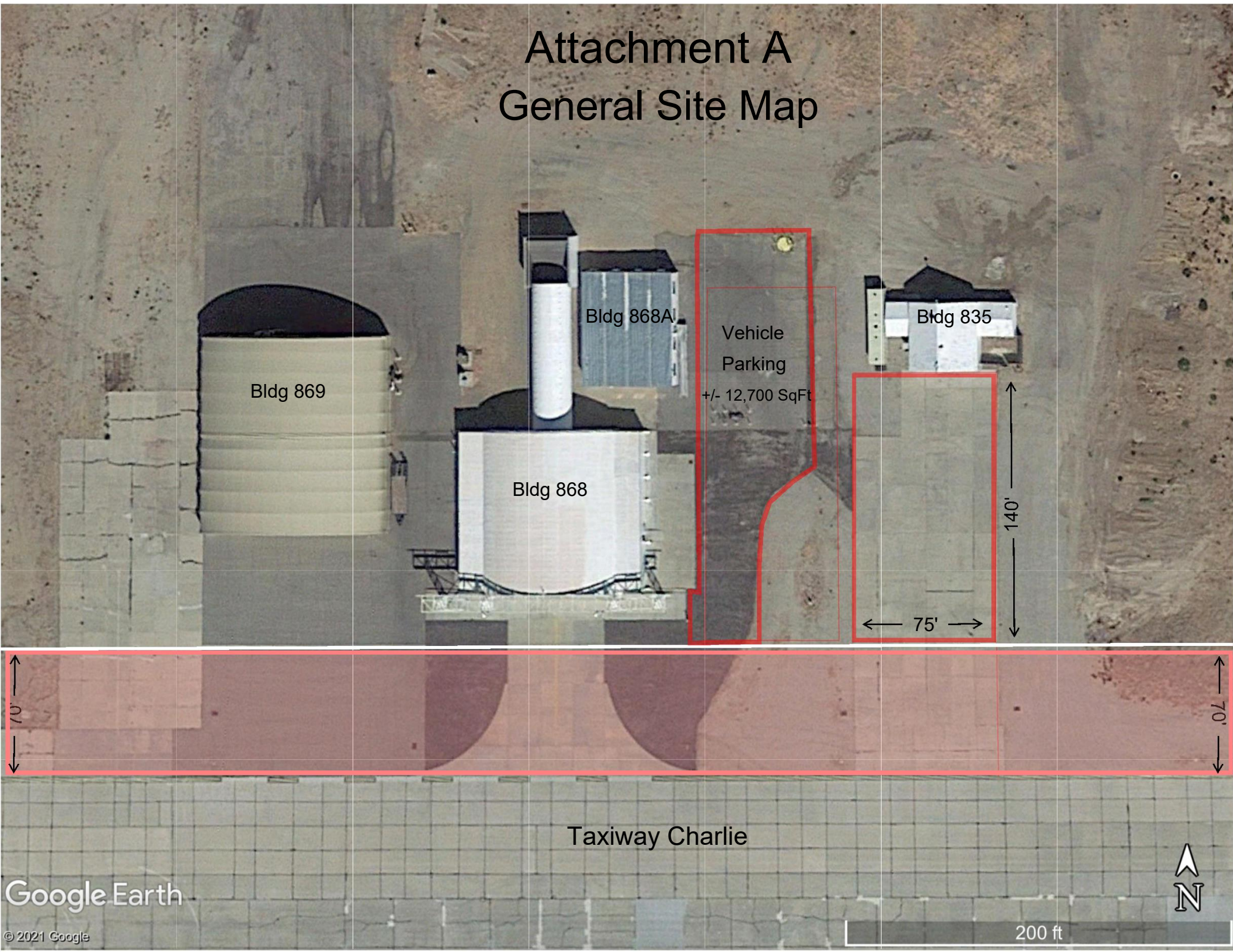
Staff remains available for any questions or comments you may have.
CER/see

- Attachments:**
- A. General Site Map
 - B. Termination Agreement for Standard Sublease Agreement for Buildings 868, 868A, 869, and 835

ATTACHMENT A

GENERAL SITE MAP

Attachment A General Site Map



ATTACHMENT B

TERMINATION AGREEMENT FOR STANDARD SUBLEASE AGREEMENT FOR BUILDINGS 868, 868A, 869, AND 835

SOUTHERN CALIFORNIA LOGISTICS AIRPORT LEASE TERMINATION AGREEMENT

This lease termination agreement (“Termination Agreement”) is entered into as of January 29, 2025, by and among the Southern California Logistics Airport Authority, a California joint powers authority (herein “SCLAA” or “Lessor”), Overair, Inc., a Delaware Corporation (herein “Lessee”) and Insolvency Services Group, Inc., a California corporation (herein “ISG”) acting as Assignee for the Benefit of Creditors. Lessor, Lessee and ISG are herein collectively referred to as the “Parties”.

RECITALS

WHEREAS, on or about November 1, 2021, Lessor and Lessee entered into that certain sublease agreement, a copy of which is attached hereto as Exhibit “A” and incorporated by this reference (the “Sublease”) for a portion of certain real property designated as: Building 868 located at 18900 Alert Road, Building 868A located at 18900 Alert Road, Building 869 located at 18904 Alert Road, and Building 835 located at 18902 Alert Road, (collectively, the “Leased Premises”) all or more fully described in the Sublease, in order to use the Leased Premises for aviation related services. The Sublease had a five (5) year term subject to certain options to extend.

WHEREAS, Lessee has experienced financial difficulties and as a result thereof, has executed a General Assignment for the Benefit of Creditors in favor of ISG; and

WHEREAS, such an Assignment for the Benefit of Creditor is a violation of the terms of the Sublease and creates a default by Lessee under the terms of the Sublease.

WHEREAS, the Parties now mutually wish to terminate the Sublease, subject to the following terms and conditions.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, WHICH ARE HEREBY INCORPORATED BY REFERENCE INTO THIS TERMINATION AGREEMENT AS THOUGH FULLY SET FORTH HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

A. Purpose.

The purpose of this Termination Agreement is to terminate the rights and obligations of the Parties under the Sublease.

B. Terms of the Termination Agreement.

(1) The Sublease shall terminate by mutual agreement of the Parties on January 31, 2025, (the "Effective Date") and shall no longer have any further force or effect thereafter.

(2) Lessee shall not be responsible for the balance of the rent otherwise due under the remaining term of the Sublease, except for any monthly rents and any and all charges, costs, or penalties, including but not limited to utility fees and late charges, which are due through the Effective Date of this Termination Agreement.

(3) Upon Lessee's and ISG's relinquishment of any rights under the Sublease and vacation of the Leased Premises, Lessor agrees to return to Lessee any security deposit(s) it paid Lessor under the Sublease.

(4) Lessee agrees to fully vacate the Leased Premises by January 31, 2025. If Lessee continues to occupy the Leased Premises beyond January 31, 2025, Lessee shall be considered to be continuing in possession without the permission of the Lessor, and Lessor shall be entitled to initiate eviction proceedings including an unlawful detainer action to remove Lessee from the Leased Premises. Further, Lessee shall also be responsible for paying any and all of Lessor's costs and expenses incurred as a result of Lessee's continued occupation of the Leased Premises or any other interference with Lessor's ability to lease the Leased Premises to another tenant.

(5) In consideration of the above, and except as otherwise provided by this Termination Agreement, Lessee and ISG each hereby forever and fully release Lessor, its board members, officers, representatives, and employees, and all persons, firms, affiliates, subsidiaries, related entities and corporations having an interest in them, from any and all claims and demands of any kind, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which arise from the Sublease or this Termination Agreement. The Parties agree that by entering into this Termination Agreement, including the furnishing consideration for this Termination Agreement shall not be deemed or construed at any time for any purpose as an evidence of wrongdoing or an admission of wrongdoing or evidence of any liability or unlawful conduct of any kind.

(6) CALIFORNIA CIVIL CODE SECTION 1542 WAIVER. As to the matters released herein, the Parties hereby expressly waive all rights under the provisions of Section 1542 of the California Civil Code and any similar rights in any state or territory or under any similar statute or regulation of the United States or any of its agencies. Section 1542 of the California Civil Code reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

(7) This Termination Agreement is binding as to the rights, obligations, and liabilities of Lessor, Lessee, and ISG under the terms and provisions of the Sublease. This Termination Agreement supersedes the Sublease.

(8) This Termination Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Without limiting the manner in which execution of this Termination Agreement may otherwise be effected, execution by any Party may be effected by facsimile or e-mail transmission of a signature page hereof executed by such Party.

(9) This Termination Agreement shall be interpreted in accordance with the laws of the State of California.

(10) It is the express intent of the Parties that all of the provisions of this Termination Agreement be given full force and effect as written. Should any judicial determination be made that any provision of this Termination Agreement is unenforceable for any reason, all remaining provisions of the Termination Agreement will remain in full force and effect as written.

(11) In any legal action or other proceeding brought to construe or enforce any of the provisions of this Termination Agreement, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees from the opposing Party.

(12) This Termination Agreement will take effect on January 31, 2025 and any rights of the Lessee or ISG to occupy the Leased Premises under the terms of the Lease will hereby be forfeited, waived and terminated.

IN WITNESS WHEREOF, the Parties hereto have executed this Termination Agreement as of the date set forth opposite their signatures.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

LESSOR

SOUTHERN CALIFORNIA LOGISTICS

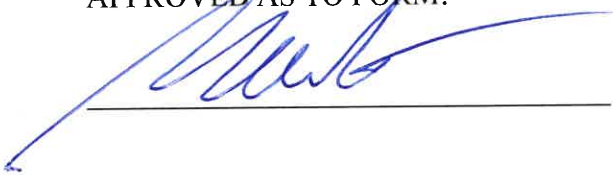
AIRPORT AUTHORITY

Dated: 1/29/2025

By: 

Keith C. Metzler, Executive Director

APPROVED AS TO FORM:



Andre de Bortnowsky,

SCLAA Legal Counsel

LESSEE

OVERAIR, INC.

Dated: January 29, 2025

By: 

Benjamin Tigner, Chief Executive Officer

ISG

INSOLVENCY SERVICES GROUP, INC.

Dated: 1/28/2025

By:

Joel Weinberg, President & CEO