



**AGREEMENT OF LEASE BETWEEN BROWARD COUNTY AND  
TRI-STAR AIRPORT HANDLING SERVICES COMPANY**

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**AGREEMENT OF LEASE BETWEEN BROWARD COUNTY AND  
TRI-STAR AIRPORT HANDLING SERVICES COMPANY**

This Agreement of Lease (“Agreement”) is entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and Tri-Star Airport Handling Services Company, a Florida corporation (“Lessee”) (County and Lessee collectively referred to as the “Parties”), and is effective as of the date that it is fully executed by the Parties (“Effective Date”).

**RECITALS**

- A. County owns and operates the Airport (hereinafter defined).
- B. Lessee currently provides cargo handling services as a sub-tenant to airlines at the Airport.
- C. Lessee desires to enter into an agreement of lease to expand its cargo handling operations and requires additional warehouse space at the Airport.

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

**ARTICLE 1. DEFINITIONS**

- 1.1 **Airport** means Fort Lauderdale-Hollywood International Airport, located in Broward County, Florida, as depicted in the Master Plan Update and all property encompassed within the boundaries of the Fort Lauderdale-Hollywood International Airport.
- 1.2 **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, advisory circulars, rules, regulations, ordinances, resolutions, development orders, grant agreements, and the Minimum Standards.
- 1.3 **Approved Plans** means the 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.
- 1.4 **Aviation Department** means the Broward County Aviation Department, or any successor agency.
- 1.5 **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.6 **Cargo Building** means the cargo building constructed by County on the Parcel (hereinafter defined) identified in **Exhibit B**.

1.7 **Common Use Areas** means the landside areas of the Airport designated for the nonexclusive use of Lessee, other tenants of the Cargo Building, and other persons picking up or dropping off of cargo, freight, or mail at the Cargo Building as depicted in **Exhibit B**. The Common Use Areas include, but are not limited to, temporary parking in front of the loading dock, temporary landside parking, and areas accessible to the public.

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

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

1.10 **Day(s)** means calendar days, not business days, unless otherwise specified in the Agreement.

1.11 **Director of Aviation** means the Director of Aviation or the Acting Director of Aviation, or such person or persons as may from time to time be authorized in writing by the Board, the 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.

1.12 **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.

1.13 **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.

1.14 **Federal Aviation Administration** or **FAA** means the agency of the United States Government established under 49 USC § 106, or its successor.

1.15 **Final Inspection Approval** or **FIA** means the written documentation from all applicable agencies, which indicate that an Improvement was completed properly and all permits have been closed.

1.16 **Improvement(s)** means any and all buildings, 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.

1.17 **Joint Use Area(s)** means the airside cargo ramp area on the south portion of the Parcel and the landside loading dock area in front of the Cargo Building, designated for the nonexclusive use of Lessee and other tenants of the Cargo Building and other duly authorized users of the Airport, which areas are depicted in **Exhibit B**.

1.18 **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.

1.19 **Lessee's Parties** means the Sublessees (hereinafter defined), officers, agents, affiliates, contractors, subcontractors, and vendors of Lessee, and all their employees, and all invitees of Lessee.

1.20 **Master Plan** means the then-current Master Plan Update for the Airport, as it may be amended from time to time.

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

1.22 **Parcel** means the parcel of land described in **Exhibit B**, and all Improvements thereon, including, but not limited to, the Cargo Building, the Joint Use Areas, and the Common Use Areas and, subject to rights-of-way and all other property interests of record.

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

1.24 **Premises** means the premises identified in **Exhibit A**, as Bay 5, measuring approximately five thousand (5,000) square feet, leased by County to Lessee for Lessee's exclusive use, together with all Improvements now or hereafter constructed thereon.

1.25 **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.

1.26 **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.

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

1.28 **Sublessee** means all Persons, tenants, franchisees, operators, management companies, and concessionaires 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.

1.29 **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.

1.30 **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.

1.31 **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.

(a) Lessee shall have the nonexclusive right to use the Joint Use Areas and the Common Use Areas, to be shared with other tenants of the Cargo Building and other authorized users of the Airport facilities, subject to any rules established by the Aviation Department.

(b) There is no promise, representation, or undertaking by, or binding upon, County with respect to the Cargo Building, Parcel, Premises, or the installation of any equipment or fixtures, except, if any, as expressly set forth in this Agreement.

2.2 Operated for Public Use. Lessee shall operate the Premises for the use and benefit of the public, shall make available all Airport facilities and services to the public 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 any of the Airport or any improvements to the Airport or any 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 Cargo Building or the Airport or otherwise constitute an Airport hazard.

2.7 Condition and Use of the Premises and Parcel. County makes no representations or warranties whatsoever as to: (a) the condition of the Premises or the Parcel; (b) whether the

Premises, the Parcel, or any part thereof, are in compliance with Applicable Laws; (c) whether any Materials exist on or under the Premises, the Parcel, or in the Improvements in violation of Applicable Laws; or (d) any permitted or available use of the Premises or the Parcel. County makes no representations or warranties regarding the legality, permissibility, suitability, or availability of any use of the Premises or the Parcel 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 Parcel and the suitability thereof for Lessee's purposes. The Premises, the Parcel, and all components thereof, are provided 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, the Parcel, and all components thereof, and hereby accepts the Premises, the Parcel, and all components thereof in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" Lessee hereby assumes all risk of noncompliance of the Premises or the Parcel, 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 Parcel, 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, the Parcel, 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 or the Parcel. In the event of any such release, the provisions of Article 27 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, and County reserves the right to grant similar privileges to another lessee or other lessees for other parts of the Airport.



2.9 Relocation; Change of Location. Notwithstanding anything to the contrary in this Agreement, the Aviation Department, in its sole discretion, may at any time require Lessee to operate from a different bay in the Cargo Building ("County Required Relocation," and the area to which relocation is required being the "County Required Relocation area"). In such event, Lessee shall move into the County Required Relocation area within the time period specified in the written notice from the Aviation Department. County shall have no obligation for any expenses incurred by Lessee in connection with relocation to the County Required Relocation area, although County may, in its sole discretion, reimburse Lessee for some or all of Lessee's actual expenses incurred, provided that there shall be no reimbursement for new furnishings, Lessee's employees' labor costs, new signage, or new equipment. The reimbursement, if any, shall, at County's sole discretion, be through a reimbursement payment to Lessee or through credits to Lessee's future rental payments. If Lessee seeks reimbursement of any of its costs arising from the County Required Relocation, Lessee shall submit the estimated costs to the Aviation Department as a tenant improvement project ("TIP") for review and approval. Reimbursement, if any, shall be limited to expenses pre-approved by the Aviation Department. If reimbursement by County is approved, following completion of the County Required Relocation, Lessee shall submit invoices and proof of payment for any approved expenses.

If Lessee requests to relocate to a different bay in the Cargo Building or if Lessee requests to add additional space in the Cargo Building ("Tenant Requested Relocation"), the approval of such request is subject to the sole discretion of the Aviation Department. All cost relating to a Tenant Requested Relocation shall be borne entirely by Lessee, without any expense to County.

In the event of either a County Required Relocation or an approved Tenant Requested Relocation, an amendment to this Agreement shall be prepared and executed depicting the relocation area, square footage, the adjusted rent, if any (calculated on the revised square footage of the relocation space), and the effective date. Amendments pursuant to this article may be approved and executed by the Director of Aviation on behalf of County. Lessee acknowledges that relocated space may not be similar in size or configuration to the Premises or Parcel leased herein.

### **ARTICLE 3. TERM**

3.1 Term. The Term of this Agreement shall commence on the Effective Date and shall end on the last Day of the fifth (5th) Lease Year, unless terminated earlier as provided in this Agreement (the "Termination Date").

3.2 Either Party may terminate this Agreement, with or without cause, by giving the other party at least ninety (90) Days prior written notice. In the event a notice of termination is given pursuant to this section, the Termination Date of this Agreement shall be the later of ninety (90) Days following the written notice of termination, or the effective date of termination set forth in such written notice.

## ARTICLE 4. RENT, FEES, AND OTHER CHARGES

### 4.1 Annual Rental.

(a) The rent payable by Lessee to County for the first (1<sup>st</sup>) Lease Year shall be Eighty-four Thousand Dollars (\$84,000.00) annually, plus applicable sales taxes thereon. Each monthly installment of rent during the first (1<sup>st</sup>) Lease Year for the Premises shall be Seven Thousand Dollars (\$7,000.00), plus applicable sales taxes.

(b) Rent shall be due and payable, without billing, set-off, or deduction, commencing on the Effective Date and continuing on the first Day of each calendar month after the Effective Date; except that if the Effective Date is other than the first Day of the month, rent shall commence on the Effective Date and be due and payable on the first Day of the following month and shall include a prorated amount for the number of Days from the Effective Date to the end of that month, and shall thereafter be due and payable on the first Day of each calendar month. 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 second (2nd) 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. The adjusted rent, together with applicable sales taxes thereon, will be the rent for that Lease Year.

4.3 Percentage Rent Adjustment. On each Adjustment Date 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 greater product of that multiplication will be the amount of the rent payable during that Lease Year, subject to any adjustment pursuant to Article 13. Upon determining the rent adjustment, the Aviation Department shall advise Lessee of the new 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.

(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. 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 Effective Date of Rental Adjustment. If a rent adjustment is required under this Article 4 or Article 13, 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 Corrective Date.

4.5 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.

4.6 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.

4.7 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.

4.8 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.**

4.9 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 thirty (30) Days after County's written demand.

4.10 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 law.

4.11 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.

4.12 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, 2200 SW 45<sup>th</sup> Street, Suite 101, Dania Beach, Florida 33312, or to such other office or address as the Aviation Department may designate.

4.13 Books and Records. Lessee shall keep true and accurate books and records, which must, at a minimum, show all County Fees, labor, overhead, and sales tax collected, as well as any other records required under this Agreement, and the aggregate amount of all sales, services, and orders of all Lessee's business done upon or within the Premises or in connection with the Airport. Lessee shall also keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, 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 4.13 shall apply to all of Lessee's Sublessees and all others that engage in any activities with respect to this Agreement, including without limitation, all affiliates and any of their sublessees (collectively "All Others"). Lessee shall ensure that All Others 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 and All Others 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, 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 4.13 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 and All Others 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 and All Others, as applicable, 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 4.13 are included in all agreements with All Others

4.14 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 cargo activity purposes. Lessee may provide the following services and activities reasonably connected with cargo activity purposes:

- (a) Storage, handling, acceptance, and delivery of air cargo, air freight, and air mail.
- (b) Performance of preventative maintenance on ground service equipment and facility support equipment. Preventative maintenance as used herein means simple or minor preservation operations or the replacement of small standard parts, such as changing oil, tires, servicing batteries, replacing lights, and the like, and not involving complex assembly operations or require special licenses. No mechanical or heavy maintenance of any nature is permitted without prior written approval of the Aviation Department.
- (c) Office activities and other administrative operations related to Lessee's conduct of a cargo, freight, and mail air transportation business.
- (d) Food/beverage vending machines in a non-public area of the Premises are to be used solely by employees of Lessee.



## 5.2 Prohibited Services.

- (a) Lessee is expressly prohibited from storing, staging, stationing, parking, or any similar action, of trucks, cars, trailers, boats, recreational vehicles, pallets, or other supplies, materials, or equipment of any kind in any area of the Parcel (including, without limitation, any area of the Premises), except to perform the authorized services described in Section 5.1, above.
- (b) Lessee shall not operate or allow to be operated upon or within the Premises any restaurant, coffee shop, lounge, food preparation, or cafeteria, except as permitted in Section 5.1(d), above.
- (c) Lessee is prohibited from any activity not related to cargo activities upon or within the Premises as determined in the Aviation Department's sole discretion, except as permitted in Section 5.1, above.

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

## **ARTICLE 6. CONSTRUCTION BY LESSEE**

6.1 Obligations Before Construction. No improvements, alterations, additions, or renovations may be constructed by Lessee or Lessee's Parties on any area of the Premises until Lessee has obtained prior written approval from the Aviation Department. Prior to the commencement of construction or refurbishment of any Improvement on the Premises, Lessee shall 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. If required by the Aviation Department, the plans and specifications shall be certified 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) certified estimate of the design, development, and construction costs; and (h) such other information as may be required by the Aviation Department. If any Improvement, addition, alteration, modification, or replacement is made without the approvals required in this Article 6, upon written notice, Lessee shall remove the 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.

6.2 Approved Plans. All construction, refurbishment, Improvements, signs, and equipment 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

Cargo Building. 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. In addition to the Aviation Department's approval, Lessee shall obtain all required approvals from all other agencies having jurisdiction over the construction, refurbishment, installation, or refurbishment of any Improvement, including, but not limited to, departments, divisions, or offices of the County, local governments, the State of Florida, and the federal government. No work may be performed on the Premises except pursuant to Approved Plans. Any work impacting portions of the Airport other than the Premises shall be performed within schedules approved in advance by the Aviation Department.

6.3 Identification of Utilities on Plans. All plans and specifications, including, without limitation, "as-built" plans provided under Section 6.10 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.

6.4 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 the Parcel, or on adjacent property. All underground conduits installed at the Premises or the Parcel, 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.

6.5 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, Parcel, 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 or the Parcel shall comply, as determined solely by the Aviation Department, with Airport system architecture, 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.

6.6 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 immediately 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.

6.7 Ownership of Leasehold Improvements. All fixtures, structures, facilities, 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) 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.

6.8 Certified Statements. Within one hundred twenty (120) Days following the FIA Date and also at such other times 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;
- (2) A certified statement from the architect or engineer stating the total architect'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.

6.9 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 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 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.

6.10 Reporting of Issuance of FIAs and "As-Built" Plans. Lessee shall report the issuance of FIAs to the Aviation Department and forward a copy of each FIA issued for any Improvements within ten (10) Days after the issuance of same. Additionally, within ninety (90) Days after the FIA 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 of the "as-constructed" or "record" plans for the Improvements.

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

7.1 Payment and Performance Bonds. Within fifteen (15) 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 G** and **H** 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 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.

7.2 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 or 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.”

7.3 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 the termination of this Agreement.

(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.

7.4 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. OBLIGATIONS OF LESSEE**

8.1 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.

8.2 Service Standards. Lessee and its Sublessees shall in connection with 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; (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 to volume purchasers.

8.3 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 Cargo Building or the Airport.

8.4 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.

8.5 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 immediately take all reasonable steps necessary to remove the cause of objection.

8.6 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.

8.7 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.

8.8 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 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.

8.9 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 Cargo Building or 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.

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

8.11 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.

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

8.13 Fueling or Refueling of Equipment. Lessee and Lessee's Parties shall not fuel or refuel equipment in the covered and enclosed portions of the Premises.

8.14 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.

8.15 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) upon or within the Premises without the prior written consent of the Aviation Department.

8.16 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 from the Parcel or the Premises. Lessee and Lessee's Parties shall not permit the temporary or permanent storage, the arrival, or the presence at the Premises or the Parcel, at any time, of any derelict vehicles. 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 or the Parcel 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.

8.17 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.

8.18 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. Incidents shall be reported within 24 hours of the incident occurrence via the SMS Reporting System by using the website address [www.fll.net/airport/safety](http://www.fll.net/airport/safety) or by e-mail to [fllsafety@broward.org](mailto:fllsafety@broward.org). 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.

8.19 Lessee shall be responsible for any damage to the Common Use Areas or the Joint Use Areas, as applicable, caused by Lessee or any of Lessee's Parties and shall repair such areas to the condition that existed immediately prior to such damage. Lessee shall use the Joint Use Areas primarily to facilitate movement of cargo to and from the Premises and for staging of equipment to be utilized in the immediate future. Lessee shall not use the Joint Use Areas for storage of equipment not currently being used for the Lessee's operations. Lessee shall use the Common Use Areas only for temporary vehicle traffic by its patrons and service providers in order to facilitate the dropping off or picking up of deliverable items authorized pursuant to Article 5 in this Agreement. The Common Use Areas are located on the non-airside portion of the Parcel in the following locations: (i) the north side of the Cargo Building; and (ii) the temporary patron and Americans with Disability Act parking spaces to the east of the Cargo Building.

## **ARTICLE 9. INGRESS AND EGRESS**

9.1 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.

9.2 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 sole 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.

#### **ARTICLE 10. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS**

10.1 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 the Parcel or any operations at the Premises or the Parcel.

10.2 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 11. MAINTENANCE AND REPAIR**

11.1 Responsibility for Maintenance and Repair. County shall maintain the structure of the Cargo Building, including exterior walls, foundation, roof, exterior lighting (excluding trade signs, enclosures, junction boxes, and all components of such signage, all of which shall be Lessee's responsibility). County shall maintain the pavement, security fencing, utility cables at its point of connection with the Cargo Building, and utilities serving common areas. County shall be responsible for the upkeep of the grounds surrounding the Cargo Building and for maintenance of the ramp and other Joint Use Areas and Common Use Areas. County shall not maintain or be responsible for the window or door glass, cargo roll-up doors, or gates for the Premises, including the care and maintenance of the Airport security barriers and devices that operate the cargo roll-up doors or the gates. County shall not maintain or be responsible for any structural alterations made by Lessee within the Premises.

11.2 Maintenance of Premises. Lessee shall, at all times, maintain its Premises in a neat, orderly, sanitary, and presentable condition. Except as set forth in Section 11.1, Lessee shall assume the entire responsibility, and shall relieve County from all responsibility for all repair and maintenance of the Premises, including, without limitation, all buildings and Improvements thereon, whether the repair or maintenance is ordinary or extraordinary. 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.

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



- (a) Paint the interior of the Premises, repair and maintain all doors, windows, toilets, fans, HVAC, and lighting fixtures.
- (b) Keep the Premises at all times in a clean and orderly condition and appearance together with all of the fixtures, equipment, and personal property located in any part of the Premises that is open to or visible by the general public.
- (c) Provide and maintain all fire protection, safety equipment, and all other equipment of every kind and nature required by any Applicable Laws.
- (d) Repair any damage to paving or other surface of the Premises, Parcel, Common Areas, or Joint Use Areas caused by operations of Lessee, or Lessee's Parties and any other Persons entering upon or using the Premises at any time during the Term, 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 such spill in accordance with Article 27.
- (e) 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 by Lessee exclusively.
- (f) Provide cleaning and litter pick-up of the Common Use Areas and the Joint Use Areas being used by Lessee and any of Lessee's Parties.

11.4 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 any law, rule, regulation, or order, 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 12. INSURANCE REQUIREMENTS

12.1 Lessee shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages set forth in **Exhibit F**, in accordance with the terms and conditions required by this article. If services are required of Lessee pursuant to this Agreement subsequent to the expiration of the Agreement, Lessee shall provide, pay for, and maintain in force such insurance coverages until County determines all services required of Lessee have been completed. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of A-, and that maintain a registered agent in Broward County, Florida upon whom service of process may be made.

12.2 Lessee 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, and any Property or Environmental Insurance policies.

All retentions, deductibles, and exclusions must be declared in writing and approved in writing by County. Lessee shall be solely responsible to pay all deductibles or retentions.

If Lessee maintains broader coverage or higher limits than the minimums shown in **Exhibit F**, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Lessee.

12.3 Lessee shall provide written notice to County of any cancellation or restriction of insurance at least thirty (30) Days prior to the date of expiration, or ten (10) Days prior to the date of expiration for cancelation due to non-payment, and shall concurrently provide County with a copy of its updated Certificates of Insurance. Upon request by County, Lessee shall provide a copy of any policy required by this article within fourteen (14) Days of a written request to Lessee, either by inspection of the policy at Broward County Aviation Department or by providing a copy of the policy. 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.

12.4 County may modify the insurance coverages required under this article at any time as County determines necessary to protect County's interest. In such event, County shall notify Lessee of the modified requirements, and Lessee shall provide an updated Certificate of Insurance evidencing such modified coverages within thirty (30) Days after County's notice of the modification to the requirements.

12.5 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.

12.6 Certificate Holder Address. The certificate holder address shall read “Broward County, c/o Aviation Department, 2200 SW 45 Street, Suite 101, Dania Beach, Florida 33312” or such other address as may from time to time be required by County.

12.7 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.

12.8 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 the Lessee’s liability arising out of the work performed or related activities.

### **ARTICLE 13. DAMAGE TO OR DESTRUCTION OF PREMISES**

13.1 Damage. In the event the Cargo Building or the Premises are partially damaged by fire or other casualty, Lessee shall give prompt written notice to County; the damaged portion of the Premises shall be repaired by Lessee, and the damaged portion of the Cargo Building, excluding the Premises, shall be repaired by County to the extent of insurance proceeds and subject to Section 13.2, unless County determines in its sole discretion that the damage is so extensive that the repair or rebuilding is not feasible. In the event that the Cargo Building or Premises are destroyed or damaged by fire, the elements, or other casualty as to render the Cargo Building or Premises untenable or unusable by Lessee, then from the date of such casualty until said portion of the Cargo Building or Premises is repaired, the monthly installments of the rent hereunder shall abate in such proportion as the part of the Premises thus destroyed in accordance with Article 25. If any area shall be so slightly damaged in any such casualty as not to be rendered unfit for occupancy, as determined by County, rent shall not cease or be abated during any repair period.

13.2 Obligation to Rebuild. In the event County elects, in its sole discretion, to rebuild or repair under this article, County’s obligations shall be limited to restoring only the structural or permanent portions of the Cargo Building to substantially the condition that existed prior to the casualty and shall further be limited to the extent of the insurance proceeds available to County for such restoration. Upon County’s election to repair or rebuild as provided in this article, Lessee will proceed with reasonable diligence, and at its sole cost and expense, to rebuild, repair, and restore its signs, fixtures, furnishings, equipment, Improvements, and other items provided or installed by Lessee in or about the Premises and the Cargo Building in a manner, and to a condition, at least equal to that which existed prior to the casualty. In the event that County determines not to repair or rebuild the Cargo Building, this Agreement shall terminate upon thirty (30) Days’ prior written notice by the Director of the Aviation Department to Lessee.

#### **ARTICLE 14. INDEMNITY**

Lessee shall at all times hereafter indemnify, hold harmless, and defend County and all of County's current, former, and future officers, agents, servants, 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 or entity 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 former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, Lessee shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel 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 15. SIGNS**

15.1 Prior Written Approval. Lessee shall not erect, maintain, or display any signs or any advertising at or on the Parcel or 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 Parcel or Premises.

15.2 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 Cargo Building, the Parcel, and the Premises, and restore the portion of the Cargo Building, the Parcel, and 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 Cargo Building, the Parcel, and the Premises, the Aviation Department may perform the necessary work and Lessee shall pay the all expenses incurred by County within ten (10) Days after written demand from County. The provisions of this Section 15.2 shall survive the expiration or early termination of this Agreement.

15.3 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 ten (10) Days after written demand from County.

## ARTICLE 16. RIGHTS OF COUNTY RESERVED

16.1 Utility, Mechanical, and Other Systems. County, may, or cause or 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.

16.2 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 ten (10) Days of written demand from County.

16.3 Entry to Show. At any time during Lessee's ordinary business hours, County, through its agents and employees, whether or not accompanied by prospective occupiers or users of the Premises, may enter the Premises to show it to prospective tenants.

16.4 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.

16.5 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.

16.6 Maintenance of Utility Easements. County reserves the right to maintain any utility easements on the Parcel 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.

16.7 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 17. ASSIGNMENT OR SUBLEASE**

17.1 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. 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.

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

17.3 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 in the event of any change in control, ownership, power to vote a majority of the outstanding voting stock of Lessee or of any parent corporation of Lessee (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 (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.



17.4 In the event any Assignment shall be made without the prior written consent of County, then any such Assignment or other action shall be null and void and of no force or effect.

17.5 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

#### **ARTICLE 18. DEFAULT, TERMINATION**

18.1 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;
- (b) Lessee voluntarily abandons, deserts, or vacates the Premises or discontinues its operation at the Airport for a period of thirty (30) Days;
- (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;
- (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;
- (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;
- (f) Lessee fails to obtain the prior written consent of County prior to any Assignment or other encumbrance of the Premises or this Agreement;
- (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;
- (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;

- (i) Lessee fails to collect or remit to County all, or any portion of, County Fees;
- (j) Lessee fails to maintain or renew a required letter of credit or security deposit;
- (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;
- (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 sole 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;
- (m) Any subsequent breach or default following notice of Habitual Default as described in Section 18.3;
- (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 27.

18.2 Result of Default. If one or more of the events of default set forth in Section 18.1 occurs, 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, which termination shall be effective upon the date specified in such notice, in which event 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 the 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 and uncontrolled 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 18, Lessee shall have no right to any reimbursements from County or any right to any payments under Section 30.18 of this Agreement.

18.3 Habitual Default. Notwithstanding the foregoing, if Lessee has, in the sole discretion of the Aviation Department, frequently, regularly, or repetitively defaulted in the performance of, or 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 breaches or defaults and that any subsequent breaches or defaults 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.

18.4 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.

18.5 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 20. 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 19. 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 20. SURRENDER**

20.1 Surrender to County. Upon the expiration or early termination of this Agreement, Lessee shall yield and deliver peaceably and promptly to County the possession of the Premises. Lessee shall surrender the Premises in the condition required under Article 11. All maintenance and repairs 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 inventories, trade fixtures, and personal property before surrender. Upon surrender, Lessee shall deliver to County all keys to the Premises. 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 27 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.

20.2 County Not Obligated to Accept Surrender. In the event Lessee fails to surrender 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 of the Premises until same have been satisfied and Lessee shall be considered to be holding over and subject to the provisions of Section 20.1. 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 of the Premises, Lessee shall be considered a holdover Lessee.

20.3 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 20, 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 of written demand from County.

20.4 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.

20.5 The provisions of this Article 20 shall survive the expiration or termination of this Agreement.

## ARTICLE 21. REMOVAL OF PROPERTY

21.1 Removal of Inventory and Other Personalty. Lessee may, at any time during the Term, remove its inventories, trade fixtures, and other personal property from the Premises, subject to any lien County may have for unpaid fees, charges, or other amounts. Lessee shall immediately repair any damage to the Premises caused by its removal of any personal property or trade fixtures and shall keep the Premises in the condition required under Article 11.

21.2 On or before the expiration or earlier termination of this Agreement, Lessee shall remove all its inventories, trade fixtures, and other personal property from the Premises:

(a) If Lessee shall fail to remove same by the expiration or earlier Termination Date of this Agreement or as otherwise required herein, such property shall be deemed to have been abandoned by Lessee and may be disposed of by County in accordance with Florida law. In such event, County shall pursue its legal options, including, but not limited to: (i) title to such movable fixtures, equipment, and inventories shall vest in County, at no cost to County; (ii) County may remove such property and inventories to a public warehouse for deposit; or (iii) County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale; second, to any sums owed by Lessee to County with any balance remaining to be paid to Lessee. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, Lessee shall pay such excess to County within fifteen (15) Days after written demand from County; or

(b) Alternatively, in County's sole option, if Lessee shall fail to remove same by the expiration or earlier Termination Date of this Agreement or as otherwise required herein, Lessee may be considered to be a holdover Lessee subject the provisions of Section 20.1.

21.3 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.

21.4 The provisions of this Article 21 shall survive the expiration or early termination of this Agreement.

## **ARTICLE 22. 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 23. NOTICES**

23.1 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  
Fort Lauderdale, Florida 33301  
Email: bhenry@broward.org

with copies to:  
Director of Aviation  
Aviation Department  
2200 SW 45 Street, Suite 101  
Dania Beach, Florida 33312  
Email: mgale@broward.org

FOR LESSEE:  
Tri-Star Airport Handling Services Company  
Jose Antonio De Oliveira Ferreira, President  
2461 NW 67 Avenue, Bldg. 700, Suite 204  
Miami, FL 33122  
Email: ferreira@tristar.net.br

## **ARTICLE 24. UTILITIES**

24.1 Utilities. Lessee shall pay for all electric, water, garbage, and all other utilities charges for the Premises when due. Except as otherwise stated below, the extension of utility mains or services to meet the needs of Lessee shall be at the sole expense of Lessee, and shall become the property of the County upon installation.

(a) Lessee shall procure at its sole expense all electric utilities for the Premises, which shall be separately metered for the Premises. Any metering devices installed by Lessee for such electric utilities shall be installed at the sole cost of the Lessee and shall become the property of County upon installation.

(b) County shall provide a single meter for water supplied to the Cargo Building, the Common Use Areas, and the Joint Use Areas. Lessee shall pay to County, on a monthly basis, its pro rata share of water and sewer charges and assessments for such areas based on the total square footage of the Premises compared to the total square footage of the Cargo Building. All such charges and assessments shall be paid by Lessee within thirty (30) Days after receipt of County's invoice.

(c) County shall provide a single meter for electric service supplied to the Common Use Areas and the Joint Use Areas. Lessee shall pay to County, on a monthly basis, its pro rata share of such electric charges and assessments based on the total square footage of the Premises compared to the total square footage of the Cargo Building. All such charges and assessments shall be paid by Lessee within thirty (30) Days after receipt of County's invoice.

24.2 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 25. 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 26. AIRPORT SECURITY**

26.1 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), that 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 after 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.

**26.2 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.

**26.3 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.

26.4 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.

26.5 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.

26.6 The provisions of this Article 26 shall survive the expiration or any other termination of this Agreement.

## **ARTICLE 27. ENVIRONMENTAL COMPLIANCE AND ENVIRONMENTAL CONTAINMENT AND REMOVAL**

The Parties acknowledge that County will be obtaining an Environmental Assessment of the Premises either prior to the Effective Date or during the Term of the Agreement.

(a) If the Environmental Assessment is performed prior to the Effective Date, then the work scope of the Environmental Assessment and the environmental firm chosen shall be at the sole discretion of the Aviation Department.

(b) If the Environmental Assessment is performed during the Term of the Agreement or in association with the conclusion or termination of the Agreement, then 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.

In the event that 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 Law or in any way to limit the regulatory powers of County or any of its agencies.

The Aviation Department, other applicable County agencies, and 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.

27.1 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.

27.2 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.

27.3 Completion of Environmental Documents. Lessee shall complete the form attached hereto as **Exhibit C** 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 C**. 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.

27.4 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.

27.5 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.

27.6 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.

27.7 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 27, 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 of 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 acceptable to County and within Applicable Laws.

27.8 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 manual 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 27.8 available for review by County's representatives.

27.9 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.

27.10 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.

27.11 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.

27.12 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.

27.13 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.

27.14 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 25, 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.

27.15 Exit Environmental Assessment. Two (2) years 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, 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 have such further actions 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 following 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.

27.16 No Limitation of Rights. All rights and remedies contained in the sections and subparagraphs of this Article 27 are cumulative and are not in limitation of any other rights or remedies under this Article 27 or any other provision of this Agreement.

27.17 Survival. The provisions of this Article 27 shall survive the expiration or any other termination of this Agreement.

## **ARTICLE 28. 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 29. SECURITY DEPOSIT**

29.1 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 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 29 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 29. The Security Deposit Letter of Credit shall be deemed a parent guarantee.

(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 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) in the event that 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 29. 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 29, 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.

(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.

29.2 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 this Article 29. In the event that County draws down on the cash deposit as authorized in this Article 29, 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 any security deposit.

### ARTICLE 30. OTHER PROVISIONS

30.1 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 the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" 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 of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

30.2 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. **BY ENTERING INTO THIS AGREEMENT, LESSEE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY**

**TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

30.3 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.

30.4 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.

30.5 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.

30.6 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 32 of this Agreement, the provisions contained in Articles 1 through 32 shall prevail and be given effect.

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

30.8 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.

30.9 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Lessee or others delegated authority or otherwise authorized to execute same on their behalf.

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 30.18.

30.10 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

30.11 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.

30.12 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.

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

30.14 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.

30.15 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.

30.16 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.

30.17 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.

30.18 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.

30.19 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.

30.20 Successors and Assigns Bound. Without waiving any of the requirements of Article 17, this Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the Parties.

30.21 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.

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

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

30.24 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, 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; provided, however, that if such non-performance exceeds sixty (60) Days, the Party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the Party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

30.25 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.

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

30.27 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.

30.28 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.

30.29 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 law;
- (c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following 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 law.

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 812.081 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)359-6100, SCOOPER@BROWARD.ORG, 2200 SW 45<sup>TH</sup> STREET, SUITE 101, DANIA BEACH, FLORIDA 33312.**

30.30 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.

30.31 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 30.31 by Lessee will automatically void those provisions and portions of this Lease 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.

30.32 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 9. 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.

30.33 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. In the event that County exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulation, laws, and ordinances 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.

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

**30.35 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.

**30.36 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.

**30.37 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.

## ARTICLE 31. REPRESENTATIONS AND WARRANTIES

31.1 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 law, rule, regulation, or duty arising in law or equity applicable to Lessee. 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.

31.2 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 the procurement or evaluation process, were true and correct when made and are true and correct as of the Effective Date of this Agreement, unless otherwise expressly disclosed by Lessee.

31.3 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.

31.4 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.

31.5 Discriminatory Vendor and Scrutinized Companies Lists. Lessee represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Lessee further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

31.6 Warranty of Performance. Lessee represents and warrants (i) it possesses the knowledge, skill, experience, and financial capability required to perform its obligations and responsibilities under this Agreement; and (ii) 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 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.

31.7 Breach of Representations. County materially relies on the representations of Lessee stated in this article in entering into this Agreement. County shall be entitled to recover any damages it incurs to the extent any such representation is false. In addition, if any such representation is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Lessee, to deduct from the compensation due Lessee under this Agreement the full amount of any value paid in violation of a representation, or to recover all sums paid to Lessee under this Agreement.

31.8 No Set Off. Lessee represents that, through the date hereof, 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.

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

#### **ARTICLE 32. ENTIRE AGREEMENT**

This Agreement consists of Articles 1-32, together with **Exhibits A, B, C, D, E, F, G, H, and I**, attached hereto, and constitute 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

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 TRI-STAR AIRPORT HANDLING SERVICES COMPANY, signing by and through its authorized \_\_\_\_\_, duly authorized to execute same.

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 \_\_\_\_\_, 2020

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Aviation Office  
2200 S.W. 45 Street, Suite 101  
Dania Beach, Florida 33312  
Telephone: (954) 359-6100  
Telecopier: (954) 359-1292

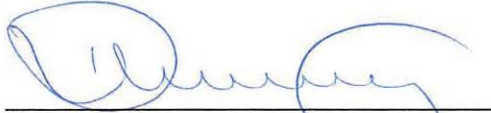
By Yesenia Alfonso Digitally signed by Yesenia Alfonso  
Date: 2020.09.30 13:48:40 -04'00'  
Yesenia Alfonso (Date)  
Assistant County Attorney

By Sharon V. Thorsen Digitally signed by Sharon V.  
Thorsen  
Date: 2020.09.30 13:54:13 -04'00'  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

YA/ch  
Tri-Star Cargo Lease  
08/20/2020  
80071.0071

**AGREEMENT OF LEASE BETWEEN BROWARD COUNTY AND  
TRI-STAR AIRPORT HANDLING SERVICES COMPANY**

WITNESSES:



Signature

Rita de Cassia F. Boregas / Vice President  
Print Name of Witness above



Signature

Yanko Enriquez / Quality Safety Manager  
Print Name of Witness above

TRI-STAR AIRPORT HANDLING SERVICES  
COMPANY

By:

Authorized Signor



Jose Antonio de O. Ferreira / President  
Print Name and Title

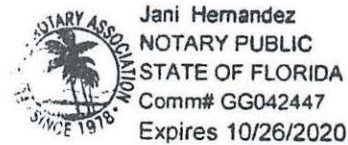
28<sup>th</sup> day of September, 2020

ATTEST:



Corporate Secretary or other person  
authorized to attest

(CORPORATE SEAL OR NOTARY)











### EXHIBIT C - ENVIRONMENTAL DOCUMENTS

Company Name:

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Mailing Address:

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Street or Post Office Box

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Type of Agreement:

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Please describe the activities performed and services provided on leasehold:

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Will there be fueling: Yes \_\_\_ No \_\_\_

Will there be maintenance: Yes \_\_\_ No \_\_\_

Will there be plane washing: Yes \_\_\_ No \_\_\_

Lessee has the following documents, if applicable, which may be requested by County for 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:

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Is Lessee required to file the SARA Title III Reporting? Yes \_\_\_ No \_\_\_

If Yes, was last filed on (date) \_\_\_\_\_.

Is Lessee a generator of hazardous waste pursuant to 40 CFR 261?

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

If Yes, the status is \_\_\_\_\_ Conditionally Exempt; \_\_\_\_\_ Small Quantity Generator; \_\_\_\_\_ Large Quantity Generator.

If required, reports were filed on (date) \_\_\_\_\_.

The following environmental permits, licenses, approvals, or orders (County, State, Federal) are issued to Lessee: (These permits, licenses, approvals and orders include, but are not limited to, storage tanks, hazardous material, air, solid waste, hazardous waste, industrial wastewater pretreatment, and storm water.)

Permit Name/Type	License No.	Date Expires
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		

## EXHIBIT D - PREVAILING WAGE RATES

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 Aviation Department shall submit the question, together with its recommendation, to the County Administrator for final determination.
4. In the event it is found by the Aviation Department 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 Aviation Department 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 the 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 Code of Ordinances. The Statement shall be in the form attached as **Exhibit E**.
8. The Aviation Department 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 Aviation Department 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 E - STATEMENT OF COMPLIANCE  
(PREVAILING WAGE RATE SECTION 26-5, BROWARD COUNTY CODE OF ORDINANCES)**

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 \_\_\_\_\_, 2020 by \_\_\_\_\_ (name of officer or agent, title of officer or agent) of \_\_\_\_\_ (name of corporation acknowledging), a \_\_\_\_\_ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

## EXHIBIT F - INSURANCE REQUIREMENTS

### EXHIBIT F

#### Insurance Requirements for Cargo Building Lease Agreement – TriStar

The following coverage's are deemed appropriate for minimum insurance requirements for this project and will be required of the selected firm and identified in the negotiated agreement. Any deviation or change during the contract negotiation period shall be approved by Risk Management.

TYPE OF INSURANCE 1. ALL COI's be submitted on an ACCORD 25 form 2. ALL deductibles are vendors responsibility 3. Self Insurance and SIR's is not automatically approved	Limits on Liability in Thousands of Dollars			
		Each Occurrence	Aggregate	
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises–Operations <input checked="" type="checkbox"/> Explosion & Collapse Hazard <input checked="" type="checkbox"/> Underground Hazard <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> mobil equipment	Bodily Injury			
	Property Damage			
	Bodily Injury and Property Damage Combined	\$ 2 mil	\$ 5 mil	
	Personal Injury			
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto If applicable	Bodily Injury (each person)			
	Bodily Injury (each accident)			
	Property Damage			
	Bodily Injury and Property Damage Combined	<b>\$300 k landside</b> <b>\$ 2 mil for vehicles landside used in project operations</b> <b>\$ 5 mil airside</b>		
<b>EXCESS OR UMBRELLA COVERAGE</b>				
<input checked="" type="checkbox"/> <b>POLLUTION LIABILITY OR ENVIRONMENTAL IMPAIRMENT LIABILITY WITH CLEAN-UP COSTS</b>		\$ 2 mil		
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY (NOTE *)</b>	<input type="checkbox"/> STATUTORY Dollar values only:	**State exemption not accepted.		
		(each accident)	\$ 1mil	
Description of Operations/Locations/Vehicles Certificate must show on general liability and excess liability <b>Additional Insured: Broward County.</b> Also when applicable certificate should show <b>Broward County as a named insured for property and builders risk and as a loss payee for installation floater when coverage's are required.</b> Certificate Must be Signed and All applicable Deductibles shown. Indicate bid number, RLI,RFP, and project manager on COI.				
<b>NOTE *</b> - If the Company is exempt from Workers' Compensation Coverage, please provide a letter on company letterhead or a copy of the State's exemption which documents this status and attaché to the Certificate of Insurance for approval. If any operations are to be undertaken on or about navigable waters, coverage must be included for U.S. Longshoremen & Harbor Workers' Act/ & Jones Act <b>CANCELLATION: Thirty (30) Day written notice of cancellation required to the Certificate Holder:</b>				
Name & Address of Certificate Holder Broward County 2200 SW 45th Street, Suite #101, Dania Beach, FL 33312 Business		Tracy Meyer, Risk Manager 08 07 20 Date Issued		

InsuranceLimitsForm.03 Revised certificateofinsrevised2005.DOC COI

### EXHIBIT G - 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:

- 1) 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,
- 2) 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,
- 3) 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:

- a) Complete the Project in accordance with the terms and conditions of the Contract Documents; or
- b) 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:

SURETY

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Agent and Attorney-in-Fact

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

### 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 Lessee or County, performing Lessee's obligations under the Contract; provided, however, that the aggregate liability of the Surety under said bond, to Lessee 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 H - 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 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 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:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

By: \_\_\_\_\_  
(Signature and Title)

\_\_\_\_\_  
(Type Name and Title Signed above)

IN THE PRESENCE OF:

SURETY

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Agent and Attorney-in-Fact

\_\_\_\_\_  
Print Name

## EXHIBIT I - NONDISCRIMINATION REQUIREMENTS

I. During the performance of this Agreement, the 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. The 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. The 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. The 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 the 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 the Lessee of the 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. The 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, the 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 the 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. The 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. The 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, the Lessee may request County to enter into such litigation to protect the interests of County and, in addition, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

(g) The 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, the 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) The 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 the 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, the Lessee, for itself, its sublessees, its personal representatives, assignees and successors in interest agrees as follows:

The 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. The Lessee agrees that it will require its covered suborganizations to provide assurances to the 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.

The 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. The 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. The 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. The 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. The 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. Lessees 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 the 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.