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November 16, 2021

Mr. Steven R. Forrer, Chief Investment Officer  
Aviation Facilities Company  
45025 Aviation Drive  
Suite 100  
Dulles, VA 20166

Subject: Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport

Dear Mr. Forrer:

On November 4, 2021, the Lee County Board of Port Commissioners approved a Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport between AFCO Cargo RSW, LLC and the Lee County Port Authority.

Enclosed, please find one fully executed copy for your records. Should you have any questions, do not hesitate to call.

Sincerely,

LEE COUNTY PORT AUTHORITY

Victoria B. Moreland  
Chief Communications & Marketing Officer

VBM/daa  
Enclosure  
Delivery by FedEx

cc: Mark Trank, Assistant Port Authority Attorney  
Brian McGonagle, Administration  
Ed Moran, Properties

## CONTRACT SUMMARY

Agreement: Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport

Tenant: AFCO Cargo RSW, LLC  
45025 Aviation Drive, Suite 100  
Dulles, VA 20166

Leased Premises: approximately 2.59 acres located within the area bounded by a future Remote Loading Dock site on the northeast, the existing service road on the northwest, and the service road alignment on the south

Allowed Use(s): receipt, storage, and shipping of air cargo; parking, storage, maintenance, and repair of airline ground service equipment; provision of aircraft-related or air cargo-related services to airlines; office space ancillary to any allowed use(s)

Term of Lease: Initial term will begin December 1, 2021, and continue until 25 years after the "Date of Beneficial Occupancy" (which will be no later than January 1, 2024); tenant has two (2) options to extend by five (5) years each

Rent: construction period rent of \$1,175.21 per month from December 1, 2022, through DBO; ground rent, beginning on the DBO, of \$4,700.85 per month (subject to CPI adjustments)

Security/Perf. Guaranty: \$25,000 cash or letter of credit to be provided by December 10, 2021

Insurance: Commercial General Liability \$10,000,000  
Auto \$5,000,000  
Property insurance at full replacement value  
Workers' Compensation as required by state law  
Employer's Liability \$1,000,000  
Pollution Legal Liability \$2,000,000 per occurrence, and \$4,000,000 annual aggregate

***Note: This Contract Summary is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this summary and the proposed contract, the contract (being more precise) will prevail.***

**GROUND LEASE**  
**FOR CONSTRUCTION AND OPERATION OF AN**  
**AIR FREIGHT BUILDING**  
**AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT**

THIS AGREEMENT is made and entered into this 4th day of November, 2021, by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") as lessor, and **AFCO CARGO RSW, LLC**, a Delaware limited liability company with principal offices at 45025 Aviation Drive, Suite 100, Dulles, VA 20166-7524 (herein referred to as "Lessee").

**Background**

Southwest Florida International Airport, in Lee County, Florida (the "Airport") is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, Section 332.08(1) Florida Statutes, and Lee County Ordinance 90-02, as amended, Lee County has vested the Lee County Port Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges.

Lessee submitted a proposal in response to the Authority's "Request For Proposals RFP #21-03TLB for Lease of Land for Development and Operation of an Air Freight Building at Southwest Florida International Airport" (the "RFP"). Pursuant to the RFP, the Authority has selected Lessee's proposal and the parties have negotiated this lease agreement, whereby the Authority leases to Lessee, and Lessee leases from Authority, a certain parcel of

land at the Airport for Lessee's development, construction, maintenance and operation of an air freight building.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

## **ARTICLE 1**

### **DESCRIPTION OF LEASED PREMISES**

**Section 1.1 Leased premises.** Subject to the terms, covenants, and conditions contained herein, the Authority does hereby demise and lease to Lessee the following described parcel of real property within the boundaries of Southwest Florida International Airport, in the County of Lee, State of Florida:

A parcel of land containing approximately **2.59** acres, depicted generally as the "Leased Premises" on the drawing attached hereto as "Exhibit No. 01";

together with the nonexclusive right to use, in common with the Authority and others, any public roads, walkways, and other public areas on the Airport for access to and from the premises; but SUBJECT TO (a) any state of facts which an accurate survey or physical inspection thereof might show; (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) all covenants, conditions, easements, reservations and other matters and defects of record.

**Section 1.2 Survey of boundaries.** The parties recognize that Exhibit No. 01 shows only an approximate depiction of the boundaries of the Leased Premises. Accordingly, within one (1)



year after the Effective Date of this lease (as defined in Section 2.1 below), and prior to commencing any construction, the Lessee shall obtain, at its own cost, and provide to the Authority, a precise boundary survey and metes and bounds description of said premises, prepared by a professional surveyor and mapper licensed in the state of Florida in accordance with said Exhibit No. 01 and certified for the benefit of the Authority and Lessee. Authority shall have thirty (30) days from the date it receives the survey and metes and bounds description to determine whether they accurately reflect the boundaries of said parcel in accordance with this lease. Upon the Authority's written approval of same (or the passage of thirty (30) days without objection by the Authority) and the filing of the survey and metes and bounds description with the Clerk of Courts, Minutes Department, the survey and metes and bounds description shall be deemed incorporated by reference into this lease, and will be the controlling interpretation of the boundaries of said leased parcel.

## **ARTICLE 2**

### **TERM**

**Section 2.1 Initial term.** The initial term of this lease will commence on December 1, 2021 (the "Effective Date"), and will continue until the day before the date that is twenty-five (25) years after the "Date of Beneficial Occupancy", as defined in Section 4.3 below.

**Section 2.2 First option to extend.** Lessee shall have

the option to extend the term of this lease for an additional five (5) year period immediately following the initial term (provided that the lease has not been terminated and that Lessee is not then in default), by giving the Authority written notice, in the manner set forth below, no earlier than one year and no later than two months prior to the expiration of the initial term, TIME BEING OF THE ESSENCE, of Lessee's intent to exercise this option.

**Section 2.3      *Second option to extend.*** If Lessee validly exercises the first option to extend, as set forth in Section 2.2 above, Lessee will have one additional option to extend the term of this lease for a second five (5) year period (provided that the lease has not been terminated and that Lessee is not then in default), by giving the Authority written notice, in the manner set forth below, no earlier than one year and no later than two months prior to the expiration of the lease term as extended by exercise of the first option, TIME BEING OF THE ESSENCE, of Lessee's intent to exercise this second option.

**Section 2.4      *Lessee's exercise of options to extend.*** It is the intention of the parties to avoid forfeiture of Lessee's rights to extend the term under the options above through its inadvertent failure to notify the Authority of its election to exercise such option. Accordingly, unless already exercised by Lessee (or waived by Lessee in writing to the Authority), each of Lessee's options to extend the lease term under this Section shall continue until the Authority has provided thirty (30) days

advance written notice to Lessee of the expiration of its option rights, which notice may be given no earlier than six (6) months before the then-current term expires. If Authority has not provided such notice to Lessee and Lessee fails to either exercise the option or waive it in writing to the Authority, then the option shall continue until Authority provides said thirty (30) day notice to Lessee and Lessee, within said thirty (30) days, either:

- (a) exercises the option;
- (b) waives the option in writing to the Authority, in which case the option, and any further options, will terminate; or
- (c) fails to exercise the option, in which case the option will expire.

If Lessee fails to validly and timely exercise any option to extend the Term of this Lease, then all subsequent options to extend the Term shall terminate. Nothing in this Section shall be construed to delay any scheduled adjustment to or increase in rent or other payments to Authority. Further, nothing in this Section shall be construed to extend this Lease beyond the date it would otherwise expire assuming any exercised option or options to extend had been exercised by Lessee in a timely manner without the need for any notice or notices to Lessee.

**Section 2.5      Lessee's Inspection Period and option to terminate therein.** Notwithstanding anything herein that may appear to the contrary, Lessee shall have a period of eighteen

(18) months, starting on the Effective Date of this lease (the "Inspection Period") within which to undertake any inspections of the premises it deems necessary, and during which time Lessee shall have the option, at its sole discretion, to terminate this lease by providing advance written notice to Authority, in which case Lessee's security deposit or performance guarantee will be returned to Lessee, and neither party shall have any further liability to the other.

**Section 2.6      *Demolition of Old Air Freight Building.*** Upon Lessee's substantial completion of the Minimum Required Improvements specified in Article 5, and receipt of a certificate of occupancy for the air freight building included therein, Lessee will provide Authority written notice thereof. Within thirty (30) days of receipt of said written notice from Lessee, Authority will provide written notice to each of its tenants in its existing air freight building at 11850 Regional Lane (herein the "Old Air Freight Building") that Authority is terminating their lease of space within said building, effective on a date to be specified by the Authority but no later than seventy-five (75) days after Authority's receipt of Lessee's notice to Authority. Authority will not agree to allow any such tenants to hold over under their existing leases beyond the effective termination date specified in such notices to the tenants.

Upon move-out of each existing tenant from the Old Air



Freight Building, Authority will not re-lease the vacated space to any other tenant. Upon move-out of the last tenant from the Old Air Freight Building, Authority will, in good faith, seek to have the Old Air Freight Building demolished as promptly as is practicable, either via a contractor selected and contracted with pursuant to the Authority's normal and legally required competitive procurement process, or via leasing the entire site of the Old Air Freight Building to a tenant which is, pursuant to such lease, prohibited from occupying or subleasing, and required to demolish, said building as promptly as is practicable.

***Section 2.7 Authority's option to terminate.***

Notwithstanding any other provisions of this lease that may appear to the contrary, if Lessee fails to obtain all necessary permits for construction and actually commence construction of the "Minimum Required Improvements" (described in Section 5.2 below) by November 30, 2023, then the Authority may, at its sole option, terminate this lease upon sixty (60) days written notice to Lessee, provided however that if Lessee obtains all necessary permits for construction of, and actually commences construction of, the Minimum Required Improvements prior to the effective date of said termination, such notice of termination will be deemed withdrawn. The Authority may extend said time period in writing, but will be under no obligation to do so. If Authority's right to terminate is exercised as herein provided, this lease shall

thereafter be null and void, and any money or security deposited hereunder shall be returned to Lessee (provided Lessee is then current on any rent obligations) and neither party shall have any further liability to the other.

### **ARTICLE 3**

#### **USE OF LEASED PREMISES**

**Section 3.1 Use of premises.** Lessee shall have the right and obligation to use the Leased Premises to develop and operate an air freight facility which will be used solely for the following uses (the "Permitted Uses"), and subleases for such Permitted Uses will not require the consent of Authority:

- (1) receipt, storage and shipping of air cargo (including office space ancillary thereto);
- (2) parking, storage, maintenance, and repair of airline ground service equipment (including office space ancillary thereto);
- (3) provision of aircraft-related or air cargo-related services to airlines (including office space ancillary thereto) such as:
  - (a) air cargo handling;
  - (b) freight forwarding;
  - (c) customs brokerage;
  - (d) airline ground services; and
  - (e) training associated with the above

In the event Lessee is unable, for a period exceeding six (6) months, to sublease any particular portion of its building to a subtenant for a Permitted Use stated above, at a rental rate of

at least \$25.00 per square foot (including all costs associated with occupancy), then Lessee may propose to Authority, for Authority's consent pursuant to Article 7 below, a sublease for another intended use, which the Authority may approve or disapprove in its sole discretion.

Notwithstanding items (1) through (3) above, nothing herein shall be construed to allow Lessee, or its subcontractors or subtenants, to provide services to other entities, either within the leased premises or on parts of the Airport outside the leased premises, without being permitted in writing by the Authority, in advance, to provide such services on the Airport, which permission may be subject to the Authority's then-applicable terms, conditions, and fees for the privilege of providing such services on the Airport (including but not limited to satisfaction of the Authority's then-current "Minimum Standards for Aeronautical Activities for Southwest Florida International Airport," to the extent applicable).

Lessee shall not use or permit the use of the leased premises, or any part thereof, for any purpose other than those specifically allowed above, and shall not provide, or allow to be provided, any other service at or from the leased premises, except upon prior written consent of the Authority.

Notwithstanding anything above which may appear to the contrary, prohibited uses of the leased premises include, but are

not limited to:

- (1) maintenance, repair, or overhaul of aircraft;
- (2) storage of cars, boats, travel trailers, recreational vehicles, or other items not related to aviation;
- (3) sale or provision of fuel or fueling services to the public or any third parties;
- (4) the presence, placement, or use, of "Mobile Minis" or any other trailers or modular units, whether for office, storage, or otherwise, after the "Date of Beneficial Occupancy" defined below;
- (5) rental of parking spaces to the public, or any other kind of commercial parking operations;
- (6) rentals or sales of any motor vehicles; and
- (7) provision of airfield access to any subtenant not having a bona fide business purpose for same.

**Section 3.2 Non-interference with Airport.** Lessee agrees to refrain from and prevent any use of the leased premises or the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, constitute an Airport hazard, or be contrary to the FAA-approved Airport Layout Plan (ALP). Lessee shall make no unlawful, improper, or offensive use of the premises.

#### **ARTICLE 4**

##### **RENT AND CHARGES**

**Section 4.1 Construction period rent prior to Date of Beneficial Occupancy.** Lessee agrees to pay the Authority, as "Construction Period Rent," monthly, the sum of \$1,175.21, together with applicable sales tax, on or before the first day of



each calendar month, for the period beginning on December 1, 2022, and continuing until the last day before the "Date of Beneficial Occupancy" (defined below). The Construction Period Rent for any partial month will be prorated.

**Section 4.2      Ground Rent.** Lessee agrees to pay the Authority, monthly, together with applicable sales tax, on or before the first day of each calendar month, commencing on the "Date of Beneficial Occupancy," and for and during the remainder of the term of this lease, "Ground Rent," in the amount of \$4,700.85 per month (subject to CPI adjustments pursuant to Section 4.4 below). The Ground Rent for any partial calendar month will be prorated.

**Section 4.3      Definition of Date of Beneficial Occupancy.**  
The "Date of Beneficial Occupancy" as used in this lease means the first day of the calendar month immediately following the earlier of:

- (1) issuance of a temporary or permanent certificate of occupancy for any building constructed on the premises (other than a temporary construction office); or
- (2) the date Lessee commences using the leased premises (or any part) for any aspect of its business (other than a temporary construction office, and construction of the improvements); or
- (3) January 1, 2024.

For the purposes of this agreement, the Date of Beneficial Occupancy will be set and conclusively determined by the date set out in Authority's written notice to Lessee, unless Lessee can

show that none of the above prerequisites to the Date of Beneficial Occupancy have occurred. Lessee will use due diligence and make good faith efforts to obtain permits, complete its construction, cause the Date of Beneficial Occupancy to occur, and open the facility for subleasing as provided herein, as soon as practicable.

**Section 4.4 CPI adjustments.** Beginning January 1, 2024, and every three (3) years thereafter, while this lease is in force, the Ground Rent will be adjusted to reflect proportionate increases and decreases in CPI, but will never be less than the initial Ground Rent specified in Section 4.2 above. The adjusted ground rent will be the product of the initial ground rent multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of October 2020. The term "comparison index" means the CPI in effect for the second calendar month before the adjustment date.

The term "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84 = 100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982-1984 = 100 as a base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to

be published, any substitute or successor equivalent index published by any agency of the U.S. government will be used.

**Section 4.5 Payments.** All payments shall be payable, together with any applicable Florida sales tax, on or before the first day of each calendar month for which the payment is due. Payments shall be paid, without demand, setoff, or deduction, to:

Lee County Port Authority  
Finance Department  
11000 Terminal Access Road, Suite 8671  
Fort Myers, Florida, 33913

or such other place as the Authority may direct in writing.

## **ARTICLE 5**

### **CONSTRUCTION OF FACILITY; MINIMUM REQUIRED IMPROVEMENTS**

**Section 5.1 Premises is leased "as is".** Lessee agrees to accept the leased premises strictly in "as is" condition. No representation has been made to Lessee by Authority concerning the condition of the premises or its suitability for Lessee's purposes or Lessee's ability to obtain permits for its development.

**Section 5.2 Minimum required improvements.** Lessee will, at Lessee's own cost and expense, design, obtain all required permits and approvals, complete all site work, and construct, on the leased premises, the following "Minimum Required Improvements" which shall consist of the following improvements and facilities:

- (1) an enclosed air freight building containing at least

15,000 square feet of floor area, with at least five (5) subleasable units; and

- (2) all associated improvements required by the RFP, the Lee County Land Development Code or any governmental entity, including, but not necessarily limited to, automobile parking, lighting, utility lines, fire protection, storm water detention, retention, and control systems, security fencing, berms, landscaping, and roads and driveways for ingress, egress, and circulation.

Authority will cooperate and assist with Lessee's procurement of required permits and approvals, provided that the Authority will incur no expenses aside for its staff time.

**Section 5.3 Minimum capital investment; Cost of improvements.** Lessee will bear the sole cost and expense of all improvements to the premises, or to serve the premises, including, but not limited to, site investigation, location of any existing utilities, design, permitting, materials, access roads, driveways, extension of utilities, site work, security fence work (as noted below), construction, insurance, and maintenance. Lessee is required to expend a minimum of \$2,025,000.00 (herein the "Minimum Capital Investment") for the initial development and construction of the Minimum Required Improvements set forth above. Only the following "Allowable Items" will be counted toward satisfying the Minimum Capital Investment:

- (1) the actual costs of labor and materials for the construction of the Minimum Required Improvements which are contracted for and paid for by the Lessee;
- (2) the actual costs of furniture, fixtures, and equipment



purchased for and installed and used on the leased premises; and

- (3) actual design, engineering, and permitting costs (including expenditures on third-party consultants such as consultants, attorneys, local agents, expeditors, etc.), not to exceed 15% of the total of the costs of (1) and (2) above.

Within ninety (90) days of the date the air freight building is opened for business, Lessee will confirm its compliance with this Section by providing Authority with an itemized list of expenditures on Allowable Items actually paid for, along with copies of paid invoices or similar documents acceptable to the Authority evidencing the amount Lessee has spent on the Allowable Items, and a signed statement by Lessee's chief financial officer certifying that to the best of their knowledge and belief the schedule is true and correct and all amounts listed were actually incurred and paid by Lessee. The amount of such expenditures which are timely and satisfactorily evidenced to the Authority, as set forth above, shall be the "Actual Capital Investment" for the purposes of this agreement.

If the amount of the Actual Capital Investment is less than the Minimum Required Capital Investment, Lessee will pay the Authority the difference within thirty (30) days of invoice or written notice by the Authority.

All work, whether interior or exterior, ordinary, extraordinary, or structural, must be performed in a good and workmanlike manner, in full compliance with plans and

specifications approved by the Authority, and in compliance with the Lee County Land Development Code and the Lee County Port Authority "Leasehold Development Standards for Southwest Florida International Airport and Page Field Airport" adopted by the Authority on March 12, 2001, as may be amended or replaced from time to time in a nonretroactive and nondiscriminatory manner ("Leasehold Development Standards"), except as may be expressly waived by the Authority, and all other applicable governmental rules or regulations.

Lessee will, as needed, and subject to the Authority's approval as to locations and specifications, remove existing fencing and install new chain link fencing, gates, and security card readers, so as to enclose the leased premises within the Airport's Airside Operations Area (herein "AOA"), while maintaining the integrity of the AOA perimeter security fencing at all times. All fencing, paving, and roadway work shall be done in accordance with Lee County D.O.T., Florida D.O.T., or Federal Aviation Administration specifications, as may be applicable.

**Section 5.4      Design approvals; construction bonds; insurance.** Prior to commencing any construction work on the leased premises or elsewhere on the Airport, (including but not necessarily limited to mobilization, earth moving, initial construction, improvements, alterations and repairs) Lessee

shall:

- (1) submit to the Authority for the Authority's approval complete plans and specifications for the proposed work, utilizing the procedures set out in the "Leasehold Development Standards";
- (2) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (3) provide the Authority with proof of insurance of the types and in the amounts set in Article 13 below;
- (4) itself, or cause its contractor to, execute, deliver to the Authority, and record in the public records of Lee County, separate payment and performance bonds which comply with the requirements of Florida Statutes Section 255.05(1) (a) and are satisfactory to the Authority, in at least the full amount of the contract price for completing the work;
- (5) require its general contractor to obtain the insurance set forth in Section 13.2 below, and furnish evidence satisfactory to the Authority that the contractor or contractors have such insurance;
- (6) coordinate with the Authority to submit an application to the FAA for "airspace analysis" and approval; and
- (7) obtain from Authority written approval (not to be unreasonably withheld or delayed) of the design plans and specifications and a written Notice to Proceed. The Authority reserves the right to require Lessee to resubmit designs and plans until acceptable to the Authority. Any requirement for such resubmittal shall detail the reason(s) the plans were unacceptable and, where applicable, the changes requested by Authority. If the Authority does not respond to Lessee's plans within 30 days after receipt by Authority, they will be deemed approved.

**Section 5.5 As-built Drawings.** Within ninety (90) days of the completion of any construction work by Lessee, Lessee will supply the Authority with an external drive (without executable files) containing the digital as-built CAD drawings ("As-built"



is defined as the revised set of drawings that reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the contract) and one (1) set of reproducible 24" x 36" as-built drawings in PDF format. All submitted drawings must include and reference the latest Autodesk CAD version and latest revision of any/all applicable Lee County Port Authority CAD Drawing Standards and OI-8200 Facility Numbering Standards, should have a defined projected coordinate system in NAD 83 State Plane Florida West 0902, and be signed and sealed by an architect or engineer licensed in Florida. If the Lessee fails to provide said as-built drawings within thirty (30) days after notice that same are overdue, the Authority may hire a registered architect or engineer to provide same and shall recover the cost of said work, plus a twenty percent (20%) overhead administrative fee, from the Lessee.

***Section 5.6 Environmental mitigation to be off-airport.***

Any environmental mitigation required of the Lessee by governmental authorities for the construction of Lessee's improvements shall be located off-airport and at Lessee's own expense. However, Lessee may locate stormwater detention or retention facilities on the leased premises, subject to the other provisions of this lease, and provided they are designed in conformance with FAA Advisory Circular 150/5200-33, "Hazardous



Wildlife Attractants on or Near Airports" as may be amended from time to time. It is further agreed that Lessee may use any existing stormwater detention and retention facilities adjacent to the leased premises and may discharge directly or from its own systems into those existing systems.

**Section 5.7      Maintenance and repairs of the premises.**

Lessee will maintain the leased premises and any structures and other improvements thereon (whether preexisting this lease or constructed by Lessee) in a good state of repair, and in a clean, orderly, safe, and serviceable condition at all times. Lessee will provide at its own expense all such maintenance, custodial, trash removal, landscaping, pest control, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises and improvements thereon.

**Section 5.8      Ownership of improvements.** Title to all Improvements when made, erected, constructed, installed, or placed upon the leased premises shall be and remain the property of the Lessee until the expiration of the lease term, or until this lease shall be sooner terminated as herein provided. Except as otherwise provided in this lease, upon such expiration or sooner termination of this lease, title to such Improvements shall automatically pass to, vest in, and belong to Authority, free of all liens and claims, without further action on the part of either party and without cost or charge to Authority. During

the lease term or until the earlier termination of this lease as herein provided, Lessee alone shall be entitled to claim depreciation on the Improvements for all taxation purposes.

Lessee will have the right, prior to termination or expiration of this lease, to remove any furnishings, trade fixtures, equipment, and other improvements that have not assumed the nature of realty, provided that Lessee is not then in default hereunder and that Lessee's removal of same does not cause damage to the premises and remaining improvements, and that Lessee repairs any damage that is caused by such removal. Any property or improvements remaining after the termination or expiration of this lease will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

**Section 5.9     Advertising and signs.** Lessee may erect signs on or about the premises, provided, however, that Lessee's installation or operation of signs on the Airport shall be subject to the prior written approval of the Authority at its sole discretion as to the number, size, height, location, color, and general type and design. Signs shall not be placed outside the boundaries of the leased premises.

## **ARTICLE 6**

### **UTILITIES**

Lessee must extend to the premises and install thereon, at its own expense, any required utilities not already in place. In

connection therewith, Authority will grant such utility easements as are reasonably required therefor.

Lessee must pay for all gas, electric, telephone, cable TV, water, sewage, trash removal, and any other utilities consumed within the leased premises.

Lessee agrees not to disturb, damage, or interfere with, in any way, any existing utility easements, utility lines, or F.A.A. cables on the premises, and agrees not to pave over, or otherwise impair or impede the Authority's or F.A.A.'s access to any utilities or F.A.A. cables, except as may be approved in writing by the Authority.

Authority will not be responsible or liable at any time for loss of life, injury, or damage to any person or property or business of Lessee or any subtenant or others claiming by, through, or under Lessee, caused by or resulting from any interruption of water, electricity, sanitary sewer, or any other utility service.

## **ARTICLE 7**

### **ASSIGNMENTS, SUBLEASES, AND LEASEHOLD MORTGAGES**

**Section 7.1 Assignments.** Except as otherwise provided in this Article 7, neither Lessee, nor Lessee's successors or assigns, shall assign, mortgage, pledge, or otherwise transfer or encumber this lease, in whole or in part (herein an "assignment"), and any such attempted assignment shall be

voidable by the Authority, unless Lessee first obtains written consent of the Authority's Board of Port Commissioners or their authorized designee, which may be withheld upon any reasonable grounds.

Any change in the direct majority ownership interest in Lessee by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this section. Notwithstanding anything in this Article or elsewhere in this Lease to the contrary, the Authority hereby expressly approves the following and no further consent shall be necessary for:

- (1) assignment of Lessee or Lessee's interest in this Lease to Aviation Facilities Company Management, LLC, or any wholly-owned subsidiary thereof or entity that it manages; or
- (2) assignment of Lessee's interest in this Lease (or up to 100% of the equity interest in Lessee) to any entity (or person) having a net worth of at least \$20 million; or
- (3) the transfer or assignment of Lessee's interest in this Lease to a holder of a leasehold mortgage which is compliance with Section 7.3 below, via foreclosure or otherwise, in either such holder's own name or through a nominee; or
- (4) the transfer or assignment of Lessee's interest in this Lease, acquired pursuant to item (3) above by a holder of a leasehold mortgage, to a third party purchaser, provided however that any subsequent transfers or assignments from such third party purchaser shall be subject to all of the requirements of this Section.

If Lessee requests Authority's consent to an assignment, Lessee shall submit in writing to Authority, not less than ninety (90) days prior to the anticipated transfer:



- (a) the name, type of entity (e.g. corporation, LLC, partnership, individual), state of incorporation or organization, and address, of the proposed assignee or subtenant ("transferee");
- (b) a copy of the material terms of the agreement of assignment, excluding financial terms;
- (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the space;
- (d) banking, financial, or credit information relating to the proposed transferee reasonably sufficient to enable Authority to reasonably determine the financial responsibility and character of the proposed transferee.

In recognition of Lessee's obligations to provide the information set forth in the preceding sentence, Authority agrees to respond to any such request for consent to any assignment submitted to Authority by Lessee in as timely a manner as reasonably practicable in consideration of such consent requested and the normal meeting schedules of the Authority's Airports Special Management Committee and Board of Port Commissioners. In the event of any such request for consent being denied, Authority shall state with specificity the reason or reasons for denying such request.

Lessee will provide Authority with a complete copy of any proposed assignment, mortgage, pledge, or encumbrance, prior to requesting Authority's consent. If the Authority withholds its consent to an assignment that a "leasehold mortgagee" (as defined in Section 7.3) proposes to make of this lease, the Authority will provide the reasons for such withholding of consent, or

rejection of the proposed assignee, in writing.

The consent by Authority to any assignment, mortgage, pledge, encumbrance, or transfer, shall not in any way be construed to relieve Lessee, or Lessee's successor or assign, from obtaining the Authority's written consent, if required hereunder, to any further assignment, mortgage, pledge, encumbrance, transfer, or sublease. Lessee will remain liable for the performance of this lease regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority expressly releases Lessee from such liability in writing.

**Section 7.2 Subleases.** Lessee may sublet the whole or any part or parts of the Leased Premises for any use permitted under this Lease.

It is the intent of the Authority and Lessee, that Lessee will give parties which are, as of the date of this lease, tenants in the Authority's existing air freight building located on the north side of runway 06-24 (herein "Existing Tenants"), priority to sublease space within the new air freight building contemplated by this lease. Lessee agrees to make good faith efforts to work with such Existing Tenants to determine their needs and respective interest (if any) in subleasing space within the new air freight building before subleasing space to a new tenant in place of an Existing Tenant.

**Section 7.3 Leasehold mortgages.** The Authority will

consent to a proposed mortgage of Lessee's interests in this lease (a leasehold mortgage), and confirm that consent in a writing reasonably acceptable to the mortgagee or trustee, provided, however, that:

- (1) Such a mortgage may be granted only to a bona fide "Lending Institution."
- (2) Neither the Authority's nor Lee County's interests in this lease or the fee title to the leased premises shall be subordinate to any leasehold mortgage or pledge of Lessee's interests in this lease.
- (3) The leasehold mortgage shall not be binding upon Authority in the enforcement of its rights and remedies herein and by law provided, unless and until an executed counterpart thereof or a copy thereof certified by the recording officer shall have been delivered to Authority, notwithstanding any other form of notice, actual or constructive.
- (4) The leasehold mortgage shall be specifically subject and subordinate to the rights of Lee County Port Authority and Lee County under the lease agreement between Authority and Lessee.
- (5) The mortgage shall provide that in the event of a foreclosure of such mortgage or of any other action or proceeding for the enforcement thereof or of any sale thereunder, if the sublessee under any existing or future sublease shall not then be in default in the payment of rent for which a proceeding is then pending brought by such sublessee's lessor, then, any provision in such sublease to the contrary notwithstanding, such sublease will not be barred, terminated, cut off, or foreclosed, nor will said sublessee be named a defendant in such foreclosure action or proceeding, nor will the rights and possession of said sublessee thereunder be disturbed.
- (6) The mortgagee shall agree to give notice to the Authority in writing by certified mail or courier service of the occurrence of any event of default under the loan.
- (7) The mortgagee shall agree to give notice to the

Authority in writing by certified mail or courier of any default prior to initiating any foreclosure action. If any payment of principal or interest required to be made under the provisions of the promissory note(s) and mortgage is not made or any covenant of the mortgage is not performed, thereby constituting a default under the terms of the mortgage, the Lessor may, at its option, cure said default in accordance with the terms of this lease.

- (8) The Authority will, in writing by certified mail or courier service, give notice to the mortgagee of the occurrence of any default under the lease.
- (9) The Authority will, by certified mail or courier, give the mortgagee at least forty-five (45) days written notice of any default prior to Authority initiating any lease termination. If any payment of rent is required to be made under the provisions of this lease and is not made or any covenant of this lease is not performed, thereby constituting a default by Lessee under the terms of the lease, the mortgagee may, at its option, cure said default.
- (10) In the event this lease is terminated, the leasehold mortgage shall not prevent the merger of the leasehold and fee estates in Lee County or the Lee County Port Authority, as the case may be.
- (11) The mortgage will not contain a future advance provision unless the proceeds of such future advances are used solely for construction of new or expanded buildings on the leased premises.
- (12) The mortgagee agrees to be bound by the terms and conditions of the lease in exercising its remedies under the mortgage and shall be bound by the assignment restrictions provided in this lease.
- (13) Any transfer of the leasehold interest from the lender to a third party shall be prohibited unless made to a capable operator as reasonably determined by Authority applying its own best judgment for the Airport, and approved by the Authority in advance.
- (14) Any amendment to the leasehold mortgage will be subject to review and approval of the Authority, which approval will not be unreasonably withheld or delayed provided that the leasehold mortgage remains in compliance with



the foregoing (1) through (13), and shall have no force or effect against Authority's and Lee County's interest in the premises until that consent is obtained and memorialized in writing.

The term "Lending Institution" as used herein shall mean a savings bank, bank, trust or insurance company, savings and loan association, college, university, pension fund, employees' profit-sharing trust, commercial credit corporation, investment banking company, or any other monetary or lending institution primarily engaged in the making of first mortgage loans, provided such entity has assets totaling not less than \$100 million.

The term "leasehold mortgage" as used herein shall include a mortgage, deed of trust, deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, assigned, pledged, or otherwise transferred, to secure a debt or other obligation, including, without limitation, obligations to reimburse the issuer of a letter of credit. The term "leasehold mortgagee" as used herein shall refer to a holder of a leasehold mortgage in respect to which notice as hereinafter provided for has been given.

Any leasehold mortgage shall be specifically subject and subordinate to the rights of Authority and Lee County hereunder.

Any mortgage on this lease or the interest of Lessee hereunder without full compliance with any and all requirements hereunder shall be invalid and of no effect against Authority.

## ARTICLE 8

### SECURITY DEPOSIT/PERFORMANCE GUARANTY

Within ten (10) days of the Effective Date of this lease, Lessee will deliver to the Authority the amount of \$25,000.00, to be paid by certified check or cashier's check, as a security deposit for the full and faithful performance by Lessee of all terms, covenants, and conditions of this lease including but not limited to the rentals, fees and charges to be paid, throughout the term of this lease; failure to do so will be a material breach and a default entitling Authority to terminate pursuant to Section 14.3.

If Lessee defaults on any duty under this lease, Authority may apply the security deposit to damages sustained. If Lessee faithfully performs the obligations of this lease and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security deposit, without interest, within forty-five (45) days after such expiration and Lessee's timely vacation of the premises and removal.

In lieu of a cash security deposit, Lessee may deliver to Authority, within the time required above, an irrevocable letter of credit, in the amount stated above, to serve as security for the full and faithful performance by Lessee of all terms, covenants, and conditions of this lease including, but not limited to, the rentals, fees and charges to be paid, throughout

the term of this lease. The letter of credit shall permit partial drawings and shall automatically renew each year unless at least sixty (60) days advance written notice of the issuer's election not to renew is provided to the Authority. If the letter of credit is not to be renewed, Lessee shall deliver a replacement letter of credit to the Authority at least thirty (30) days before expiration of the current letter of credit. If the letter of credit is drawn upon, Lessee shall replenish or replace the same so as to always maintain the full amount required under this Article available for Authority's protection.

The letter of credit shall be issued by a commercial bank acceptable to Authority that is chartered under the laws of the United States, any state thereof or the District of Columbia and which is insured by the Federal Deposit Insurance Corporation. If at any time the financial condition of such issuer changes in any materially adverse way, as determined by Authority in its sole discretion, then Lessee shall within five (5) days of written notice from Authority, deliver to Authority a replacement letter of credit which otherwise meets the requirements of this lease and Lessee's failure to do so shall, notwithstanding anything in this lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid five (5) day period. Among other things, Authority shall have the right under such circumstances to immediately, and without

further notice to Lessee, present a draw under the letter of credit for payment and to hold the proceeds thereof.

In the event the issuer of a letter of credit held by Authority is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver, or liquidator is appointed for the issuer, then, effective as of the date of such occurrence, said letter of credit shall be deemed to not meet the requirements of this Section, and Lessee shall within five (5) days of written notice from Authority, deliver to Authority a replacement letter of credit which otherwise meets the requirements of this lease and Lessee's failure to do so shall, notwithstanding anything in this lease to the contrary, constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto other than the aforesaid five (5) day period; or alternatively Lessee shall, within such five (5) day period deliver cash or certified check or cashier's check to Authority in the amount required above.

## **ARTICLE 9**

### **LESSEE'S STANDARDS OF OPERATION**

**Section 9.1 General.** Lessee will, in good faith and using due diligence, seek to obtain all required permits and approvals, and to complete all construction and open the facility, as promptly as possible. Once the facility is open,



Lessee will continuously operate the facility, and maintain and operate the "Minimum Required Improvements" set forth in Section 5.2 above.

**Section 9.2 Premises.** Lessee will maintain the premises, or cause the premises to be maintained, in a first class manner with regard to safety, and cause the premises to be kept clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents and vermin. Lessee will store and use any hazardous materials in accordance with all applicable laws.

**Section 9.3 Cleanliness.** Lessee shall keep the premises clean and shall dispose of all debris and other waste matter which may accumulate, and shall provide, or have its subtenants provide, adequate metal dumpsters, with proper covers, and regular trash removal service, for waste generated within the premises.

## **ARTICLE 10**

### **RIGHT OF ENTRY**

Authority's agents or employees will have the right to enter the leased premises to:

- (1) as coordinated with Lessee, view and inspect the premises, or make repairs any time during Lessee's regular business hours;
- (2) view and inspect the premises or make repairs at any time in case of emergency; and
- (3) perform any and all things which Lessee is obligated to do and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and

replacements to the premises, unless Lessee already is making a reasonable effort to effectuate corrective measures. The cost of all labor, materials, and overhead charges required for performance of such work will be promptly paid by Lessee to Authority.

## **ARTICLE 11**

### **COMPLIANCE WITH LAWS**

Lessee (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Lessee has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee Co. Ord. 94-09, as amended, or as may be further amended, renumbered, or replaced), and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

## **ARTICLE 12**

### **RELEASE, INDEMNITY, AND HOLD HARMLESS**

Notwithstanding any minimum insurance requirements prescribed elsewhere in this contract, Lessee agrees to defend, release, indemnify, and hold harmless Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from:

- (1) any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with the use of the Leased Premises by Lessee, its subtenants, employees, agents, contractors, and invitees, except to the extent caused by the negligence of the Authority and/or Lee County (and/or their respective Commissioners,

officers, agents, and employees);

- (2) any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with the installation, use, maintenance, repairs, and removal of the USTs or other tanks, including but not necessarily limited to leaks, pollution, or other contamination to the environment; and
- (3) any and all fines or penalties imposed on the Authority or Lee County by any governmental agency (including but not limited to the Federal Aviation Administration and the Transportation Security Administration) as a result of the failure of Lessee or its agents, employees, or contractors, to abide by or comply with any statute, ordinance, rule, regulation, or other requirement (including but not limited to environmental damage or breaches of the Airport's security).

## **ARTICLE 13**

### **INSURANCE**

**Section 13.1 Insurance during term of lease.** Lessee must procure and maintain, effective upon or prior to the start of any construction (except as specified in item (6) below), and during the remainder of the lease term, at its own expense, for the protection of the Authority and Lessee, in form satisfactory to Authority, from one or more insurers qualified to do business in Florida:

- (1) Commercial general liability insurance, including premises, operations, airside automobile, and contractual liability, with a minimum combined single limit of \$10,000,000.00, and products-completed operations, with a minimum limit of \$10 million aggregate.
- (2) Business automobile liability insurance, covering all owned, leased, hired, and non-owned vehicles, with a minimum combined single limit of \$5,000,000.00.



- (3) Property insurance for all risks of physical loss or damage to the premises and improvements including loss or damage by fire, windstorm, and other such causes commonly referred to as "extended coverages." Coverages must be maintained in an amount sufficient to prevent any party from being a co-insurer on any part of the risk, but the amount must be not less than the full replacement value.
- (4) Workers' compensation insurance, if, and as, required by Florida law.
- (5) Employer's liability insurance, with a limit of at least \$1,000,000.00.
- (6) Pollution Legal Liability Insurance, effective upon or prior to the issuance of a certificate of occupancy for the facility, with limits of at least \$2,000,000.00 per occurrence, and \$4,000,000.00 annual aggregate, with an extended recovery period of at least two (2) years beyond the last day of the term of this lease, and including coverage for:
  - (a) third-party claims for on and off-site bodily injury and property damage; and
  - (b) claims resulting in bodily injury property damage or cleanup costs;

**Section 13.2 Contractor's insurance.** In addition to the insurance required above, prior to commencement of any construction work on the premises, Lessee must, at its own expense, require its general contractor or contractors to procure and maintain, for the protection of the Authority and Lessee, in form satisfactory to Authority, from one or more insurers qualified to do business in Florida:

- (1) Commercial general liability insurance, including premises, operations, airside automobile, products-completed operations, and contractual liability, with minimum limits of \$2 million per occurrence and \$4 million aggregate.



- (2) Workers' compensation insurance, in the amounts required by Florida law.
- (3) Inland Marine Builder's Risk Insurance, written on an all-risk, replacement cost, and completed value form basis, in an amount equal to at least 100% of the contract price of the work.
- (4) Contractor's Pollution Legal Liability Insurance, including Errors & Omissions, and providing complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties, for losses caused by pollution conditions that arise from the operations of the contractor, with limits of at least \$2,000,000 per occurrence, and \$4,000,000 annual aggregate, with an extended recovery period of at least two (2) years beyond the last day of the term of this lease, and including coverage for:
  - (A) third-party claims for on and off-site bodily injury and property damage; and
  - (B) claims resulting in bodily injury property damage or cleanup costs;
- (5) Contractor's Professional Errors & Omissions Liability Insurance, with limits of at least \$1,000,000 per occurrence, and \$2,000,000 annual aggregate.

**Section 13.3 General insurance requirements.** Except for the workers compensation insurance and the employers liability insurance, the Authority must be named as additional insured in all insurance policies required by this lease, to the full limits of the policy, even if those limits are in excess of the limits required by this lease. Lessee's and Lessee's contractors' insurance policies will be primary and non-contributory and include a waiver of subrogation in favor of the Authority.

Lessee shall be deliver to Authority, prior to issuance of a Work Permit or Notice to Proceed by the Authority, and prior to

Lessee's commencement of any construction or occupation or use of the premises, and throughout the term of this lease, copies of insurance certificates evidencing the required coverages. The Authority reserves the right to additionally require copies of the declarations and endorsements pages from any required insurance policies, or copies of the applicable policy language effecting coverage required by this Article. Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled or materially changed or altered without first giving advance written notice to the Lee County Port Authority."

Maintenance of the above required insurance is a material element of this lease; Lessee's failure to obtain and maintain or renew such coverage, or cause such coverage to be obtained, maintained, or renewed, or to provide evidence of same, will be considered a material breach of this lease.

## **ARTICLE 14**

### **DEFAULT BY LESSEE**

**Section 14.1 Default.** Lessee will be deemed in default of this lease if:

- (1) Lessee fails to pay rent or make any other payment required hereunder within ten (10) days after payment is due;
- (2) Lessee neglects or fails to perform and observe any promise, covenant or condition set forth in this

agreement after receipt of written notice of breach from the Authority;

- (3) Lessee becomes a corporation in dissolution for a period exceeding six (6) months; or
- (4) Lessee abandons, deserts, vacates or discontinues its operation of the business herein authorized without prior written consent of Authority (except that vacancies due to Lessee's inability to secure subtenants willing to pay reasonable rental rates will not trigger this item (4) .

**Section 14.2 No waiver.** No default will be deemed waived by Authority, whether or not Authority has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the Authority.

**Section 14.3 Authority's remedies.** In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this lease, and to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least thirty (30) days written notice to Lessee, if Lessee is in default of this lease as set forth in Section 14.1 above, and such default is not cured to the Authority's reasonable satisfaction:

- (A) within thirty (30) days after the Authority gives Lessee written notice of the default, or,
- (B) if any such default (other than the payment of rent or money) is not curable within thirty (30) days, Lessee fails to demonstrate to the Authority within said thirty (30) day period that it has commenced curing the default, or, once started, Lessee fails to diligently pursue the cure of such default to completion.



## ARTICLE 15

### CASUALTY AND CONDEMNATION

**Section 15.1 Notice to Authority.** If the premises or any improvement thereon, such as the air freight building, is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Lessee shall promptly give written notice to Authority of the date and nature of such damage.

**Section 15.2 Damage due to insurable cause not near end of extended term, or minor damage.** If any structure or building is damaged and:

- (A) such damage occurs by fire, hurricane, tornado, or other casualty of the type which Lessee is required to provide coverage for, or which is covered by any insurance policy carried by Lessee, and such damage occurs within the initial term (as set forth in Section 2.1 above) or, if Lessee has exercised its option to extend the term (as set forth in Section 2.2 above), within the optional extended term, but not more than 3 years prior to the expiration date of such extended term; or
- (B) the structure or building is less than ten percent (10%) damaged, as determined by an "Independent Architect" as defined below;

then Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild it, at least to the extent of the value and as nearly as practicable to the character of the premises and improvements existing immediately prior to the occurrence of such damage, and in accordance with the procedures set forth above for Lessee's initial construction (not limited to the Authority's



review and approval of plans), and all insurance proceeds shall be payable to the Leasehold Mortgagee, if any, to be held and applied to payment of the cost of restoration and repair of the leased premises and the improvements thereon. If there is no Leasehold Mortgagee, the insurance proceeds shall be applied to the restoration and repair cost directly by the Lessee.

An "Independent Architect" shall mean an architect or engineer that is licensed to practice in the State of Florida, who has experience in estimating the cost of construction and repair, and who is selected by agreement between Authority and Lessee, or, if Lessee rejects or does not approve, within thirty (30) days of Authority's written proposal, any two (2) independent licensed architects or engineers, then the "Independent Architect" may be selected unilaterally by the Authority (but shall not be one of the two originally proposed by Authority, if such architect(s) or engineer(s) were expressly rejected by Lessee in writing within said thirty (30) day time period). In any event, the fee charged by the "Independent Architect" shall be split equally between Authority and Lessee.

In the event of casualty, for which insurance proceeds are available and are less than ten (10) percent of the coverage limits of the insurance, such proceeds shall be paid by the insurer to Lessee to be used for and applied to the cost of restoration and repair of the damaged Improvements. In the event of casualty for which insurance proceeds are available and are

ten (10) percent or more of the coverage limits of the insurance, such proceeds paid by the insurer will be deposited with an "Insurance Trustee" to be used for restoration and repair of the damaged Improvements and disbursed based on monthly requisitions as restoration and repair proceeds to completion. The insurance trustee shall be a banking institution having a bank branch in Lee County and selected by mutual agreement among Authority, Lessee and Leasehold Mortgagee. If the proceeds are insufficient to pay the cost of restoration and repair, Lessee must pay the shortfall. If the proceeds exceed the cost of restoration and repair, Lessee will be entitled to the surplus, unless Lessee is in default under this lease. In the latter event, the surplus must be applied to the default; and the remainder, if any, will be paid to Lessee.

**Section 15.3 Major damage due to uninsurable cause or near end of lease term.** If any structure or building is damaged and:

- (A) such damage occurs by a cause, such as war or nuclear attack, not of the type which Lessee is required to provide coverage for, and which is not covered by any insurance policy carried by Lessee, or, if Lessee has exercised its option to extend the term (as set forth in Section 2.2 above); and
- (B) the structure or building is more than ten percent (10%) damaged, as determined by an "Independent Architect" as defined above;

then Lessee shall have the option to elect to terminate this lease by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of said

casualty.

If Lessee exercises this option to terminate, then, after applying the insurance proceeds to the full payment of the leasehold mortgage, the excess thereof shall be split equally between Lessee and Authority, provided that at the written request of the Authority, given not later than ninety (90) days after Lessee's notice of its election to terminate, Lessee shall be responsible for the prompt demolition of, and removal from the premises, any existing improvements specified by Authority that are damaged and remaining after such damage or destruction.

If Lessee does not so exercise this option to terminate, then Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild the damaged structures or buildings, at least to the extent of the value, and as nearly as practicable to the character, of the premises and the Minimum Required Improvements set forth in Section 5.2 existing immediately prior to the occurrence of such damage, and in accordance with the procedures set forth above for Lessee's initial construction (not limited to the Authority's review and approval of plans), and all insurance proceeds shall be handled and disbursed as provided in Section 15.2 above.

**Section 15.4 Abatement of rents and other payments.** If Lessee's business is stopped due to casualty to the Improvements, Lessee's obligation to pay rent and any other applicable fees or charges will abate from the date of said cessation of business,

until the date a certificate of occupancy for completion of Lessee's repairs is issued, or until Lessee reopens the premises for business (whichever occurs first), but in any event not to exceed a period of one year. Notwithstanding the preceding sentence, in the event Lessee terminates this lease pursuant to Section 15.3 above, Lessee will pay the Authority all rents and fees which accrue, prorated as of the date Lessee has so terminated and surrendered the premises to the Authority.

***Section 15.5 Condemnation; permanent taking.***

(A) If at any time during the term of this lease or any extension thereof, the entire leased premises, or such a substantial portion thereof as would render the balance thereof not suitable for the use to which the leased premises was being utilized immediately prior thereto by the Lessee, as determined by Lessee in its sole but reasonable discretion, shall be taken or appropriated in the exercise of eminent domain by any competent authority for public or quasi-public use, this lease may be terminated at Lessee's written election, effective upon the date that title to the leased premises vests in the condemning authority, at which time all rights and obligations between the parties shall cease. Rents and other charges shall be prorated to the date of termination. The taking of any portion of the Improvements which:

- (i) prohibits the legal occupancy of the leased premises for the conduct of Lessee's business; or



- (ii) results in the loss of the rights of ingress and egress to the leased premises, as established (unless comparable access and facilities can be made available);

shall be considered such a substantial taking as would render the use of the leased premises not suitable for Lessee's use.

(B) In the event of a taking (or purchase in lieu thereof) resulting in the termination of this lease pursuant to the provisions of paragraph (A) of this Section, there shall be paid from any award or settlement (but excluding the amount awarded or paid to the Authority or Lee County for the value of the land without Improvements) first to the holder of any Leasehold Mortgage (securing the debt or other obligations incurred by Lessee in connection with the construction, operation, repair, replacement and improvements to and business operated at the leased premises and of the Improvements), the unpaid balance of said Leasehold Mortgage, together with any interest thereon accrued to the date of such payment. Lessee will be entitled to participate in any award or settlement resulting from the taking to the extent of:

- (i) Lessee's interest in the leased premises determined without regard to the termination of this lease by the taking or any unexercised options to extend the term;

- (ii) business damages and relocation costs; and

(iii) the unamortized value of the leasehold improvements; but only to the extent such amounts exceed the entitlement, as defined above, of the holders of any Leasehold Mortgages. This

lease will terminate on the date title to the leased premises vests in the taking authority. Rent will be prorated to the date of termination.

**Section 15.6 Condemnation; use of proceeds by Lessee.** In the event of a partial taking (or purchase in lieu thereof), not resulting in the termination of this lease pursuant to the provisions of paragraph (A) of Section 15.5 above, then if Lessee elects to make repairs to any Improvement(s) on the leased premises affected by such taking (or purchase in lieu thereof) to the extent necessary to restore the same to complete architectural units (to the extent feasible, taking into account the amount of land remaining after such taking or purchase), all compensation available or paid to Authority and Lessee (but excluding the amount awarded or paid to the Authority or Lee County for the value of the land without Improvements) upon such partial taking (or purchase) shall be paid to Lessee for the purpose of paying towards the cost of such restoration.

**Section 15.7 Condemnation; temporary taking.** If less than the whole of the leased premises or less than such portion thereof as would render the use of the leased premises not suitable for Lessee's purposes as aforesaid is taken for a period of less than one (1) year, Lessee shall be entitled to a reduction of rental by a fraction, the numerator of which shall be the number of square feet of the Improvements taken or

condemned and the denominator of which shall be the square footage of the leased premises, upon such date as possession is surrendered to the taking authority and continuing until possession is restored to the Lessee.

**Section 15.8 Condemnation; use of proceeds by Leasehold Mortgagee.** All condemnation proceeds (but excluding the amount awarded or paid to the Authority or Lee County for the value of the land without Improvements) payable as a result of a partial taking of any portion of the leased premises which does not result in a termination of the lease, shall be payable to the Leasehold Mortgagee to be held by the Leasehold Mortgagee and applied to payment of the cost of restoration and repair of the leased premises and the Improvements thereon.

**Section 15.9 Definition of "taking".** The term "taking" includes any taking by a governmental body or quasi-governmental body, or by a public or private utility authorized by law to exercise the power of eminent domain, and includes a voluntary sale to such body or entity as an alternative to taking.

## **ARTICLE 16**

### **LICENSES AND TAXES**

Lessee shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. Lessee agrees to bear, pay, and discharge, on or before their respective due

dates, all federal, state, and local taxes, fees, assessments, and levies which are now or may hereafter be levied upon the premises, or upon Lessee, or upon the business conducted on the premises, or upon any of Lessee's property used in connection therewith.

## **ARTICLE 17**

### **COMPLIANCE WITH ENVIRONMENTAL LAWS**

**Section 17.1 Covenants and Indemnity.** As a material inducement to Authority to lease the premises to Lessee, Lessee covenants and warrants that Lessee and Lessee's use of the premises will at all times comply with and conform to all Environmental Laws. Lessee agrees not to cause a Release of any Hazardous Substance, or otherwise violate any Environmental Law with respect to the premises, and will release, hold harmless, and indemnify Authority for any and all claims, demands, damages, actions, causes of action, and suits, whether at law or in equity, of any nature whatsoever, for any third party claims with respect to Lessee's breach of the covenants in this Article 17. Lessee will release the Authority from, and Authority will not be liable for, any damages, including but not limited to general, special, or consequential damages (such as delays, loss of customers, or business interruption), related to the environmental condition of the leased premises, except for any environmental contamination existing prior to the date of this



lease, or subsequently caused by Authority or an adjoining tenant or other third party on adjoining land which, through no fault of Lessee, spreads to the premises leased herein.

**Section 17.2 Definitions.** For purposes of this lease:

"Environmental Law" shall include any and all federal, state, county, municipal, local or other statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions relating to the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or Hazardous Substances, materials, or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes, including the Comprehensive Environmental Response and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Federal Water Pollution Control Act, as amended, and the Clean Water Act, as amended.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Substance" shall mean and refer to asbestos, urea formaldehyde, mold, radon, lead paint, polychlorinated biphenyls,

nuclear fuel or materials, explosives, known carcinogens, petroleum products and byproducts (including crude oil or any fraction thereof), and any pollutant, contaminant, chemical, material, substance or waste, defined as hazardous, toxic or dangerous or as a pollutant or contaminant in, or the use, manufacture, generation, storage, treatment, transportation, release or disposal of which is regulated by, any Environmental Law.

"Release" shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

## **ARTICLE 18**

### **STORM WATER COMPLIANCE**

**Section 18.1 Definitions.** For purposes of this Article, the following definitions apply:

"Storm water" - Storm water runoff and surface water runoff and drainage.

"Significant materials" - Includes, but is not limited to -- raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products, raw materials used in food processing or production; hazardous substances designated under Section 181(14) of the CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA;

fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have a potential to be released with storm water discharges. (See 40 CFR 122.26(b)(12).)

"Best Management Practices (BMP)" - Practices employed to prevent or reduce source water pollution, such as the construction of runoff-retention basins and replanting eroding surfaces.

### **Section 18.2 Acknowledgments.**

(A) Notwithstanding any other provisions of this Lease, Lessee acknowledges that the Airport is subject to federal storm water regulations, 40 CFR Part 122, and, if applicable, state storm water regulations, Chapter 373, Part IV, Florida Statutes. Lessee further acknowledges that it is familiar with these storm water regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations of those regulations.

(B) Authority has taken steps necessary to apply for or obtain a storm water discharge permit as required by the applicable regulations for the Airport, including the Leased Premises. Lessee acknowledges that the storm water discharge permit issued to the Airport may name the Lessee as a co-permittee.

(C) Notwithstanding any other provision or terms of this lease, including the Lessee's right to quiet enjoyment, Authority and Lessee acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and

conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that, as discussed more fully below, it may have to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by the Lessee, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."

(D) Lessee acknowledges that the Airport's storm water discharge permit (NPDES Permit Number FLR05A513, or its successor) is incorporated by reference into this Lease.

***Section 18.3 Permit compliance.***

(A) Authority will provide Lessee with written notice of the storm water discharge permit requirements in the Airport's storm water permit that Lessee will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of good housekeeping measures or Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee, within seven (7) days of receipt of such written notice, shall notify Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed to assent to undertake such requirements. If Lessee provides



Authority with timely written notice that it disputes such storm water discharge permit requirements, Authority and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to written notice from the Authority for purposes of delay or avoiding compliance.

(B) Lessee agrees to undertake, at its sole expense unless otherwise agreed to in writing between Authority and Lessee, those storm water discharge permit requirements for which it has received written notice. Lessee warrants that it shall meet any and all deadlines, that are either imposed on it without objection, or agreed to by the parties. Lessee acknowledges that time is of the essence.

(C) Authority agrees to provide Lessee, at its request, with any non-privileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations.

(D) Lessee agrees that the terms and conditions of the Authority's storm water discharge permit may change from time to time and hereby appoints Authority as its agent to negotiate any such permit modifications with the appropriate governmental entity.

(E) Authority will give Lessee written notice of any breach by Lessee of the Authority's storm water discharge permit or the provisions of this section. Such a breach is material, and, if of a continuing nature, Authority may terminate this lease

pursuant to the terms of the lease. Lessee agrees to cure promptly any breach. Lessee acknowledges that the Airport's storm water discharge permit is incorporated by reference into this lease. Lessee covenants that its use of the premises will not cause any violation of said permit.

## **ARTICLE 19**

### **WASTE; SURRENDER OF POSSESSION**

Lessee will not commit or permit waste of the premises and must quit and voluntarily deliver up possession of the leased premises at the end of the term in as good condition as at the beginning of this lease, and all fixed improvements in as good condition as when installed or constructed, excepting only ordinary wear and tear.

## **ARTICLE 20**

### **BROKERAGE COMMISSIONS**

Authority and Lessee each represents and warrants to the other that it has not authorized or employed, or acted by implication to authorize or employ, any real estate broker or salesman to act for it in connection with this lease.

## **ARTICLE 21**

### **CIVIL RIGHTS AND TITLE VI**

**Section 21.1      *General Civil Rights Provisions.***      Lessee

agrees to 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 benefitting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### ***Section 21.2 Compliance with Nondiscrimination***

***Requirements.*** During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly

or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Port Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Port Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.



6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Port Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Port Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Section 21.3      *Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.***

A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the

right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon.

**Section 21.4 Construction/Use/Access to Real Property**

**Acquired Under the Activity, Facility or Program.**

- A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will 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 such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon.

**Section 21.5 Title VI List of Pertinent**

**Nondiscrimination Acts and Authorities.** During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49



CFR parts 37 and 38;

9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

## **ARTICLE 22**

### **FAA CLAUSES**

**Section 22.1**      ***Incorporation of required provisions.*** The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this lease as a condition precedent to the granting of



funds for the improvement of the Airport, or otherwise, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this lease as may be reasonably required.

**Section 22.2      Airport protection.** It shall be a condition of this lease, that the Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the Airport.

The Lessee agrees, for itself and its successors and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee agrees, for itself and its successors and assigns, to prevent any use of the leased premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

**Section 22.3      Subordination.** This lease is subject and subordinate to the provisions of any governmental restrictions of

record and any existing or future agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

**Section 22.4      Nonexclusivity.** Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this lease are non-exclusive and the Authority reserves the right to grant similar privileges to another lessee or other lessees on other parts of the Airport.

**Section 22.5      Nondiscrimination.** Lessee will provide its services on a fair, equal, reasonable, and not unjustly discriminatory, basis to all users of the Airport. Lessee will charge fair, reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee will be allowed to make reasonable and nondiscriminatory discounts, rebates, or other types of price reductions to volume purchasers. Lessee will operate its business so as to not cause any violation of the grant assurances the Authority has made to the Federal government in consideration for Federal grant assistance.

## **ARTICLE 23**

### **QUIET ENJOYMENT**

Lessee, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this lease on Lessee's part to be kept, shall quietly have, hold and enjoy the leased premises during the term, without any interruption or disturbance from the Authority, or anyone claiming by, through or under the Authority. This covenant shall be construed as running with the land to and against subsequent owners and successors in interest, and is not, nor shall it operate or be construed as a personal covenant of the Authority.

### **ARTICLE 24**

#### **AIRPORT SECURITY REQUIREMENTS**

Lessee acknowledges that the Authority is subject to strict federal security regulations limiting access to secure areas of the airport and prohibiting violations of the adopted Airport Security Program. Lessee may need access to these secure areas to complete the work required by this lease. Lessee therefore agrees, in addition to the other indemnification and assumption of liability provisions set out above, to indemnify and hold harmless the Authority and Lee County, Florida, and their respective commissioners, officers and employees, from any duty to pay any fine or assessment or to satisfy any punitive measure imposed on the Authority or Lee County, Florida, by the FAA or any other governmental agency for breaches of security rules and

regulations by Lessee, its agents, employees, subcontractors, or invitees.

Lessee further acknowledges that its employees and agents may be required to undergo background checks and take Airport Security and Access Procedures ("S.I.D.A.") training before receiving an Airport Security Identification Badge. Immediately upon the completion of any work requiring airport security access under this lease, or upon the resignation or dismissal of, or conclusion of any work justifying airport security access to, any agent, employee, subcontractor, or invitee of the Lessee, Lessee shall surrender any Airport Security Identification Badge held by the Lessee or by such agent, employee, subcontractor, or invitee. If Lessee has failed to surrender any such badge to the Authority within five (5) days, the Lessee will be assessed, and pay, a fee for each badge not returned, at the then-current amount set by the Authority for lost badge fees (such fee is currently \$100.00 per lost badge).

## **ARTICLE 25**

### **GENERAL PROVISIONS**

**Section 25.1**      **Notices.** Notice to Authority will be sufficient if sent by registered or certified mail, postage prepaid, or by courier, or by a nationally recognized overnight delivery service (e.g. Federal Express, Airborne Express, UPS), to: Executive Director, Lee County Port Authority, 11000 Terminal



Access Road, Suite 8671, Fort Myers, Florida 33913. Notice to Lessee will be sufficient if sent in the same manner, addressed to Lessee at:

Via Courier:

AFCO Cargo RSW, LLC

Attn: President & CEO  
45025 Aviation Drive, Suite 100  
Dulles, VA 20166-7524

or

Via USPS:

AFCO Cargo RSW, LLC

Attn: President & CEO  
P.O. Box 16860  
Washington, DC 20041-6860

The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as Federal Express) or when postmarked (if sent by mail).

**Section 25.2      Captions.** The captions within this agreement are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Section 25.3      *Incorporation of exhibits.*** All exhibits referred to in this agreement are intended to be and hereby are specifically made a part of this agreement.

**Section 25.4      *Time.*** Time is of the essence in the performance of this agreement.

**Section 25.5      *Governing law and venue.*** This lease shall become valid when executed and accepted by the Authority in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida. In the event of a dispute between the parties, suit will be brought only in the federal or state courts of Florida, and venue shall be in Lee County, Florida.

**Section 25.6      *Waiver of right to jury trial.*** The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this lease or Lessee's use or occupation of the premises.

**Section 25.7      *Attorneys' fees.*** Should any action or proceeding be commenced to enforce any of the provisions of this agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

**Section 25.8      Nonwaiver of rights.** No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

**Section 25.9      Administration of lease.** Whenever Lessee is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, then, unless specifically provided to the contrary above, Lessee shall deal with Authority's authorized representative; and unless and until Authority gives Lessee written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director.

**Section 25.10      Airport development.** Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, without Lessee's interference or hindrance and regardless of Lessee's views and desires.

**Section 25.11      Lessee's use and construction to conform with Federal Aviation Regulations.** Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or

construction on the premises. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

**Section 25.12      Lessee's noninterference with aircraft.**

Lessee and its successors, assigns, and sublessees will not use the premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, Authority reserves the right to enter the premises and abate or eliminate the interference at the expense of Lessee.

**ARTICLE 26**

**MISCELLANEOUS**

**Section 26.1      Entire agreement.** This lease sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties. No agreement to modify this lease will be effective unless in writing and executed by both parties.

**Section 26.2      Recording.** At the time of the execution of this lease, the parties consent and agree that it or a memorandum thereof or short form lease may be recorded by Lessee



at Lessee's expense in the Lee County Land Records.

**Section 26.3      Modification.** This lease shall not be changed orally, but only by an agreement in writing executed by all parties hereto, with the same formality as the original lease.

**Section 26.4      Estoppel letters.** Each party agrees, at any time and from time to time, upon not less than thirty (30) days prior written request by the other party, to execute, acknowledge, and deliver to the requesting party a statement in writing, certifying (a) that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) the dates to which the rent and other charges have been paid in advance, if any; (c) whether there exists any known uncured default on the part of the requesting party, and if so, specifying the same with reasonable particularity; (d) expressing the commencement and termination dates of this lease; and (e) any other matters that may reasonably be requested; it being intended that any such statement delivered pursuant to this Section may be relied upon by prospective purchasers of the requesting party's interest or mortgagees of the requesting party's interest or assignees of any mortgage upon the requesting party's interest in the leased premises.

**Section 26.5      Releases.** In the event of any permitted

transfer of Lessee's interest in this lease, the Lessee (and in the case of any subsequent permitted transfers or conveyances, such subsequent grantor) shall be automatically relieved, from and after the date of such transfer or conveyance, of all liability accruing after such permitted transfer with respect to the performance of any covenant, condition, and agreement on the part of Lessee contained in this lease, it being intended hereby that the covenants, conditions, and agreements contained in this lease on the part of the Lessee shall, subject to the aforesaid, be binding on Lessee, its successors, and assigns, only during their respective periods of ownership of the leasehold estate. Notwithstanding the foregoing, Lessee and any subsequent grantor of the leasehold estate will remain liable, even after assignment transfer, or conveyance, for any rent payments or other liabilities which accrued during its tenancy and remain undischarged.

**Section 26.6      Successors and assigns.** Each and every provision in this lease shall bind and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns.

**Section 26.7      Duties.** Any provision of this lease which permits or requires a party to take any particular action shall be deemed to permit or require as the case may be, the party to cause such action to be taken.

**Section 26.8      Delegation.** The delegation of a duty of a party shall not excuse a party from the primary obligation to perform such duty.

**Section 26.9      Costs.** Unless otherwise provided, each party shall perform its obligations at its own expense.

**Section 26.10      Construction.** Words denoting one gender include the other gender, the singular includes the plural, the plural includes the singular.

**Section 26.11      Authority to sign.** Each party hereby severally represents that it has been duly authorized to execute, deliver, and perform this lease through its members, officers, manager, or agents signing on its behalf and affixing any appropriate seal thereto.

**Section 26.12      Force majeure.** In the event that Authority or Lessee shall be delayed or hindered in or prevented from the performance of any act required hereunder, by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, national emergency, acts of God, weather, or other reasons of like nature beyond the control of the party claiming relief hereunder, then performance of such act, except for the payment by Lessee of Rent or any other amounts due to Authority, shall be excused for the period of the delay and the period for the performance of any such act

shall be extended for a period equivalent to the period of such delay, provided however, that nothing herein shall be construed to extend the term of this lease or any time period or date set forth in Article 2 above.

**Section 26.13      Notice regarding public entity crimes.**

Section 287.133(3) (a) F.S. (1995) may require the Authority to notify Lessee of the provisions of Section 287.133(2) (a) F.S.

Section 287.133(2) (a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- (1) Contracting to provide goods or services to a public entity.
- (2) Submitting a bid on a contract for construction or repair of a public building or public work.
- (3) Submitting bids on leases of real property to a public entity.
- (4) Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of \$25,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

**Section 26.14      No third party beneficiaries.** Nothing



contained herein shall create any relationship, contractual or otherwise with, or any rights in favor of, any third party.

**Section 26.15 Termination under Section 287.135, F.S.**

Notwithstanding any provision of this lease to the contrary, Authority will have the option to terminate this lease, in the exercise of its sole discretion, if Lessee is found to have submitted a false certification under Section 287.135 (5), F.S. (2016), or has been placed on either the Scrutinized Companies with Activities in Sudan List; the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Syria or has engaged in "Boycott Israel" activities as defined in Section 215.4725(1)(a) F.S. (2016), that result in Lessee being added to the Scrutinized Companies that Boycott Israel List, as described in Section 287.135 F.S. (2016).

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

**AFCO CARGO RSW, LLC**

(Lessee)

By:  \_\_\_\_\_

Print Name: Charles Stipancic, Jr.

Title: President & CEO

Date: October 6, 2021

**LEE COUNTY PORT AUTHORITY**

By: [Signature]  
Chairman or Vice Chairman,  
Lee County Port Authority  
Board of Port Commissioners

Date: 11/5/2021

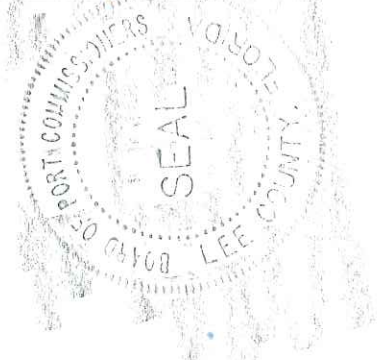
Approved as to Form for the  
Reliance of the Lee County  
Port Authority only:

By: [Signature]  
Port Authority Attorney

ATTEST:

LINDA DOGGETT, CLERK

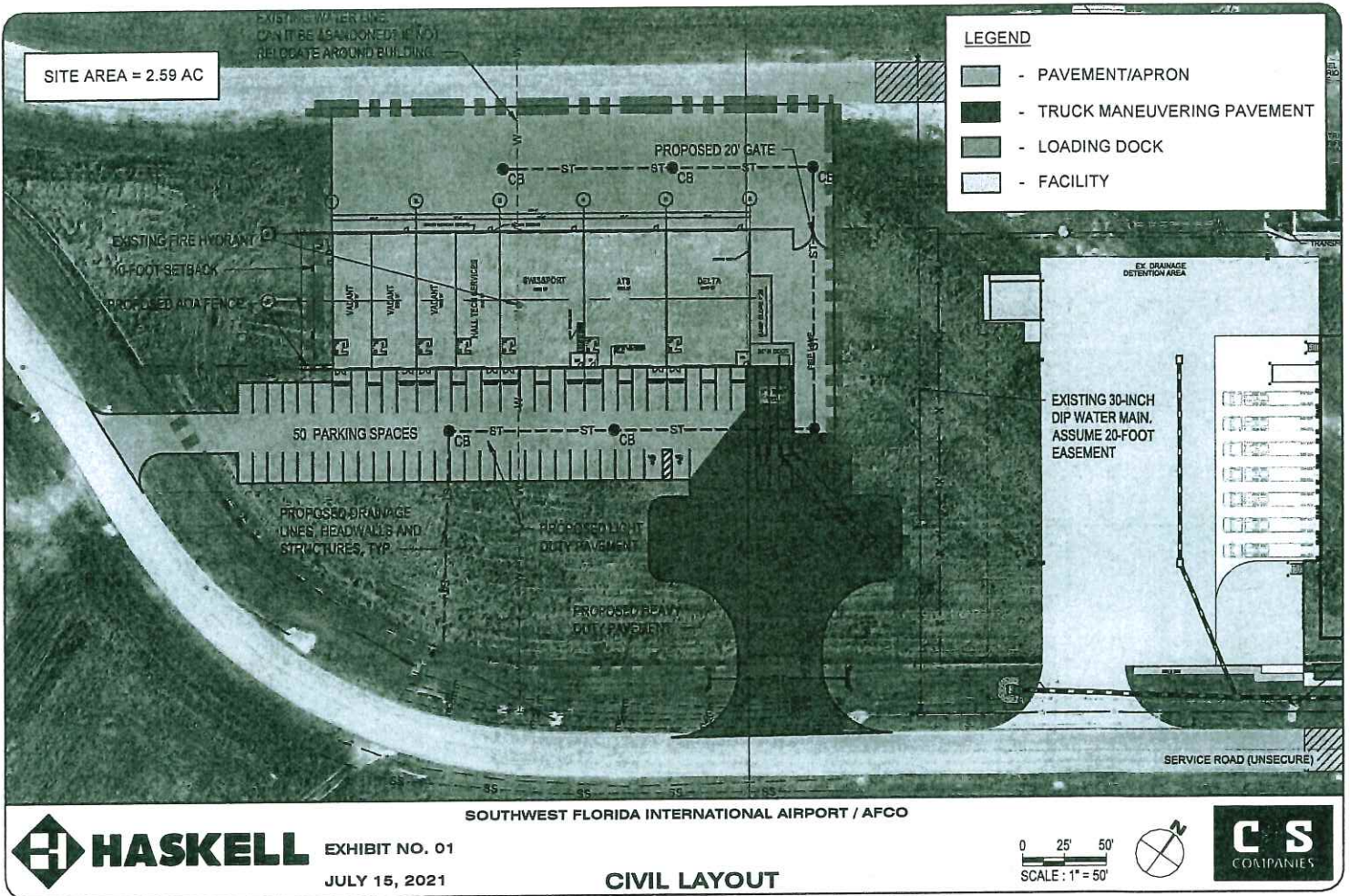
By: [Signature]  
Deputy Clerk



SITE AREA = 2.59 AC

LEGEND

- PAVEMENT/APRON
- TRUCK MANEUVERING PAVEMENT
- LOADING DOCK
- FACILITY





# BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<b>1. REQUESTED MOTION/PURPOSE:</b> Request Board approve a "Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport" with AFCCO Cargo RSW, LLC.				<b>5. CATEGORY:</b> 28. Administrative Agenda	
<b>2. FUNDING SOURCE:</b> N/A <b>3. TERM:</b> 25 years, plus two (2) options to extend for 5 years each <b>4. WHAT ACTION ACCOMPLISHES:</b> Leases a parcel, south of the runway, to a developer to construct a new air freight building which will replace the airport's old air freight building north of the runway.				<b>6. ASMC MEETING DATE:</b> 10/19/2021  <b>7. BoPC MEETING DATE:</b> 11/4/2021	
<b>8. AGENDA:</b> <input type="checkbox"/> CEREMONIAL/PUBLIC PRESENTATION <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADMINISTRATIVE			<b>9. REQUESTOR OF INFORMATION:</b> (ALL REQUESTS) NAME <u>Brian McGonagle</u>  DIV. <u>Administration</u>		
<b>10. BACKGROUND:</b> <p>The original RSW terminal complex located north of the runway included an airline air freight building of approximately 13,500 square feet. That building was designed in 1982 and is believed to have been in use since the original terminal's opening in 1983. The building is used by passenger airlines (for belly freight) and companies that service them.</p> <p>The building is nearing the end of its useful life and will require significant investment to extend that life. Also, with RSW's terminal now south of the runway, the building's location on the north side of the runway is not very practical for RSW's passenger airlines. Accordingly, the Authority selected a site south of the runway, near the rental car fuel farm and future consolidated receiving facility, for a potential replacement air freight building.</p> <p>On September 17, 2020, the Authority advertised Request for Proposals (RFP) 21-03TLB, for "Lease of Land for Development and Operation of an Air Freight Building at Southwest Florida International Airport." The advertisement appeared in statewide and national aviation trade publications, the Fort Myers News-Press, and on the Port Authority's website. A non-mandatory pre-proposal meeting was held remotely on September 28, 2020, to discuss the requirements and objectives of the RFP and to answer questions. Addendums to the RFP were released on October 16, November 10, and November 20, 2020. On December 3, 2020, two proposals were received from the following companies (listed alphabetically): Aeroterm Acquisitions, LLC (herein "Aeroterm") and AFCCO Aviation Facilities Company Management, LLC (herein "AFCCO").</p>					
<b>11. RECOMMENDED APPROVAL</b>					
<b>DEPUTY EXEC DIRECTOR</b>  <i>Brian W. McGonagle</i>	<b>COMMUNICATIONS AND MARKETING</b>  <i>Victoria B. Moreland</i>	<b>OTHER</b>  <i>N/A</i>	<b>FINANCE</b>  <i>Dave W. Amdor</i>	<b>PORT ATTORNEY</b>  <i>Mark A. Trank</i>	<b>EXECUTIVE DIRECTOR</b>  <i>Benjamin R. Siegel</i>
<b>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</b>  APPROVED X (5-0) APPROVED as AMENDED DENIED OTHER			<b>13. PORT AUTHORITY ACTION:</b>  APPROVED X Hamman/Ruane with Sandelli absent APPROVED as AMENDED DENIED DEFERRED to OTHER		



### **Background (continued)**

A publicly noticed meeting of the Authority's Staff Evaluation Committee was held remotely on December 18, 2020, to review the proposals to determine which proposers were responsible and submitted responsive proposals, and to recommend an order of preference of the responsive, responsible proposers to the Airports Special Management Committee (ASMC) for their consideration. During this meeting, the Staff Evaluation Committee deemed the proposal by Aeroterm to be nonresponsive to the RFP, making AFCO the sole responsive, responsible proposer. At their February 16, 2021, meeting, the ASMC concurred with staff in selecting AFCO Aviation Facilities Company Management, LLC, as the sole responsive, responsible proposer. The Board concurred with that selection on March 4, 2021, and authorized staff to begin contract negotiations with AFCO. Those negotiations have resulted in this proposed agreement.

The proposed agreement is a ground lease to AFCO Cargo RSW, LLC ("AFCO RSW"), recently formed by AFCO for this project. The lease provides for AFCO RSW's development and operation of an air freight building. The main points of the ground lease are as follows:

- (1) AFCO RSW will lease a parcel of land containing approximately 2.59 acres located within the area bounded by a future Remote Loading Dock site on the northeast, the existing service road on the northwest, and the service road alignment on the south.
- (2) The initial term of the lease will be 25 years after the Date of Beneficial Occupancy (DBO), and AFCO RSW will have 2 options to extend the term by 5 years each, for a total potential term of 35 years after DBO.
- (3) AFCO RSW will expend at least \$2,025,000.00 (the "minimum capital investment") on the "minimum required improvements," consisting of an enclosed air freight building containing at least 15,000 square feet of floor area, with at least five (5) sub-leasable units, and associated landside parking, airside parking, receiving, and storage area.
- (4) "Construction Period Rent" in the amount of \$1,175.21, per month will commence on January 1, 2023, and will continue until the day before the DBO.
- (5) Upon the DBO, which will be no later than January 1, 2024, rent will increase to \$4,700.85 per month, subject to periodic CPI adjustments.

The following page contains a summary of the main terms of the proposed agreement. Following that is the proposed agreement.

#### Attachments

1. Rendering of proposed building
2. Contract Summary
3. Proposed Agreement