



**AGREEMENT OF LEASE BETWEEN BROWARD COUNTY
AND ACAP BROWARD COUNTY, LLC**

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**AGREEMENT OF LEASE BETWEEN BROWARD COUNTY
AND ACAP BROWARD COUNTY, LLC**

This Agreement of Lease ("Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and ACAP Broward County, LLC, a Delaware limited liability corporation authorized to transact business in the State of Florida ("Lessee") (each a "Party" and collectively referred to as the "Parties"), and is effective as of the date that it is fully executed by the Parties ("Effective Date").

ARTICLE 1. DEFINITIONS

1.1 **Affiliate** means a Person who (i) is directly or indirectly controlled by, or under common control with, the Lessee; (ii) owns, directly or indirectly, thirty-five percent (35%) or more of the equity interests of Lessee; (iii) is a general partner, officer, director, nonfinancial institution trustee, or fiduciary of any Person described in (i) or (ii); or (iv) is a child, spouse, domestic partner, parent, sibling, or in-law of Lessee.

1.2 **Aircraft Fuel Farm Facility** or **Fuel Farm Facility** means a location where aviation fuel is stored prior to being transferred into aircraft fuel tanks, including all appurtenances and component parts thereof.

1.3 **Airport** means Fort Lauderdale-Hollywood International Airport located in Broward County, Florida, and all property encompassed within the boundaries of the Fort Lauderdale-Hollywood International Airport

1.4 **Amortization Period** means a period of twenty-five (25) Lease Years, commencing on the first (1st) day of the fourth (4th) Lease Year.

1.5 **Applicable Laws** means all Environmental Laws and any and all applicable laws, codes, advisory circulars, rules, regulations, ordinances, and resolutions of any governmental or quasi-governmental entity relating to the Airport, the Premises, or activities at the Airport or the Premises, that have been or may hereinafter be adopted, including, but not limited to, all applicable federal, state, County, and local, quasi-governmental agency laws, codes, building codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, grant agreements, and the Minimum Standards.

1.6 **Approved Leasehold Mortgage** means an encumbrance on Lessee's interest in the Agreement that has been approved by County pursuant to the requirements of Article 19.

1.7 **Approved Leasehold Mortgagee** means a leasehold mortgagee that has been approved by County pursuant to the requirements of Article 19.

1.8 **Approved Plans** means plans and specifications for Improvements to the Premises, including any amendments and changes thereto that have received the prior written approval of the Aviation Department and all other applicable governmental agencies.

1.9 **Aviation Department** means the Broward County Aviation Department or any successor agency.

1.10 **Board** means the Board of County Commissioners of Broward County, Florida.

1.11 **Capital Expenditure(s)** means the actual costs paid for work done, services rendered, and/or materials furnished for the construction of Improvements at the Premises in accordance with Approved Plans and all the requirements herein.

1.12 **Certificate of Occupancy ("CO")** means written documentation that indicates that an Improvement has met the requirements for legal occupancy.

1.13 **Certificate of Occupancy Date ("CO Date")** means the date that a CO is issued for an Improvement.

1.14 **Completion Date** means the last day of the third (3rd) Lease Year by which time the work must be completed in compliance with the Approved Plans, all conditions of permits and regulatory agencies have been satisfied, and the Improvement can be occupied or used for its intended purpose.

1.15 **County Administrator** means the administrative head of Broward County appointed by the Board.

1.16 **County Attorney** means the chief legal counsel for County appointed by the Board.

1.17 **County Business Enterprise or CBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

1.18 **Certified Public Accountant ("CPA")** means a duly licensed independent certified public accountant or an independent firm of certified public accountants.

1.19 **Director of Aviation** means the Director of Aviation or the Acting Director of Aviation, or such other person or persons as may from time to time be authorized in writing by the Board, the Broward County Administrator, or the Director of Aviation to act for the Director of Aviation with respect to any or all matters pertaining to this Agreement.

1.20 **Due Diligence Period** means the period of time commencing on the Effective Date and ending on the last day of the first (1st) Lease Year.

1.21 **Environmental Assessment** means a document based on one or more environmental site assessments, examinations, inspections, tests, inquiries, and surveys necessary to identify Recognized Environmental Conditions, contamination, pollutants, and the presence of hazardous materials, hazardous substances, or other Materials in, on, or under the surface of the Premises or real property impacted by the condition of the Premises, including Environmental Site Assessments conducted in accordance with American Society for Testing and Materials ("ASTM") E1527 - 13, ASTM E2247 - 16, or Rule 62-780, Florida Administrative Code.

1.22 **Environmental Laws** means any and all applicable federal, state, County, and local statutes, ordinances, regulations, codes, rules, laws, permits, licenses, approvals, orders, advisory circulars, resolutions, development orders, grant agreements, and directives of any federal, state, or local court, governmental, or quasi-governmental entity with jurisdiction of such matter, that have been, or may hereinafter be adopted, including, but not limited to, those relating to the generation, use, handling, storage, transportation, or disposal of hazardous materials or hazardous substances and those relating to surface water management. Such laws include, but are not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC § 9601, et seq.); the Resources Conservation and Recovery Act of 1976 (42 USC § 6901, et seq.); the Clean Water Act (33 USC § 1251 et seq.); the Safe Drinking Water Act (42 USC § 300 et seq.); the Hazardous Materials Transportation Act (49 USC § 5101 et seq.); the Toxic Substance Control Act (15 USC § 2601, et seq.); Chapters 373, 376, and 403, Florida Statutes, and rules adopted thereunder; and Chapter 27 of the Broward County Code of Ordinances.

1.23 **Federal Aviation Administration ("FAA")** means that agency of the United States Government established under 49 USC § 106, or its successor.

1.24 **Fuel Flowage Fees** means the fees payable to County, at the rates published in the Broward County Administrative Code, for the purchase of aviation fuel and/or lubricating oil by Lessee and its Sublessees at the Airport.

1.25 **Improvement(s)** means any and all buildings, hangars, structures, pavements, fixtures, permanently affixed equipment, facilities (both above ground and below ground), including but not limited to, electrical, plumbing, sprinkler, fire protection, fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas, all other systems and their pipes, wires, mains, lines, tubes, conduits, equipment, all drains, culverts, ditches, and catch basins, and all other structures now or hereafter constructed on any portion of the Premises, and all additions, alterations, modifications, renovations, and replacements thereto.

1.26 **Lease Year** means the period beginning on the earlier of (a) the first day of the month following the Effective Date, or (b) the Effective Date, if it occurs on the first day of a month, and ending on the last day of the twelfth month thereafter, and each succeeding twelve-month period thereafter.

1.27 **Lessee's Parties** means the Sublessees, officers, agents, Affiliates, contractors, subcontractors, and vendors of Lessee, and all their employees, and all invitees of Lessee.

1.28 **Master Plan** means the Fort Lauderdale-Hollywood International Airport Master Plan or update thereto, and all amendments and replacements thereof, as accepted by the FAA.

1.29 **Materials** means any pollutant, contaminant, petroleum product, hydrocarbon contamination, hazardous substances, hazardous materials, or other material regulated pursuant to Applicable Laws.

1.30 **Minimum Standards** means the Fort Lauderdale-Hollywood International Airport Minimum Standards for Commercial Aeronautical Activities, a/k/a Minimum Standards Policy for General Aviation at Broward County Airports, as may be amended from time to time, and which standards have been provided to Lessee and are available upon request from the Aviation Department.

1.31 **Parcel** means the parcel of land more particularly described in **Exhibit A**, attached hereto and made a part hereof, subject to rights-of-way and all other property interests of record.

1.32 **Person** means any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise. Any reference in this Agreement to one of the foregoing types of Persons is a reference to all other types of Persons.

1.33 **Premises** means the Parcel identified in **Exhibit A**, together with all Improvements now or hereafter constructed thereon.

1.34 **Public Landing Areas** means the areas of land at the Airport, including Runways, Taxiways, and the areas between and adjacent to Runways and Taxiways, designated and made available from time to time by County for the landing and taking off of aircraft.

1.35 **Recognized Environmental Conditions** means the presence or likely presence of any hazardous substances, hazardous materials, pollution, contamination, or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment and as described in the Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process ASTM E 1527-13.

1.36 **Runways** means the portions of the Airport used for the purpose of landing and taking off of aircraft, including approaches thereto.

1.37 **Sublessee** means all Persons, tenants, franchisees, and operators who occupy or operate at any portion of the Premises (including their successors and assigns) pursuant to any agreement or arrangement (including any written or verbal) with Lessee or any sublessee of Lessee, provided Lessee has received the prior written consent of the Sublease from the Aviation Department or approval pursuant to Article 19 herein.

1.38 **Sublease** means an agreement between Lessee and any Person to use part or all of the Premises and that has received the prior written consent of the Aviation Department.

1.39 **Taxiway(s)** means the portion of the Airport used for ground movement of aircraft to, from, and between the Runways, the public ramps, apron areas, aircraft parking, storage spaces, or other portions of the Airport. Taxiway(s) shall not include any area in which exclusive use has been granted to Lessee or any other Person by lease, permit, or otherwise.

1.40 **Term** means the period of time that this Agreement is in effect, subject to earlier termination as provided in this Agreement.

ARTICLE 2. LEASE

2.1 Lease. Subject to the terms in this Agreement, County leases to Lessee the Premises described in **Exhibit A**. The Premises shall be used solely for the purposes authorized in Article 5 and for no other purposes. The use of the Premises shall be subject to Applicable Laws.

2.2 Operation. Lessee shall make available all Airport facilities and services on reasonable terms without unjust discrimination, and shall refrain from imposing or levying excessive, discriminatory, or otherwise unreasonable charges or fees for any Airport service.

2.3 No Rights in Airspace. Except to the extent required for the performance of Lessee's obligations hereunder, nothing contained in this Agreement grants Lessee any rights whatsoever in the airspace above the Premises. County reserves the right to take any action that it considers necessary to protect the aerial approaches of the Airport against obstruction. County's right shall include, but not be limited to, requiring the demolition or removal of structures upon the Premises and the right to prevent Lessee from erecting or permitting to be erected any building or other structure at the Airport that, in County's opinion, may limit the usefulness or interfere with the operations at the Airport or constitute a hazard to aircraft.

2.4 Subordination of Agreement. This Agreement and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in those instruments and documents and any existing or subsequent amendments thereto. This Agreement is subject and subordinate to Applicable Laws pertaining to the Airport. This Agreement is subject and subordinate to the provisions of any agreement made at any time between County and the United States Government relative to the operation or maintenance of the Airport, the execution of which was required as a condition precedent to the transfer of federal rights or property to County for Airport purposes or the expenditure of federal funds for the improvement or development of the Airport, including without limitation, the expenditure of federal funds for the development of any of the Airport under the Federal Aviation Act of 1958, as codified in Title 49, United States Code. In addition, this Agreement is subordinate and subject to all resolutions adopted at any time by County in connection with any revenue bonds issued by County with respect to the operations of the Airport, improvements to the Airport, all Airport facilities, and to the provisions of all documents executed in connection with any such bonds, including without limitation, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any of those bonds.

2.5 Height Restriction. Lessee expressly agrees for itself and its successors and assigns to restrict the heights of structures, objects of natural growth, and other obstructions on the Premises to heights that comply with all provisions of this Agreement and all applicable federal aviation regulations, including, but not limited to, 14 CFR Part 77.

2.6 No Interference with Airport's Operations or Maintenance. Lessee expressly agrees for itself and its successors and assigns to prevent any use of the Premises that would interfere with

or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard.

2.7 Condition and Use of the Premises. County makes no representations or warranties whatsoever as to: (a) the condition of the Premises; (b) whether the Premises, or any part thereof, are in compliance with Applicable Laws; (c) whether any Materials exist on or under the Premises or in the Improvements in violation of Applicable Laws; or (d) any permitted or available use of the Premises. County makes no representations or warranties regarding the legality, permissibility, suitability, or availability of any use of the Premises that may be contemplated by Lessee. County makes no representations or warranties concerning habitability or fitness for any particular purpose. Lessee specifically obligates itself to conduct its own due diligence investigation as to the Premises and the suitability thereof for Lessee's purposes. The Premises, and all components thereof, are leased in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" Lessee acknowledges that it is leasing the Premises subject to the noises, sounds, and impacts to persons and property that are customarily contained or emanate from an airport. Lessee represents, acknowledges, and agrees that Lessee has had sufficient opportunity to inspect the Premises and all components thereof and hereby accepts the Premises and all components thereof in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" Lessee hereby assumes all risk of noncompliance of the Premises, or any part thereof, with Applicable Laws. Upon receipt of any notice of noncompliance with any Applicable Laws, Lessee hereby agrees to make all repairs, alterations, and additions to the Premises and to take all corrective measures as may be necessary to bring the Premises into compliance with Applicable Laws. Lessee shall not be entitled to any abatement or adjustment of rent or any other payments based on the condition of the Premises, the failure of any component part(s) to be in working order, the necessity of Lessee to repair or take corrective actions with respect to any part thereof, or the inability to obtain, or any delay in obtaining, any development approvals from any governmental body having jurisdiction, including but not limited to, County.

Lessee hereby releases County from any and all claims, demands, damages, and liabilities whatsoever on account of the condition of the Premises, any failure of any of the component parts to be in working order, the necessity of Lessee to repair or take corrective actions with respect to any part thereof, or the necessity to obtain any development approvals from any governmental body, including, without limitation, County.

In the event of any conflict between these provisions and any other provisions of this Agreement, the provisions of this section shall control. Notwithstanding anything herein to the contrary, this section is not intended to address or apply to the release of any Materials at the Premises. In the event of any such release, the provisions of Article 29 shall apply.

2.8 Federal Aviation Act, Section 308. Nothing contained in this Agreement shall be deemed to grant to Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in 49 USC § 40103, et seq., for the conduct of any activity on the Airport, except that, subject to the terms and conditions hereof, Lessee shall have the right to possess the Premises under this Agreement. The rights granted under this Agreement are nonexclusive

(except for possession of the Premises as permitted herein), and County reserves the right to grant similar privileges to another lessee or other lessees for other parts of the Airport.

ARTICLE 3. TERM

3.1 Term. The initial term of this Agreement (“Initial Term”) shall commence on the Effective Date and shall end on the last day of the twenty-eighth (28th) Lease Year, unless terminated earlier as provided in this Agreement (the “Termination Date”).

3.2 Extension of Term. Lessee may request an extension of the Term if the amount of its actual Capital Expenditure on the Improvements required in Section 6.2 exceeds the Minimum Capital Expenditure established in Section 6.3 by One Million Dollars (\$1,000,000.00) or more and Lessee is in full compliance with all the terms and conditions of the Agreement. A request to extend the Term must be made by Lessee to the Director of Aviation in writing no later than the first day of the twenty-seventh (27th) Lease Year. If the Director of Aviation determines that Lessee has met the requirements for an extension of the Term, an amendment to this Agreement reflecting the extension shall be submitted to the Board for its consideration. The extension of the Term shall not exceed ten (10) additional Lease Years.

ARTICLE 4. RENT, FEES, AND OTHER CHARGES

4.1 Annual Rental. No rent shall be due or payable during the period from the Effective Date through the end of the third (3rd) Lease Year, as that period of time encompasses the Due Diligence Period and Construction Period. The rent due and payable by Lessee to County commencing on the first day of the fourth (4th) Lease Year shall be established pursuant to the appraisal process described in Section 4.4 below.

All rent payments must include applicable taxes. Rent shall be due and payable, without billing, set-off, or deduction, commencing on the first day of the fourth (4th) Lease Year and continuing on the first day of each calendar month thereafter. Should the first day of any month fall on a weekend day or County holiday, the applicable monthly installment of rent shall be due and payable on the last County business day of the previous month.

4.2 Annual Increases in Rent. On the first day of the fifth (5th) Lease Year and on the first day of each Lease Year thereafter (each such date being referred to as an “Adjustment Date”), County shall adjust the rent in accordance with the percentage rent adjustment provisions of Section 4.3 or in accordance with the appraisal process described in Sections 4.4 through 4.10, as applicable. The adjusted rent, together with applicable sales taxes thereon, will be the new rent for that Lease Year.

4.3 Percentage Rent Adjustment. On each Adjustment Date other than the first day of the fourteenth (14th) Lease Year, and on the first day of the twenty-fourth (24th) Lease Year, and, if applicable, on the first day of the twenty-ninth (29th) Lease Year, and every tenth (10th) Lease Year thereafter, which are adjusted pursuant to Sections 4.4 through 4.10, the rent shall be increased to an amount equal to the greater of: (a) the product of the rent for the immediately

preceding Lease Year, multiplied by the "CPI Multiplier" (as hereinafter defined); or (b) the product of the rent for the immediately preceding Lease Year multiplied by 1.03. The product of that multiplication will be the amount of the rent payable during that Lease Year, subject to any adjustment pursuant to Sections 6.18, 6.19, and 32.19 and Article 14. Upon determining the rent adjustment, the Aviation Department shall advise Lessee of the new annual rent and the monthly installment amount of rent. In no event will any adjusted rent established under this Section 4.3 be less than the total rent due during the immediate prior Lease Year unless the Parcel is reduced in size as authorized in this Agreement.

(a) The "CPI Multiplier" is a fraction, the numerator of which is the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date and the denominator of which is the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.

(b) The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS-UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984=100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The rent and the adjustment made based upon the provisions of this section shall be made solely by County subject to the terms of this Agreement. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such CPI Index Numbers are published is admissible evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity. Should the Bureau of Labor Statistics cease publishing the above-described index, then such other index as may be published by the United States Department of Labor that most nearly approximates the discontinued index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an index approximating the index contemplated, then such index as may be published by another United States governmental agency that most nearly approximates the index first above referenced shall govern and be substituted as the index to be used.

4.4 Rent Adjustment Based on Appraisal. On the first day of the fourth (4th) Lease Year, the first day of the fourteenth (14th) Lease Year, and the first day of the twenty-fourth (24th) Lease Year, the rent shall be adjusted (up or down) to an amount equal to the Land MR as defined below, which shall be established as provided in this section. If applicable, the day after the conclusion of the Amortization Period (i.e., the first day of the twenty-ninth (29th) Lease Year) and on the first day of every tenth (10th) Lease Year thereafter, the rent shall be adjusted (up or down) to an amount equal to the "Full Market Rent," which shall be established as provided in this section. Upon determining the Land MR or the Full Market Rent, the Aviation Department shall advise Lessee of the new annual rent amount and the new monthly installment amount of rent.

(a) Full Market Rent will be determined based on the Full Market Rent of the entire Premises, considering the current use at the time of the appraisal and considering the

existing rent rates for comparable properties within comparable Florida airports with comparable uses, taking into consideration the restrictions of this Agreement.

(b) Full Market Rent is equal to the total of the "Land MR," the "Pavement MR," and the "Improvements MR" (as such terms are hereinafter defined).

(c) The "Land MR" shall be determined based upon the market rent of the leased fee, without any value being attributed for any pavement or any other Improvements thereon.

(d) The "Pavement MR" shall be determined based upon the market rent of all pavements at the leased fee, without any value being attributed for any other Improvements located on the pavement.

(e) The "Improvements MR" shall be determined based upon the market rent of all Improvements that exist on the Premises at the time of the appraisal (excluding the pavements and excluding an Aircraft Fuel Farm Facility if constructed at the Premises).

4.5 Appraiser and Appraisal Report Standards. Any appraiser retained by any of the Parties to prepare an appraisal under this Article 4 must be a Member of the Appraisal Institute (MAI) Designated Appraiser or a State of Florida Certified General Appraiser (or a member of a professional group of similar stature that has been approved by the Aviation Department), having an office in Broward, Miami-Dade, or Palm Beach counties. Each appraisal report obtained by County or Lessee will follow the Summary Appraisal format, the content of which will conform to the Uniform Standards of Professional Appraisal Practice. Each appraisal of Full Market Rent must contain determinations of Land MR, Pavement MR, and Improvements MR pursuant to Section 4.4, and shall comply with the requirements of this Article 4.

4.6 Requirement for Two County Appraisals. If an appraisal obtained by County results in a projected cumulative Full Market Rent for all remaining Lease Years in the aggregate for the then-remaining Term exceeding Two Million Dollars (\$2,000,000.00), then a second appraisal will be obtained by the Aviation Department and the Land MR or Full Market Rent will be determined either by County, through its Department of Public Works, Real Property Section, or successor thereto (the "Real Property Section") acting as the review appraiser, or by a review appraiser selected by the Real Property Section.

4.7 Notice of Adjusted Land MR or Full Market Rent. The Aviation Department shall provide Lessee written notice of the adjusted Land MR or Full Market Rent amount based on County's appraisal(s), which notice shall include copies of the appraisal(s) and the review appraisal, if any. If Lessee does not agree with the adjusted Land MR or Full Market Rent amount established by County, Lessee may hire its own appraiser to perform a Full Market Rent appraisal. Lessee's appraisal must be obtained and provided to the Aviation Department within sixty (60) days after receipt of the Aviation Department's notice of the adjusted Land MR or Full Market Rent, and Lessee's appraisal must satisfy the requirements of this Article 4. If Lessee fails for any reason whatsoever to obtain an appraisal that satisfies the requirements of this Article 4 and provide it

to the Aviation Department within the aforesaid sixty (60) day period, Lessee shall have no further right to dispute the adjusted Land MR or Full Market Rent amount (and all components thereof) as set forth in the Aviation Department's notification of the adjusted Land MR or Full Market Rent.

4.8 Lessee's Appraisal. If Lessee obtains an appraisal and provides the appraisal to the Aviation Department in accordance with Section 4.7, and if the appraisal's finding of Land MR or Full Market Rent does not agree with County's finding of Land MR or Full Market Rent, then the Real Property Section shall compare and review the appraisal reports. The Real Property Section shall schedule a meeting with the appraiser(s) selected by County and the appraiser selected by Lessee. The Real Property Section will attempt to resolve the appraisal differences within fifteen (15) days after receipt of the appraisal reports.

4.9 Dispute Resolution Appraiser. If at the end of the aforesaid fifteen (15) day period, the attempt by Real Property Section to resolve the appraisal differences is not successful for any reason whatsoever, the Real Property Section shall give written notice of the failure to the Aviation Department and Lessee, and within fifteen (15) days thereafter the appraiser(s) selected by County and the appraiser selected by Lessee shall together select another appraiser ("Dispute Resolution Appraiser") to resolve the appraisal differences. If the appraiser(s) selected by County and the appraiser selected by Lessee fail for any reason whatsoever to select a Dispute Resolution Appraiser within fifteen (15) days after the Real Property Section provides notice of its failure to resolve the appraisal differences, then Lessee will thereafter have no further rights to dispute the Land MR or Full Market Rent amount (including all components thereof) as set forth in the Aviation Department's notification of the adjusted the Land MR or Full Market Rent.

4.10 Dispute Resolution Appraisal. The Dispute Resolution Appraiser selected in accordance with Section 4.9 shall, within fifteen (15) days after receipt of the appraisal reports, compare and review all the appraisal reports and meet with the appraisers. At that meeting, the Dispute Resolution Appraiser shall try to resolve the appraisal differences. If for any reason whatsoever the Dispute Resolution Appraiser fails within thirty (30) days after the selection of the Dispute Resolution Appraiser to resolve the appraisal differences, the Dispute Resolution Appraiser shall proceed as follows:

(a) The Dispute Resolution Appraiser shall prepare and complete an appraisal ("Dispute Resolution Appraisal") within sixty (60) days after its selection that sets forth the Dispute Resolution Appraiser's findings of Full Market Rent, including determinations of Land MR, Pavement MR, and Improvements MR pursuant to Section 4.4. The Dispute Resolution Appraiser shall provide copies of the Dispute Resolution Appraisal to both the Aviation Department and Lessee.

(b) If the values established by County's appraisal(s) and the Lessee's appraisal as to Full Market Rent are within a ten percent (10%) range of the Dispute Resolution Appraisal (without regard to the values of the individual components of the appraisals), then the Land MR or Full Market Rent will be the average of the Land MR or Full Market Rent amounts stated in all of the appraisal reports. This determination shall be binding on

Lessee and County, and the Parties will have no right to dispute that Land MR or Full Market Rent amount.

(c) If the values established by County's appraisal(s) and Lessee's appraisal as to Land MR or Full Market Rent are not all within a ten percent (10%) range of the Dispute Resolution Appraisal, then the finding of Land MR or Full Market Rent (and all components thereof) established by the Dispute Resolution Appraisal shall be binding on Lessee and County, and the Parties will have no right to dispute that Land MR or Full Market Rent amount.

(d) The Parties shall share equally the expense of obtaining the Dispute Resolution Appraisal. Lessee's portion of that expense will be paid to County within five (5) days after receipt of County's invoice for same.

4.11 Effective Date of Rental Adjustment. If a rent adjustment is required under this Article 4, Sections 6.18 or 6.19, Article 14, or Section 32.19, the previous monthly rent amount shall continue to be paid by Lessee until the Aviation Department provides notice of the adjusted rent amount. The adjusted rent amount shall be retroactive to the date the rent should have been adjusted ("Corrective Date"). The amount that is the difference between the total rent paid by Lessee from the Corrective Date and the total amount of rent due for such period until Lessee commences paying the adjusted rent shall be due and payable to County within thirty (30) days following the Aviation Department's notice of the new adjusted rent amount. If Lessee disputes the amount of any adjustment of rent payments, Lessee shall continue paying rent to County in the amount required before the rent adjustment until such time as the dispute has been settled, at which time an adjustment, with interest thereon, will be made retroactive to the beginning of the adjustment period in which the dispute arose.

4.12 Notification of New Rental. Upon determining a rent adjustment pursuant to this Agreement, the Aviation Department shall advise Lessee of the new monthly rent installment for such period, accompanied by evidence supporting the manner in which the new adjusted rent was determined, in sufficient detail to enable Lessee to verify the calculations.

4.13 County Policy on Rent Adjustments. Notwithstanding anything herein to the contrary, if County adopts a policy to require all rent adjustments at the Airport be made on the same date, the adjustments of rent under this Agreement shall be made in accordance with, and at the uniform times established by, that policy.

4.14 Contribution to Retention Pond. County caused the construction of a four (4) acre retention pond ("Retention Pond") to address the water retention needs at the Airport and satisfy water management permitting requirements to support approximately sixty-eight (68) acres of development on the Airport. The Retention Pond enables Lessee to proceed with the development of eight (8) acres of the Premises ("Benefited Property"). Lessee receives a direct benefit from the Retention Pond and shall reimburse County's construction costs relating to the Benefited Property. County's construction costs are calculated in the amount of Thirty-four Thousand Five Hundred Twenty-two 26/100 Dollars (\$34,522.26) per acre of developable

property, resulting in a total amount due from Lessee of Three Hundred Ten Thousand Seven Hundred and 34/100 Dollars (\$310,700.34) ("Lessee Retention Pond Share"). Lessee shall pay the Lessee Retention Pond Share in one of the following two methods, as it elects, and shall provide County notice of its election no later than the last day of the third (3rd) Lease Year: Lessee shall pay the Lessee Retention Pond Share (i) in full on or before the first day of the fourth (4th) Lease Year; or (ii) in equal monthly amounts, commencing on the first day of the fourth (4th) Lease Year, and continuing on the first day of each calendar month thereafter for a period of ten (10) years, of Two Thousand Five Hundred Eighty-nine and 17/100 Dollars (\$2,589.17) ("Monthly Retention Pond Payment") until the Lessee Retention Pond Share is paid in full. If Lessee elects to pay its Retention Pond Share in monthly increments, the payments shall become additional rent, subject to all applicable taxes, and recoverable by County in the same manner and with like remedies as if the Monthly Retention Pond Payment was originally a part of the rent due and owing pursuant to this Agreement. If, for any reason, the Retention Pond Share is not fully paid prior to expiration or early termination of this Agreement, Lessee shall pay any outstanding Retention Pond Share within fifteen (15) days after County's written demand.

4.15 Fuel Flowage Fees. In addition to rent payments, Lessee shall pay, if applicable, Fuel Flowage Fees based on the gallons of aviation fuels and lubricating oils purchased by Lessee and its Sublessees from the supplier of such products.

(a) Fuel Flowage Fees are established by the Board and may be increased or decreased from time to time in its sole discretion. Aviation fuels and lubricating oils delivered on account of an airline that has executed an Airline-Airport Lease and Use Agreement with County, or successor agreement ("Signatory Agreement"), for use of the airfield shall be exempt from the Fuel Flowage Fees.

(b) Lessee shall either pay the Fuel Flowage Fees directly to County using the forms required by the Aviation Department, or have its fuel supplier(s) collect the Fuel Flowage Fees from Lessee and its Sublessees and remit to County on their behalf.

(c) If Lessee elects to make direct payments to County, Fuel Flowage Fees incurred in the preceding month are due on the tenth (10th) day of each month. If Lessee elects to have its fuel supplier collect the Fuel Flowage Fees, Lessee, its Sublessees, and the supplier shall complete and execute the required Aviation Department release and authorization form ("Release and Authorization Form") and provide the original executed Release and Authorization Form to the Aviation Department. Lessee shall require the fuel supplier(s) to pay the required Fuel Flowage Fees to County on or before the tenth (10th) day of the month for aviation fuels and lubricating oils sold by the fuel supplier to the Lessee or its Sublessees in the prior month. All payments of Fuel Flowage Fees to the County shall be accompanied by the reporting form required by the Aviation Department.

(d) Lessee shall provide (or cause to be provided) to County all reports and back-up documentation required by the Aviation Department to verify all Fuel Flowage Fees due to County. All required reports and documentation must be provided on or before the tenth (10th) day of each month.

4.16 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), the leasehold estate granted by this Agreement, the business conducted on the Premises, any of Lessee's property used in connection therewith, and 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.

4.17 Utilities. Lessee shall timely pay all utilities fees and charges that are now or hereafter charged or assessed with respect to operations at the Premises.

4.18 Other Fees and Charges. County has established, or may establish, from time to time, various fees and charges for the use of various facilities, equipment, and services provided by County and not leased to or specifically provided to Lessee, which may include, but are not limited to, landing fees. In addition to rent, Lessee shall pay, in the manner prescribed by County, all rents, rates, fees, and charges due from Lessee for the use of any Airport facilities or under any agreement between Lessee and County pertaining to Lessee's operations at the Airport. Lessee shall collect from its customers and Sublessees, as applicable, and remit to County, all rents, rates, fees, and charges that may now, or in the future, be established by County regarding general aviation uses of the Airport, which may include, but are not limited to, landing fees (collectively, "County Fees"). Lessee shall collect and submit County Fees to County in accordance with all County established procedures, including completion and submittal of any required forms in the format provided by or acceptable to County. Lessee shall separately designate County Fees on receipts it provides to its customers and Sublessees. Fees designated by Lessee as County Fees shall not exceed actual County Fees. Lessee shall not attribute or imply that any fees, other than County Fees, collected by Lessee from its customers and Sublessees are fees imposed by County. Lessee shall honestly and fairly represent its prices and policies and County's prices and policies to its customers. **Lessee shall not charge any amount to its customers or Sublessees and attribute such amount to County except for County Fees that are payable by Lessee to County. Any charges or fees imposed by Lessee on its customers or Sublessees for use of any facilities of Lessee shall be separately stated on Lessee's invoice or charge slip and shall not be aggregated together with any County Fees.**

4.19 Additional Rent and Charges. If County is required or elects to pay any sum or incur any obligation or expense by reason of the failure, neglect, or refusal of Lessee to perform or fulfill any of the conditions, covenants, or requirements contained in this Agreement, or as a result of any act or omission of Lessee, or if Lessee fails to pay any obligation arising under this Agreement, Lessee shall pay to County the sum paid or the expense incurred by County, including all costs, damages, penalties, and interest at the rate of eighteen percent (18%) per annum from the date paid by County or due from Lessee until the date paid by Lessee ("Additional Payment Obligation"). The Additional Payment Obligation will become additional rent, subject to all applicable taxes, and recoverable by County in the same manner and with like remedies as if it

were originally a part of the rent due and owing pursuant to this Agreement. Lessee shall pay the Additional Payment Obligation in the next installment of rent following a written notice of demand. In the event that no further rent payments are due, Lessee shall pay the Additional Payment Obligation within fifteen (15) days after County's written demand.

4.20 Late Payments - Interest. County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid for any amounts payable under this Agreement. The right of County to require payment of interest and the obligation of Lessee to pay interest to County shall be in addition to, and not in lieu of, the right of County to enforce any other remedy provided in this Agreement or under Applicable Laws.

4.21 Dishonored Check or Draft. In the event Lessee delivers a dishonored check or draft to County in payment of any obligation arising under this Agreement, Lessee shall incur and pay a service charge in the then-prevailing amount established by County. In such event, the Aviation Department may require that future payments be made by cashier's check or other means acceptable to the Aviation Department, and the security deposit required herein may be increased, in the Aviation Department's sole discretion.

4.22 Place of Payments. All payments required to be made by Lessee under this Agreement shall be made payable to "Broward County" and be provided to the Finance Division, Broward County Aviation Department, 320 Terminal Drive, Suite 200, Fort Lauderdale, Florida 33315, or to such other office or address as the Aviation Department may designate. County shall provide instructions for Automated Clearing House ("ACH") payments, if requested by Lessee.

4.23 Books and Records. Lessee shall keep true and accurate books and records, which must, at a minimum, show all County Fees, Fuel Flowage Fees, Capital Expenditures, and sales tax collected, as well as any other records required under this Agreement. Lessee shall also keep and maintain financial records, supporting records, supporting documents, and all other documents pertinent to this Agreement. Lessee shall keep its books and records in accordance with generally accepted accounting principles and shall maintain such other books and records as County, its employees, or its agents may request. Lessee shall ensure that the provisions of this Section 4.23 shall apply to all of Lessee's Sublessees. Lessee shall ensure that Sublessees shall keep separate books and records for operations covered by this Agreement.

(a) Lessee shall ensure that all books and records are kept and maintained during the Retention Period. The "Retention Period" is defined as the longer of: (1) the required retention period under the Florida public records law (Chapter 119, Florida Statutes), if applicable; or (2) the period covering the Term of this Agreement and for three (3) years after the end of the Term of this Agreement or until the final resolution of any audit findings.

(b) As to County Fees, Lessee shall, at a minimum, keep and maintain such records as would ordinarily and necessarily be required by County, if County were collecting such County Fees.

(c) Upon County's request, Lessee shall provide its agreements, invoices, cash receipts, and all other books and records of Lessee for inspection by County's authorized representatives. Upon reasonable notice to Lessee, County may audit, or cause to be audited, all such books and records relating to operations under this Agreement to determine the correctness of County Fees, Fuel Flowage Fees, Capital Expenditures, and any other amounts payable by Lessee or any others pursuant to this Agreement, and to ensure compliance with all the provisions of this Agreement. Lessee shall make all books and records covered by this Section 4.23 available upon fourteen (14) days' notice. Lessee shall make all books and records required to be maintained hereunder available to County at Lessee's Premises, the Premises of its Sublessees, the Aviation Department's offices, or such other place as may be directed by the Aviation Department. All books, records, and accounts of Lessee shall be kept in written form, or in a form capable of conversion to written form within a reasonable time, and upon request to do so, Lessee shall make same available at no cost to County in written form.

(d) If any audit reflects that the total amounts Lessee or any other entity covered by this Agreement actually paid to County during a Lease Year were less than the amounts due and owing for that Lease Year, upon written demand, Lessee shall immediately pay County the difference with interest thereon from the date the amounts were due until said amounts are paid to County. If, as a result of any audit, it is established that any amount owed to County under this Agreement is understated in any report submitted by Lessee to County by 10% or more of the amount paid to County during the reporting period, Lessee shall bear the entire expense of that audit, which amount shall be paid within fifteen (15) days after written demand. County shall provide Lessee with a copy of any audit results obtained by County, upon Lessee's written request.

Lessee shall ensure that the requirements of this Section 4.23 are included in all agreements with its Sublessees.

4.24 The provisions of this Article 4 shall survive the expiration or any other termination of this Agreement.

ARTICLE 5. USES OF THE PREMISES

5.1 Required Services. Lessee shall use the Premises solely for aviation purposes related to maintenance and operation of aircraft for a charter or scheduled airline, which services must include the following:

- (a) The offering of aircraft and engine maintenance and repair service directed towards the executive general aviation, corporate, commercial aviation, and governmental market, but not for light, non-complex, general aviation aircraft.
- (b) Aircraft arrival guidance on the ramp.
- (c) Line services, with a qualified attendant on duty.

- (d) Flight planning and flight service facilities.
- (e) Pilot and passenger amenities, including pilot and passenger lounges and restrooms.
- (f) Removal of disabled aircraft up to ninety thousand (90,000) pounds maximum certified takeoff weight.
- (g) Scheduled and nonscheduled charter air services for the transportation of passengers and cargo pursuant to the requirements of 14 CFR Parts 121, 129, 135, and amendments thereto, and all other applicable rules and regulations.

5.2 Optional Services. In addition to the services listed in Section 5.1, following written request by Lessee and receipt of written consent from the Aviation Department, Lessee may use the Premises for any of the following additional permitted services:

- (a) Aerial survey.
- (b) Aerial photography and mapping.
- (c) Air ambulance.
- (d) Aircraft painting.
- (e) Avionics and instrument repair.
- (f) Propeller repair.
- (g) Avionics and instrument repair.
- (h) Aircraft rental.
- (i) Rental of offices for aviation purposes only.
- (j) Aircraft wash in compliance with Applicable Laws.
- (k) Fueling of aircraft on the Premises by an authorized fuel service provider.
- (l) The sale of aircraft, aircraft components, parts, and accessories thereto directed towards the executive general aviation, corporate, commercial aviation, and governmental market and light, non-complex, general aviation aircraft.
- (m) The offering of enclosed aircraft hangar storage, aircraft parking and tie-down service directed towards the executive general aviation, corporate, commercial aviation, governmental market, and light, non-complex, general aviation aircraft.

- (n) Food and beverage service limited to vending machines only, for consumption by customers and employees of Lessee and its Sublessees.
- (o) Cafeteria/lounge facility provided solely for the employees of Lessee and its Sublessees.
- (p) Pilot and crew training.
- (q) Other compatible aviation related services for which the Aviation Department, in its discretion, has provided prior written consent.

5.3 Prohibited Services. Lessee may not provide or offer the following services on or in connection with any of the Premises:

- (a) Terminal facilities for passenger operations, other than those covered by Federal Aviation Regulation 14 CFR Part 135.
- (b) Restaurant, coffee shop, lounge, or cafeteria with food preparation service (except a cafeteria/lounge facility provided solely for the employees of Lessee and its Sublessees).
- (c) Sell or dispense alcoholic beverages.
- (d) Sell non-aviation products.
- (e) Air shows.
- (f) Any use prohibited by law or not related to aviation as determined in the Aviation Department's sole discretion.
- (g) Park or store, or allow the parking or storage, of any vehicles on the Premises that are not used in the daily operation of the business permitted on the Premises.
- (h) Fuel farm or retail sale of fuel.
- (i) Limousine, taxi, transportation network company, or other ground transportation service. Lessee shall not make any contractual or other arrangement with any rental car company except a County authorized on-airport car rental concessionaire company.

5.4 Compliance. Lessee and its Sublessees shall not use the Premises for any purpose other than as specifically allowed by this Agreement.

ARTICLE 6. CONSTRUCTION BY LESSEE

6.1 Due Diligence Period. Lessee shall have the first (1st) Lease Year as a due diligence period ("Due Diligence Period"). There shall be no extension of the Due Diligence Period except as authorized below.

(a) Lessee's Activities During Due Diligence Period. During the Due Diligence Period, Lessee:

- i) Shall inspect, or cause to be inspected, the Premises to determine whether the Premises are suitable for its development and use as permitted by this Agreement.
- ii) Shall submit development plans and phasing schedules to the Aviation Department's project review committee ("PRC") for review and comment.
- iii) May submit applications for site plan and building permit approvals to the applicable governmental authorities.
- iv) May perform other due diligence activities necessary for Lessee to reach a determination as to whether the Premises is suitable for the development and use as permitted by this Agreement.

(b) During the Due Diligence Period, Lessee shall obtain an Initial Environmental Assessment and a survey and legal description of the Parcel depicted in **Exhibit A**. The survey and legal description (collectively, the "Survey") shall be prepared by a licensed surveyor, at Lessee's sole expense, in order to establish the legal boundaries and total square footage of the Premises. Lessee shall provide an electronic copy of the Survey to the Aviation Department, in the form prescribed by the Aviation Department, within five (5) business days after receipt of the Survey. The Survey shall be subject to the written approval of the Aviation Department. The Aviation Department may require, in its sole discretion, changes to the Survey to address impacts on Airport operations or future Airport development, including without limitation Runways, Public Landing Areas, airfields, Taxiways, taxi lanes, and drainage. The Aviation Department shall provide its comments on the Survey to Lessee within thirty (30) days after receipt of the Survey and Lessee shall revise the Survey in accordance with such comments and submit the revised Survey to the Aviation Department for review in accordance with this section. If the Aviation Department does not provide any comments within the thirty (30) days, the Survey shall be deemed approved. Following the Aviation Department's approval of the Survey, a revised **Exhibit A** shall be created and the existing **Exhibit A** shall be replaced by an amendment to this Agreement. The Director of Aviation is hereby authorized to sign any such amendment on behalf of County.

(c) All of the due diligence activities and requirements shall be conducted at Lessee's sole expense. During the Due Diligence Period, Lessee may advise County of any concerns

Lessee has regarding the Premises. County shall have no obligation to take any action or incur any expense to address any of Lessee's concerns.

(d) Due Diligence Termination Notice. Before the expiration of the Due Diligence Period, if Lessee determines the Premises are not suitable for development or use permitted by this Agreement, for any reason or for no reason, in Lessee's sole discretion, Lessee may terminate this Agreement by giving written notice to County ("Due Diligence Termination Notice") no later than the last day of the Due Diligence Period. If Lessee fails to provide the Due Diligence Termination Notice by the last day of the Due Diligence Period, Lessee shall have no right to terminate this Agreement as permitted in this Section 6.1.

(e) This Agreement shall terminate thirty (30) days after County's timely receipt of a Due Diligence Termination Notice ("Due Diligence Termination Date"). In addition, the following provisions shall apply in the event of a Due Diligence Termination Notice:

i) On or before the Due Diligence Termination Date, Lessee shall return the Premises to their condition immediately before the Effective Date, leave the Premises free and clear of all liens, claims, and encumbrances whatsoever as may have been caused by Lessee, and vacate and peacefully surrender the Premises pursuant to the requirements in Article 22 herein.

ii) Lessee shall pay County for all costs incurred by County as a result of any of Lessee's activities at the Premises, which payment shall be made before the later of the Lessee's complete vacation of the Premises or the Due Diligence Termination Date.

iii) Lessee shall have no right to payment of any amounts described in Section 32.19.

iv) County shall return the Letter of Credit required pursuant to Article 7 to Lessee within one hundred twenty (120) days following the Due Diligence Termination Date, less any costs incurred by County caused by Lessee or any of Lessee's Parties.

The provisions of this Section 6.1 shall survive the early termination of this Agreement.

(f) Extension of Due Diligence Period. A portion of the Premises is currently being used for the storage of vehicles, including buses, ("Vehicles") used by a County contractor that is providing shuttle bus and other transportation services at the Airport. County is in negotiations to lease a parcel of property that will be used to store the Vehicles ("Third Party Lease"). After County's approval of the Third Party Lease and completion of specified improvements to the Third Party Lease premises, the Vehicles will be removed from the Premises and relocated to the Third Party Lease premises. If the Vehicles are

not removed from the Premises within one hundred eighty (180) days after the Effective Date ("Removal Date"), Lessee may request that the Due Diligence Period be extended for a one year period. In such event, the Director of Aviation shall have the authority to execute an amendment to provide for such extension of the Due Diligence Period and to extend by a one (1) year period the Initial Term, the date for the commencement of rent, the Completion Date, the Amortization Period, and the dates on which rent will be adjusted by appraisal. The extension of the Due Diligence Period shall be Lessee's sole remedy in the event that the Vehicles are not removed from the Premises by the Removal Date and Lessee shall not have any claim for lost profits, lost rents, or other damages, including any consequential damages. The continued presence of the Vehicles on the Premises shall not impact Lessee's rights to conduct activities during the Due Diligence Period as set forth in this Section 6.1.

6.2 Improvements. Lessee shall construct and complete all of the following Improvements no later than the last day of the third (3rd) Lease Year ("Completion Date"):

- (a) Construct an approximately Fifty-four Thousand (54,000) sq. ft. hangar with an additional Twelve Thousand (12,000) sq. ft. of office space.
- (b) Install signage on the hangars and buildings at the Premises.
- (c) Paving of any associated ramp, public and employee parking, landscaping, and all required connecting Taxiways between the main taxiway and the Premises.
- (d) Installation of all required utilities, including conduit ducts for cable, telecommunications, electric power, sewage, electrical system, wastewater disposal, and a perimeter safety fence, lighting, and all other security measures, as required by the Aviation Department and shown in the Approved Plans.
- (e) Complete any and all structural, electrical, and plumbing that are required for the Improvements in order to achieve a CO for all Improvements.

6.3 Minimum Capital Expenditure. Lessee shall spend a minimum Capital Expenditure amount of Twenty-two Million Dollars (\$22,000,000.00) ("Minimum Capital Expenditure") to complete all the Improvements required in Section 6.2 no later than the Completion Date. Only costs paid for the construction of the Improvements that qualify as Capital Expenditures will count towards the Minimum Capital Expenditure.

6.4 Capital Expenditures. In order to qualify as a Capital Expenditure to satisfy Lessee's obligations herein, Lessee must submit the proposed Capital Expenditure to the Aviation Department in advance for review and written approval. Capital Expenditures must have been incurred after the Effective Date of the Agreement and shall be subject to the following:

- (a) Limited to actual third-party costs without any markup.

(b) Limited to the actual cost of demolition, construction, and acquisition of Improvements, plus the cost of required bonds, construction insurance, building impact and concurrency fees.

(c) Payments made to independent contractors for surveying, engineering, interior design, or architectural design work shall qualify as Capital Expenditures, provided that the total of all such payments do not exceed ten percent (10%) of the total of all other sums included in the determination of the total Capital Expenditure amount.

(d) Costs incurred by any Affiliate of Lessee shall not qualify as Capital Expenditures unless specifically approved in writing by the Aviation Department, in its sole discretion, upon Lessee's separate written request, made before the cost is incurred. Such costs must also meet all requirements of this Section 6.4 to be considered for approval by the Aviation Department as Capital Expenditures. Any costs incurred by an Affiliate of Lessee before Aviation Department approval shall not qualify as Capital Expenditures.

(e) Costs associated with acquisition or installation of any personalty, including without limitation, furnishings and trade fixtures or equipment not permanently affixed to the Premises, shall not qualify as Capital Expenditures unless specifically identified in Section 6.2, or as may be specifically approved in writing by the Aviation Department, upon Lessee's separate written request, made prior to Lessee incurring the costs. Any costs incurred before Aviation Department approval shall not qualify as Capital Expenditures.

(f) Costs of interior decorations (other than standard Aviation Department approved finishes), special finishes, wall tile or other special wall finishes and coverings, construction photographs, special external and internal lighting, and signage shall not qualify as Capital Expenditures unless specifically approved in writing by the Aviation Department, upon the Lessee's separate written request, made prior to incurring such costs. Any costs incurred before Aviation Department approval shall not qualify as Capital Expenditures.

(g) Costs associated with any Improvements that are not specifically identified in Section 6.2 do not qualify as Capital Expenditures unless specifically approved in writing by the Aviation Department, upon Lessee's separate written request, prior to Lessee incurring the costs. Any costs incurred before Aviation Department approval shall not qualify as Capital Expenditures.

(h) Payments to consultants shall be limited to those consultants performing surveying, engineering, interior design, or architectural design work, subject to the limitations established in subsection (c) above. Services provided by consultants such as, but not limited to, lawyers and accountants shall not qualify as Capital Expenditures.

(i) Costs of financing, interest expenses, administration, supervisory, overhead, and internal costs of Lessee, or any Affiliates of Lessee, shall not qualify as Capital Expenditures.

(j) Costs incurred by an Approved Leasehold Mortgagee will qualify as Capital Expenditure costs if the costs would otherwise qualify as a Capital Expenditure if incurred by Lessee.

6.5 Capital Expenditure Report. Upon request by the Aviation Department (not more than once each Lease Year), Lessee shall provide the Aviation Department with a report of the total Capital Expenditures that have been incurred as of the date of the report ("Capital Expenditure Report").

6.6 Obligations Before Construction. Before starting construction, installation, or refurbishment of any Improvement on the Premises, Lessee must submit Letter(s) of Intent to satisfy the CBE goal established in Article 8 herein. The Letter(s) of Intent must be submitted, no later than submission of Lessee's request for County's approval to proceed with the applicable construction, installation, or refurbishment required in this Agreement. Lessee must also submit to the Aviation Department for its approval and written authorization, a site plan and complete plans and specifications of the contemplated construction or refurbishment and shall record or cause to be recorded in the Official Records of Broward County, Florida, a notice of commencement in compliance with the requirements of Chapter 713, Florida Statutes. The plans and specifications shall be signed and sealed by an architect or engineer licensed to practice in Florida and shall consist of the following: (a) working drawings; (b) technical specifications; (c) bid documents, if applicable; (d) schedule for accomplishing Improvements; (e) schedule of finishes and graphics; (f) list of furnishings, fixtures and equipment; (g) estimate of the design, development, and construction costs; and (h) such other information as may be required by the Aviation Department. If any addition, alteration, modification, or replacement is made without Aviation Department approval, upon notice in writing, Lessee shall remove same or, at the sole option of the Aviation Department, cause same to be changed to the Aviation Department's satisfaction. If Lessee fails to comply with the notice, the Aviation Department may affect the removal or change, and Lessee shall pay the cost thereof to County within fifteen (15) days after County's written demand together with support documentation.

6.7 Approved Plans. In addition to the Aviation Department's approval, Lessee shall obtain all required approvals from all other agencies having jurisdiction over the construction, installation, or refurbishment of any Improvements, including but not limited to departments, divisions, or offices of the County, local governments, the State of Florida, and the federal government. Lessee shall provide any and all documentation and information necessary in order to obtain approval from the FAA. All Improvements shall conform to, and be consistent with, all applicable provisions of the Americans with Disabilities Act of 1990. No work may be performed on the Premises except pursuant to Approved Plans. All construction, Improvements, signs, equipment, and landscaping shall be made in accordance with the requirements set forth in this Agreement and shall conform to the standard requirements of the Aviation Department that are

applicable to tenants of the Airport. All of the plans and specifications shall be in sufficient detail to reasonably permit the Aviation Department to determine whether the facilities will be consistent with this Agreement and the standards of the Aviation Department. No material changes shall be made to any Approved Plans without the Aviation Department's prior written approval, which will not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit is a material change.

6.8 Identification of Utilities on Plans. All plans and specifications, including, without limitation, "as-built" plans provided under Section 6.17 below, shall identify the purpose of utilities and any conduits by generic reference only (e.g., "phone conduit," "telecommunications conduit," or "power conduit"), and shall not identify any utility or conduit ducts for cable, telecommunications, electric service, and the like, by any specific company name.

6.9 Cost to Remove, Replace, and Relocate Utilities and Navigational Aids. During any construction or refurbishment undertaken by Lessee, Lessee shall pay all costs associated with any removal, replacement, relocation, and protection of all utilities and navigational aids, including but not limited to, water, wastewater disposal, sewer, telephone, electric, airfield lighting system, conduit ducts for cable, telecommunications, and electric service, and navigational aids, whether such are located at the Premises or on adjacent property. All underground conduits installed at the Premises, including without limitation cable, electric, and telecommunications, are leasehold Improvements. Lessee shall install all such conduits at Lessee's expense and shall ensure the conduits are free of all liens, claims, and encumbrances, including any claims of any utility provider. Lessee shall not, or attempt to, grant, agree to, or sign any easements with any utility provider with respect to the Premises or any other portion of the Airport property.

6.10 Improvements to Comply With Airport Requirements and Applicable Laws. The Aviation Department shall have the right to require that all construction, installation, or refurbishment of any Improvements on the Premises or any development within the Airport be consistent with the overall Airport system architecture and the Master Plan, as well as reasonable standards of safety and quality. All construction, installation, or refurbishment of any Improvements, equipment, interior design, and decor constructed or installed at the Premises shall comply, as determined solely by the Aviation Department, with Airport system architecture, Master Plan, reasonable standards of safety and quality, and Applicable Laws. The Aviation Department's approval of any plans, specifications, or designs is not a representation or warranty as to such compliance, and the responsibility for compliance shall at all times remain with Lessee. The Aviation Department may refuse to grant consent to construction, installation, or refurbishment of any Improvements on the Premises if, in its sole opinion, the proposed facilities as shown on the plans and specifications will not satisfy the provisions of this Agreement, comply with Applicable Laws, or for any other reason whatsoever, in its sole discretion.

6.11 Construction of Approved Facilities and Improvements. Upon approval of plans, specifications, and schedules by the Aviation Department and receipt of all other necessary approvals, Lessee shall promptly begin construction, installation, or refurbishment, as applicable,

of the Improvements. Lessee shall perform any work that impacts portions of the Airport, other than the Premises, within schedules approved in writing in advance by the Aviation Department.

6.12 Periodically Scheduled Meetings. Upon request by the Aviation Department, Lessee, its architect/engineer, and its contractor shall meet with the Aviation Department in periodically scheduled meetings to assess the current status of construction, installation, or refurbishment, as applicable, of the approved Improvements and the completion thereof.

6.13 Ownership of Leasehold Improvements. All fixtures, structures, facilities, hangars, pavements, and other Improvements and any additions and alterations made or located upon the Premises (except trade fixtures, equipment and personalty that are not permanently affixed to the Premises, the Aircraft Fuel Farm Facility and its appurtenances) are leasehold Improvements, and title thereto shall vest with County upon the expiration or earlier termination of this Agreement. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Premises and is not readily removable as a trade fixture or item of equipment is a leasehold Improvement. If the removal of any personalty, trade fixture, or equipment causes damage to the Premises, Lessee shall repair such damage and restore the Premises to the condition in which it existed before the damage occurred.

6.14 Certified Statements. Within one hundred twenty (120) days following the CO Date and also at such other times prior to the CO Date as shall be requested by the Aviation Department, Lessee shall provide the following to the Aviation Department:

- (1) A certified statement from the construction contractor(s) specifying the total construction cost and stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material suppliers, subcontractors, or laborers; and
- (2) A certified statement from the architect, interior designer, or engineer stating the total architect's, interior designer's, or engineer's fees and that the Improvements have been constructed in accordance with the Approved Plans and in compliance with all Applicable Laws; and
- (3) Any back-up documentation and releases of lien as required by the Aviation Department.

6.15 Schedule of Capital Expenditure Costs for Improvements. Within one hundred twenty (120) days after the Completion Date, and also at any other time requested by the Aviation Department, Lessee, at its sole cost and expense, shall provide to the Aviation Department a schedule of all costs it proposes to be considered by the Aviation Department as Capital Expenditures. The schedule shall show by line item, detailed information as to each cost, including but not limited to, description, payee, and date of payment. The schedule of Capital Expenditures shall be accompanied by an independent auditor's report ("Independent Auditor's Report"). The Independent Auditor's Report shall be based on an audit of the costs in the schedule, shall be conducted by a CPA in accordance with generally accepted accounting principles and standards, and shall contain a statement as to whether the Capital Expenditure

amounts set forth in the schedule meet the requirements of this Agreement. The Independent Auditor's Report must clearly indicate any items on the schedule that do not qualify as Capital Expenditures. Lessee shall document to the satisfaction of the CPA and the Aviation Department, that the monies were expended, that they are true and correct, and how they are eligible to be included in the Capital Expenditure amount. Lessee shall provide, upon request, such invoices and other back-up documentation as may be required by the Aviation Department or the CPA to verify that the Minimum Capital Expenditures have been met by Lessee by the Completion Date.

6.16 Liens, Claims, and Encumbrances. Lessee shall not do, nor permit to be done, anything that shall result in the imposition of any liens, claims, or encumbrances on the Premises, or portion thereof, or the Improvements. If any lien or notice of lien shall be filed against the Premises, or portion thereof, or the Improvements, Lessee shall cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within thirty (30) days after notice of the filing thereof. Lessee shall not be deemed to be County's agent so as to confer upon any contractor or subcontractor providing labor or materials to the Premises or Improvements a mechanic's lien upon County's estate under the provisions of Chapter 713, Florida Statutes. The provisions of this section shall not apply to any leasehold mortgage to which County has consented as provided in Article 19 or any purchase money security interest in any movable trade fixtures of Lessee installed at the Premises. County's interest in this Agreement shall not be subordinate to any leasehold mortgage or any claim, lien, or encumbrance affecting Lessee's interests in this Agreement.

All of Lessee's assets that are brought onto the Premises and used in connection with its business conducted on the Premises shall be subject to County's landlord lien on such assets as provided by applicable Florida law.

6.17 Reporting of Issuance of COs and "As-Built" Plans. Lessee shall report the issuance of COs to the Aviation Department and forward a copy of each CO issued for any Improvements within ten (10) days after the issuance of same. Additionally, within ninety (90) days after the CO Date or Completion Date for any Improvements, and also at such other times as requested by the Aviation Department, Lessee, at its sole expense, shall provide the Aviation Department with a complete set of "as-built" plans and specifications in a format that meets the Aviation Department's electronic media submittal standards. If based on the nature of the Improvement a CO was not required, Lessee shall submit to the Aviation Department evidence that all applicable permits have been closed.

6.18 Increase of Rent Upon Failure to Complete Improvements By Completion Date. If Lessee does not complete construction of the Improvements required in Section 6.2 on or before the Completion Date, then, beginning on the first (1st) day of the fourth (4th) Lease Year, the rent for the entire Premises shall be increased to equal twice the rent that would otherwise be due on the first (1st) day of the fourth (4th) Lease Year ("Construction Adjusted Rent"). The Construction Adjusted Rent shall remain in effect as provided herein until the Improvements have been properly completed. During the period that the Construction Adjusted Rent is in effect, it shall be subject to adjustment at the commencement of each Lease Year in accordance with Section

4.3 and other adjustments in accordance with this Agreement, as applicable. On the date Lessee completes construction of all of the Improvements, the Construction Adjusted Rent shall be adjusted to the annual rent that would otherwise be in effect pursuant to the provisions of this Agreement. The provisions of this Section 6.18 are in addition to all other rights and remedies of County, including without limitation, those set forth in Article 7 and Article 32 of this Agreement.

6.19 Failure to Expend Minimum Capital Expenditure Requirement. The Parties agree that if Lessee has not expended the Minimum Capital Expenditure in constructing the Improvements by the Completion Date, the Aviation Department shall provide written notice to Lessee of the amount of the difference between the Capital Expenditures expended by Lessee (as evidenced in the documentation required in Section 6.15 above) and the amount of the Minimum Capital Expenditure ("Shortfall Amount").

(1) If the Shortfall Amount is equal to or greater than ten percent (10%) of amount of the Minimum Capital Expenditure, County may, upon sixty (60) days' prior written notice, at its sole option, reduce the Initial Term by six (6) months for each Two Hundred Fifty Thousand Dollars (\$250,000.00) of Shortfall Amount.

(2) If the Shortfall Amount is less than ten percent (10%) of the amount of the Minimum Capital Expenditure, Lessee shall address the Shortfall Amount in one of the following two methods, as it elects, and shall provide County notice of its election no later than fifteen (15) days after County's notice of the Shortfall Amount: (i) pay the Shortfall Amount to County, together with applicable sales taxes thereon; or (ii) reduce the Initial Term by six (6) months for each Two Hundred Fifty Thousand Dollars (\$250,000.00) of Shortfall Amount or any portion thereof. If Lessee elects to pay the Shortfall Amount, the payments shall be made in equal monthly amounts, commencing on the first day of the month following Lessee's election, and continuing on the first day of each calendar month thereafter for a period of ten (10) years ("Monthly Shortfall Payment") until the Lessee Shortfall Amount is paid in full. If Lessee elects to pay its Shortfall Amount, the payments shall become additional rent, subject to all applicable taxes, and recoverable by County in the same manner and with like remedies as if the Monthly Shortfall Payment was originally a part of the rent due and owing pursuant to this Agreement. After the date on which the Shortfall Amount occurs, if Lessee makes any Capital Expenditure authorized in writing by the Aviation Department ("Subsequent Capital Expenditure"), then the amount of such Subsequent Capital Expenditure(s) shall be credited against the remaining Shortfall Monthly Payments due. If Subsequent Capital Expenditure(s) exceed the total amount of the remaining Shortfall Monthly Payments, no further Monthly Shortfall Payments shall be due from Lessee. The Monthly Shortfall Payment paid by Lessee to County pursuant to this section shall not be considered Capital Expenditures. County shall have no obligation to credit or set-off to Lessee any Shortfall Payments made to County prior to the Subsequent Capital Expenditures. If, for any reason, the Shortfall Amount is not fully paid prior to expiration or early termination of this Agreement, Lessee shall pay any outstanding Shortfall Amount within fifteen (15) Days after County's written demand.

(3) If the Initial Term is reduced pursuant to this section, Lessee and County shall execute an amendment to this Agreement to reflect the reduction in the Initial Term. The Director of Aviation is authorized to execute such amendment.

(4) The provisions hereof are in addition to all other rights and remedies of County, including, without limitation, those set forth in Article 7 of this Agreement.

ARTICLE 7. CONSTRUCTION CONTRACTS, BONDS, INDEMNIFICATION, AND INSURANCE REQUIREMENTS FOR CONTRACTORS

7.1 Due Diligence and Construction Letter of Credit. In addition to the Letter of Credit required in Article 31, within two (2) days after the Effective Date, Lessee shall provide County with a Letter of Credit as security for activities by Lessee during the Due Diligence Period and for the construction requirements established in Article 6 (the "Letter of Credit," which term shall be deemed to include each replacement thereof). The Letter of Credit shall (a) be irrevocable, (b) be issued by a federally or state chartered bank (the "Issuer") reasonably acceptable to County, (c) be in the amount of \$2,200,000.00 (i.e., 10% of Minimum Capital Expenditure requirement) and be maintained with an undrawn balance of at least the amount required in this section, (d) have an expiration date no earlier than the last day of the current Lease Year, and (e) be in a form reasonably acceptable to County. The Letter of Credit shall provide that it may be drawn against, in whole or in part, in accordance with the procedures of this Article 7 by presentation to the Issuer of a sight draft, with no other requirements as a condition of drawing on the Letter of Credit. On or before one hundred twenty (120) days prior to the expiration date of the Letter of Credit, Lessee shall provide County with reasonable evidence that Lessee has renewed the Letter of Credit for a period of no less than one (1) year from its then current expiration date in the amount indicated below.

(a) The Letter of Credit must provide coverage from the Effective Date of this Agreement and must be kept in full force and effect throughout the Due Diligence Period and until satisfactory completion of the Construction required in Article 6 and a written consent to release the Letter of Credit is issued to Lessee by the Aviation Department. Any termination of the Letter of Credit without the Aviation Department's written consent to release the Letter of Credit shall be a default of this Agreement. Lessee's failure to timely renew the Letter of Credit shall entitle County to draw down the full amount of such Letter of Credit.

(b) Unless otherwise expressly stated herein, County shall not draw on the Letter of Credit without first giving Lessee written notice of its intent to draw sums under the Letter of Credit together with an explanation of the amount sought to be drawn and the basis for such draw with reasonable supporting documentation. County may draw on the Letter of Credit (i) in the event that Lessee has failed to perform one or more of its obligations described in subsection (c)(i) through (c)(iii) below, (ii) upon the occurrence of a bankruptcy event involving Lessee, or (iii) upon cancellation or nonrenewal of the Letter of Credit as required by this Article 7. If any deficiencies in performance claimed by County in the notice are not cured within thirty (30) days after such notice to County's

reasonable satisfaction, the draw on the Letter of Credit may be immediately submitted by County. Notwithstanding the foregoing, upon the occurrence of a bankruptcy petition involving Lessee, or upon cancellation or nonrenewal of the Letter of Credit as required in this Section 7.1, the draw on the Letter of Credit may be immediately submitted by County. Lessee hereby irrevocably directs the then Issuer of the Letter of Credit to honor any draw pursuant to this section immediately upon submission thereof by County. In the event that County draws on the Letter of Credit as authorized in this Article 7, Lessee shall replenish the funds drawn by County within three (3) business days.

(c) The Parties acknowledge and agree that the Letter of Credit shall be security for the performance of the obligations under this Agreement set forth below:

- (i) Performance of all of Lessee's obligations during the Due Diligence Period; and
- (ii) Performance of all of Lessee's obligations following delivery of a Due Diligence Termination Notice; and
- (iii) Performance of all construction and Capital Expenditure obligations.

7.2 Cash Deposit. In the alternative, Lessee may deliver to County, in lieu of the Letter of Credit, a security deposit in cash. Any cash security deposit shall be in the amount and subject to all the requirements of Article 7. In the event that County draws down on the cash deposit as authorized in this Article 7, Lessee shall replenish the funds drawn by County within three (3) business days. The security deposit shall not be returned to Lessee until Lessee has performed all of its obligations as set forth in Section 7.1 (c)(i) through (c)(iii) above. County shall not pay interest on the security deposit.

7.3 Payment and Performance Bonds. Within ten (10) days prior to commencement of any construction or repairs to any Improvements located on the Premises, Lessee, or its general contractor hired to perform construction or repairs to any facilities located on the Premises, shall furnish Performance and Payment Bonds as financial security in the forms attached hereto as **Exhibits H** and **I** respectively, and "Broward County" shall be named as a dual obligee on the Performance and Payment Bonds.

(a) Each bond shall be in the amount of one hundred percent (100%) of the cost of the construction and repairs to any facilities located on the Premises and guarantee the completion and performance of the Improvements, as well as full payment of all suppliers, laborers, and subcontractors performing the construction or repairs to any facilities located on the Premises. Each bond shall be with a surety company that is qualified pursuant to the terms set forth in this section.

(b) Alternate Form of Security. Lessee may furnish County an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or unconditional letter of credit, in the amount equal to one hundred percent (100%) of

the cost of the construction or repairs to the facilities located on the Premises, in lieu of providing Performance and Payment Bonds. Such alternate form of security shall be subject to the approval of County, and include all the same conditions as set forth in subsection (a) above.

(c) County will only accept Payment and Performance Bonds from a surety company that has twice the minimum surplus and capital required by the Florida Insurance Code at the time of the construction or repair, is otherwise in compliance with the provisions of the Florida Insurance Code, and holds a currently valid certificate of authority issued by the United States Department of the Treasury under Sections 9304 to 9308 of Title 31 of the United States Code. Lessee shall provide a certificate and affidavit in a form provided by County certifying to the satisfaction of the requirements provided in this subsection (c).

7.4 Construction Contract Provisions. Lessee shall include substantially the following provision in all contracts it enters into with any contractors in connection with construction or repairs to any facilities located on the Premises:

“Contractor shall indemnify and hold harmless Broward County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorneys’ fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of contractor or other persons employed or utilized by contractor in the performance of this Agreement. These provisions shall survive the expiration or any other termination of this Agreement. To the extent considered necessary by Lessee and Broward County, any sums due Contractor under this Agreement may be retained by Lessee until all of Lessee and Broward County’s claims for indemnification under this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Lessee.”

7.5 Insurance Requirements for Construction Contracts.

(a) Lessee shall, at all times during the Term of this Agreement (unless otherwise provided), require that all contractors and subcontractors working on Lessee’s leased Premises or for Lessee in relation to the leased Premises obtain and maintain insurance coverages for the work and project. Unless otherwise agreed to in writing by County and Lessee, said coverages shall include, but not be limited to, general liability, automobile, workers’ compensation, builder’s risk, and environmental/pollution. Said insurance coverages shall be in accordance with the terms and conditions required by this section. Such policy or policies shall be issued by companies authorized to do business in the State of Florida that have a registered agent in Broward County, Florida upon whom service of process may be made.

(b) Lessee shall include insurance requirements in compliance with this section in all agreements it enters into with contractors and subcontractors performing work at the Premises, and Lessee shall provide County (prior to commencement of any Improvements and no later than the pre-construction meeting held by the Aviation Department with

Lessee) with certificates of insurance evidencing the contractor's compliance with the requirements of this section.

(c) Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. Contractor shall specifically protect County by naming Broward County as an additional insured/loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, Builder's Risk, and any Property or Environmental Insurance policies. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation. Contractor's certificate of insurance shall be in a form that is satisfactory to County's Risk Manager or Risk Management Division.

(d) Coverage is not to cease and is to remain in force until all performance required of contractor is completed. All policies must be endorsed to provide County with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished to County at least thirty (30) days prior to the date of their expiration. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after completion and acceptance of the construction or repairs to any Improvements at the Premises.

(e) Not less than ten (10) days prior to commencement of any construction or repairs to any Improvements at the Premises, Lessee shall provide to County certificates of insurance evidencing the insurance coverage as specified above. The required certificates of insurance shall not only name the types of coverage provided, but also shall refer specifically to this Agreement with the type of insurance that is being furnished, and shall state that such insurance is as required by this Agreement. If the initial insurance expires prior to the completion of the Improvements, renewal certificates of insurance shall be furnished at least thirty (30) days prior to the date of expiration. Insurance shall not be canceled, modified, or restricted, without at least thirty (30) days prior written notice to County, and must be endorsed to provide same. The aforesaid insurance may be reviewed from time to time by County and may be adjusted if County determines that an adjustment would better protect County's interest. If County notifies Lessee, in writing at any time, that the insurance represented in a policy or certificate delivered to County does not conform to the provisions hereof for any other reason, Lessee shall cure such defect within fifteen (15) days after notice.

7.6 Provision of Documents. Lessee shall provide the Aviation Department with certificates of insurance, policies of insurance, and any other documentation required by this Article 7.

ARTICLE 8. CBE REQUIREMENTS

8.1 Lessee shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the development, construction, or modification of Improvements on the Premises. Failure by Lessee to carry out any of the requirements of this Article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or Applicable Laws, all such remedies being cumulative.

8.2 Lessee must meet or exceed the required CBE goal by utilizing the CBE firms submitted as part of its obligations before construction as required in Section 6.6 of this Agreement (or a CBE firm substituted for a listed firm, if permitted) for ____ percent (____%) of all construction and Improvements required in this Agreement, including, but not limited to, engineering, design, and consulting services related to, construction, fixtures, furniture, and equipment in Improvements, but excluding any costs or other reimbursable amounts stated in this Agreement (the "Commitment"), for the scope of work and the percentage of work amounts identified on each Letter of Intent. Lessee shall enter into formal contracts with the CBE firms submitted as required in Section 6.6 prior to its commencement of the construction, installation, or refurbishment of the improvements and, upon request, shall provide copies of the contracts to the Broward County Office of Economic and Small Business Development ("OESBD").

8.3 Each CBE firm utilized by Lessee to meet the CBE goal must be certified by OESBD. Lessee shall inform County immediately when a CBE firm is not able to perform or if Lessee believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Lessee to substitute the CBE firm with another CBE firm, as applicable. Whenever a CBE firm is terminated for any reason, Lessee shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required if the termination results from modification of the project and no CBE firm is available to perform the work under the modified project; in which event, Lessee shall notify County, and OESBD may adjust the CBE goal by written notice to Lessee. Lessee shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

8.4 The Parties stipulate that if Lessee fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If Lessee fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Lessee failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Lessee shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Lessee failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total Contract Value (as defined in Section 1-81, Broward County Code of Ordinances). An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by

County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Lessee's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Lessee acknowledges and agrees that the liquidated damages provided in this section are proportionate to an amount that might reasonably be expected to flow from a breach of the Commitment and are not a penalty. Any failure to meet the Commitment attributable solely to force majeure, changes to the project by County, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Lessee, shall not be deemed a failure by Lessee to meet the Commitment.

8.5 Lessee acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Lessee and shall include a deadline for Lessee to notify County in writing if Lessee concludes that the modification exceeds the authority under this section. Failure of Lessee to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Lessee.

8.6 County may modify the required participation of CBE firms in connection with any amendment, extension, modification, or other change to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, and changes, increases the initial Contract Value by ten percent (10%) or more. Lessee shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, or other change, and shall report such efforts, along with evidence thereof, to OESBD.

8.7 Lessee shall provide written monthly reports to OESBD attesting to Lessee's compliance with the Commitment. In addition, Lessee shall allow County to engage in onsite reviews to monitor Lessee's progress in achieving and maintaining the Commitment. OESBD shall perform such review and monitoring.

8.8 Lessee shall demonstrate timely payments of sums due to all contractors and suppliers of all construction and improvements provided in the Agreement. The presence of a "pay when paid" provision in a Lessee's contract with a CBE firm shall not preclude County or its representatives from inquiring into claims of nonpayment.

ARTICLE 9. OBLIGATIONS OF LESSEE

9.1 Observation of Rules and Regulations. Lessee shall require all Lessee's Parties entering upon or using the Premises to observe reasonable and nondiscriminatory rules and standards of conduct to preserve Lessee's peaceful enjoyment of the Premises and shall ensure the use of the Premises is in compliance with the terms of this Agreement. All Lessee's rules and standards of conduct must comply with Applicable Laws and this Agreement. Lessee shall take all lawful action to enforce compliance with this Agreement and the rules and standards of conduct by Lessee's Parties. Lessee and Lessee's Parties shall observe and obey, and shall require their employees,

invitees, suppliers, contractors, and subcontractors to observe and obey, Applicable Laws and the rules and regulations of the Aviation Department and County. Lessee's and Lessee's Parties' obligation to require the observance and obedience of their employees, invitees, suppliers, contractors, and subcontractors applies only while those persons are on or in occupancy of any portion of the Premises.

9.2 Service Standards. Lessee and its Sublessees shall, in connection with all sales and services offered to the public: (a) furnish good, prompt, and efficient service adequate to meet all demands for its services at the Airport; (b) conduct such hours of business as necessary to provide its services or as required by the Minimum Standards, whichever are greater; (c) furnish services on a fair, equal, and nondiscriminatory basis to all users thereof; (d) ensure that charges are fair, reasonable, and nondiscriminatory for each unit of sale or service; provided, however, reasonable and nondiscriminatory discounts, rebates, or other types of price reductions may be granted. As used in this section, "services" includes the furnishing or sale of parts, materials, and supplies.

9.3 Conduct of Operations. Lessee and Lessee's Parties shall conduct their operations hereunder in an orderly and commercially reasonable manner, considering the nature of their operations so as not to unreasonably annoy, disturb, endanger, or be offensive to others at the Airport.

9.4 Reasonable Measures. Lessee and Lessee's Parties shall take all reasonable measures to reduce to a minimum vibrations that may tend to damage any equipment, structure, building, or portion of a building on the Premises or located elsewhere on the Airport, and to keep the sound level of their operations as low as possible. Operation of aircraft within federal noise requirements is not a violation of this provision.

9.5 Conduct of Others on Premises. Lessee and Lessee's Parties shall control the conduct, demeanor, and appearance of their employees, invitees, suppliers, contractors, and subcontractors. Upon objection from the Aviation Department concerning the conduct, demeanor, or appearance of any such Person, Lessee shall promptly take all reasonable steps necessary to remove or otherwise remediate the cause of objection.

9.6 Removal of Garbage, Debris, and Other Waste Material. Lessee and Lessee's Parties shall remove from the Airport, or otherwise dispose of in a manner approved by the Aviation Department, all garbage, debris, and other waste materials (whether solid or liquid) arising out of the occupancy of the Premises or any operations at the Premises. Lessee and Lessee's Parties shall ensure that any garbage, debris, or other waste materials that are temporarily stored in the open shall be kept in suitable garbage and waste receptacles, made of metal and equipped with tight-fitting covers, and designed safely and properly to contain whatever material may be placed therein. Lessee and Lessee's Parties shall use appropriate care when affecting removal of all such waste and shall comply with Applicable Laws.

9.7 No Nuisance, Waste or Injury. Lessee and Lessee's Parties shall not commit any nuisance, waste, or injury on the Premises, and shall not do or permit to be done anything that may result in the creation or commission of any nuisance, waste, or injury on the Premises.

9.8 No Obnoxious Odors, Smokes, or Noxious Gases or Vapors. Lessee and Lessee's Parties shall not cause or allow any obnoxious odors, smokes, noxious gases, or vapors at the Premises; provided, however, that fumes resulting from the normal operations of properly certified and maintained aircraft and properly maintained trucks and other vehicles are exempt from this provision. Lessee and Lessee's Parties shall ensure that emissions generated by any aircraft, trucks, and other vehicles comply with Applicable Laws.

9.9 No Interference with Utilities. Lessee and Lessee's Parties shall not do, or permit to be done, anything that may interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Premises that are also used by other entities at the Airport. Lessee shall forthwith repair, at Lessee's sole cost and expense, any utilities that are damaged as a result of Lessee's or Lessee's Parties' activities.

9.10 No Overloading of Floor or Paved Area. Lessee and Lessee's Parties shall not overload any floor or paved area on the Premises, and Lessee shall repair, at Lessee's sole cost and expense, any floor and paved area, including supporting members, damaged by overloading.

9.11 No Increase in Risk to Premises. Lessee and Lessee's Parties shall not do, or permit to be done, anything upon the Premises: (a) that will invalidate or conflict with any fire insurance policies covering the Premises, any part thereof, or other contiguous premises at the Airport; or (b) that may constitute a hazardous condition so as to increase the risks normally attendant regarding the operations permitted by this Agreement.

9.12 Handling of Flammable Liquids. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored, and used by Lessee and Lessee's Parties in accordance with all Applicable Laws.

9.13 Fueling or Refueling of Aircraft or Other Equipment. Lessee and Lessee's Parties shall not fuel or refuel aircraft or other equipment in the covered and enclosed portions of the Premises without the Aviation Department's prior consent; provided, however, that using gasoline or other fuel in such enclosed portions where necessary to repair and test component parts is not prohibited. In any such event, Lessee and Lessee's Parties shall take all precautions reasonably necessary to minimize the hazard created by that use, and shall comply with all Applicable Laws.

9.14 Public Landing Areas. Lessee and Lessee's Parties shall prevent access to the Public Landing Areas from the Premises, except for aircraft equipped with radio transmission devices suitable for use as required in the Public Landing Areas.

9.15 Tests of Fire Extinguishing System. From time to time, and as often as reasonably required by the Aviation Department or any governmental authority having jurisdiction, Lessee and Lessee's Parties shall conduct pressure, water flow, and other appropriate tests of the fire

extinguishing system and apparatus that are maintained by Lessee or any Sublessee at the Premises.

9.16 No Vending Machines. Except for food and beverage vending machines as may be permitted in Article 5, Lessee and Lessee's Parties shall not place any coin or token operated vending machine or similar device (including without limitation, pay telephones, beverage or food machines, or other commodities dispensed by machine) upon or within the Premises without the prior written consent of the Aviation Department.

9.17 Derelict Aircraft, Parking, and Storage of Vehicles. Lessee and Lessee's Parties shall comply with the provisions of Chapter 2, Broward County Code of Ordinances, with respect to the removal of derelict vehicles and derelict aircraft from the Premises. Lessee and Lessee's Parties shall not permit the temporary or permanent storage, the arrival, or the presence at the Premises, at any time, of any derelict aircraft. Lessee and Lessee's Parties shall not park, store, or allow the parking or storage of any vehicles, boats, motorcycles, recreation vehicles, trailers, or any other non-aviation equipment whatsoever on the Premises that are not used in the daily operation of the business permitted to be conducted at the Premises pursuant to Article 5 of this Agreement. Notwithstanding the foregoing, Lessee may repair specified derelict aircraft within a specified period of time if Lessee requests in writing and the Aviation Department provides written approval. Any violation of these provisions or any failure to comply with any requirement contained in any response by the Aviation Department to the written request by Lessee to repair specified aircraft shall be a default hereunder.

9.18 Emergency Evacuation and Hurricane Plans. Within thirty (30) days following the Effective Date, Lessee shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with County's evacuation and hurricane plans for the Airport. These plans must contain detailed procedures of actions to be taken by Lessee and all Sublessees if an evacuation is needed or if a hurricane alert is present, and the plans must include emergency contact information. Before June 1 of each year, Lessee shall submit updated emergency evacuation and hurricane plans to the Aviation Department.

9.19 Safety Management System ("SMS"). In accordance with the Aviation Department's rules, regulations, and policies, or regulations promulgated by the FAA, Lessee and Lessee's Parties shall report to the Aviation Department all safety incidents that occur as a result of any action, inaction, or operations of Lessee or Lessee's Parties on the Premises or anywhere on Airport property. Lessee and Lessee's Parties shall cooperate with the Aviation Department with respect to any subsequent investigations of an incident. If a Safety Management System ("SMS") program is established at the Airport, Lessee shall comply, and shall require all of Lessee's Parties to comply, with that program immediately upon notification and receipt of the same from County. Incidents shall be reported within 24 hours after the incident occurrence via the SMS Reporting System by using the website address www.fll.net/airport/safety or by e-mail to fllsafety@broward.org.

ARTICLE 10. INGRESS AND EGRESS

10.1 Ingress and Egress to Premises. Lessee and Lessee's Parties will have ingress and egress to the Premises by public ways used in common with other tenants and users of the Airport. County may, from time to time, substitute other suitable means of ingress and egress. The determination of suitability shall be in County's sole discretion.

10.2 Ingress and Egress between Premises and Public Landing Areas. Subject to the provisions of this Agreement, Lessee and Lessee's Parties will have ingress and egress between the Premises and the Public Landing Areas at the Airport by means of Taxiways existing or hereafter to be constructed by Lessee, to be used in common with other tenants and users of the Airport, provided that County may, from time to time, substitute other suitable means of ingress and egress. The determination of suitability shall be in County's sole discretion.

10.3 Temporary or Permanent Closure. County may close, consent to, or request the closure of, any roadway, taxiway or other area at the Airport presently or hereafter used; provided, a suitable means of ingress and egress is made available to the Premises. The determination of suitability of any alternate ingress and egress shall be in County's discretion. Any such closure may be temporary or permanent. Lessee hereby releases, waives, and discharges County, its successors and assigns, of and from any and all claims, demands, or causes of action that Lessee may now or at any time hereafter have against County, its successors and assigns, arising or alleged to arise out of the closing of any street, roadway, taxiway, or other area used as such, whether within or outside the Airport, provided that County makes available to the Premises suitable means of ingress and egress.

10.4 Ground Transportation Ingress and Egress. Lessee and its Sublessees must permit ingress and egress to and from the Premises by County-authorized limousines, taxis, transportation network companies, and other ground transportation providers to serve the transportation needs of the public.

ARTICLE 11. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS

11.1 Compliance with Applicable Laws. Lessee and Lessee's Parties shall comply with Applicable Laws that now or at any time during the Term apply to the Premises or any operations at the Premises.

11.2 Assurance of Proper Safeguards. Lessee and Lessee's Parties shall comply with governmental requirements to ensure proper safeguards for the protection of persons and property on the Premises and at the Airport.

ARTICLE 12. MAINTENANCE AND REPAIR

12.1 Responsibility for Maintenance and Repair. Lessee shall, at all times, assume the entire responsibility, and shall relieve County from all responsibility, for all repair and maintenance whatsoever of the Premises, including, without limitation, all buildings and Improvements

thereon, whether the repair or maintenance is ordinary or extraordinary, structural, or otherwise. Lessee shall ensure maintenance and repairs are completed in a manner and class to preserve the Premises in good order and condition, and that any repair leaves the items or structures being repaired in a condition at least comparable to the original work, normal wear and tear excepted.

12.2 Lessee's Obligation to Maintain Buildings and Improvements. Lessee shall keep all buildings and other Improvements in good, tenantable, useable condition throughout the Term of this Agreement, and without limiting the generality thereof, Lessee shall:

- (a) For all metal, aluminum, or steel pre-engineered Improvements:
 - (i) Upon expiration of the manufacturer's warranty, repair and paint or seal the exterior and interior of the Improvements to a condition satisfactory to the Aviation Department, as determined in its sole discretion;
 - (ii) If the manufacturer's warranty has not expired but there are visible signs of product deterioration, as determined by the Aviation Department in its sole discretion, repair the exterior and interior of the Improvements to a level satisfactory to the Aviation Department and in compliance with the manufacturer's warranty, within one hundred eighty (180) days after receipt of written notice from the Aviation Department.
- (b) For Improvements other than metal, aluminum, or steel pre-engineered Improvements:
 - (i) Paint or seal the exterior and interior of the Premises every five (5) years, or as frequently as may be requested by the Aviation Department, and repair and maintain the Premises to a standard that is satisfactory to the Aviation Department.
- (c) For all the Premises and all Improvements:
 - (i) Repair and maintain the Premises, including but not limited to, all doors, windows, pavements, fencing, equipment, lighting fixtures, light bulb replacement, HVAC, furnishings, fixtures, roof, exterior walls, ramp seal coating, ramp markings, fans, exhausts, and all structural support systems; and
 - (ii) Keep the Premises, at all times, in a clean, safe, sanitary, and orderly condition and appearance, free and clear of trash and debris, including without limitation, upkeep and maintenance of all landscaping and upkeep and maintenance of all of Lessee's fixtures, equipment, and personal property located in any part of the Premises open to or visible by the general public; and

- (iii) Provide and maintain in good working order all obstruction lights and similar devices, fire protection, safety equipment, and all other equipment of every kind and nature required by Applicable Laws; and
- (iv) Repair any damage to paving or other surface of the Premises caused by operations of Lessee or Lessee's Parties and any other Person entering upon or using the Premises, including without limitation, any oil, gasoline, grease, lubricants, or other liquids and substances having a corrosive or detrimental effect thereon, and report the incident of any spill in accordance with Article 29; and
- (v) Take anti-erosion measures, including but not limited to, planting and replanting of grasses with respect to all portions of the Premises not paved or built upon; and
- (vi) Maintain and repair all utilities, including but not limited to, service lines and conduits for the supply of water, gas, electrical power, telephone, telecommunications, sanitary sewers, and storm sewers that are, at any time, located upon the Premises and that are used exclusively by Lessee or any of its Sublessees.

12.3 Right to Entry, Inspection, and Testing. Lessee and all Sublessees shall permit entry, inspection, and testing, at all reasonable times, by inspectors of any federal, state or County agency having jurisdiction under Applicable Laws, applicable to the Premises or the operations at the Premises. This right of entry, inspection, and testing does not impose a duty on County to take any action and will not impart liability on County should it not take any action. County, by its officers, employees, agents, representatives, and contractors may, at all reasonable times, enter the Premises to inspect the Premises, to observe Lessee's performance of its obligations under this Agreement, and to do any act or thing that County must or may do under this Agreement or otherwise. Additionally, representatives of County, including without limitation Aviation Department representatives, may in their sole discretion, enter the Premises at reasonable times to inspect same to determine if Lessee is maintaining the Premises as required by this Agreement. If Lessee fails in any material respect to: (i) commence to maintain, clean, repair, replace, rebuild, or paint the Premises within the period of time required under this Agreement, or as may be requested by the Aviation Department, and after written notice from the Aviation Department to do so; or (ii) fails in any material respect to diligently continue to completion the maintenance, repair, replacement, rebuilding, or painting of the Premises as required pursuant to this Agreement, then the Aviation Department may, at its option, and in addition to all other remedies that may be available, maintain, repair, replace, rebuild, or paint all or any part of the Premises, and Lessee shall pay the cost thereof within fifteen (15) days after written demand by County.

ARTICLE 13. INSURANCE REQUIREMENTS

13.1 Throughout the Term, Lessee shall, at its sole expense, maintain the minimum insurance coverages stated in **Exhibit G**, in accordance with the terms and conditions of this article. Lessee

shall ensure that all insurance coverages shall remain in full force and effect without any lapse in coverage throughout the Term and if services are required of Lessee pursuant to this Agreement subsequent to the expiration of the Agreement, Lessee at its sole expense maintain in force such insurance coverages until County determines all services required of Lessee have been completed. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

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

13.3 Lessee shall declare in writing any self-insured retentions or deductibles over the limits(s) prescribed in **Exhibit G** 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 involving the Premises. 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. If Lessee maintains broader coverage or higher limits than the insurance requirements in **Exhibit G**, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Lessee.

13.4 All required insurance policies must be issued by insurers: (1) assigned an AM Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact business in the State of Florida.

13.5 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.

13.6 Lessee or its insurer shall provide written notice to County of any cancellation or modification of any required policy of insurance at least thirty (30) days prior to the effective date of any cancellation or modification, and at least ten (10) days prior to the effective date of 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). Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination or expiration of this Agreement. Commercial General Liability Insurance shall be written on an "occurrence" basis only.

13.7 Subrogation. Notwithstanding anything to the contrary in this Agreement, Lessee waives any right of recovery against County for any loss or damage to the extent the same is required to

be covered by Lessee's insurance hereunder. Lessee shall obtain from its insurers a waiver of subrogation in favor of County in connection with any loss or damage covered by Lessee's insurance.

13.8 Certificate Holder Address. The certificate holder address shall read "Broward County, c/o Aviation Department, 320 Terminal Drive, Suite 200, Fort Lauderdale, Florida 33315" or such other address as may from time to time be required by County.

13.9 Subcontractor Coverage. Any subcontractor performing work for Lessee shall have Broward County listed as a certificate holder for all coverages and as an additional insured for its General Liability, Excess Liability, and Pollution coverages. Lessee shall require its subcontractors to provide all appropriate and necessary insurance coverages in their respective agreements.

13.10 The failure of County to demand evidence of the required insurance or to identify any deficiency in Lessee's coverage based on the evidence of insurance provided shall not be construed as a waiver by County. The insurance requirements required under this Agreement are minimum requirements, and shall in no way limit Lessee's liability arising out of the work performed or related activities.

13.11 The provisions of this Article 13 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 14. DAMAGE TO OR DESTRUCTION OF PREMISES

14.1 Removal of Debris. If the Premises, or any part thereof, is damaged by fire, the elements, or other casualty, Lessee shall promptly remove all debris resulting from such damage and shall promptly take all necessary action and repairs to protect the safety of persons entering the Premises. To the extent such measures are covered by Lessee's insurance, all proceeds thereof shall be used by Lessee for such purpose. If Lessee fails to promptly comply with the provisions hereof, County may take any measures it deems necessary to render the Premises in a safe condition; Lessee shall be fully responsible for any of County's expenses, and shall pay all expenses incurred by County within thirty (30) days after written demand from County together with supporting documentation; and if there are insurance proceeds covering such measures, the proceeds shall be paid to County.

14.2 Minor Damage. If the Premises, or any part thereof, is damaged by fire, the elements, or other casualty, but not rendered untenable or unusable, there will be no abatement of rent. Lessee, at its sole expense, shall commence the repair of the Premises within sixty (60) days following the occurrence and thereafter diligently pursue the restoration to its completion. All repairs shall be made in accordance with the plans and specifications for the Premises as they existed before such damage or in accordance with new plans approved as required in Article 6. To the extent such repairs are covered by Lessee's insurance, the proceeds of any insurance covering such repairs by Lessee will be adjusted with and paid to Lessee.

14.3 Major Damage to or Destruction of the Premises. If the Premises, or any part thereof, is destroyed or so damaged by fire, the elements, or other casualty as to render the Premises untenable or unusable:

(a) Lessee shall have the option to make the necessary repairs or replace the Premises in accordance with the plans and specifications as the same existed before the damage or destruction or in accordance with new Approved Plans. Lessee shall have a period of ninety (90) days after the occurrence of the damage or destruction (the "Election Period") in which to notify County in writing of Lessee's election. If Lessee elects to make the repairs, it shall commence such repairs within ninety (90) days after the date of Lessee's notice to County and thereafter diligently pursue restoration to its completion. Lessee may submit a written request to extend the time to commence repairs or replacements. Such request must contain a description of reasonable cause for the extension. The Aviation Department may, by written notice, extend the time to commence repairs, as determined in its sole discretion. If such destruction or damage was covered by Lessee's insurance, the proceeds thereof will be adjusted with and paid to Lessee.

(b) If by the end of the Election Period, Lessee has failed to notify County in writing of Lessee's election, or if Lessee notifies County in writing that Lessee does not intend to make the repairs or replacements, County may, at its sole option, make the repairs or replacements. If County elects to make the repairs or replacements, County shall notify Lessee of its election to do so within ninety (90) days after the expiration of the Election Period. If County elects to make the repairs or replacements, it shall do so in its sole discretion and without cost to Lessee, except that if such destruction or damage was covered by Lessee's insurance, the proceeds thereof will be adjusted with and paid to County. If County makes the repairs or replacements, the rent required to be paid by Lessee under Article 4 will be adjusted upwards on the first day of the month following completion of the repairs and replacements to an amount equal to the rent in effect immediately before the adjustment plus ten percent (10%) of County's actual costs of the repairs and replacement of the Improvements ("Replacement and Repair Adjustment"). County shall give Lessee written notice of the amount of the Replacement and Repair Adjustment and its effective date. Thereafter, the Replacement and Repair Adjustment shall be the new rent subject to future adjustments in accordance with Article 4 and Sections 6.18 and 6.19, as applicable.

(c) In the event the restoration is made pursuant to either subparagraph (a) or (b) above, rent will abate from the date of the damage or destruction until the Premises has been placed in a usable condition. Such abatement will be made pursuant to Article 27. All restoration work will be made under the plans and specifications that have received County's prior approval, and all such work will comply with the provisions and conditions of this Agreement, including without limitation, Article 6.

(d) In the event that neither Party elects to make the necessary repairs or replacements, this Agreement shall terminate upon the date established in the written

notice of termination provided by County to Lessee ("Major Damage Termination Date Notice"). Any and all proceeds collected from Lessee's insurance will be applied first to County's costs and expenses associated with restoring the Premises to a safe condition, as reasonably determined by County in its sole discretion, which costs shall include, but are not limited to, the removal of debris, the removal or demolition of any Improvements to grade, the removal of all above ground or underground infrastructure, the capping of all utilities, and general cleanup of the Premises ("Cleanup Costs"). Cleanup Costs will not include any costs to build or repair Improvements on the Premises unless determined necessary by County, in its sole discretion, to restore the Improvements to a safe condition. Thereafter, the proceeds shall be applied to any outstanding Approved Leasehold Mortgage(s) and thereafter the remaining Lessee's insurance proceeds shall be distributed between Lessee and County as follows: (i) the proceeds payable to Lessee shall not exceed the unamortized value of the Improvements existing on the Premises as of the date immediately preceding the date of the casualty (excepting any Improvements for which rent has been paid by Lessee based on the percentage of the value of the Improvements as determined by County, which shall be excluded from the calculation) depreciated over the remainder of the Term of the Agreement; and (ii) County shall receive any remaining balance of the insurance proceeds. In such event, the payment of rent shall terminate as of the date of the damage or destruction. If there is any leasehold mortgage(s) recorded against the Premises, Lessee shall obtain a full satisfaction of such mortgage(s) and shall provide a certified copy(ies) of the recorded mortgage satisfaction(s) to the Aviation Department prior to the termination date established in the Major Damage Termination Date Notice.

ARTICLE 15. INDEMNITY

Lessee shall at all times hereafter 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 (collectively, a "Claim"), raised or asserted by any Person not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Lessee, its current or past officers, employees, or agents, arising from, relating to, or in connection with this Agreement. If any Claim is brought against an Indemnified Party, Lessee shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Aviation Department and the County Attorney, any sums due Lessee under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 16. SIGNS

16.1 Prior Written Approval. Lessee shall not erect, maintain, or display any signs or any advertising at or on the exterior parts of the Premises or in the Premises so as to be visible from outside the Premises without obtaining the Aviation Department's prior written approval, which approval may be withheld by the Aviation Department in its sole discretion. No billboards are permitted on the Premises.

16.2 Removal of Signs on Expiration or Early Termination of the Agreement. Upon the expiration or early termination of this Agreement, Lessee shall remove, obliterate, or paint out, as the Aviation Department may direct, any and all signs and advertising on the Premises and restore the portion of the Premises affected by such signs or advertising to the same condition as existed before the placement of such signs or advertising. If Lessee fails to remove, obliterate, or paint out each and every sign or advertising and to restore the Premises, the Aviation Department may perform the necessary work and Lessee shall pay all the expenses incurred by County within thirty (30) days after written demand from County. The provisions of this Section 16.2 shall survive the expiration or early termination of this Agreement.

16.3 Removal of Unauthorized Signs. County reserves the right to remove and dispose of any signs not authorized by County that are located anywhere on Airport property. Any removal and disposal by County will be without any recompense to Lessee or Lessee's Parties. In the event County removes and/or disposes of any unauthorized signs, Lessee shall pay all expenses incurred by County within thirty (30) days after written demand from County.

ARTICLE 17. OBSTRUCTION LIGHTS

Lessee shall install, maintain, and operate, at its own expense, such obstruction lights on the Premises as the FAA or the Aviation Department may direct. Lessee shall energize the obstruction lights daily, starting thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise, and for such other periods as may be directed or requested by the air traffic control tower of the Airport.

ARTICLE 18. RIGHTS OF COUNTY RESERVED

18.1 Utility, Mechanical, and Other Systems. County may or may permit others to construct, maintain, repair, alter, replace, install, and rebuild, over, in, or under the Premises, existing and future utility, mechanical, electrical, and other systems and parts thereof, and enter the Premises at all reasonable times for any such purposes, as may, in County's opinion, be deemed necessary or advisable. County, in the exercise of rights hereunder, will not unreasonably interfere with Lessee's actual use and occupancy of the Premises.

18.2 Lessee Must Not Obstruct County's Access. If any personal property of Lessee obstructs the access of County, its officers, employees, agents, or contractors to any existing or future utility, mechanical, electrical, and other systems or any part thereof, Lessee shall move such property, as directed by County, in order to provide access to the utility, mechanical, electrical,

or other systems or parts thereof. If Lessee fails to remove the property after direction from County to do so, County may remove such property and Lessee shall pay all expenses incurred by County within thirty (30) days of written demand from County.

18.3 No Eviction of Lessee. The exercise of any or all of the foregoing rights by County or others shall not be construed to be an eviction of Lessee nor be made the grounds for any abatement of rent or the basis for any claim or demand for damages, consequential or otherwise.

18.4 Right of Flight. County reserves for itself, its successors, and its assigns, for the use and benefit of the public, at any and all times, a right of flight for the passage of aircraft in the airspace above the Premises, together with the right to cause in such airspace such noise and other intrusions as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in that airspace, and for use of said airspace for landing on, taking off from, and operating at the Airport.

18.5 Maintenance of Utility Easements. County reserves the right to maintain any utility easements on the Premises as County may now or in the future determine, in its sole discretion, are necessary to serve the needs of the Airport. Lessee takes the Premises subject to these easement requirements. Utility easements may be used for, but are not limited to, the installation of water distribution, sewage collection, underground electrical, telephone and telecommunications conduits, and above ground lighting and power poles. County will restore any Improvements Lessee has made, at County's cost, if the Improvements are materially damaged by any utilities installation made by County, and County shall take reasonable steps to ensure that any such installation is performed in a manner not unreasonably disruptive to Lessee's operations.

18.6 Police and Regulatory Powers. Nothing herein contained shall limit County's ability to exercise its police and regulatory powers or its powers of eminent domain.

ARTICLE 19. ASSIGNMENT, SUBLEASE, LEASEHOLD MORTGAGE

19.1 Lessee shall not sell, transfer, assign, sublet, pledge, mortgage, or otherwise encumber this Agreement or any portion of the Premises, or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise, or contract for the performance of any of the services to be provided by Lessee under this Agreement (any such action shall be an "Assignment") without the prior written consent of County. County's consent may include such additional terms and conditions deemed necessary in the reasonable discretion of County or the Aviation Department acting on behalf of County. Lessee's written request for consent to an Assignment shall include copies of documentation pertaining to the Assignment. In addition, Lessee shall provide the Aviation Department with such additional information and documentation, as may be reasonably requested. The factors upon which the decision on whether to grant consent, shall include, but not be limited to: (a) an assessment of whether the proposed assignee meets standards of creditworthiness; (b) whether the assigned space will be used for the purposes permitted herein; and (c) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any Assignment,

Lessee shall not be released of any liability hereunder that arose, whether known or unknown, prior to the effective date of such Assignment. In the event Lessee seeks County's consent to an Assignment to an Affiliate, as a condition of such Assignment, Lessee (or those persons or entities that have majority ownership of Lessee, directly or indirectly) may be required to execute an irrevocable Guaranty of Payment and Performance of this Agreement in form and substance satisfactory to County. Any written consent or approval required hereunder shall not be effective unless evidenced by a written document signed by the authorized representative of the County.

19.2 County hereby consents to a sublease of the Premises to Global Crossing Airlines LLC, a Florida limited liability corporation, subject to (a) County's written approval of the sublease agreement between Lessee and Global Crossing Airlines LLC ("Sublease"); (b) the Sublease containing all essential terms of this Agreement and being expressly subordinate to the terms herein; and (c) the term of the Sublease and any extensions or renewals thereof not extending beyond the Term of this Agreement.

19.3 In no case will an Assignment be permitted if a material default hereunder remains uncured.

19.4 An Assignment shall include any transfer of this Agreement by merger, consolidation, liquidation, or by operation of law. If Lessee is a corporation, an Assignment shall occur if there is any change in control, ownership, or power to vote a majority of the outstanding voting stock, of Lessee or of any parent corporation of Lessee from that which existed on the Effective Date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions). If Lessee is a limited or a general partnership or joint venture, an Assignment shall occur in the event of any transfer of an interest in the partnership or joint venture (or a transfer of an interest in a corporate general partner or corporate joint venturer) that results in a change in control (either directly or indirectly) of such partnership or joint venture from those controlling such partnership or joint venture on the Effective Date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions). Notwithstanding the foregoing, a transfer of stock among current stockholders or among current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests among existing partners or among existing partners or joint venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed an Assignment for purposes of this article. Notwithstanding the foregoing, the provisions of this article shall not apply to any public trades of registered stock of Lessee that occurs on a national stock exchange.

19.5 If any Assignment shall be made without the prior written consent of County, then that Assignment and any action premised upon such Assignment shall be null and void and of no force or effect.

19.6 Lessee shall be liable for the acts and omissions by any licensee, assignee, Sublessee, transferee, purchaser, agent, contractor, subcontractor, or any other party in privity with Lessee.

19.7 Lessee's Mortgage Does Not Bind County. No mortgage of Lessee's interest under this Agreement shall be binding upon or operate to restrain County in the enforcement of its rights under this Agreement.

19.8 Right of Lessee to Mortgage Lessee's Interest under this Agreement and Rights of Approved Leasehold Mortgagees. Subject to County's prior written consent as required herein, Lessee has the right to mortgage Lessee's interest under this Agreement to any lender that is both authorized to make leasehold mortgage loans in the State of Florida and that has been approved by County pursuant to this Article 19, subject to the other provisions of this Agreement.

An Approved Leasehold Mortgagee shall deliver to County, at the addresses stated for County in Article 25, a copy of the Approved Leasehold Mortgage certified as a true copy by the Records, Taxes and Treasury Division of Broward County, Florida together with a written notice setting forth the name and address of the Approved Leasehold Mortgagee. Following delivery, then, until the time that the Approved Leasehold Mortgage shall be satisfied of record, the following provisions shall apply:

- (a) County shall provide to each Approved Leasehold Mortgagee a copy of any notice of default given to Lessee. The notice shall be provided as stated in Article 25 to the address set forth in the Approved Leasehold Mortgage or as modified pursuant to Article 25. Lessee and the Approved Leasehold Mortgagee shall ensure that County has the correct and current mailing address for both Lessee and the Approved Leasehold Mortgagee.
- (b) In the event County has notified Lessee of any default hereunder, Lessee shall promptly notify the Approved Leasehold Mortgagee of the default and include all actions Lessee has taken, or will take, to cure the default. Lessee shall simultaneously provide the Aviation Department with a copy of the notice it provides to the Approved Leasehold Mortgagee.
- (c) The Approved Leasehold Mortgagee shall have the right to cure any default of Lessee within the time period established by this Agreement. County shall accept the performance on the part of the Approved Leasehold Mortgagee as though the same had been done or performed by Lessee.
- (d) County will provide the Approved Leasehold Mortgagee with a notice of termination of the Agreement ("Notice of Termination") when such notice is given to Lessee.
- (e) At any time prior to the Notice of Termination, the Approved Leasehold Mortgagee may: (1) obtain the rights to the leasehold Premises and cure the default if the default is susceptible to being cured following its acquisition of leasehold rights as Lessee; or (2) institute foreclosure proceedings and complete such foreclosure or otherwise acquire Lessee's interest under this Agreement with diligence and continuity and thereafter commence and diligently proceed to cure such default. Nothing in this

Section 19.8 shall preclude County from exercising any rights or remedies under this Agreement for any other default by Lessee during any period of forbearance.

(f) The Approved Leasehold Mortgagee may become the legal owner and holder of this Agreement by foreclosure of its mortgage or as a result of the assignment of this Agreement in lieu of foreclosure, whereupon the Approved Leasehold Mortgagee will immediately become and remain liable under this Agreement. However, in no event may the Approved Leasehold Mortgagee sell, assign, transfer, convey, or otherwise dispose of its interest in its leasehold to a third party without County's prior written consent under this Article 19.

(g) If an Approved Leasehold Mortgagee becomes the owner or holder of Lessee's interest by foreclosure of its mortgage, by assignment of this Agreement in lieu of foreclosure, or otherwise, the term "Lessee," as used in this Agreement, means only the owner or holder of Lessee's interest. In the event County has provided prior written consent as required in Section 19.1 to an Assignment or other disposition of Lessee's interest in this Agreement by the Approved Leasehold Mortgagee, and the Approved Leasehold Mortgagee has no interest or claim in or to the leasehold or against County, the Approved Leasehold Mortgagee will be relieved of all Lessee's covenants and obligations under this Agreement. No further agreement shall be necessary between County and the Approved Leasehold Mortgagee, or among County, the Approved Leasehold Mortgagee, and the Approved Leasehold Mortgagee's purchaser or assignee, in the event that the purchaser or assignee of Lessee's interest has assumed and agreed to carry out any and all covenants and obligations of Lessee under this Agreement, including all covenants and obligations that accrued before the sale, assignment, or other disposition of this Agreement by the Approved Leasehold Mortgagee.

(h) Within thirty (30) days after a written request by Lessee or by Lessee's Approved Leasehold Mortgagee, or if County needs an estoppel statement upon any sale, Assignment, or mortgaging of Lessee's interest in this Agreement by Lessee or Lessee's Approved Leasehold Mortgagee, County and Lessee shall each deliver a certificate to any proposed Approved Leasehold Mortgagee certifying the following (if such be the case): (1) the Effective Date and Termination Date of the Agreement; (2) the amount of rent and additional rent due under the Agreement if any, and the date to which rents have been paid; (3) whether the Agreement is in full force and effect; and (4) that County and Lessee have no knowledge of any default under this Agreement, or if any default is known to exist, specifying the nature of the default.

(i) So long as Lessee's interest in this Agreement is mortgaged to an Approved Leasehold Mortgagee, County will not sell, grant, or convey to Lessee all or any portion of County's fee simple title to the Premises without the prior written consent of that Approved Leasehold Mortgagee. In the event of any such sale, grant, or conveyance by County to Lessee, the sale, grant, or conveyance will not create a merger of this Agreement into a fee simple title to the Premises. Nothing in this Article 19 shall prevent

County from selling, granting, or conveying its fee simple title to any person, firm, or corporation other than Lessee, its successors, legal representatives, and assigns.

(j) Reference in this Agreement to an Approved Leasehold Mortgagee refers, where circumstances require, to any assignee of an Approved Leasehold Mortgagee, so long as the transfer to such assignee received County's prior written consent as provided in this Article 19 and the assignee provided to County the assignment of the Approved Leasehold Mortgage certified as a true copy by the Records, Taxes and Treasury Division of Broward County together with a written notice setting forth the name and address of the assignee.

(k) Any Approved Leasehold Mortgage is specifically subject and subordinate to County's rights under this Agreement. Despite any provision that is or may appear to be to the contrary in this Agreement, under no circumstances whatsoever will County's fee simple title interest in the Premises be subordinated to this Agreement, to any leasehold mortgage, or to any other encumbrance. In the event of any conflict or ambiguity, this subsection controls. No Approved Leasehold Mortgagee may impose a lien of any kind or nature on County's interest in the Premises.

(l) County shall accept performance by an Approved Leasehold Mortgagee of any provision of this Agreement required to be performed by Lessee with the same force and effect as though performed by Lessee.

(m) The Aviation Department shall, upon reasonable written request, provide an Approved Leasehold Mortgagee with estoppel information as to the status of the Agreement. Any assignment of Lessee's interest as Lessee to any leasehold mortgagee does not give Lessee or its assignee any lien or encumbrance upon the fee simple interest in the Premises, which is vested in Broward County, State of Florida.

ARTICLE 20. DEFAULT, TERMINATION

20.1 Events of Default. The occurrence of any one or more of the following events is a default under this Agreement:

(a) 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 takes possession or control of all or substantially all of the property of Lessee, and such possession or control continues in effect for a period of thirty (30) days; or

(b) Lessee abandons, deserts, or vacates the Premises or discontinues its operation at the Airport for a period of thirty (30) days; or

(c) Any lien, claim, or other encumbrance filed against the Premises is not removed or is not adequately secured by bond within thirty (30) days after Lessee has received notice thereof; or

- (d) Lessee fails to pay any rent when due to County and continues such failure for a period of ten (10) days after written notice from County that such payments are past due; or
- (e) Lessee fails to make any other monetary obligation or payment required hereunder when due, and Lessee continues such failure for a period of ten (10) days after written notice to cure nonpayment; or
- (f) Lessee fails to obtain the prior written consent of County prior to any Assignment or other encumbrance of the Premises or this Agreement; or
- (g) Any business is conducted, service is performed, or product is sold from the Premises that is not specifically authorized by this Agreement, and such activity does not cease within ten (10) days after written notice thereof; or
- (h) Lessee fails to keep, perform, and observe each and every other nonmonetary promise, covenant, and provision set forth in this Agreement on its part to be kept, performed, or observed, and continues such failure for a period of thirty (30) days after receipt of notice of default thereunder, or in the case of the default in any obligation that cannot be cured with due diligence and good faith within thirty (30) days, if Lessee fails to proceed promptly and with due diligence to cure the default within thirty (30) days after notice, or having begun to cure the default in a timely manner fails to diligently prosecute the cure to completion; or
- (i) Lessee fails to collect or remit to County all, or any portion of, County Fees; or
- (j) Lessee fails to maintain or renew a required letter of credit or security deposit; or
- (k) Suspension for a period of three (3) or more consecutive months or revocation of Lessee's right to operate by a governmental unit or agency having jurisdiction over the Premises and/or the business as being conducted thereon; or
- (l) If Lessee or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of Lessee, or any of Lessee's Parties, 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, 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; or (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; or (iii) involves an act of moral turpitude meaning conduct or acts that tend to degrade the principals or owners in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult or offend the community, ridicule public morals or decency, or 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 event by submitting evidence satisfactory to County

in its reasonable discretion that Lessee has implemented best business practices seeking to prevent and address such illegal conduct or activity from reoccurring, and required the offending person(s) to resign or has otherwise removed the person from Lessee's management activities related to this Agreement; or

(m) Any subsequent breach or default following notice of Habitual Default as described in Section 20.3; or

(n) A material inaccuracy of any representation or warranty made or given by Lessee in this Agreement; or

(o) Lessee fails to comply with its environmental responsibilities as required in Article 29.

20.2 Result of Default. If any one or more events of default set forth in Section 20.1 occur, or at any time thereafter during the continuance of such event, County may, at its sole option, exercise one or more of the following rights:

(a) Terminate the rights of Lessee hereunder by giving thirty (30) days written notice thereof ("Termination Notice"), which termination shall be effective upon the date specified in such notice unless the event of default has been remedied to County's sole satisfaction within such thirty (30) day period. If the default has not been remedied by the date specified in the Termination Notice, the Term and all rights of Lessee hereunder shall expire and terminate on such date and County shall be released and relieved of all liability under this Agreement;

(b) Sue Lessee for all damages, costs, and expenses arising from Lessee committing an event of default, and to recover all such damages, costs, and expenses, including reasonable attorneys' fees at both trial and appellate levels;

(c) Restrain, by injunction, the commission or attempted commission of an event of default and to obtain a decree specifically compelling performance of any such term or provision of this Agreement. Lessee acknowledges that County would not have an adequate remedy at law for an event of default and that injunctive relief or specific performance are required to protect the public from irreparable harm;

(d) Draw down on a required letter of credit or security deposit; and/or

(e) Exercise any and all other remedies available to County under this Agreement or at law or in equity.

In the event of any termination by County, County may accelerate and declare immediately due and payable all unpaid amounts due and other sums required to be paid under this Agreement (excluding amounts not yet payable prior to the termination). In addition, Lessee shall be liable for all damages incurred by County in connection with Lessee's default or the termination of this Agreement upon such a default, including

without limitation, all direct damages, such as collection costs and reasonable attorneys' fees, as well as indirect, consequential, and all other damages whatsoever. The exercise by County of any right of termination shall be without prejudice to any other such rights and remedies. No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy provided in this Agreement or otherwise available, and each and every remedy shall be cumulative.

At any time, or from time to time, after any such expiration or termination, County shall have the right, but not the obligation, to re-let the Premises or any part thereof for such term or terms, which may be greater or lesser than the period which would have otherwise constituted the balance of the Term, on such conditions, which may include concessions or free rent, as County, in its sole discretion, may determine, and County may collect and receive the rents (if any) therefor. County shall in no way be responsible for any failure to re-let the Premises or any part thereof, or for the failure to collect any rent for any such re-letting. Any such termination by County shall be without prejudice to every other remedy available pursuant to this Agreement to County and at law or in equity.

Upon any termination pursuant to this Article 20, Lessee shall have no right to any reimbursements from County or any right to any payments under Section 32.19 of this Agreement.

20.3 Habitual Default. Notwithstanding the foregoing, if Lessee has, in the sole discretion of the Aviation Department, frequently, regularly, or repeatedly defaulted in the performance of, or repeatedly breached any of, or been in noncompliance with, any of the terms and conditions required herein to be kept and performed by Lessee, and regardless of whether Lessee has cured each individual condition of breach or default, Lessee may be determined by the Aviation Department to be a "habitual violator." At the time such determination is made, the Aviation Department shall issue to Lessee a written notice advising of such determination and citing the circumstances. The notice shall also advise that there shall be no further notice or cure periods to correct any subsequent breach or default and that any subsequent breach or default of whatever nature, taken with all previous breaches and defaults, shall be considered cumulatively and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to Lessee. Such termination shall be effective upon delivery of the notice to Lessee.

20.4 County's Acceptance of Payment Is Not a Waiver. County's acceptance of rent, fees, charges, or other payments, in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof to be performed, kept, or observed by Lessee does not waive County's right to terminate this Agreement or to exercise any other available remedies.

20.5 Obligations upon Termination; Survival. Upon the expiration or early termination of this Agreement, Lessee and its Sublessees shall immediately cease all operations on the Premises and

shall vacate and peacefully surrender the Premises to County in accordance with the terms and conditions set forth in Article 22. The expiration or early termination of this Agreement does not release Lessee from any liabilities or obligations hereunder that have accrued on or before the Termination Date, and all such liabilities and obligations shall survive the expiration or any other termination of this Agreement.

ARTICLE 21. REMEDIES TO BE NONEXCLUSIVE

Unless otherwise expressly stated herein, no remedy herein conferred upon or reserved to County or Lessee is intended to be exclusive of any other remedy herein provided or otherwise available, and each shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Unless otherwise expressly stated herein, all rights and remedies of the Parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy does not exclude or waive the right to the exercise of any other.

ARTICLE 22. SURRENDER

22.1 Surrender to County. Upon the expiration or early termination of this Agreement, Lessee shall vacate, surrender, and deliver peaceably and promptly to County the possession of the Premises. Lessee shall ensure that the Premises is, on the date it is surrendered and delivered to County, (i) in good working order and repair, (ii) in the condition required by Article 12 of this Agreement, and (iii) in a condition that complies with all Applicable Laws. All maintenance and repairs required by Article 12 on the Premises shall be completed before surrender. Lessee shall cause all occupants, legal or otherwise, to vacate the Premises, pay in full all fees and other amounts payable to County that are then due and owing, and remove all Personal Property (hereinafter defined) before surrender and delivery. Upon surrender and delivery, Lessee shall deliver to County all keys, locks, alarm codes, and security codes for the Premises and return all Airport Issued Identification Media as required in Article 28. Lessee shall, at its sole expense, take all actions that are required to remove from the Premises any and all hazardous substances or other Materials, whether stored in drums or found in vats, containers, distribution pipe lines, or the like, or discharged into the ground. All such substances and Materials shall be removed by Lessee in a manner that complies with Article 29 and Applicable Laws.

It is agreed and understood that any holding over by Lessee after the expiration or earlier termination of the Term hereof shall not renew and extend same, and Lessee shall be construed as a tenancy at sufferance; Lessee agrees to pay to County the rent and all other charges required to be paid hereunder during any such holdover period. County, at its option, may impose a double monthly rent amount during any holdover period as permitted by Florida law. Lessee shall be liable to County for all loss or damage on account of any such holding after the expiration or earlier termination of the Term, whether such loss or damage may be contemplated at the execution of this Agreement or not. It is expressly agreed that acceptance of rent and any other payments by County in the event that Lessee fails or refuses to surrender possession shall not operate or give Lessee any right to remain in possession nor shall it constitute a waiver by County of its right to immediate possession or constitute an extension or renewal of the Term.

22.2 County Not Obligated to Accept Surrender. In the event Lessee fails to surrender and deliver the Premises in the condition required by this Agreement or has failed to complete any of the obligations due under this Agreement, County shall not be obligated to accept Lessee's surrender and delivery of the Premises until same have been satisfied and Lessee shall be considered to be holding over and subject to the provisions of Section 22.1. During the period of time from the Termination Date of this Agreement and until County is satisfied, in its sole discretion, with Lessee's surrender and delivery of the Premises, Lessee shall be considered a holdover Lessee.

22.3 Final Walkthrough. Prior to County's acceptance of surrender, a final exit walkthrough inspection shall be conducted by Lessee and the Aviation Department to determine compliance with this article and the Aviation Department's acceptance of the condition of the Premises. The Aviation Department's acceptance of the condition of the Premises and satisfaction of the surrender thereof shall be reduced to writing by the Aviation Department. In the event Lessee fails to comply with the terms of this Article 22, County reserves the right to perform all necessary work to bring the Premises to its original condition prior to Lessee's occupancy, normal wear and tear excepted, and Lessee shall reimburse County for all expenses incurred within fifteen (15) days after written demand from County.

22.4 Acceptance of Surrender of Premises. No agreement of surrender or an acceptance of surrender of the Premises is valid unless and until it has been reduced to writing and signed by County's and Lessee's duly authorized representatives.

22.5 The provisions of this Article 22 shall survive the expiration or termination of this Agreement.

ARTICLE 23. REMOVAL OF PROPERTY

23.1 Removal of Personal Property. Lessee may, at any time during the Term, remove its inventories, trade fixtures, and other personal property ("Personal Property") from the Premises, subject to any lien County may have for unpaid fees, charges, or other amounts. Lessee shall promptly repair any damage to the Premises caused by its removal of any Personal Property and shall keep the Premises in the condition required under Article 12.

23.2 On or before the expiration or earlier termination of this Agreement, Lessee shall remove all of its Personal Property and the Aircraft Fuel Farm Facility from the Premises:

- (a) Any Personal Property that is not removed from the Premises on the date the Premises is surrendered and delivered to County shall be deemed abandoned by Lessee and County may thereupon take possession, retain, convey, destroy, or dispose of such Personal Property in County's sole and absolute discretion, without any accounting or liability to County. If County incurs any expenses in any way related to taking possession, retaining, conveying, destroying, or disposing of such Personal Property, Lessee shall pay County the amount of the expenses incurred within fifteen (15) days after written demand from County.

(b) Alternatively, in County's sole option, if Lessee shall fail to remove its Personal Property by the expiration or earlier termination of this Agreement or as otherwise required herein, Lessee may be considered to be a holdover Lessee subject to the provisions of Section 22.1.

23.3 Removal or Demolition of Improvements on Termination or Expiration. Upon expiration or earlier termination of this Agreement, County, in its sole discretion, may determine that the Improvements should be removed from the Premises. In such event, County in its sole discretion may either: (a) remove or demolish all Improvements at the Premises (both above ground and below ground); or (b) require Lessee to remove or demolish all Improvements at the Premises (both above ground and below ground). If County elects to arrange for the removal or demolition of all Improvements, then the salvage value of such Improvements will inure to County's benefit. If County elects to require Lessee to remove or demolish all Improvements at the Premises, then the salvage value of such Improvements will inure to Lessee's benefit, so long as Lessee has removed or demolished all such Improvements within sixty (60) days after notice from County that demolition or removal is required. If Lessee fails to effect such demolition or removal within the aforesaid period of time, then County, at its sole option, may cause the demolition or removal of the Improvements; in such event, Lessee shall be responsible for all costs incurred by County and Lessee will not have any salvage rights in the Improvements. Lessee shall pay all costs incurred by County within fifteen (15) days of written demand from County.

23.4 The provisions of this Article 23 shall survive the expiration or early termination of this Agreement.

ARTICLE 24. LIMITATION OF PRIVILEGES GRANTED

Lessee will have no greater privilege to use the Airport or any part thereof, other than the privileges expressly and specifically granted in this Agreement.

ARTICLE 25. NOTICES

25.1 Notices. In order for a 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 herein unless and until changed by providing notice of such change in accordance with the provisions of this Article.

FOR COUNTY:
County Administrator
Governmental Center
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301
Email: mcepero@broward.org

with copies to:

Director of Aviation
Aviation Department
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Email: mgale@broward.org

FOR LESSEE:
Thomas Bosco, CEO
American Corporate Airport Partners, LLC
1301 6th Avenue, 34th Floor
New York, NY 10019
Email: tbosco@acapinfra.com and rbyrne@acapinfra.com

25.2 Approved Leasehold Mortgagee's Notice. Any notices sent to Lessee must also be sent to any Approved Leasehold Mortgagee at the address set forth in the Approved Leasehold Mortgage on file with the Aviation Department, which address may be changed in the manner provided in this article.

ARTICLE 26. UTILITIES

26.1 Lessee Pays for Utilities. Lessee shall pay for all electric, water, garbage, and all other utilities charges for the Premises when due. Lessee shall install the metering devices for such utilities at Lessee's sole cost. The metering devices will become the property of County upon installation. Extension of utility mains or services to meet Lessee's needs on the Premises shall be at Lessee's sole expense, and will also become County's property upon installation. Lessee shall not commingle or share metered utilities at the Premises or beyond the Premises boundary. Each Improvement shall have a dedicated meter for the appropriate utility.

26.2 Failure, Delay, Interruption in Service. A failure, delay, or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made for same) shall not be construed to be an eviction of Lessee, grounds for any diminution or abatement of rent, or grounds for any claim by Lessee under this Agreement for damages, including any consequential damages.

ARTICLE 27. ABATEMENT

If, at any time, Lessee becomes entitled to an abatement of rent by this Agreement or otherwise, County shall abate the rent on an equitable basis taking into consideration the amount and character of the space, the reasonable use of which is denied Lessee as compared with the entire Premises, and the period of time for which such reasonable use is denied to Lessee.

ARTICLE 28. AIRPORT SECURITY

28.1 Airport Security Program and Aviation Regulations. Lessee shall observe all security requirements and other requirements of the FAA regulations applicable to Lessee, including but

not limited to, all regulations of the United States Department of Transportation (USDOT), FAA, and the Transportation Security Administration (TSA). Lessee shall comply with County's Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and with such other rules and regulations as may be reasonably prescribed by County, including any regulations pertaining to emergency response training, and shall take such steps as may be necessary or directed by County to ensure that Lessee's Parties observe these requirements. Lessee shall be responsible for the care and maintenance of the Airport security barriers and devices as a permanent improvement to the Premises. All costs associated with the construction and repair of the security fence, barriers, access control and monitoring system, including, but not limited to, gates, signs, or locks (keying and re-keying), which are installed now or in the future at the Premises, shall be borne by Lessee. If required by the Aviation Department, Lessee shall conduct background checks of its employees in accordance with applicable federal regulations. If, as a result of the acts or omissions of Lessee or Lessee's Parties, County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the USDOT, the FAA, or the TSA, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of County, and/or any expense in enforcing County's Airport Security Program, then Lessee agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys' fees and all costs incurred by County in enforcing this provision. Lessee's payment shall be due within fifteen (15) days of written demand by County. Lessee shall rectify, to the satisfaction of the applicable enforcement agency, any security deficiency or other deficiency as may be determined as such by County or the USDOT, FAA, the TSA, or any other federal agency with jurisdiction. In the event Lessee fails to remedy any such deficiency, County may do so at the sole cost and expense of Lessee. Lessee shall pay County's costs within fifteen (15) days of written demand by County. County reserves the right to take whatever action it deems necessary, in its sole discretion, to rectify any security deficiency or other deficiency at Lessee's sole cost and expense.

28.2 Access to Security Identification Display Areas and Identification Media. Lessee shall be responsible for requesting the Aviation Department to issue airport issued identification media ("Airport Issued Identification Media") to all employees, including those who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, as designated in the Airport Security Program. In addition, Lessee shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the Airport Issued Identification Media for any Lessee's personnel transferred from the Airport or terminated from the employ of Lessee, and upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Lessee shall comply with the requirements of applicable Federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. Lessee shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require Lessee to conduct background investigations and to furnish certain data on its employees before the

issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

28.3 Operation of Vehicles on the AOA. Before Lessee shall permit any employee of Lessee or of any subconsultant/subcontractor or Sublessee to operate a motor vehicle of any kind or type on the AOA, Lessee shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of Lessee or of any subconsultant/subcontractor or sublessee operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department (unless escorted by an Aviation Department approved escort), which identification must be displayed as required by the Aviation Department.

28.4 Consent to Search/Inspection. Lessee's vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Lessee and its subconsultant/subcontractors and Sublessees shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. The foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts, and other unlawful activities at the Airport. For this reason, persons not executing such consent-to-search/inspection form shall not be employed by Lessee or by any subconsultant/subcontractor or Sublessee at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Lessee or by any subconsultant/subcontractor or Sublessee.

28.5 If any of Lessee's employees, or the employees of any of its subconsultants/subcontractors, or Sublessees are required in the course of the work to be performed under this Agreement to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed under Federal law, Lessee shall require such individual to execute a SSI Non-Disclosure Agreement promulgated by the Aviation Department before that individual may have access to or contact with SSI.

28.6 The provisions of Article 28 shall survive the expiration or any other termination of this Agreement.

ARTICLE 29. ENVIRONMENTAL COMPLIANCE AND ENVIRONMENTAL CONTAINMENT AND REMOVAL

29.1 Environmental Assessment. The Parties acknowledge that Lessee will be obtaining an Environmental Assessment of the Premises during the Due Diligence Period.

The Aviation Department and Lessee will mutually agree on the scope of the Environmental Assessment and the firm ("Environmental Firm") selected to perform the Environmental Assessment referenced in **Exhibit C**. If the Parties are unable to reach mutual agreement within ten (10) days of County's written request on either the scope of the Environmental Assessment or the Environmental Firm, the Aviation Department

shall select the Environmental Firm and shall determine the scope of the Environmental Assessment.

Lessee, the Aviation Department, and applicable County agencies shall be given five (5) days advance written notice by the Environmental Firm of commencement of the work scope activities of the Environmental Assessment so that they shall have an opportunity to review the assessment activities.

If the Aviation Department or any of the other County agencies or Lessee disagree with any of the findings of the Environmental Assessment, such concerns and areas of disagreement ("Comments in Disagreement") shall be provided, in writing, by the disagreeing Party to the other within sixty (60) days following the completion of the Environmental Assessment and its receipt by County and Lessee. The Environmental Assessment, together with Comments in Disagreement, shall be initialed by Lessee and the Director of Aviation and kept on file at the Aviation Department.

The Environmental Assessment shall not be deemed to in any way release any Party from any liability under Applicable Laws or in any way to limit the regulatory powers of County or any of its agencies.

The Aviation Department, other applicable County agencies, and the Environmental Firm shall have entry to the Premises at all times for the purpose of performing the assessment, and the right to perform such examinations, inspections, soil borings, other tests, inquiries, and surveys necessary or desirable in the performance of the Environmental Assessment, and to inspect and copy all relevant records of Lessee.

29.2 Environmental Responsibilities. Lessee shall at all times be responsible for any Recognized Environmental Condition and any release, discharge, or disposal of any Material at the Premises or upon any other Airport property occupied, utilized or accessed by Lessee in any manner whatsoever, that was caused by Lessee or any of Lessee's Parties, or caused by any trespasser on the Premises at any time that Lessee was in possession of the Premises. Lessee shall, at Lessee's sole expense, and upon County's demand or demand of any local, state, or federal regulatory agency, immediately contain, remove, abate, and remediate any Recognized Environmental Conditions and Materials released, discharged, or disposed of on the Premises by Lessee, Lessee's Parties or Lessee's actions or upon any other Airport property occupied, utilized or accessed by Lessee or Lessee's Parties, in any manner whatsoever. If Lessee does not take action immediately to have such Recognized Environmental Conditions and Materials contained, removed, abated, and remediated County or any of its agencies may, upon reasonable notice to Lessee (which notice must be written unless an emergency condition exists, as determined by County, at its sole discretion), undertake the containment, removal, abatement, or remediation of the Recognized Environmental Conditions and Materials at Lessee's sole cost and expense; however, any such action by County or any of its agencies will not release Lessee from its obligations under this or any other provision of this Agreement or as imposed by law. Lessee shall pay all costs incurred by County within fifteen (15) days after written demand by County. No action taken by either Lessee or County to contain, remove, abate, or remediate Recognized

Environmental Conditions, or a release, discharge, or disposal, whether such action is taken voluntarily or not, is an admission of liability as to the source of, or the person who caused, the Recognized Environmental Conditions or a release, discharge, or disposal. Lessee shall contain, remove, abate, and remediate any impacted property as aforesaid, in accordance with timetables acceptable to County and within Applicable Laws.

29.3 No Release from Other Liability. Any Environmental Assessment obtained by either County or Lessee does not in any way release any Party from any liability under Applicable Laws or in any way limit the regulatory powers of County or any of its agencies.

29.4 Completion of Environmental Documents. Lessee shall complete the form attached hereto as **Exhibit D** with respect to matters pertaining to the Premises and shall deliver same to County contemporaneously with its execution of this Agreement. At any time as may be requested by the Aviation Department, Lessee shall provide an accurate and complete update of the Premises as to the matters set forth in **Exhibit D**. Lessee shall provide the Aviation Department, if requested at any time, with a list of all hazardous, bio-hazardous, or other Materials stored, used, handled, generated, released, discharged, or disposed of on or transported to or from the Premises.

29.5 Compliance. Lessee shall comply with Applicable Laws and the requirements of any Development Order covering the Airport issued to County under Chapter 380, Florida Statutes, including, without limitation, those addressing the following:

- (a) Proper protection, use, storage, treatment, and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials.
- (b) Proper protection, use, disposal, and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms on the Premises, if applicable. Lessee shall have in place, and make available to the Aviation Department for review, all required environmental permits, licenses, approvals, and documents including, but not limited to site specific Storm Water Pollution Prevention Plan, and a Spill Prevention and Countermeasures Plan.
- (c) Adequate inspection, licensing, insurance, and registration of existing or future storage tanks, storage systems, and ancillary facilities to meet all County, local, state, and federal standards, including the installation and operation of adequate monitoring devices and release detection systems.
- (d) Adequate facilities on the Premises for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper storage, handling, use, and disposal thereof.

(e) Compliance with reporting and notification requirements of Title III of the Superfund Amendment, Chapters 373, 376, 403 of the Florida Statutes and rules promulgated thereunder, and Chapter 27 of the Broward County Code of Ordinances, as applicable and as such laws may be amended from time to time.

29.6 Release or Discharge of Materials. Lessee is responsible for the release or discharge of any Materials and the associated impacts to the environment from such a release of Materials, which release was directly or indirectly caused by: (a) Lessee or any of Lessee's Parties that occurs at the Premises or occurs upon any other Airport property whether before or after the Effective Date; or (b) any trespasser on the Premises at any time during the Term or at any time Lessee is in possession and control of the Premises, whether before or after the Effective Date, that is in an amount that violates any federal, state, County, or local law, rule, or regulation or violates an order or directive of any federal, state, or local court, or governmental authority. At Lessee's sole expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, Lessee shall immediately contain, remove, abate, and remediate any release or discharge Materials and associated impacts to the environment to meet the requirements of Applicable Laws to the Aviation Department's and County's satisfaction.

29.7 Environmental Assessment and Remediation. County may require Lessee to actively perform and complete an environmental assessment and remediation that may be required as the result of any release or discharge of Materials as referenced above. Such activities will be performed at Lessee's sole expense, despite the acceptance of any site into any government funded cleanup program that might not require immediate assessment or remediation based on a site ranking or scoring within that program. If County requires environmental assessment or remediation of any such site, then upon County's demand and at Lessee's sole expense, Lessee shall immediately contain, remove, abate, and remediate the site to the Aviation Department's and County's satisfaction. Lessee shall assess and remediate any impacted property in accordance with timetables acceptable to County and within Applicable Laws so as to achieve a timely remediation of the site that does not impede any County development or other County plans.

29.8 Containment, Removal, or Abatement of Remaining Materials. If Lessee does not immediately contain, remove, and abate any release or discharge of Materials and the associated impacts to the environment, as required by this Article 29, County or any of its agencies may, upon reasonable notice to Lessee (which notice will be written unless an emergency condition exists), undertake the containment, removal, or abatement of the Materials and all other appropriate actions at Lessee's sole cost and expense and Lessee shall pay all costs incurred by County within fifteen (15) days after written demand by County. However, any such actions by County or any of its agencies shall not release Lessee from its obligations under this or any other provision of this Agreement or as imposed by Applicable Laws. Any action taken by either Lessee or County to contain, remove, or abate a release or discharge of Materials, whether such action is taken voluntarily or not, is not an admission of liability as to the source of, or the person who caused the pollution or its release. Lessee shall assess or remediate any impacted property in accordance with timetables reasonably acceptable to County and within Applicable Laws.

29.9 Reports or Notices of Releases or Discharges. Lessee shall provide the Aviation Department with reporting or notice of releases or discharges of Materials occurring at any area used by Lessee, Lessee's Parties, or occasioned due to Lessee's operations at the Airport, which notices will be provided in accordance with the requirements of the Aviation Department's policies and procedures and Applicable Laws. Lessee shall maintain a log of all such reports and notices and shall also maintain all records required by all Applicable Laws and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws. Upon request by the Aviation Department, Lessee shall make all documentation required by this Section 29.9 available for review by County's representatives.

29.10 Reports or Notice of Spills, Leaks, or Discharges. As required by Applicable Laws, Lessee shall provide the federal, state, County and local regulatory agencies with reports or notice of spills, releases, leaks or discharges (collectively, "release") of Materials on the Premises or on Airport property that exceed an amount required to be reported to any local, County, state, or federal regulatory agency under all Applicable Laws, which reports or notice will be in accordance with all Applicable Laws. Lessee shall further provide the Aviation Department and the County Environmental Protection and Growth Management Department (or successor agency) with written notice within one (1) day following commencement of same, of the containment, removal, or abatement measures, remediation efforts or monitoring activities to be effected on the Premises. Lessee shall have an updated contingency plan in effect relating to releases that provides minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of releases, and transfer and disposal of regulated Materials and other Materials. The contingency plan will describe design features, response actions and procedures to be followed in case of releases or other accidents involving hazardous substances, hazardous materials, bio-hazardous materials, petroleum products or other Materials. Lessee shall permit entry at all reasonable times of inspectors of County's Environmental Protection and Growth Management Department (or successor agency) and of other regulatory authorities with jurisdiction.

29.11 Right to Inspect Documents Relating to Environmental Conditions. The Aviation Department, upon written notice to Lessee, may inspect all documents relating to the environmental condition of the Premises, including without limitation, the release of any Materials or any Recognized Environmental Conditions on the Premises, or any curative, remediation, or monitoring efforts. The Aviation Department shall also have the right, upon written notice to Lessee, to inspect any documents Lessee must maintain under all Applicable Laws or any development order issued to County pertaining to the Airport, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental assessments, and sampling and test results. If requested at any time by the Aviation Department, Lessee shall provide the Aviation Department with copies of any such documents at Lessee's sole cost. Lessee shall allow inspection of the Premises by appropriate federal, state, County, and local agency personnel in accordance with all Applicable Laws and as required by any development order issued to County pertaining to the Airport.

29.12 County's Removal of Materials. If County arranges for the removal of any Materials or

the associated impacts to the environment from a release of Materials which release was directly or indirectly: (a) caused by Lessee or any of Lessee's Parties or that occurs at the Premises or occurs at any other Airport property after the Effective Date; or (b) caused by any trespasser on the Premises at any time during the Term of this Agreement or during any period that Lessee was in possession and control of the Premises before or after the Effective Date, Lessee shall pay all costs of the removal that are incurred by County and such payment shall be made within fifteen (15) days of County's written demand.

29.13 Duty to Cooperate. Nothing herein shall release Lessee of its general duty to cooperate with County in ascertaining the source and in containing, removing, abating and remediating any Materials. The Aviation Department shall cooperate with Lessee with respect to Lessee's obligations under these provisions, including making Public Records available to Lessee in accordance with Florida law. However, nothing herein releases Lessee of its obligations in this Agreement or creates any 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 all Applicable Laws. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Lessee, and the federal, state, local, and other County agencies and their employees, contractors, and agents, at all times in accordance with all Applicable Laws, shall have the right to enter the Premises to exercise police powers and governmental powers and to conduct all appropriate environmental assessments, inspections, testing, sampling, examinations, and audits as deemed appropriate by the Aviation Department.

29.14 Facility Inspections and Updated Initial Environmental Assessment. County may require Lessee to conduct and allow County to conduct facility inspections of the Premises and to provide an update to the Initial Environmental Assessment of the Premises, at Lessee's sole expense: (a) prior to any assignment of this Agreement; or (b) at any time during the Term of this Agreement.

29.15 Rent Abatement for Removal of Materials. If County arranges for the removal of Materials on the Premises that are not Lessee's responsibility to rectify, and if any such clean-up activities by County prevents Lessee from using the Premises for the purposes intended, the rent will be abated in accordance with Article 27, hereof, from the date that the use of the Premises for its intended purposes is precluded and until the Premises again become available for Lessee's use. County shall use reasonable efforts to not disrupt Lessee's business. In no event is Lessee entitled to any amount on account of lost profits, lost rents, or other damages as a result of County's clean-up activities and any disruption caused thereby to Lessee's operations.

29.16 Exit Environmental Assessment. No less than one (1) year before the Termination Date, or within one hundred eighty (180) days after the date of termination if the Agreement is terminated earlier under the provisions of the Agreement, whichever is earlier, Lessee and County shall conduct an inspection of the Premises and Lessee shall cause to be performed an exit environmental assessment of the Premises ("Exit Environmental Assessment") at Lessee's sole expense which shall include, but is not limited to, soil and water sampling and analysis

consistent with a Phase II Environmental Assessment. Lessee must develop the scope of the work for the Exit Environmental Assessment in cooperation with the Aviation Department. If the Exit Environmental Assessment or inspections indicate that further actions should be conducted, then County may require that such actions be conducted by Lessee at Lessee's sole expense to County's satisfaction. Nothing herein will limit County's right of entry onto the Premises under other provisions of this article or of this Agreement, or under its regulatory powers. County shall have the right to split any soil or water samples obtained by Lessee, and Lessee shall have the right to split any soil or water samples obtained by County.

(a) If County performs the inspections or the Exit Environmental Assessment due to Lessee's denial or failure to perform as required in this provision, then Lessee will reimburse County for the cost of such Exit Environmental Assessment and inspections plus any administrative costs, within fifteen (15) days after written demand.

(b) If an Exit Environmental Assessment discloses Recognized Environmental Conditions or Materials on the Premises caused by Lessee or Lessee's Parties beyond those levels established in the Initial Environmental Assessment's baseline, Lessee shall be required to complete all required environmental remediation in compliance with Applicable Laws.

29.17 No Limitation of Rights. All rights and remedies contained in the sections and subparagraphs of this Article 29 are cumulative and are not in limitation of any other rights or remedies under this Article 29 or any other provision of this Agreement.

29.18 Survival. The provisions of this Article 29 shall survive the expiration or any other termination of this Agreement.

ARTICLE 30. QUIET ENJOYMENT

Lessee, upon paying the required rent and performing and observing all the terms and conditions of this Agreement, shall peaceably and quietly have, hold, and enjoy the Premises during the Term, subject to all provisions of this Agreement.

ARTICLE 31. SECURITY DEPOSIT

31.1 In addition to the Letter of Credit required in Article 7, within forty-eight (48) hours after approval of this Agreement by the Board, Lessee shall provide County with a letter of credit as security for Lessee's obligations required in this Agreement (the "Security Deposit Letter of Credit," which term shall be deemed to include each replacement thereof). The Security Deposit Letter of Credit shall (a) be irrevocable, (b) be issued by a federally or state chartered bank (the "Issuer") reasonably acceptable to County, (c) be in an initial amount of Eighty-eight Thousand Eighty-four Dollars (\$88,084.00) (i.e., equal to three (3) monthly installments of rent, together with applicable sales tax), and shall thereafter be maintained with an undrawn balance in an amount not less than the amount required in this section, (d) have an expiration date no earlier than the last day of the current Lease Year, and (e) be in a form reasonably acceptable to County.

The Security Deposit Letter of Credit shall provide that it may be drawn against, in whole or in part, in accordance with the procedures of this Article 31 by presentation to the Issuer of a sight draft, with no other requirements as a condition of drawing on the Security Deposit Letter of Credit. One hundred and twenty (120) days prior to the expiration date of the Security Deposit Letter of Credit, Lessee shall provide County with reasonable evidence that Lessee has renewed the Security Deposit Letter of Credit for a period of no less than one (1) year from its then current expiration date in the amount required herein. The amount of change in the face amount of the Security Deposit Letter of Credit will be as indicated in this Article 31.

(a) The Security Deposit Letter of Credit shall be increased by Lessee to reflect any increases in rent within fourteen (14) days following any rent adjustment, and such increased Security Deposit Letter of Credit shall be provided by Lessee to the Aviation Department within fourteen (14) days following any rent adjustment. In addition, the Aviation Department, upon fourteen (14) days written notice to Lessee, may require an increase in the amount of the Security Deposit Letter of Credit up to an additional amount equal to five (5) additional months' rent installments due to increased obligations hereunder, or if upon a review of Lessee's payment or performance history at the Airport, the Aviation Department determines an increase is required. The increased Security Deposit Letter of Credit shall be provided to the Aviation Department within fourteen (14) days following a written notice to Lessee from the Aviation Department of a requirement to increase the Security Deposit Letter of Credit.

(b) The Security Deposit Letter of Credit must provide coverage from the Effective Date of this Agreement and must be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months thereafter. Any termination of the Security Deposit Letter of Credit without the written consent of the Aviation Department before the end of the aforesaid six (6) month period following the Termination Date shall be a default of this Agreement. A failure to renew a Security Deposit Letter of Credit, or to increase or replace the amount of the Security Deposit Letter of Credit, if required, shall entitle County to draw down the full amount of such Security Deposit Letter of Credit.

(c) The County shall not draw on the Security Deposit Letter of Credit without first giving Lessee written notice of its intent to draw sums under the Security Deposit Letter of Credit together with an explanation of the amount sought to be drawn and the basis for such draw with reasonable supporting documentation. County may draw on the Security Deposit Letter of Credit (i) if Lessee has failed to perform one or more of its obligations described in subsection (d) below, (ii) upon the occurrence of a bankruptcy petition involving Lessee, or (iii) upon cancellation or nonrenewal of the Security Deposit Letter of Credit as required by this Article 31. If any deficiencies in performance claimed by County in the notice are not cured within thirty (30) days after such notice to County's reasonable satisfaction, the draw on the Security Deposit Letter of Credit may be immediately submitted by County. Upon the occurrence of a bankruptcy event involving Lessee, or upon cancellation or nonrenewal of the Security Deposit Letter of Credit as

required in this Article 31, the draw on the Security Deposit Letter of Credit may be immediately submitted by County. Lessee hereby irrevocably directs the then Issuer of the Security Deposit Letter of Credit to honor any such draw immediately upon submission thereof by County. If County draws on the Security Deposit Line of Credit as authorized in this Article 31, Lessee shall replenish the funds drawn by County within three (3) days.

(d) The Parties acknowledge and agree that the Security Deposit Letter of Credit shall be security for the performance of the obligations set forth below:

- (i) Payment of all monies due to County; and
- (ii) Performance of all of Lessee's obligations to County.

31.2 In the alternative, Lessee may deliver to County, in lieu of the Security Deposit Letter of Credit, a security deposit in cash. Any cash security deposit shall be in the amount and subject to all the requirements of Article 31. If County draws down on the cash deposit as authorized in this Article 31, Lessee shall replenish the funds drawn by County within three (3) days. The security deposit shall not be returned to Lessee until six (6) months after the expiration or earlier termination of this Agreement and all obligations of this Agreement are performed and satisfied. County shall not pay interest on the security deposit.

ARTICLE 32. OTHER PROVISIONS

32.1 Interpretation. The 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.

32.2 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. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY**

TO CONTEST THE DEMAND FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

32.3 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.

32.4 Relationship of Parties. The relationship of County and Lessee hereunder is the relationship of lessor and lessee. Services provided by Lessee shall be subject to the supervision of Lessee and such services shall not be provided by Lessee or Lessee's Parties, as agents of County.

32.5 Third-Party Beneficiaries. Neither Lessee nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge 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.

32.6 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 34 of this Agreement, the provisions contained in Articles 1 through 34 shall prevail and be given effect.

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

32.8 Incorporation by Reference. Any and all Recital clauses and representations stated herein are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

32.9 Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Lessee.

32.10 Amendments Required by the Federal Government. In the event that the United States Government, or any of its departments or agencies require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Lessee shall consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required (collectively, a "Required Amendment"). Notwithstanding the foregoing, in the event any such Required Amendment would unreasonably interfere with the business operations of Lessee, then Lessee may refuse to consent to such Required Amendment, but Lessee must give immediate notice to County of any such refusal to consent and such notice must state with specificity the reasons for any such refusal. Upon the failure of Lessee to consent to any such Required Amendment, County shall have the right to immediately terminate this

Agreement and County shall be released and relieved of all liability under this Agreement. In the event of a termination under these provisions, Lessee will have no right to payment of any amounts under Section 32.19.

32.11 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

32.12 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision 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.

32.13 Civil Rights - General. Lessee shall comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from Federal assistance.

32.14 Civil Rights - Title VII Assurances. Lessee shall abide by and comply with the nondiscrimination requirements set forth in **Exhibit B** to the extent same are applicable by law, rule, or regulation, or federal grant requirements.

32.15 Nondiscrimination. Neither Party to this Agreement shall 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.

Lessee shall include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR Parts 23 and 26.

32.16 Federal Fair Labor Standards Act (Federal Minimum Wage). This Agreement incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Lessee has full responsibility to monitor compliance to the referenced statute or regulation. Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

32.17 Occupational Safety and Health Act of 1970. This Agreement incorporates by reference

the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Lessee retains full responsibility to monitor its compliance and its Sublessees' and subcontractors' compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

32.18 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 non-resident 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 protest thereto.

32.19 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.

32.20 Waiver of Claims. Lessee hereby waives any claim against County and its officers, commissioners, and employees for any consequential damages, including, but not limited to, any loss of business or anticipated profits. No officer, commissioner, or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement, including as amended, due to an actual or alleged breach of this Agreement or the execution or attempted execution of this Agreement.

32.21 Successors and Assigns Bound. Without waiving any of the requirements of Article 19, this Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the Parties.

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

32.23 Prevailing Wage Requirement. If applicable, Lessee shall fully comply with the requirements of Section 26-5, Broward County Code of Ordinances including as set forth in **Exhibit E** and **Exhibit F**.

32.24 Written Approvals. All notices, approvals and consents required to be obtained hereunder must be in writing to be effective.

32.25 Force Majeure. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, or by epidemic or pandemic, order, proclamation, regulation, ordinance of any governmental agency, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the Party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed. The duration of the excused non-performance shall be subject to the written approval of the Party that is not prevented from performance by the force majeure event.

32.26 MOA for Land Use Controls. To the extent applicable, this Agreement is subject to the Memorandum of Agreement for Land Use Controls, dated July 1, 2015, between County and the Division of Waste Management, Florida Department of Environmental Protection, recorded on July 23, 2015, at instrument # 113129335 of the Official Records of Broward County, Florida, which enables County to assess and remediate contamination at the Airport consistent with applicable standards and procedures.

32.27 Use of County Logo. Lessee shall not use County's name, logo, or otherwise refer to this Agreement in marketing or publicity materials without prior written consent from County.

32.28 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.

32.29 Authorized Representatives. Unless otherwise expressly stated herein or in the applicable Procurement Code, Code of County Ordinances, or Administrative Code of Broward County, staff of the Broward County Aviation Department may act on behalf of County to exercise the authority and powers of County under this Agreement.

32.30 Public Records. To the extent Lessee is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Lessee shall:

- (a) Keep and maintain public records required by County to perform the services under this Agreement;
- (b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Laws;
- (c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Laws for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and
- (d) Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Lessee or keep and maintain public records required by County to perform the services. If Lessee transfers the records to County, Lessee shall destroy any duplicate public records that are exempt or confidential and exempt. If Lessee keeps and maintains public records, Lessee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Lessee to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under Applicable Laws.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Lessee will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Lessee contends, constitutes, or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Lessee must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 688.002 and stating the factual basis for same. In the

event that a third party submits a request to County for records designated by Lessee as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Lessee. Lessee shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

IF LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 359-6129, SCOOPER@BROWARD.ORG, 320 TERMINAL DRIVE, SUITE 200, FORT LAUDERDALE, FLORIDA 33315.

32.31 Survival. Upon termination or expiration of this Agreement, Lessee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

32.32 No Recordation of Lease; Memorandum of Lease. Neither Lessee nor any Sublessee may record this Agreement or any sublease of any of the Premises in the Official Records of Broward County, Florida. A violation of this section by Lessee will automatically void those provisions and portions of this Agreement which run to the benefit of Lessee. Lessee may record a Memorandum of Lease in the Official Records of Broward County, Florida, which Memorandum will only set forth: (a) the names of the Parties; (b) the Effective Date and Term of the Lease; and (c) the legal description of the Premises. The Director of Aviation is authorized to execute a Memorandum of Lease on behalf of the County.

32.33 Right to Develop, Expand, and Improve Airport. County reserves the right to further develop and improve the Airport, including but not limited to, all Public Landing Areas, as it sees fit, regardless of the desires or views of Lessee, and without interference or hindrance from Lessee, subject to Article 10. County shall have the right to develop, maintain, and operate the Airport 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 Airport improvements, alterations, or modifications. If at any point County seeks federal, state, or local government approval regarding the operation or modification of the Airport, 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.

32.34 County as Landlord and Police and Regulatory Powers. County is the public body, agency, or instrumentality that is a Party to this Agreement and for which this Agreement is to be performed. In all respects, County's performance under this Agreement is pursuant to County's position as landlord. If County exercises its regulatory authority as a governmental body, the

exercise of such regulatory authority and the enforcement of Applicable Laws shall have occurred pursuant to County's regulatory authority as a governmental body, and shall not be attributable in any manner to County as a Party to this Agreement. 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.

32.35 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 the county health department.

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

32.37 Damage to Airport Facilities. Lessee is responsible for any and all damage to the Airport caused by the negligence of Lessee, its agents, employees, contractors, subcontractors, or invitees including, but not limited to, damage to terminal areas, ramp and Taxiway areas, engine run-up areas, Runways, hangar facilities and any and all areas where any activities are performed by Lessee.

32.38 Airport Issued Identification Media and Emergency Response Training. All Lessee's Parties shall obtain any required Airport Issued Identification Media and complete any emergency response training required by Section 2-43 of the Broward County Code of Ordinances. Lessee shall strictly comply with the requirements of Section 2-43 of the Broward County Code of Ordinances, including the requirement that Lessee compensate its employees, agents, representatives, contractors, and subcontractors for time spent completing the emergency response training.

32.39 Parental Guaranty. Lessee shall deliver to County a Parental Guaranty made by American Corporate Airport Partners, LLC, a Delaware limited liability company in the form attached as **Exhibit J**. The Parental Guaranty shall remain in effect for the Term of this Agreement or until all

of Lessee's payment obligations hereunder have been satisfied to County's satisfaction, whichever is the last to occur.

ARTICLE 33. REPRESENTATIONS AND WARRANTIES

33.1 Representation of Authority. Lessee represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable agreement of Lessee, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Lessee has with any third party or violates any Applicable Laws. Lessee further represents and warrants that execution of this Agreement is within Lessee's legal powers, and each individual executing this Agreement on behalf of Lessee is duly authorized by all necessary and appropriate action to do so on behalf of Lessee and does so with full legal authority.

33.2 Solicitation Representations. Lessee represents and warrants that all statements and representations made in Lessee's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during any evaluation process, were true and correct in all material respects when made and are true and correct in all material respects as of the Effective Date of this Agreement, unless otherwise expressly disclosed by Lessee.

33.3 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.

33.4 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. 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.

33.5 Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Lessee represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Lessee represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Lessee represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

33.6 Claims Against Lessee. Lessee represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Lessee, threatened against or affecting Lessee, the outcome of which may (a) affect the validity or enforceability of this Agreement,

(b) materially and adversely affect the authority or ability of Lessee to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Lessee or on the ability of Lessee to conduct its business as presently conducted or as proposed or contemplated to be conducted.

33.7 Warranty of Performance. Lessee represents and warrants it possesses the knowledge, skill, experience, and financial capability required to perform and provide its obligations and responsibilities required by this Agreement and that each person and entity that will perform on behalf of Lessee under this Agreement is duly qualified to do so by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render performance. Lessee further represents and warrants that its performance under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such performance shall equal or exceed prevailing industry standards for the provision of such services.

33.8 Breach of Representations. Lessee acknowledges that County is materially relying on the representations, warranties, and certifications of Lessee stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Lessee; and (c) set off from any amounts due Lessee the full amount of any damage incurred.

33.9 No Set Off. Lessee represents that, through the date it has executed this Agreement, Lessee has no claims against County concerning any of the matters covered by this Agreement, and has no right of set off or counterclaims against any of the amounts payable by Lessee to County under this Agreement.

33.10 Environmental Disclosure. Lessee represents that the matters disclosed in **Exhibit D** are accurate and complete as of the date of execution of this Agreement.

33.11 Verification of Employment Eligibility. Lessee represents that Lessee and each Sublessee have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Lessee violates this section, County may immediately terminate this Agreement for cause and Lessee shall be liable for all costs incurred by County due to the termination.

33.12 Prohibited Telecommunications Equipment. Lessee represents and certifies that Lessee and each Sublessee 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 each Sublessee shall not provide or use such covered telecommunications equipment, system, or services during the Term of this Agreement.

ARTICLE 34. ENTIRE AGREEMENT

This Agreement consists of Articles 1-34, together with **Exhibits A, B, C, D, E, F, G, H, I, and J** attached hereto, and constitutes the entire agreement of the Parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by County's and Lessee's duly authorized representatives. No representations or warranties are binding upon County unless expressed in writing in this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

DRAFT

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 _____, 20__, and LESSEE, signing by and through its authorized representative.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

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
Aviation Office
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Telephone: (954) 359-6100

By _____
Sharon V. Thorsen (Date)
Senior Assistant County Attorney

SVT/ch
ACAP lease
05/26/2022
80071.0115

**AGREEMENT OF LEASE BETWEEN BROWARD COUNTY
AND ACAP BROWARD COUNTY, LLC**

LESSEE

ATTEST:

ACAP Broward County, LLC

Secretary

By: _____

Print Name: _____

Title: _____

(CORPORATE SEAL) ____ day of _____ 20

WITNESSES:

Signature:

Print Name:

Signature:

Print Name:

EXHIBIT A - PARCEL

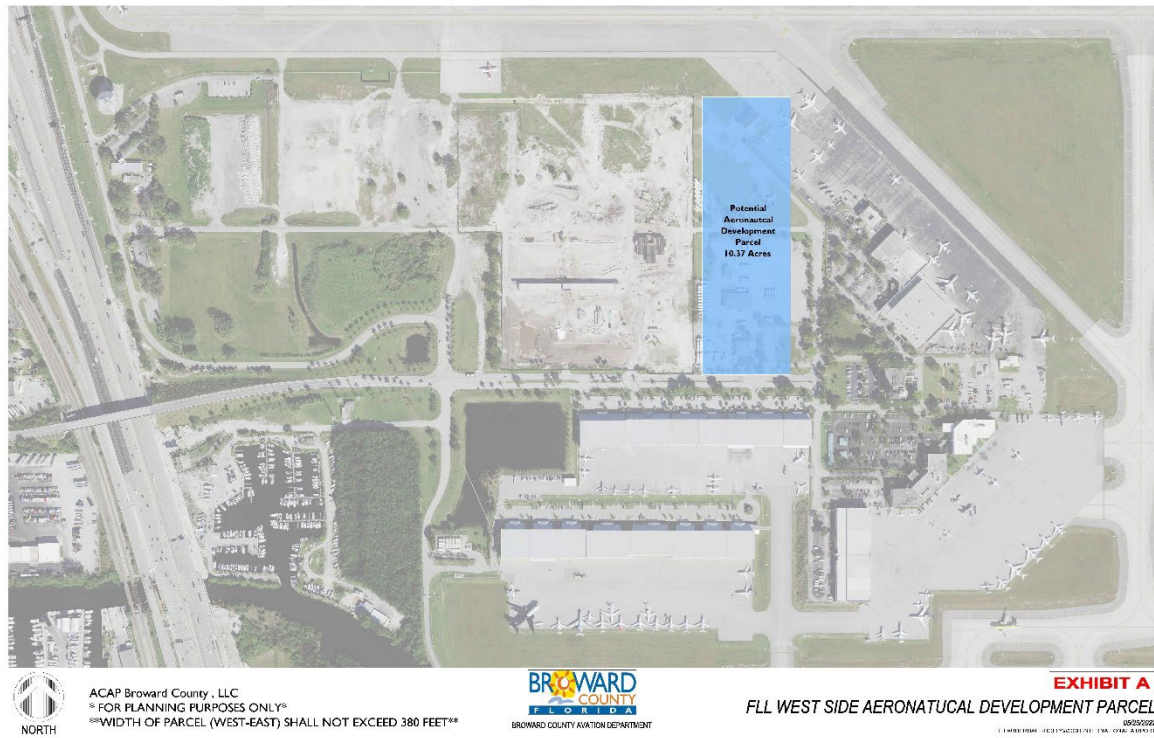


EXHIBIT B - NONDISCRIMINATION REQUIREMENTS

I. During the performance of this Agreement, Lessee shall comply, and ensure its personal representatives, sublessees, assigns and successors in interest comply, with the following provisions and agrees as follows:

(a) Compliance With Regulations. Lessee shall comply with the Regulations relative to nondiscrimination in Federally Assisted Programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(b) Nondiscrimination. Lessee shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of contractors or subcontractors, including procurement of materials and leases of equipment. Lessee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitation for Subcontracts, Including Procurement of Materials and Equipment. In all solicitation either by competitive bidding or negotiation made by Lessee for work to be performed hereunder, including procurement of materials or leases of equipment, each potential contractor, subcontractor or supplier shall be notified by Lessee of Lessee's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.

(d) Information and Reports. Lessee shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by County or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish this information, Lessee shall so certify to County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of Lessee's noncompliance with the nondiscrimination provisions of this contract, County shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: (1) withholding of payments under the contract until there is compliance, and/or (2) cancellation, termination, or suspension of the contract, in whole or in part. In the event of cancellation or termination of the contract (if such contract is a lease), County shall have the right to re-enter the Premises as if said lease had never been made or issued.

These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

(f) Incorporation of Provisions. Lessee shall include the provisions of paragraphs (a) through (e), above, in every contract or subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Lessee shall take such action with respect to any contract, subcontract, or procurement as County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Lessee becomes involved in, or is threatened with, litigation with a contractor, subcontractor or supplier as a result of such direction, Lessee may request County to enter into such litigation to protect the interests of County and, in addition, Lessee may request the United States to enter into such litigation to protect the interests of the United States.

(g) Lessee, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.

(h) Lessee, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the premises and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

II. During the performance of this contract, Lessee, for itself, its sublessees, its personal representatives, assignees and successors in interest agrees as follows:

Lessee agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. The Lessee agrees

that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Lessee agrees that it will require its covered suborganizations to provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

Lessee agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, County or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Lessee agrees that state or County affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. Lessee agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

If required by 14 CFR Part 152, Lessee shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. Lessee shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

If Lessee is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity under Part 152, then Lessee shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Lessee shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

Lessee shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Lessee shall require its covered suborganizations to keep similar records as applicable.

Lessee shall, if required by Part 152, annually submit to County the reports required by Section 152.415 and Lessee shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to the Lessee who shall, in turn, submit same to County for transmittal to the FAA.

III. Lessee, for itself, its personal representatives, sublessees, assignees and successors in interest agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, gender,

national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participating in any activity conducted with or benefiting from Federal assistance. This obligation remains in effect during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the Party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. The Lessee's obligation shall be in effect from bid solicitation period, application process, including all negotiations through the completion of the contract.

IV. Lessee shall not discriminate on the basis of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the performance of this contract. Failure by Lessee to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate.

EXHIBIT C - GENERAL OUTLINE FOR INITIAL ENVIRONMENTAL ASSESSMENT

The purpose of the environmental testing activities is to establish the environmental conditions of the property. At a minimum, the initial stages of the process should include sufficient non-intrusive activities to identify the current and historical use of the property, the regulatory compliance record of the property, and any other information deemed necessary to evaluate the potential impacts from hazardous substances, hazardous materials, and petroleum products to soil, surface water, and groundwater at the site. These nonintrusive activities should be consistent with methodologies outlined in ASTM E1527-13 Standard Practice for Phase 1 Environmental Site Assessments.

Information identified during the initial Phase 1 stage will be used to make recommendations for Phase 2 testing activities. Prior to implementation, these recommendations must be reviewed by Aviation Department staff. The depth and breadth of these activities will be dependent on the findings of the Phase 1 activities, and may include, but not be limited to, the installation of soil borings and monitor wells; soil screening; and chemical analysis of soil, surface water, and groundwater samples.

Should the Phase 1 activities identify no Recognized Environmental Conditions, sufficient testing will still be required to establish a quantitative baseline of the site's soil, surface water, and groundwater conditions against which future impacts can be measured.

EXHIBIT D - ENVIRONMENTAL DOCUMENTS

Company Name:

Mailing Address:

Street or Post Office Box

City: _____ State: _____ Zip Code: _____

Name of Environmental Representative: _____

Cell Phone Number: _____

Email Address: _____

Type of Agreement (Check One):

() Airline Service Provider Agreement

() Terminal Building Lease Agreement

() Field Usage Agreement

() Meals Aloft Permit

() Agreement of Lease

() Other _____

Describe the activities performed and/or services provided under this agreement:

Does the company use any gas, oil or other environmentally sensitive products in the operation of your business? Explain in detail.

Does the company use any equipment or vehicles that use gas, oil or other environmentally sensitive products? Explain in detail.

Does the company perform fueling? Yes ___ No ___

Does the company use a vendor to perform fueling? Yes___ No___

If yes, what is the name and contact information of the fueling vendor?

Does the company perform aircraft or equipment maintenance? Yes ___ No ___

Does the company use a vendor for aircraft or equipment maintenance? Yes___ No___

If yes, what is the name and contact information of the maintenance vendor?

Does the company wash the exterior of planes? Yes ___ No ___

Does the company use a vendor to wash the exterior of planes? Yes___ No___

If yes, what is the name and contact information of the washing vendor?

Does the company have the following documents? Please provide a copy for the County's review:
If not applicable, denote "NA."

1. Best Management Plan, dated _____
 2. Storm Water Pollution Prevention Plan, dated _____
 3. Spill Prevention Control and Countermeasures Plan, dated _____
 4. Hazardous Materials Plan, dated _____
 5. Other applicable environmental plans:
-

Is the company required to file the SARA Title III Reporting? Yes ___ No ___

If Yes, was last filed on (date) _____

Does the company generate or store hazardous waste or hazardous materials pursuant to 40 CFR 261?

Yes ___ No ___.

If Yes, the status is _____ conditionally exempt; _____ small; _____ large quantity generator.

If required, reports were filed on (date) _____.

If Yes, what types of hazardous waste or materials do you generate or store?

Please provide all data sheets for any products used in cleaning or maintenance.

The County, State, or Federal governments issued to the Company the following environmental licenses and/or permits: (These licenses/permits include, but are not limited to, storage tanks, hazardous material, air, solid waste, hazardous waste, industrial wastewater pretreatment, and storm water). Provide copies of all environmental licenses and permits.

Permit Name/Type	License No.	Date Expires
------------------	-------------	--------------

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

EXHIBIT E -PREVAILING WAGES

Prevailing Wage Rates: Pursuant to Section 26-5, Broward County Code of Ordinances:

1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
2. All mechanics, laborers, and apprentices employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. Lessee shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
3. If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
4. In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by Lessee, or any subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to Lessee terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, Lessee and its sureties shall be liable to County for any excess costs occasioned to County thereby.
5. These provisions shall apply to Lessee, its contractors, and any subcontractors.
6. Lessee shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
7. Lessee shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Section 26-5, Broward County Ordinances. The Statement shall be in the form attached as **Exhibit F**.
8. The Contract Administrator may withhold or cause to be withheld from Lessee as much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by Lessee or any subcontractor on the work, the full amount of wages required by this Agreement.

9. If Lessee or any contractor or subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to Lessee, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

**EXHIBIT F - STATEMENT OF COMPLIANCE
(PREVAILING WAGE RATE ORDINANCE)**

Contract No. _____ 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 _____, 20____,

Lessee

By _____
(Signature)

By _____
(Name and Title)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ by _____
(name of person acknowledging), who is personally known to me or who has produced
_____ (type of identification) as identification.

(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 G - INSURANCE REQUIREMENTS

EXHIBIT G INSURANCE REQUIREMENTS LEASE FOR MAINTENANCE HANGAR BY ACAP

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form ☒ Commercial General Liability ☒ Premises-Operations ☒ [x] XCU Explosion/Collapse/Underground ☒ Products/Completed Operations Hazard ☒ Contractual Insurance ☒ Broad Form Property Damage ☒ Independent Contractors ☒ Personal Injury ☒ [x] mobile equipment Per Occurrence or Claims-Made: ☒ Per Occurrence ☐ Claims-Made Gen'l Aggregate Limit Applies per: ☐ Project ☐ Policy ☐ Loc. ☐ Other _____	☒	☒	Bodily Injury Property Damage Combined Bodily Injury and Property Damage Personal Injury Products & Completed Operations	\$5 mil \$5 mil	\$5 mil
AUTO LIABILITY ☒ Comprehensive Form ☒ Owned ☒ Hired ☒ Non-owned ☒ Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	☒	☒	Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined Bodily Injury and Property Damage	\$5 mil airside \$300k landside	
☐ EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: ☐ Per Occurrence ☐ Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	☒	☒			
☒ WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	☒	Each Accident	STATUTORY LIMITS	
☒ EMPLOYER'S LIABILITY			Each Accident	\$1mil	
☒ POLLUTION / ENVIRONMENTAL LIABILITY COSTS including cleanup and remediation	☒	☒	If claims-made form: Extended Reporting Period of: *Maximum Deductible: Extended Reporting Period of: *Maximum Deductible: *Maximum Deductible:	2 years \$25k 2yrs \$25k \$10 k	\$5 mil
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Vendor 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 Aviation Department Ft. Lauderdale-Hollywood International Airport 320 Terminal Drive Suite 200 Fort Lauderdale, FL 33315 GA			 Digitally signed by Tracy Meyer Date: 2022.04.08 07:30:37 -04'00'		

EXHIBIT H - PERFORMANCE BOND

BY THIS BOND, We _____, as Principal, hereinafter called Contractor, and _____, as Surety, are bound to _____, as Obligee, (hereinafter called "Lessee"), in the amount of _____ Dollars (\$_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: _____, dated the _____ day of _____, 20____, with Lessee, which Contract Documents are by reference incorporated herein and made a part hereof, and may specifically include provision for Liquidated Damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

Performs the Contract between Contractor and Lessee for construction of _____, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and,

Pays Lessee all losses, Liquidated Damages, expenses, costs and attorney's fees including appellate proceedings, that Lessee sustains as a result of default by Contractor under the Contract; and,

Performs the guaranties of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever Contractor shall be, and declared by Lessee to be, in default under the Contract, Lessee having performed Lessee obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

Complete the Project in accordance with the terms and conditions of the Contract Documents; or

Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if Lessee elects, upon determination by Lessee and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Lessee, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance

of the Contract Price," as used in this paragraph, shall mean the total amount payable by Lessee to Contractor under the Contract and any amendments thereto, less the amount properly paid by Lessee to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Lessee named herein and Broward County.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this _____ day of _____, 20____.

ATTEST:

Secretary

(CORPORATE SEAL)

(Name of Contractor)

By _____
(Signature and Title)

(Type Name and Title Signed Above)

IN THE PRESENCE OF:

Signature

Print Name

Signature

Print Name

SURETY:

By _____
Agent and Attorney-in-Fact

DUAL/ADDITIONAL OBLIGEE RIDER

THIS RIDER, executed simultaneously with and being part of those certain Performance and Payment Bonds (Bond No. _____) executed on the _____ day of _____ 20____, between _____, (Contractor), and _____, Surety, in favor of _____, (Lessee/Obligee):

THAT THE AFORESAID BOND SHALL BE AND IT IS AMENDED AS FOLLOWS:

1. The name of the Broward County, shall be and is hereby added to the bond as a named Obligee.
2. The rights of Broward County, as a named Obligee shall be subject to _____ or County, performing Lessee's obligations under the Contract; provided, however, that the aggregate liability of the Surety under said bond, to _____ and County, as their interests may appear, is limited to the penal sum of said bond.
3. Except as herein modified, the aforementioned bond shall be and remain in full force and effect.

SIGNED, SEALED AND DATED THIS _____ DAY OF _____, 20____.

SURETY

CONTRACTOR

By _____
Attorney-in-Fact

By _____
Title: _____

(Accompany this Rider with Attorney-in-Fact's authority from the Surety to execute Rider, certified to include the day of the Rider.)

EXHIBIT I - PAYMENT BOND

BY THIS BOND, we _____, as Principal, (hereinafter called "Contractor"), located at _____, phone _____, and _____, as Surety, located at _____, phone _____ under the assigned Bond Number _____, are bound to _____, as Obligee, hereinafter called Lessor, in the amount of _____ Dollars (\$_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: _____, dated the _____ day of _____, 20____, with Lessor for construction of _____, located at _____, which Contract Documents are by reference incorporated herein and made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

- 1) Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- a) A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, serve notice to Contractor that it intends to look to the bond for protection.
- b) A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall no earlier than 45 days, but within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, serve notice to Contractor and to the Surety, of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- c) No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions a) and b) have been given.
- d) Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this _____ day of _____, 20____.

ATTEST:

Secretary

(CORPORATE SEAL)

(Name of Contractor)

By _____
(Signature and Title)

(Type Name and Title Signed Above)

IN THE PRESENCE OF:

Signature

Print Name

Signature

Print Name

SURETY:

By _____
Agent and Attorney-in-Fact

EXHIBIT J - GUARANTY FROM AMERICAN CORPORATE AIRPORT PARTNERS, LLC

PARENT GUARANTY

This Parent Guaranty ("**Guaranty**"), effective as of the May __, 2022, is made by American Corporate Airport Partners, LLC, a Delaware limited liability company ("**Lessee Guarantor**"), for the benefit of Broward County, a political subdivision of the State of Florida ("**County**").

Recitals

ACAP Broward County, LLC, a Delaware limited liability company ("**Lessee**") is a wholly-owned subsidiary of Lessee Guarantor. Lessee and County are parties to an Agreement of Lease (the "**Lease**") effective June __, 2022 (the "**Effective Date**"), for the parcel of land located on Fort Lauderdale-Hollywood International Airport, as more particularly described in the Lease. Capitalized terms not defined in this Guaranty will have the meaning specified in the Lease. Subject to the conditions and limitations set forth below, Lessee Guarantor will guaranty Lessee's performance of certain payment obligations under the Lease.

Guaranty

In consideration of the foregoing and to induce County to enter into the Lease, Lessee Guarantor agrees as follows:

1. Lessee Guarantor unconditionally and absolutely guarantees to County Lessee's payment of all Lessee payment obligations that are not paid by Lessee as required by the Lease. Payment obligations as used herein shall include, but not be limited to, the rent obligations payable under Article 4 and the Minimum Capital Expenditure requirement payable under Article 6 of the Lease. All such guaranteed amounts will be paid by Lessee Guarantor promptly upon receipt of a written notice from County that evidences (a) Lessee's non-performance of any individual payment obligation under the Lease, and (b) County's first having demanded payment of such obligation from Lessee in writing that Lessee has not honored within the applicable time frame set forth in the Lease. County's demand upon Lessee does not need to include the initiation of legal proceedings. Except to the extent of the demand requirement set forth in this Section, Lessee Guarantor waives protest and notice of dishonor or default. This is a guaranty of payment, and not of collection.
2. This Guaranty is governed by the laws of the State of Florida, excluding any conflicts of law principles. Subject to Section 1, this Guaranty will continue until all payment obligations under the Lease have been satisfied. This Guaranty is binding upon and inures to the benefit of Lessee Guarantor's and County's successors and assigns. Lessee Guarantor has all of Lessee's payment defenses, except that Lessee Guarantor's liability will not be affected by (a) County's remedy impairing Lessee Guarantor's subrogation or reimbursement rights against Lessee; or (b) any defense arising from the bankruptcy or insolvency of any Lessee. All notices under this Guaranty will be given in writing, will refer to this Guaranty and will be sent by overnight courier, or registered or certified mail (return receipt requested). Notices to Lessee Guarantor will be delivered to the following addresses:

Mail

American Corporate Airport Partners, LLC
1301 Avenue of the Americas, 34th Floor
New York, New York 10019
Attn. Ronan Byrne

Lessee Guarantor may change its notice address by sending County notice to the addresses in the

Lease.

3. All notices hereunder will be given in writing, will refer to this Guaranty and will be personally delivered or sent by overnight courier, or registered or certified mail (return receipt requested). Notices to County will be delivered at the following addresses:

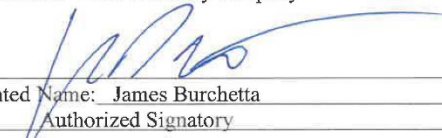
County Administrator
Governmental Center
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301
Email: mcepero@broward.org

With a copy to:

Director of Aviation
Aviation Department
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Email: mgale@broward.org

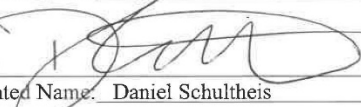
IN WITNESS WHEREOF, this Guaranty has been executed by the undersigned as of the date set forth below.

AMERICAN CORPORATE AIRPORT PARTNERS, LLC,
a Delaware limited liability company

By: 
Printed Name: James Burchetta
Its: Authorized Signatory

Witness

By: 
Printed Name: Will Frew

By: 
Printed Name: Daniel Schultheis