



## LEASE AGREEMENT BETWEEN BROWARD COUNTY AND CHIQUITA FRESH NORTH AMERICA L.L.C.

This Lease Agreement (“Agreement”) is made and entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and Chiquita Fresh North America L.L.C., a Delaware limited liability company authorized to transact business in the State of Florida (“Lessee”) (each a “Party” and collectively referred to as the “Parties”).

### RECITALS

A. County owns and operates Port Everglades, a deep-water port located in Broward County, Florida.

B. The Parties entered into a lease agreement, dated August 14, 2019 (“Prior Lease”), wherein County leased to Lessee 19,700 square feet of improved vacant land and 51,868 square feet of warehouse space, all located at 3403 McIntosh Road, Hollywood, Florida.

C. The Prior Lease expired on March 31, 2020, but Lessee remained on the property, creating a month-to-month tenancy pursuant to the terms of the Prior Lease.

D. In accordance with the terms of the Prior Lease, County requested that rent be increased from Forty-six Thousand Four Hundred Sixty-five and 89/100 Dollars (\$46,465.89) per month to Sixty-two thousand Four Hundred Fifty-five and 67/100 (\$62,455.67) per month, starting November 1, 2021.

E. Each of the Parties confirm that, as of the Effective Date, to the best of their respective knowledge, no defaults and/or any other outstanding obligations (with the exception of Lessee’s payment of the increased rent as detailed in Recital D above and Section 4.1 below) exist under the month-to-month tenancy.

F. The Parties now desire to enter into a new lease agreement for the same property retroactive to November 1, 2021, plus an additional 3,233 square feet of land located just southwest of Warehouse 30-West, all upon the terms and conditions set forth in this Agreement.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1. DEFINITIONS

- 1.1. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2. **Business Days** means Monday through Friday of each week, exclusive of County holidays, between the hours of 8:00 a.m. and 5:00 p.m. (Eastern).
- 1.3. **Lease Year** means the twelve (12) month period beginning on November 1, 2021, and ending twelve (12) months thereafter (“**Lease Year 1**”), and each twelve (12) month period

thereafter until the date this Agreement expires or terminates (“**Lease Year 2**,” “**Lease Year 3**,” etc.).

1.4. **Port Department** means the County department established pursuant to Section 16.1 of the Broward County Administrative Code and responsible for administering and operating Port Everglades. All approvals by the Port Department required by this Agreement require the written approval of the Port Director or designee.

1.5. **Port Director** means the Chief Executive/Port Director of the Port Department.

1.6. **Port Everglades** or **Port** means the deep-water port located on the lower East Coast of the Florida peninsula at the adjoining city limits of the City of Fort Lauderdale, the City of Hollywood, and the City of Dania Beach, and all port facilities located thereon, as more specifically defined in the Tariff.

1.7. **Tariff** means Port Everglades Tariff Number 12, as may be amended, which is electronically filed with the U.S. Federal Maritime Commission, filed in the FMC-ATFI system, and located at <https://www.porteverglades.net/development/tariff>.

## ARTICLE 2. PREMISES

2.1. **Premises.** Subject to the terms of this Agreement, commencing on the Commencement Date, County leases to Lessee: (i) 19,700 square feet of improved vacant land; and (ii) 51,868 square feet of warehouse space located on the west side of the first floor of the building commonly referred to as “Warehouse 30-West;” both with an address of 3403 McIntosh Road, Hollywood, Florida, all as more particularly described as the “Initial Premises” on **Exhibit A**. Subject to the terms of this Agreement, commencing on the Effective Date, County leases to Lessee: (i) the Initial Premises; and (ii) an additional 3,233 square feet of land located just southwest of Warehouse 30-West (“Southwest Lot”), also with an address of 3403 McIntosh Road, Hollywood, Florida, all as more particularly described on **Exhibit A**. For the period between the Commencement Date and the Effective Date, the Initial Premises shall be referred to herein as the “Premises.” Starting on the Effective Date, the Initial Premises and the Southwest Lot shall be collectively referred to herein as the “Premises.”

2.2. **Condition of Premises.** County makes no representations or warranties whatsoever as to: (i) the condition of the Premises; or (ii) whether the Premises complies with applicable federal, state, and local laws, ordinances, rules, or regulations. The Premises is demised in “**AS IS CONDITION**” and “**WITH ALL FAULTS**.” Lessee represents, acknowledges, and agrees that it has had sufficient opportunity to inspect the Premises and accepts the Premises in “**AS IS CONDITION**” and “**WITH ALL FAULTS**.” Lessee releases County from any and all claims and liabilities relating to or on account of the condition of the Premises or any failure of any of its component parts to be in working order, as applicable.

2.3. Use of Premises. Lessee may use the Premises solely for the purpose of a distribution center and ripening facility and for any other activities reasonably necessary for such use ("Approved Use"). Lessee shall conduct its operations in an orderly and commercially reasonable manner considering the nature of its operations.

2.4. Prohibited Use(s) of Premises. Lessee will not use, or allow or permit others to use, any portion of the Premises: (a) for any purpose whatsoever, other than for the Approved Use, without the prior written consent of the Port Director; (b) in competition with any business conducted by County; (c) in any way that may unreasonably annoy, disturb (whether via vibrations, noise, or otherwise), endanger, or be offensive to any other user or tenant at Port Everglades; (d) in any way that may commit waste or cause injury on or about the Premises; (e) in any way that may cause the creation of any nuisance from dust, smoke, obnoxious odors, fumes, vapors, noise, or otherwise; or (f) to keep or store any explosives without the required notification to and prior approval of the Broward Sheriff's Office ("BSO") Fire Rescue Department located at Port Everglades. The fire truck access area within the Premises must remain clear at all times (e.g., trailers must never be parked/stored in this area). Lessee will not conduct, or allow or permit others to conduct, any welding or burning on the Premises until all required permits from County, the City of Hollywood, Florida, and the U.S. Coast Guard have been obtained, as applicable. County will not unreasonably withhold the issuance of any welding or burning permits that are issued by County. Lessee shall provide the Port Department with evidence that it has obtained all required permits within one (1) Business Day after the Port Department's written demand therefor.

### ARTICLE 3. TERM

3.1. Effective Date. This Agreement shall become effective on the date it is executed by the last of the Parties executing this Agreement ("Effective Date").

3.2. Term. The term of this Agreement shall retroactively begin on November 1, 2021 ("Commencement Date"), and shall end on the last day of Lease Year 3 (i.e., October 31, 2024) ("Term"), unless sooner terminated as provided herein.

### ARTICLE 4. RENTALS, FEES, AND SECURITY DEPOSIT

4.1. Rent. During the Term, Lessee shall pay rent ("Rent") to County for the Premises on a monthly basis.

4.1.1. Initial Premises. During Lease Year 1, each monthly installment of Rent for the Initial Premises shall be in the amount of Sixty-two thousand Four Hundred Fifty-five and 67/100 Dollars (\$62,455.67), plus applicable sales taxes. During Lease Year 2, each monthly installment of Rent for the Initial Premises shall be in the amount of Sixty-five thousand Four Hundred Thirty-seven and 67/100 Dollars (\$65,437.67), plus applicable sales taxes. During Lease Year 3, each monthly installment of Rent for the Initial Premises shall be in the amount of Sixty-eight thousand Four Hundred Nineteen and 66/100 Dollars

(\$68,419.66), plus applicable sales taxes. Rent for the Initial Premises shall be due and payable, without billing, set-off, or deduction, commencing on the Commencement Date and on the first day of each calendar month thereafter; provided, however, that the sum of (A) and (B) immediately below shall be due on the later of the following two dates: (1) thirty (30) days after the Effective Date, or (2) thirty (30) days after the Lessee's receipt of the corresponding invoice delivered in accordance with Section 13.41 (Notices) below:

(A) the amount of One Hundred Ninety-one Thousand Eight Hundred Seventy-seven and 36/100 Dollars (\$191,877.36), plus applicable sales taxes, which the Parties stipulate is the difference between the rent paid by Lessee pursuant to the Prior Lease for Lease Year 1 and Rent due under this Agreement for the same Lease Year 1; and

(B) the product of (i) the Lease Year 2 monthly rate set forth above in this section and (ii) the number of month(s) between November 1, 2022, and the last day of the calendar month in which the Effective Date falls (e.g., November 30 if the Effective Date is any date in November), plus applicable sales taxes, minus any Lease Year 2 rent already paid by Lessee.

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4.1.2. Southwest Lot. During Lease Year 2, each monthly installment of Rent for the Southwest Lot shall be in the amount of \$808.25, plus applicable sales taxes. During Lease Year 3, each monthly installment of Rent for the Southwest Lot shall be in the amount of \$942.96, plus applicable sales taxes. Rent for the Southwest Lot shall be due and payable, without billing, set-off, or deduction, commencing on the Effective Date and on the first day of each calendar month thereafter; provided, however, that if the Effective Date falls on a date other than the first day of a calendar month, then such monthly installment for the month in which the Effective Date falls shall be prorated based on the number of days in such month and will be due on the later of the following two dates: (1) thirty (30) days after the Effective Date, or (2) thirty (30) days after the Lessee's receipt of the corresponding invoice delivered in accordance with Section 13.41 (Notices) below.

4.2. Licenses, Fees, and Taxes. Lessee shall timely pay all federal, state, County, and local taxes and fees, and all special assessments of any kind, that are now or may hereafter be levied upon the Premises (including all Improvements, as defined in Article 5), the leasehold estate granted by this Agreement, the business conducted on the Premises, any of Lessee's property used in connection therewith, and/or upon any rents or other sums payable hereunder, including, but not limited to, any ad valorem taxes attributable to the Premises, sales or excise taxes on rents, and personal property taxes against Lessee's tangible and intangible personal property. Lessee shall maintain in full force and effect all federal, state, county, and local licenses, local business taxes, and permits required for Lessee's business operation.

4.3. Utilities. Lessee, at its sole expense, shall be responsible for arranging for and paying for all utility services it requires for the Premises, including, but not limited to, water and electricity; provided, however, County shall arrange for and pay for electricity for the outdoor lighting serving the Premises (subject to reimbursement by Lessee as set forth in this section). Lessee

agrees to reimburse County sixty-three percent (63%) of the total electric bill for Meter #KNL0822 and Meter #KN82578 on a monthly basis ("Electricity Fee"). The Electricity Fee represents a pro rata portion of the electricity costs incurred by County for the outdoor lighting serving the Premises. The Electricity Fee, plus applicable sales tax, shall be due and payable, without billing, set-off, or deduction, within thirty (30) days after Lessee's receipt of a corresponding accurate invoice from County delivered in accordance with Section 13.41 (Notices) below. Lessee's obligation to make the final payment of the Electricity Fee shall survive the expiration or earlier termination of this Agreement. No failure, delay, or interruption in the supplying of electricity for the outdoor lighting serving the Premises shall be construed as an eviction of Lessee or be grounds for any abatement of Rent or any claim by Lessee for damages.

4.4. Interest and Late Charges. If Lessee fails to timely pay any amounts due, Lessee's account shall be placed in "Delinquent Status" and Lessee shall pay County, in addition to the amount otherwise due: (a) a finance charge of one and one-half percent (1.5%) for each month or portion thereof, starting thirty (30) days after the due date, that any invoice remains delinquent; and (b) a late charge equal to ten percent (10%) of any overdue amount if still unpaid fifteen (15) days after the due date. No acceptance by County of payments in whole or in part after a default by Lessee of any of the terms, covenants, or conditions hereof shall be deemed a waiver of any right on the part of County to collect the finance charge or late charge or terminate this Agreement. If placed in Delinquent Status, Lessee will be subject to the procedures set forth in Item 910 of the Tariff, as amended.

4.5. Dishonored Check or Draft. If County receives a dishonored check or draft in payment of any obligation arising under this Agreement, Lessee shall reimburse County for the corresponding expense imposed upon County by its bank as a result thereof, within thirty (30) days after Lessee's receipt of the corresponding invoice and documentation by County. In such event, and in addition to any other remedies available to County under this Agreement, at law or in equity, County may require that future payments be made by cashier's check or other means acceptable to County.

4.6. Weekends and Holidays. Should any payment due date fall on a weekend day or holiday, such payment shall be due and payable on the immediately preceding Business Day.

4.7. Place of Payments. All payments required to be made hereunder shall be made payable to Broward County and delivered to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, Florida 33316, or to such other office or address as may be substituted by County therefor.

4.8. Security Deposit. County hereby confirms that (1) County is in possession of Lessee's full security deposit from the Prior Lease in the amount of Forty-six Thousand Four Hundred Sixty-five and 89/100 Dollars (\$46,465.89) ("Prior Lease Security Deposit"), and (2) County has not applied and will not apply the Prior Lease Security Deposit to anything pertaining to the Prior Lease. As security for the payment of all monies due and the performance of Lessee's obligations under this Agreement, County shall retain the Prior Lease Security Deposit and Lessee shall post

an additional security deposit with County equal to Nineteen Thousand Seven Hundred Eighty and 03/100 Dollars (\$19,780.03) ("Additional Security Deposit"). The Prior Lease Security Deposit and the Additional Security Deposit (totaling Sixty-six thousand Two Hundred Forty-five and 92/100 Dollars (\$66,245.92)) shall collectively be referred to herein as the "Security Deposit." Lessee shall submit the Additional Security Deposit to County within thirty (30) days after County's request by email in accordance with the Notice provision in this Agreement. The Security Deposit shall be either in the form of cash, an irrevocable letter of credit ("Letter of Credit") in form and substance satisfactory to County, or a payment and performance bond ("Bond") in form and substance satisfactory to County. No interest shall be due or paid on the Security Deposit. County, upon at least fourteen (14) calendar days' notice to Lessee, may increase the amount of the required Security Deposit to reflect any increases in monies due. In addition, County, upon at least fourteen (14) calendar days' notice to Lessee, may increase the amount of the required Security Deposit if Lessee fails to timely pay the Rent required herein for two (2) consecutive months. In the event of any Event of Default (hereinafter defined), in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to any and all amounts owed arising directly from said Event of Default, whether before or after the expiration or earlier termination of this Agreement. Within five (5) Business Days after notice from County of any such draw, Lessee shall replenish the Security Deposit with cash, a new Letter of Credit, or new Bond, as applicable, so it equals the full amount of the required Security Deposit. If a Letter of Credit is posted, the initial term and all renewal terms of the Letter of Credit shall be for a period of not less than one (1) year, and the Letter of Credit shall be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If a Bond is posted, the Bond shall provide coverage and be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If Lessee posts a cash deposit, then such cash deposit shall be retained by County throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. Not less than one hundred (100) calendar days prior to any expiration date of the Letter of Credit or Bond, Lessee shall submit evidence in form satisfactory to County that said security instrument has been renewed. Each Letter of Credit shall be provided by a financial institution authorized to do business in the State of Florida, having a resident agent in Broward County, and having been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. Each Bond shall be executed by a surety company authorized to do business in the State of Florida, having a resident agent in Broward County, and having been in business with a record of successful continuous operation for at least five (5) years. Furthermore, such surety company must have at least an "A" rating in the latest revision of Best's Insurance Report. Any failure by Lessee to strictly comply with the terms of this section shall constitute an Event of Default, and the obligations of this section shall survive the expiration or earlier termination of this Agreement.

## ARTICLE 5. IMPROVEMENTS

5.1 Required Approval. No improvements, alterations, additions, or renovations (collectively, "Improvements") may be constructed on the Premises unless Lessee obtains the prior written approval of the Port Department.

5.2 Required Contract Documents for Construction of Improvements. Prior to the commencement of construction of any Improvements, Lessee shall submit to the Port Department a complete set of the contract documents for approval by the Port Department (one (1) hard copy and one (1) .pdf format). Contract documents shall include, at a minimum, a site plan and complete plans and specifications of the contemplated construction. Unless otherwise agreed in writing by the Port Department, the plans and specifications shall be certified by an architect or engineer licensed to practice in the State of Florida and shall consist of: (i) working drawings, (ii) technical specifications, (iii) schedule for accomplishing the Improvements, and (iv) such other information as may be reasonably required by the Port Department. All Improvements must be made in accordance with the requirements set forth in this Agreement. All of the plans and specifications shall be in such detail as may reasonably permit the Port Department to make a determination as to whether the construction will be consistent with the standards set forth in this Agreement. Any plans and specifications that have received the Port Department's written approval, and any amendments and changes thereto that have received the Port Department's written approval, are hereinafter referred to collectively as the "Approved Plans." No construction may be performed on the Premises except pursuant to Approved Plans.

5.3 Changes to Approved Plans. No material changes shall be made to any Approved Plans without the prior written approval of the Port Department. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.

5.4 Compliance with law. All Improvements constructed or installed by Lessee, its agents, or contractors, including the plans and specifications relating to same, shall conform to all applicable state, federal, County, and local agency (including divisions and departments of County) statutes, ordinances, building codes, fire codes, rules, and regulations, and design standards. The approval by the Port Department of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with Lessee.

5.5 Ownership. All Improvements to the Premises shall become County's property upon the expiration or earlier termination of this Agreement and shall be surrendered with and remain on the Premises (without cost to, or reimbursement by, County), excluding furnishings, equipment, and trade fixtures that are not permanently affixed to the Premises. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Premises and is not readily removable shall become part of the Premises as a leasehold improvement, whether or not such may be deemed a trade fixture. If any personalty is removed by Lessee, Lessee shall restore any damage to the Premises caused thereby. Notwithstanding any other provisions of this Agreement, the Port Department shall have the right, in their sole discretion, to require

Lessee, at Lessee's sole cost, to remove any leasehold Improvements installed by Lessee prior to the date this Agreement terminates.

5.6 Certified Statements. Within one hundred and twenty (120) days after the installation of any Improvements, unless otherwise agreed in writing by the Port Department, Lessee must provide to the Port Department: (a) a certified statement from the construction contractor(s) stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material supplier, subcontractor, or laborer, and that all such fees and charges have been paid; and (b) a certified statement from the architect or engineer stating that the Improvements have been constructed in accordance with the Approved Plans and in compliance with all applicable federal, state, local, and County laws, rules, ordinances, regulations, and building codes. Lessee shall provide, upon request, such back-up documentation and releases of lien as may be reasonably required by the Port Department.

5.7 Liens. Lessee represents, warrants, and covenants to County that the Premises and all Improvements constructed or placed thereon shall be at all times free and clear of all liens, claims, and encumbrances created by Lessee or Lessee's agents, contractors, employers, officers, or invitees. If any such lien or notice of lien shall be filed against the Premises or any Improvements, Lessee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction.

5.8 As Built Plans and Specifications. Within one hundred twenty (120) days after the installation of any Improvements, unless otherwise agreed in writing by the Port Department, Lessee shall, at its expense, provide the Port Department with a complete set of "as built" plans and specifications (one (1) hard copy and one (1) .pdf format), including mylar reproducible "record" drawings, and a complete set of machine-readable disks containing electronic data in an AUTOCAD format that meets the Port Department's graphic standards of the "as-constructed" or "record" plans for such Improvements (one (1) hard copy and one (1) .pdf format).

5.9 Approval from Other Governmental Agencies for Lessee's Improvements. In addition to the Port Department's approval, Lessee shall be responsible for obtaining all construction permits, complying with inspection requirements of the Broward County edition of the current South Florida Building Code, and obtaining any other required approval from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions, or offices of County, the State of Florida, and the federal government.

5.10 Americans with Disability Act Compliance. All Improvements made to the Premises shall be in conformity and consistent with the Americans with Disability Act of 1990, as same may be amended from time to time.

5.11 Failure to Obtain Approval. If any Improvement is made without the approvals required pursuant to this article, then, upon notice in writing, Lessee shall remove the same, or, at the sole option of the Port Department, cause the same to be changed to the satisfaction of the Port Department. In the case of any failure on the part of Lessee to comply with such notice, County



may affect the removal or change, and Lessee shall pay the cost thereof to County within ten (10) days following written demand for said payment.

5.12 Impact on Public Areas. During construction of any Improvements, Lessee shall maintain the public areas in the same manner and cleanliness as provided by County. Any such Improvements shall be made within the time specified in the approval from the Port Everglades Department and shall be undertaken with the least disturbance possible to the public and the operation of Port Everglades.

5.13 Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Lessee at the Port, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. Lessee shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibit B**.

5.14 Construction and Labor and Material Bonds. Lessee agrees that before commencing any work or construction of Improvements, unless otherwise agreed in writing by the Port Department, Lessee shall obtain or require the contractors to maintain, at all times, valid payment bonds and valid performance bonds, each of which shall be in form and content satisfactory to County and in an amount not less than the amount covering the full amount of the work being performed. Such bonds must guarantee to County the completion and performance of the work being performed as well as full payment of all suppliers, laborers, or subcontractors employed in the performance of the project. The bonds shall continue in effect for one year after final completion and acceptance of the work. The bonds must be executed by a surety company of recognized standing, authorized to do business in the state of Florida as a surety, having a resident agent in the State of Florida, and having been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. In addition, the surety company must meet at least one of the following additional qualifications:

5.14.1. The surety company shall hold a current certificate of authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, as revised, including September 1, 1978 (31 CFR Section 223.10 and Section 223.111). Further, the surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner.

5.14.2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

In lieu of such bonds, Lessee may furnish an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by County and remain in effect for one (1) year after final completion and acceptance of the work.

It is understood and agreed that Lessee shall be responsible for payment of all costs and expenses relating to (i) Lessee's Improvements, including, but not limited to, the design, permitting, and construction thereof; and (ii) all other improvements necessary to Lessee's use of the Port facilities, including, but not limited to, improvements mandated by any governmental authority having jurisdiction over the Port facilities.

#### **ARTICLE 6. MAINTENANCE OF PREMISES**

6.1. Lessee Maintenance and Repair Responsibilities. Except as specifically stated in Section 6.2, commencing on the Commencement Date, Lessee shall, at its sole expense, maintain and repair the Premises and the fixtures, equipment, Improvements, and appurtenances thereon, including, but not limited to, the asphalt pavement (including repairing potholes), windows, doors, locks, interior lighting, overhead doors, HVAC, fire and life safety, reefers (including underground wiring to the reefer plugs), exterior fencing and gates, parking lot lighting, exterior building lighting, interior building security alarm systems, and interior plumbing fixtures (such as restroom sinks and toilets), in a clean, safe, neat, orderly, working, sanitary, and presentable condition, and free and clear of all trash, rubbish, debris, rodents, insects, and other pests. Lessee shall furnish and pay for its own janitorial service in the Premises and shall cause all waste, garbage, and rubbish to be removed from the Premises daily. Such waste, garbage, and rubbish may not be deposited on any part of the Port without the written permission of the Port Department. Lessee shall replace air conditioning filters (if any air conditioning units are located on the Premises) at least monthly. All maintenance and repairs completed by Lessee or on its behalf shall be of first-class quality in both materials and workmanship. All maintenance and repairs shall be completed in conformity with the rules and regulations prescribed from time to time by federal, state, county, and local authorities having jurisdiction over the work. Upon failure of Lessee to perform its obligations set forth in this article, after reasonable notice to Lessee, County may perform or cause the obligations to be performed and Lessee shall pay the cost thereof to County within ten (10) days following written demand for said payment.

6.2. County Maintenance and Repair Responsibilities. Commencing on the Commencement Date, County shall, at its sole expense, maintain and repair the structural elements of the Premises (including the roof), the underground utilities on the Premises (except as provided in Section 6.1 – e.g., underground wiring to the reefer plugs), the high-mast lighting (which are now or may be subsequently installed on the Premises), and mechanical and plumbing systems serving Warehouse 30-West. County shall not be liable to Lessee for any damage to persons or property of any kind caused by any damage or disrepair to the structural or permanent portions of the Premises, unless (i) County has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Lessee; and (ii) any such damage or disrepair shall not have been due to any actions or negligence of Lessee.

Notwithstanding any other provision contained in this Agreement, County shall have the absolute right to maintain and to make repairs, alterations, and additions to the Premises, as well as the right to enter the Premises for the purpose of doing so; however, County shall provide advance notice to Lessee of such entry of the Premises, repairs, alterations, and/or additions, and shall cooperate with Lessee in order to perform such activities without unreasonably disrupting Lessee's operations (except no notice to Lessee will be necessary in the event of an emergency, as determined by County).

#### **ARTICLE 7. DEFAULT BY LESSEE**

7.1 Event of Default by Lessee. The occurrence of any of the following shall constitute an "Event of Default" by Lessee under this Agreement:

7.1.1 Lessee fails to pay any monies when due and continues in its failure to pay for a period of fifteen (15) days following the date written notice to cure is sent by the Port Department to Lessee;

7.1.2 Lessee fails to comply with any provision of this Agreement and (a) such failure continues for a period of fifteen (15) days following the date written notice to cure is sent by the Port Department to Lessee; (b) in the case of any obligation that cannot be cured with due diligence and good faith within fifteen (15) days, as determined by the Port Department, Lessee fails to proceed promptly and with due diligence and good faith to begin to cure the default within fifteen (15) days after such notice is sent by the Port Department; or (c) having begun to cure the default in a timely manner, Lessee thereafter fails to diligently prosecute the cure to completion;

7.1.3 Lessee assigns all or substantially all of Lessee's assets for the benefit of Lessee's creditors;

7.1.4 Lessee abandons, deserts, or vacates the Premises, or ceases to operate in the Premises in compliance with this Agreement, for a period of thirty (30) consecutive days;

7.1.5 By or pursuant to, or under authority of, any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer having

jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the assets of Lessee, and such possession or control shall continue in effect for a period of ninety (90) days;

7.1.6 Lessee, or an individual acting in the capacity of an officer, director, or owner of Lessee, is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, where the illegal conduct or activity (i) is considered to be a Public Entity Crime as defined by Chapter 287, Florida Statutes, as amended; (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; (iii) involves an act of moral turpitude, meaning conduct or acts that tend to degrade the person in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult, or offend the community, or to ridicule public morals, or decency, or to harm the image of County by virtue of its association with Lessee; or (iv) results in a felony conviction. Notwithstanding the foregoing, Lessee may abate this triggering event by submitting evidence satisfactory to the Port Department that Lessee has: (a) implemented best business practices seeking to address such illegal conduct or activity and prevent it from reoccurring, and (b) required the offending person(s) to resign or has otherwise removed the person from Lessee's management activities related to this Agreement;

7.1.7 Suspension or revocation of Lessee's operations by a governmental unit or agency having jurisdiction over the Premises or the business as being conducted thereon;

7.1.8 Lessee assigns this Agreement in violation of Article 10; or

7.1.9 The material inaccuracy of any representation or warranty made or given by Lessee in this Agreement and Lessee's failure to cure such inaccuracy to the satisfaction of the Port Department within fifteen (15) days after written notice to cure is sent to Lessee.

7.2 County's Remedies for Lessee's Default. If one or more Events of Default occurs, County may, at its sole option, exercise one or more of the following rights after notice to Lessee:

7.2.1 Terminate this Agreement;

7.2.2 Sue Lessee for all damages, costs, and expenses arising from the Event of Default, and seek to recover all such damages, costs, and expenses, including reasonable costs and attorneys' fees at both trial and appellate levels;

7.2.3 Seek an injunction or specific performance of any such term or provision of this Agreement. Lessee waives any and all requirements that County post any security or collateral that may be otherwise required as a condition for County to obtain specific performance, injunctive relief, or other equitable relief. The Parties agree and stipulate that County may not have an adequate remedy at law for an Event of Default and, if such

determination is made by County, Lessee agrees that injunctive relief or specific performance may be required to protect the County from irreparable harm;

7.2.4 Draw down on the Security Deposit; and/or

7.2.5 Exercise any and all other remedies available to County under this Agreement, at law, or in equity.

7.3 Remedies under Federal Bankruptcy Laws. Neither this Agreement nor any rights or privileges under this Agreement shall be an asset of Lessee in any bankruptcy, insolvency, or reorganization proceeding. If County is not permitted to terminate this Agreement because of the provisions of any applicable laws, including, but not limited to, the United States Bankruptcy Code, Lessee or any trustee for it shall, within fifteen (15) days, upon request by County to the applicable court or administrative body, assume or reject this Agreement; provided, however, that Lessee (or successor) may not assume this Agreement unless all Events of Default have been cured, County shall have been compensated for any monetary loss resulting from such Events of Default, and County shall be provided with adequate assurance of full and timely performance of all provisions, terms, and conditions of this Agreement on the part of Lessee to be performed.

Notwithstanding the foregoing, to the greatest extent permitted under applicable law, upon the filing by or against Lessee of any proceeding under federal bankruptcy laws, if there has been an Event of Default within the six (6) months preceding such filing, County shall have the right to immediately terminate this Agreement, in addition to other remedies provided under provisions of any Applicable Laws, including, but not limited to, the United States Bankruptcy Code. Such termination shall be by written notice to Lessee within sixty (60) days after the date of Lessee's initial filing in bankruptcy court.

7.4 Payment under Protest. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between County and Lessee with respect to any obligation or alleged obligation of Lessee to pay money, the payment under protest by Lessee of the amount claimed by County to be due shall not waive any of Lessee's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then County shall as promptly as reasonably practicable reimburse Lessee any amount determined as not due. County shall not be required to pay any interest on any such reimbursed sums.

7.5 Holdover. Any holding over of Lessee after the expiration or earlier termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy at sufferance, pursuant to Section 83.04, Florida Statutes, as amended, and, unless otherwise agreed in writing by the Port Director, Lessee shall be required to pay to County during any holdover period monthly rent equal to double the Rent for the Premises based on the rates then in effect under this Agreement. All other provisions of this Agreement shall remain in effect during such holdover period. Lessee shall be liable to County for all loss or damage on account of any such holding over after the expiration or earlier termination of this Agreement, whether or not such loss or damage may be contemplated as of the Effective Date. County reserves the right to pursue all remedies available to it under applicable laws as a result of Lessee's holdover.

Acceptance of any payments by County in the event that Lessee fails or refuses to surrender possession shall not operate as County's consent to Lessee's continued possession nor shall it constitute a waiver by County of its right to immediate possession of the Premises.

7.6 Habitual Default. If Lessee has frequently or regularly breached any of the terms, covenants, or conditions of this Agreement, regardless of whether Lessee has cured each or any individual breach, Lessee may be determined by County to be a "Habitual Violator." At the time that such determination is made, County shall issue to Lessee a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Lessee that there shall be no further notice or cure periods to correct any subsequent breach and that any subsequent breach of whatever nature, taken with all previous breaches, considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. If any such subsequent breach, County may terminate this Agreement upon the giving of written notice of termination to Lessee, such termination to be effective upon delivery of the notice to Lessee.

#### **ARTICLE 8. FIRE AND OTHER DAMAGE**

8.1 Fire Prevention. Lessee agrees to use every reasonable precaution against fire and agrees to provide and maintain approved, labeled fire extinguishers, emergency lighting equipment, fire safety equipment, fire sprinklers, and exit signs as required or recommended by the Occupational Safety and Health Administration, the local fire department, or any similar body.

8.2 Fire and Other Damage. If structural or permanent portions of the Premises are partially damaged by a fire or other casualty for which Lessee is not responsible, Lessee shall give immediate notice thereof to the Port Department and the same shall be repaired at the expense of County without unreasonable delay unless the Port Department determines, in their sole discretion, that the damage is so extensive that the repair or rebuilding is not feasible. From the date of such casualty until said portion of the Premises is so repaired, if ever, the Rent shall abate in such proportion as the part of the Premises thus destroyed or rendered untenable; provided, however, that for any area within the Premises that is so slightly injured in any such casualty that it is not rendered unfit for occupancy ("Area(s) Fit for Occupancy"), as determined exclusively by the Port Department, payments pertaining to the Area(s) Fit for Occupancy shall not cease or be abated during any repair period. If the Port Department determines, in their sole discretion, that the damage is so extensive that the repair or rebuilding is not feasible, then, at the option of the Port Department and upon written notice to Lessee, the damaged area shall be removed from the Agreement and **Exhibit A** shall be amended automatically without the need for an amendment.

8.3 Party Responsibilities. County's obligations to rebuild or repair under this article shall be limited to restoring only the structural or permanent portions of the building in which the Premises are located to substantially the condition that existed prior to the casualty, and shall further be limited to the extent of the insurance proceeds available to County for such restoration. Lessee agrees that if the Port Department elects to repair or rebuild as provided in this article, then Lessee will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair, and restore its signs, fixtures, furnishings, equipment, Improvements, and other items provided or installed by

Lessee in or about the Premises in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

8.4 Damage Caused by Lessee. If the applicable damage described in Section 8.2 is caused by the act or omission of Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, Lessee's payments shall not abate and Lessee shall be responsible, at its expense, for making all the necessary repairs as approved by the Port Department. If Lessee fails to make the necessary repairs in a timely manner as determined by the Port Department, then the Port Department may, at their option, cause such repairs to be completed and Lessee shall reimburse County for the costs and expenses incurred in such repair, plus an administrative fee as permissible under the Broward County Administrative Code.

## ARTICLE 9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification. Lessee shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Lessee, or any intentional, reckless, or negligent act or omission of Lessee, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"), except and to the extent that such Claim arises from the gross negligence and/or willful misconduct of the County and/or the Indemnified Party. If any Claim is brought against an Indemnified Party, Lessee shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel selected by Lessee provided that said counsel is satisfactory to County (whose approval shall not be unreasonably withheld), or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party provided that said attorney is approved by Lessee (whose approval shall not be unreasonably withheld), and said approval is stipulated for defense by the Broward County Office of the County Attorney (whose approval shall not be unreasonably withheld). The obligations of this section shall survive the expiration or earlier termination of this Agreement.

9.2 Insurance. For the duration of the Agreement, Lessee shall, at its sole expense, maintain the minimum insurance coverages stated in **Exhibit C** in accordance with the terms and conditions of this article. Lessee shall maintain insurance coverage against claims relating to any act or omission by Lessee, its agents, representatives, employees, or subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.3 Additional Insured. Lessee shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in **Exhibit C** on all policies required under this article.

9.4 Certificates of Insurance. On or before the Effective Date, Lessee shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the

insurance coverage required in this article. If and to the extent requested by County, Lessee shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

9.5 Remain in Full Force. Lessee shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Lessee has been completed, as determined by the Port Department. Lessee or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Lessee shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

9.6 Insurer. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

9.7 Broader Coverage. If Lessee maintains broader coverage or higher limits than the minimum insurance requirements stated in **Exhibit C**, County shall be entitled to any such broader coverage and higher limits maintained by Lessee. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Lessee.

9.8 Self-Insured. Lessee shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in **Exhibit C** and submit to County for approval at least fifteen (15) days prior to the Effective Date. Lessee shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Lessee agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Lessee agrees to obtain same in endorsements to the required policies.

9.9 Subrogation. Unless prohibited by the applicable policy, Lessee waives any right to subrogation that any of Lessee's insurers may acquire against County, and agrees to obtain same in an endorsement of Lessee's insurance policies.

9.10 Subcontractor Insurance. Lessee shall require that each subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Lessee under this article. Lessee shall ensure that all such subcontractors comply with these requirements and that



“Broward County” is named as an additional insured under the subcontractors’ applicable insurance policies.

9.11 Failure to Maintain Insurance. If Lessee or any subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Lessee. Lessee shall not permit any subcontractor to provide services unless and until the requirements of this article are satisfied. If requested by County, Lessee shall provide, within one (1) Business Day, evidence of each subcontractor’s compliance with this article.

9.12 Claims-Made Coverage. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in **Exhibit C**; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Lessee must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in **Exhibit C**.

#### **ARTICLE 10. ASSIGNMENT, SUBLETTING, AND SUBORDINATION**

10.1 County Consent Requirements; Factors and Standards. Lessee shall not (i) sublet the Premises or any part thereof; (ii) permit any transfer, assignment, pledge, or encumbrance of this Agreement; (iii) transfer, assign, pledge, or otherwise encumber or subordinate this Agreement or any rights or obligations hereunder; or (iv) allow same to be assigned by operation of law or otherwise (collectively, any such action hereinafter referenced as an “Assignment”) without the Port Department’s prior written consent, which consent may be granted or withheld by the Port Department in its sole discretion and conditioned upon such additional terms and conditions as the Port Department deems necessary. The factors upon which the Port Department may base its decision on whether to grant such consent shall include, but not be limited to: (i) an assessment of whether the proposed assignee meets standards of creditworthiness; (ii) whether the Premises will be used in connection with the maritime industry for the purposes described herein; and (iii) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any request for an Assignment by Lessee, the proposed assignee shall be required to execute a written assumption lease, agreeing to assume and abide by all of the terms and provisions of this Agreement, which assumption lease must be acceptable to the Port Department. County shall not unreasonably withhold its consent to an Assignment. In no case will an Assignment be granted if a default by Lessee shall have occurred and remain uncured.

10.2 No Release. In the event of any Assignment, Lessee shall not be released of its obligations and liabilities hereunder. County, as a condition of approving an Assignment, may increase the Rent and fees payable, and may require modification of any other terms or conditions of this Agreement and/or execution of additional documents, including an irrevocable Guaranty of Payment and Performance by Lessee or any other proposed assignor.

10.3 Assumption of Liability. No Assignment shall be binding on County unless and until such assignee, transferee, or sublessee executes a written lease or assumption lease with County assuming all liabilities and obligations of Lessee hereunder.

10.4 Change in Lessee's Status. For purposes of this article, an "Assignment" shall include: (i) any transfer of this Agreement by consolidation, liquidation, or by operation of law; and (ii) any change in ownership or power to vote a majority of the outstanding voting stock or interest of Lessee. Notwithstanding the foregoing, the following shall not be deemed an Assignment: (i) a transfer of stock or interests in Lessee among its current (as of the date this Agreement was executed by County) owners and/or their affiliates; (ii) a transfer of stock or interests in Lessee resulting from the death of a stockholder, member, partner, or joint venturer; (iii) any transfers of stock in Lessee or any assignee, transferee, or sublessee which stock is publicly traded on a national stock exchange; or (iv) a transfer of stock or ownership or interests in Lessee resulting from a merger.

10.5 Voiding of Assignment or Sublease; Right to Collect Rent. If Lessee takes any action prohibited under this article without the Port Department's prior written consent, then any such Assignment shall be null and void and of no force or effect, and in addition to all other available remedies, the Port Department shall be entitled to immediately terminate this Agreement. In no case may the activities, uses, privileges, and obligations authorized herein regarding the Premises or any portion thereof be assigned for any time period for which a default of this Agreement by Lessee has occurred and remains uncured.

In addition, if the Premises is occupied by any entity without County's prior written consent in violation of this article, then County may collect rent from the assignee, sublessee, or any entity that claims a right to this Agreement or that occupies the Premises, and the Port Department shall apply the net amount collected to the Rent due under this Agreement; however, no such collection shall be deemed a waiver by County of the provisions of this article or any acceptance by County of any assignee, sublessee, or any entity who claims a right to this Agreement or who occupies the Premises.

10.6 Subordinate to County. Lessee acknowledges and agrees that each sublessee of Lessee is subject to all of the terms and provisions of this Agreement, including, but not limited to, the requirement that each such sublessee must comply with all federal, state, and local laws, ordinances, rules, regulations, and orders in effect that are applicable to the operations being conducted on or the use and enjoyment of the Premises by the sublessee. Notwithstanding any sublease of the Premises to which County has consented as provided herein, Lessee shall remain responsible for ensuring that each and every term and provision of this Agreement is fully abided by and complied with and, in that regard, any breach of this Agreement by a sublessee shall be deemed a breach of this Agreement by Lessee hereunder, entitling County to any and all remedies available hereunder and pursuant to applicable Florida law. Each sublease of the Premises to which County has consented as provided herein shall be subordinate in all respects to all the terms and provisions of this Agreement, and upon any termination or expiration of this Agreement, each sublease of the Premises shall also terminate or expire contemporaneously on the effective termination date or expiration date of this Agreement.

**10.7 Mortgage on Leasehold.** No leasehold mortgage shall be binding upon County without the prior written consent of the Port Department. However, County will accept performance or payment by the holder of any leasehold mortgage to which the Port Department has consented, of any term and condition of this Agreement required to be made by Lessee, with the same force and effect as though performed by Lessee, if at the time of such performance or payment, County shall be furnished with evidence satisfactory to the Port Department, of the interest in the leased property claimed by the person or entity tendering such performance or payment. The holder of such leasehold mortgage shall have ten (10) additional days after the date on which the Port Department may otherwise terminate this Agreement as to the defaulting Lessee to cure any default in the payment of Rent or other additional sums required to be paid under this Agreement, and thirty (30) additional days after the date on which the Port Department may otherwise terminate this Agreement as to the defaulting Lessee to cure any other default hereunder. In no event shall an approved leasehold mortgagee sell, assign, transfer, convey, or otherwise dispose of its interest in this Agreement to a third party without the prior written consent of the Port Department.

The Port Department shall, from time to time, upon reasonable written request, provide a leasehold mortgagee or Lessee with an estoppel certificate stating whether Lessee is in default, whether this Agreement is in full force and effect, and whether this Agreement has been modified. Notwithstanding any consent provided by County, no Assignment shall give Lessee or its assignee, sublessee, transferee, or leasehold mortgagee any lien or encumbrance upon the fee simple ownership interest in the Premises, which is vested in County.

When giving notice to Lessee with respect to any default under the provisions of this Agreement, the Port Department shall also serve a copy of such notice upon any approved leasehold mortgagee by certified mail, return receipt requested, or any other method of delivery that can be confirmed and verified, to the leasehold mortgagee at the address set forth in the approved leasehold mortgage. It is Lessee's responsibility and the approved leasehold mortgagee's responsibility to ensure that the Port Department has both Lessee's and the approved leasehold mortgagee's correct and current mailing address.

Upon Lessee's receipt of notice of default from the Port Department, Lessee will promptly notify the approved leasehold mortgagee in writing of such occurrence and state in the written notice what action has been or will be taken by Lessee to cure the default. Lessee shall also promptly provide the Port Department with a copy of the written notice provided to the approved leasehold mortgagee.

## **ARTICLE 11. SURRENDER OF PREMISES**

**11.1 Surrender and Condition.** Upon the expiration or earlier termination of this Agreement, Lessee shall surrender possession of the Premises in the same condition as it was received on the first day of occupancy, less reasonable wear and tear, and all of the Premises and Improvements located thereon shall be free and clear of all liens, encumbrances, and security interests. The required condition of the Premises at the time of Lessee's surrender shall include, but not be limited to, the following: (i) all flooring must be cleaned as reasonably required by the Port

Department; (ii) all doors and walls must be patched and painted with in a color approved by the Port Department; (iii) all ceiling tiles shall be in place, clean, and matching; (iv) all Lessee-installed conduit and wiring shall be removed if requested by the Port Department ; and (v) all personal property and Improvements (except Improvements that are owned by County as provided in Article 5) shall be removed. A final exit walkthrough inspection shall be conducted prior to surrender by Lessee and the Port Department to determine compliance with this provision and the Port Department's acceptance of the condition of the Premises. If Lessee fails to comply with the terms of this section, County reserves the right to perform all necessary work to bring the Premises to the required condition and Lessee shall be required to reimburse County for all reasonable expenses incurred. The provisions of this section shall survive the expiration or other termination of this Agreement.

11.2 Removal. Lessee has the right at any time during this Agreement to remove any furnishings, trade fixtures, or equipment it has installed in, on, or about the Premises, subject to the provisions of this Agreement and any lien County may have thereon for unpaid fees, charges, or other amounts payable under this Agreement, and provided that Lessee shall restore any damage to the Premises and the Premises shall be returned to County in the same condition as defined in Section 11.1. Any such property not removed by Lessee by the expiration or earlier termination of this Agreement shall become part of the Premises or, if elected by the Port Department, may be removed, stored, or sold by County, at Lessee's expense, with such obligation to pay surviving the expiration or earlier termination of this Agreement.

11.3 Failure to Surrender. If Lessee fails to surrender the Premises in the condition required by this article or fails to complete any of the obligations due under this Agreement, including the payments of Rent, Lessee, from the date of the expiration or earlier termination of this Agreement until the acceptance of surrender by the Port Department as set forth in Section 11.4, shall be considered a holdover tenant under the terms set forth in Section 7.5.

11.4 Acceptance of Surrender. No agreement of surrender or to accept a surrender of the Premises under this Agreement shall be valid unless and until approved in writing by the Port Department and Lessee, provided that the Port Department's approval shall not be unreasonably withheld. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of County shall be deemed an acceptance of a surrender.

## **ARTICLE 12. ENVIRONMENTAL**

12.1 County makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or under the Premises or the improvements thereon in violation of any federal, state, or local law, rule, or regulation or in violation of any order or directives of any federal, state, or local court or entity with jurisdiction of such matter. The term "Pollutants" refers to and includes all derivatives or by-products of any one or more of the following terms as defined by applicable local, state, or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials, and wastes as are or become regulated under

applicable local, state, or federal laws or regulations. Lessee acknowledges, represents, and warrants to County that it has made sufficient inspection of the Premises and the improvements thereon to satisfy itself as to the presence or absence of any such Pollutants. Lessee shall have no liability for any preexisting environmental impairments, liabilities, or conditions related to the Premises and the improvements thereon not caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees. Lessee shall not be liable for any migration of Pollutants and/or rise in the level of any Pollutants related to the Premises not caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees.

12.2 The discharge of any Pollutants on the Premises or in Port Everglades in violation of any federal, state, or local law, rule, or regulation, or in violation of an order or directive of any federal, state, or local court or entity is prohibited. Any Pollutant discharge by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, whether committed prior to or subsequent to the Effective Date of this Agreement, shall be, at Lessee's expense, and upon the Port Department demand, immediately contained, removed, and abated to the satisfaction of the Port Department and any court or regulatory entity having jurisdiction of the Pollutant discharge. If Lessee does not take action immediately to have such Pollutants contained, removed, and/or abated, County may undertake the removal of the Pollutant discharge; however, any such action by County shall not relieve Lessee of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Lessee or County to contain or remove Pollutants, or to abate a discharge, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or cause of the Pollutant discharge.

12.3 Lessee shall provide the Port Department with immediate notice of any and all spills, leaks, or discharges of any size whatsoever of Pollutants arising from its operations on and/or use of the Premises or in Port Everglades, and further provide the Port Department with not less than one (1) Business Day prior written notice of all curative measures, remediation efforts, and/or monitoring activities to be effectuated by Lessee, or promptly after taking any emergency measures.

12.4 If the Port Department arranges for the removal of any Pollutants in Port Everglades that were caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, the costs of such removal incurred by County shall be paid by Lessee to County immediately upon the Port Department's written demand, with interest as is provided for under County's rules, regulations, and ordinances, including the Tariff.

12.5 Lessee shall not be liable for the discharge of any Pollutants caused by the negligence or willful misconduct of County. Nothing herein shall relieve Lessee of its general duty to cooperate with County in ascertaining the source and containing, removing, and abating any Pollutants located at the Premises and, if County is liable for such discharge, County shall pay all costs and expenses associated with the containing, removing, and abating of such Pollutants. Upon reasonable advance notice to Lessee (except no notice is necessary for emergencies), County and County's employees, contractors, and agents shall have the right at all times to enter the

Premises for the purposes of the foregoing activities and/or conducting such environmental inspections, audits, testing, or sampling as County deems appropriate without unreasonable interruption or disturbance of Lessee's commercial operations. In addition, Lessee hereby agrees that upon any Assignment of this Agreement, County shall have the right to have a "Phase I" audit of the Premises conducted at Lessee's expense, and if such "Phase I" audit indicates that further testing and/or studies should be conducted, to include, but not be limited to, soil samples and water samples, then County shall have the right to have such further testing and studies conducted at Lessee's expense. For testing and studies conducted upon Assignment, Lessee shall reimburse County for the reasonable costs of such testing and studies within fifteen (15) days after written demand by County.

12.6 If the Port Department arranges for the removal of Pollutants on the Premises that are not Lessee's responsibility to correct, and if County's remediation activities prevent Lessee from using the Premises for its intended purposes, then from the date that the use of any portion of the Premises for its intended purposes is precluded and until the date said portion again becomes available for Lessee's use, then a prorated portion of the Rent payments due shall be abated based on the portion of the Premises rendered unusable. In no event shall Lessee be entitled to claim or seek from County any amount on account of lost profits, lost rents, or other direct or consequential damages as a result of County's remediation activities. Remediation activities shall be completed within a reasonable time under applicable law.

12.7 Lessee shall, as required by applicable law, provide the relevant regulatory authorities with notice of any and all spills, leaks, or discharges of Pollutants on the Premises or within Port Everglades that Lessee is aware of and have an updated contingency plan in effect for such spills, leaks, or discharges.

12.8 The provisions of this article shall survive the expiration or earlier termination of this Agreement.

### **ARTICLE 13. OTHER PROVISIONS**

#### **13.1. Right to Enter Premises.**

13.1.1 Upon reasonable advance notice to Lessee (excluding emergencies), County, by its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times to enter upon the Premises to inspect, make inquiry, and ascertain whether Lessee is complying with the terms of this Agreement, and to perform or conduct any reasonable act or activity that County may be obligated or have the right to do under this Agreement or otherwise; provided however, that County in the exercise of this right shall not unreasonably interfere, disturb and/or disrupt Lessee's use and occupancy of the Premises nor endanger the safety of Lessee's employees.

13.1.2 Without limiting the generality of the foregoing, and upon reasonable advance notice to Lessee (excluding emergencies), County, by its employees, agents, representatives, and contractors, may enter upon the Premises at all reasonable times to:

(i) make any installations, repairs, replacements, or alterations relating to existing and future utility, mechanical, electrical, HVAC, plumbing, roofing, or other systems in, on, or under the Premises as may be deemed necessary or advisable by County; or (ii) use the Premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration, or new construction, County shall not unreasonably interfere with the use and occupancy of the Premises by Lessee nor endanger the safety of Lessee's employees.

13.1.3 If any of Lessee's personal property obstructs the access of County or County's officers, employees, agents, or contractors to any of the existing or future utility, mechanical, electrical, HVAC, plumbing, roofing, or other systems in, on, or under the Premises, and thus interferes with the inspection, maintenance, or repair of any such system, Lessee shall move such property, as directed by the Port Department, in order that access may be had to the system or part thereof for its inspection, maintenance, or repair, and if Lessee fails to so remove such property after direction from the Port Department, then the Port Department may move it and Lessee shall pay the cost of such moving within ten (10) days after the Port Department sends written demand therefor.

13.1.4 If at any time during the Term hereof, it is necessary for the Port Department to enter the Premises for the purposes of constructing utility or pipeline facilities or making repairs or other needed improvements, Lessee agrees that the Port Department and its contractors may enter the Premises for such purposes, upon reasonable advance notice to Lessee (excluding emergencies), and during reasonable hours and under conditions that will not unreasonably interfere with Lessee's use of the Premises nor endanger the safety of Lessee's employees.

13.1.5 The exercise of any or all of the foregoing rights by County shall not be construed to be an eviction of Lessee nor be grounds for any abatement of rental, nor any claim or demand for damages, consequential or otherwise, against County.

13.2. Ingress and Egress. Lessee and Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, and invitees, subject to the terms of this Agreement, shall have the right of ingress and egress via appropriate public ways, to be used in common with others having rights of passage within Port Everglades; provided, however, that the Port Department may, from time to time, substitute other suitable means (considering Lessee's business operations) of ingress and egress so long as an alternate adequate means of ingress and egress is available. The Port Department may, at any time, temporarily or permanently close, or request the closing of any such street, roadway, and/or other area at Port Everglades presently or hereafter used as such so long as an alternate adequate means of ingress and egress is made available to the Premises (considering Lessee's business operations). Lessee releases and discharges County of and from any and all claims, demands, or causes of action that Lessee may now or at any time hereafter have against County arising or alleged to arise out of the temporary or permanent closing of any street, roadway, or other area used as such, whether within or

outside Port Everglades, provided that County makes available to the Premises an adequate means of ingress and egress (considering Lessee's business operations).

13.3. Tariff. Except as otherwise expressly provided herein, Lessee, in its use of County-owned property and facilities and its utilization of services at Port Everglades, shall comply with and be governed by the Tariff, and pay, in addition to the required payments under this Agreement, all charges and rates in accordance with the provisions of the Tariff. Notwithstanding anything to the contrary herein, if there is a conflict or inconsistency between this Agreement and the Tariff, then this Agreement shall prevail and be given effect.

If County's Board of County Commissioners is expected to consider an amendment to the Tariff that may impact Lessee, the Port Everglades Department will provide Lessee with prior written notice in advance of any public meeting of the Board of County Commissioners where such amendment will be considered. If, on or after the Effective Date, the Tariff is amended in a manner that materially increases Lessee's cost(s), liability, and/or compliance responsibilities, and Lessee objects to such amendment by letter to the Port Director within thirty (30) calendar days after such amendment becomes effective explaining how the amendment materially increases Lessee's cost(s), liability, and/or compliance responsibilities, then the Parties shall meet and discuss Lessee's concerns, and if the Parties are unable to agree on a resolution within sixty (60) calendar days after such notice is sent by Lessee, Lessee may terminate this Agreement upon ninety (90) calendar days' notice to the Port Director.

13.4. Animals. Lessee shall not allow any animal(s) or pet(s) of any kind to be kept or harbored in or about the Premises without the prior written permission of the Port Department.

13.5. Signage. Lessee will not place, suffer to be placed, or maintain on the Premises any sign, awning, canopy, or advertising matter without prior written consent of the Port Department, which consent shall not be unreasonably withheld. If such consent is granted by the Port Department, Lessee shall always maintain such item(s) in good condition and install same pursuant to the Port Everglades Development District Zoning Classification.

13.6. Security. Lessee, at its sole cost, shall be responsible for security on the Premises and all improvements thereon, and shall take and reasonably require others to take, as required, whatever legal precautions as are necessary to protect the Premises and all improvements thereon, and all persons and property thereon. Lessee acknowledges that security measures at Port Everglades may be increased by County and that such efforts will likely impact the Premises. In this regard, Lessee agrees to cooperate with County's efforts to increase security and agrees to comply with all security related laws, rules, and regulations (whether imposed by the United States Customs and Border Protection, the United States Coast Guard, state of Florida, or County). Lessee, at its sole cost, shall be responsible for complying with all security-related measures that impact the Premises, Lessee, or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees. Any increased security-related measures imposed by County on Lessee hereunder shall be uniformly imposed by County on similarly situated parties at Port Everglades.



13.7. Fines. If as a result of an intentional or negligent act or omission of Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, County incurs any fines and/or penalties, or any expense in enforcing the Port Everglades Security Program or the rules and regulations of other applicable security agencies, then Lessee agrees to pay and/or reimburse to County all such fines, penalties, costs, and expenses, including all costs of administrative proceedings, court costs, and reasonable attorney's fees incurred by County in enforcing this provision. Lessee further agrees to rectify any security deficiency caused by Lessee or Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, or invitees, or other deficiency as may be determined by the Port Department. If Lessee fails to remedy any such deficiency, the Port Department may do so at the cost and expense of Lessee. County reserves the right to take whatever action is necessary to rectify any such security deficiency or other compliance deficiency. The provisions hereof shall survive the expiration or any other termination of this Agreement.

13.8. Inspections. Lessee acknowledges that all persons, vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave Port Everglades. Lessee acknowledges and understands that the inspection requirements are for the protection of users of the Port and are intended to reduce incidents of cargo tampering, thefts, and other unlawful activities at the Port. For this reason, Lessee agrees that County has the right to deny entry to persons requiring access to the Port who do not consent to be inspected.

13.9. Risk of Loss. The risk of loss of or damage to personal property, including, but not limited to, cargo, commodities, and equipment, that has been stored at or moved on or near the Premises shall be borne solely by Lessee or the owner of such property, except to the extent the loss or damage to the personal property is caused by any intentional, reckless, or negligent act or omission of the County, its officers, employees, or agents.

13.10. Licenses. Lessee shall maintain in current status all federal, state, county, and local licenses, business tax receipts, and permits required for the operation of the business conducted by Lessee.

13.11. Parking. Lessee's use of parking spaces in Port Everglades shall be subject to and in accordance with County's vehicle parking regulations set forth in the Tariff. Lessee shall ensure that its officers, employees, and agents park only in parking spaces specifically assigned to Lessee, which total thirty-eight (38) spaces as shown on Exhibit A. Such spaces may only be used for passenger vehicles; not for storage of trucks/trailers. Commencing on the Effective Date, Lessee may use the Southwest Lot for parking and for the storage of trucks/trailers. Moreover, the Parties agree to discuss the terms and conditions upon which additional land may be made available by County to Lessee for the storage of trailers/trucks by Lessee. Vehicles parked in parking spaces not specifically assigned to Lessee may be towed at the vehicle owner's expense.

13.12. Uncontrollable Forces. Neither County nor Lessee shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming Party could not avoid. The term “Uncontrollable Forces” shall mean any event that results in the prevention or delay of performance by a Party of its obligations under this Agreement and that is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to, fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Any delay or failure to perform on the part of Lessee caused by Uncontrollable Forces shall not be recognized unless Lessee notifies the Port Department in writing within ten (10) days after the Uncontrollable Forces event. Neither economic impracticability nor inability of Lessee to perform in whole or in part for economic reasons shall constitute an Uncontrollable Forces event.

13.13. Nondiscrimination. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. By execution of this Agreement, Lessee represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement in accordance with the provisions of Article 7 herein.

13.14. Damage to Port Facilities. Lessee shall be responsible for and repair any and all damage to the Port caused by the negligence of Lessee. If Lessee fails to make the necessary repairs in a timely manner as determined by the Port Department, then the Port Department may, at their option, cause such repairs to be completed and Lessee shall reimburse County for the reasonable costs and expenses incurred in such repair, plus an administrative fee as permissible under the Broward County Administrative Code.

13.15. Development and Expansion of Port. County shall have the right to develop, maintain, and operate the Port as it deems advisable and desirable in accordance with such appropriate governmental authority and regulation as may be applicable, and County shall have the right to make such agreements as County deems necessary or advisable in connection with federal and state funding of Port improvements, alterations, or modifications. If at any point County seeks federal, state, or local government approval regarding the operation or modification of the Port, Lessee shall provide any and all reasonably requested cooperation and support, including, without limitation, supporting County’s efforts to obtain any such approvals and executing any documents or instruments reasonably requested by County. Lessee shall not be required to bear any additional expense and shall not be deemed an agent of County.

13.16. Cooperation with County. Lessee acknowledges that County will be seeking regulatory approvals (“Regulatory Approvals”) consistent with its Airport Master Plan and subsequent updates (collectively, “Master Plan”) and Federal Administrative Administration Record of Decision and subsequent updates (collectively, “ROD”), and Part 150 Study and subsequent

updates (collectively, "Part 150 Study"), and the implementation thereof, which may include the following: (1) amendment of development agreements and orders; (2) agreements with the State of Florida and other agencies; (3) land use and zoning amendments; (4) preparation of environmental assessments and environmental impact statements; (5) such permitting as may be required by federal, state, county, or local regulations; and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan, the ROD, or the Part 150 Study. Lessee shall reasonably cooperate with County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of Effective Date of this Agreement, Lessee shall (i) reasonably support County's efforts to obtain the Regulatory Approvals; and (ii) execute any documents(s) or instrument(s) reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Lessee shall not be required to bear any expense in connection therewith and Lessee shall not be deemed an agent of the County.

13.17. Easements. County reserves the right to maintain such easements and right of way agreements on the Premises as may now or in the future be determined necessary to serve the needs of Port Everglades, and Lessee agrees to take the Premises subject to such easement and agreement requirements. Such easements and agreements will be used for, among other things, ingress and egress for other Port users, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting, and power poles. However, it is understood and agreed that County will restore any Improvements that Lessee has made on the Premises, if such Improvements are damaged by any installation made by County. Furthermore, the Port Department shall take reasonable steps to ensure that any such installation work be the least disruptive to Lessee's operations.

13.18. Polystyrene Food Service Articles. Lessee shall comply with the prohibition on the use or sale of expanded polystyrene products (e.g., Styrofoam) or single-use plastic beverage straws or stirrers on County property set forth in Section 27.173, Broward County Administrative Code.

13.19. Prohibited Telecommunications Equipment. Lessee represents and certifies that Lessee and all of its subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Lessee represents and certifies that Lessee and all of its subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

13.20. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY**

**WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

13.21. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees to the extent required by Section 768.28, Florida Statutes.

13.22. Agent for Service of Process. If Lessee is not a resident of the State of Florida, is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then Lessee hereby designates the Secretary of State of the State of Florida as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Agreement, and service shall be made as provided by the laws of the State of Florida for service upon a nonresident who has designated the Secretary of State as agent for service. If for any reason service of such process is not possible, as an alternative method of service of process, Lessee may be personally served with such process out of this State by certified mailing to Lessee at the address set forth in this Agreement. Any such service out of this State shall constitute valid service upon Lessee as of the date of mailing. Lessee is amenable to and agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protests thereto.

13.23. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. Either Party's failure to enforce any provision of this Agreement, or County's acceptance of any Rent or any partial performance by Lessee, shall not be deemed a waiver of any provision of this Agreement or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

13.24. Time of Essence. Time is of the essence with respect to this Agreement and shall apply to all terms and conditions contained in this Agreement.

13.25. Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

13.26. Relationship of the Parties. Neither Party nor its agents shall act as officers, employees, or agents of the other Party. Neither Party shall have the right to bind the other Party to any obligation not expressly undertaken by said other Party under this Agreement.

13.27. Third-Party Beneficiaries. Except as expressly set forth in Section 13.57, neither Lessee nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, except as expressly set forth in Section 13.57, the Parties agree that there are no third-party beneficiaries to this Agreement, and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

13.28. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

13.29. Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

13.30. Incorporation of Required Provisions. The Parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

13.31. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The following Exhibits are incorporated into and made a part of this Agreement:

<b>Exhibit A</b>	<b>Premises</b>
<b>Exhibit B</b>	<b>Statement of Compliance</b>
<b>Exhibit C</b>	<b>Minimum Insurance Coverage</b>
<b>Exhibit D</b>	<b>Settlement Agreement</b>

13.32. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by authorized signatories of both the Board and Lessee.

13.33. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement (i.e., Lessee's lease of the Premises starting on the Commencement Date) and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. No deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

13.34. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa unless the context otherwise requires. Terms such as

“herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

13.35. Survival. Upon termination or expiration of this Agreement, both Lessee and County shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Agreement to the contrary, no obligation which accrued but has not been satisfied under any prior agreements between the Parties, including the Prior Lease, shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

13.36. No Set Off. The Parties each respectively acknowledge that, through the Effective Date, to the best of its knowledge, it has no claims against the other Party with respect to any of the operations of Lessee at the Port and/or any of the matters covered by this Agreement or the Prior Lease.

13.37. Waiver of Claims. Lessee hereby waives any claim against County and its officers, commissioners, and employees for any consequential damages, including, without limitation, any loss of anticipated profits caused by (a) any failure of County to comply with any obligations hereunder; (b) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; (c) any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same or any part thereof from being carried out; or (d) any change in the operation or configuration of, or any change in procedures governing the use of the Port.

13.38. Non-Liability of Government Representatives. No commissioner, director, officer, agent, or employee of County shall be charged personally or held contractually liable under any term or provision of this Agreement or of any supplement, modification, or amendment to this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

13.39. No Remedy Exclusive. No remedy conferred in this Agreement upon or reserved to County or Lessee is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Agreement or now or hereafter existing at law or in equity.

13.40. Condemnation. If at any time during the Term, the power of eminent domain shall be exercised or threatened whether by condemnation proceeding or threat or imminence thereof (a “Taking”) of the entirety of the Premises or of substantially all of the Premises so as to render

the Premises untenable shall occur, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking. For purposes of this Agreement, the date of Taking shall be the earlier of the date upon which actual possession of the Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority, or the date in which title vests in such lawful power or authority. The rent required to be paid by Lessee shall be paid up to the date of such Taking. Lessee shall in all respects keep, observe, and perform all the terms and conditions of this Agreement up to the date of such Taking.

County agrees to promptly notify Lessee of any eminent domain proceeding, and Lessee, at its sole cost and expense, will be entitled to join such proceeding and to defend Lessee's interest in the Premises affected by such proceeding, and, to the extent permitted by law, to be awarded damages attributable to the value of Lessee's unexpired leasehold estate in the Premises. If at any time during the Term a Taking of less than the whole of the Premises shall occur, rent shall thereafter be reduced in proportion to the reduction in the rentable area of the Premises.

Termination of this Agreement by County shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement, or any other facts or circumstances arising out of or in connection with this Agreement.

**13.41. Notices.** Unless otherwise stated herein, for notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy via e-mail to the addresses listed below, and shall be effective upon mailing. The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

**FOR BROWARD COUNTY:**

Chief Executive/Port Director  
Port Everglades Department  
1850 Eller Drive, Suite 604  
Fort Lauderdale, Florida 33316  
Email address: jdaniels@broward.org

**FOR LESSEE:**

Jaime Keller, Senior Manager  
Chiquita Fresh North America L.L.C.  
DCOTA Office Center  
1855 Griffin Road, Suite C-436  
Dania Beach, Florida 33004-2275  
Email address: jakeller@chiquita.com

With a copy to:  
Chiquita Fresh North America L.L.C.

Attn: Legal Department  
DCOTA Office Center  
1855 Griffin Road, Suite C-436  
Dania Beach, Florida 33004  
Email address: kzinchiak@chiquita.com

Notwithstanding anything herein to the contrary, invoices only need to be sent by e-mail to: jakeller@chiquita.com, andperez@chiquita.com, andedeleon@chiquita.com.

13.42. Compliance with Laws. Lessee and Lessee's officers, agents, employees, partners, contractors, subcontractors, sublessees, guests, and invitees shall comply with all present and future applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement, including any governing the operation, maintenance, and use of the Port.

13.43. Public Entity Crime Act. Lessee represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Lessee further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Lessee has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this section is false, County shall have the right to immediately terminate this Agreement and recover all sums paid to Lessee under this Agreement.

13.44. Scrutinized Companies List. The Agreement may also be terminated for cause if Lessee is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if Lessee provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

13.45. Police/Regulatory Powers. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Premises, any Improvements thereon, or any operations at the Premises. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules, and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing in this Agreement shall be considered zoning by contract.

13.46. Visual Artists' Rights Act. With respect to construction or installation of any Improvements at the Premises and regarding the requirements of the federal Visual Artists Rights



Act of 1990, 17 USC §§ 106A and 113 (the "Act"), Lessee shall not (i) hire any artist or permit any sublessee to hire any artist for the purpose of installing or incorporating any work of art into or at the Premises; or (ii) permit the installation or incorporation of any work of art in or at the Premises without the prior written approval of County. Lessee shall provide such reasonable documentation as County may request in connection with any request for such approval and the approval of County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act, in form and substance acceptable to County.

13.47. Contingency Fee. Lessee represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Lessee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County learns that this representation is false, County shall have the right to terminate this Agreement without any further liability to Lessee. Alternatively, if such representation is false, County, at its sole discretion, may deduct from the compensation due Lessee under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

13.48. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

13.49. Florida Clean Indoor Air Act. Pursuant to Chapter 386, Florida Statutes, and Chapter 18.38, Broward County Administrative Code, Lessee acknowledges that the Premises is designated as a "No Smoking" facility. Furthermore, Lessee agrees to prohibit smoking by employees, visitors, agents, and invitees except in posted designated areas as defined by Florida law.

13.50. Drug-Free Workplace. It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Section 21.31(a)(2) of the Broward County Code of Ordinances. Execution of this Agreement by Lessee shall serve as Lessee's required certification that it has a drug-free workplace program in accordance with Section 287.087, Florida Statutes, and Section 21.31(a)(2) of the Broward County Code of Ordinances as of the Effective Date, and that it will maintain such drug-free workplace program for the remainder of the term of this Agreement.

13.51. Port Department Authority. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Port Department may act on behalf of County under this Agreement.

13.52. Use of County Name or Logo. Lessee shall not use County's name or logo in marketing or publicity materials without prior written consent from the Port Director.

13.53. No Recordation of Agreement. Lessee shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida.

13.54. Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

13.55. Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

13.56. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

13.57. Settlement with the City of Hollywood. The Parties acknowledge and recognize that the Settlement Agreement (“Settlement Agreement”), dated June 22, 2004, among the City of Hollywood, Florida, Broward County, PE Land Holdings, LLC, Florida East Coast Industries, Inc., and Flagler Development Co., attached as **Exhibit D**, requires, among other things, County to contractually require any tenant who leases any portion of the “World Gate Site” from County to make annual payments to the City of Hollywood in lieu of ad valorem taxes. The Parties acknowledge that a portion of the Premises leased by County to Lessee pursuant to this Agreement is located within the World Gate Site. County has provided Lessee with a sketch and description of the World Gate Site, and Lessee shall make arrangements directly with the City of Hollywood to determine which portion of the Premises is subject to the Settlement Agreement. Lessee shall be solely responsible for making payments to the City of Hollywood in such amounts and at such times as required by the Settlement Agreement. Any amounts due to the City of Hollywood under the Settlement Agreement shall be in addition to, and not in lieu of, any amounts due to County under this Agreement. The City of Hollywood is an express third-party beneficiary of this Agreement for the purpose of enforcing its rights under the Settlement Agreement.

**[THIS SPACE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2023, and Chiquita Fresh North America L.L.C., signing by and through its President, duly authorized to execute same.

COUNTY

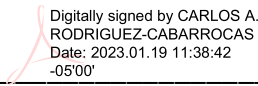
ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

By: \_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By: \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Port Everglades Department  
1850 Eller Drive, Suite 302  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404

CARLOS A.  
RODRIGUEZ-  
By CABARROCAS   
Digitally signed by CARLOS A. RODRIGUEZ-CABARROCAS  
Date: 2023.01.19 11:38:42 -05'00'  
Carlos Rodriguez-Cabarrocas (Date)  
Senior Assistant County Attorney

CRC:cr  
Chiquita Lease  
10/21/22  
3348

**LEASE AGREEMENT BETWEEN BROWARD COUNTY  
AND CHIQUITA FRESH NORTH AMERICA L.L.C.**

Lessee

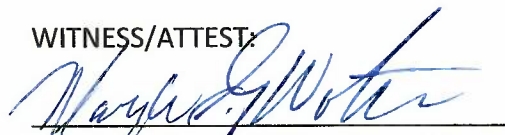
Chiquita Fresh North America L.L.C.,  
A Delaware limited liability company

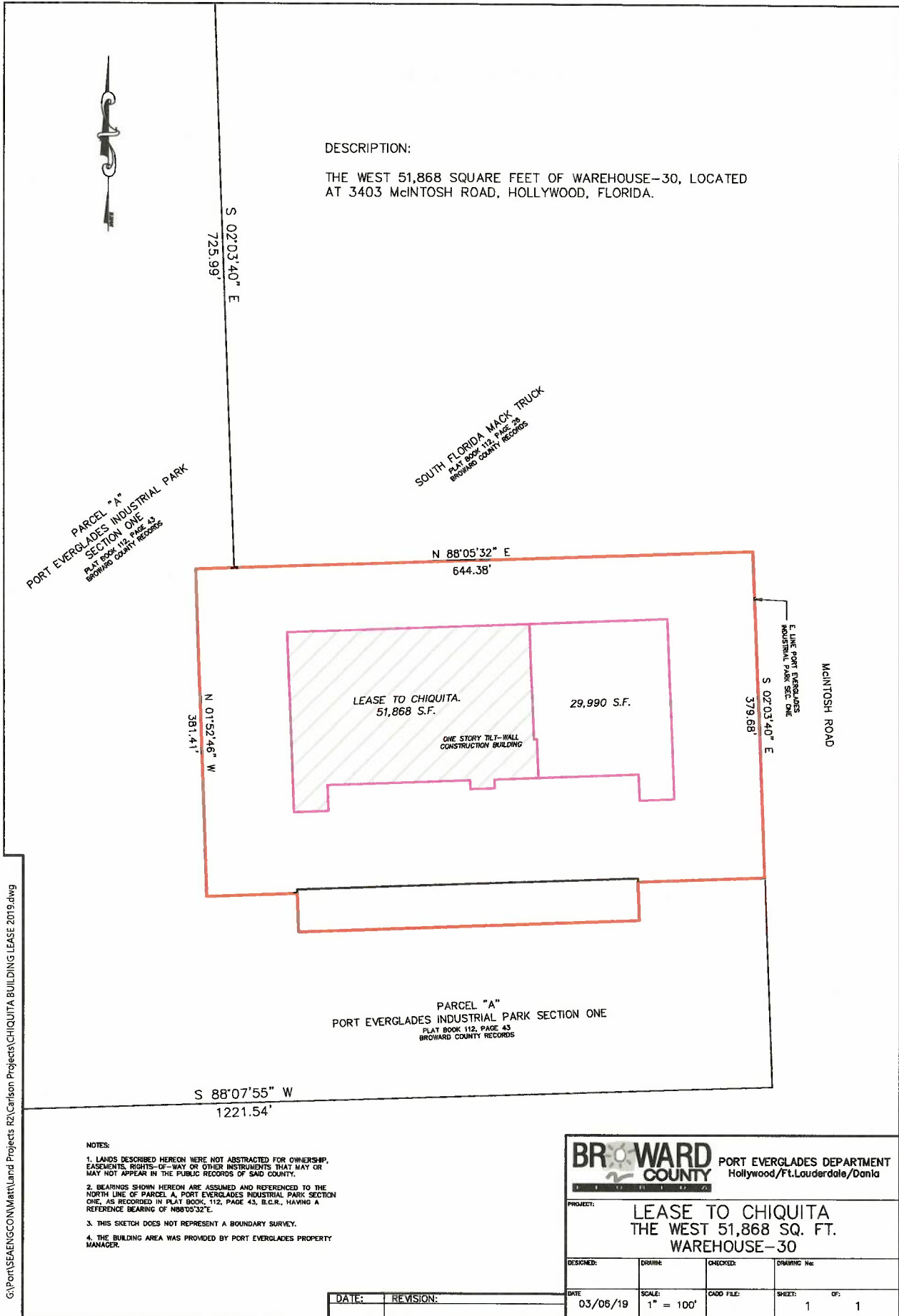
By:   
Authorized Signer

Carlos Lopez Flores  
Print Name and Title

16<sup>th</sup> day of January, 2023

WITNESS/ATTEST:

  
Corporate Secretary or other witness  
Marilyn Watts



G:\Port\SEAENGCON\Matt\Land Projects\Carlson Projects\CHIQUITA BUILDING LEASE 2019.dwg

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION ONE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 112, PAGE 43, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 4, BLOCK 1, SOUTH FLORIDA MACK TRUCK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 112, PAGE 26, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE SOUTH 02°03'40" EAST, ALONG THE EAST LINE OF SAID PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION ONE, A DISTANCE OF 374.68 FEET; THENCE SOUTH 87°56'20" WEST, A DISTANCE OF 146.70 FEET TO THE POINT OF BEGINNING (1); THENCE SOUTH 02°03'40" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 87°56'20" WEST, A DISTANCE OF 394.00 FEET; THENCE NORTH 02°03'40" WEST, A DISTANCE OF 50.00 FEET; THENCE NORTH 87°56'20" EAST, A DISTANCE OF 394.00 FEET TO THE POINT OF BEGINNING.

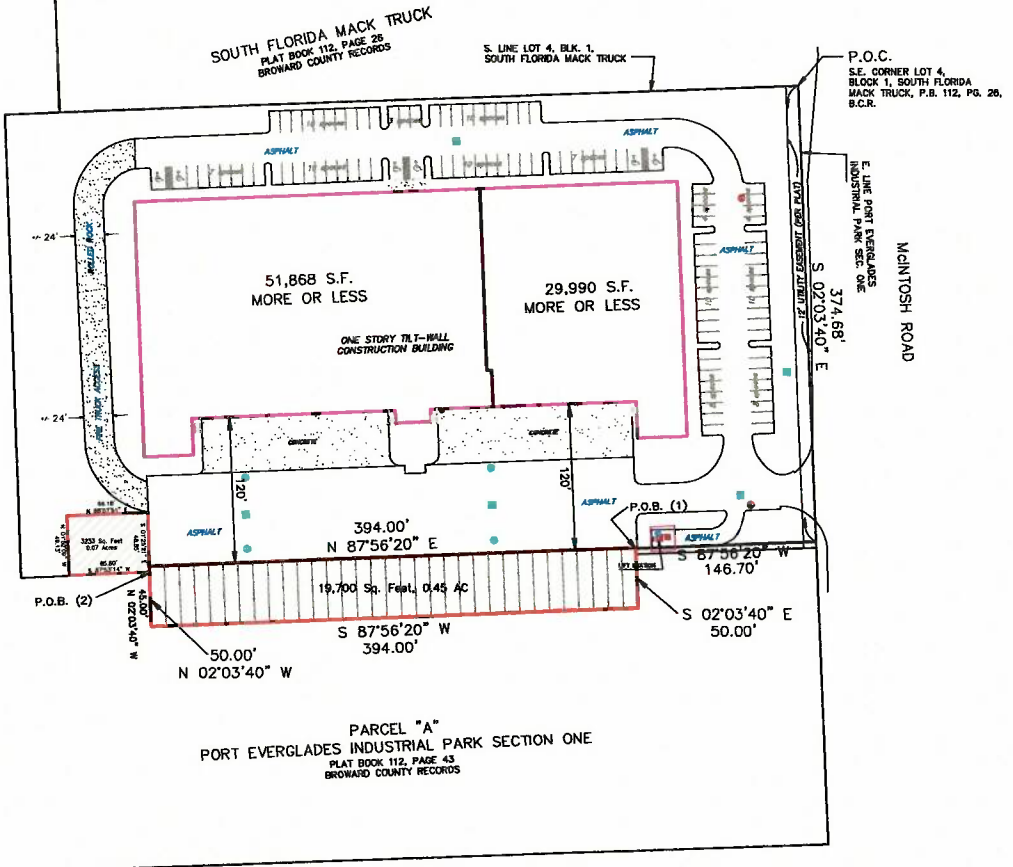
SAID LANDS SITUATE IN BROWARD COUNTY, FLORIDA, CONTAINING 0.45 ACRES (19,700 SQUARE FEET) MORE OR LESS.

TOGETHER WITH:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 4, BLOCK 1, SOUTH FLORIDA MACK TRUCK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 112, PAGE 26, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE SOUTH 02°03'40" EAST, ALONG THE EAST LINE OF SAID PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION ONE, A DISTANCE OF 374.68 FEET; THENCE SOUTH 87°56'20" WEST, A DISTANCE OF 146.70 FEET; THENCE SOUTH 02°03'40" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 87°56'20" WEST, A DISTANCE OF 394.00 FEET; THENCE NORTH 02°03'40" WEST, A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING (2); THENCE SOUTH 87°53'14" WEST, A DISTANCE OF 65.80; THENCE NORTH 01°52'09" WEST, A DISTANCE OF 49.13 FEET; THENCE NORTH 88°07'51" EAST, A DISTANCE OF 66.18 FEET; THENCE SOUTH 01°25'21" EAST, A DISTANCE OF 48.85 FEET TO THE POINT OF BEGINNING (2).

SAID LANDS SITUATE IN BROWARD COUNTY, FLORIDA, CONTAINING 0.07 ACRES (3233 SQUARE FEET) MORE OR LESS.

PARCEL "A"  
PORT EVERGLADES INDUSTRIAL PARK  
SECTION ONE  
PLAT BOOK 112, PAGE 43  
BROWARD COUNTY RECORDS



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- NOTES:
1. LANDS DESCRIBED HEREON WERE NOT ABSTRACTED FOR OWNERSHIP, EASEMENTS, RIGHTS-OF-WAY OR OTHER INSTRUMENTS THAT MAY OR MAY NOT APPEAR IN THE PUBLIC RECORDS OF SAID COUNTY.
  2. BEARINGS SHOWN HEREON ARE ASSUMED AND REFERENCED TO THE NORTH LINE OF PARCEL A, PORT EVERGLADES INDUSTRIAL PARK SECTION ONE AS RECORDED IN PLAT BOOK, 112, PAGE 43, B.C.R., HAVING A REFERENCE BEARING OF N87°56'32" E.
  3. THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY.
  4. THE SQUARE FOOTAGE SHOWN OF THE EAST PORTION OF THE BUILDING WAS CALCULATED BY MEASURING THE WALL LINES FROM INSIDE THE BUILDING, BEING THE INDOOR OCCUPIED SPACE.

**BROWARD COUNTY** PORT EVERGLADES DEPARTMENT  
Hollywood/Ft.Lauderdale/Dania

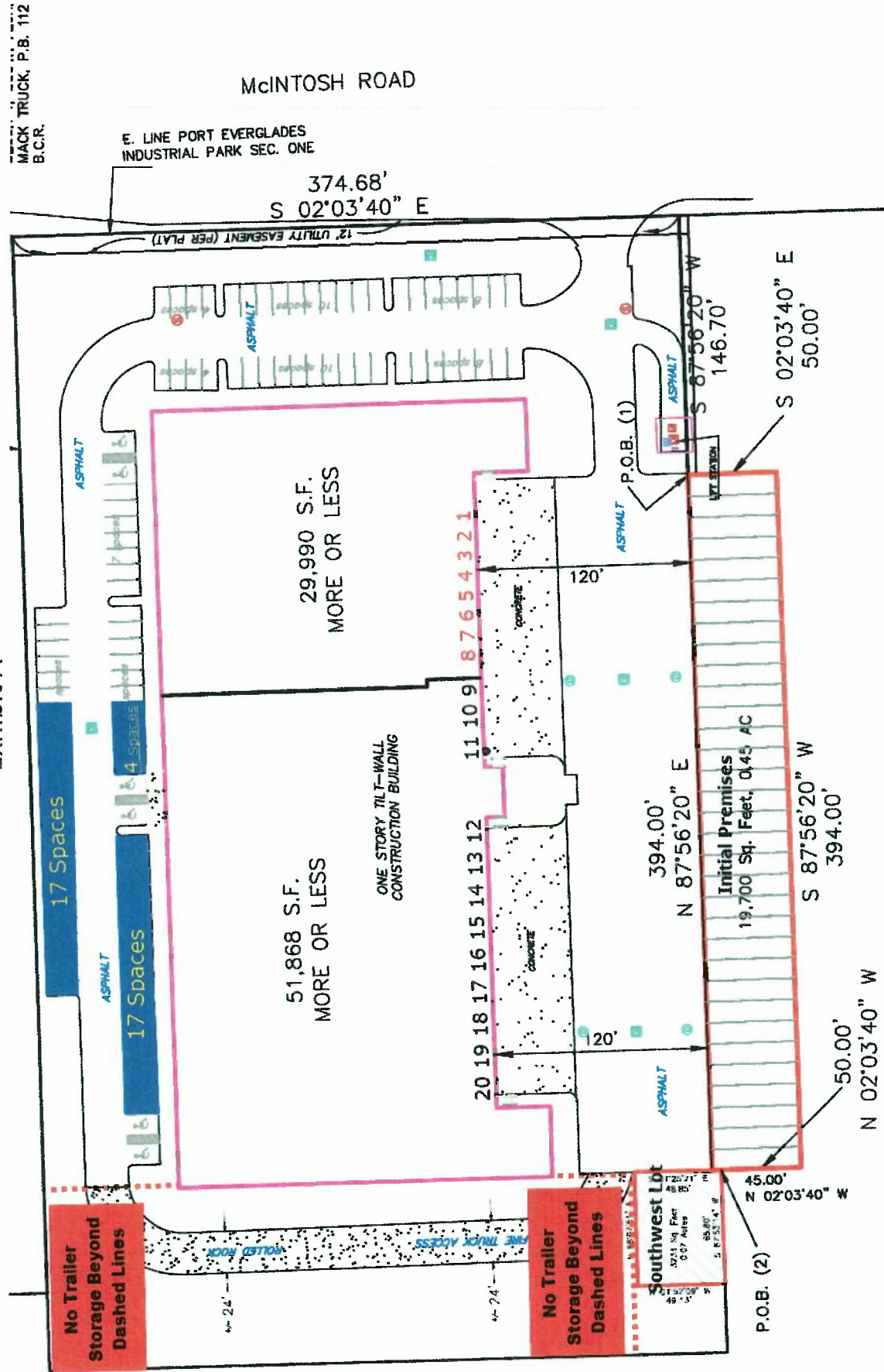
PROJECT:  
**LEASE TO CHIQUITA**

DATE	REVISION	DESIGNED	DRAWN	CHECKED	DRAWING No.
10/31/22	REVISED SKETCH & DESCRIPTION				
03/02/22	ADDED DIMENSIONS TO FIRE TRUCK ACCESS				
03/02/22	ADDED PARKING SPACES AND FIRE TRUCK ACCESS				
11/19/21	ADDED DISTANCE TO BUILDING AND INDOOR SQUARE FOOTAGE				

DATE	SCALE	CADD FILE	SHEET	OF
03/07/19	1" = 100'		1	1

Exhibit A



**EXHIBIT B – STATEMENT OF COMPLIANCE**

No. \_\_\_\_\_

Agreement No. \_\_\_\_\_ Project Title \_\_\_\_\_

The undersigned Lessee hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated \_\_\_\_\_, \_\_\_\_\_  
\_\_\_\_\_  
Lessee

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name and Title)

STATE OF )  
                  ) SS.  
County OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of officer taking acknowledgment)  
**typed, printed, or stamped**

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

My commission expires:



**EXHIBIT C – MINIMUM INSURANCE COVERAGE**

# Exhibit C

## INSURANCE REQUIREMENTS

Tenant: **CHIQUITA**  
Agency: **Port Everglades Business Development**

TYPE OF INSURANCE	ADD L INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury Property Damage Combined Bodily Injury and Property Damage Personal Injury Products & Completed Operations	\$1,000,000	\$2,000,000
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined Bodily Injury and Property Damage	\$1,000,000	
<input checked="" type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		\$5,000,000	
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	<b>STATUTORY LIMITS</b>	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$1,000,000	
<input type="checkbox"/> <b>POLLUTION / ENVIRONMENTAL LIABILITY</b>			If claims-made form: Extended Reporting Period of: *Maximum Deductible:		
<input type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS)</b> <b>All engineering, surveying and design professionals.</b>			If claims-made form: Extended Reporting Period of: *Maximum Deductible:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood): *Maximum Deductible:		
<b>Description of Operations:</b> "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Lessee insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) must be declared to and approved by County and may require proof of financial ability to meet losses. Vendor is responsible for all coverage deductibles unless otherwise specified in the agreement.					

**CERTIFICATE HOLDER:**

Broward County  
1850 Eller Drive  
Fort Lauderdale, Florida 33316

: Attention: Josh Miller

Norma  
Dmytriw

Digitally signed by  
Norma Dmytriw  
Date: 2021.10.26  
09:28:06 -04'00'

Risk Management Division

EXHIBIT D

**SETTLEMENT AGREEMENT**

THIS AGREEMENT made as of the 22nd day of June, 2004 by and among CITY OF HOLLYWOOD, a Florida municipal corporation ("City"), BROWARD COUNTY, a political subdivision of the State of Florida ("County"), PE LAND HOLDINGS, LLC, a Florida limited liability company ("Tenant"), FLORIDA EAST COAST INDUSTRIES, INC., a Florida corporation which wholly owns Tenant ("FECI"), and FLAGLER DEVELOPMENT COMPANY, a Florida corporation which is a wholly owned subsidiary of FECI ("Flagler").

**RECITALS**

WHEREAS, County and Tenant were parties to that certain Lease ("Lease") dated October 15, 1997 between County and World Gate Associates Limited Partnership, predecessor in interest to Tenant, ("World Gate") relating to a ninety-seven (97) acre site ("World Gate Site") in Port Everglades, Broward County, Florida, which site is within the municipal boundary of City;

WHEREAS, City and County are among the parties to that certain Interlocal Agreement ("Interlocal Agreement") dated May 6, 1994 among City, County and the cities of Fort Lauderdale and Dania, Article IV of which provided, *inter alia*, for payments in lieu of ad valorem taxes with respect to Port Everglades;

WHEREAS, County, City and Tenant are parties to that certain Agreement Relating to Acquisition of Property by Broward County ("Tri-Party Agreement") dated September 30, 1997 among County, City and World Gate, which Agreement provided, *inter alia*, for certain

payments to City in lieu of ad valorem taxes with respect to the World Gate Site upon the acquisition of the site by County, which payments would continue for the term of the Lease, including any renewals thereof;

WHEREAS, Tenant's obligations under the Tri-Party Agreement were guaranteed pursuant to that certain Guaranty ("Guaranty") dated November 16, 1997 issued by Michael J. Swerdlow, an affiliate of World Gate ("Swerdlow"), to City;

WHEREAS, Flagler acquired World Gate's interest in the Lease and assumed World Gate's obligations under the Lease and the Tri-Party Agreement, all pursuant to that certain Assignment and Assumption of Lease dated November 30, 2000, and incident thereto Flagler agreed to indemnify Swerdlow with respect to his obligations under the Guaranty pursuant to that certain Indemnity Agreement dated November 30, 2000 between Flagler and Swerdlow;

WHEREAS, Tenant acquired Flagler's interest in the Lease and assumed Flagler's obligations under the Lease and the Tri-Party Agreement pursuant to that certain Assignment and Assumption of Lease and Improvements dated July 23, 2003;

WHEREAS, the obligations of Tenant, as successor in interest to World Gate, to City under the Tri-Party Agreement are further secured by that certain Collateral Assignment of Lease ("Collateral Assignment") dated November 16, 1997 between World Gate and City;

WHEREAS, County and Tenant have terminated the Lease pursuant to that certain Lease Termination Agreement dated March 15, 2004 ("Lease Termination Agreement");

WHEREAS, City has asserted various claims against County and Tenant with respect to past and future payments in lieu of ad valorem taxes relating to the World Gate Site, including,

without limitation, claims under or related to the Interlocal Agreement, the Tri-Party Agreement and/or the Collateral Assignment and the matters set forth in City Commission Resolution No R-2004-92, and claims against Swerdlow under the Guaranty (all of such claims collectively the "City Claims"); and

WHEREAS, the parties desire to resolve the City Claims upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Initial Payment to City. FECl shall pay to City One Million Eight Hundred Thousand Dollars (\$1,800,000.00) in cash within five business days following the full authorization, execution and delivery of this Agreement by all parties hereto.

2. Future Payments to City.

(a) Current Tenants. County has currently leased portions of the space within the existing warehouse on the World Gate Site to Chiquita Bands Company, North America, ("Chiquita") and Toyota Tsusho America, Inc. ("Toyota") (collectively the "Current Leases"). County shall make annual payments to City in lieu of ad valorem taxes relating to such space on January 15, 2005 and on each January 15<sup>th</sup> thereafter in an amount equal to the amounts which Toyota and Chiquita would have been required to pay under paragraph (b) with respect to the preceding year but for the fact that their respective leases were entered into prior to the date of this Agreement, but in the case of Toyota the amount of such annual payment shall be based only on the portion of the Rate/sf which is in excess of 30¢; provided, however, that County shall be required to make such payments, as it relates to either Chiquita or Toyota, if and only to the

extent that the applicable tenant is current in the payment of rent due under its lease as of the date such payment is owing to City.

(b) Future Tenants. Commencing on the date of this Agreement, County shall contractually require each of its tenants who lease all or any portion of the World Gate Site (other than under the Current Leases) to make annual payments to City in lieu of ad valorem taxes with respect to all periods during which such tenants have a right of possession as to such property, but not beyond December 31, 2032, in an amount equal to the product of (i) the following rate per square foot for the applicable calendar year, multiplied by (ii) the amount of square footage of floor space leased by such tenant in the building(s), if any, located on such property as to which certificates of occupancy or their equivalent have been issued (with a reasonable allocation (proportionate to all occupiable space within such building(s)) of any common areas within such building(s) consistent with any such allocation relating thereto made in the tenant's lease):

<u>Calendar Year</u>	<u>Rate/af</u>
2005	30¢
2006	30¢
2007	30¢
2008	30¢
2009	36¢
2010	42¢
2011	48¢
2012	54¢
2013	60¢
2014	63¢
2015	66¢
2016	69¢
2017	72¢
2018-2032	75¢

provided that in no event shall any such annual payment be in an amount less than \$2,103.09 per acre multiplied by the total land area which is a part of the World Gate Site which is leased by such tenant (without allocation of any land area other than that as to which it has a right to exclusive possession). County shall contractually require that (i) each such annual payment be made by the tenant on or before January 15th following the year with respect to which it was determined, (ii) if such payment is not paid when due the tenant shall in addition pay City interest thereon at the rate of one percent (1%) per month from the due date through the date of payment, (iii) if the tenant's lease includes a security deposit, such deposit shall be available to secure the tenant's payment obligations to City, subject and subordinate to any claim by County against such deposit, and (iv) in the event of a partial lease year during a calendar year, the amount due to City with respect to such calendar year shall be prorated to reflect the length of such partial lease year relative to a full twelve months. For purposes of this paragraph (b), the square footage of buildings on the World Gate Site shall be determined as of July 1<sup>st</sup> of the applicable year and "building" shall mean any leaseable above-ground improvement or portion of an improvement (i.e., the type of structure that, in the ordinary course of business, is considered a structure for which rent is collected, whether or not rent is actually collected for the structure) on the World Gate Site, which has a roof. If at any time ad valorem taxes are assessed and paid with respect to any portion of the property leased by such tenant, then the tenant shall be entitled to a credit against the amount owing to City under this paragraph (b) in the amount of such paid taxes.

(c) Sale. In the event that County sells the World Gate Site or any portion thereof to a third party prior to December 31, 2032, then for purposes of paragraph (b) the purchaser shall be deemed to have leased all of such portion from County for a term

commencing on the closing of the sale, with its right of possession commencing on the commencement of such term and continuing through December 31, 2032.

(d) City as Beneficiary: Non-Recourse as to County. City is intended to be, and shall expressly be named in all future leases as, a third party beneficiary of the contractual requirements to be obtained by County from its tenant(s) and purchaser(s) pursuant to this Paragraph 2. Each such contractual requirement, upon being established by County, is without recourse against County.

3. Release by City.

(a) Release. City hereby remises, releases, acquits, satisfies, and forever discharges and fully releases each of the Paragraph 3 Released Parties (as defined in paragraph (b)) of and from all manner of known, unknown, natural, unnatural or unsuspected actions, causes of action, claims, liabilities, suits, debts, dues, sum of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, expenses, attorney's fees, compensation and all other damages and demands whatsoever, in law or in equity, now accrued or hereafter to accrue, which City ever had, now has or may have in the future, against the Paragraph 3 Released Parties or any of them, for, upon or by reason of any matter, cause or thing whatsoever, known or unknown, past, present or future, relating to the World Gate Site, including, without limitation, any such matter, cause or thing arising under or with respect to any of the following:

- (i) any City Claim;
- (ii) Article IV of the Interlocal Agreement, but only insofar as it relates to the World Gate Site;
- (iii) the Tri-Party Agreement (except, in the case of County, Section 2 thereof);



- (iv) the Guaranty;
- (v) the Collateral Assignment; or
- (vi) the Lease, including, without limitation, the termination thereof and the entering into and/or consummation of the Lease Termination Agreement;

provided, however, that this release shall not release FECI with regard to its obligations under Paragraph 1 hereof nor County with regard to its obligations under Paragraph 2 hereof.

(b) Paragraph 3 Released Parties. As used in paragraph (a), the term "Paragraph 3 Released Parties" shall mean (v) Tenant, Flagler, FECI, and all entities owned directly or indirectly by FECI and all of their respective current and past officers, directors, agents, employees, independent contractors and legal representatives, (w) County and its current and past officers, Commissioners, agents, employees, independent contractors and legal representatives, (x) Swerdlow, (y) World Gate, Port Everglades Commerce Center Associates Limited Partnership, all of their respective affiliates, and all of their respective current and past partners, shareholders, members, managers, officers, directors, agents, employees, independent contractors and legal representatives, and (z) any of their respective predecessors, heirs, successors or assigns, as presently or hereinafter composed.

4. Release of City.

(a) Release. County, Tenant, FECI and Flagler (collectively, the "Paragraph 4 Releasing Parties"), hereby remise, release, acquit, satisfy, and forever discharge and fully release each of the City Released Parties (as defined in paragraph (b)) of and from all manner of known, unknown, natural, unnatural or unsuspected actions, causes of action, claims, liabilities, suits, debts, dues, sum of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments,

executions, claims, expenses, attorney's fees, compensation and all other damages and demands whatsoever, in law or in equity, now accrued or hereafter to accrue, which any of the Paragraph 4 Releasing Parties ever had, now have or may have in the future, against the City Released Parties or any of them, for, upon or by reason of any matter, cause or thing whatsoever, known or unknown, past, present or future, relating to the World Gate Site, including, without limitation, any such matter, cause or thing arising under or with respect to any of the following:

- (i) Article IV of the Interlocal Agreement, but only insofar as it relates to the World Gate Site; or
- (ii) the Tri-Party Agreement (except Section 2 thereof).

(b) City Released Parties. As used in paragraph (a), the term "City Released Parties" shall mean City and its current and past officers, Commissioners, agents, employees, independent contractors and legal representatives, and any of their respective predecessors, heirs, successors or assigns, as presently or hereinafter composed.

5. Termination of Certain Instruments. The parties hereto hereby acknowledge and agree that each of the following instruments have been or are hereby terminated and are of no further force or effect:

- (i) Lease;
- (ii) Tri-Party Agreement, except that Section 2 thereof, insofar as it relates to City and County, shall remain in full force and effect;
- (iii) Article IV of Interlocal Agreement, but only insofar as it relates to any of the approximately 272 acres of land purchased by County from Port Property Associates, L.P. pursuant to that certain Purchase and Sale Agreement dated September \_\_, 1997 (Article IV, and the remaining provisions of Interlocal Agreement, shall otherwise remain in full force and effect);
- (iv) Collateral Assignment; and
- (v) Guaranty.

City shall execute and deliver to Tenant such further documentation as Tenant may from time to time reasonably request to confirm on the public record that each of such documents has been terminated.

6. Return of Letter of Credit By County. Upon the full authorization, execution and delivery of this Agreement by all parties hereto, County shall deliver to FECL the original of the letter of credit provided to County pursuant to the provisions of Section 2 of that certain Indemnification Agreement dated March 15, 2004 between County and FECL, together with any amendments thereto and any other documentation reasonably requested by the issuer of such letter of credit evidencing the termination thereof.

7. Miscellaneous.

(a) Each party acknowledges that the releases provided for in Paragraphs 3 and 4, as applicable, have been freely and voluntarily executed by the party granting same after having consulted with their respective counsel, and that such party has not relied on any inducements, promises or representations made by any other party hereto or their employees or agents in entering into this Agreement except as set forth herein.

(b) Each party represents and warrants to each of the other parties hereto that (i) its execution and delivery of this Agreement has been authorized by all necessary corporate action, and (ii) all other actions required to be taken to authorize execution of this Agreement and performance of all obligations undertaken by such party have been duly and regularly taken.

(c) This Agreement shall be binding upon, and inure to the benefit of, each of the parties hereto and their respective successors and assigns.

(d) This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to the application of conflict of laws principles, except to the extent such laws are superseded by federal law.

(e) In the event that any party initiates litigation or any other proceeding arising from, related to, or in connection with, this Agreement or the subject matter hereof, the sole venue for such litigation shall be in the Circuit Court in and for Broward County, Florida.

(f) This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior verbal and written agreements and understandings relating thereto. No party hereto has made any representation or warranty or covenant in connection with the subject matter set forth herein except as expressly stated herein.

(g) The parties may execute this Agreement in multiple counterparts, each of which shall constitute an original and together shall constitute one and the same instrument.

(h) Any notice to be given or served upon any party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail, FedEx or other nationally recognized overnight courier, hand-delivery or facsimile (with an original immediately followed by certified or registered mail or overnight courier) and shall be deemed to have been given upon the earlier of when received or two (2) business days after notice is sent.

Notices shall be delivered to the addresses set forth below:

If to City:

City Manager  
City of Hollywood  
P.O. Box 229045  
Hollywood, FL 33022-9045

**If to County:**

County Administrator  
Office of the County Administrator  
Broward County Governmental Center  
115 South Andrews Avenue, Suite 409  
Fort Lauderdale, FL 33301

**If to Tenant:**

PE Land Holdings, LLC  
c/o Florida East Coast Industries, Inc.  
One Malaga Street  
St. Augustine, FL 32084  
Attention: Heidi J. Eddins, Esq.  
Executive Vice President and General Counsel

**If to FECL:**

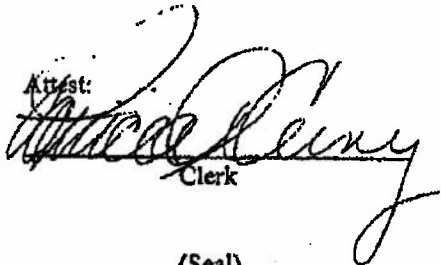
Florida East Coast Industries, Inc.  
One Malaga Street  
St. Augustine, FL 32084  
Attention: Heidi J. Eddins, Esq.  
Executive Vice President and General Counsel

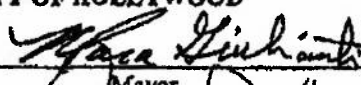
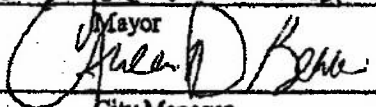
**If to Flagler:**

Flagler Development Company  
10151 Deerwood Park Boulevard  
Building 100, Suite 330  
Jacksonville, FL 32256  
Attention: James A. Hoener, Esq.  
Counsel

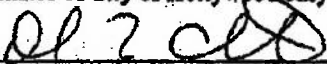
(i) Each party to this Agreement acknowledges that it has participated in the negotiation of this Agreement and that no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or any governmental or judicial authority by reason of such person's having drafted or been deemed to have drafted such provision.

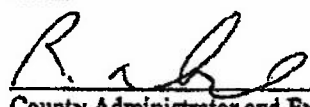
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.


Attest:  
  
Clerk  
  
(Seal)

CITY:  
CITY OF HOLLYWOOD  
By:   
Mayor  
By:   
City Manager

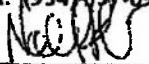
22nd day of June, 2004

Approved as to form and legality for use reliance of City of Hollywood only:  
  
City Attorney

Attest:  
  
County Administrator and Ex-Officio Clerk of the Board of County Commissioners of Broward County, Florida

COUNTY:  
BROWARD COUNTY, through its Board of County Commissioners  
By:   
Name: HELENE LIEBERMAN  
Title: MAYOR  
Date: 6/22/04

22nd day of June, 2004

Approved as to form by Office of County Attorney, Broward County, Florida  
EDWARD A. DION, County Attorney  
115 S. Andrews Avenue, Suite 423  
Fort Lauderdale, FL 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968  
By:   
Assistant County Attorney



**TENANT:**

**PE LAND HOLDINGS, LLC**, a Florida  
limited liability company

By: Florida East Coast Industries, Inc., a  
Florida corporation, its managing  
and sole member

By: Hadi J. Eddins  
Executive Vice President, Secretary  
and General Counsel

Witness:

Linda Jackson  
Wayne Robinson

**FECI:**

**FLORIDA EAST COAST INDUSTRIES, INC.**

By: Hadi J. Eddins  
Executive Vice President, Secretary  
and General Counsel

Witness:

Linda Jackson  
Wayne Robinson

**FLAGLER:**

**FLAGLER DEVELOPMENT COMPANY**

By: Hadi J. Eddins  
Secretary

Witness:

Linda Jackson  
Wayne Robinson