

AGREEMENT OF LEASE
BETWEEN
BROWARD COUNTY AND
AZORRA AVIATION, LLC

AGREEMENT OF LEASE
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AGREEMENT OF LEASE

PARTIES

THIS AGREEMENT OF LEASE, made by and between BROWARD COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners ("County"), and AZORRA AVIATION, LLC, a Florida limited liability company having offices at 10 South New River Drive E, Suite 200, Fort Lauderdale, Florida 33301 ("Lessee").

RECITALS

WHEREAS, County owns and has jurisdiction over the development, operation and maintenance of the Fort Lauderdale-Hollywood International Airport ("FLL" or "Airport") located in Broward County, Florida; and

WHEREAS, Lessee currently leases certain premises at FLL pursuant to an Agreement of Lease that was originally entered into on February 28, 1995 between Broward County and South Florida Aviation Services, Inc., which lease, as amended, was assigned to Lessee on September 16, 2002 ("Prior Lease"); and

WHEREAS, the Prior Lease covers the premises set forth on **Exhibit A-1**, attached hereto and made a part hereof ("Current Parcel"); and

WHEREAS, Lessee and County desire to enter into a new lease for the Current Parcel, that commences on the termination of the Prior Lease; and

WHEREAS, in addition to the Current Parcel, Lessee desires to lease and develop additional premises located at FLL as set forth on **Exhibit A-2**, attached hereto and made a part hereof ("Development Parcel"), and County desires to lease the Development Parcel to Lessee; and

NOW, THEREFORE, in consideration of the premises and the mutual terms, conditions, promises, covenants and payments hereinafter set forth, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, County and Lessee hereby agree as follows:

TERMS

SECTION 1. DEFINITIONS

The foregoing recitals are hereby incorporated into this Lease by this reference. The terms set forth below, when used in this Agreement, are defined as follows:

- (a) **Affiliate** an "affiliate" of a specified person means a person who: (1) is directly or indirectly controlled by, or under common control with, the specified person; or (2) owns directly or indirectly thirty-five percent (35%) or more of equity securities of the specified person; or (3) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified person or of any person described in (1) or (2), preceding; or (4) is a son, daughter, spouse, parent, sibling or in-law of the specified person.
- (b) **Agreement and Lease** means Sections 1 through 37 of this Agreement of Lease, including any supplements, exhibits, modifications or amendments thereof.
- (c) **Aircraft Fuel Farm Facility** means the Aircraft Fuel Farm Facility which may be constructed at the Premises pursuant to Section 6 and other applicable provisions of this Agreement, and also every fuel facility and appurtenances thereto that are now or hereafter located on the Premises. Aircraft Fuel Farm Facility also means every fuel facility and appurtenances thereto that are now or hereafter located anywhere else at the Airport and that were or will be installed by Lessee.
- (d) **Airport or FLL** means the Fort Lauderdale-Hollywood International Airport located in Broward County, Florida.
- (e) **Amortization Period** means a period of thirty-one (31) Lease Years commencing on the Commencement Date.
- (f) **Applicable Environmental Laws** means any and all applicable federal, state, County and local statutes, ordinances, regulations, codes, rules, laws, permits, orders, advisory circulars, resolutions, development orders, grant agreements, and directives of any federal, state, or local court, governmental or quasi-governmental entity with jurisdiction of such matter, that have been, or may hereinafter be adopted, and as may be amended from time to time, relating to the generation, use, storage, transportation, or disposal of hazardous materials, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC § 9601, et. seq.), the Resources Conservation and Recovery Act of 1976 (42 USC § 6901, et. seq.), the Clean Water Act (33 USC § 1251 et. seq.), the Safe Drinking Water Act (42 USC § 300 et. seq.), the Hazardous Materials Transportation Act (49 USC § 5101 et. seq.), and the Toxic Substance Control Act (15 USC § 2601, et. seq.), all as may be amended from time to time.
- (g) **Applicable Laws** means any and all applicable federal, state, County and local statutes, ordinances, regulations, codes, rules, laws, permits, orders, advisory circulars, resolutions, development orders, grant agreements, and directives of

any federal, state, or local court, governmental or quasi-governmental entity with jurisdiction of such matter, that have been, or may hereinafter be adopted, and as may be amended from time to time, relating to the Airport, the Premises, or activities at the Airport or the Premises, including but not limited to the Minimum Standards and Applicable Environmental Laws.

- (h) **Approved Plans** means plans and specifications for Improvements to the Premises that have received the prior written approval of the Aviation Department pursuant to Section 6, hereof.
- (i) **Aviation Department** means the Broward County Aviation Department or any other successor agency and the duly authorized representatives of that agency.
- (j) **Capital Expenditure** shall mean the costs paid for work done, services rendered, and materials furnished for construction of Improvements at the Premises that are made in accordance with Approved Plans and all requirements of this Agreement and that Lessee, its contractors and subcontractors (as permitted hereunder) install following the Commencement Date and completed prior to the Completion Date, subject to the following:
 - (1) All costs submitted by Lessee to be considered as Capital Expenditure costs must be reviewed and approved in writing by the Aviation Department.
 - (2) The actual cost of demolition, construction and acquisition of Improvements, plus the cost of required bonds, construction insurance, building impact and concurrency fees shall qualify as Capital Expenditure costs.
 - (3) Payments made to independent contractors for surveying, engineering and architectural design work shall qualify as Capital Expenditure costs, provided that those costs do not exceed ten percent (10%) of the total of all other sums included in the determination of the total Capital Expenditure amount.
 - (4) Only true third party costs shall qualify as Capital Expenditure costs.
 - (5) Any costs incurred by any sublessee or licensee or other occupant of any portion of the Premises other than Lessee shall not qualify as Capital Expenditure costs unless specifically approved in writing by the Aviation Department, upon the separate written request of the Lessee made prior to incurring such costs, and such costs must also meet all the requirements of this Subsection 1(j) to be considered for approval by the Aviation Department as Capital Expenditure costs.

- (6) Costs for consultants (other than engineering and design consultants, as provided above), legal fees and accountants' fees shall not qualify as Capital Expenditure costs.
- (7) Finance, interest expenses, administration, supervisory, overhead and internal costs of Lessee, and any affiliates of Lessee shall not qualify as Capital Expenditure costs.
- (8) Costs incurred by any affiliate of Lessee shall not qualify as Capital Expenditure costs unless specifically approved in writing by the Aviation Department, upon the separate written request of the Lessee made prior to incurring such costs, and such costs must also meet all the requirements of this Subsection 1(j) to be considered for approval by the Aviation Department as Capital Expenditure costs.
- (9) Costs associated with acquisition or installation of any personalty whatsoever, including without limitation, furnishings, trade fixtures and equipment that is not permanently affixed to the Premises, shall not qualify as Capital Expenditure Costs, unless specifically identified in Subsection 6(b), or as may be specifically approved in writing by the Aviation Department, upon Lessee's separate written request, made before incurring the costs.
- (10) The cost of interior decorations, construction photographs and signage shall not qualify as Capital Expenditure costs, unless specifically approved in writing by the Aviation Department, upon the separate written request of the Lessee made prior to incurring such costs.
- (11) Costs associated with repairs, alterations, modifications, renovations or maintenance of any Improvements on the Premises (including Improvements existing as of the date of this Lease, and Improvements subsequently constructed on the Premises) shall not qualify as Capital Expenditure costs unless specifically described in Subsection 6(b), or as may be approved in writing by the Aviation Department, upon Lessee's separate written request, made before incurring the costs.
- (12) Costs associated with any Improvements that are not specifically identified in Subsection 6(b), hereof, do not qualify as Capital Expenditure costs unless specifically approved in writing by the Aviation Department, upon Lessee's separate written request, made before incurring the costs.
- (13) Provided that any such Fuel Farm is operational prior to the Completion Date, Capital Expenditures meeting the requirements of this Subsection 1(j) that are associated with the construction and installation of an Aircraft Fuel Farm Facility constructed pursuant to Subsection 6(b) shall be

included in Capital Expenditure costs for purposes of satisfying the Minimum Capital Expenditure Requirement. However, all Capital Expenditures made for any Fuel Farm Facility shall not be included in the Capital Expenditure costs for any Buy-Out Amount. Furthermore, any costs associated with the removal and clean-up of any Aircraft Fuel Farm Facility shall not be included in any Capital Expenditure costs.

- (k) **CO** means either: (a) a shell certificate of occupancy that is issued by the appropriate governmental authority for any building that is constructed upon the Premises, or (b) as to any other improvement on the Premises, "CO" means the improvement is capable of being used for its intended purpose.
- (l) **CO Date** and the date that any improvement is deemed to be completely constructed, means either: (i) the date that a shell certificate of occupancy is issued by the appropriate governmental authority for any building constructed on the Premises; or (ii) for any other improvement on the Premises, the date that the improvement may first be used for its intended purpose, regardless of whether it is the actual first date of usage.
- (m) **Commencement Date** means that date that is the earlier to occur of: (i) the first day of the month following the Effective Date; or (ii) the Effective Date, if it occurs on the first day of a month.
- (n) **Completion Date** means the last day of the sixth (6th) Lease Year.
- (o) **CPA** means a duly licensed independent firm of certified public accountants.
- (p) **Current Parcel** means the parcel described on **Exhibit A-1**, subject to rights-of-way and all other property interests of record.
- (q) **Days** as used herein, "days" means the days of the week, consisting Sunday through Saturday.
- (r) **Development Parcel** means the parcel described on **Exhibit A-2**, subject to rights-of-way and all other property interests of record.
- (s) **Director of Aviation** or **Aviation Director** means the Director of Aviation or the Acting Director of Aviation of the Aviation Department, or such other person as may be appointed by the Broward County Administrator to be the administrator over all Aviation Department functions.
- (t) **Due Diligence Period** means that period beginning on the Commencement Date and ending on the last day of the first (1st) Lease Year.

- (u) **Effective Date** means the date this Agreement is approved by the Broward County Board of County Commissioners ("Board").
- (v) **FAA** means the Federal Aviation Administration, or any successor agency.
- (w) **Improvements** means any and all buildings, hangars, structures, pavements, permanently affixed equipment, facilities (both above ground and below ground), including but not limited to, electrical, plumbing, sprinkler, fire protection, fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures and all drains, culverts, ditches and catch basins, and all other structures now or hereafter constructed at any portion of the Premises, and all additions, alterations, modifications, renovations, and replacements thereto.
- (x) **Lease Year** means the period beginning on the Commencement Date and ending on the last day of the twelfth month thereafter, and each twelve-month period thereafter, until the termination of this Agreement.
- (y) **Lessee** means Azorra Aviation, LLC, its successors or assigns, as permitted herein.
- (z) **Master Plan** means the Fort Lauderdale-Hollywood International Airport Master Plan or update thereto and all amendments and replacements thereof.
- (aa) **Parcel** means the parcels more particularly described on **Exhibit A-1** and **Exhibit A-2**, subject to easements, rights-of-way and all other property interests of record.
- (bb) **Part 150 Study** means any Part 150 Study or update thereto for the Airport and all amendments and replacements thereof.
- (cc) **Person** means any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise. The reference in this Agreement to any one of the foregoing types of persons shall be deemed a reference to all other types of persons.
- (dd) **Phase 1 Date** means the last day of third (3rd) Lease Year.
- (ee) **Phase 2 Date** means the last day of the (5th) Lease Year.
- (ff) **Premises** means the Current Parcel as more particularly described on **Exhibit A-1** and the Development Parcel as more particularly described on **Exhibit A-2** subject to easements, rights-of-way and other property interests of record, together with all Improvements now or hereafter constructed thereon.

- (gg) **Prior Lease** means that Agreement of Lease between Broward County and South Florida Aviation Services, Inc., dated February 28, 1995, as amended and assigned to Azorra Aviation, LLC on September 16, 2002. The Prior Lease shall terminate on the Commencement Date of this Agreement.
- (hh) **Public Landing Area** means the area of land at the Airport, including Runways, Taxiways and the areas between and adjacent to Runways and Taxiways, designated and made available from time to time by the County for the landing and taking off of aircraft.
- (ii) **Runways** means the portions of the Airport used for the purpose of landing and taking off of aircraft, including approaches thereto.
- (jj) **Taxiways** means the portion of the Airport used for the purpose of ground movement of aircraft to, from and between the Runways, Public Landing Areas, public ramps and apron areas, aircraft parking and storage spaces and other portions of the Airport (not including, however, any taxiways the exclusive use of which is granted to the Lessee or any other person by lease, permit or otherwise).
- (kk) **Term and Term of this Agreement** or words of similar import shall mean the term set forth in Section 3 hereof.
- (ll) **Termination Date** shall mean as set forth in Subsection 3(a) or Subsection 3(b)(3) of this Agreement, unless sooner terminated as provided in this Agreement.

SECTION 2. LETTING

- (a) The County hereby lets to Lessee and Lessee hereby hires and takes from the County, the Premises as herein above defined in Subsection 1(ff), above. The Premises shall be used solely for the purposes as described in Section 5 of this Agreement and for no other purposes.
- (b) The Lessee agrees to operate the Premises for the use and benefit of the public; to make available all Airport facilities and services to the public, without unjust discrimination; and to refrain from imposing or levying excessive, discriminatory or otherwise unreasonable charges or fees for any airport service.
- (c) The County reserves the right to further develop and improve the Airport, including but not limited to all Public Landing Areas, Runways and Taxiways of the Airport, as it sees fit, regardless of the desires or views of the Lessee, and without interference or hindrance, subject to Section 9, hereof.

- (d) Except to the extent required for the performance of any of the obligations of the Lessee hereunder, nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the Premises. In that regard, the County reserves the right to take any action whatsoever that it considers necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to, the demolition or removal of structures upon the Premises, together with the right to prevent the Lessee from erecting or permitting to be erected any building or other structure at the Airport which, in the opinion of the County, would limit the usefulness of or interfere with the operations at the Airport, or constitute a hazard to aircraft.
- (e) This Agreement, and all provisions hereof, are subject and subordinate to the terms and conditions of the instruments and documents under which the County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in such instruments and documents and any existing or subsequent amendments thereto. This Agreement and all provisions hereof, are subject and subordinate to any ordinances, rules or regulations which have been, or may hereafter be adopted by the County pertaining to the Airport. This Agreement, and all provisions hereof, are subject and subordinate to the provisions of any agreement heretofore or hereafter made between the County and the United States Government relative to the operation or maintenance of the Airport, or the execution of which has been required as a condition precedent to the transfer of federal rights or property to the County for Airport purposes, or the execution of which has been required as a condition precedent to the expenditure of federal funds for the improvement or development of the Airport, including without limitation the expenditure of federal funds for the development of the Airport under the provisions of the Federal Aviation Act of 1958, as codified in Title 49, United States Code, as it has been amended from time to time. In addition, this Agreement is subordinate and subject to the provisions of all resolutions heretofore and hereafter adopted by the County in connection with any revenue bonds issued by the County with respect to the operations of the Airport, or any improvements to the Airport or any of its facilities, and to the provisions of all documents executed in connection with any such bonds, including without limitation, any pledge, transfer, hypothecation or assignment made at any time by County to secure any such bonds.
- (f) The County reserves unto itself, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Premises together with the right to cause in said airspace such noise and other intrusions as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for aircraft landing on, taking off from, or operating at the Airport.

- (g) Lessee, its successors and assigns, agrees to restrict the height of structures, objects of natural growth and other obstructions on the Premises to a height in order to comply with all provisions of this Lease and all applicable Federal Aviation Regulations, and any amendments thereto, including but not limited to 14 CFR Part 77.
- (h) Lessee expressly agrees, for itself, its successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard to aircraft or others.
- (i) County reserves the right to maintain such utility easements on the Premises as may now or in the future be determined to be necessary to serve the needs of the Airport, and the Lessee agrees to take the Premises subject to said easement requirements. Such easements will be used for, but are not limited to, the installation of water distribution, sewage collection, underground electrical, telephone and telecommunications conduits, above ground street lighting and power poles. However, it is understood and agreed that the County will restore any Improvements which Lessee has made, if such Improvements are materially damaged by any installation made by the County. Furthermore, the County shall take reasonable steps to insure that any such installation be the least disruptive to Lessee's operations.
- (j) **CONDITION AND USE OF THE PREMISES.** The County makes no representations or warranties whatsoever as to: (1) the condition of the Premises; or (2) whether the Premises, or any part thereof, is in compliance with all Applicable Laws; or (3) the permitted or available uses of the Premises under all Applicable Laws. The County makes no representations or warranties whatsoever as to the legality, permissibility or availability of any use of the Premises that may be contemplated by the Lessee. **County makes no representations or warranties concerning habitability or fitness for any particular purpose.** Lessee specifically obligates itself to conduct its own due diligent investigation as to the Premises and the suitability thereof for Lessee's purposes. The Premises and all components thereof, are hereby demised in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" The Lessee represents, acknowledges and agrees that it has had sufficient opportunity to inspect the Premises, and all components thereof, and hereby accepts the Premises, and all components thereof, in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" The Lessee hereby **ASSUMES ALL RISK** of non-compliance of the Premises, or any part thereof, with any Applicable Laws. Upon receipt of notice of any non-compliance with any such Applicable Laws, the Lessee hereby agrees to make any and all repairs, alterations, and additions to the Premises and to take all corrective measures as may be necessary to bring the Premises into compliance with all such Applicable Laws. The Lessee shall not be entitled to any adjustment of any rentals hereunder on account of the condition of the Premises

or any failure of any of the component parts to be in working order or because of any necessity of Lessee to repair or take corrective actions with respect to any part thereof or because of the inability of obtaining or any delay in obtaining any required development approvals from any governmental body having jurisdiction, including but not limited to, County agencies. Furthermore, the Lessee hereby releases the County of any and all claims and liabilities whatsoever on account of the condition of the Premises or any failure of any of the component parts to be in working order or because of any necessity of Lessee to repair or take corrective actions with respect to any part thereof, or the necessity for obtaining any development approvals from any governmental body, including without limitation, County agencies. In the event of any conflict between these provisions and any other provisions of this Agreement, the provisions of this Subsection 2(j) shall control. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that: (1) this Subsection 2(j) is not intended to address or apply to the release of any "Materials" (as hereinafter defined in Section 32) at the Premises; and (2) with respect to any such Materials, the provisions of Section 32 shall apply.

SECTION 3. TERM

- (a) The Term of this Agreement shall commence on the Commencement Date and shall end on the earlier to occur of: (i) the last day of the thirty-first (31st) Lease Year of this Agreement ("Termination Date"); or (ii) the date set forth in Subsection 3(b)(3) below, unless sooner terminated as provided in this Agreement.
- (b) **Due Diligence Period.** County shall provide Lessee with a one (1) year Due Diligence Period commencing on the Commencement Date and ending on the last day of the first (1st) Lease Year in order to determine the feasibility of proceeding with development of the Development Parcel. Both parties agree there shall be no extension of the Due Diligence Period.
 - (1) The parties acknowledge that the County obtained an "Initial Environmental Assessment" (as defined in Subsection 32(b) of this Lease) of the Development Parcel prior to the execution of the Agreement, a copy of which has been provided to Lessee. During the Due Diligence Period, Lessee shall have the right to provide written notice of non-acceptance of the Development Parcel ("Non-Acceptance Notice") for any reason whatsoever, including without limitation, if Lessee discovers that adverse environmental conditions are identified in the Initial Environmental Assessment or through independent environmental testing which materially affect the required use and development of the Development Parcel pursuant to this Agreement.
 - (2) Any notice of non-acceptance that is provided by Lessee to the Aviation Department must be in writing and provided to the Aviation Department at

- least ten (10) days prior to the expiration of the Due Diligence Period. In the event Lessee fails to timely provide a Non-Acceptance Notice to Aviation Department pursuant to Subsection (b)(1), above, Lessee shall have no further right to notify the Aviation Department of Lessee's non-acceptance of the Development Parcel and Lessee shall be required to accept the entire Premises in "**AS IS CONDITION**" and "**WITH ALL FAULTS**" as provided in Subsection 2(j), above.
- (3) Notwithstanding anything to the contrary contained herein, Lessee shall remain liable and obligated to return the Development Parcel to the Aviation Department in the same condition as it was on the Commencement Date.
- (4) In the event the Aviation Department receives timely written notice of non-acceptance of the Development Parcel from Lessee, then Lessee and County shall execute an amendment to this Agreement (the "Removal Amendment") to provide as follows: (i) that the Development Parcel is removed from the Lease; and (ii) that Section 3 of this Lease is revised to provide that the Termination Date is the earlier to occur of the last day of the sixth (6th) Lease Year, unless sooner terminated. The Director of Aviation is hereby authorized to sign any such amendment on behalf of the County.
- (5) The parties acknowledge that a survey and legal description of the Development Parcel has not been completed as of the Effective Date of this Lease. County and Lessee agree that during the Due Diligence Period the Lessee shall obtain a survey and legal description of the Development Parcel depicted on **Exhibit A-2** by a licensed surveyor, at Lessee's expense, in order to establish the legal boundaries and total square footage of the Development Parcel. Lessee shall provide the Aviation Department with a copy of such survey and legal description within five (5) days of receipt of same. Such survey and legal description is subject to the prior written approval of the Aviation Department, and the Aviation Department may require changes addressing any impacts on Airport operations or future Airport development, including without limitation Runways, Public Landing Areas, airfields, Taxiways and drainage. The Aviation Department shall provide any comments to such survey and legal description within thirty (30) days of receipt of the survey, Once the Aviation Department accepts the survey and legal description, and if Lessee accepts the Development Parcel pursuant to the requirements of this Subsection 3(b), County will create a new exhibit of the Development Parcel based on the survey and legal description provided by Lessee that will be attached to this Agreement pursuant to an amendment thereto. The Director of Aviation is hereby authorized to sign any such amendment on behalf of the County. Further, if Lessee does not accept the Development Parcel pursuant to the conditions of this Subsection 3(b), Lessee is not required to perform any survey work pursuant to this subsection.

- (c) Upon any termination of this Agreement or removal of the Development Parcel or the Current Parcel from this Agreement pursuant to this Section 3, Lessee shall have no right to payment of any amounts under Section 34 or Subsection 35(c).
- (d) If Lessee accepts the Development Parcel pursuant to the conditions of this Section 3, then within sixty (60) days following the CO Date for all Phase 1 Improvements, as set forth in Subsection 6(b)(1) (the "Phase 1 Improvements"), the Current Parcel shall be removed from this Agreement pursuant to an amendment. Lessee and County shall execute an amendment to this Agreement to reflect the removal of the Current Parcel. The amendment shall include the following: (i) the effective date of the removal of the Current Parcel from this Lease (the "Removal Date"); (ii) that commencing with the Removal Date, the Lessee shall have no further rights or interest in the Current Parcel, however Lessee shall remain responsible for all liabilities and obligations of Lessee which have accrued with respect to the Current Parcel on or prior to the Removal Date; and (iii) all provisions of this Lease shall continue in effect as to the Development Parcel. The Director of Aviation is hereby authorized to sign any such amendment on behalf of the County. Lessee shall, at its expense, surrender the Current Parcel in accordance with the provisions of Section 21 of this Agreement. Notwithstanding anything to the contrary contained herein, Lessee shall continue to pay rent for the Current Parcel until such date as the Current Parcel has been surrendered to the County in accordance with Sections 21 and 22 of this Agreement.
- (e) In accordance with the Broward County leasing guidelines, a copy of which has been provided to Lessee, Lessee may request an extension of Term if the amount of Capital Expenditure expended by Lessee exceeds the Minimum Capital Expenditure Requirement set forth in Subsection 6(e), below, by One Million Dollars (\$1,000,000.00) or more. Any extension of Term based on this provision must be approved by the Board, and Lessee must be fully compliant with all terms and conditions of the Agreement prior to making said request. In no event shall any extension of Term based on this provision be greater than five (5) additional years. Any request to extend the term pursuant to this Subsection 3(e) must be made by Lessee to County in writing within no more than thirty (30) days following Lessee's submittal of the schedule of Capital Expenditures required pursuant to Section 6(t) for all of the Improvements that are used to qualify for such extension.

SECTION 4. RENTALS, FEES AND CHARGES

- (a) **Annual Rental for Current Parcel and Development Parcel.** Annual rental, subject to adjustment as hereinafter provided, shall be paid by the Lessee in twelve (12) equal monthly installments, together with all applicable sales taxes thereon, in advance and without demand, set off or deduction. The first monthly

installment of rent as set forth in Subsection 4(a)(1), below, shall be paid on the Commencement Date, and thereafter, monthly installments of rental shall be payable in advance on the first (1st) day of each and every month.

- (1) Current Parcel. The annual rent for the first (1st) Lease Year is Three Hundred Thousand and 00/100 Dollars (\$300,000.00), plus applicable sales taxes. The monthly installment payments of rent during the first (1st) Lease Year shall be Twenty Five Thousand and 00/100 Dollars (\$25,000.00) each, plus applicable sales taxes. The annual rent for the Current Parcel is subject to adjustment as provided in Subsections 4(a)(3) through 4(a)(17), below.

- (2) Development Parcel. If Lessee accepts the Development Parcel pursuant to the requirements of Section 3, then the annual rent for the Development Parcel shall be payable commencing on the first day of the fourth (4th) Lease Year. Annual rent for the Development Parcel shall be adjusted in accordance with the construction phasing schedule set forth in Subsection 6(b). Such adjustments are hereinafter referred to as Phase 1 Rent, Phase 2 Rent and Phase 3 Rent, and are as set forth in subparagraphs (i) through (iii) below. Annual rent for the Development Parcel shall also be subject to adjustment as provided in Subsections 4(a)(3) through 4(a)(17), below.
 - (i) **Phase 1 Rent** shall commence on the first (1st) day of the fourth (4th) Lease Year and the annual rent for the entire Development Parcel shall be established by multiplying the Base SF LM Rent (as defined in Section 4(a)(8), by sixty percent (60%) of the total square footage of the Development Parcel. Such annual rent shall be subject to adjustments as provided in subparagraphs (ii), (iii) and (iv) below and Subsections 4(a)(3) through 4(a)(17), below . The Aviation Department shall send the Lessee written notice of the Base SF LM Rent at least sixty (60) days prior to the commencement of Phase 1 Rent, and such notice shall include a copy of the appraisal(s).

 - (ii) **Phase 2 Rent** shall commence on the first (1st) day of the sixth (6th) Lease Year and the annual rent for the entire Development Parcel shall be established by multiplying the per square foot rent then in effect for the Development Parcel by eighty percent (80%) of the total square footage of the Development Parcel. Such annual rent shall be subject to adjustments as provided in subparagraphs (iii) and (iv) below and Subsections 4(a)(3) through 4(a)(17), below.

 - (iii) **Phase 3 Rent** shall commence on the first (1st) day of the seventh (7th) Lease Year and the annual rent for the entire Development Parcel shall be established by multiplying the per square foot rent then

in effect for the Development Parcel by one hundred percent (100%) of the total square footage of the Development Parcel. Such annual rent shall be subject to adjustments as provided in subparagraph (iv) below and Subsections 4(a)(3) through 4(a)(17), below, below. Upon the commencement of Phase 3 Rent, Lessee shall be paying annual rent on one hundred percent (100%) of the total square footage of the Development Parcel.

- (iv) Double Rent. In the event Lessee has not completed all of the Improvements at the Development Parcel that are required for a particular phase (which required improvements are described in Subsection 6(b), below) pursuant to Approved Plans and obtained a CO for all such Improvements by the Phase 1 Date, the Phase 2 Date, or the Completion Date, as applicable, then the annual rent for the Development Parcel shall be adjusted effective on the Phase 1 Date, the Phase 2 Date or the Completion Date, as applicable to double the amount of monthly rental that would otherwise be due. Such increased annual rent shall continue and shall be applicable to Phase 1 Rent, Phase 2 Rent, and Phase 3 Rent, as applicable, until Lessee has completed all of the required Improvements pursuant to Approved Plans and obtained a CO for such Improvements by the respective Phase 1 Date, Phase 2 Date or Completion Date, whereupon annual rent shall revert to the rent that is then payable pursuant to Subsection 4(a)(2) (i), (ii), or (iii) above (provided that at such time the Lessee has completed the Phase 1 Improvements, Phase 2 Improvements and Phase 3 Improvements by the required date of completion, or any such required date of completion has not then occurred), and also annual rent shall be subject to adjustments as provided in Subsections 4(a)(3) through 4(a)(17), below, and any future double rent adjustments pursuant to this Subsection 4(a)(2)(iv).
- (3) County and Lessee agree that following the Commencement Date, annual rental for the Current Parcel and for the Development Parcel, as established by Subsections 4(a)(1) and (2), above, shall be adjusted on the first (1st) day of each Lease Year as set forth below, and such adjusted rental (together with applicable sales taxes thereon) shall be the new annual rental for the succeeding Lease Year (subject to all other adjustments as provided in this Subsection 4(a)), and shall be payable in twelve (12) equal monthly installments.
 - (i) Current Parcel. Annual rental payments for the Current Parcel, as established in Subsection 4(a)(1), above shall be adjusted on the first day of each Lease Year in accordance with Subsection 4(a)(4) below until the earlier to occur of: (i) the expiration or termination of

this Agreement; or (ii) the date the Current Parcel is surrendered pursuant to the provisions of this Agreement.

- (ii) Development Parcel. If Lessee accepts the Development Parcel pursuant to the requirements of Section 4(a)(2), above, then annual rental payments for the Development Parcel, as established in Subsections 4(a)(2), above, shall be adjusted in accordance with Subsection 4(a)(4) below, commencing on the first day of the fifth (5th) Lease Year and on the first day of each Lease Year thereafter (including any extensions pursuant to Subsection 3(e), below), except for the fourteenth (14th) Lease Year and the twenty-fourth (24th) Lease Year. The annual rental adjustments for the Development Parcel for the fourteenth (14th) Lease Year and the twenty-fourth (24th) Lease Year shall be as provided in Subsections 4(a)(5) through Subsection 4(a)(17) below.
- (4) The annual rental for the Current Parcel and for the Development Parcel (subject to additional adjustment as provided in Subsection 4(a)(2)(iv)) shall be increased on the first day of each applicable Lease Year to an amount equal to the greater of either: (i) the product of the annual rental paid during the immediately preceding Lease Year, multiplied by the "CPI Multiplier," as hereinafter defined; or (ii) the product of the annual rental paid during the immediately preceding Lease Year, multiplied by 1.03. The product of such multiplication shall be the amount of the annual rental payment to be made during the next succeeding Lease Year, commencing on the first day of such Lease Year. Upon determining such rental adjustment, the Aviation Department shall advise Lessee of the new annual rental and the monthly installment payment of rent. In no event shall any adjusted annual rental established pursuant to this Subsection 4(a)(4) be less than the total annual rental paid during the immediate prior Lease Year.
- (i) The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number," as hereinafter defined, indicated for the month that is three (3) months prior to the commencement of the Lease Year for which the rental adjustment is to be made, and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to commencement of the Lease Year for which the rental adjustment is to be made,
 - (ii) The "CPI Index Numbers" are the index numbers of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS - UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The rental and

the adjustment made based upon the provisions of this Section shall be made solely by County. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such Index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Lease without further proof of authenticity. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency which most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

- (5) If Lessee accepts the Development Parcel pursuant to the requirements of Section 3, above, the Aviation Department shall cause an appraisal to be performed on the Development Parcel during the third (3rd) Lease Year in order to determine the market rent of the Development Parcel, established as hereinafter provided. The "market rent of the Development Parcel" is the market value of the rights of use of the leased fee, given the restrictions of the Agreement. The market rent of the Development Parcel shall be equal to the market value of the leased fee as encumbered by the Agreement and without any other improvements, to which market value shall be applied the "Percentage Adjustment Factor" (as hereinafter defined") then being used by the County for rentals at the Airport.
- (6) If Lessee accepts the Development Parcel pursuant to the requirements of Section 3, above, then on the commencement of the fourteenth (14th) Lease Year and the commencement of the twenty-fourth (24th) Lease Year, the annual rental for the Development Parcel shall be adjusted (up or down) to an amount equal to the appraised market rent of the Development Parcel. Such adjusted rental shall commence on the first day of the respective Lease Year. Upon determining such rental adjustment, the Aviation Department shall advise Lessee of the Base SF LM Rent, the new annual rental and the new monthly installment payment of rent.
- (7) The "Percentage Adjustment Factor" shall be the percentage factor being utilized by the County, in its sole discretion at the time of the adjustment, to establish rentals for leases at the Airport, in accordance with a resolution adopted by the County, from time to time.

- (8) The "Base SF LM Rent" shall be determined by applying the Percentage Adjustment Factor to the market rent of the Development Parcel without Improvements and dividing by the total square footage of the Development Parcel.
- (9) Notwithstanding anything to the contrary herein contained, if at a future time the County adopts as policy for the Airport (pursuant to a resolution adopted by its Board of County Commissioners), a requirement that rental adjustments shall be made on the same date for all leases, then the adjustments of rental based on appraisals and the other annual adjustments of rental shall be made in accordance with and at the uniform times established pursuant to said policy.
- (10) The appraisal reports will follow the Summary Appraisal format, the content of which will conform to the Uniform Standards of Professional Appraisal Practice. Should an appraisal finding result in a projected total rental amount for the remaining Term of the Lease which exceeds Two Million Dollars (\$2,000,000.00), then a second appraisal will be obtained, and in such case, the new rental amount shall be determined either by the County, through its Department of Public Works, Real Property Section, or successor thereto ("Real Property Section") acting as the review appraiser, or by a review appraiser selected by Real Property Section.
- (11) The Aviation Department shall send the Lessee written notice of the adjusted rental amount based on the County's appraisal(s), or review appraisal, as appropriate, which notice shall include copies of the appraisal(s) and review appraisal, if any. If the Lessee is not in agreement with the adjusted rental amount established by the County, the Lessee may hire its own appraiser to perform an appraisal; provided that Lessee's appraisal must be obtained and provided to the Aviation Department within sixty (60) days following receipt of the Aviation Department's notice of the adjusted rent and the Lessee's appraisal must satisfy the requirements of this Section 4. If the Lessee fails for any reason whatsoever to obtain an appraisal and provide it to the Aviation Department within said sixty (60) day period, then Lessee shall thereafter have no further rights to dispute the adjusted rental amount (and all components thereof) as set forth in the Aviation Department's notification of the adjusted rent.
- (12) If the Lessee does obtain an appraisal and provide the appraisal to the Aviation Department within the sixty (60) day period as aforesaid, and if such appraisal's finding of the appraisal amount does not agree with the County's determination of the appraisal amount, then the Real Property Section shall compare and review all the appraisal reports. The Real Property Section shall schedule a meeting with the appraiser(s) selected

by the County and the appraiser selected by the Lessee, at which time the Real Property Section will attempt to resolve the dispute within fifteen (15) days of receipt of the appraisal reports.

- (13) If at the end of the aforesaid fifteen (15) day period, the attempt by Real Property Section to resolve the appraisal dispute is not successful for any reason whatsoever, the Real Property Section shall give written notice of such failure to the Aviation Department and the Lessee, and thereafter the appraiser(s) selected by the County and the appraiser selected by the Lessee shall together select another appraiser ("Dispute Resolution Appraiser") within fifteen (15) days following the date the Real Property Section sends the notice of the failure of the Real Property Section's attempt to resolve the dispute. If the appraiser(s) selected by the County and the appraiser selected by the Lessee fail for any reason whatsoever to select a Dispute Resolution Appraiser within fifteen (15) days following the date the Real Property Section sends notice of the failure of the Real Property Section's attempt to resolve the dispute, then Lessee shall thereafter have no further rights to dispute the appraisal amount (and all components thereof) as set forth in the Aviation Department's notification of the adjusted rent.

- (14) The Dispute Resolution Appraiser selected in accordance with Subsection 4(a)(13) above shall within fifteen (15) days of receipt of the appraisal reports, compare and review all the appraisal reports and shall thereafter schedule a meeting with the appraisers. At such meeting, the Dispute Resolution Appraiser will attempt to resolve the dispute. If for any reason whatsoever the Dispute Resolution Appraiser fails within thirty (30) days following the selection of the Dispute Resolution Appraiser to resolve the dispute, the Dispute Resolution Appraiser shall proceed as follows:
 - (i) The Dispute Resolution Appraiser will prepare and complete an appraisal ("Dispute Resolution Appraisal") within sixty (60) days of its employment that sets forth the Dispute Resolution Appraiser's findings of the appraisal amount. The Dispute Resolution Appraiser shall provide copies of the Dispute Resolution Appraisal to both the Aviation Department and the Lessee.

 - (ii) If the values established by the County, Lessee and Dispute Resolution Appraiser as to the appraisal amount are within a ten percent (10%) range, the average of all three values will be the value for establishing the appraisal amount. Such determination shall be binding on Lessee and County, and the parties shall have no right to dispute such appraisal amount.

 - (iii) If the values established by the County, Lessee and Dispute

Resolution Appraiser as to the appraisal amount are not within a ten percent (10%) range, then the finding of the appraisal amount (and all components thereof) established by the Dispute Resolution Appraisal shall be binding on Lessee and County, and the parties shall have no right to dispute the appraisal amount (and all components thereof) as set forth in the Dispute Resolution Appraisal.

- (iv) The expense of obtaining the Dispute Resolution Appraisal shall be borne equally by the parties. The Lessee's portion of such expense shall be paid to the County immediately following receipt of County's invoice for same.
- (15) Any appraiser retained by any of the parties to prepare an appraisal under this Agreement must be an MAI Appraiser or a State of Florida Certified General Appraiser (or a member of a professional group of similar stature, that has been approved by the Aviation Department), having an office in Broward, Miami-Dade or Palm Beach County.
- (16) It is understood and agreed that if a rental adjustment is required hereunder, the previous rental then being paid shall continue until the Aviation Department provides notice of the adjusted rent amount, and the adjustment shall be retroactive to the Adjustment Date. The sum constituting the adjustment for the months of the period which have passed prior to the determination of the amount of the adjustment shall be due and payable within thirty (30) days after such determination. In the event Lessee disputes the amount of any adjustment of the rental payments, Lessee shall continue paying the rent to County under the last preceding rental adjustment until such time as the dispute has been settled, at which time an adjustment (with interest at the rate of eighteen percent (18%) per annum) will be made retroactive to the beginning of the adjustment period in which the dispute arose.
- (17) Upon determining a rental adjustment, the Aviation Department shall advise Lessee of the new monthly rental installment for such period, which shall be accompanied by evidence supporting the manner in which the new adjusted rent was determined, which evidence shall be in sufficient detail to enable Lessee to verify the calculations.
- (b) **Aviation Fuels and Lubricants Flowage Fees.** Lessee shall pay the fees described by Subsection 5(a)(10), below, on the dates, and in the prescribed manner. Lessee shall pay "Fuel Flowage Fees" as set forth in Chapter 39.3 of the Broward County Administrative Code, as amended, for any aviation fuels or lubricating oils delivered to the premises, whether such aviation fuels or lubricating oils are for retail sales or self-fueling purposes.

- (c) **Licenses, Fees and Taxes.** Lessee shall pay, on or before their respective due dates, all federal, state, County, and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including Improvements) or the estate hereby granted, or upon Lessee, or upon the business conducted on the Premises, or upon any of Lessee's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes (based upon the Lessee's pro rata share according to the area of the Premises), and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Lessee. Lessee shall maintain in current status all federal, state, County and local licenses and permits required for the operation of the business conducted by Lessee.
- (d) **Utilities.** Lessee shall pay when due, all utilities fees or charges which are now or hereafter charged or assessed with respect to operations at the Premises.
- (e) **Other Fees and Charges; County Fees; Landing Fees.**
- (1) **Other Fees and Charges.** The Lessee acknowledges that the County has or will establish, from time to time, various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to or specifically provided to the Lessee hereunder and the procedures relating to payment of same. In addition to rentals for the Premises, the Lessee agrees to pay all rentals, rates, fees and charges payable by Lessee for use of any Airport facilities, or under any agreement between Lessee and the County pertaining to Lessee's operations at the Airport and in the manner prescribed by the County.
- (2) **County Fees; Landing Fees.** Lessee shall be obligated to collect from its general aviation customers and tenants (collectively, "General Aviation Customers"), as applicable, and remit to the County any user fees or other fees or charges that may be established from time to time by the County regarding general aviation uses of the Airport (which may include but are not limited to landing fees) pursuant to a resolution adopted by the Board of County Commissioners (collectively, "County Fees"). In any such event, Lessee shall collect any such County Fees from its General Aviation Customers, as agent for the County and for the account of the County, and shall submit all County Fees to the County in accordance with County established requirements and procedures, as may be amended from time to time (including completion and timely submittal of all County required forms and activity reports). The Lessee acknowledges receipt of a current copy of the County's requirements and procedures, and the County will provide written notice to Lessee of any changes to such requirements and procedures. All County Fees required to be collected by

Lessee are held by Lessee in trust for the County and shall not for any purpose whatsoever be deemed property of the Lessee. Lessee's obligation to collect and remit all County Fees to the County shall be secured by the Security Deposit posted by Lessee with the County under this Agreement. Any failure by Lessee (for any reason whatsoever) to remit to County all or any portion of the County Fees that are required to be collected by Lessee, shall be a default of this Agreement, entitling County to draw down upon the Security Deposit posted hereunder and to all other remedies hereunder or at law or in equity.

- (i) The Lessee shall be entitled to an administrative charge equal to ten percent (10%) of all County Fees remitted by the Lessee to the County ("Administrative Charge"), which shall be credited to Lessee against the County Fees remitted by Lessee to County, in accordance with the County's requirements and procedures. The Lessee shall separately state the County's landing fees and any other County Fees on the receipts provided by the Lessee to its customers and the stated amount shall in no event exceed the landing fees and other County Fees that are actually imposed by the County. The Lessee shall not in any manner attribute or imply that any other fees collected by the Lessee from its customers are fees imposed by the County. The Lessee shall honestly and fairly represent its prices and policies and the County's prices and policies to its customers. Lessee shall not charge any amount to passengers or persons and attribute such amounts to the County, except County Fees payable by Lessee to the County. Any charges or fees imposed by the Lessee on its customers for use of any facilities of Lessee shall be separately stated on the Lessee's invoice or charge slip and shall not be aggregated together with any County Fees.
- (ii) Any credit extended by Lessee to any of its General Aviation Customers shall be at Lessee's own risk. Except for the Administrative Charge, Lessee shall be obligated to remit to the County all County Fees that are payable by Lessee's General Aviation Customers and required to be collected by Lessee hereunder, notwithstanding any default in payment of any such County Fees to Lessee by its General Aviation Customers (including but not limited to any failure to pay because any such customer is in bankruptcy proceedings). There will be no credit given by the County to the Lessee for uncollectible County Fees, whether occurring as a result of the bankruptcy of any of Lessee's General Aviation Customers or for any other reason.

- (iii) The Lessee must satisfy each and every one of the "Collection Requirements" hereinafter set forth. In order to be deemed to have satisfied all "Collection Requirements" the Lessee must (1) make a good faith collection effort, and (2) require payment by the General Aviation Customer on a "cash basis," and (3) give the Broward County Aviation Department immediate telephone notice, followed by written notice within 24 hours, of any such failure to pay. If with respect to any General Aviation Customer, the Lessee fails to satisfy all Collection Requirements [i.e., take all actions described by (1) through (3), above] then the Lessee shall remain obligated and responsible to the County for all County Fees imposed on such General Aviation Customer, whether or not collectible from such General Aviation Customer. The phrase "cash basis" shall mean that the Lessee shall collect all applicable County Fees from the respective General Aviation Customer immediately upon its arrival or prior to departure from the Airport.
 - (iv) If any General Aviation Customer pays any fees to Lessee, same shall first be applied to the payment of all County Fees due and owing to the County, and any remaining amounts may be applied to the Administrative Charge and to other sums that may be owed by the General Aviation Customer to Lessee.
 - (v) Lessee shall have no right of set-off or right to assert any counterclaim against any of the County Fees payable by Lessee, or collected or required to be collected by Lessee. In the event the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service charge in the amount established by the County from time to time. In such event (and in addition to any other remedies available to the County hereunder or at law or in equity) the County may require that future payments be made by cashier's check or other means acceptable to the County.
 - (vi) Except as provided in this subparagraph (2), with respect to collection of County Fees, this Agreement shall not constitute the Lessee as the agent or representative of the County.
- (f) **Additional Rent and Charges.** If the County is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of any act or omission of the Lessee contrary to said conditions, covenants or agreements, Lessee agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added

to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent recoverable by the County in the same manner and with like remedies as if it were originally a part of the rent as established by Subsection 4(a), hereof. All such sums of money shall be paid by Lessee within ten (10) days after written demand therefore.

- (g) **Late Payments - Interest.** The County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid on any amounts that are past due under this Agreement. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the right of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.
- (h) **Dishonored Check or Draft.** In the event the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service charge in the amount established by the County from time to time. In such event, the Aviation Department may require that future payments be made by cashier's check or other means acceptable to the Aviation Department.
- (i) **Place of Payments.** All payments required to be made by the Lessee under this Agreement shall be made payable to "Broward County," and shall be paid to the Finance Division, Broward County Aviation Department, 2200 SW 45th Street, Dania Beach, FL 33312, or to such other office or address as may be substituted for this address.
- (j) **Books and Records.** Lessee shall keep true and accurate records, books and data, which shall, among other things, show all gross revenues, County Fees, fuel flowage fees, Capital Expenditures, and other records required pursuant to this Lease. Lessee further agrees to keep its books and records in accordance with generally accepted accounting principles and agrees to maintain such other books and records as the County, its employees or agents, may request. The Lessee shall keep separate books and records for its Airport operations at the Premises covered by this Lease.
 - (1) The Lessee's books and records shall be kept and maintained during the "Retention Period" (as hereinafter defined). The "Retention Period" is defined as the greater of: (1) the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable; or (2) or for the entire Term of this Agreement as to the Capital Expenditures of the Lessee; or (3) if any audit has been initiated and audit findings have not been resolved at the end of the three (3) years, the books and records shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County's Office of County Attorney to be

applicable to Lessee's records, Lessee shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Lessee.

- (2) As to all County Fees the following provisions are also applicable: (i) Lessee shall at a minimum keep and maintain such records as would ordinarily and necessarily be required by the County, if the County were collecting such County Fees; (ii) Lessee shall provide the public with access to such public records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (iii) ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and (iv) meet all requirements for retaining public records and transfer to the County, at no cost, all public records that are in the possession of the Lessee upon termination of this Lease and destroy any duplicate public records that are exempt or confidential and exempt, and (v) all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. The failure of Lessee to comply with the provisions hereof shall be a default of this Agreement in accordance with Section 19(a)(8).
- (3) Upon request, rental agreements, invoices, or cash receipts and all other books and records of Lessee pertaining to its operations shall be open to inspection by authorized representatives of the County. The County shall have the right, upon reasonable notice to Lessee, to audit the Lessee's books and records relating to the Lessee's operations pursuant to this Agreement in order to determine the correctness of the County Fees, Fuel Flowage Fees, the Capital Expenditures, and **any Buy-Out Amount** and that Lessee is complying with the terms of this Agreement. All such records shall be made available upon fourteen (14) days' notice. Lessee shall make all books and records required to be maintained hereunder available to the County at the Airport, or at the corporate headquarters of the Lessee, as may be directed by the Aviation Department.
- (4) In the event that any such audit reflects that the total amounts that are actually paid by Lessee to the County during a Lease Year shall be less than the amounts due and owing for such Lease Year, then the Lessee shall immediately pay the difference to the County upon written demand for payment with interest thereon at eighteen percent (18%) per annum from the date such amounts were due. If, as a result of any audit, it is established that the total amounts paid to the County during a Lease Year shall be ten percent (10%) or more than the amounts actually owed to the County for such Lease Year, the entire expense of said audit shall be borne by the Lessee. County shall provide Lessee with a copy of any audit results obtained by County, upon written request of Lessee.

SECTION 5. USES OF THE PREMISES

- (a) **The Premises shall be used solely for general aviation purposes.** Lessee is required to offer those services related to the services provided by a Fixed Base Operator (FBO) as provided in the Aviation Department's minimum operating standards, which standards have been provided to the Lessee and are amended periodically, at the sole discretion of the Aviation Department. The Lessee shall be required to provide, but not be limited to, the following products or services:
- (1) The sale of aircraft, aircraft components, parts and accessories thereto directed towards the executive general aviation, corporate, commercial aviation and governmental market, but not for light, non-complex general aviation aircraft.
 - (2) The offering of aircraft and engine maintenance and repair service directed towards the executive general aviation, corporate, commercial aviation and governmental market, but not for light, non-complex general aviation aircraft.
 - (3) The offering of enclosed aircraft hangar storage and tie-down service directed towards the executive general aviation, corporate, commercial aviation and governmental market, but not for light, non-complex general aviation aircraft.
 - (4) The offering of aircraft parking directed towards the executive general aviation, corporate, commercial aviation and governmental market, but not for light, non-complex general aviation aircraft.
 - (5) Aircraft arrival guidance on the ramp.
 - (6) Line services, with a qualified attendant on duty.
 - (7) Flight planning and flight service facilities.
 - (8) Pilot and passenger amenities, including pilot and passenger lounges, and restrooms.
 - (9) Removal of disabled aircraft, up to ninety thousand (90,000) pounds maximum certificated take-off weight.
 - (10) Lessee shall dispense and sell aviation fuels and lubricating oils within the confines of the Premises. In addition, the Lessee may dispense and sell fuels and lubricating oils within the confines of any area of the Airport that is mutually opened to all other lessees having aviation fuels and

lubricating oils dispensing sales privileges; and Lessee shall be under the same terms and conditions provided to all such other lessees that are granted such privileges. However, the County shall in no way be hampered from granting exclusive rights for the sale and dispensing of aviation fuels and lubricating oils on premises other than those covered by this Agreement under such terms and conditions as it may deem advisable. In connection with the sale or dispensing of such products upon the Premises or otherwise, the County assumes no responsibility for acts of any supplier regarding delivery, quality of product, or maintenance of supplier-owned or Lessee-owned equipment.

- (i) Aviation fuels and lubricating oils shall be stored and dispensed by the Lessee in accordance with all County, local, state and federal laws, regulations, rules and other requirements, as same may be amended, regarding the sale and storage of such fuels and oils, including without limitation any rules, regulations or minimum standards that are established by the Aviation Department for operations of Airport tenants. Prior to commencement of the operations of dispensing and selling fuels, the Lessee shall submit to the Aviation Department, for review and comment, the Lessee's Spill Prevention Control and Countermeasure Plan.
- (ii) Aviation fuels and lubricating oils delivered to the Premises, whether such aviation fuels or lubricating oils are for retail sales or self-fueling purposes, or to any area of the Airport that is mutually opened to all other lessees having aviation fuels and lubricating oils dispensing sale privileges, shall be paid for by Lessee at the rate of cost to the Lessee, plus an additional fee payable by Lessee for the account of the County ("Fuel Flowage Fees"), except aviation fuels and lubricating oils delivered on account of an airline that has executed an Airline-Airport Lease and Use Agreement with the County ("Signatory Agreement"), or successor agreement thereto, for use of the airfield, shall be exempt from the Fuel Flowage Fees. The amount of the Fuel Flowage Fees shall be established by a resolution adopted by the Board of County Commissioners and may be increased or decreased by the County from time to time in its sole discretion. The Lessee shall provide such reports and back-up documentation to the County on a monthly basis, as the Aviation Department may require verifying all amounts payable to the County, which shall be provided on or before the tenth (10th) day of each month.
- (iii) Lessee may either pay the Fuel Flowage Fees directly to the County, using the forms required by the Aviation Department, or Lessee may elect to have the Fuel Flowage Fees collected from Lessee by Lessee's supplier and remitted to the County by the supplier. If

Lessee makes direct payments to the County, payments of the Fuel Flowage Fees incurred in the preceding month shall be due monthly, on the tenth (10th) day of the following month. If Lessee elects to have its supplier collect the Fuel Flowage Fees, then Lessee and its supplier shall complete and execute the Release and Authorization form required by the Aviation Department and provide the original executed form to the Aviation Department. The supplier shall be required to make monthly payments to the County of the required Fuel Flowage Fees, which payments shall be accompanied by the reporting form required by the Aviation Department, and shall be payable on the tenth (10th) day of each month.

- (b) Lessee, subject to the prior written consent from the Aviation Department, may, at its option, provide the following services in addition to the required services listed in Subsection 5(a), above:
- (1) Aerial survey.
 - (2) Aerial photography and mapping.
 - (3) Aerial ambulance.
 - (4) Aircraft painting in compliance with all local, state and federal rules and regulations and aircraft upholstery repair.
 - (5) Scheduled and nonscheduled air charter services for transporting passengers, cargo and mail.
 - (6) Avionics and instrument repair.
 - (7) Propeller repair.
 - (8) Merchandise shop, selling aviation-related products incidental to the usual activities of a fixed base operation.
 - (9) Airline support services, maintenance and repairs.
 - (10) Aircraft rental.
 - (11) Rental of offices for aviation purposes only.
 - (12) Air cargo and/or courier mail handling facilities and associated aircraft handling, servicing and fueling.

- (13) Aircraft wash rack in compliance with all local, state and federal rules and regulations.
 - (14) Food and beverage service including a restaurant, coffee shop, cafeteria and vending machines.
 - (15) Aircraft Fuel Farm Facility in compliance with all local, state and federal rules and regulations.
 - (16) Retail sales of non-aviation products, provided that any such operation must be consented to in writing by the Aviation Department, either pursuant to an Aviation Department Consent to Sublease that includes a specific consent to such use, or pursuant to a separate written consent to such use by the Aviation Department. Any such use must represent an insignificant portion of the business activities at the Premises, and the Lessee shall provide such documentation as the Aviation Department requests with respect to these activities and the proportion of the business of Lessee that will be represented by such activities.
 - (17) Such other compatible aviation related services for which the Aviation Department has given its prior written consent. Lessee shall not be permitted to provide any aviation related services pursuant to this Subsection 5(b)(17), unless it has first received the written consent of the Aviation Department.
- (c) Lessee, shall be expressly prohibited from providing the following services:
- (1) Terminal facilities for passenger operations, other than those covered by Federal Aviation Regulation 14 CFR Parts 91, 125 and 135. In addition, passenger operations covered by Federal Aviation Regulation 14 CFR Part 121 shall be allowed only for the activities described by Subsection 5(d), below.
 - (2) Sale of non-aviation products, except as provided in (b) above.
 - (3) Air shows.
 - (4) Any use prohibited by law or not related to aviation.
 - (5) Lessee shall not park, store, or allow the parking or storage of any equipment or vehicles on the Premises which are not used in the daily operation of the aviation business permitted to be conducted on the Premises.

- (d) Notwithstanding the rights and uses stated in this Section 5, it is understood and agreed that the handling of aircraft on the Premises for passenger operations covered by Federal Aviation Regulation 14 CFR Part 121 shall be allowed only for non-scheduled Part 121 operations not requiring clearance or inspection by the U.S. Customs, U.S. Immigrations or U.S. Agricultural Departments and shall be operated in accordance with all Applicable Laws.
- (e) Limousine and taxi concessionaires authorized by County shall be allowed free ingress to and egress from the Premises to serve the public and the Lessee shall not operate or authorize any competing service. Lessee shall not make any contractual arrangement with any rental car company except an authorized on-airport concessionaire rental car company.
- (f) In connection with sales and services to the public, Lessee shall furnish good, prompt and efficient service adequate to meet all demands for its services at the Airport and shall conduct such hours of business as may be necessary to provide these services. Such services will be furnished on a fair, equal and non-discriminatory basis to all users thereof and charges shall be fair, reasonable and non-discriminatory for each unit of sale or service. Lessee, however, shall be permitted to grant reasonable and non-discriminatory discounts, rebates, or other types of price reductions to volume purchasers. As used in this Section 5, the word "services" shall include the furnishing of parts, materials and supplies (including the sale thereof as well as furnishing of service).
- (g) The Premises shall be used for no purposes other than as specifically allowed by this Agreement. The Premises shall not be used in any manner that is incompatible with or violates provisions of any Applicable Laws, including without limitation FAA Advisory Circular No. 150/5300-13, Chapter 333, Florida Statutes, and Chapter 2 and Chapter 39, Broward County Code of Ordinances.
- (h) Nothing in this Agreement shall be deemed to prohibit Lessee from requiring its employees, contractors, sublessees, invitees, agents, guests and any others entering upon or using the Premises at any time during the Term to observe reasonable and non-discriminatory rules and standards of conduct to maintain the Premises in the manner required by the terms of this Lease and to preserve the Lessee's and its sublessees' peaceful enjoyment of the Premises; provided that such rules and standards of conduct shall comply with the terms of this Lease and all Applicable Laws. In addition, nothing in this Lease shall be deemed to prohibit Lessee from taking any lawful action to enforce compliance with the terms of this Lease and the rules and standards of conduct of Lessee (as described by the first sentence hereof).

SECTION 6. CONSTRUCTION BY LESSEE

- (a) During the Due Diligence Period, Lessee shall submit its development plans to the Aviation Department's project review committee for review and approval. In addition, Lessee, at Lessee's sole cost and expense and without County obligation or liability, shall have the right to submit its applications for site plan and building permit approvals to the applicable governmental authorities and to obtain such approvals. Additionally, Lessee shall perform the requirements set forth in Subsection 6(h), below.
- (b) If Lessee accepts the Development Parcel pursuant to the requirements of Section 3, above, then Lessee shall construct Improvements on the Development Parcel in three (3) phases (hereinafter referred to as "Phase 1 Improvements," "Phase 2 Improvements" and "Phase 3 Improvements"), as described below:
- (1) **Phase 1 Improvements.** Lessee shall construct at a location that represents at least sixty percent (60%) of the Development Parcel's area, a hangar facility of at least 19,000 square feet with all associated infrastructure including vehicular access, parking, utilities, and ramp, along with an additional terminal building of at least 6,000 square feet and an aircraft wash rack. All Phase 1 Improvements shall be completed by no later than the Phase 1 Date.
 - (2) **Phase 2 Improvements.** Lessee shall construct at another location, that represents at least twenty percent (20%) of the Development Parcel's area, a hangar facility of at least 19,000 square feet with all associated infrastructure including ramp, utilities, offices and parking. All Phase 2 Improvements shall be completed by no later than the Phase 2 Date; and
 - (3) **Phase 3 Improvements.** Lessee shall construct on the remaining area of the Development Parcel (i.e., approximately twenty percent (20%) of the Development Parcel), a hangar facility of at least 19,000 square feet with all associated infrastructure including ramp, utilities, offices and parking. All Phase 3 Improvements shall be completed by no later than the Completion Date.
 - (4) Each phase shall include associated paved ramp, public and employee parking, landscaping and all required connecting taxiways between the main taxiway and the Premises.
 - (5) In addition, each phase shall include proper installation of all required utilities, including without limitation: conduit ducts for cable, telecommunications and electric power, sewage, electrical system, wastewater disposal, a perimeter safety fence, and lighting and security measures, as required.

- (6) At its option Lessee may construct an Aircraft Fuel Farm Facility on the Development Parcel, which facility in its entirety shall be subject to the prior written consent of the Aviation Department. Any such Aircraft Fuel Farm Facility must be in compliance with Aviation Department Approved Plans, all Applicable Laws and the Airport's minimum standards. Lessee may construct the Aircraft Fuel Farm Facility during any phase listed in this Subsection 6(b). However, for any costs associated with the construction and installation of an Aircraft Fuel Farm Facility to be included in as Capital Expenditure costs for purposes of satisfying the Minimum Capital Expenditure Requirement as provided in Subsection 1(j), the Aircraft Fuel Farm Facility must be completed and have obtained all necessary COs by no later than the Completion Date. If Lessee desires to have any costs associated with the construction and installation of an Aircraft Fuel Farm Facility included in a specific phase, Lessee shall complete construction of the Aircraft Fuel Farm Facility during that phase and notify the Aviation Department of same in writing by no later than the last day of that phase.
- (c) Lessee covenants to enter into contract(s) with a general contractor for construction of the Phase 1 Improvements, Phase 2 Improvements and Phase 3 Improvements that represents at least the Minimum Capital Expenditure Requirement for each phase, by no later than the following dates: (1) for Phase 1 Improvements, the contract must be entered into within twelve (12) months following the Commencement Date; (2) for Phase 2 Improvements, the contract must be entered into by at least six (6) months prior to the Phase 1 Date; and (3) for Phase 3 Improvements the contract must be entered into by at least six (6) months prior to the Phase 2 Date. The aforesaid time periods may be extended only for good cause, but only if the Aviation Department gives its prior written approval for such extension. Any approval by the Aviation Department shall not extend the date by which any Improvements must be completed, unless specifically stated in the Aviation Department's written approval. The Lessee shall provide the Aviation Department with a copy of each construction contract for each phase within the aforesaid time periods, and the amount of such contracts shall not be reduced below the Minimum Capital Expenditure Requirement for a particular phase without prior written consent of the Aviation Department. The contract with each general contractor must contain the provisions and insurance coverage required by Section 7, hereof.
- (d) The initial mix and configuration of the facilities described in Subsection 6(b), above and any changes to such mix and configuration are subject to the prior written approval of the Aviation Department. No other Improvements may be constructed on the Premises unless the Lessee shall first obtain the prior written approval of the Aviation Department.

- (e) Lessee covenants and agrees to expend with respect to the facilities described by Subsection 6(b), above, a total minimum Capital Expenditure of at least Ten Million Dollars (\$10,000,000) ("Minimum Capital Expenditure Requirement") by no later than the Completion Date. Capital Expenditure is determined as set forth in Section 1(j), hereof. Only Capital Expenditure costs associated with the Improvements described by Subsection 6(b) shall count towards the Minimum Capital Expenditure Requirement. The Phase 1 Date, the Phase 2 Date and the Completion Date may be extended only for good cause and only if the Aviation Department gives prior written approval for such extension. The Minimum Capital Expenditure Requirement shall be expended in accordance with the construction phasing schedule established in Subsection 6(b), above, and as set forth below:
- (1) Lessee shall spend a minimum Capital Expenditure amount of at least Six Million Dollars (\$6,000,000.00) (the "Phase 1 Capital Expenditure Amount") for construction of the Phase 1 Improvements described in Subsection 6(b)(1). Construction of the Phase 1 Improvements shall be completed and the Phase 1 Capital Expenditure Amount must be expended by no later than the Phase 1 Date.
 - (2) Lessee shall spend an additional minimum Capital Expenditure amount of at least Two Million Dollars (\$2,000,000.00) (the "Phase 2 Capital Expenditure Amount") for construction of the Phase 2 Improvements described in Subsection 6(b)(2). Construction of the Phase 2 Improvements shall be completed and the Phase 2 Capital Expenditure Amount must be expended by no later than the Phase 2 Date.
 - (3) Lessee shall spend a minimum Capital Expenditure amount of at least Two Million Dollars (\$2,000,000.00) (the "Phase 3 Capital Expenditure Requirement") for construction of the Phase 3 Improvements described in Subsection 6(b)(3). Construction of the Phase 3 Improvements shall be completed and the Phase 3 Capital Expenditure Amount must be expended by no later than the Completion Date.
- (f) For any cost of Lessee to qualify towards the Minimum Capital Expenditure Requirement: (1) said amount must qualify as a Capital Expenditure, as defined in Subsection 1(j); (2) the Lessee shall have constructed the respective Phase 1 Improvements, Phase 2 Improvements and Phase 3 Improvements pursuant to Approved Plans and in compliance with the standards set forth in this Lease; (3) the Lessee shall have provided to the Aviation Department the certificates of the construction contractor(s) and of the architect/engineer(s) required by Subsection 6(s), hereof; (4) the Lessee shall have provided the schedule of Capital Expenditure costs and the opinion from the CPA firm required by Subsection 6(t), hereof; and (5) the Lessee shall have provided the "as-built" plans and AUTOCAD files required by Subsection 6(v), hereof.

- (g) If requested by the Aviation Department (not more than once each Lease Year), Lessee shall provide the Aviation Department with a report ("Capital Expenditure Report") of the total Capital Expenditures thus far made by Lessee towards the Minimum Capital Expenditure Requirement. The Aviation Department, at its option, may audit the costs or any as-built plans provided by the Lessee, or may engage a CPA firm to conduct such audit.
- (h) Prior to the commencement of construction or refurbishment of any facilities on the Premises, Lessee shall submit to the Aviation Department for its written approval, a site plan and complete plans and specifications of the contemplated construction. The plans and specifications shall be certified by an architect or engineer licensed to practice in the State of Florida and shall consist of: (1) working drawings; (2) technical specifications; (3) bid documents, if applicable; (4) schedule for accomplishing Improvements; (5) schedule of finishes and graphics; (6) list of furnishings, fixtures and equipment; (7) certified estimate of the design, development and construction costs; and (8) such other information as may be required by the Aviation Department. All construction, Improvements, signs, equipment and landscaping must be made in accordance with the requirements set forth in this Lease and must conform to the standard requirements of the Aviation Department that are applicable to tenants of the Airport. All of the plans and specifications shall be in such detail as may reasonably permit the Aviation Department to make a determination as to whether the facilities will be consistent with the provisions of this Lease and the standards of the Aviation Department. The plans and specifications for the facilities that have received the Aviation Department's written approval, and any amendments and changes thereto that have received the Aviation Department's written approval, are hereinafter referred to collectively, as the "Approved Plans." No work may be performed on the Premises, except pursuant to Approved Plans.
- (i) All plans and specifications, including without limitation "as built" plans, shall not identify any conduit ducts for cable, telecommunications, electric service, and the like by any specific company name, and such plans shall identify the purpose of such conduits by generic reference only (e.g., "phone conduit," "telecommunications conduit," or "power conduit").
- (j) No material changes shall be made to any Approved Plans, without the prior written approval of the Aviation Department, which approval shall not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.
- (k) Any and all construction shall be performed in such a manner as to provide that all facilities and Improvements shall:

- (1) be structurally sound and safe for human occupancy, and free from any hazards;
 - (2) provide sufficient clearance for taxiways, runways and aprons, and shall not intrude into any aeronautical surfaces or exceed any height limitations and shall not interfere with the operations of arriving and departing aircraft at the Airport;
 - (3) be designed for use for only those purposes permitted under Section 5, hereof;
 - (4) comply with the provisions of the deed under which the County acquired its title to the Airport from the United States of America, and the provisions of any grant agreements or other agreements between the County and the United States Government or the State of Florida that are applicable to the Premises; and
 - (5) comply with the terms and provisions of this Lease.
- (l) The Aviation Department reserves the right to require that all development within the Airport be consistent with the overall Airport system architecture and the Master Plan, as well as reasonable standards of safety and quality. The Aviation Department may refuse to approve plans submitted by Lessee if, in its opinion, the proposed facilities as shown on such plans and specifications will fail to meet the criteria set forth above or in any other provision of this Lease, or for any other reason whatsoever, at its sole discretion.
- (m) It is understood and agreed that in the course of any construction or refurbishment undertaken by Lessee during the Term of this Agreement, the Lessee shall be responsible for all costs associated with any removal, replacement, relocation and protection of all utilities, whether such utilities are located at the Premises or on adjacent property, including but not limited to water, wastewater disposal, sewer, telephone, electric, airfield lighting system, conduit ducts for cable, telecommunications and electric service, and Federal Aviation Administration navigational aid system. All underground utilities conduits installed at the Premises, including without limitation cable, electric and telecommunications, shall be deemed leasehold Improvements and ownership thereof shall be vested in the County upon installation. All such conduits shall be installed by the Lessee at its expense, and shall be free of all liens, claims and encumbrances, including any claims of any utilities provider.
- (n) The parties agree that if Lessee has not expended the amount of the Minimum Capital Expenditure Requirement in constructing the facilities described in Subsection 6(b), above, by the Completion Date, pursuant to Aviation Department Approved Plans and in accordance with all requirements of the

Lease, the Aviation Department shall provide written notice to Lessee ("Shortfall Notice") of any shortfall in meeting the Minimum Capital Expenditure Requirement ("Shortfall Amount"). Any Shortfall Notice will be sent to Lessee following Aviation Department receipt of all documentation required to be provided by Lessee to document the Lessee's Capital Expenditures. If the Shortfall Amount is greater than ten percent (10%) of the Minimum Capital Expenditure Requirement, then the County, in its sole discretion may, upon sixty (60) day's written notice to Lessee, reduce the Term of this Agreement by one (1) year for every Two Hundred Thousand Dollars (\$200,000.00) of Shortfall Amount. If the Shortfall Amount is less than ten percent (10%) of the Minimum Capital Expenditure Requirement, and the Aviation Department determines, in its sole discretion, that Lessee has completed the Improvements required pursuant to Section 6 in accordance with the Lease by the Completion Date, Lessee shall notify the County in writing within fifteen (15) days following Lessee's receipt of the Aviation Department's Shortfall Notice, of Lessee's election to either: (1) pay the Shortfall Amount to the County, together with any applicable sales taxes thereon; or (2) reduce the Term of this Agreement by one (1) year for every Two Hundred Thousand Dollars (\$200,000.00) of Shortfall Amount. If Lessee elects to pay the Shortfall Amount, Lessee shall pay the Shortfall Amount to the County over a ten (10) year period, commencing on the first day of the calendar month following the Completion Date, which shall be payable in one hundred twenty (120) equal monthly installments, together with any applicable sales taxes, over said ten (10) year period ("Shortfall Monthly Payments"). The Shortfall Monthly Payments shall be payable by Lessee in addition to all other rent and other payments due from Lessee to the County pursuant to the terms of this Lease. The County shall have no obligation to refund or pay back to Lessee any Shortfall Monthly Payments made to the County. In the event the Term of the Lease is reduced pursuant to this Subsection, Lessee and County shall execute an amendment to this Agreement to reflect the reduction in Term. The provisions hereof are in addition to all other rights and remedies of County and the provisions hereof shall not in any way be deemed to waive the requirement that all Improvements required by Section 6(b) shall be completed by the dates established in Subsection 6(b)(1), (2), and (3). The Director of Aviation is hereby authorized to sign any amendment on behalf of the County to reflect any revision of Term pursuant to this provision.

- (o) All Improvements, equipment and interior design and decor constructed or installed by the Lessee, its agents, or contractors, including the plans and specifications relating to same shall conform to all Applicable Laws. The approval by the Aviation Department of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance shall at all times remain with Lessee.
- (p) Upon approval of plans, specifications and schedules by the Aviation Department and the obtaining of all other necessary governmental approvals, the Lessee

shall immediately begin construction, installation or refurbishment, as applicable, of the approved Improvements and shall pursue the same to completion in accordance with the phasing schedule established by Subsection 6(b), above. Any work impacting portions of the Airport other than the Premises shall be performed within schedules approved by the Aviation Department.

- (q) If requested by the Aviation Department, the Lessee and its architect/engineer and contractor shall meet with the Aviation Department in periodically scheduled meetings to assess the current status of completion.
- (r) All fixtures, structures, facilities, hangars, pavements and other leasehold Improvements and any additions and alterations made to the Premises (except trade fixtures not permanently affixed to the Premises, the Aircraft Fuel Farm Facility, and equipment not permanently affixed to the Premises, and any other personalty of Lessee and its sublessees) shall become County's property upon construction or installation and shall be surrendered with and remain on the Premises. Any addition, fixture or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Premises and is not readily removable as a trade fixture or item of equipment, is a leasehold Improvement. If any personalty, including furnishings, trade fixtures or equipment, is removed by Lessee or its sublessees, Lessee shall restore any damage to the Premises. All utilities conduits installed at the Premises by the Lessee or any of its sublessees, including without limitation cable, electric and telecommunications, shall be deemed leasehold Improvements and ownership thereof shall be vested in the County upon installation. All such conduits shall be installed by the Lessee and its sublessees at their expense. All such conduits shall be free of all liens, claims and encumbrances, including without limitation, any claims of any utilities provider.
- (s) Within one hundred twenty (120) days following the CO Date with respect to all Improvements, the Lessee must provide to the Aviation Department, a certified statement from the construction contractor specifying the total construction cost and that the Improvements are free and clear of all liens, claims or encumbrances by any material suppliers, subcontractors, or laborers, and a certified statement from the architect or engineer stating the total architect's or engineer's fees and that the Improvements have been constructed in accordance with the Approved Plans and in compliance with all Applicable Laws. Lessee shall provide, upon request, such back-up documentation and releases of lien as may be required by the Aviation Department. The Aviation Department, at its option, may conduct an audit of such expenditures, or may engage a duly licensed, independent certified public accounting firm to conduct such audit.
- (t) By no later than one hundred twenty (120) days following the Completion Date, the Lessee must provide to the Aviation Department a schedule of all qualifying Capital Expenditures per Subsection 1(j), which schedule shall show line item

detailed information as to each cost per phase, including but not limited to, description, payee and date of payment. The schedule of Capital Expenditures must be accompanied by an independent auditor's report. Such report shall be the result of an audit conducted by a certified public accounting ("CPA") firm in accordance with generally accepted accounting principles and shall contain a statement as to whether the Capital Expenditure amounts set forth on the schedule meet the requirements of Subsection 1(j), the phasing schedule set for in this Section, and are in conformity with generally accepted accounting principles, subject to the limitations set forth in Subsection 1(j). If any items on the schedule of Capital Expenditures do not meet the requirements of Subsection 1(j) or the phasing schedule, the independent auditor's report shall so indicate. The Lessee shall be responsible for documenting for the CPA firm and the Aviation Department that the monies were expended, that they are true and correct, and why they are eligible to be included in the Capital Expenditure amount. The Lessee shall provide, upon request, such invoices and other back-up documentation as may be required by the Aviation Department or the CPA firm to verify that the Minimum Capital Expenditure Requirement has been met by Lessee by the Completion Date. The Aviation Department, at its option, may conduct an audit of such expenditures, or may engage a CPA firm to conduct such audit.

- (u) Lessee hereby represents, warrants, and covenants to the County that the Premises and all Improvements now and hereafter constructed or placed thereon shall be at all times free and clear of all liens, claims and encumbrances. If any lien or notice of lien shall be filed against the Premises or any Improvements, the Lessee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. The provisions hereof shall not apply to any leasehold mortgage to which the County has consented as provided in this Lease, or any purchase money security interest in any movable trade fixtures installed at the Premises.
- (v) Within ninety (90) days after the CO Date with respect to any Improvements, the Lessee shall at its expense, provide the Aviation Department with a complete set of "as built" plans and specifications, including Mylar reproducible "record" drawings, and one set of machine readable disks containing electronic data in an AUTOCAD format that meets the Aviation Department's graphic standards of the "as-constructed" or "record" plans for such Improvements.
- (w) In addition to the Aviation Department's approval, Lessee shall obtain any required approval from all other agencies having jurisdiction over any Improvements, including but not limited to departments, divisions or offices of the County and local governments, the State of Florida, and the federal government.

- (x) All Improvements must be coordinated with the FAA, including the filing of required forms and the provision of any documentation the FAA may request.
- (y) All Improvements hereafter made to the Premises shall be in conformity and consistent with all applicable provisions of the Americans with Disabilities Act of 1990, as same may be amended from time to time.
- (z) The Lessee shall not make any additions, alterations, modifications or replacements to any Improvements at the Premises unless Lessee shall first have submitted to the Aviation Department, for its written approval, complete plans and specifications for same in accordance with this Section 6. All additions, alterations, modifications and replacements shall comply with all provisions of this Lease, including without limitation, this Section 6. In the event any addition, alteration, modification or replacement is made without Aviation Department approval pursuant to this Section 6, then, upon notice in writing so to do, the Lessee shall remove same or at the option of the Aviation Department cause same to be changed to the satisfaction of the Aviation Department. In the case of any failure on the part of the Lessee to comply with such notice, the Aviation Department may effect the removal or change and the Lessee shall pay the cost thereof to the County.
- (aa) Notwithstanding any provision of this Lease giving County title to Improvements located on the Premises, County shall not acquire title to any part of the Aircraft Fuel Farm Facility and its appurtenances at any time whatsoever. The Aircraft Fuel Farm Facility, and all component parts thereof, must be completely removed from the Premises by Lessee upon the expiration or other termination of this Agreement, which removal shall be performed in accordance with all Applicable Laws, rules and regulations.
 - (1) In the event Lessee shall fail to remove the Aircraft Fuel Farm Facility and its appurtenances on or before the expiration or other termination of this Lease, then Lessee shall be considered to be holding over under Subsection 35(b) hereof and shall be liable for charges payable pursuant to such provision. In addition, in the event Lessee shall fail to remove the Aircraft Fuel Farm Facility within sixty (60) days following the expiration or other termination of this Lease, then, in addition to all remedies available hereunder and at law or in equity, County shall have the right to remove the Aircraft Fuel Farm Facility and Lessee shall be liable for all expenses and charges (whether direct or indirect) incurred by County in effectuating such removal (including any storage charges) that are in any way connected to the Aircraft Fuel Farm Facility, including interest thereon at the rate of eighteen percent (18%) per annum from the date incurred. In contracting for any such removal, County shall be entitled to dispose of the Aircraft Fuel Farm Facility in any way it sees fit, including without limitation, through demolition of such Aircraft Fuel Farm Facility, through

giving salvage rights to the contractor, through storage or through public auction.

- (2) Lessee shall provide County with documentation that the Aircraft Fuel Farm Facility has been removed in accordance with all Applicable Laws, rules and regulations, including such backup documentation as the County may request. The provisions of this Subsection 6(aa)(2) shall survive any termination or expiration of this Agreement.

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

- (a) **Security Deposit for Due Diligence and Construction of Improvements.** The Lessee agrees to provide the County with a "Construction Security Deposit" in the form of cash or letter of credit in the amount of One Million Dollars (\$1,000,000.00) as ten percent (10%) of the Minimum Capital Expenditure Requirement for the Improvements described by Subsection 6(b). Such Construction Security Deposit shall serve as liquidated damages in the event Lessee fails to expend the Minimum Capital Expenditure Requirement on the Improvements described by Subsection 6(b) or fails to complete such Improvements in accordance with the phasing schedule established by Subsection 6(b). Lessee must post One Hundred Thousand Dollars (\$100,000.00) of the Construction Security Deposit with the Aviation Department prior to the Effective Date of this Agreement, the remaining portion of the Construction Security Deposit must be posted with the Aviation Department on the earlier to occur of: (i) the last day of the Due Diligence Period; or (ii) approval of the plans and specifications pursuant to Section 6(h). Lessee covenants and agrees as follows:
 - (1) If Lessee properly notifies the Aviation Department of the non-acceptance of the Development Parcel in accordance with Subsection 3(b), above, and returns the Development Parcel to the County in the same condition it was in on the Commencement Date, the Aviation Department shall return the Construction Security Deposit to Lessee within ninety (90) days of receipt of Lessee's written request. If Lessee fails to return the Development Parcel to the County in the same condition it was in on the Commencement Date, and County incurs any costs associated with returning the Development Parcel to the same condition it was in on the Commencement Date, County may draw down on the Construction Security Deposit to cover said costs.
 - (2) If Lessee accepts the Development Parcel in accordance with Subsection 3(b), above, and Lessee fails to perform its obligations to expend the amount of the Minimum Capital Expenditure Requirement on the Improvements described in Subsection 6(b) and in accordance with the

phasing schedule established therein, the County may retain that portion of the Construction Security Deposit as liquidated and agreed-upon damages as follows:

- (i) in the event Lessee fails to expend a minimum of Six Million Dollars (\$6,000,000.00) required to be spent on construction of Phase 1 Improvements by the Phase 1 Date, or Lessee fails to construct the Improvements described in Subsection 6(b)(1), County shall retain Six Hundred Thousand Dollars (\$600,000.00) of the Construction Security Deposit; and
- (ii) in the event Lessee fails to expend a minimum of Two Million Dollars (\$2,000,000.00) required to be spent on construction of Phase 2 Improvements, or Lessee fails to expend an aggregate minimum of Eight Million Dollars (\$8,000,000.00) required to be spent on construction of the Phase 1 Improvements and the Phase 2 Improvements by the Phase 2 Date, or Lessee fails to construct the Improvements described in Subsection 6(b)(2), County shall retain Two Hundred Thousand Dollars (\$200,000.00) of the Construction Security Deposit; and
- (iii) in the event Lessee fails to expend a minimum of Two Million Dollars (\$2,000,000.00) required to be spent on construction of Phase 3 Improvements, or Lessee fails to expend an aggregate minimum of Ten Million Dollars (\$10,000,000.00) required to be spent on construction of Phase 1 Improvements, Phase 2 Improvements and Phase 3 Improvements by the Completion Date, or Lessee fails to construct the Improvements described in Subsection 6(b)(3), County shall retain Two Hundred Thousand Dollars (\$200,000.00) of the Construction Security Deposit.

The provisions hereof are in addition to all other rights and remedies of County, including without limitation, those set forth in Subsection 6(n) of this Agreement and County rights of termination.

- (3) Upon Lessee's satisfactory completion of the Improvements for each phase by the applicable date, as determined by the Aviation Department in its sole discretion, Lessee shall have the right to request a release of that portion of the Construction Security Deposit applicable to that phase. The Aviation Department may release that portion of the Construction Security Deposit to the Lessee with respect to the completed phase after the Aviation Department has satisfied itself that: (1) the required amount of the Minimum Capital Expenditure Requirement for such phase was expended by Lessee; (2) Lessee has completed all Improvements for such phase in accordance with the requirements of this Lease; and (3) all

documentation required by Section 6 has been provided for such phase, as follows: (i) for Phase 1 Improvements, within one hundred twenty (120) days following the Phase 1 Date; (ii) for Phase 2 Improvements within one hundred twenty (120) days following the Phase 2 Date; and (iii) for Phase 3 Improvements within one hundred twenty (120) days following the Completion Date. Notwithstanding the forgoing, if Lessee fails to comply with any of the requirements of the preceding sentence, Lessee shall not be entitled to any release of the Construction Security Deposit until after the later to occur of: (i) the Completion Date; or (ii) the date by which all required CO's have been obtained for all of the Phase 1 Improvements, Phase 2 Improvements and Phase 3 Improvements; or (iii) the date by which all obligations under this Lease as to the construction of all Improvements are performed and satisfied, as determined by the Aviation Department. If the Construction Security Deposit is in the form of a Letter of Credit, any failure to renew the Letter of Credit, or to maintain the amount required, shall entitle the County to draw down the full amount of the Construction Security Deposit and such shall be a default of this Agreement entitling County to all available remedies.

- (4) No interest shall be paid on the Construction Security Deposit and pursuant to this Subsection 7(a), shall never be applied as rent; its sole purpose being to serve as liquidated damages for the obligations of Lessee described in this Subsection 7(a). If the Construction Security Deposit is in the form of a letter of credit, then the requirements of Subsection 33(b) shall be applicable.
 - (5) Upon any failure by the Lessee to expend the amount of the Minimum Capital Expenditure Requirement on the Improvements described in Approved Plans pursuant to Subsection 6(b), or to complete the Improvements described by Subsection 6(b) in accordance with the provisions of this Agreement, any portion of the Construction Security Deposit and all monies payable thereunder shall at once pass to and become the property of the County, not as a penalty or forfeiture, but as liquidated damages to the County because of such default by the Lessee, which damages are hereby fixed and agreed upon between the parties hereto, both parties recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by the County in consequence of such default, and both parties desiring to obviate any questions or dispute concerning the amount of such damages and the cost and effect of such default.
- (b) **Payment and Performance Bonds.** The Lessee agrees that before commencing any construction work or leasehold improvements, the Lessee shall require the contractor building any Improvements to maintain, at all times, a valid payment bond and a valid performance bond, which bonds shall be in an amount

not less than the amount covering the full amount of the work being performed. Each bond must guarantee to the County the completion of the work being performed by the contractor as well as full payment of all suppliers, material suppliers, laborers or subcontractors employed in the project.

- (c) **Construction Contract Provisions.** Lessee agrees to abide by and include the following provisions in all contracts it enters into with successful contractors in connection with the construction and completion of any Improvements to the Premises:

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

- (d) **Insurance Requirements for Construction Contracts.**

- (1) Lessee agrees to include the following insurance language in any agreement it enters into with any contractors performing work at Premises and Lessee further agrees to provide to County (prior to commencement of any Improvements and by no later than the pre-construction meeting held by the Aviation Department with the Lessee) with certificates of insurance evidencing the contractor's compliance with the requirements of this Section:

"A. Without limiting any of the other obligations or liabilities of contractor, contractor shall provide, pay for, and maintain in force until all of its work to be performed under this Contract has been completed and accepted by Lessee (or for such duration as is otherwise specified hereinafter), the insurance coverage's set forth herein.

1. **Workers' Compensation Insurance** shall be provided to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy must include: Employers' Liability with a limit of **One Million Dollars (\$1,000,000.00)** each accident.

2. **Comprehensive General or Commercial Liability Insurance** shall be provided with minimum limits of **Five Million Dollars (\$5,000,000.00)** per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability and **Five Million Dollars (\$5,000,000.00)** per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Premises and/or Operations; Independent Contractors; Products and/or Completed Operations for contracts over **Fifty Thousand Dollars (\$50,000.00)**; Explosion, Collapse and Underground Coverage's; Contractual Insurance; Personal Injury; Broad Form Property Damage; Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement; Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Contractor shall maintain in force until at least three (3) years after completion of all work required under the contract, coverage for Products and Completed Operations, including Broad Form Property Damage and Broad Form Contractual Coverage.

3. **Business Automobile Liability Insurance** shall be provided with minimum limits of **One Million Dollars (\$1,000,000.00)** for all non-airside circulation and **Five Million Dollars (\$5,000,000.00)** for all airside circulation, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned/Leased Vehicles; Hired and Non-Owned Vehicles; and Employer's Non-Ownership."
4. **Builder's Risk:** contractor shall provide all risk Completed Value form Builders Risk Policy with a deductible not to exceed **Ten Thousand Dollars (\$10,000.00)** each claim for all perils except wind and flood. For the peril of wind, the contractor shall maintain a deductible that is commercially feasible which does not exceed five percent (5%) of the value of the contract price said percentage to be determined at the sole discretion of the County's Risk Manager. For the peril of flood, the contractor shall maintain a deductible that is commercially feasible which does not exceed **Ten Thousand Dollars (\$10,000.00)**. Such Policy shall reflect

Broward County as additional loss payee. Contractor shall be responsible for up to the first **Ten Thousand Dollars (\$10,000.00)** of loss within any of the Policy's deductibles. Broward County shall be responsible for all losses in excess of the contractor's deductible responsibilities up to the applicable Policy deductibles. This coverage shall be provided to County within ten (10) days prior to commencement of any construction activity."

"B. Such policy or policies shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the state of Florida. The Commercial General Liability policy shall specifically protect the County by naming County as additional insured."

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

- (2) Lessee shall provide to County, not less than ten (10) days prior to commencement of any Improvements at the Premises, site certificates of insurance evidencing the insurance coverage as specified above. The required certificates of insurance shall not only name the types of coverage provided, but also shall refer specifically to this Lease with the type of insurance which is being furnished, and shall state that such insurance is as required by such Sections of this Lease. If the initial insurance expires prior to the completion of the Improvements, renewal certificates of insurance shall be furnished at least thirty (30) days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted, without at least thirty (30) days prior written notice to County, and must be endorsed to provide same. The aforesaid minimum limits of insurance shall be reviewed from time to time by County and may be adjusted if County determines that such adjustments protect County's interest. When such policies or certificates have been delivered by the Lessee to the County as aforesaid and at any time or times thereafter, the County may notify the Lessee, in writing, that the insurance represented thereby does not conform to the provisions hereof because of the amount or because of the insurance company or for any other reason, and the Lessee shall have fifteen (15) days in which to cure any such defect.

- (3) Contractor shall have Broward County as a certificate holder for all coverage and an additional insured for its General Liability and Excess Liability coverage. The contractor's certificate of insurance shall be in a form that is satisfactory to the County's Risk Manager or Risk Management Division.
- (e) Lessee shall provide the Aviation Department with the certificates of insurance and any other documentation required by this Section 7.

SECTION 8. OBLIGATIONS OF THE LESSEE

- (a) Lessee covenants and agrees to observe and obey, and to require its sublessees, officers, employees, guests, invitees and those doing business with it, to observe and obey such rules and regulations of the Aviation Department and the County (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee and others on the Premises as may from time to time be promulgated, including without limitation any rules, regulations or minimum standards that are established for operations of Airport tenants. The obligation of the Lessee to require such observance and obedience on the part of its sublessees, guests, invitees and business visitors shall pertain only while such persons are on or in occupancy of any portion of the Premises.
- (b) Lessee and all sublessees shall conduct their operations hereunder in an orderly and commercially reasonable manner, considering the nature of such operations so as not to unreasonably annoy, disturb, endanger or be offensive to others at the Airport.
- (c) Lessee and all sublessees shall take all reasonable measures:
 - (1) To reduce to a minimum vibrations tending to damage any equipment, structure, building or portion of a building which is on the Premises or is a part thereof, or is located elsewhere on the Airport; and
 - (2) To keep the sound level of their operations as low as possible. The parties agree that aircraft that operates within federal noise requirements shall not be deemed to be a violation of this provision.
- (d) Lessee and all sublessees shall control the conduct, demeanor and appearance of their employees, invitees, and of those doing business at the Premises and, upon objection from the Aviation Department concerning the conduct, demeanor and appearance of any such persons, shall immediately take all reasonable steps necessary to remove the cause of objection.

- (e) Lessee and all sublessees shall remove from the Airport or otherwise dispose of in a manner approved by the Aviation Department all garbage, debris and other waste materials (whether solid or liquid) arising out of the occupancy of the Premises or out of any operations conducted thereon. Any of such as may be temporarily stored in the open, shall be kept in suitable garbage and waste receptacles, the same to be made of metal and equipped with tight-fitting covers and to be of a design safely and properly to contain whatever material may be placed therein. The Lessee shall use extreme care when effecting removal of all such waste and shall comply with all laws, ordinances, rules, regulations and procedures of all applicable governmental authorities.
- (f) Lessee and all sublessees shall commit no nuisance, waste or injury on the Premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such nuisance, waste or injury on the Premises.
- (g) Lessee and all sublessees shall not create nor permit to be caused or created upon the Premises any obnoxious odors, smokes, noxious gases, or vapors; provided, however, that fumes resulting from the normal operations of properly certified and maintained aircraft and properly maintained trucks and other vehicles shall be excepted from this provision. Lessee and all sublessees shall ensure that emissions generated by any such aircraft, trucks, and other vehicles shall comply with all provisions of applicable environmental emissions laws and regulations.
- (h) Lessee and all sublessees shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Premises which are also used by other entities at the Airport.
- (i) Lessee and all sublessees shall not overload any floor or paved area on the Premises and shall repair any floor, including supporting members, and any paved area damaged by overloading.
- (j) Lessee and all sublessees shall not do or permit to be done any act or thing upon the Premises:
 - (1) which will invalidate or conflict with any fire insurance policies covering the Premises or any part thereof or other contiguous premises at the Airport; or
 - (2) which may constitute a hazardous condition so as to increase the risks normally attendant upon the operations permitted by this Agreement.

- (k) All flammable liquids that are kept or stored at the Premises must at all times be handled, stored and used in accordance with all applicable federal, state, County and local laws, rules and regulations.
- (l) Lessee and all sublessees shall not fuel or refuel aircraft or other equipment in the covered and enclosed portions of the Premises without the prior written approval of the Aviation Department, provided, however, that the Lessee shall not be prohibited from using gasoline or other fuel in such enclosed portions where necessary in repairing and testing component parts and, in such event, all precautions reasonably necessary to minimize the hazard created by such use shall be taken and all applicable requirements of all governmental authorities having jurisdiction shall be complied with.
- (m) Lessee and all sublessees shall prevent access to the Public Landing Areas from the Premises, except for aircraft equipped with radio transmission devices suitable for use as required in the Public Landing Areas.
- (n) From time to time and as often as reasonably required by the Aviation Department or any governmental authority having jurisdiction, Lessee and all sublessees shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus which are maintained by the Lessee or any sublessee.
- (o) Lessee and its sublessees shall not place any coin or token operated vending machine or similar device (including without limitation, pay telephones, beverage or food machines or other commodities) upon or within the Premises, without the prior written consent of the Aviation Department, except for food/beverage vending machines as may be permitted by Section 5, above.
- (p) Lessee and all sublessees shall pay before delinquency all licenses and permit fees and charges for the conduct of any business conducted at the Premises.
- (q) Lessee and all sublessees shall comply with the provisions of Chapter 2, Broward County Code of Ordinances with respect to the removal of derelict vehicles and derelict aircraft from the Premises. Lessee and all sublessees shall not permit the temporary or permanent storage and shall not allow the arrival at the Premises or the presence at the Premises at any time of any derelict aircraft. Lessee and all sublessees shall not park or store or allow the parking or storage of any vehicles, boats, motorcycles, recreation vehicles, trailers or any other non-aviation equipment whatsoever on the Premises that are not used in the daily operation of the business permitted to be conducted at the Premises pursuant to Section 5 of this Agreement. Notwithstanding the foregoing, Lessee may make specific written requests to the Aviation Department to repair specified aircraft within a specified period of time. Any violation of these provisions or the failure

to comply with the written request of Lessee shall be a default hereunder in accordance with Section 19(a)(8).

- (r) **Emergency Evacuation and Hurricane Plan.** Within thirty (30) days following the execution of this Lease, the Lessee shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with the County's plans for the Airport. These plans shall be detailed procedures of actions to be taken by the Lessee and its sublessees if an evacuation is needed or a hurricane alert is present and shall include emergency contact information. Prior to June 1 of each year, hurricane plans are to be annually updated and submitted to the Aviation Department.
- (s) **Safety Management System ("SMS").** Lessee shall report to the Aviation Department's Safety Manager/Risk Manager (as set forth below) any and all incidents which have occurred on or about its Premises or which have occurred anywhere on the Airport which is related to any of its operations. Lessee shall cooperate with any subsequent investigations in compliance with Aviation Department's Safety Management System ("SMS") projects and any other requirement as set forth by FAA's SMS final order, if applicable. All incidents shall be reported in writing to the attention of the Operations Department Risk, Safety Manager for the Airport or any other person designated in writing by the Aviation Department, at 100 Aviation Blvd, Ft. Lauderdale, Florida 33315, or such other address as may be noticed pursuant to Section 25 of this Lease, within twenty four (24) hours of its occurrence. Additionally and simultaneously, a copy of the report shall be emailed to the Risk Insurance and Contracts Manager at the Aviation Department at flsafety@broward.org or any other person designated in writing by the Aviation Department.

SECTION 9. INGRESS AND EGRESS

- (a) Lessee, its invitees, licensees, sublessees, agents, guests, contractors, suppliers of material and furnishers of services, shall have ingress and egress to the Premises via appropriate public ways to be used in common with other tenants and users of the Airport, provided that the County may, from time to time, substitute other suitable means of ingress and egress, so long as an alternate adequate means of ingress and egress is available.
- (b) Subject to the provisions of this Agreement, Lessee, its invitees, licensees, sublessees, agents and guests shall have ingress and egress between the Premises and the Public Landing Areas at the Airport by means of taxiways existing or hereafter to be constructed by Lessee to be used in common with other tenants and users of the Airport, provided that the County may, from time to time, substitute other suitable means of ingress and egress, so long as an alternate adequate means of ingress and egress is available.

- (c) The County may at any time temporarily or permanently close or consent to or request the closing of any roadway, taxiway and any other area at the Airport presently or hereafter used as such, so long as an alternate adequate means of ingress and egress is made available to the Premises. The Lessee hereby releases and discharges the County, its successors and assigns, of and from any and all claims, demands or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, taxiway, or other area used as such, whether within or outside the Airport, provided that the County makes available to the Premises an adequate means of ingress and egress.

SECTION 10. COMPLIANCE WITH GOVERNMENTAL PROCEDURES

- (a) Lessee shall comply with all Applicable Laws including, but not limited to, Airport rules and regulations and minimum standards now or at any time during the Term of this Lease which are applicable to Lessee or the operations conducted at the Premises.
- (b) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property on the Premises. Such provision is not to be construed as a submission by the County to the application to itself of such requirements or any of them.
- (c) The Lessee agrees to permit entry, inspection, and testing, at all reasonable times, by inspectors of any federal, state or County agency having jurisdiction under any law, rule, regulation or order, applicable to the Premises or the operations at the Premises. This right of entry, inspection and testing shall impose no duty on the County to take any such action and shall impart no liability on the County should it not take any such action.

SECTION 11. MAINTENANCE AND REPAIR

- (a) Lessee shall throughout the Term of this Lease assume the entire responsibility and shall relieve the County from all responsibility for all repair and maintenance whatsoever on the Premises (which shall include, without limitation, all buildings and Improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Maintenance and repairs shall be in quality and class comparable to the original work, to preserve the Premises in good order and condition.
- (b) The Lessee shall be required to keep all buildings and other Improvements in good, tenantable, useable condition throughout the Term of this Lease, and without limiting the generality thereof, Lessee shall:

- (1) For all metal, aluminum or steel pre-engineered Improvements, Lessee shall repair and paint the exterior and interior of the Improvements upon expiration of the manufacturer's warranty to a condition satisfactory to the Aviation Department, as determined in its sole discretion; or in the event the warranty has not expired but visible signs of product deterioration are evident, as determined by the Aviation Department in its sole discretion, then within one hundred eighty (180) days after receipt of written notice from the Aviation Department, the Lessee shall have repaired the facility to a condition satisfactory to the Aviation Department, as determined in its sole discretion. For all other Improvements, Lessee shall paint the exterior and interior of the Premises every five (5) years commencing on the tenth (10th) anniversary of the Commencement Date and every five (5) years thereafter, or as may be requested by the Aviation Department. Lessee shall further repair and maintain the Premises, which repair shall include, but not be limited to, all doors, windows, pavements, fencing, equipment, lighting fixtures, HVAC, furnishings, fixtures, roofs, exterior walls, ramp markings, and all structural support systems.
- (2) Keep the Premises at all times in a clean and orderly condition and appearance, including without limitation, upkeep and maintenance of all landscaping and upkeep and maintenance of all of the Lessee's fixtures, equipment and personal property which are located in any part of the Premises which is open to or visible by the general public.
- (3) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.
- (4) Repair any damage to the paving or other surface of the Premises caused by operations of Lessee, its agents, employees, sublessees or invitees and any others entering upon or using the Premises at any time during the Term, including without limitation any oil, gasoline, grease, lubricants or other liquids and substances having a corrosive or detrimental effect thereon and report the incident of such spill pursuant to Section 32.
- (5) Take anti-erosion measures, including but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or built upon.
- (6) Be responsible for the maintenance and repair of all utilities including but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers and storm sewers which are now or which may be

subsequently located upon the Premises leased to the Lessee and which are used exclusively by the Lessee or any of its sublessees.

- (c) The Aviation Department shall have the right to enter the Premises at reasonable times to inspect same, for purposes of determining if the Lessee is maintaining the Premises as required by this Lease. In the event Lessee fails in any material respect to commence to maintain, clean, repair, replace, rebuild or paint within the period of time required by this provision and after written notice from the Aviation Department to do so; or fails in any material respect diligently to continue to completion the maintenance, repair, replacement, rebuilding or painting of all of the Premises required to be maintained, repaired, replaced, rebuilt or painted by the Lessee under the terms of this Agreement, the Aviation Department may, at its option, and in addition to any other remedies which may be available to it, maintain, repair, replace, rebuild or paint all or any part of the Premises included in said notice and the cost thereof, as determined by the Aviation Department, shall be payable by the Lessee upon demand. The Lessee shall have a period of thirty (30) days to commence any required action hereunder, except for emergency and public safety items which shall be immediately undertaken by Lessee.
- (d) In order to extend the useful life of Improvements on the Current Parcel beyond the Term of this Agreement, Lessee agrees to make specific repairs to Improvements on the Current Parcel as set forth on **Exhibit G**, attached hereto and made a part hereof. Lessee must spend a minimum of Two Hundred Fifty Thousand Dollars (\$250,000.00) on the repairs set forth on **Exhibit G** and the work must be completed by no later than the last day of the third Lease Year. No portion of the repair work set forth on **Exhibit G**, or any work performed on the Current Parcel, will qualify as Capital Expenditure or count toward Lessee's Minimum Capital Expenditure Requirement.

SECTION 12. INSURANCE REQUIREMENTS

- (a) Lessee shall, at a minimum, provide, pay for, and maintain in force at all times during the Term of this Agreement (unless otherwise provided), the insurance coverages set forth in the below, in accordance with the terms and conditions required by this Section 12. Such policy or policies shall be without any deductible amount (except as may be expressly authorized herein). Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A- . Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. Lessee shall name Broward County as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability, Property Damage Insurance, Airport Liability, and all environmental and impairment liability policies as well as on any

Excess Liability policy. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation.

- (b) Lessee shall, during the Term of this Lease, insure and keep insured to the extent of not less than one hundred percent (100%) of the insurable replacement value thereof, all buildings, structures, fixtures and equipment on the Premises against such hazards and risks as may now or in the future be included under the Standard Form of Fire and Extended Coverage insurance policy of the State of Florida and also against the following hazards and risks:
- (1) Sprinkler leakage - by which is meant damage caused by water or any other substance discharged from any part of the fire protection equipment for the Lessee's Premises or from adjoining premises; collapse or fall of tanks forming part of such fire protection equipment or the component parts or supports of such tanks.
 - (2) Damage caused by such perils and hazards as may now or in the future be included under any Boiler and Machinery policy filed with and approved by the Insurance Commissioner of the State of Florida, or if there be no such policy so filed, then reasonable coverage against perils and hazards occasioned by the existence and operation of such boilers, provided that the Lessee shall be required to maintain such insurance only with respect to such buildings and structures in which boilers are installed.
 - (3) Such policies of insurance shall be limited to a deductible for windstorm of not more than two percent (2%) of the insurable replacement value of the Improvements. In addition, the deductible for all other windstorm perils shall be not more than **Five Thousand Dollars (\$5,000.00)**. In the event of any damage to the Premises, if the cost of repair or replacement is less than the deductible amount, the Lessee shall nevertheless be required to make such repair or replacement and to restore the Premises to the condition required by Section 13.
 - (4) All policies of such insurance and renewals thereof shall insure the County and Lessee as their interest may appear, and shall provide that the loss, if any, shall be adjusted with and payable to the County, except as otherwise provided in Section 13 hereof.
 - (5) In the event the Premises or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Section 12, and if such loss is to be adjusted with and payable to the County, the Lessee shall promptly furnish to the County such information and data as may be necessary to enable the County to adjust the loss.

- (6) The property insurance carried by Broward County shall be excess over any other valid and collectible insurance carried by the Lessee, including but not limited to the insurance obtained by Lessee pursuant to this Agreement.
- (c) **Airport Liability or Commercial General Liability Insurance** shall be provided to protect against bodily injury liability and property damage in an aggregate amount of not less than **Five Million Dollars (\$5,000,000.00)** per occurrence, combined single limit and **Five Million Dollars (\$5,000,000.00)** per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Premises and/or Operations, Personal Injury, Independent Contractors, Broad Form Property Damage and Broad Form Contractual Coverage covering all liability arising out of the terms of this Agreement. Lessee is responsible for all deductibles in the event of a claim.
- (d) **Business Automobile Liability Insurance** shall be provided in an amount not less than **One Million Dollars (\$1,000,000.00)** for non-airside circulation and **Five Million Dollars (\$5,000,000.00)** for airside circulation, per occurrence combined single limit, for bodily injury and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-owned and Hired vehicles.
- (e) **Environmental and Impairment Liability Insurance** shall be provided in the minimum amount of **Two Million Dollars (\$2,000,000.00)** per claim, subject to a maximum deductible of **One Hundred Thousand Dollars (\$100,000.00)** per claim. Such policy shall include a **Two Million Dollars (\$2,000,000.00)** annual policy aggregate and name County as additional insured. **Lessee** is responsible for all deductibles in the event of a claim.
- (f) From time to time, the County's Risk Management Division shall review the necessity for environmental insurance and the coverage required, including a review of activities at the Premises, geographic of location, other leases and subleases at the Premises or Airport, as well as the insurance market (which may present changes in reasonable availability and premium costs.) As a result of such review, the County, through its Risk Management Division, may determine to require environmental insurance, or may adjust the requirements to increase or decrease coverage requirements. In the event of any such requirement or adjustment, Lessee shall provide evidence of such coverage's to the County within thirty (30) days following notice of such requirement or adjustment. In the event the County's Risk Management Division requires that Lessee obtain environmental and impairment liability insurance, the Risk

Management Division may allow Lessee to provide self-insurance in the required amount, which shall be certified by the Lessee's Chief Financial Officer, provided that the Risk Management Division is satisfied with the financial ability of Lessee to meet the self-insurance requirements and Lessee shall provide the Risk Management Division with all requested documentation. If self-insurance is permitted, then if at any time the self-insurance funds are reduced below the specified limit, such failure shall be a default hereunder.

- (g) **"Environmental and Impairment Liability Insurance"** is defined as a specialized insurance policy that covers liability and cleanup costs associated with discharge of "Materials" (as defined in Subsection 32(a)). It provides broader coverage than the general liability policy by covering gradual as well as sudden and accidental releases.
- (h) **Workers' Compensation and Employer's Liability Insurance** shall be provided to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policies must include: Employers' Liability with a limit of **One Million Dollars (\$1,000,000)** each accident.
- (i) Lessee shall furnish to the Aviation Department, Certificates of Insurance evidencing the insurance coverage's specified by this Section 12 prior to the commencement of this Agreement.
- (j) Coverage is not to cease and is to remain in force (subject to cancellation notice) throughout the Term of this Agreement and until all performance required hereunder is completed. All policies must be endorsed to provide County with at least thirty (30) days' prior written notice of expiration, cancellation and/or restriction. If any of the insurance coverage's will expire prior to the termination of this Agreement, copies of renewal certificates shall be furnished at least thirty (30) days' prior to the date of their expiration. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination of this Agreement. Comprehensive General and Commercial Liability Insurance shall be written on an "occurrence" basis, and shall not be written on a "claims made" basis.
- (k) The aforesaid minimum limits of insurance shall be reviewed from time to time by County and may be adjusted if County determines that such adjustments protect County's interest. When such policies or certificates have been delivered by the Lessee to the County as aforesaid and at any time or times thereafter, the County may notify the Lessee, in writing, that the insurance represented thereby does not conform to the provisions of this Section 12 either because of the amount or because of the insurance company or for any other reason, and the Lessee shall have fifteen (15) days in which to cure any such defect.

- (l) **Subrogation.** Notwithstanding anything to the contrary herein, Lessee waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Lessee's insurance hereunder. Lessee shall obtain from its insurers a waiver of any subrogation the insurer may have against County in connection with any loss or damage covered by Lessee's insurance.
- (m) The certificate holder address shall read "Broward County."
- (n) Compliance with the foregoing requirements shall not relieve the Lessee of its liability and obligations under any other provision of this Lease.
- (o) Any contractor performing work for Lessee on the Premises shall have Broward County listed as a certificate holder for all coverage and an additional insured for its General Liability and Excess Liability coverage. The certificate of insurance shall be in a form that is satisfactory to the County's Risk Manager or Risk Management Division.

SECTION 13. DAMAGE TO OR DESTRUCTION OF PREMISES

- (a) **Removal of Debris.** If the Premises or any part thereof shall be damaged by fire, the elements, or other casualty, the Lessee shall promptly remove all debris resulting from such damage from the Premises, and Lessee shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of persons entering upon the Premises. To the extent, if any, that such measures are covered by any insurance obtained by Lessee, the proceeds thereof shall be made available to the Lessee for such purpose. If the Lessee shall fail to promptly comply with the provisions hereof, then the County may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition, and the Lessee shall be responsible for any costs expended by the County in connection therewith and the proceeds of any insurance covering the Premises shall be adjusted with and paid to the County.
- (b) **Minor Damage.** If the Premises, or any part thereof shall be damaged by fire, the elements, or other casualty but not rendered untenable or unusable, then there shall be no abatement of rent and the Premises shall be repaired with due diligence in accordance with the plans and specifications for the Premises as they existed prior to such damage, or in accordance with new plans approved by County pursuant to Section 6, hereof, by and at the expense of the Lessee and, if such damage is covered by insurance, the proceeds thereof shall be made available to the Lessee for that purpose.
- (c) **Major Damage to the Premises or Destruction of the Premises.** If the Premises or any part thereof shall be destroyed or so damaged by fire, the

elements or other casualty as to render the Premises untenable or unusable, then:

- (1) The Lessee shall have an option to make the necessary repairs or replacements for the restoration thereof in accordance with the plans and specifications as the same existed prior to such damage or destruction, provided that the Lessee within forty-five (45) days after the occurrence of such damage or destruction notifies the County in writing that it elects to exercise its option to make the necessary repairs or replacements. If the Lessee elects to make such repairs or replacements it shall do so with reasonable dispatch and, if such destruction or damage was covered by insurance, the proceeds thereof shall be adjusted with and paid to the Lessee.
- (2) If the Lessee fails to notify the County in writing of its intention to make the necessary repairs or replacements within the forty-five (45) day period provided in Subsection 13(c)(1), above, or if within said forty-five (45) day period the Lessee notifies the County in writing that it does not elect to make such repairs or replacements, then the County may at its election make such repairs and replacements provided that the County notifies the Lessee of its election to do so within thirty (30) days following the expiration of said forty-five (45) day period. If the County elects to make such repairs or replacements, it shall do so with reasonable dispatch and without cost to the Lessee, except that if such destruction or damage was covered by insurance, the proceeds thereof shall be adjusted with and paid to the County. In the event the County makes such repairs or replacements, then the annual rental required to be paid by Lessee pursuant to Section 4 hereof, shall be adjusted upwards by the County following completion of the repairs and replacements to an amount equal to the annual rental in effect immediately prior to the adjustment, plus 10% of the actual cost of the repairs and replacement Improvements. Thereafter, the additional rentals established pursuant to this provision, shall be adjusted at the intervals set forth in Section 4, and in accordance therewith.
- (3) In the event that restoration is made pursuant to either Subsections 13(c)(1) or (2), above, the rent shall abate from the date of the damage or destruction until the Premises have been placed in a usable condition, as determined by the Aviation Department in its sole discretion. Such abatement shall be made pursuant to Section 29 hereof. All restoration work shall be made pursuant to plans and specifications that have received the prior written approval of the Aviation Department and all such work shall comply with the terms and provisions of this Agreement, including without limitation, Section 6 hereof.

- (4) In the event County and Lessee elect not to make such repairs and replacements as referred to hereinabove, this Lease shall terminate on a date to be determined by the Aviation Department and set forth in a written notice to Lessee. The Aviation Department in determining the date of the termination shall provide a reasonable time period for Lessee to surrender the Premises pursuant to Section 21 herein.
- (5) In the event the Lease is terminated pursuant to Subsection 13(c)(4), above, any and all proceeds collected from Lessee's insurance shall be applied first to any costs and expenses incurred by the County for the removal of all Improvements and debris from the Parcel and the general cleanup and restoration of the Parcel to a safe and developable condition, as determined by County. Thereafter, the remaining insurance proceeds shall be distributed between the Lessee and the County as their interests may appear. In the event there is a leasehold mortgage on the Lessee's leasehold interest pursuant to this Agreement, the Lessee shall obtain satisfactions for all mortgages and provide the Aviation Department with a certified copy of the recorded satisfactions.
- (6) In the event the Lease is terminated pursuant to Subsection 13(c)(4), above, Lessee's rights in and to any insurance proceeds shall not exceed the unamortized value of the Improvements, less any penalties or fees, existing on the Premises as of the date immediately preceding the date of the casualty (excepting any County-owned improvements for which rent has been paid by the Lessee, if any, which shall be excluded from the calculation), depreciated over the Amortization Period, if such is defined by Section 1, or if an Amortization Period has not been defined, then depreciated over the Term of the Lease. In such event, the payment of rentals shall terminate as of the date of the damage or destruction.

SECTION 14. INDEMNITY

Lessee shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend County, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Lessee, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against County by reason of any such claim, cause of action, or demand, Lessee shall, upon written notice from County, resist and defend such lawsuit or proceeding by counsel satisfactory to County or, at County's option, pay

for an attorney selected by County Attorney to defend County. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Lessee under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

SECTION 15. SIGNS

- (a) Except with the prior written approval of the Aviation Department, which approval may be withheld by the Aviation Department in its sole discretion, Lessee shall not erect, maintain or display any signs or any advertising at or on the exterior parts of the Premises or in the Premises so as to be visible from outside the Premises. No billboards shall be permitted at the Premises.
- (b) The Aviation Department reserves the right to remove any signs from Airport property which have not been approved in writing by the Aviation Department.
- (c) Upon the expiration or termination of this Agreement, the Lessee shall remove, obliterate or paint out, as the Aviation Department may direct, any and all signs and advertising on the Premises and, in connection therewith, shall restore the portion of the Premises affected by such signs or advertising to the same condition as existed prior to the placing thereon of such signs or advertising. In the event of a failure on the part of the Lessee to remove, obliterate or paint out each and every sign or advertising and to restore the Premises, the Aviation Department may perform the necessary work and the Lessee shall pay the costs thereof to the County on demand.

SECTION 16. OBSTRUCTION LIGHTS

The Lessee shall install, maintain and operate at its own expense such obstruction lights on the Premises as the FAA may direct or as the Aviation Department may reasonably direct, and shall energize such lights daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise and for such other periods as may be directed or requested by the Control Tower of the Airport.

SECTION 17. RIGHTS OF ENTRY RESERVED

- (a) The County, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Premises for the purpose of inspecting same, for observing the performance by the Lessee of its obligations under this Agreement and for the doing of any act or thing which the County may be obligated or have the right to do under this Agreement or otherwise.

- (b) Without limiting the generality of the foregoing, the County, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right from time to time, for its own benefit or for the benefit of others or for the benefit of the Lessee, to construct, maintain, repair, alter, replace, install, and rebuild, over, in, or under the Premises, existing and future utility, mechanical, electrical and other systems and parts thereof, and to enter upon the Premises at all reasonable times for any such purposes, as may, in the opinion of the County, be deemed necessary or advisable, provided, however, that in the exercise of such rights, the County shall not unreasonably interfere with the actual use and occupancy of the Premises by the Lessee.
- (c) In the event that any personal property of the Lessee shall obstruct the access of the County, its officers, employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems or part thereof, the Lessee shall move such property, as directed by the County, in order that access may be had to the system or part thereof by the County, its officers, employees, agents, representatives, contractors and furnishers of utilities and other services. If the Lessee shall fail to so remove such property after direction from the County to do so, the County may move it and the Lessee hereby agrees to pay the cost of such moving upon demand.
- (d) At any time and from time to time during the ordinary business hours of Lessee County, by its agents and employees, whether or not accompanied by prospective occupiers or users of the Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of same and during the six-month period preceding the termination of this Agreement, the County may place and maintain on the Premises "To Let" signs, which signs the Lessee shall permit to remain without molestation.
- (e) If, during the last month of the Term of this Agreement, the Lessee, and any sublessees shall have removed all or substantially all of their property from the Premises, the County may immediately enter and alter, renovate and redecorate the Premises.
- (f) The exercise of any or all of the foregoing rights by the County or others shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of rental nor any claim or demand for damages, consequential or otherwise.
- (g) Nothing herein contained shall be deemed to in any way limit the County in the exercise of its police and regulatory powers or its powers of eminent domain.

SECTION 18. ASSIGNMENT OR SUBLEASE; SUBORDINATION

- (a) Lessee shall not: (1) sublet the Premises or any part thereof; or (2) permit any transfer, assignment, pledge, mortgage, or encumbrance of any sublease; or (3) transfer, assign, pledge, mortgage, or otherwise encumber this Agreement or any rights or obligations hereunder; or (4) allow same to be assigned by operation of law or otherwise; or (5) permit a Lessee's subtenant to sublet the Premises or any part thereof (any such action being called an "assignment") without the prior written consent of the County, which consent may be conditioned upon such additional terms and conditions as may be imposed in the reasonable discretion of the Aviation Department, acting on behalf of the County.

- (b) The Lessee's request for consent to an assignment shall include copies of all documentation pertaining to the assignment. In addition, the Lessee shall provide the Aviation Department with such additional information and documentation as may be reasonably requested. The factors upon which the decision on whether to grant such consent or not, shall include without limitation: (1) an assessment of whether the proposed assignee meets standards of creditworthiness; (2) whether the Premises will be used only for the purposes described herein; and (3) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any assignment, the Lessee shall not be released of any liability hereunder and the assignee shall be required to execute a written assumption agreement, agreeing to assume all obligations and liabilities under this Lease and to abide by all of the terms and provisions of this Lease, which assumption agreement must be acceptable to the Aviation Department in all respects. In the event that the Lessee shall seek the County's consent to an assignment to an affiliate of the Lessee, then as a condition of such assignment, Lessee (or those persons or entities that have majority ownership of Lessee, directly or indirectly) may be required to execute an irrevocable Guaranty of Payment and Performance of this Lease, which shall be in form and substance satisfactory to the Aviation Department.

- (c) In no case will an assignment be permitted if a default shall have occurred hereunder and remain uncured.

- (d) An "assignment" shall include any transfer of this Lease by merger, consolidation or liquidation or by operation of law, or if Lessee or any sublessee is a corporation, any change in control of or ownership of or power to vote a majority of the outstanding voting stock of Lessee, or any sublessee or of any parent corporation of Lessee or any sublessee from the owners of such stock or those controlling the power to vote such stock on the date of this Lease (whether occurring as a result of a single transaction or as a result of a series of transactions), or if Lessee or any sublessee is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture (or a transfer of an interest in a corporate general partner or corporate joint venturer)

which results in a change in control (either directly or indirectly) of such partnership or joint venture from those controlling such partnership or joint venture on the date of this Lease (whether occurring as a result of a single transaction or as a result of a series of transactions). Notwithstanding the foregoing, a transfer of stock among current stockholders or among current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests among existing partners or among existing partners or joint venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed an assignment for purposes of this Section 18. Notwithstanding the foregoing, the provisions of this Subsection 18(c) shall not apply to any public trades of registered stock of a Lessee or sublessee that occurs on a national stock exchange.

- (e) In the event any action specified hereunder shall be taken without the prior written consent of the County, then any such assignment or other action shall be null and void and of no force or effect and in addition to all other available remedies, the County shall be entitled to immediately terminate this Agreement. Any written consent required hereunder shall not be effective unless evidenced by a written document signed by the authorized representative of the County.
- (f) Lessee shall obtain prior written approval from the Aviation Department to sublet any portion of the Premises. Lessee acknowledges and agrees that each sublessee of the Lessee is subject and subordinate to all of the terms and provisions of this Agreement, including but not limited to the requirement that each such sublessee must comply with all Applicable Laws that now or at any time during the Term of this Agreement are applicable to the operations of such sublessee at the Premises. Notwithstanding any sublease of the Premises to which the County has consented, Lessee shall remain responsible for insuring that each and every provision of this Agreement is abided by and complied with and, in that regard, any failure by any sublessee to abide by and/or comply with any provision of this Agreement shall be deemed a default hereunder, entitling County to any and all remedies available hereunder. Each sublease to which the County has consented shall be subordinate in all respects to all terms and provisions of this Lease and upon any termination of this Lease, all subleases of the Premises shall terminate.
- (g) If, without the prior written consent of the County, the Lessee assigns, sells, conveys, transfers, mortgages, pledges or sublets in violation of this Section 18 or if the Premises are occupied by anyone other than the Lessee, the County may collect rent from any assigns, sublessee or anyone who claims a right to this Agreement or Letting or who occupies the Premises, and the County shall apply the net amount collected to the rental herein reserved; but no such collection shall be deemed a waiver by the County of the provisions of this Section 18 or any acceptance by the County of any such assignee or sublessee.

- (h) No mortgage of this Lease shall be binding upon the County in the enforcement of its rights under this Lease.
- (i) Lessee shall obtain the written consent of the County prior to mortgaging any portion of the Premises (hereinafter referred to as an "Approved Leasehold Mortgage"), and also for any modification, refinancing, substitution or extension of any Approved Leasehold Mortgage. The County will accept performance by the holder of any Approved Leasehold Mortgage, to which the County has consented (hereinafter referred to as an "Approved Leasehold Mortgagee"), of any provision of this Lease required to be performed by the Lessee, with the same force and effect as though performed by the Lessee, if at the time of such performance, the County shall be furnished with evidence satisfactory to the County of the interest in the leased property claimed by the Approved Leasehold Mortgagee tendering such performance or payment. The amount of all Approved Leasehold Mortgages and all refinancings may never exceed the then appraised value of the Premises plus the value of Improvements to be constructed thereon pursuant to the construction requirements of Section 6, above, with the proceeds of such financing and all costs incurred and reserves required in connection with such financing. The Approved Leasehold Mortgagee shall have ten (10) days after the date on which County may otherwise terminate the Lease as to the defaulting Lessee to cure any default in the payment of rent or additional rent required to be paid under this Lease and a reasonable time not to exceed thirty (30) days within which to cure any other default.
- (j) The County, if requested by any Approved Leasehold Mortgagee to which the County has consented, will reasonably consider an amendment of this Lease to conform to any reasonable amendments requested by any Approved Leasehold Mortgagee which do not increase the obligations of County hereunder. The Aviation Department shall, from time to time, upon reasonable written request, provide an Approved Leasehold Mortgagee with estoppel information as to the status of this Lease.
- (k) As a condition of the County's consent to any Approved Leasehold Mortgage, each Approved Leasehold Mortgagee shall provide the County with a Debt Service Schedule pursuant to Section 34, and an acknowledgement that it shall record a satisfaction of the Approved Leasehold Mortgage upon County's tender of the Buy-Out Amount to the Lessee, and that the Approved Leasehold Mortgagee shall look solely to the Lessee for any amounts due to the Approved Leasehold Mortgagee. Lessee and all Approved Leasehold Mortgagees acknowledge and agree that any assignment of its interest as Lessee to any Approved Leasehold Mortgagee does not give the Lessee or its assignee any lien or encumbrance upon the fee simple interest in the Premises which is vested in Broward County, State of Florida.

SECTION 19. DEFAULT; TERMINATION

- (a) If any one or more of the following events shall occur, same shall be an event of default under this Lease:
- (1) By or pursuant to or under authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of thirty (30) days; or
 - (2) The Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operation at the Airport for a period of thirty (30) days; or
 - (3) Any lien, claim or other encumbrance which is filed against the Premises is not removed, or if the County is not adequately secured by bond or otherwise, within thirty (30) days after the Lessee has received notice thereof; or
 - (4) The Lessee shall fail to pay the rentals within ten (10) days following the date of written notice from County that any payments are past due; or
 - (5) The Lessee shall fail to make any other payment required hereunder when due to the County and shall continue in its failure to make any such other payments required hereunder for a period of ten (10) days after notice is given to make such payments; or
 - (6) The Lessee shall take any action described by Section 18 hereof without the prior written consent of the County; or
 - (7) Any business is conducted, or service is performed, or product is sold from the Premises that is not specifically authorized by this Lease, and such activity does not cease within ten (10) days after receipt of notice to that effect; or
 - (8) The Lessee shall fail to keep, perform and observe each and every non-monetary promise, covenant and provision set forth in this Agreement on its part to be kept, performed or observed within thirty (30) days after receipt of written notice of default thereunder (except where fulfillment of its obligation requires activity over a greater period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and continues such performance without interruption).

- (b) Then upon the occurrence of any event set forth in (a), above, or at any time thereafter during the continuance thereof, the County may at its option immediately terminate this Agreement and all rights of Lessee hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice and/or County may exercise any and all other remedies available to County hereunder or at law or in equity. In the event of any such termination, Lessee shall immediately quit and surrender the Premises to County and shall cease operations at the Airport. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder or breach of covenant, or damages for the balance of the rent payable hereunder through the full Term of this Agreement, or any other damages or remedies whatsoever, including without limitation, all direct, indirect, consequential, and all other damages whatsoever. **In the event of a termination pursuant to this Section 19, the Lessee shall have no right to payment of the Buy-Out Amount or any other amounts under Section 34 or Subsection 35(c).**
- (c) **Habitual Default.** Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, and regardless of whether the Lessee has cured each individual condition of breach or default, the Lessee may be determined by the Aviation Department to be an "habitual violator." At the time that such determination is made, the Aviation Department shall issue to the Lessee a written notice advising of such determination and citing the circumstances. Such notice shall also advise Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon delivery of the written notice to Lessee. **In the event of a termination pursuant to this Section 19, the Lessee shall have no right to payment of the Buy-Out Amount or any other amounts under Section 34 or Subsection 35(c).**
- (d) No acceptance by the County of rental, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the County to terminate this Lease, or to exercise any other available remedies.
- (e) Failure by County to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of

any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. County and Lessee agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material provision hereof.

- (f) The rights of termination described above shall be in addition to any other rights provided in this Agreement and in addition to any rights and remedies that the parties would have at law or in equity consequent upon any breach of this Agreement and the exercise of any right of termination shall be without prejudice to any other such rights and remedies.

SECTION 20. REMEDIES TO BE NON-EXCLUSIVE

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

SECTION 21. SURRENDER

- (a) The expiration or termination of this Agreement shall not relieve Lessee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective Termination Date of this Agreement or earlier termination as provided for herein.
- (b) Upon the expiration or termination of this Agreement, Lessee shall cease forthwith all operations upon the Premises, immediately vacate the Premises and pay in full all fees and other amounts payable to County as set forth in this Agreement, then due and owing. Lessee shall be responsible for vacating all subtenants, holdovers or other occupants, legal or otherwise from the Premises upon any expiration or earlier termination of this Agreement.
- (c) Upon the expiration of the Term or earlier termination as provided for in this Agreement, Lessee agrees to surrender possession of the Premises in the condition required under Section 11. All maintenance and repairs shall be completed prior to surrender, and if applicable, the Aircraft Fuel Farm Facility and wash rack shall be removed prior to surrender. The Lessee shall deliver to the County all keys to the Premises upon surrender. The Lessee shall at its expense take all actions required by federal, state and County laws, rules and regulations, as well as all the terms and conditions of this Agreement, to remove from the Premises any hazardous substances or other Materials, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like or discharged into the ground.

- (d) Lessee shall have the right at any time during the term of this Agreement to remove any furnishings, trade fixtures or equipment it has installed in, on or about the Premises, subject to any lien the County may have thereon for unpaid fees, charges, or other amounts payable under this Agreement, and provided that Lessee shall restore any damage to the Premises, and the Premises shall be returned to the County in the same condition as defined above. Any property not removed by Lessee immediately upon the expiration or termination of this Agreement shall become part of the Premises and title thereto shall vest in County and any cost incurred by County in removing same shall be reimbursed to County by Lessee.
- (e) In the event Lessee fails to surrender the Premises in the above required condition or has failed to complete any of the obligations due under this Agreement or any future amendments thereto, County shall not be obligated to accept Lessee's surrender of the Premises until same have been satisfied. During the period of time from the date of the termination or expiration of the Lease and until the County is satisfied, in its sole discretion, with Lessee's surrender of the Premises and County reduces its acceptance of surrender to writing as provided for in Section 22 below, the Lessee shall be considered a holdover tenant under the terms set forth in Subsection 35(b) herein.

SECTION 22. ACCEPTANCE OF SURRENDER OF LEASE

No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until same shall have been reduced to writing and signed by the duly authorized representatives of the County and of the Lessee. Except as expressly provided in this Agreement, neither the doing of, nor any omission to do any act or thing by any of the officers, agents or employees of the County shall be deemed an acceptance of a surrender of letting under this Lease.

SECTION 23. REMOVAL OF PROPERTY

- (a) The Lessee shall have the right at any time during the letting to remove its inventories, trade fixtures and other personal property from the Premises. Lessee shall immediately repair any damage to the Premises caused by its removal of any personal property or trade fixtures. If the Lessee shall fail to remove its inventories, trade fixtures, and personal property by the termination or expiration of this Agreement, then, Lessee shall be considered to be holding over and subject to charges under Subsection 35(b), hereof, and after fourteen (14) days following said termination or expiration, at the County's option: (1) title to same shall vest in the County, at no cost to the County; or (2) County may remove such property to a public warehouse for deposit; or (3) County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second, to any sums owed by the Lessee to the County, with any balance remaining to be

paid to the Lessee; or (4) County may dispose of such property in any manner permitted by law. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the County upon demand.

- (b) Upon termination of this Agreement, County in its sole discretion may either remove or demolish all Improvements (both above ground and below ground) upon the Parcel or require Lessee to remove or demolish all Improvements (both above ground and below ground) upon the Parcel. In the event County shall elect to arrange for the removal or demolition of all Improvements, then the salvage value of such Improvements will inure to the benefit of County. In the event County shall elect to require Lessee to remove or demolish all Improvements upon the Parcel, then the salvage value of such Improvements will inure to the benefit of Lessee; provided that Lessee shall remove or demolish all such Improvements within sixty (60) days following notice from County that such is required. In the event Lessee shall fail to effect such demolition or removal within the aforesaid period of time, then County, at its sole option, may cause the removal or demolition of the Improvements. In such event Lessee shall be liable to County for all costs thereof and Lessee shall have no salvage rights in the Improvements.
- (c) The provisions of this Section 23 shall survive six (6) months following the expiration or termination of this Agreement.

SECTION 24. LIMITATION OF PRIVILEGES GRANTED

No greater privileges with respect to the use of the Airport or any part thereon are granted or intended to be granted to the Lessee by this Agreement or by any provision hereof, other than the privileges expressly and specifically granted hereby.

SECTION 25. NOTICES

- (a) Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by overnight courier with receipt acknowledgment, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this Section 25. For the present, the parties designate the following:

FOR BROWARD COUNTY:

County Administrator
Governmental Center
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

with a copy to:

Director of Aviation
Aviation Department
2200 SW 45th Street
Dania Beach, Florida 33312

FOR LESSEE:

President
Azorra Aviation, LLC
10 South New River Drive E, Suite 200
Fort Lauderdale, Florida 33301

- (b) All notices, approvals and consents required hereunder must be in writing to be effective.
- (c) Any notices which shall be sent to Lessee shall also be sent to any Approved Leasehold Mortgagee at the address set forth in the Approved Leasehold Mortgage on file with the Aviation Department, which address may change in the manner provided above. It is the responsibility of the Lessee and of any Approved Leasehold Mortgagee to verify the addresses on file with the Aviation Department are current. The Aviation Department will send notices to the last address on file for both the Lessee and any Approved Leasehold Mortgagee. The Aviation Department will not be held liable or waive any of its rights in this Agreement for notices not received by Lessee or an Approved Leasehold Mortgagee so long as proof of attempted delivery is available, if requested.

SECTION 26. CONSTRUCTION AND APPLICATION OF TERMS

- (a) The article, section and paragraph headings in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.
- (b) **Law/Jurisdiction/Venue/Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the

enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, LESSEE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT, AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEY'S FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

- (c) **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Lessee elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final. In the event of a termination pursuant to these provisions, the Lessee shall have no right to payment of any amounts under Subsection 35(c). If Lessee elects a termination pursuant to these provisions, Lessee shall have no right to any payment of the Buy-Out Amount or any other amounts under Section 34.
- (d) **Independent Contractor/Relationship of Parties.** The relationship of County and Lessee hereunder is the relationship of lessor and lessee. Services provided by Lessee shall be subject to the supervision of Lessee and such services shall not be provided by Lessee or its agents, officers, employees, as agents of the County. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship between the parties hereto.
- (e) **Third Party Beneficiaries.** Neither Lessee nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.
- (f) **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or event referred to herein, or any document incorporated into this

Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Sections 1 through 37 of this Agreement shall prevail and be given effect.

- (g) This Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.
- (h) **Incorporation by Reference.** The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached **Exhibits A-1, A-2, B, C, D, E, F, G and H** are incorporated into and made a part of this Agreement.
- (i) **Incorporation of Required Provisions.** The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.
- (j) **Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties hereto.
- (k) **Termination of Prior Agreements; Prior Negotiations.** Effective as of the Commencement Date of this Agreement, this Agreement shall supersede and terminate the Prior Lease and all other lease agreements between the parties with respect to any portion of the Premises; provided however that Lessee shall not be released of any obligations or liabilities to the County that have accrued pursuant to the Prior Lease prior to the Commencement Date of this Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- (l) All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or Section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such

Section, unless the reference is made to a particular subsection or subparagraph of such Section.

SECTION 27. NON-LIABILITY OF INDIVIDUALS

No commissioner, director, officer, agent or employee of the County and no director, officer, agent of employee of Lessee, shall be charged personally or held contractually liable under any provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

SECTION 28. UTILITIES

- (a) The Lessee shall pay for all electric, water, garbage and other utilities charges for the Premises. The metering devices installed by the Lessee for such utilities shall be installed at the cost of the Lessee and shall become the property of the County upon installation. Extension of utility mains or services to meet the needs of the Lessee on the Premises shall be at the expense of the Lessee, and shall become the property of the County upon installation.
- (b) No failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of the Lessee or grounds for any diminution or abatement of rental or shall be grounds for any claim by the Lessee under this Lease for damages, consequential or otherwise.

SECTION 29. ABATEMENT

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

SECTION 30. AIRPORT SECURITY PROGRAM AND AVIATION REGULATIONS

Lessee agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Lessee, including without limitation, all regulations of the United States Department of Transportation, the Federal Aviation Administration and the Transportation Security Administration, and the Lessee agrees to comply with the County's Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by the County, and to take such steps as may be necessary or directed by the County to insure that sublessees, employees, invitees and guests observe these requirements. If required by the Aviation

Department, Lessee shall conduct background checks of its employees in accordance with applicable Federal Regulations. If as a result of the acts or omissions of Lessee, its sublessees, employees, invitees or guests, the County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the United States Department of Transportation, the Federal Aviation Administration or the Transportation Security Administration, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of the County, and/or any expense in enforcing the County's Airport Security Program, then Lessee agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney's fees and all costs incurred by County in enforcing this provision. Lessee further agrees to rectify any security deficiency or other deficiency as may be determined as such by the County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other federal agency with jurisdiction. In the event Lessee fails to remedy any such deficiency, the County may do so at the sole cost and expense of Lessee. The County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

- (a) Access to Security Identification Display Areas and Identification Media. The Lessee shall be responsible for requesting the Aviation Department to issue Airport Issued Identification Media to all employees who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, as designated in the Airport Security Program. In addition, Lessee shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the Airport Issued Identification Media of Lessee's personnel transferred from the Airport, or terminated from the employ of the Lessee, or upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Lessee shall comply with the requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. The Lessee shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require the Lessee to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such Airport Issued Identification Media.
- (b) Operation of Vehicles on the AOA. Before the Lessee shall permit any employee of Lessee or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA (and unless escorted by an Aviation Department approved escort), the Lessee shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor

vehicles and equipment of Lessee or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.

- (c) Consent to Search/Inspection. The Lessee agrees that its vehicles, cargo, goods and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. The Lessee further agrees on behalf of itself and its subconsultant/subcontractors, that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Lessee acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, Lessee agrees that persons not executing such consent-to-search/inspection form shall not be employed by the Lessee or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by the Lessee or by any subconsultant/subcontractors.
- (d) Lessee understands and agrees that if any of its employees, or the employees of any of its subcontractors, are required in the course of the work to be performed under this Agreement to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed under federal law, that individual will be required to execute a Sensitive Security Information Non-Disclosure Agreement promulgated by the Aviation Department.
- (e) The provisions hereof shall survive the expiration or any other termination of this Agreement.

SECTION 31. NONDISCRIMINATION

- (a) The Lessee agrees to abide by and comply with the nondiscrimination requirements set forth on **Exhibit B**, attached hereto and made a part hereof, to the extent same are applicable by law, rule or regulation, or federal grant requirements.
- (b) Lessee shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Lessee shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Lessee shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

- (c) Lessee's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 1/2), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.
- (d) Lessee shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 1/2) in performing any services pursuant to this Agreement.

SECTION 32. ENVIRONMENTAL COMPLIANCE; ENVIRONMENTAL CONTAINMENT AND REMOVAL

- (a) Lessee acknowledges and agrees that the County makes no representations or warranties whatsoever as to whether any pollutant, or hydrocarbon contamination, hazardous materials, or other contaminants or regulated materials (collectively, "Materials") exist on or in the Premises or the Improvements in violation of any Applicable Laws or in violation of any order or directive of any federal, state or local court or entity with jurisdiction of such matter. It shall be the responsibility of the Lessee to make sufficient inspection of the Premises and the Improvements to satisfy itself as to the presence or absence of any such Materials.
- (b) **Initial Environmental Assessment.** The "Initial Environmental Assessment" is a document based on environmental site assessments, examinations, inspections, tests, inquiries and surveys necessary to identify contamination and the presence of hazardous substances or other Materials in, on or under the surface of the Development Parcel.
 - (1) The parties acknowledge that the County obtained an Initial Environmental Assessment of the Development Parcel prior to the execution of this Agreement, a copy of which has been provided to Lessee.
 - (2) In the event that the Aviation Department or any of the other County agencies disagree with any of the findings of the Initial Environmental Assessment, such concerns and areas of disagreement shall be provided in writing to the Lessee during the Due Diligence Period.
 - (3) In the event that Lessee disagrees with any of the findings of the Initial Environmental Assessment, Lessee shall have the right to submit in writing to the Aviation Department any objections no less than thirty (30) days prior to the expiration of the Due Diligence Period.

- (4) The sole purpose of the Initial Environmental Assessment is to establish a factual context for proceedings pursuant to this Agreement. The Initial Environmental Assessment shall not be deemed to in any way release any party from any liability under any federal, state, County, or local laws, rules or regulations or in any way to limit the regulatory powers of the County or any of its agencies.
- (c) **Exit Environmental Assessment.** The "Exit Environmental Assessment" is a document based on environmental site assessments, examinations, inspections, tests, inquiries and surveys necessary to identify contamination and the presence of hazardous substances or other Materials in, on or under the surface of the Premises. A general outline of the Environmental Assessment is provided in **Exhibit C**. The actual scope of services proposed by the Lessee must be approved by the Aviation Department prior to implementation. The Aviation Department and any applicable County agencies shall be given five (5) days advance written notice of commencing the work scope activities of any Exit Environmental Assessment. The parties acknowledge that Lessee must obtain an Exit Environmental Assessment of the Current Parcel as set forth below, and if Lessee accepts the Development Parcel pursuant to the requirements of Section 3, above, than Lessee must obtain an Exit Environmental Assessment of the Development Parcel, as provided below:
- (1) **Current Parcel.** If Lessee accepts the Development Parcel pursuant to the requirements of Section 3, above, Lessee shall obtain an Exit Environmental Assessment of the Current Parcel within twelve (12) months prior to the Phase 1 Date. If Lessee does not accept the Development Parcel pursuant to the requirements of Section 3, above, Lessee shall obtain an Exit Environmental Assessment of the Current Parcel within twelve (12) months prior to the Completion Date. Lessee must provide a copy of the Exit Environmental Assessment to the Aviation Department within seven (7) days of receipt.
 - (2) **Development Parcel.** If Lessee accepts the Development Parcel pursuant to the requirements of Section 3, above, Lessee shall obtain an Exit Environmental Assessment of the Development Parcel within twelve (12) months prior to the Termination Date. Lessee must provide a copy of the Exit Environmental Assessment to the Aviation Department within seven (7) days of receipt.
 - (3) The Lessee shall, at the Lessee's sole cost and expense, without deferment or transfer to any other type of environmental remediation fund or program, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contain, remove and remediate any recognized environmental conditions and Materials

and any associated impacts from Materials disclosed by any Exit Environmental Assessment to the satisfaction of the Aviation Department.

- (4) If Lessee does not take action immediately to contain, remove and abate such recognized environmental conditions and Materials and associated impacts identified in any Exit Environmental Assessment in a timeframe acceptable to the Aviation Department and in accordance with the provisions of this Section 32, the County may, upon notice to Lessee (which notice shall be written unless an emergency condition exists), undertake the containment, removal and abatement of any such recognized environmental conditions, Materials and associated impacts to the environment and any other appropriate actions; however, any such actions by the County or any of its agencies shall not relieve the Lessee of its obligations under this or any other provision of this Agreement or as imposed by law. The County shall have the right to pursue damages and any and all other available remedies from the Lessee if the Lessee does not comply with any of its obligations under this Section 32.
- (d) Lessee shall provide the Aviation Department, if requested at any time, with a list of all hazardous, bio-hazardous, or other Materials stored, used, generated or disposed of on the Premises. Lessee shall complete the form attached hereto as **Exhibit D** with respect to matters pertaining to the Premises and shall deliver same to the County contemporaneously with its execution of this Agreement. Lessee represents that the matters disclosed on such form will be accurate and complete as of the Effective Date of this Agreement. At the request of the Aviation Department (not more than once a year) the Lessee shall provide an accurate and complete update with respect to the Premises as to the matters set forth on **Exhibit D**.
- (e) Lessee agrees to comply with all existing and future Applicable Laws and the requirements of any Development Order covering the Airport, including without limitation those addressing the following:
- (1) Proper use, storage, treatment and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials.
 - (2) Proper use, disposal and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms on the Premises, if applicable. The Lessee shall have in place, and make available to the Aviation Department for review, all required environmental licenses and documents including, but not limited to, site specific Stormwater Pollution Prevention Plan and Spill Prevention and Countermeasures Plan.

- (3) Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all County, local, state and federal standards, including the installation and operation of adequate monitoring devices and leak detection systems.
 - (4) Adequate facilities on the Premises for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper disposal thereof.
 - (5) Compliance with reporting requirements of Title III of the Superfund Amendment and Chapter 27 of the Broward County Code, as applicable and as such laws may be amended from time to time.
- (f) The release of any Materials at the Premises caused by Lessee, or by the sublessees, officers, employees, contractors, subcontractors or agents of Lessee, or by any invitee or trespasser on the Premises, or the release of any Materials on any other Airport property caused by Lessee, or the sublessees, officers, employees, contractors, subcontractors, invitees, or agents of Lessee, that is in an amount that is in violation of any Applicable Laws or in violation of an order or directive of any federal, state, or local court or governmental authority, whether committed prior to or subsequent to the date of execution of this Agreement, shall be, at the Lessee's expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of Applicable Laws. If Lessee does not take action immediately to have such Materials contained, removed and abated, the County or any of its agencies may upon reasonable notice to Lessee (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by the County or any of its agencies shall not relieve the Lessee of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either the Lessee or the County to contain or remove Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release. As used in this Agreement, "Lessee's operations" and "Lessee's actions" and words of similar import, shall include all actions and inaction by Lessee, by its sublessees, or by any of their officers, employees, contractors, subcontractors, invitees or agents.
- (g) Lessee shall provide the Aviation Department with notice of releases of Materials occurring at any area used by Lessee or occasioned due to Lessee's operations at the Airport, which notices shall be provided in accordance with the requirements of the Aviation Department's policies and procedures manual. Lessee shall maintain a log of all such notices and shall also maintain all records required by Applicable Laws and also such records as are reasonably necessary

to adequately assess environmental compliance in accordance with all Applicable Laws. Upon request by the Aviation Department, Lessee shall make all documentation required by this subsection available for the review of County representatives.

- (h) As required by law, Lessee shall provide the federal, state, County and local regulatory agencies with notice of spills, releases, leaks or discharges (collectively, "release") of Materials on the Premises or on the Airport property which exceeds an amount required to be reported to any local, County, state, or federal regulatory agency under Applicable Laws, which notice shall be in accordance with Applicable Laws. Lessee shall further provide the Aviation Department and the County Department of Planning and Environmental Protection (or successor agency) with written notice within one (1) business day following commencement of same, of the curative measures, remediation efforts and/or monitoring activities to be effected on the Premises. Lessee shall have an updated contingency plan in effect relating to such releases which provide minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of spills and releases, and transfer and disposal of regulated Materials and other Materials. The contingency plan shall describe design features, response actions and procedures to be followed in case of releases or other accidents involving hazardous Materials, bio-hazardous Materials or petroleum products or other Materials. The Lessee agrees to permit entry at all reasonable times, of inspectors of the County Department of Planning and Environmental Protection or (successor agency) and of other regulatory authorities with jurisdiction.
- (i) The Aviation Department, upon reasonable written notice to Lessee, shall have the right to inspect all documents relating to the environmental condition of the Premises, including without limitation, any release of Materials at the Premises, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under Applicable Laws or any development order issued to the County pertaining to the Airport, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental site assessments, and sampling and test results. If requested at any time by the Aviation Department, the Lessee shall provide the Aviation Department with copies of any such documents. Lessee agrees to allow inspection of the Premises by appropriate federal, state, County and local agency personnel in accordance with Applicable Laws and as required by any development order issued to the County pertaining to the Airport.
- (j) If the County arranges for the removal of any Materials on the Premises that were caused by the Lessee, or any of its officers, employees, contractors, subcontractors, invitees, or agents of Lessee or its sublessees, all costs of such removal incurred by the County shall be paid by Lessee to the County within ten

(10) days of County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.

- (k) Nothing herein shall relieve Lessee of its general duty to cooperate with the County in ascertaining the source and, containing, removing and abating any Materials. The Aviation Department shall cooperate with the Lessee with respect to Lessee's obligations pursuant to these provisions, including making public records available to Lessee in accordance with Florida law; provided, however, nothing herein shall be deemed to relieve Lessee of its obligations hereunder or to create any affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with Applicable Laws, development orders and grant agreements. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Lessee, and the federal, state, local and other County agencies, and their employees, contractors, and agents, at times in accordance with Applicable Laws shall have the right to enter the Premises for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections and audits as it deems appropriate.
- (l) The Lessee hereby agrees that upon any assignment of this Lease, and at any time during the Term of this Lease, and at any time during the year following any termination of this Lease, the County shall have the right to require Lessee to conduct a facility inspection of the Premises, at the Lessee's expense. If documentation warrants, the County shall have the right to require the Lessee to conduct a further assessment of the Premises at the Lessee's expense which may include, but shall not be limited to, soil and water samples.
- (m) If any assessment or inspection indicates that further actions should be conducted, then the County shall have the right to have such further actions conducted at the Lessee's expense. Nothing herein shall be construed to limit County's right of entry onto the Premises pursuant to other provisions of this Section or of this Agreement, or pursuant to its regulatory powers. Lessee shall have the right to split any soil or water samples obtained by the County.
- (n) Lessee shall reimburse to the County the cost of such assessments and inspections as are chargeable to the Lessee pursuant hereto, within ten (10) days following written demand therefor, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.
- (o) In the event County shall arrange for the removal of Materials on the Premises that are not the responsibility of the Lessee to correct, and if any such clean-up activities by County shall prevent Lessee from using the Premises for the purposes intended, the rent shall be abated in accordance with Section 29, hereof, from the date that the use of the Premises for its intended purposes is

precluded and until the Premises again become available for the Lessee's use. County shall use reasonable efforts to not disrupt Lessee's business, however, in no event shall Lessee be entitled to any amount on account of lost profits, lost rentals or other damages as a result of County's clean-up activities.

- (p) The provisions of this Section shall survive the expiration or other termination of this Agreement.

SECTION 33. SECURITY DEPOSIT

- (a) Throughout the Term of this Agreement, Lessee shall post a security deposit with the County equal to three (3) monthly installments of rental, together with the applicable sales tax amount ("Security Deposit"). **The required Security Deposit must be posted prior to the submission of this Agreement to the Board for approval.** The Security Deposit shall serve as security for the payment of all monies due to County and shall also secure the performance of all obligations of Lessee to the County. The Security Deposit shall be either in the form of cash or an Irrevocable Letter of Credit ("Letter of Credit") in form and substance satisfactory to the County. No interest shall be paid on said Security Deposit.

In the event of any failure by Lessee to pay when due any rentals or charges or upon any other failure to perform its obligations or other default under this Agreement, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down the full amount of the Security Deposit and apply same to all amounts owed by Lessee to County. Upon notice of any such draw, Lessee shall immediately replace the Security Deposit with a new Letter of Credit or cash in the full amount of the Security Deposit required hereunder.

The Aviation Department, upon fourteen (14) days' notice to the Lessee, may require an increase in the amount of the Security Deposit to reflect any increases in the monies payable hereunder. In addition the Aviation Department, upon fourteen (14) days' notice to the Lessee, may require an increase in the amount of the Security Deposit equal to up to five (5) additional month's rent installments because of increased obligations hereunder, or if upon a review of Lessee's payment or performance history at the Airport, the Aviation Department determines an increase should be required.

The Security Deposit instrument shall provide coverage from the Effective Date of this Agreement and shall be kept in full force and effect throughout the Term of this Lease and for a period of six (6) months thereafter. Any termination of the Security Deposit instrument without the consent of the Aviation Department prior to the end of the aforesaid six (6) month period following the Termination Date shall be a default of this Agreement. Not less than one hundred twenty (120)

days prior to any expiration date of a Letter of Credit, Lessee shall submit evidence in form satisfactory to County that said security instrument has been renewed. A failure to renew a Letter of Credit, or to increase the amount of the Security Deposit, if required pursuant hereto, shall entitle the County to draw down the full amount of such Security Deposit, and be a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to the Lessee until all obligations under this Lease are performed and satisfied.

- (b) Each Letter of Credit provided hereunder or under any other Section or provision of this Lease shall be provided by a financial institution of recognized standing authorized to do business in the State of Florida. Throughout the term of the Letter of Credit, the financial institution that has issued the Letter of Credit must maintain a relationship with a financial institution having an office in Broward, Miami-Dade, or Palm Beach County, Florida at which the Letter of Credit may be presented for drawing down, and the financial institution that has issued the Letter of Credit must have been in business with a record of successful continuous operation for at least five (5) years. Each Letter of Credit shall be in form and substance satisfactory to the County.

SECTION 34. COUNTY BUY-OUT

County Buy-Out Of Lease. The County shall have the right and option at any time after the first day of the tenth (10th) Lease Year to buy-out the Lease, or any portion thereof, as hereinafter provided, if the Premises are needed for "Airport Purposes." The term "Airport Purposes" shall mean the development of taxiways, runways, airfield improvements, passenger terminals, drainage facilities, or other Airport facilities that are owned and operated by the County. Notwithstanding the foregoing, if the FAA determines that the Premises are needed for Airport Purposes, the County may buy-out the Premises, or a portion thereof, at any time after the Commencement Date. The determination to buy-out the Lease for Airport Purposes shall be conclusive and not subject to challenge by the Lessee or any other person whatsoever. Notwithstanding the foregoing, the County shall only have the right and option to buy out a portion of the Premises (as opposed to the entire Premises) under the following conditions: (i) if the portion to be bought-out by the County contains any buildings or hangars, the County shall be required to buy-out the entire building or hangar, as applicable; and (ii) if the portion to be bought-out by the County includes any parking areas, the remainder of the Premises not bought-out by the County must have sufficient parking areas to provide necessary parking in accordance with applicable governmental requirements for Lessee's business operations on the remainder of the Premises; and (iii) the elimination of the bought-out portion of the Premises from this Lease shall not materially and adversely impact Lessee's business operations on the remainder of the Premises. In the event the Aviation Department does not agree with any assertions by Lessee as to whether any of the conditions of subparagraphs (i) through (iii) preceding exist, the Board shall make the final and binding determination as to the size of the parcel that will

be subject to the County's buy-out. Such early termination of this Agreement is provided for under the following conditions:

- (a) The County may exercise this buy-out option by giving Lessee three hundred sixty (360) days advance written notice to that effect ("Buy-Out Notice").
- (b) The date of termination of this Agreement, or the portion subject to the buy-out, shall occur on the later to occur of: (i) the 360th calendar day following the giving of the County's Buy-Out Notice; or (ii) such date as is specified in the County's Buy-Out Notice; or (iii) if there is an outstanding Approved Leasehold Mortgage, the date the Approved Leasehold Mortgagee is tendered the "Buy-Out Amount" (as hereinafter defined). The date of termination of the Lease, or the date of release of the portion subject to the buy-out, if the buy-out provisions of this Section 34 are exercised is hereinafter referred to as the "Buy-Out Termination Date." Notwithstanding subparagraph (iii) preceding, if there is an outstanding Approved Leasehold Mortgage, but the County has not been provided with a "Debt Service Schedule" (as hereinafter defined) within sixty (60) days of County's written demand for same to the Lessee, then the Buy-Out Termination Date shall be the later to occur of: (1) the 360th calendar day following the giving of the County's Buy-Out Notice; or (2) such date as is specified in the County's Buy-Out Notice.
- (c) If the County exercises its buy-out rights, the "Buy-Out Amount" shall be equal to the greater of: (i) 100% of the "Fair Market Value of Lessee's Interest in the Leasehold Estate" (as determined pursuant to Exhibit G attached hereto and made a part hereof); or (ii) 100% of the "Pay-Off Amount," which is an amount equal to the product of the "Pay-Off Percentage Factor" (as hereinafter defined) multiplied by the "Outstanding Amount" (as hereinafter defined). The "Outstanding Amount" is equal to: (1) the then outstanding principal amount of the loan secured by the Approved Leasehold Mortgage (together with all accrued and unpaid interest through the date of tender of the Pay-Off Amount and prepayment penalties and other lender charges), **less** (2) any amounts attributable to charges incurred because principal or interest payments were not paid by Lessee as and when due, such as late charges or additional interest, **less** (3) any portion of the outstanding principal amount of the loan secured by the Approved Leasehold Mortgage that is attributable to disbursements made to the Lessee for use by Lessee in connection with properties encumbered by the Approved Leasehold Mortgage that are not located at the Airport. In the event there is more than one Approved Leasehold Mortgage encumbering the property being bought out, the Pay-Off Amount shall be determined for each such mortgage and then added together to arrive at the total Pay-Off Amount. The County shall not be liable for or required to pay any amounts attributable to charges incurred because principal or interest amounts were not paid by the Lessee as and when due.

The "Pay-Off Percentage Factor" shall be the percentage derived by dividing (i) the fair market value of the portion of the Premises to be released from the encumbrance of the Approved Leasehold Mortgage (including all buildings and improvements located thereon, if any), by (ii) the fair market value of all of the real property located at the Airport then encumbered by the Approved Leasehold Mortgage that encumbers the property to be released (including all buildings and improvements located thereon).

- (d) If the County exercises its option to buy-out this entire Lease or a portion of the Premises, and there exists no outstanding Approved Leasehold Mortgage, then the County will tender 100% of the Fair Market Value of Lessee's Interest in the Leasehold Estate to the Lessee, as the total Buy-Out Amount. Such payment shall be made to Lessee within sixty (60) days following the determination of the "Fair Market Value of Lessee's Interest in the Leasehold Estate" (as determined pursuant to Exhibit G attached hereto and made a part hereof). In addition, in the event the County exercises its right to buy-out a portion of the Premises, the rent payable by Lessee under this Lease shall be reduced effective on the Buy-Out Termination Date by an amount equal to the then annual per square foot rent applicable to the portion bought out multiplied by the total square footage contained within the portion bought out.
- (e) If the County exercises its buy-out rights, and there exists an outstanding Approved Leasehold Mortgage, then the County will tender to the Approved Leasehold Mortgagee the Buy-Out Amount. If the County tenders the Buy-Out Amount to the Approved Leasehold Mortgagee, then the County shall have no further payment obligations to Lessee with respect to the Buy-Out Amount, and Approved Leasehold Mortgagee shall file in the public records of Broward County, Florida and other applicable public offices, the required release or satisfaction relating to the Approved Leasehold Mortgage.
- (f) Lessee agrees to cause the Approved Leasehold Mortgagee to provide to County a Debt Service Schedule prepared in accordance with generally accepted accounting standards ("Debt Service Schedule") which shall: (i) state the original outstanding principal amount of the loan; (ii) show the schedule of amortization of such financing over the term of the loan, provided all principal and interest payments are paid in the amounts and on the dates required by the loan documents; (iii) state the Pay-Off Amount for the loan as of stated dates and the daily per diem; (iv) show any amounts that are attributable to charges incurred because principal or interest amounts were not paid as and when due, such as late charges or additional interest charges; and (v) show any portion of the outstanding principal amount of the loan secured by the Approved Leasehold Mortgage that is attributable to disbursements made to the Lessee for use by Lessee in connection with properties encumbered by the Approved Leasehold Mortgage that are not located at the Airport. The Debt Service Schedule shall be accompanied by appropriate back-up documentation supporting the manner in

which the Debt Service Schedule was derived. The Lessee shall cause the Approved Leasehold Mortgagee to provide the County with a Debt Service Schedule as a condition of the County's consent to any leasehold mortgage, and the Lessee shall provide an updated Debt Service Schedule within thirty (30) calendar days of any written request made by the Aviation Department. The County shall be entitled to rely on the Debt Service Schedule obtained by the Lessee in making determinations pursuant to this Section 34.

- (g) It shall be Lessee's responsibility to cause the Approved Leasehold Mortgagee to: (i) provide the Debt Service Schedule to the County, together with such documentation as may be requested by County to verify the Debt Service Schedule; (ii) accept the Buy-Out Amount from the County; and (iii) record a satisfaction of the Approved Leasehold Mortgage as to the Premises if this Lease is terminated as a result of the buy-out, or to record a release of the portion or all of the Premises that is subject to the buy-out from the encumbrance of the Approved Leasehold Mortgage. Notwithstanding anything to the contrary herein, if the Buy-Out Amount paid to the Approved Leasehold Mortgagee with respect to any Approved Leasehold Mortgage is equal to or greater than the Outstanding Amount, then the Approved Leasehold Mortgagee shall record a satisfaction or release of the Approved Leasehold Mortgage as to all premises at the Airport that are encumbered by the Approved Leasehold Mortgage.
- (h) In the event of any termination of the Agreement or a portion of the Premises pursuant to the provisions of this Section 34: (i) Lessee shall vacate the Premises or portion thereof and shall leave the Premises free and clear of all liens, claims and encumbrances whatsoever as may have been caused by Lessee; (ii) this Agreement and all subleases shall be terminated, or the portion of the Premises and subleases with respect thereto that are subject to the buy-out, on the date of termination established by subsection (b), above and County shall be entitled to record a notice of termination or release in the public records of Broward County; and (3) the parties shall be released of all further obligations to each other under this Agreement if the whole Lease is terminated, or as to the portion of the Premises affected, as applicable, and except for liabilities that have accrued prior to the date of termination, including without limitation, the Buy-Out Amount and any unpaid rentals. The rights of termination pursuant to the provisions of this Section 34, is in addition to any other rights of termination available to the County under other provisions of this Agreement.
- (i) If the provisions of this Section 34 are applicable, then Lessee shall not be entitled to any compensation or other payments pursuant to Section 35(c), below. In the event of any termination of the Agreement pursuant to the provisions of this Section 34, Lessee shall be entitled to moving expenses (which shall be determined in accordance with the provisions of 49 CFR 24.303, and Chapter 5, FAA Order 5100.37A, which pertain to eligible moving and related expenses for nonresidential moves), but Lessee shall not be entitled to any severance

damages, business damages or any other amounts or damages whatsoever, other than the aforementioned moving expenses.

- (j) The rights of termination pursuant to the provisions of this Section 34, are in addition to any other right of termination available to the County under other provisions of this Agreement, and the provisions of this Section 34 as to payment of the Buy-Out Amount shall not apply to any such other County rights of termination.
- (k) Notwithstanding anything to the contrary contained in this Agreement, County shall have no obligation to pay Lessee any Buy-Out Amount if any obligations of Lessee to County under this Lease have not been satisfied, and County shall be entitled to set off any unpaid monetary obligations of Lessee to County against the Buy-Out Amount.
- (l) The provisions of this Section 34 shall survive the termination of this Agreement.

SECTION 35. MISCELLANEOUS

- (a) **Wages.** Lessee shall pay wages that are not less than the minimum wages required by federal and state statutes and County and local ordinances, to persons employed in operations conducted at the Premises. If any County-funded construction work in excess of **Two Hundred Fifty Thousand Dollars (\$250,000.00)** is required of, or undertaken by, Lessee as a result of this Agreement, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to the entire construction project; and further Lessee shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibits E and F**.
- (b) **Holdover.** It is agreed and understood that any holding over of Lessee after the termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy at sufferance, pursuant to Section 83.04, Florida Statutes, as it may be amended from time to time. County reserves the right to pursue all remedies available to it under applicable law as a result of Lessee's holdover. It is expressly agreed that acceptance of rent or any other payments by the County in the event that Lessee fails or refuses to surrender possession shall not operate as County's consent to Lessee's continued possession nor shall it constitute a waiver by the County of its right to immediate possession of the Premises. At the sole option of County, upon written notice to the Lessee by the Aviation Department, the Lessee shall be required to pay to the County during any holdover period monthly rent which shall be equal to double the amount of the monthly installment of rent that was due and payable for the month immediately preceding the Termination Date of this Agreement. If the County exercises this option, a tenancy at will lasting from month to month shall be

created, and such tenancy shall be subject to all other provisions contained in this Agreement.

- (c) **Condemnation.** In the event the Premises or any part thereof shall be condemned and taken by authority of eminent domain, then the laws of the State of Florida shall govern such proceedings and any award with respect thereto.
- (d) **Agent for Service of Process.** It is expressly understood and agreed that if the Lessee is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event the Lessee does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and the County arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Florida for service upon a non-resident, who has designated the Secretary of State as agent for service. It is further expressly agreed, covenanted and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Lessee may be personally served with such process out of this State by certified mailing to the Lessee at the address set forth herein. Any such service out of this State shall constitute valid service upon the Lessee as of the date of mailing. It is further expressly agreed that the Lessee is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.
- (e) **Waiver of Claims.** The Lessee hereby waives any claim against Broward County and its officers, commissioners and employees for any consequential damages, including, without limitation, any loss of business or anticipated profits, caused by: (1) any default of County hereunder; or (2) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; or (3) by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof null, void or voidable, or delaying the same or any part thereof, from being carried out; or (4) any change in the operation or configuration of, or any change in procedures governing the use of, the Airport.
- (f) **Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.
- (g) **Right to Amend.** In the event that the United States government, or its departments or agencies requires changes or additions to this Agreement, including without limitation, any nondiscrimination provisions, as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required (collectively, an

"amendment"). Notwithstanding the foregoing, in the event any such amendment would unreasonably interfere with the business operations of Lessee, then Lessee may refuse to consent to such amendment, provided that Lessee must give immediate notice to the County of any such refusal to consent and such notice must state with specificity the reasons for any such refusal. The County shall have the right to immediately terminate this Agreement upon the failure of Lessee to consent to any such amendment. In the event of a termination pursuant to these provisions the Lessee shall have no right to payment of any amounts under subsection 35(c) or the Buy-Out Amount or any other amounts under Section 34.

- (h) **Time of Essence.** Time is expressed to be of the essence of this Agreement.
- (i) **Written Approvals.** All notices, approvals and consents required to be obtained hereunder must be in writing to be effective.
- (j) **No Assignment.** Lessee covenants and agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement or any right created hereby or take any other action described by Section 18, hereof, without the prior written consent of the County.
- (k) **Authority of Individuals.** The individuals executing this Agreement on behalf of Lessee personally warrant that they have full authority to execute this Agreement on behalf of Lessee for whom they are acting herein.

SECTION 36. OTHER PROVISIONS

- (a) **Federal Aviation Act, Section 308.** Nothing herein contained shall be deemed to grant the Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in Title 49 USC Section 40103, et. seq., for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, the Lessee shall have the right to possess the Premises under the provisions of this Agreement. It is expressly understood and agreed that the rights granted under this Agreement are non-exclusive and the County reserves the right to grant similar privileges to another lessee or other lessees on other parts of the Airport.
- (b) **No Waiver.** All rights and remedies of the parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. No waiver by either party of any failure to perform any of the terms, covenants and conditions hereunder shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants or conditions herein contained.

- (c) **Specific Performance.** The parties agree that in addition to all other remedies, the obligations contained herein shall be subject to the remedy of specific performance, injunctive relief, and writ of prohibition or mandamus to compel the other party to abide by the terms of this Agreement. The parties hereby waive any and all requirements that the other party post any security or collateral which may be otherwise required or stipulated as a condition for such party to obtain specific performance, injunctive relief, or writ of prohibition or mandamus or other equitable relief.
- (d) **Survival.** Upon termination or expiration of this Lease, the Lessee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Lease to the contrary, no obligation which accrued but has not been satisfied under any prior agreements between the parties, shall terminate or be considered canceled upon execution of this Lease. Rather, such obligation shall continue as if it had accrued under this Lease until the obligation is satisfied.
- (e) **Public Entity Crimes Act.** Lessee represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on leases of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from County's competitive procurement activities. In addition to the foregoing, Lessee further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Lessee has been placed on the convicted vendor list.
- (f) **Recordation of Memorandum of Lease.** County hereby consents to Lessee recording a Memorandum of Lease in the Public Records of Broward County, Florida, which Memorandum shall set forth, and shall only set forth: (1) the names of the parties; and (2) the Commencement Date and Term of the Lease. Lessee and any sublessees shall not record this Lease or any sublease of any of the Premises in the Public Records of Broward County, Florida, and a violation of

this paragraph by Lessee shall automatically void those provisions and portions of this Lease which run to the benefit of Lessee.

- (g) **No Set Off.** The Lessee acknowledges that, through the date hereof, it has no claims against County with respect to any of the matters covered by this Lease, and it has no right of set off or counterclaims against any of the amounts payable by Lessee to County under this Lease.
- (h) **Police/Regulatory Powers.** County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Premises, any Improvements thereon, or any operations at the Premises. Nothing in this Lease shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.
- (i) **Regulatory Approvals.** Lessee acknowledges that County, from time to time, will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its Master Plan and Part 150 Study and subsequent updates, and the implementation thereof, which may include the following: (1) implementing, amending or rescinding development agreements and orders; (2) agreements with the state of Florida and other agencies; (3) land use and zoning amendments; (4) preparation of environmental assessments and environmental impact statements; (5) such permitting as may be required by federal, state, County or local regulations, and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and Part 150 Study. Lessee agrees to cooperate with County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, Lessee covenants and agrees: (1) to support the County's efforts to obtain the Regulatory Approvals; and (2) to execute any documents or instruments reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Lessee shall not be required to bear any expense in connection therewith and Lessee shall not be deemed an agent of the County.
- (j) **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County public health unit.

- (k) **Visual Artist's Rights Act.** With respect to construction or installation of any Improvements at the Premises and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 USC Sections 106A and 113, as it may be amended from time to time (the "Act"), Lessee agrees that it shall not (1) hire any artist or permit any sublessee to hire any artist for the purpose of installing or incorporating any work of art into or at the Premises, or (2) permit the installation or incorporation of any work of art into or at the Premises, without the prior written approval of the County. Lessee shall provide such reasonable documentation as the County may request in connection with any such approval and the approval of the County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act, in form and substance acceptable to the County.
- (l) **Contingency Fee.** Lessee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Lessee, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Lessee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, County shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- (m) **Right to Develop the Airport.** County reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Lessee and without interference or hindrance.
- (n) **Damage to Airport Facilities.** Lessee shall be responsible for any and all damage to the Airport caused by the negligence of Lessee, its agents, sublessees, employees, contractors, subcontractors, or invitees including, but not limited to, damage to terminal areas, ramp and taxiway areas, engine run-up areas, runways, hangar facilities and any and all areas where any activities are performed by Lessee.
- (o) **Government Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.
- (p) **Multiple Copies.** Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original.

SECTION 37. ENTIRE AGREEMENT

This Agreement consists of: Sections 1-37, together with Exhibits A-1, A-2, B, C, D, E, F, G and H attached hereto, constitute the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the duly authorized representatives of the County and the Lessee. Lessee agrees that no representations or warranties shall be binding upon the County unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Lease Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the _____ day of _____, 20__, and AZORRA AVIATION, LLC, signing by and through its CEO, duly authorized to execute same.

AGREEMENT OF LEASE BETWEEN BROWARD COUNTY AND AZORRA AVIATION, LLC

LESSEE

ATTEST:

Secretary

(CORPORATE SEAL)

John Evans

By: JOHN EVANS

Title: CEO

18TH day of NOVEMBER, 2014

WITNESS:

Tracy H. Spivey
Angela Allyn

AGREEMENT OF LEASE BETWEEN BROWARD COUNTY AND AZORRA AVIATION, LLC

COUNTY

ATTEST:

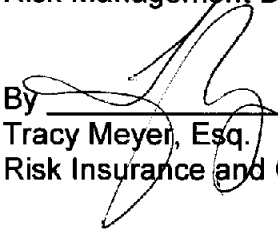
BROWARD COUNTY, by and through
its Board of County Commissioners

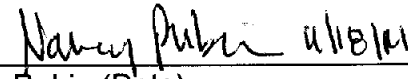
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

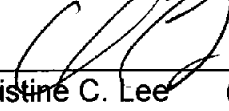
By _____
Mayor
____ day of _____, 20____

Insurance requirements
approved by Broward County
Risk Management Division

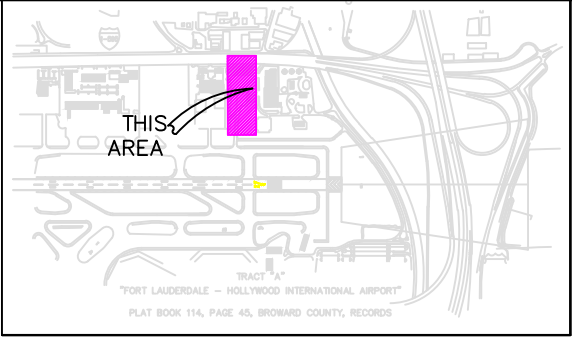
Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Aviation Office
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By  11-19-14
Tracy Meyer, Esq. (Date)
Risk Insurance and Contracts Manager

By  11/18/14
Nancy Rubin (Date)
Assistant County Attorney

By  11-18-14
Christine C. Lee (Date)
Senior Assistant County Attorney

CCL/lg
Azzora Aviation LLC Lease
11/17/14
#14-071.78



LOCATION SKETCH
(NOT TO SCALE)

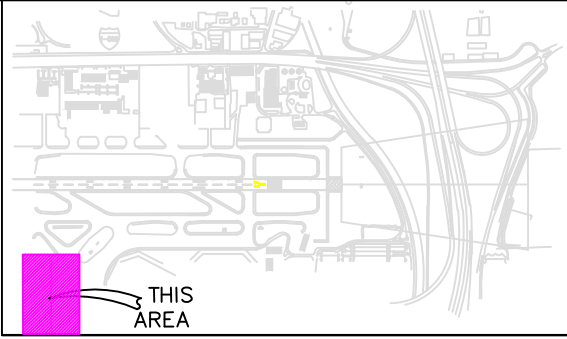


TOTAL LEASE AREA = 364,310 Sq.Ft.

SKETCH AND BOUNDARY LINE OF:
AZORRA AVIATION, LLC
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT
BROWARD COUNTY, FLORIDA

EXHIBIT A-1
CURRENT PARCEL

★FOR PLANNING PURPOSES ONLY



LOCATION SKETCH
(NOT TO SCALE)



TAXIWAY "C"

**PROPOSED
(25 Acres)**

SW 40th St.

S.W. 14th Ave.

41st COURT / LEE WAGNER Blvd.

S.W. 12th Terrace

TOTAL LEASE AREA = 1088992 Sq.Ft.

SKETCH AND BOUNDARY LINE OF:
AZORRA AVIATION, LLC
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT
BROWARD COUNTY, FLORIDA

**EXHIBIT A-2
DEVELOPMENT PARCEL**

***FOR PLANNING PURPOSES ONLY**

EXHIBIT B
NONDISCRIMINATION REQUIREMENTS

- I. During the performance of this contract, the Consultant/Contractor/Tenant/Concessionaire/Lessee/Permittee/Licensee for itself, its personal representatives, assigns and successors in interest (hereinafter referred to collectively as the "Contractor") agrees as follows:
- (a) Compliance With Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally Assisted Programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
 - (b) Nondiscrimination. The Contractor shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - (c) Solicitation for Subcontracts, Including Procurement of Materials and Equipment. In all solicitation either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.
 - (d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the County shall impose such contract sanctions as it or the FAA may determine to be appropriate,

including, but not limited to: (1) withholding of payments under the contract until there is compliance, and/or (2) cancellation, termination, or suspension of the contract, in whole or in part. In the event of cancellation or termination of the contract (if such contract is a lease), the COUNTY shall have the right to re-enter the Premises as if said lease had never been made or issued. These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

- (f) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (a) through (e), above, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
 - (g) The Contractor, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.
 - (h) The Contractor, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any Improvements on, over, or under the premises and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- II. During the performance of this contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

The Contractor agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. The Contractor agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The Contractor agrees that it will require its covered suborganizations to provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

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

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

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

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

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

- III. The Contractor, for itself, its assignees and successors in interest agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Contractor or its transferee, for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or Improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.
- IV. Contractor shall not discriminate on the basis of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate.

EXHIBIT C **GENERAL OUTLINE FOR ENVIRONMENTAL BASELINE ASSESSMENT FIRMS**

The purpose of the environmental baseline testing activities is to establish the environmental conditions of the property. At a minimum, the initial stages of the baseline process should include sufficient non-intrusive activities to identify the current and historical use of the property, the regulatory compliance record of the property, and any other information deemed necessary to evaluate the potential impacts from hazardous materials/petroleum products to soil, surface water and groundwater at the site. These non-intrusive activities should be consistent with methodologies described in ASTM E1527-00 Standard Practice for Phase 1 ESA Process.

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

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

EXHIBIT D
ENVIRONMENTAL DOCUMENTS

Company Name:

Mailing Address:

Street or Post Office Box

City: _____ State: _____ Zip Code: _____

Type of Agreement:

Please describe the activities performed and services provided on leasehold:

Will there be fueling: Yes ___ No ___

Will there be maintenance: Yes ___ No ___

Will there be plane washing: Yes ___ No ___

The Lessee has the following documents, if applicable, which may be requested by the County for review: If not applicable, denote "NA."

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

Is the Lessee required to file the SARA Title III Reporting? Yes ___ No ___
If Yes, was last filed on (date) _____.

Is the Lessee a generator of hazardous waste pursuant to 40 CFR 261?
Yes ___ No ___.

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

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

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

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

EXHIBIT E

Prevailing Wage Rates: On November 17, 1983, the Broward County Board of County Commissioners enacted Ordinance No. 83-72 providing that, in all non-federally funded County construction procurement activity of \$250,000 or more, the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in like industries as determined by the Secretary of Labor and as published in the Federal Register (latest revision).

Prevailing Wage Rate Ordinance. If the project is not federally funded and if County is funding any portion of the construction project, then if the construction cost is in excess of \$250,000, the following shall apply:

1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
2. All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. Lessee shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
3. If the parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Aviation Department shall submit the question, together with its recommendation, to the County Administrator for final determination.
4. In the event it is found by the County that any laborer or mechanic or apprentice employed by Lessee, or any subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the County may: (a) by written notice to Lessee terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (b) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, Lessee and its sureties shall be liable to County for any excess costs occasioned to County thereby.
5. Subparagraphs (1) through (4) above shall apply to prime contracts and subcontracts under such prime contracts.
6. Lessee shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics and apprentices working at the site of the work. Such records

shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.

7. If County is funding any portion of the work, Lessee shall submit, with each requisition to County for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as **Exhibit F**.

8. The County may withhold or cause to be withheld from Lessee so much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watch persons, and guards employed by Lessee or any subcontractor on the work, the full amount of wages required by this Agreement.

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

EXHIBIT F

STATEMENT OF COMPLIANCE
(PREVAILING WAGE RATE ORDINANCE NO. 83-72)

No. _____

Contract No. _____

Project Title _____

The undersigned Lessee hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Broward County Ordinance No. 83-72 and the applicable conditions of this Agreement.

Dated _____, 20____, _____

Lessee

By _____

(Signature)

By _____

(Name and Title)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal, this ____ day of _____, 20__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)

typed, printed or stamped

(Title or rank)

(Serial number, if any)

My commission expires:

EXHIBIT G
METHODOLOGY FOR DETERMINING
"FAIR MARKET VALUE OF LESSEE'S INTEREST IN THE LEASEHOLD ESTATE"

The Methodology for Determining the "Fair Market Value of Lessee's Interest in the Leasehold Estate" shall be as follows:

- (1) Lessee agrees to provide to County a special audit report by a CPA Firm prepared in accordance with generally accepted accounting standards ("Report"). The Report shall be provided by Lessee within sixty (60) days following the giving by County of the Buy-Out Notice. The Report shall: (i) identify the renovations and improvements that are located on the Premises and are Approved Improvements; (ii) state the original cost of such improvements; (iii) include the CPA Firm's determination of the Lessee's Capital Expenditure for such Approved Improvements (showing the basis of all computations); (iv) provide a listing of all current leases between Lessee and any tenants of any portion of the Premises showing all gross revenues to Lessee from such leases; (v) provide the net revenues received from all such leases after subtracting operating expenses for the last fiscal year of the Lessee; (vi) provide the net income received by Lessee from Lessee's operations at the Premises for the last fiscal year of the Lessee; and (v) include any other information reasonably requested by the appraiser(s) retained by County and Lessee as hereinafter provided, or as may be requested by the County Auditor. Lessee shall maintain its books and records in accordance with generally accepted accounting principles, and shall provide such documentation as the County may request. The County, at its option, may conduct an audit of such expenditures of Lessee and Lessee's lease revenues and income, or may engage a CPA Firm to conduct such audit.
- (2) The Report shall be accompanied by appropriate back-up documentation supporting all conclusions and statements set forth in the Report. The documentation shall be in sufficient detail to enable the appraisers and/or the County Auditor to verify the Report's determinations. It shall be Lessee's responsibility to provide to the CPA Firm, the Appraiser(s) and the County Auditor such documentation as may be necessary to determine the Fair Market Value of Lessee's Interest in the Leasehold Estate.
- (3) The County shall retain an appraiser to determine the Fair Market Value of Lessee's Interest in the Leasehold Estate which shall be determined based on the "methodology" set forth in paragraph (4), below. The Aviation Department shall send the Lessee a copy of the appraisal. If the Lessee is not in agreement with the stated Fair Market Value of Lessee's Interest in the Leasehold Estate, then Lessee shall hire its own appraiser; provided that Lessee's appraisal must be obtained within sixty (60) days following receipt of the County's appraisal. The Lessee shall provide the Aviation Department with a copy of any such

appraisal. If the Lessee fails to obtain an appraisal within said sixty (60) day period, then Lessee shall thereafter have no further rights to dispute the finding of Fair Market Value of Lessee's Interest in the Leasehold Estate as set forth in the appraisal obtained by the County. If the Lessee does obtain an appraisal within said sixty (60) days and if such appraisal's finding of the Fair Market Value of Lessee's Interest in the Leasehold Estate is not the same as the finding set forth in the appraisal obtained by the County, then the appraiser selected by the County and the appraiser selected by the Lessee shall together select another appraiser ("Dispute Resolution Appraiser") within thirty (30) days following completion of the Lessee's appraisal. If the appraiser selected by the County and the appraiser selected by the Lessee fail to select a Dispute Resolution Appraiser within thirty (30) days following completion of the Lessee's appraisal, then the County Auditor shall select a Dispute Resolution Appraiser after consulting with the appraiser selected by the County and the appraiser selected by the Lessee. Any Dispute Resolution Appraiser must complete its appraisal ("Dispute Resolution Appraisal") within sixty (60) days of its employment. The finding of the Fair Market Value of Lessee's Interest in the Leasehold Estate set forth in a timely obtained Dispute Resolution Appraisal shall be binding on both parties. The Dispute Resolution Appraiser shall provide copies of the Dispute Resolution Appraisal to both the Aviation Department and the Lessee. The expense of any Dispute Resolution Appraisal shall be borne equally by the parties, and the Lessee's portion of such expense shall be paid to the County immediately following receipt of County's invoice for same.

- (4) Any appraisal conducted hereunder must contain a determination of the Fair Market Value of Lessee's Interest in the Leasehold Estate, in accordance with this subsection (4). The appraiser will prepare a complete appraisal following the methodology set forth in the latest publication of *The Appraisal of Real Estate* by the Appraisal Institute, or its successor organization, and accepted by the Uniform Standards of Professional Appraisal Practice to determine Fair Market Value of Lessee's Interest in the Leasehold Estate, taking into consideration the then unexpired portion of the term of this Lease and based upon comparable property within comparable Florida airports. In the event that the buy-out shall be of the total Premises, the appraiser shall determine the Fair Market Value of Lessee's Interest in the Leasehold Estate. In the event that the buy-out shall be of a portion of the Premises (other than a "Minimal Buy-out", as hereinafter defined), the appraiser shall determine the value of the property to be bought out by determining the Fair Market Value of Lessee's Interest in the Leasehold Estate immediately before the buy-out and subtract therefrom the Fair Market Value of Lessee's Interest in the Leasehold Estate immediately after the buy-out, the result of which shall be the Fair Market Value of Lessee's Interest in the Leasehold Estate of the property bought out. In the event that the buy-out shall involve less than five percent (5%) of the total square footage of the Premises, and does not include any building improvements (a "Minimal Buy-out"), the appraiser shall determine the Fair Market Value of Lessee's Interest in the Leasehold Estate solely based on the property that is the subject of the buy-

out (and shall not determine the Fair Market Value of Lessee's Interest in the Leasehold Estate as to the remainder of the Premises). Any appraisal conducted hereunder will use the following methodology:

- (a) The appraisal reports will follow the self-contained format suggested by the American Institute of Real Estate Appraisers, the content of which will conform to the Uniform Standards of Professional Appraisal Practice; and
 - (b) The date of valuation for making all determinations pursuant hereto will be date that the Buy-Out Notice is given to Lessee.
 - (c) In no event shall Lessee be entitled to compensation for the value of its business, or receive business damages, as a result of a whole or partial buy-out of its leasehold interest.
- (5) Any appraiser retained by any of the parties to prepare an appraisal hereunder, including the Dispute Resolution Appraiser, must hold the M.A.I. Designation and must comply with the Competency Provision under the Uniform Standards of Professional Appraisal Practice (USPAP).

EXHIBIT H
REPAIR SCOPE FOR CURRENT PARCEL IMPROVEMENTS

General:

Install smoke detectors and electrical interconnect- 2nd floor
Clean and paint main column anchorages as needed
Lubricate hangar door wheel axles
Remove tree on south elevation of paint hangar
Excavate drainage swale behind paint hangar to existing retention areas to the south
Add additional 10 feet of rock and asphalt behind fuel truck parking area

Hangar 1:

Replace steel roof panels
Weld helper plate to rusted roof purlin flange
Install stairs for office
Install door barricade on second story
Remove and replace main gutters
Clean and paint main steel frame at ridge of building
Clean and paint main steel frame bases at ridge of building
Repair base of wall panels on north elevation
Remove and replace rusted wall girts on north elevation
Seal concrete floor slab cracks

Hangar 2:

Replace steel roof panels
Troubleshoot exhaust fans
Weld helper plate to rusted roof purlin flange
Replace missing steel building sway rod
Tighten loose steel building sway rod
Remove and replace main gutters
Clean and paint main steel frame base at ridge of building
Repair electrical wiring and receptacles as needed
Seal concrete floor slab cracks
Replace horizontal steel wall panel strut (Z shape)
Replace/splice vertical steel exterior wall panel
Patch concrete between steel rolling door rails

Hangar 3:

Replace steel roof panels
Repair eye wash shower and sink
Supply and install splash blocks
Clean off rust and repair main frame column bases