

AGENDA ITEM SUMMARY

☐ Consent ☐ Regular
☐ Workshop ☐ Public Hearing


Submitted By: Department of Airports

I. EXECUTIVE BRIEF


Summary: The Resolution establishes a new standard form Lease for use with tenants at the cargo building at 1300 N. Perimeter Road (Building 1300) at the Palm Beach International Airport (PBI), and authorizes the County Administrator or his designee to execute the standard form Lease on behalf of the Board. The Resolution also authorizes the County Administrator or his designee to execute amendments to the Lease for the purpose of relocating, increasing or decreasing a tenant's leased or licensed premises. The new standard form replaces the standard form Air Freight Building Lease Agreement established by Resolution 97-233. **Countywide (HJF)**

Background and Justification: Building 1300 contains approximately 31,000 square feet of interior space and is currently divided into 13 leasehold spaces. Tenant businesses include aeronautical support services, cargo and freight forwarding. The term of the Lease will renew annually each October 1, unless terminated by either party.

1. Resolution

Recommended By:  4/26/00
 Department Director Date

LB

Approved By:  5/1/00
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0 + see below</u>	_____	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
Budget Account No: Fund _____ Department _____ Unit _____ RSource _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* No fiscal impact.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

[Signature]
OFMB

5/6/10
5/14/10

[Signature]
Contract Dev. and Control

B. Legal Sufficiency:

[Signature] 5/10/10
Assistant County Attorney

C. Other Department Review:

Department Director

RESOLUTION NO. R-2010-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE A STANDARD FORM CARGO BUILDING LEASE AGREEMENT FOR USE AT THE PALM BEACH INTERNATIONAL AIRPORT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE CERTAIN AMENDMENTS; REPEALING RESOLUTION 97-233; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Palm Beach County, by and through its Department of Airports, owns and operates the Palm Beach International Airport ("PBIA"); and

WHEREAS, the Board of County Commissioners approved a standard form lease agreement entitled the "Air Freight Building Lease Agreement" on February 18, 1997 (R-97-233); and

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee to execute a new standard form lease agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein.
2. **Standard Form Document.** The Board hereby authorizes the County Administrator or his designee to execute the standard form "Cargo Building Lease Agreement", attached hereto and incorporated herein as Attachment "A", on behalf of the Board of County Commissioners for the lease of cargo building space at Building 1300 at PBIA. The County Administrator or his designee is hereby authorized to execute: (i) amendments to the Cargo Building Lease Agreement for the purpose of relocating, increasing or decreasing a tenant's leased or licensed premises; and (ii) Cargo Building Lease Agreements that include non-material changes. For purposes of this Resolution, "non-material changes" means changes that do not modify the substantive obligations of the County. In addition, the County Administrator or his designee may modify the insurance requirements provided in the standard form Cargo Building Lease Agreement upon the advice of the Risk Management Department to establish coverage amounts or require additional policies of

insurance. For purposes of this Resolution, the Director of the Department of Airports shall be considered to be a designee of the County Administrator.

3. **Repeal of Prior Resolution.** Effective upon adoption of this Resolution, Resolution 97-233 shall be repealed in its entirety; provided, however, this Resolution shall not affect the validity of any agreement entered into pursuant to the aforementioned Resolution prior to adoption of this Resolution.
4. **Severability.** If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.
5. **Effective Date.** This Resolution shall become effective immediately upon adoption.

The remainder of this page is left intentionally blank.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Burt Aaronson, Chair	-
Commissioner Karen T. Marcus, Vice Chair	-
Commissioner Jeff Koons	-
Commissioner Shelley Vana	-
Commissioner Steven L. Abrams	-
Commissioner Jess R. Santamaria	-
Commissioner Priscilla A. Taylor	-

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2010.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

Attachment "A"
to
Resolution

**CARGO BUILDING LEASE AGREEMENT
PALM BEACH INTERNATIONAL AIRPORT**

**Department of Airports
Palm Beach County, Florida**

and

**CARGO BUILDING LEASE AGREEMENT
PALM BEACH INTERNATIONAL AIRPORT**

THIS CARGO BUILDING LEASE AGREEMENT (this "Lease") is made and entered into _____, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and _____, a _____ corporation, having its office and principal place of business at _____ ("Tenant").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports, owns and operates the Palm Beach International Airport, located in Palm Beach County, Florida; and

WHEREAS, County has certain areas cargo building facilities at the Palm Beach International Airport, that are available for lease; and

WHEREAS, Tenant desires to lease space within a cargo building located on the Airport for the purpose of conducting its {freight and cargo} operations.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

ARTICLE 1
RECITALS

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

ARTICLE 2
DEFINITIONS

The following terms set forth below, when used in this Lease, shall be defined as follows:

- 2.01 "Additional Rent" has the meaning set forth in Section 5.08.
- 2.02 "Adjustment Date" has the meaning set forth in Section 5.03.
- 2.03 "Airport" means the Palm Beach International Airport located in Palm Beach County, Florida.
- 2.04 "Airport Rules and Regulations" means the Palm Beach County Airport Rules and Regulations adopted by Resolution No. R-98-220, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport.
- 2.05 "Assigned Building Premises" has the meaning set forth in Section 4.01(A).
- 2.06 "Assignment" has the meaning set forth in Section 17.01.
- 2.07 "Board" means the Board of County Commissioners of Palm Beach County, Florida.
- 2.08 "Bond" has the meaning set forth in Section 5.06.
- 2.09 "Bond Resolution" means the Palm Beach County Airport System Revenue Bond Resolution dated April 3, 1984 (R-84-427), as amended and supplemented, which is hereby incorporated herein by reference and made a part hereof.
- 2.10 "Cargo Building" means Building 1300 located on the Airport.

- 2.11 "Cargo Building Parking Lot" has the meaning set forth in Section 4.02(A).
- 2.12 "Cargo Building Ramp Area" has the meaning set forth in Section 4.02(C).
- 2.13 "Commencement Date" has the meaning set forth in Section 3.01.
- 2.14 "Department" means the Palm Beach County Department of Airports.
- 2.15 "Derelict Vehicle" means a vehicle designed for use on the roadways that is in a wrecked, dismantled or partially dismantled condition, or which is discarded and in an inoperable condition.
- 2.16 "Director" means the Director or Acting Director of the Department of Airports.
- 2.17 "Effective Date" means the date this Lease is signed by the parties hereto.
- 2.18 "FAA" means the Federal Aviation Administration.
- 2.19 "Fire Lane" means an area or lane in a parking lot or other area that is marked, striped, signed or otherwise identified as a "fire lane" or "emergency lane", where the parking or storage of vehicles or equipment is prohibited to ensure the access of safety equipment in the event of an emergency.
- 2.20 "Initial Term" has the meaning set forth in Section 3.01.
- 2.21 "Letter of Credit" has the meaning set forth in Section 5.06.
- 2.22 "Licensed Areas" means those areas of the Airport set forth in Section 4.02.
- 2.23 "Loading Dock" has the meaning set forth in Section 4.02(B).
- 2.24 "Major Maintenance" means repair activities other than routine servicing activities normally requiring more than two (2) hours to complete.
- 2.25 "Plans" have the meaning set forth in Section 6.01(A).
- 2.26 "Premises" means the Assigned Building Premises and the Licensed Areas, as well as any Storage Area.
- 2.27 "Renewal Term" has the meaning set forth in Section 3.01.
- 2.28 "Risk Management Department" means the Palm Beach County Risk Management Department.
- 2.29 "Security Deposit" has the meaning set forth in Section 5.06.
- 2.30 *Insert if applicable:* "Storage Area" has the meaning set forth in Section 4.02(D).
- 2.31 "Term" means the Initial Term and any Renewal Term(s).
- 2.32 "TSA" means the Transportation Security Administration or any successor agency responsible for airport security.

ARTICLE 3

TERM, COMMENCEMENT DATE AND RENEWAL OPTION

3.01 Term. The term of this Lease shall commence on _____ (the Commencement Date") and expire on September 30, 20____ (the "Initial Term"). This Lease shall be automatically renewed at one (1) year intervals thereafter (October 1st to September 30th) (the "Renewal Term"); provided, however, either party, with the Department acting on behalf of County, may elect to not renew this Lease upon providing no less than thirty (30) days advance written notice to the other party prior to the expiration of the then current Term. Each Renewal Term shall be upon the same terms and conditions set forth herein.

ARTICLE 4
PREMISES, LICENSED AREAS AND PRIVILEGES

4.01 Description of Premises and Specific Privileges, Uses and Rights.

- A. Subject to the terms, conditions and covenants set forth herein, County hereby demises and leases to Tenant, and Tenant rents from County approximately _____ (_____) square feet of interior cargo space within the Cargo Building, identified as Unit ____ at 13__ Perimeter Road, West Palm Beach, Florida, 33406, as more particularly described in the attached Exhibit "A" (the "Assigned Building Premises") for {office administration, shipping, receiving, storage, sorting, loading and unloading of parcels, freight, and cargo and for - - - - purposes}.
- B. Tenant acknowledges and agrees that all maintenance activities performed at the Premises or elsewhere on the Airport shall be in compliance with all applicable federal, state and local laws, including, but not limited, local building and fire codes and environmental laws. Tenant shall be responsible, at its sole cost and expense, for making any necessary modifications to the Assigned Building Premises to accommodate its intended use of the Assigned Building Premises, including, but not limited to, maintenance of equipment.

4.02 Licensed Areas and Specific Privileges, Uses and Rights. County hereby grants to Tenant a non-exclusive, revocable license to use the following areas (the "Licensed Areas"), as more particularly depicted in Exhibit "B":

- A. The Cargo Building Parking Lot, consisting of the paved asphalt parking lot area in front of the Cargo Building, located immediately north of and adjacent to the Loading Dock, for employee and visitor parking and deliveries.
- B. The loading dock and loading ramp area, consisting of the paved area in front of the Cargo Building, located immediately north of and adjacent to the Cargo Building (the "Loading Dock"), for active shipping, receiving, loading and unloading of cargo.
- C. The Cargo Building Ramp Area, consisting of the paved asphalt service area to the rear of the Cargo Building, located immediately adjacent to the south side of the Cargo Building, for the purposes of active shipping, receiving, loading and unloading in accordance with the terms and conditions of this Lease.
- D. ***Insert if applicable:*** [_____ square feet of paved asphalt (the "Storage Area") to be used solely and exclusively for _____ and no other purpose whatsoever.

4.03 Space Allocations. During the Term, County may re-measure various areas of the Premises. In the event the square footage or area of the Premises identified herein differs from the Premises based on such re-measurement, the parties agree to enter into an amendment to this Lease to modify the Premises, and the rental and other charges as provided in Article 5, to reflect the actual square footage or area. The parties agree that any increase or decrease in the monthly rentals, fees and charges payable hereunder resulting from the re-measurement of the Premises shall not be applied retroactively.

4.04 General Privileges, Uses and Rights. In addition to the specific privileges granted in this Article 4, County hereby grants to Tenant the following non-exclusive general privileges, uses and rights, all of which shall be subject to the terms, conditions, and covenants hereinafter set forth:

- A. The general use, in common with others, of all public Airport facilities and improvements that are now or may hereafter be connected with or appurtenant to the Airport, to be used by Tenant, its agents and employees, patrons and invitees, suppliers of service, furnishers of material, and authorized subtenants, if any. For the purpose of this Lease, "public Airport facilities" shall include all necessary roadways, sidewalks, or other public facilities appurtenant to the Airport, not specifically leased to or under the contractual control of a third party.
- B. The right of ingress to and egress from the Premises over and across public roadways serving the Airport for Tenant, its agents and employees, patrons and invitees, suppliers of service and furnishers of material, and its authorized subtenants, if any. Said right shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport.

Except as expressly set forth in this Article 4, nothing herein contained shall be construed to grant to Tenant the right to use any space or area improved or unimproved which is leased to, or under contractual control of a third party, or which County has not leased or licensed herein.

4.05 Restrictions on Privileges, Uses and Rights.

- A. The Department shall have the right to establish reasonable rules and regulations governing the use of Licensed Areas or public Airport facilities. Tenant agrees to be subject to, and comply with, such reasonable rules and regulations.
- B. The rights granted hereunder are expressly limited to the improvement, maintenance, and operation of the Premises pursuant to the terms and conditions of this Lease, and nothing herein shall be construed to give Tenant any rights in any future expansion, renovation or relocation of the Airport or cargo facilities. Tenant covenants and agrees that the Premises shall be utilized solely for the uses permitted in this Article 4 and for no other purpose whatsoever.
- C. Parts and supplies storage must be in relation to Tenant's approved use of the Assigned Building Premises. All such storage must be contained within the Assigned Building Premises.
- D. Except as otherwise provided for herein, use of the Premises and other areas of the Airport for Major Maintenance, repair or maintenance service on vehicles or equipment and painting or stripping of equipment is strictly prohibited.
- E. The Cargo Building Ramp Area and Loading Dock shall be maintained and kept free and clear to allow for the lateral movement of other tenants' freight, equipment and personnel in these non-exclusive areas. Furniture, chairs and similar items shall be prohibited on the Licensed Area. Overnight or long-term parking of vehicles, trailers or equipment on the Cargo Building Ramp Area or Cargo Building Parking Lot is prohibited. Subject to the restrictions set forth herein, all tenants of the Cargo Building shall have the right to utilize the Cargo Building Ramp Area and Loading Dock areas according to each tenant's business needs. Parking of automobiles upon the Loading Dock is prohibited. Long-term parking of any motorized vehicle or trailer upon the Loading Dock is prohibited.
- F. Fire Lanes shall be maintained and kept free and clear at all times to ensure the access of safety equipment in the event of an emergency.

- G. Persons, including, but not limited, to Tenant's employees, shall not loiter or remain overnight on the Premises or elsewhere at the Airport.

4.07 Condition and Use of the Premises. Tenant expressly acknowledges that it has inspected the Premises and Airport and accepts both in their "AS IS CONDITION" and "WITH ALL FAULTS," together with all defects, latent and patent, if any. Tenant further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Airport or the Premises including, but not limited to, the physical and/or environmental condition of the Premises or any improvements located thereon; the value of the Premises or improvements; the zoning of the Premises; title to the Premises; the suitability of the Premises or any improvements for Tenant's intended use; or Tenant's legal ability to use the Premises for Tenant's intended use.

ARTICLE 5

RENTAL, FEES, CHARGES AND SECURITY DEPOSIT

5.01 Annual Rental/Fees. Tenant shall pay to County for use of the Assigned Building Premises an initial annual rental in the amount of _____ Dollars (\$____) per square foot for approximately _____ (____) square feet or _____ Dollars (\$____) annually, plus any applicable taxes. *Insert if applicable:* [Tenant shall pay to County for use of the Storage Area an initial annual license fee in the amount of _____ Dollars (\$____) per square foot for approximately _____ (____) square feet or _____ Dollars (\$____) annually.

5.02 Commencement and Time of Payment. Payment of all sums due hereunder shall commence on the Commencement Date. Rental and any license fees shall be payable in equal monthly installments, in advance, without demand and without any deduction, holdback or set off whatsoever, by the first day of each and every month throughout the Term and any extension thereof. All sums due hereunder shall be delivered to the Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406, or at such other address as may be directed by County from time to time. Payments shall be deemed delinquent if not received by the first business day of the month in which they are due. If the Commencement Date occurs on a day other than the first day of the month, Tenant shall pay rent from the Commencement Date to the first day of the following month on a per diem basis (calculated on the basis of a thirty (30) day month). Any payment due hereunder for any other fractional month shall likewise be calculated and paid on such a per diem basis.

5.03 Adjustment of Assigned Building Premises Rental Rate.

- A. On October 1, 2010, and each three (3) year anniversary thereof (the "Adjustment Date"), the then current rental rate shall be adjusted in accordance with the provisions of this paragraph. The new rental rate shall be determined by an appraisal obtained by County, which shall set forth the fair market rental for the Assigned Building Premises. The appraisal shall be performed, at County's sole cost and expense, by a qualified appraiser selected by County. County shall notify Tenant in writing of the fair market rental of the Assigned Building Premises as established by the appraisal, which shall become the new rental rate for the Assigned Building Premises. Tenant shall commence paying the new rental rate on the Adjustment Date. The new rental rate shall not be less than the rental rate for the prior period. This Lease shall automatically be considered as amended to reflect the new rental rate, without formal amendment hereto, upon County's written notification of the establishment of the new rental rate applicable to the Assigned Building Premises. Notwithstanding any provision of this Lease to the contrary, Tenant acknowledges and agrees that County shall have the right to establish and maintain the rental rates hereunder to ensure compliance with the provisions of Section 710 (rate covenant) of the Bond Resolution.
- B. *Insert if applicable:* [The license fee for the use of the Storage Area may be modified from time to time by County upon thirty (30) days prior written notice to Tenant.]

5.04 Other Fees and Charges. Tenant acknowledges that County shall have the right to adopt new fees and charges or to adjust fees and charges applicable to Tenant's operations at the Airport from time to time by prior written notice to Tenant. Tenant shall pay all fees and charges applicable to Tenant's operations at the Airport when assessed.

5.05 Late Payments - Interest. In the event Tenant fails to make timely payment of any rentals, fees and charges due and payable in accordance with the terms of this Lease, interest, at the rate of one and one-half percent (1.5%) per month shall accrue against the delinquent payment(s) from the date due until the date payment is received by County.

5.06 Security Deposit. Prior to the Effective Date of this Lease, Tenant shall post a security deposit with County in an amount equal to County's estimate of three (3) months rental, fees and charges payable by Tenant hereunder ("Security Deposit"). The Security Deposit shall serve as security for the payment of all sums due to County and shall also secure the performance of all obligations of Tenant to County. The Security Deposit shall be either in the form of a clean, Irrevocable Letter of Credit ("Letter of Credit") or a Surety Bond ("Bond") in form and substance satisfactory to County, or if the amount of the Security Deposit is five thousand dollars (\$5,000.00) or less, the Security Deposit may be in the form of cash. In the event of any failure by Tenant to pay any rentals, fees or charges when due or upon any other failure to perform any of its obligations or other default under this Lease, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw on the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Tenant shall promptly replace the Security Deposit with a new Letter of Credit or Bond, or cash as applicable, in the full amount of the Security Deposit required hereunder. Tenant shall promptly increase the amount of the Security Deposit to reflect any increases in the sums payable hereunder. The Security Deposit shall be kept in full force and effect throughout the Term of this Lease and any extension thereof and for a period of six (6) months after the termination of this Lease. Not less than forty-five (45) days prior to any expiration date of a Letter of Credit or Bond, Tenant shall submit evidence in form satisfactory to County that such security instrument has been renewed. Failure to renew a Letter of Credit or Bond or to increase the amount of the Security Deposit as required by this Section 5.06 shall: (i) entitle County to draw down the full amount of such Security Deposit, and (ii) constitute a default of this Lease entitling County to all available remedies. The Security Deposit shall not be returned to Tenant until all obligations under this Lease are performed and satisfied. No Security Deposit shall be required from a Tenant who is a Signatory Airline (as defined in the Airline-Airport Use and Lease Agreement) operating at the Airport pursuant to a current Airline-Airport Use and Lease Agreement. Prior to consent from County to any assignment of this Lease by Tenant, Tenant's assignee shall be required to provide a Security Deposit to County in accordance with the terms and conditions of this Section 5.06.

5.07 Sales and Use Tax. Tenant hereby covenants and agrees to pay monthly to County, as "Additional Rent," any sales, use or other tax, or any imposition in lieu thereof (excluding State and /or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the Premises imposed by the United States of America, the State of Florida or Palm Beach County, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon County as Landlord, to the extent as applicable.

5.08 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease other than the annual rent shall be considered "Additional Rent," whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to County with regards to annual rent.

5.09 Licenses, Fees, and Taxes. On or before their respective due dates, Tenant shall pay all applicable federal, state and local taxes, fees and special assessments levied upon Tenant, the Premises, the estate hereby granted, the business conducted on the Premises, any property used in connection with Tenant's business, and any rentals or other sums payable hereunder

5.10 Accord and Satisfaction. In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Lease or under the law.

5.11 Inspector General. Pursuant to Ordinance No. 2009-049, County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. All contractors and parties doing business with County and receiving County funds are required to fully cooperate with the Inspector General, including receiving access to records relating to this Lease. Tenant shall cooperate with the Inspector General in any inspections, audits, reviews or investigations instituted pursuant to Ordinance No. 2009-049, as may be amended, related to this Lease. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the contractors, and their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and to detect corruption and fraud.

ARTICLE 6

CONSTRUCTION OF IMPROVEMENTS

6.01 Alterations or Additions, Tenant Construction Requirements. Tenant shall make no improvements, alterations or additions to the Premises or improvements constructed thereon, without the prior written consent of the Department. All improvements, alterations or additions constructed or placed on the Premises, or improvements constructed thereon, by Tenant shall be of attractive construction and first-class design; comply with any and all applicable governmental laws, regulations, rules and orders; follow standard construction methods; and shall be constructed in accordance with the requirements of this Article 6.

- A. Construction Requirements. Prior to constructing any improvements on the Premises, Tenant, without cost to County, shall prepare detailed preliminary construction plans and specifications for the improvements (hereinafter collectively referred to as the "Plans") in accordance with standards established by the Department and deliver the preliminary Plans to the Department for review, comment and adjustment. The Department shall review the preliminary Plans and provide a written response to Tenant after receipt of the preliminary Plans. In the event the Department does not approve the preliminary Plans, Tenant will be notified of the reasons for the disapproval and the necessary modifications and/or alterations to the Plans. Tenant shall resubmit modified Plans to the Department within thirty (30) days of the date of the Department's written notice of disapproval. Within one hundred twenty (120) days following approval of the preliminary Plans by the Department, Tenant shall prepare or cause to be prepared final working Plans in substantial conformity to the approved preliminary Plans and shall submit the final working Plans to the Department for approval. Upon approval of the final working Plans by the Department, Tenant shall obtain all permits and other government approvals required for the commencement of construction. Prior to commencement of construction, Tenant shall deliver to the Department one complete set of the final working Plans as approved by the governmental agencies exercising jurisdiction thereover. Minor changes from the final working Plans shall be permitted if such changes may be reasonably inferred from the final working Plans, or if they are made to comply with requirements of any governmental agency exercising jurisdiction thereover.
- B. Within sixty (60) days of Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Section 6.01, Tenant, at its sole cost and expense, shall have prepared and deliver to the Department one (1) complete set of as-built Mylar drawings and one (1) set of Auto CADD files in the latest version acceptable by the Department.
- C. All improvements constructed upon the Premises shall be completed at Tenant's sole cost and expense and shall be completed in accordance with the standards established by the Department.
- D. The construction or installation of improvements shall not interfere with the operation of the Airport or unreasonably interfere with the activities of other Airport tenants and users.

- E. The County shall have no obligation whatsoever to approve the installation of any improvements within any Licensed Areas.

6.02 Construction Bonds. Tenant shall ensure that all improvements are constructed to completion in accordance with the approved Plans and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials. Tenant, at its sole cost and expense, shall cause to be made, executed and delivered to County prior to commencement of any improvements to the Premises, a bond, drawn in a form and issued by a company approved by County, guaranteeing compliance by Tenant of its obligations arising hereunder. County shall be named as a dual obligee on the bonds.

6.03 Contractor Requirements. Tenant shall require contractors to furnish for the benefit of County a public construction bond as required under Section 255.05, Florida Statutes, in a form approved by County. Tenant shall require its contractors to name County as a dual obligee on the bond(s). Tenant shall also require contractors to furnish satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive auto insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as the Risk Management Department may reasonably require. The Risk Management Department may require additional insurance for any alterations or improvements approved hereunder, in such amounts as the Risk Management Department reasonably determines to be necessary.

6.04 No Liens. Tenant agrees that nothing contained in this Lease shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida and understands that County's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Tenant of this provision of this Lease. If so requested by County, Tenant shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's estate shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Premises or other County property in connection with any work performed by or on behalf of Tenant, Tenant shall satisfy such claim, or transfer same to security, within thirty (30) days from the date of filing. In the event that Tenant fails to transfer or satisfy such claim within the thirty (30) day period, County may do so and thereafter charge Tenant all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorneys' fees, and Tenant shall promptly pay to County all such costs upon demand, as Additional Rent.

ARTICLE 7

OBLIGATIONS OF TENANT

7.01 Compliance with Regulations. Tenant covenants and agrees to observe and obey, and to require its subtenants, officers, employees, guests, invitees and those doing business with it to observe and obey such rules and regulations of the Department and County (including amendments and supplements thereto) regulating the conduct and operations of Tenant and others on the Premises as may from time to time be promulgated. The obligation of Tenant to require such observance and obedience on the part of its subtenants, guests, invitees and business visitors shall pertain only while such persons are on or in occupancy of any portion of the Premises.

7.02 Disturbances. Tenant shall conduct its 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.

7.03 Noise and Vibrations. Tenant shall take all reasonable measures to:

- A. Reduce to a minimum, vibrations tending to damage any equipment, structure, building or portion of a building on the Airport; and
- B. Keep the sound level of its operations as low as possible.

7.04 Regulation of Conduct. Tenant shall control the conduct, demeanor and appearance of its employees, subtenants, invitees and others doing business at the Airport and, promptly upon objection from County concerning the conduct, demeanor and appearance of any such persons, shall take all reasonable steps necessary to remove the cause of objection.

7.05 Nuisance, Waste or Injury. Tenant shall not commit any nuisance, waste or injury on the Airport and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of any nuisance, waste or injury on the Airport.

7.06 Vapors, Fumes or Emissions. Tenant shall not create, nor permit to be caused or created upon the Airport any obnoxious odor, smoke, noxious gases or vapors; provided, however, that fumes resulting from the normal operations of properly certified and maintained trucks and other vehicles shall be excepted from this provision. Tenant shall ensure that emissions generated by any such trucks, and other vehicles shall comply with all provisions of applicable environmental emissions laws and regulations.

7.07 Utilities Systems. Tenant shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utilities systems that are also used by other occupants, customers or users of the Airport.

7.08 Overloading of Floor or Paved Areas. Tenant shall not overload any floor or paved area on the Premises and shall repair, at its sole cost and expense, any floor, including supporting members, and any paved area damaged by overloading.

7.09 Hazardous Conditions. Tenant shall not do or permit to be done any act or thing upon any area of the Airport that:

- A. Will invalidate or conflict with any insurance policies covering the Premises or other areas of the Airport; or
- B. May constitute a hazardous condition that increases the risks normally attendant upon the operations permitted by this Lease.

7.10 Flammable Liquids. All flammable liquids that are kept or stored in accordance with this Lease must at all times be handled, stored and used in accordance with all applicable federal, state and local laws.

7.11 Fire Extinguishing System. From time to time and as often as reasonably required by County or any governmental authority having jurisdiction, Tenant shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus maintained by Tenant or any subtenant.

7.12 Vending Machines. Tenant shall not place any coin or token operated vending machine or similar device (including, but not limited to, pay telephones, beverage or food machines, or other commodities) upon or within the Premises, without the prior written consent of County, which consent may be granted or withheld by County in its sole discretion for any reason or no reason at all.

7.13 Emergency Evacuation and Hurricane Plans. Tenant shall prepare and maintain emergency evacuation and hurricane plans consistent with County's plans for the Airport. The plans shall include detailed procedures of actions to be taken by Tenant if an evacuation need or hurricane alert warning is present. Tenant shall provide copies of the plans to County upon request. In addition, hurricane plans shall be annually updated, if requested by County.

ARTICLE 8

SECURITY OF PREMISES

Tenant acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all personal property, inventory, equipment, facilities and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to its facilities, and expressly agrees to comply with, and to require its employees and contractors to fully comply with, all rules and regulations of County and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Tenant fully understands that the police security protection provided by County is

limited to that provided to any other business situated in Palm Beach County, Florida, by the Palm Beach County Sheriff's Office, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises and improvements constructed thereon, shall be the sole responsibility of Tenant and shall involve no cost to County.

ARTICLE 9
MAINTENANCE AND REPAIR, CLEANLINESS OF PREMISES

9.01 Maintenance and Repair.

- A. Tenant shall, at its sole cost and expense, maintain the Premises, improvements, and appurtenances thereto, in a safe and presentable condition consistent with good business practice, industry standards and in accordance with all applicable laws, regulations and rules of any governmental entity. Tenant shall repair any damage to the Premises and improvements caused by its employees, patrons, invitees, licensees, suppliers of service or furnishers of material, or any other persons whomsoever, and all damages caused by or resulting from or in any way arising out of Tenant's operations thereon or Tenant's use of the Premises. Tenant hereby agrees that it shall abide by the decision of County with respect to maintenance or repair of the Premises. Maintenance and repairs shall be in quality and class comparable to the original work, to preserve the Premises in good order and condition. County shall be the sole judge of Tenant's performance under this Section 9.01(A) as to the quality of maintenance and repair. Upon written notice by County to Tenant, Tenant shall perform the required maintenance or repair in accordance with Department's decision. If Tenant has not made a good faith effort, as determined by Department, to begin to perform said maintenance or repair within ten (10) days after written notice and to diligently pursue the same to completion, County shall have the right to enter on the Premises and perform the necessary maintenance or repair, and Tenant hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs incurred by County, plus twenty-five percent (25%) administrative overhead. Such maintenance or repair cost, plus the administrative cost, shall be paid to County by Tenant within thirty (30) days from the date of Department's invoice.
- B. Throughout the Term and any extension thereof, Tenant shall keep the Assigned Building Premises in good, tenable, useable condition. Without limiting the generality thereof, Tenant shall, at its sole cost and expense:
- (1) Paint the interior of the Assigned Building Premises, repair and maintain all doors, windows, equipment, lighting fixtures, furnishings and fixtures in good condition.
 - (2) Provide and maintain all 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.
 - (3) Repair any damage to the Premises, including, but not limited to, the Licensed Areas, paving or other surfaces, caused by any oil, gasoline, grease, lubricants or other liquids or substances having a corrosive or detrimental effect thereon.
- C. Except as otherwise expressly provided for herein, County shall have no obligation whatsoever to maintain or repair the Premises. County shall be responsible for maintenance of the structure of the Assigned Building Premises, including, the roof, foundation, floor slab, columns and exterior and load-bearing walls; provided, however, County shall have no obligation whatsoever repair any damage to the Premises if the necessity for making any such repair: (i) shall have been occasioned by Tenant's failure to satisfy

its obligations under this Article; or (ii) is as a result of the act, omission, or negligence of Tenant or any of its subtenants, contractors, employees, officers, licensees, agents or invitees. Notwithstanding any provision of this Lease to the contrary, County shall have no obligation whatsoever to maintain or repair Tenant's personal property or fixtures or any improvements made by Tenant to the Premises.

9.02 Cleanliness of Premises.

- A. Tenant shall not deposit nor store any waste, garbage or refuse of any kind on any part of the Airport. Tenant shall remove or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the use or occupancy of the Premises, Airport or out of any operations conducted thereon in a manner approved by County. Garbage, debris and other non-hazardous waste materials may be temporarily stored on the Premises in suitable garbage and waste receptacles. Tenant may deposit garbage, debris and other non-hazardous waste materials in containers provided by County designated for the collection and removal of waste. Containers shall be located within the immediate vicinity of the Cargo Building in such common use and access areas as determined by Department. The cost for disposal of such waste shall be prorated and billed by County to Tenant monthly, and shall be paid to County by Tenant within thirty (30) days from the date of Department's invoice.
- B. Tenant shall, at its sole cost and expense, keep the Premises and all of the fixtures, equipment and personal property, which are located in any part of the Premises and open to or visible by the general public, in a neat, clean and orderly condition and appearance at all times and shall maintain and keep the Cargo Building Ramp Area and Loading Dock areas free of obstructions in order to permit unrestricted movement of equipment.
- C. Tenant shall not permit the temporary or permanent storage of Derelict Vehicles on the Premises. Tenant shall cause Derelict Vehicles to be removed from the Premises within twenty-four (24) hours after written notice from County.
- D. Tenant shall not park boats, motor homes or recreational vehicles within the Premises. Tenant shall not stockpile or store inoperable equipment, machinery and/or containers within the Premises.
- E. County shall reasonably determine whether Tenant is in compliance with the obligations as provided for in this Section 9.02. Immediately upon Tenant's receipt of County's written notice of violation, Tenant shall commence such corrective action as required by County or as may be necessary to remedy such non-compliance to satisfaction of County. If corrective action is not immediately initiated and pursued in a diligent manner to completion, County may cause the same to be accomplished and Tenant hereby expressly agrees that Tenant shall assume and be liable to County for payment of all costs incurred by County, plus twenty-five percent (25%) for administrative overhead. Such cleaning, removal and grounds maintenance costs, plus the administrative cost, shall be due and payable to County within thirty (30) days of the date of County's written notice. County shall not be liable for any damage or inconvenience or interruption of the business of Tenant occasioned by the exercise of County's rights under this Section 9.02.

9.03 Inspections. County shall have the right to enter the Premises at reasonable times to inspect same for the purpose of determining whether Tenant is in compliance with the requirements of this Lease. In the event Tenant is not in compliance with this Lease, as reasonably determined by County, County shall provide Tenant with written notice of such noncompliance. Tenant shall commence corrective action to remedy such noncompliance to the satisfaction of County upon receipt of the notice of noncompliance. If corrective action is not immediately initiated and pursued in a diligent manner to completion, County may cause the

same to be accomplished. Tenant agrees that Tenant shall assume and be liable to County for payment of all costs incurred by County, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall constitute additional rent hereunder and shall be paid to County by Tenant within thirty (30) days from the date of Department's invoice.

ARTICLE 10

UTILITIES

10.01 Utility Costs. Tenant shall pay for all utilities used by it. County shall provide water and sewer utilities, the costs of which shall be prorated and billed by County to Tenant monthly. County also reserves the right to charge Tenant for electric utilities to all common areas serving the Cargo Building. Tenant's share of utility costs shall be determined as a proportionate percentage of the total billable square feet contained in the Cargo Building. Tenant shall have the right, but not the obligation, at its sole cost and expense, to connect to any and all utility mainlines or cables existing at the Effective Date of this Lease or installed during the Term. County shall have the right to require Tenant to provide, at Tenant's sole cost and expense, separate meters or connections to any and all utility mainlines or cables in which case Tenant shall pay any charges according to the metered usage. Utility costs shall be paid to County by Tenant within thirty (30) days from the date of Department's invoice.

10.02 Interruption of Service. No failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made therefore) shall be or be construed to be an eviction of Tenant or grounds for any diminution or abatement of rental or shall be grounds for any claim by Tenant under this Lease for damages, consequential or otherwise.

10.03 Industrial Waste Systems. Tenant shall provide, operate and maintain adequate facilities for separating, neutralizing and treating industrial waste and foreign materials generated within the Premises and the proper disposal thereof as required by all applicable federal, state and local laws, regulation and rules, as now or hereafter amended.

ARTICLE 11

AIRPORT SECURITY PROGRAM

Tenant expressly acknowledges and accepts full responsibility to maintain the integrity of the airfield operations area and hereby agrees to fully comply with all federal, state and local laws, rules and security requirements applicable to Tenant's operations, as now or hereafter promulgated or amended, including, but not limited to, Title 14, Part 139 of the Code of Federal Regulations and Title 49, Part 1542 of the Code of Federal Regulations and the Palm Beach County Criminal History Record Check Ordinance (R-2003-030). Tenant shall comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto. Notwithstanding any provision of this Lease to the contrary, Tenant shall comply with such other security policies, procedures, rules and regulations as may be prescribed by County, the Department, FAA, or TSA and take such steps as may be necessary or directed by County, the Department, FAA, or TSA to ensure that subtenants, employees, invitees and guests observe these requirements. If required by the Department, Tenant shall conduct background checks of its employees in accordance with applicable federal, state or local laws. Tenant shall pay any and all fees assessed for providing the security badges for Tenant's employees and contractors, and other fees that may be imposed. All costs associated with the construction and repair of the security fence, barriers, access control and monitoring system, including, but not limited to, gates, signs or locks (keying and re-keying), which are installed now or in the future at the Premises shall be borne by Tenant. Tenant shall rectify any security deficiency or other deficiency as may be determined as such by County, the Department, FAA or TSA. In the event Tenant fails to remedy any such deficiency, County may do so at the cost and expense of Tenant. Tenant acknowledges and agrees that County shall have the right to take whatever action is necessary to rectify any security deficiency or other deficiency as may be determined by County, the Department, FAA or TSA. Tenant shall be solely responsible for any fines, penalties, costs, expenses (including attorneys' fees and costs), and damages incurred by County and/or Tenant as a result of Tenant's failure to strictly comply with the requirements of this Article 11. The provisions of this paragraph shall survive the expiration or any other termination of this Lease.

ARTICLE 12
INSURANCE REQUIREMENTS

12.01 Insurance Requirements. Tenant, at its sole cost and expense, shall maintain in full force and effect throughout the Term and any extension thereof, the insurance coverages, limits and endorsements required herein. Neither the requirements contained in this Article 12, nor County's review or acceptance of insurance, shall in any manner limit or qualify the liabilities and obligations assumed by Tenant hereunder.

- A. Property Insurance. Tenant shall maintain Property Insurance in an amount not less than 100% of the total replacement cost of any betterments and improvements made by or on behalf of Tenant to the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than 25% of the Property Insurance limit. Tenant shall maintain Flood Insurance, regardless of the flood zone, in an amount not less than 100% of the total replacement cost of the betterments and improvements made by or on behalf of Tenant to the Premises or the maximum amount available from the National Flood Insurance Program, whichever is less. Tenant shall maintain Windstorm Insurance, unless included as a covered peril in the Property Insurance, in an amount not less than 100% of the total replacement cost of the betterments and improvements made by or on behalf of Tenant to the Premises or the maximum amount available under the Florida Windstorm Underwriting Association, whichever is less. Tenant shall cause County to be endorsed as a "Loss Payee" on the policies. The "Loss Payee" endorsement shall provide coverage on a primary basis and shall read "Palm Beach County Board of County Commissioners, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406."
- B. Business Automobile Liability Insurance. Tenant shall maintain Business Automobile Liability Insurance covering all Owned, Hired, and Non-Owned Vehicles used on the Airport in an amount of not less than \$1,000,000 Combined Single Limit per occurrence for Bodily Injury (including death) and Property Damage Liability; provided however, that if the scope and conduct of Tenant's operations under this Lease require vehicle access to the Airport's Aircraft Operations Area, Tenant shall maintain Business Automobile Liability Insurance in an amount not less than \$5,000,000 Combined Single Limit per occurrence for Bodily Injury (including death) and Property Damage Liability. Notwithstanding the foregoing, if the scope and conduct of Tenant's operations under this Lease do not involve the operation, ownership or use of any vehicle, then this requirement shall include automobile liability for Hired & Non-Owned vehicles only. Coverage shall be provided on a primary basis.
- C. Commercial General Liability Insurance. Tenant shall maintain Commercial General Liability Insurance at limits of not less than \$5,000,000 Combined Single Limit per occurrence for Personal Injury, Bodily Injury (including death) and Property Damage Liability and shall include, but not be limited to, Premises and Operations, Personal Injury, Products-Completed Operations and Contractual Liability. Coverage shall be underwritten by a company or companies, which may be subject to the acceptance of County, in its reasonable discretion. Coverage shall be provided on a primary basis.
- D. Worker's Compensation Insurance. Tenant shall maintain Workers Compensation Insurance applying to all employees for Statutory Limits in compliance with Chapter 440, Florida Statutes and applicable Federal Laws. Coverage shall include Employers Liability with minimum limits of \$100,000 Each Accident, \$500,000 Disease-Policy Limit, and \$100,000 Disease-Each Employee unless otherwise stated. In the event Tenant subcontracts any portion of the work or services under this Lease to another party, Tenant shall be responsible for ensuring its subcontractors maintain Worker's Compensation & Employers Liability Insurance.

12.02 Waiver of Subrogation. By entering into this Lease, Tenant agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage should Tenant enter into such an agreement on a pre-loss basis. Nothing contained in this Section shall be construed as an obligation of Tenant to provide a Waiver of Subrogation in the event that Tenant's insurer will not provide it.

12.03 Additional Insured. Tenant shall endorse County as an "Additional Insured" on Tenant's Commercial General Liability Insurance. The "Additional Insured" endorsements shall provide coverage on a primary basis. The "Additional Insured" endorsement shall read: "Palm Beach County, a Political Subdivision of the State of Florida, its Board of County Commissioners, Officers, Employees and Agents, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida 33406".

12.04 Certificate of Insurance. A signed Certificate or Certificates of Insurance, evidencing that required insurance coverage(s) has been procured or maintained by Tenant in the types and amount(s) required hereunder, shall be delivered to County prior to the Effective Date. The Certificate(s) of Insurance shall clearly state that Palm Beach County is an "Additional Insured" as required herein. Certificate(s) of Insurance shall also endeavor to provide thirty (30) days written notice to County prior to cancellation (ten (10) days for nonpayment of premium) or non-renewal of coverage. Required insurance shall be subject to the review, acceptance and approval of County, at its reasonable discretion, as to form and types of coverage. Tenant's failure to maintain all insurance policies required herein shall constitute a material default of this Lease by Tenant, entitling County to exercise any remedies available to it under this Lease, at law and in equity, including the right to immediately terminate this Lease.

12.05 Claims-Made Liability. When any of Tenant's liability insurance policies is provided under a Claims-Made Liability form, Tenant agrees to the following additional special conditions:

- A. The Certificate of Insurance issued to County shall clearly indicate whether the Claims-Made Liability form applies, include the retroactive date of coverage and indicate if the limits are subject to annual aggregate. In the event aggregate limits are applicable, Tenant agrees to maintain an aggregate limit not less than three (3) times the per occurrence limit of liability required in Sections 12.01(A) through (D) above.
- B. Tenant shall purchase a Supplemental Extended Reporting Period providing an additional reporting period of not less than three (3) years in the event a Claims-Made liability policy is canceled, non renewed, switched to an Occurrence Form, renewed with an advanced retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period during the term of this Lease. All insurance policies required hereunder may be written to include a reasonable deductible or self-insured retention, unless otherwise stated or limited. Limits on said deductible amounts may be subject to review and approval. When requested, Tenant shall submit a copy of its most recent financial statement in order to justify a particular deductible or self-insured retention amount.

12.06 Self-Insurance. County may allow insurance coverage required herein to be provided by Tenant's self-insurance plan, subject to prior written approval of County's Risk Management Department.

12.07 Right to Review. County, by and through its Risk Management Department, in cooperation with the Department, reserves the right to periodically review any and all policies of insurance and to reasonably adjust the limits of coverage required hereunder from time to time throughout the term of this Lease. County may reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, County shall provide Tenant written notice of such adjusted limits or rejection and Tenant shall comply within thirty (30) days of receipt thereof. Tenant shall be responsible for any premium revisions as a result of any such reasonable adjustment.

12.08 Invalidation of Policies. Tenant shall not knowingly use or permit the use of the Premises for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or Airport for County or Tenant. In the event Tenant's acts or failure to act shall cause cancellation of any policy, then Tenant shall immediately, prior to notification by County, take such action as is necessary to reinstate or replace the required insurance.

12.09 Deductibles, Coinsurance & Self-Insured Retention. Tenant shall be fully and solely responsible for any deductible, coinsurance penalty or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

12.10 No Representation of Coverage Adequacy. Tenant acknowledges the limits, coverages and endorsements required by this Article 12 are intended to minimize liability for County. Tenant agrees that it will not rely upon the requirements of this Article 12 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Tenant against any loss exposures, whether as a result of this Lease or otherwise.

ARTICLE 13

DAMAGE OR DESTRUCTION OF PREMISES OR IMPROVEMENTS

13.01 Damage or Destruction. Tenant hereby assumes full responsibility for the condition of the Premises and character, acts and conduct of all persons admitted to the Premises by or with the actual or constructive consent of Tenant or by or with the consent of any person acting for or on behalf of Tenant. If the Premises, improvements, or any part thereof, are damaged in any way whatsoever by the act, default or negligence of Tenant or its sublessees, contractors, employees, officers, licensees, agents or invitees, Tenant shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Tenant shall commence such restoration within thirty (30) days of such damage and shall diligently pursue such restoration to completion in accordance with Article 6 of this Lease. Such repairs, replacements or rebuilding shall be performed by Tenant in accordance with the construction requirements established by the Department. If Tenant fails to restore the Premises as required above, County shall have the right to enter the Premises and perform the necessary restoration, and Tenant hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs incurred by County, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be paid to County by Tenant within thirty (30) days from the date of Department's invoice.

13.02 Partial Destruction. If any of the improvements on the Premises are damaged or destroyed in part by fire or other casualty, County may terminate this Lease upon written notice to Tenant within ninety (90) days after the date of any such damage or destruction or commence restoration of the Premises within a commercially reasonable period of time subject to the limitations set forth herein. In the event of restoration of the Premises by County pursuant to this paragraph, Tenant's obligation to pay rental shall be abated proportionately on a square footage basis as to that portion of the Assigned Building Premises rendered unusable by reason of casualty commencing on the date of the casualty. Such abatement shall continue until thirty (30) days after notice by County to Tenant that the Assigned Building Premises have been substantially repaired or restored. Notwithstanding any provision of this Lease to the contrary, County shall have no obligation under this Lease to restore the Premises in the event the casualty was the result of the act, default or negligence of Tenant or its sublessees, contractors, employees, officers, licensees, agents or invitees. In such event, Tenant shall be obligated to restore the Premises in accordance with Section 13.01 above with no abatement in rental.

13.03 Total Casualty. In the event of a total casualty to the Premises, which renders the Premises unusable, as reasonably determined by County, either party shall have the right to terminate this Lease within ninety (90) days of the date of the casualty by delivering a written notice of termination to the other party in accordance with the notice provisions in this Lease; provided, however, Tenant shall not have the right to terminate in the event the casualty was the result of the act, default or negligence of Tenant or Tenant's sublessees, contractors, employees, officers, licensees, agents or invitees. In such event, Tenant shall be obligated to restore the Premises in accordance with Section 13.01 above with no abatement in rental. In the event neither party terminates this Lease pursuant to this Section 13.03 and County elects to restore the Premises, Tenant's obligation to pay rental shall be abated until thirty (30) days after notice by County to Tenant that the Premises have been substantially repaired or restored.

13.04 Waiver. Tenant hereby waives any claim against County for any and all liability, damages or compensation in the event this Lease is terminated pursuant to Sections 13.02 or 13.03 above.

13.05 Limitations. Notwithstanding any provision of this Lease to the contrary, County shall have no obligation to repair, rebuild or restore Tenant's personal property or fixtures or any improvements made by Tenant to the Premises. In the event County elects to restore or rebuild the Premises following a casualty, County's obligation to restore, rebuild or restore the Premises pursuant to this Lease shall exist only to the extent of the insurance proceeds received by County as a result of such casualty. Tenant shall not be entitled to and hereby waives any claims against County for any compensation or damage for any loss of use of the Premises, in whole or in part, or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. In addition, County shall not be liable for any damage or inconvenience or interruption of the business of Tenant occasioned by fire or other casualty.

13.06 Insurance Proceeds. Upon receipt by Tenant of the proceeds of any applicable insurance policy or policies, the proceeds shall be deposited in an escrow account approved by County so as to be available to pay for the cost of such repair, replacement or rebuilding. Any insurance proceeds shall be disbursed during construction to pay the costs of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements and the damage was caused by Tenant or its sublessees, contractors, employees, officers, licensees, agents or invitees, Tenant shall pay any additional sums required into said escrow account. If the amount of the insurance proceeds is in excess of the costs of repair, replacement or rebuilding, the amount of such excess shall be remitted to Tenant.

ARTICLE 14 **ENCUMBRANCES**

Tenant shall not, in any manner, mortgage, pledge or otherwise encumber this Lease, the Premises or any improvements now existing or hereinafter erected or constructed upon the Premises without County's prior written consent, which consent may be granted or withheld by County in its sole discretion for any reason or no reason at all. Any such encumbrance without County's approval shall be null and void. This provision shall be construed to include a prohibition against any mortgage, pledge, or encumbrance by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

ARTICLE 15 **TITLE TO IMPROVEMENTS**

15.01 Title to Improvements. Tenant acknowledges and agrees that County holds and shall hold sole and absolute title to the Premises as of the Commencement Date. During the Term, Tenant shall be deemed to be the owner of all improvements constructed by Tenant upon the Premises. Upon expiration of the Term or its sooner termination as provided herein, all improvements constructed or placed upon the Premises by Tenant, title to which has not previously vested in County hereunder, shall become the absolute property of County, and County shall have every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

15.02 Removal of Improvements. Notwithstanding any provision of this Lease to the contrary, County shall be entitled, at its option, to have the Premises returned to County free and clear of some or all of the improvements constructed by Tenant at Tenant's sole cost and expense. In such event, County shall provide timely notification to Tenant of its election to require removal of improvements and, to the extent possible, County shall notify Tenant at least sixty (60) days prior to the expiration or termination of this Lease. Tenant shall have sixty (60) days from date of notice within which to remove the improvements. If Tenant fails to remove the improvements, County may remove the improvements. Tenant agrees that Tenant shall fully assume and be liable to County for payment of all costs of removal of the improvements (whether direct or indirect) incurred by County, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be paid to County by Tenant within thirty (30) days from the date of Department's invoice.

15.03 Survival. The provisions of this Article 15 shall survive expiration or termination of this Lease.

ARTICLE 16
EXPIRATION OF LEASE, DEFAULTS, REMEDIES AND TERMINATION

16.01 Expiration. This Lease shall automatically terminate at the end of the Term, unless terminated sooner as provided for herein.

16.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

- A. The vacating or abandonment of the Premises by Tenant.
- B. The failure by Tenant to pay any sum due hereunder within three (3) days after the same shall become due.
- C. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure continues for a period of fifteen (15) days after written notice thereof from County to Tenant; provided, however, that if the nature of Tenant's default is such that more than fifteen (15) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within such fifteen (15) day period and thereafter diligently pursues such cure to completion. Nothing contained in this paragraph shall be deemed to alter or affect the cure period for performance of any covenant, condition or provision for which a specific time period is provided in this Lease.
- D. To the extent permitted by law, (i) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.
- E. A default by Tenant of any other agreement, permit or lease between County and Tenant, which default has not been cured within the applicable cure period provided in such agreement, permit or lease.

Notwithstanding any provision of this Lease, Tenant acknowledges and agrees that County may require Tenant to immediately cease any activity, which could result in an airport hazard or endanger safety of any other Airport user, as reasonably determined by County.

16.03 Remedies. In the event of any default or breach by Tenant, County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which County may have under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- A. Declare the entire rent for the balance of the term or any part thereof due and payable forthwith, and bring an action for the recovery thereof.
- B. Terminate Tenant's right to possession of the Premises by any lawful means and reenter and retake possession of the Premises for the account of Tenant, in which case the rent and other sums hereunder shall be accelerated and due in full, and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what County is able to recover from its good faith efforts to relet the Premises, which deficiency shall be paid by Tenant.

Upon such reletting, all rentals received by County shall be applied, first to the payment of any indebtedness, other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by County due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Premises including reasonable attorneys' fees, and reasonable real estate commissions paid by County relating to the unexpired term of this Lease; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be paid to Tenant.

- C. Treat this Lease as terminated and reenter and retake possession of the Premises for the account of County, thereby terminating any further liability under this Lease on the part of Tenant and County. Notwithstanding the foregoing, County shall have a cause of action to recover any rent remaining unpaid when County retakes possession of the Premises for the account of County.
- D. Stand by and do nothing, holding Tenant liable for rent as it comes due.
- E. Pursue any other remedy now or hereinafter available to County under the laws of the State of Florida.

Notwithstanding anything in this Lease to the contrary, County shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and County reserves all rights which laws of the State of Florida confer upon a landlord against a tenant in default. Tenant hereby waives any additional notice Tenant may be entitled to pursuant to Florida law.

16.04 Termination by Tenant. Tenant may terminate this Lease, if Tenant is not in default of this Lease (including, but not limited to, its payments to County hereunder), by giving County sixty (60) days advance written notice, upon or after the happening of any one of the following events:

- A. The issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes or a substantial part of the Premises for the purposes permitted hereunder, which injunction remains in force for a period of at least ninety (90) days.
- B. The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of thirty (30) days after receipt from Tenant of written notice to remedy same; provided, however, that no notice of cancellation, as provided herein, shall be of any force or effect if County shall have remedied the default prior to receipt of Tenant's notice of cancellation; or in the event the same cannot be cured within such thirty (30) day period and County has commenced such cure and thereafter diligently pursues the same until completion.
- C. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Tenant, for a period of at least ninety (90) days.

16.05 Default by County. County shall not be in default unless County fails to perform obligations imposed upon County hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to County, specifying wherein County has failed to perform such obligations; provided, however, that if the nature of County's default is such that more than thirty (30) days are reasonably required for its cure then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursue such cure to completion.

16.06 Surrender of Premises. Tenant expressly agrees that it shall immediately surrender the Premises to County in good condition, upon expiration or termination of this Lease, depreciation and wear from ordinary use for the purpose for which the Premises were leased

being excepted. In the event Tenant shall holdover, refuse, or fail to give up the possession of the Premises at the termination of this Lease, Tenant shall be liable to County for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to County during the entire time period of such holdover, double rental, as provided for in Section 83.06, Florida Statutes. Tenant shall remove all of its personal property from the Premises prior to the expiration of this Lease. Any personal property of Tenant not removed by Tenant shall become the property of County, or alternatively, may be disposed of by County at Tenant's expense.

ARTICLE 17

ASSIGNMENT AND SUBLETTING

17.01 Assignment by Tenant. Tenant shall not in any manner assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise convey an interest in this Lease, or any portion of Premises, without the prior written consent of County ("Assignment"), which consent may be granted or withheld in County's sole and absolute discretion. Notwithstanding the foregoing, the consent of County shall not be withheld for an Assignment of this Lease in its entirety where all or substantially all of the assets of Tenant are acquired by another entity by reason of a merger or consolidation; provided that the successor entity agrees to assume all obligations of Tenant hereunder and to comply with terms and conditions set forth in this Lease. Tenant further agrees to provide County with such documentation relating to the merger or consolidation of Tenant and the successor entity as County requires in its reasonable discretion.

17.02 Subletting By Tenant. Tenant shall not sublease the Premises, or any portion thereof, without the prior written consent of County, which consent may be granted or withheld in County's sole and absolute discretion. Tenant acknowledges that County's consent to the sublease of the Premises, in whole or in part, shall not release Tenant from its obligations hereunder, including, without limitation, the obligation to pay the rentals, fees, and charges provided herein.

17.03 General. This Article 17 shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance or sublease by operation of law, legal process, receivership, bankruptcy or other wise, whether voluntary or involuntary.

ARTICLE 18

INDEMNIFICATION

Tenant agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which County is named or joined, arising out of this Lease or Tenant's use or occupancy of the Premises, including, without limitation those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of, or incident to, or in connection with Tenant's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Tenant, or any breach of the terms of this Lease; provided, however, Tenant shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of County its respective agents, servants, employees and officers. Tenant further agrees to hold harmless and indemnify County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Tenant's activities or operations or use of the Premises, whether or not Tenant was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving said activities. Said indemnification shall be extended to include all suppliers, furnishers of material, or anyone acting for, on behalf of, or at the request of Tenant. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that County would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Article 18 shall survive the expiration or termination of this Lease.

ARTICLE 19
SIGNS

No signs, posters or similar devices shall be erected, displayed or maintained by Tenant on the Premises without the prior, written consent of County, which consent may be granted or withheld by County for any reason or no reason at all. All signs not approved by County shall be immediately removed at the sole cost and expense of Tenant upon written demand therefor by County.

ARTICLE 20
LAWS, REGULATIONS AND PERMITS

20.01 General.

- A. Tenant shall at all times be and shall remain in full and complete compliance with all applicable federal, state and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended or promulgated, including, without limitation, FAA Advisory Circulars and Airport Rules and Regulations.
- B. Tenant shall require its appropriate managers, supervisors and employees to attend such training and instructional programs as Department may from time to time require, in connection with policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations or the Rules and Regulations of the Department.

20.02 Permits and Licenses Generally. Tenant shall, at its sole cost and expense, obtain, comply with and maintain current any and all permits, licenses and other governmental authorizations required for its operations and activities on the Premises. Upon the written request of County, Tenant shall provide County with certified copies of any and all permits and licenses requested by County pursuant to this Section 21.02.

20.03 Air and Safety Regulation. Tenant agrees that it shall conduct its operations and activities under this Lease in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable federal, state and local laws and regulations and shall require the observance thereof by all employees, subtenants, contractors, business invitees and all other persons transacting business with or for Tenant resulting from, or in any way related to, the conduct of Tenant's business on the Airport. Tenant shall procure and maintain such fire prevention and extinguishing devices as required by County and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Airport, as same may now exist or hereafter come into being. Tenant hereby agrees that neither Tenant, nor employee or contractor or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

20.04 Environmental and Natural Resource Laws, Regulations and Permits.

- A. Notwithstanding any other provision of this Lease to the contrary, Tenant hereby expressly covenants, warrants, guarantees and represents to County, upon which County expressly relies, that Tenant is knowledgeable of any and all federal, state and local governmental laws, ordinances, regulations, orders and rules, without limitation, which govern or which in any way, apply to the direct or indirect results and impacts to the environment and natural resources due to, or in any way resulting from, the conduct by Tenant of its operations pursuant to this Lease or upon the Premises. Tenant agrees that it shall comply with all applicable federal, state and local laws, regulations and ordinances protecting the environment and natural resources, as now existing or hereafter amended or adopted, including, but not limited to, the Federal Clean Water Act,

Safe Drinking Water Act, Clean Air Act, Resource Conservation Recovery Act, and Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("Superfund").

- B. Tenant acknowledges and understands that its operations performed pursuant to this Lease may involve the generation, processing, handling, storing, transporting and disposal of certain hazardous and/or toxic materials which are, or may be, subject to regulation by federal, state or local laws, ordinances, regulations, rules, orders or other governmental rules and requirements.
- C. Tenant expressly covenants, warrants, guarantees and represents to County, upon which County expressly relies, that Tenant is knowledgeable of all such governmental laws and regulations governing hazardous and/or toxic waste, ground water contamination, air and water pollution, oil spills, sanitary and industrial waste, pollutants, cooling water and industrial storm water drainage. Tenant further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such hazardous and/or toxic waste materials, and all other pollutants and contaminants, in a manner which is both safe and in full compliance with any and all applicable federal, state and local laws and regulations.
- D. Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such governmental laws and regulations in the handling and disposal of any and all hazardous waste and/or toxic materials, and all pollutants or contaminants of any kind, resulting from or arising out of Tenant's operations conducted on the Airport, and Tenant shall, prior to commencement of any such operations pursuant to this Lease, secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter thereof. Tenant further represents, warrants, guarantees and covenants to County, upon which County hereby expressly relies, that Tenant, its employees, agents, contractors, and those persons that are required to be so trained working for, or on behalf of, Tenant have been fully and properly trained in the handling of all such hazardous and toxic waste materials, and other pollutants and contaminants, and that such training, at a minimum, complies with any and all applicable federal, state and local laws, ordinances, regulations, rulings, orders and standards, as now or hereafter amended.
- E. Tenant shall provide to County satisfactory documentary evidence of all such requisite legal permits and notifications, as hereinabove required and as may be further required, upon request, from time to time by County.
- F. If Tenant is deemed to be a generator of hazardous waste, as defined by State, Federal or local law:
 - (1) Tenant shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law;
 - (2) Provisions shall be made by Tenant to have an accurate inventory list (including quantities) of all such hazardous, toxic, and other contaminated or polluted materials, whether stored, disposed of, or recycled, available at all times on the Premises for inspection at any time by County;

- (3) Tenant shall notify the Palm Beach County Solid Waste Authority, Palm Beach County Environmental Resources Management Department, and such other agencies as County may from time to time designate, of all hazardous waste activities so that Tenant shall be included as a County Generator of such waste; and
 - (4) Tenant agrees that an emergency coordinator and phone number shall be furnished to the Department, Risk Management Department - Safety Division, and to all appropriate governmental entities having jurisdiction thereof in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- G. Violation of any part of the foregoing provisions or disposition by Tenant of any sanitary waste, pollutants, contaminants, hazardous waste, industrial cooling water, sewage or any other materials in violation of the provisions of this Article 20 shall be deemed to be a default under this Lease and shall be grounds for termination of this Lease unless cured within ten (10) days of notice from County or as expeditiously as possible if the default cannot be completely cured within the ten (10) day period. Tenant shall be strictly liable for, and hereby expressly assumes all responsibility for all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with the improper use, handling, storage, and/or disposal of all pollutants or contaminated materials, as same are defined by law, by Tenant or by Tenant's employees, invitees, suppliers of service or furnishers of materials or any other person whomsoever, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Tenant pursuant to the terms of this Lease. All such remedies of County with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive expiration or termination of this Lease.
- H. Tenant agrees to protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against any and all claims, liability, expenses, losses, costs fines and damages (including reasonable attorney fees at trial and appellate levels), arising from, resulting out of or in any way caused by or connected to Tenant's failure to comply with any and all applicable federal, state and local laws, ordinances, regulations, rulings, orders and standards, now or hereafter promulgated for the purpose of protecting the environment or natural resources. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 18 of this Lease. Tenant acknowledges the broad nature of this indemnification and hold-harmless clause and that County would not enter into this Lease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by County in support of this indemnification in accordance with laws of the State of Florida. The obligations arising under this Section 20.04(H) shall survive the expiration or termination of this Lease.

ARTICLE 21
AMERICANS WITH DISABILITIES ACT

Tenant shall comply with the applicable requirements of the Americans with Disabilities Act and any similar or successor laws, ordinances, rules, and regulations, including cooperation with County, concerning the same subject matter.

ARTICLE 22
DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND TENANT HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY TENANT, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF TENANT OR TENANT'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS JUDICIALLY DETERMINED TO HAVE BEEN CAUSED BY COUNTY'S SOLE NEGLIGENCE OR IS CAUSED BY COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE LEASING OF THE PREMISES, OR LICENSE TO USE THE LICENSED AREAS, PURSUANT TO THIS LEASE. TENANT RELEASES COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS LEASE. FURTHERMORE, TENANT ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY COUNTY OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS LEASE WAS AT ITS SOLE RISK.

ARTICLE 23
REMEDIES CUMULATIVE

The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

ARTICLE 24
GOVERNMENTAL RESTRICTIONS

24.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located for public purposes for a period in excess of ninety (90) days, either party may terminate this Lease by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Section 24.01 shall not act or be construed as a waiver of any rights Tenant may have against the United States as a result of such taking.

24.02 Federal Review. This Lease is subject to any applicable review by the Federal Aviation Administration to determine satisfactory compliance with Federal law and said Lease shall be in full force and effect and binding upon both parties pending review and approval by said Federal Aviation Administration, if applicable; provided, however, that upon such review all parties hereto agree to modify any of the terms hereof which shall be determined by the Federal Aviation Administration to be in violation of existing laws, regulations or other legally binding requirements.

24.03 County Tax Assessment Right. None of the terms, covenants and conditions of this Lease shall in any way be construed as a release or waiver on the part of County, as a political subdivision of the State of Florida, or any of the public officials of the County of Palm Beach, of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Premises, the business or property of Tenant.

24.04 Height Restriction. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Title 14, Part 77 of the Code of Federal Regulations, as now or hereafter amended.

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

24.06 Operation of Airport. Tenant expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.

24.07 Release. Tenant acknowledges that noise and vibration are inherent to the operation of Airport and hereby releases County from any and all liability relating to the same.

24.08 Exclusive Rights. Notwithstanding any provision of this Lease to the contrary, Tenant understands and agrees that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Assigned Building Premises, and that County may grant similar privileges to another lessee or other lessees on other parts of the Airport.

24.09 Hazardous Wildlife Attractants. Tenant shall be prohibited from using the Premises in a manner which attracts, or has the potential to attract, hazardous wildlife to or in the vicinity of the Airport. Tenant acknowledges that water detention and retention areas are considered wildlife attractants and shall request the approval of County prior to constructing a water detention or retention area within the Premises. If approved by County, water detention or retention areas shall be in compliance with the siting, design and construction requirements of County. Tenant further agrees to comply with the provisions of Federal Aviation Administration Advisory Circular No. 150/5200-33, as now or hereafter amended, as such circular is interpreted by County.

ARTICLE 25

NON-DISCRIMINATION

25.01 Non-discrimination in Employment. Tenant assures 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, creed, color, national origin, sex, sexual orientation, gender identity or expression, familial status, religion, marital status, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Tenant for the period during which Federal assistance is extended to County for the Airport, except where the Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates Tenant for the longer of the following periods: (1) the period during which the property is used by County for a purpose involving the provision of similar services or benefits; or (2) the period during which the County retains ownership or possession of the property. Tenant shall include this provision in all subleases and subcontracts.

25.02 Non-discrimination in Benefits and Services. Tenant for itself, its successors in interest and assigns, as a part of the consideration herefor, does hereby covenant and agree that: (1) no person on the grounds of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, familial status, religion, marital status, age or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) 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, creed, color, national origin, sex, sexual orientation, gender identity or expression, familial status, religion, marital status, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49 Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. In the event of breach of any of the above non-discrimination

covenants, County shall have the right to terminate this Lease and to re-enter and repossess the Premises and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision shall not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights. Tenant, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant 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 Regulations may be amended.

ARTICLE 26

COUNTY NOT LIABLE

County shall not be responsible or liable to Tenant for any claims for compensation or any losses, damages or injury whatsoever sustained by Tenant resulting from failure of any water supply, heat, air conditioning, electrical current, or sewage or drainage facility, or caused by natural physical conditions on the Premises, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God or state of war, civilian commotion or riot, or any cause beyond the control of County. All personal property placed on or moved on to the Premises shall be at the sole risk of Tenant. County shall not be liable for any damage or loss of any personal property placed or moved on to the Premises.

ARTICLE 27

AUTHORIZED USES ONLY

Notwithstanding anything to the contrary herein, Tenant shall not use or permit the use of the Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Premises or the Airport for County or Tenant.

ARTICLE 28

MISCELLANEOUS

28.01 Waiver. The failure of either party to insist on strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that either party may have for any subsequent breach, default, or non-performance, and neither parties' right to insist on strict performance of this Lease shall be affected by any previous waiver or course of dealing.

28.02 Subordination.

- A. Subordination to Bond Resolution. This Lease and all rights granted to Tenant hereunder are expressly subordinated and subject to the lien and provisions of the pledge, transfer, hypothecation or assignment made by County in the Bond Resolution, and County and Tenant agree that to the extent permitted by authorizing legislation, the holders of the bonds or their designated representatives may exercise any and all right of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Tenant and County with the terms and provisions of this Lease and Bond Resolution.
- B. Subordination to State/Federal Agreements. This Lease shall be subject and subordinate to all the terms and conditions of any instrument and documents under which County acquired the land of which the Premises are a part, and the improvements thereon, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Tenant understands and agrees that this Lease shall be subordinate to the provisions of any existing or future agreement between County and the United States of America or State of Florida, or any of

their agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of State or Federal funds for the development of the Airport.

28.03 Easements. Nothing in this Lease shall impair any existing utility easements, nor impair the right of access to any existing utility lines. County reserves the right to grant utility easements, licenses and rights-of way to others over, under, through, across or on the Premises; provided, however, that such grant is not materially detrimental to the proper conduct of Tenant's operations.

28.04 Relationship of the parties. Tenant or any successor in interest to this Lease, is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and County shall in no way be responsible therefor.

28.05 Governmental Authority. Nothing in this Lease shall be construed to waive or limit the County's governmental authority as a political subdivision of the State of Florida to regulate Tenant or its operations. The County's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statutes and laws, nor alter or impair the County's governmental functions, including, without limitation, the County's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of the County's governmental authority.

28.06 Rights Reserved to the County. All rights not specifically granted Tenant by this Lease are reserved to County.

28.07 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision, clause or any portion thereof of this Lease shall have no effect upon the validity of any other part or portion hereof.

28.08 Governing Law. This Lease shall be governed by and in accordance with the laws of the State of Florida.

28.09 Venue. Venue in any action, suit or proceeding in connection with this Lease shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida.

28.10 Inspections. Notwithstanding any provision of this Lease to the contrary, Tenant agrees that authorized employees and representatives of County and any federal, state and local governmental entity having jurisdiction over Tenant's operations or activities on the Premises shall have the right of access to the Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Lease and applicable laws.

28.11 Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Attn: Deputy Director, Airports Business Affairs
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, Florida 33406-1470
Fax: 561-471-7427

With a copy to:

Attn: Airport Attorney
Palm Beach County Attorney's Office
301 North Olive Ave, Suite 601
West Palm Beach, FL 33401
Fax: 561-355-4398

Tenant:

Fax: _____

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other party.

28.12 Paragraph Headings. The heading of the various articles and sections of this Lease are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

28.13 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida, without the prior written consent of County.

28.14 Binding Effect. The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibitions against or limitations regarding assignment or subletting.

28.15 Performance. The parties expressly agree that time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

28.16 Non-Exclusivity of Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or inequity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

28.17 Construction. No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

28.18 No Broker. Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees plus cost at trial and all appellate levels, expended or incurred in the defense of any such claim or demand. The obligations set forth in this paragraph shall survive the termination of this Lease.

28.19 Public Entity Crimes. As provided in Section 287.132-133, Florida Statutes, by entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

28.20 Consent or Action. In this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole, absolute and unfettered discretion of the County or Department, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Lease requires the County or Department's consent or approval or permits the County or Department to act, such consent, approval or action may be given or performed by the Director.

28.21 Entirety of Agreement. The parties agree that this Lease sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Lease may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

28.22 Remedies Cumulative. The rights and remedies of the parties hereto with respect to any of the terms and conditions of this Lease shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.

28.23 Annual Appropriation. Nothing in this Lease shall obligate County, during any fiscal year, to expend money or incur any liability that involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. County's obligations under this Lease, which involve the expenditure of money, shall be subject to annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners in accordance with Chapter 129, Florida Statutes, as it may be amended.

28.24 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by such reference.

28.25 Radon. 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 County's public health unit.

28.26 Survival. Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

Insert if applicable: 28.26 Termination of Prior Agreement. Upon the Commencement Date of this Lease, that certain Air Freight Building Lease between Lessee and County, dated (R-), shall be terminated in its entirety, provided, however, that any claim, cause of action, or other obligation to Lessee or to County then accrued, shall survive said termination and become a claim under this Lease.

(Remainder of page left blank intentionally)

IN WITNESS WHEREOF, County has caused this Lease to be signed by the Director of Airports, pursuant to the authority granted by the Board, and Tenant has caused these presents to be signed in its lawful name by its duly authorized officer, and the seal of Tenant to be affixed hereto the day and year first written above.

Signed, sealed and delivered in the presence of two witnesses for County:

Signature

Print Name

Print Name

Print Name

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**PALM BEACH COUNTY, a political
subdivision of the State of Florida,
by its Department of Airports**

By: _____
Director, Department of Airports

Signed, sealed and delivered in the presence of two witnesses for Tenant:

Signature

Print Name

Signature

Print Name

TENANT:

By: _____
Signature

Print Name

Title

(Seal)

EXHIBIT “A”

LEGAL DESCRIPTION

“ASSIGNED BUILDING PREMISES”

EXHIBIT “B”

“LICENSED AREAS”