

R 2011-1160

TERMINAL BUILDING LEASE AGREEMENT

THIS TERMINAL BUILDING LEASE AGREEMENT (this "Lease") is entered into this \_\_\_ day of \_\_\_\_\_ AUG 16 2011, 2011, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as "County" or "Lessor") and the General Services Administration, an executive agency of the United States of America (hereinafter referred to as "Lessee" or the "Government").

W I T N E S S E T H :

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

WHEREAS, County has constructed upon the Airport a terminal and related facilities; and

WHEREAS, Lessee requires the use of certain specific premises, facilities, rights and privileges in connection with its use of the Airport and County is willing to lease the same to Lessee upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for 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  
DEFINITIONS

- 1.01 "Airline-Airport Use and Lease Agreement" means the then current Airline-Airport Use and Lease Agreement approved by the Board, as such agreement may be amended from time to time, or any successor resolution or agreement adopted by the Board establishing rental rates for airline space within the Terminal Building. As of the Effective Date, the most current version of the Airline-Airport Use and Lease Agreement was approved pursuant to Resolution No. R-2006-1906 and is incorporated herein by reference.
- 1.02 "Airport" means the Palm Beach International Airport located in Palm Beach County, Florida.
- 1.03 "ATO Office Common Area" means the common hallways, bathrooms and break area, more particularly identified on the attached Exhibit "A" as "ATO Office Common Area" that Lessee shall have the nonexclusive license to use in common with other tenants of the ATO Office Space.
- 1.04 "ATO Office Common Area Charge" means a license fee assessed to Lessee for its use of ATO Office Common Area pursuant to Article 4.01(B) of this Lease.

- 1.05 "ATO Office Space" means the ticket office spaces located on the third level of the Terminal Building, which are more particularly identified on the attached Exhibit "A" as "ATO Office Space" and includes the Ticket Offices leased to Lessee.
- 1.06 "Board" means the Palm Beach County Board of County Commissioners.
- 1.07 "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.
- 1.08 "Common Areas" has the meaning set forth in Section 2.04(A).
- 1.09 "Department" means the Palm Beach County Department of Airports.
- 1.10 "Director of Airports" and "Director" means the Director or Acting Director of the Department of Airports or his or her designee.
- 1.11 "Effective Date" means the date that this Lease is approved by the Palm Beach County Board of County Commissioners and has been signed by all parties.
- 1.12 "General Clauses" means the general clauses set forth in the attached Exhibit "B".
- 1.13 "Initial Term" has the meaning set forth in Section 3.02.
- 1.14 "Initial Improvements" means the initial improvements to be made by County, to a portion of the Premises, consisting of approximately 825 square feet located on the second level of the Terminal Building across from the Concourse "C" Security Checkpoint, as identified in the attached Exhibit "C".
- 1.15 "Lease" means this Terminal Building Lease Agreement.
- 1.16 "Premises" means those certain areas of the Terminal Building more particularly identified in the attached Exhibit "A".
- 1.17 "Prior Lease Agreements" has the meaning set forth in Article 22.
- 1.18 "Renewal Term" has the meaning set forth in Section 3.03.
- 1.19 "Signatory Airline" has the meaning set forth in the Airline-Airport Use and Lease Agreement.
- 1.20 "Term" means the Initial Term and any Renewal Term.
- 1.21 "Terminal" and "Terminal Building" means the Airline Terminal Building located at the Airport, including any expansion thereof or any improvements thereto.
- 1.22 "Ticket Offices" means that portion of the Premises consisting of office space on the

third level of the Terminal Building.

- 1.23 "Type of Space" means the type of space as detailed in Exhibit "E" to the Airline-Airport Use and Lease Agreement.

## **ARTICLE 2**

### **PREMISES, RIGHTS AND USES**

- 2.01 Premises. County hereby demises and leases to Lessee, and Lessee rents from County the Premises upon the terms and conditions hereinafter set forth.
- 2.02 Relocation, Change of Locations. Notwithstanding anything in this Lease to the contrary, the Department may, at any time, provide Lessee with an alternative premises within the Terminal Building for its activities under this Lease. Lessee acknowledges and agrees that the alternative premises designated by the Department may vary in size or configuration from the Premises. In the event of a change to the Premises pursuant to this paragraph, the parties shall enter into an amendment to this Lease, which amendment shall: (i) replace Exhibit "A" with a description of the alternative premises; (ii) establish the date Lessee shall be required to relocate to the alternative premises and surrender possession of the Premises; (iii) provide the square footage of the alternative premises; and (iv) provide for the adjustment in rentals in accordance with square footage of the alternative premises. The Department shall provide Lessee with no less than ninety (90) days prior written notice of any change of Premises. In the event Lessee fails to relocate to the alternative premises as provided for herein, this Lease shall be canceled and of no further force or effect, and neither County nor Lessee shall be liable to the other for any damages of any kind whatsoever. Any amendment entered into pursuant to this paragraph or any amendment to increase or decrease the square footage of Premises may be executed by the Director on behalf of County.
- 2.03 Rights and Uses. The Premises shall be used solely by the Lessee as administration and support areas for the [REDACTED]. No other uses of the Premises are permitted.
- 2.04 General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to this Article 2, County hereby grants to Lessee:
- A. The nonexclusive use of the common areas within the Terminal Building for Lessee, its employees, contractors and agents. For purposes of this Lease, "Common Areas" means the public corridors, restrooms and other public areas within the Terminal Building. The Common Areas shall at all times be subject to the exclusive control and management of County. County shall the full right and authority to make all rules and regulations as County may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Common Areas; and
  - B. The nonexclusive right of ingress to and egress from the Terminal Building

over and across public roadways and walkways serving the Airport for Lessee, its employees, contractors and agents.

- C. Lessee shall also have the nonexclusive right to use the ATO Office Common Area. Lessee's right to use the ATO Common Area shall be in common with all other tenants of the ATO Office Space. The rights provided for herein shall be subject to rules and regulations established by County and the Department and any and all reasonable, nondiscriminatory fees and charges established by County for such uses.
- 2.05 Restrictions of Privileges, Uses and Rights. The rights granted under this Lease are limited to the maintenance and operation of the Premises pursuant to the terms and conditions of this Lease. Except as expressly set forth in Section 2.04, nothing in this Lease shall be construed to grant to Lessee the right to use any space or area improved or unimproved which is leased to a third party, or which County has not leased herein.
- 2.06 Employee Parking. County shall use its reasonable efforts to ensure that parking facilities are sufficient to accommodate Lessee's personnel employed on the Airport.

### ARTICLE 3 TERM AND TERMINATION

- 3.01 Effective Date. This Lease is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").
- 3.02 Commencement Date and Initial Term. The term of this Lease shall commence on the Effective Date and expire October 31, 2016 (the "Initial Term").
- 3.03 Renewal Term. Lessee may renew this Lease for a period of three (3) additional years (the "Renewal Term") upon written notice by Lessee to County of its intent to renew not later than ninety (90) calendar days prior to the expiration of the Initial Term, time being of the essence. Provided that Lessee has timely provided its notice of intent to renew to County and Lessee is not in default of any of the terms and conditions of this Lease, this Lease shall automatically be considered renewed upon the expiration of the Initial Term, without formal amendment hereto. Such Renewal Term shall be upon the same terms and conditions as set forth herein except there shall be no further Renewal Term.

- 3.04 Termination. This Lease may be terminated at any time by either party, with or without cause, upon ninety (90) calendar days prior written notice to the other party, in which event the parties shall be released from all obligations arising after the date of such termination except for those obligations which expressly survive termination of this Lease. Notwithstanding anything in this Lease to the contrary, termination of this Lease shall not relieve Lessee of any liability or obligations arising on or prior to the date of termination.

#### **ARTICLE 4** **RENTALS, FEES AND CHARGES**

4.01 Rental, ATO Office Common Area Charge and Reimbursement of Improvement Costs.

- A. Rental. Rental to be paid by Lessee for the Premises shall be in accordance with the rental rates for Signatory Airlines, as set forth in the Airline-Airport Use and Lease Agreement. Rental rates shall be adjusted in accordance with Section 4.05. As of the Effective Date, the initial rental for the Premises shall be as follows:

	Area Location/ Description	Square Footage	Type of Space	Initial Rate Per Square Foot	Initial Annual Rental
(i)	Ticket Office Space, Third Level	754	2	\$80.96	\$61,043.84
(ii)	First Level, Concourse "C"	2,008	4	\$62.97	\$126,443.76
(iii)	First Level, Concourse "C"	1,245	4	\$62.97	\$78,397.65
(iv)	Second Level, Concourse "A/B" Checkpoint Office	312	4	\$62.97	\$19,646.64
(v)	Second Level, Concourse "C" Checkpoint Office	301	4	\$62.97	\$18,953.97
(vi)	First Level Operations Area Offices; Concourse "A/B" Connector	4,925	4	\$62.97	\$310,127.25
(vii)	Second Level Offices; across from Concourse "C" Checkpoint entry	825	2	\$80.96	\$66,792.00

- B. ATO Office Common Area Charge. Lessee shall pay to County the ATO Office Common Area Charge for its use of ATO Office Common Area. The ATO Office Common Area Charge shall be calculated as follows:

ATO Office Common Area Charge =

$$\frac{\text{Square Footage of Ticket Office Space Leased to Lessee}}{3224 \text{ Square Feet of ATO Office Space}} \times 1218 \text{ square feet} \times \text{Type 2 Space Rate}$$

As of the Effective Date of this Lease, Lessee leases approximately 754 square feet of Ticket Office Space; therefore, the ATO Office Common Area Charge will initially be \$23,061.84 (i.e., 754 square feet / 3,224 square feet x 1,218 square feet x \$80.96 = \$23,061.84). The ATO Office Common Area Charge shall be payable in arrears, without demand, in equal monthly installments on or before the tenth (10<sup>th</sup>) day of each month. The ATO Office Common Area Charge shall be adjusted each October 1<sup>st</sup> throughout the Term of this Lease in accordance with Section 4.05. In addition to any other remedy provided for in this Lease, the Department, on behalf of County, shall have the right to revoke Lessee's license to use the ATO Office Common Area in the event Lessee fails to pay the ATO Office Common Area Charge when due.

- C. Reimbursement of Construction Costs for the Initial Improvements. Lessee shall pay to County, the amount of \$64,740.00, plus interest at the rate of five percent (5%) per annum, payable in equal monthly installments of \$1,221.72, for 60 months, for reimbursement of costs for construction of the Initial Improvements. In the event of expiration or earlier termination of this Lease prior to Lessee's full reimbursement payment of such construction costs, the entire balance of such construction costs remaining due shall be payable in full upon the expiration or earlier termination of this Lease.

#### 4.02 Commencement and Time of Payment.

- A. Payment of rental by Lessee to County, for those portions of the Premises listed in Section 4.01(A)(i) through (vi) above, shall commence upon the Commencement Date of this Lease.
- B. Payment of rental by Lessee to County, for that portion of the Premises listed in Section 4.01(A)(vii) above (Second Level Offices; located across from Concourse "C" Checkpoint entry), shall commence upon completion by County of the Initial Improvements and occupancy of such portion of the Premises by Lessee.
- C. Reimbursement by Lessee to County, for construction costs of the Initial Improvements, pursuant to Section 4.01(C) shall commence on the first day of the month following completion by County of the Initial Improvements and occupancy of such portion of the Premises by Lessee.
- D. The payment of rental and reimbursement of Initial Improvement Construction Costs in Sections 4.02 (A) through (C) above shall be payable in arrears, without demand, in equal monthly installments by the tenth (10<sup>th</sup>) day of each month following the month for which payment is due throughout the Term. Any rent payment due hereunder for a fractional month shall be calculated and paid on a per diem basis [calculated on the basis of a thirty (30) day month].

- 4.03 Other Charges. Other charges payable by Lessee to County, in addition to those specified elsewhere in this Lease shall be as follows:
- A. Employee Parking Charges. Lessee shall pay to County such charges as have been reasonably established by County for the use of employee parking areas designated in accordance with Section 2.06, which charges shall not exceed that which is charged to other commercial tenants in the Terminal Building.
  - B. Additional Rent. Any and all sums of money or charges required to be paid by Lessee under this Lease other than the 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 Lessee of all additional rent as are available to County with regard to rent.
- 4.04 Method of Payment. Lessee shall pay sums due hereunder, including, without limitation, rental payments, by electronic funds transfer ("EFT"). The Department shall designate a financial institution for receipt of EFT payments in accordance with the requirements of Title 48, Part 552.223-76 of the Code of Federal Regulations, entitled "Electronic Funds Transfer Payment," and made a part of the General Clauses.
- 4.05 Adjustment of Rental Rates and ATO Office Common Area Charge.
- A. Each October 1<sup>st</sup> throughout the Term of this Lease, the rental rates applicable to the Premises and the ATO Office Common Area as set forth in Sections 4.01(A) and (B) shall be adjusted in accordance with the provisions of the Airline-Airport Use and Lease Agreement relating to the adjustment of rates, fees and charges.
  - B. Notwithstanding anything in this Lease to the contrary, Lessee acknowledges and agrees County shall have the right to establish and maintain rental rates under this Lease to ensure compliance with the provisions of Section 710 of the Bond Resolution.
- 4.06 Failure to Pay Rental, Fees or Charges. In the event Lessee fails to pay rental, fees or charges as required to be paid under provisions of this Lease within ten (10) days after the earliest due date, interest shall accrue against the delinquent payment(s) at the rate established under Section 12 of the Contract Disputes Act of 1978 (41 USC §611) from the date due until payment is received by County. Implementation of this provision shall not preclude the Department from terminating this Lease for default in the payment of rental, fees and charges or from enforcing any other provisions contained herein or implied by law.

**ARTICLE 5**  
**OBLIGATIONS OF COUNTY AND LESSEE**

**5.01 County's Obligations.**

- A. Condition of the Premises. Lessee certifies that Lessee is in possession of the Premises and has inspected the Premises and accepts same "As Is", in its existing condition, as the Effective Date. Lessee further acknowledges that the Lessor has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements located therein, or the suitability of the Premises or any improvements for Lessee's intended use of the Premises. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Lease.
- B. Maintenance Responsibility. Subject to and except as otherwise provided in Section 5.02 and Article 13 of this Lease, County agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, all exterior walls, the existing fire-sprinkler, HVAC, electrical and plumbing systems serving the Premises; provided, however, County shall not be responsible for: (i) repair or maintenance of any system or equipment inside the Premises, whether or not directly connected to the Terminal Building's system(s), or installed specifically to serve the Premises; (ii) repair or maintenance of interior decorations, unless damage is caused by or growing out of breakage, leakage or defective condition of any system required to be repaired or maintained by County pursuant to this paragraph; (iii) any damage caused by Lessee, its employees, agents, contractors, customers, licensees or invitees; or (iv) any damage caused by or resulting from or in any way arising out of Lessee's operations or Lessee's use of the Premises. In no event shall County be liable for damages or injuries arising out of the failure to maintain or make repairs to the above-referenced systems, nor shall County be liable for damages arising from defective workmanship or materials in making any such repairs. Except as provided in this paragraph, County shall not be obligated or required to make or conduct any other maintenance or repairs.

**5.02 Lessee's Obligations.**

- A. Maintenance Responsibility. Except as otherwise provided in Section 5.01(B), Lessee shall, at its sole cost and expense, at all times maintain the Premises in a neat, orderly, sanitary and presentable condition consistent with good business practice, industry standards and in accordance with all applicable laws, regulation and rules of any governmental entity.
- B. Utilities. County shall provide electricity and water used or consumed in the leased premises. County reserves the right, during the Term of this Lease, to pro-rate utility charges to Terminal tenants including Lessee. Such utility



costs shall be due and payable within thirty (30) consecutive days from Department's billing therefor.

- C. Cleanliness of Premises. Lessee shall, at its sole cost and expense, keep the Premises clean at all times and shall cause to be removed from the Premises all waste, garbage and rubbish. Lessee shall not to dispose of any such waste, garbage or rubbish on any part of the Airport; provided, however, Lessee may deposit the same in appropriate containers provided by County designated for the collection and removal of waste. Upon failure of Lessee to carry out the terms of this paragraph, the Department may have the work performed and the applicable charges shall be paid by Lessee. Lessee hereby expressly agrees that it shall fully assume and be liable to County for payment of such costs, plus twenty-five percent (25%) administrative overhead. Such costs, plus the administrative cost, shall constitute additional rent and shall be due and payable within thirty (30) calendar days of Department's billing therefor.
- D. Security. Lessee acknowledges and accepts full responsibility for the security of the Premises and any and all inventory and equipment now existing or hereafter placed on or installed at the Airport, and for the prevention of unauthorized access to its facilities, and expressly agrees to 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. Lessee fully understands that the police security protection provided by County is limited to that provided by the Palm Beach County Sheriff's Office to any other business situated at the Airport, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises shall be the sole responsibility of Lessee and shall involve no cost to County.
- E. Airport Security Program. Lessee agrees to observe all security requirements and other requirements of the Federal Aviation and Transportation Security Regulations applicable to Lessee, including without limitation, Title 14, Part 139 and Title 49, Part 1500 of the Code of Federal Regulations, as now or hereafter amended. Lessee agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by County, and to take such steps as may be necessary or directed by County to insure that Lessee's employees, invitees and guests observe these requirements.
- F. Permits and Licenses. Lessee shall maintain in current status all applicable federal, state, county and local licenses and permits required for its operations hereunder.
- G. Compliance with Laws. Lessee expressly covenants, warrants, guarantees and agrees that throughout the Term, Lessee shall at all times be and shall

remain in full and complete compliance with all applicable statutes, regulations, rules, rulings, orders, ordinances, or directives of any kind or nature without limitations, as same may be amended, of any and all federal, state, county, municipal or local governmental bodies now or hereafter having jurisdiction over the Airport, Lessee, Lessee's operations conducted under this Lease on the Premises, and over those persons and entities performing any work or services on behalf of Lessee or at Lessee's actual or constructive request, including, but not limited to Federal Aviation Administration advisory circulars. Lessee further covenants, warrants, guarantees, and agrees that it shall comply with all ordinances of County, including but not limited to the "Rules and Regulations of the Department of Airports of Palm Beach County, Florida" (Resolution No. R-98-220, as may be amended, supplemented or superseded), all operational orders issued thereunder, and any and all other laws, ordinances, regulations, rules, and orders of any governmental entity which may be applicable to Lessee or in any way to Lessee's business operations under this Lease within the boundaries of the Airport, as said laws, ordinances, regulations, rules, and orders now exist, or are hereinafter amended, promulgated, or otherwise imposed on Lessee by law.

#### **ARTICLE 6** **INSURANCE**

Lessee hereby represents and warrants to County that for purposes of Lessee's tenancy under this Lease, Lessee shall be self-insured.

#### **ARTICLE 7** **INDEMNIFICATION**

To the extent permitted by Federal Law, including, without limitation, the Federal Tort Claims Act (28 USC §§2671-2680) and the Equal Access to Justice Act (5 USC §504), Lessee 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 allowable 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 Lessee'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 Lessee's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Lessee or any breach of the terms of this Lease; provided, however, Lessee shall not be responsible to County for damages resulting out of bodily injury (including death) or damages to property which are attributable to the negligence of County, its respective agents, servants, employees and

officers. The obligations arising under this clause shall survive the expiration or termination of this Lease.

## **ARTICLE 8**

### **DEFAULT**

- 8.01 Default by Lessee. The occurrence of any one or more of the following shall constitute an event of default by Lessee under this Lease: (i) Lessee's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) Lessee's failure to perform or observe any of the agreements, covenants or conditions contained in this Lease (except for payment of any sum due hereunder) to be performed or observed by Lessee if such failure continues for more than thirty (30) days after notice from County (unless such failure cannot reasonably be cured within thirty (30) days and Lessee has commenced to cure the failure within the thirty (30) day period and continues diligently to pursue the curing of same); or (iii) Lessee's vacating or abandoning the Premises. If any event of default occurs, then at any time thereafter while the event of default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give Lessee notice that County intends to terminate this Lease upon a specified date, in which event this Lease shall then expire on the date specified by County as if that date had been originally fixed as the expiration date of the Term of this Lease.
- 8.02 Default by County. Except as otherwise provided in this Lease, County shall be in default under this Lease if County fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice thereof from Lessee (unless such failure cannot reasonably be cured within thirty (30) days and County shall have commenced to cure the failure within the thirty (30) day period and continues diligently to pursue the curing of same).

**ARTICLE 9**  
**SURRENDER OF PREMISES**

Upon the expiration or earlier termination of this Lease, Lessee shall, at its sole cost and expense, surrender the Premises to County in the same condition the Premises were in as of the Effective Date, reasonable wear and tear excepted. Any personal property not removed by Lessee immediately upon the expiration or termination of this Lease shall become property of County.

**ARTICLE 10**  
**ALTERATIONS/IMPROVEMENTS AND SIGNS**

10.01 Construction of Initial Improvements by County. County agrees to construct the Initial Improvements at a cost to County not to exceed \$64,740.00. The parties agree that the cost for construction of the Initial Improvements shall be reimbursed by Lessee to County in accordance with Section 4.01(C). County agrees to commence construction as soon as reasonably practical and to diligently prosecute construction of the Initial Improvements through completion.

10.02 Installation of Improvements by Lessee. Lessee shall have the right to construct and install improvements to the Premises as Lessee reasonably deems to be necessary for its operations subject to the terms and conditions of this Lease. Lessee shall obtain prior written approval of the Department for any improvements to be constructed or installed in the Premises, including associated plans and specifications and construction schedule(s), prior to construction or installation of the improvements, which approval shall not be unreasonably withheld. Any such additions, alteration or improvements shall be made in accordance with the construction requirements established by the Department and this Article 10. Lessee agrees to diligently prosecute construction of the improvements through completion. Any improvements constructed or installed by Lessee shall be at Lessee's sole cost and expense.

- A. Any work associated with such construction or installation shall not interfere with the operations of the Airport, Terminal, or any other areas, or otherwise unreasonably interfere with the permitted activities of other Airport tenants and users. Upon completion of approved improvements and within sixty (60) days of Lessee's receipt of a Certificate of Occupancy, a complete set of as-built drawings and a final statement of costs shall be delivered to the Department for the permanent record of County.
- B. Any and all construction or installation shall be; (i) at the sole risk of Lessee; (ii) in accordance with all applicable federal, state and local codes, laws, the construction standards established by the Department, and the approved plans and specifications; and (iii) shall be subject to inspection by County. At the discretion of the Department, any improvements that are constructed in violation of this Article 10 shall be removed or reconstructed at Lessee's sole cost and expense.

- 10.03 Construction Obligations. Lessee shall ensure that all improvements are constructed to completion in accordance with the approved plans and specifications and that all persons or entities performing work or providing materials relating to such improvements including, but not limited to, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.
- 10.04 Contractor Requirements. Lessee shall require its 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 County's Risk Management Department may reasonably require. County's Risk Management Department may require additional insurance for any alterations, additions or improvements approved pursuant to this Lease in such amounts as County's Risk Management Department reasonably determines to be necessary.
- 10.05 No Liens. Lessee covenants and 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. Lessee shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Lessee of this provision in this Lease. If so requested by County, Lessee shall file a notice in the Public Records of Palm Beach County, Florida, satisfactory to County, stating that County's interest shall not be subject to liens for improvements made by Lessee. 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 Lessee, Lessee shall satisfy such claim, or transfer same to security within 10 (ten) days. . In the event Lessee fails to transfer or satisfy such claim within the ten (10) day period, County may do so and thereafter charge Lessee, and Lessee shall promptly pay to County upon demand all costs incurred by County in connection with the satisfaction or transfer of such claim.
- 10.06 Signs. No signs, posters or similar devices shall be erected, displayed, or maintained by Lessee in the view of the general public in, on or about the Premises or elsewhere on the Airport, without the prior written consent of the Department, which consent may be granted or withheld in the Department's sole and absolute discretion for any reason or no reason at all. Any signs, posters or similar devices that are not approved shall be immediately removed at the sole cost and expense of Lessee.

#### ARTICLE 11 ASSIGNMENT AND SUBLETTING SPACE

Lessee shall not sublet the Premises or any part thereof or transfer, assign, pledge, or otherwise encumber this Lease or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise.

**ARTICLE 12**  
**NOTICES**

All notices and elections (collectively, "notices") to be given or delivered by or to either 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, 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 service, or overnight mail, 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 designate 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:  
Palm Beach County  
Department of Airports  
Deputy Director, Airports Business Affairs  
846 Palm Beach International Airport  
West Palm Beach, Florida 33406-1470

With a copy to:  
Palm Beach County Attorneys' Office  
ATTN: Airport Attorney  
301 North Olive Avenue  
Suite 601  
West Palm Beach, Florida 33401

Lessee:  
General Services Administration  
ATTN: Contracting Officer  
7771 W. Oakland Park Blvd.  
Room 119  
Sunrise, FL 33351

With a copy to:

Either 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.

**ARTICLE 13**  
**DAMAGE OR DESTRUCTION OF PREMISES/IMPROVEMENTS**

- 13.01 Lessee's Obligations. Lessee 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 Lessee or by or with the consent of any person acting for or on behalf of Lessee. Except as otherwise provided in Section 5.01(B), if the Premises, improvements, or any part thereof, during the Term, are damaged, whether by act of God, by the act, default or negligence of Lessee, or of Lessee's, agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Premises by Lessee or otherwise, Lessee shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Lessee shall commence such restoration within thirty (30) days of any such damage and shall diligently pursue such restoration to completion using materials of like kind and quality or better. All repairs, replacements or rebuilding shall be performed by Lessee in accordance with the construction requirements established by the Department. If Lessee fails to restore the Premises as required above, County shall have the right to enter the Premises and perform the necessary restoration, and Lessee hereby expressly agrees that it shall fully assume and be liable to County for payment of the costs therefor, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of written notice from the Department.
- 13.02 Right to Cancel. If any of the improvements on the Premises are damaged or destroyed in whole or in part by fire or other casualty, Lessee may, subject to approval of County, be relieved of the obligation to repair, replace or rebuild the same and have the right to cancel this Lease. In such event, Lessee shall provide County written notice within thirty (30) days after the date of any such damage or destruction and, upon approval by County, this Lease shall terminate. All fees and other sums due hereunder payable under this Lease shall be prorated and paid to the date of such termination. Notwithstanding the foregoing, in the event the Premises are damaged or destroyed due to the willful act, omission or negligence of Lessee or of Lessee's agents, employees, officers, representatives or contractors, Lessee's payment for damages or obligation to repair, replace or rebuild the Premises shall be determined in accordance with the Federal Tort Claims Act (28 USC §§2671-2680), as now or hereafter amended. The receipt and acceptance of payment for damages by County under this paragraph will relieve Lessee from any responsibility to restore the Premises to their former condition, and Lessee waives any claim against County for damages for compensation should this Lease be so terminated.
- 13.03 Termination Upon Destruction or Other Casualty. In the event the Premises, or any part thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Lease by County impossible, then County, at County's sole option, may terminate this Lease. Lessee shall pay all fees, rental, costs and satisfy all of its obligations

hereunder arising prior to the time of such termination, whereupon this Lease shall terminate and the parties shall be relieved of all further obligations hereunder except those obligations which expressly survive expiration or termination of this Lease. Lessee hereby waives any claim for damages or compensation should this Lease be so terminated.

#### **ARTICLE 14**

#### **TITLE TO IMPROVEMENTS**

Notwithstanding any provision of this Lease to the contrary, upon termination of this Lease, all improvements constructed or placed upon the Premises by Lessee shall become the absolute property of County, and County shall have every right, title and interest therein, free and clear of any liens, mortgages or encumbrances; and any interest in such improvements held by Lessee, and absolute title thereto, shall be vested in County; provided, however, County shall be entitled, at its option, to have the Premises returned to County free and clear of some or all improvements, at Lessee's sole cost and expense. In such event, County shall provide timely notification to Lessee of its election to require removal of the improvements and to the extent possible, County shall notify Lessee at least ninety (90) days prior to the effective date of such termination. Lessee shall have ninety (90) days from date of notice within which to remove such improvements. If Lessee fails to so remove the improvements, County may remove same at Lessee's sole cost and expense.

#### **ARTICLE 15**

#### **DISCLAIMER OF LIABILITY**

COUNTY HEREBY DISCLAIMS, AND LESSEE 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 LESSEE, ITS EMPLOYEES, AGENTS OR INVITEES DURING THE TERM OF THIS LEASE, INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF LESSEE OR LESSEE'S INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY COUNTY'S NEGLIGENCE. 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 PURSUANT TO THIS LEASE. LESSEE RELEASES COUNTY FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY COUNTY RELATING TO THIS LEASE. FURTHERMORE, LESSEE 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. THE FOREGOING DISCLAIMER SHALL NOT BE CONSTRUED TO CONSTITUTE AN AGREEMENT BY LESSEE TO INDEMNIFY COUNTY FOR COUNTY'S NEGLIGENT, WILLFUL OR INTENTIONAL ACTS.



**ARTICLE 16**  
**INSPECTION**

County or County's agent shall have the right, upon reasonable notice to Lessee (except in the event of an emergency, in which event no notice need be given) to enter the Premises for the purpose of inspection. County shall use reasonable efforts to conduct such inspection in a manner calculated to minimize interference with or disruption of Lessee's use of and operations within the Premises.

**ARTICLE 17**  
**RELATIONSHIP OF THE PARTIES**

Lessee 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.

**ARTICLE 18**  
**GOVERNMENTAL RESTRICTIONS**

- 18.01 Federal Review. Lessee acknowledges this Lease may be subject to review or inspection by the Federal Aviation Administration to determine satisfactory compliance with Federal law and Federal grant assurance requirements. This Lease shall be in full force and effect and binding upon both parties pending such review or inspection by the Federal Aviation Administration, if applicable; provided, however, that upon such review or inspection the parties hereto agree to modify any of the terms of this Lease which are determined by the Federal Aviation Administration to be in violation of existing laws, regulations, grant assurances or other Federal requirements.
- 18.02 Height Restriction. Lessee 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.
- 
- 18.03 Right of Flight. Lessee 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 the said airspace for landing on, taking off from, or operating on the Airport.
- 18.04 Operation of Airport. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard. County expressly acknowledges that the security functions of the [REDACTED] at the Airport do not interfere with or adversely affect Airport operations.

- 18.05 Release. Lessee acknowledges that noise and/or vibration are inherent to the operation of Airport and hereby releases Lessee from any and all liability relating to the same.

## **ARTICLE 19**

### **NONDISCRIMINATION**

Lessee for itself, its successors in interest and assigns, as a part of the consideration herefor, does hereby covenant and agree (a) that no person on the grounds of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, marital status, familial status, age, or disability shall be excluded from participation in or denied the use of the Premises, (b) that in the construction of any improvements on, over, or under such Premises and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, marital status, familial status, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as now or hereafter amended. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Lease and to reenter and repossess said Premises and the facilities hereon, and hold the same as if said Lease had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Part 21 of the Code of Federal Regulations, as now or hereafter amended, are followed and completed including exercise or expiration of appeal rights.

## **ARTICLE 20**

### **SUBORDINATION**

- 20.01 Subordination to Bond Resolution. This Lease and all rights granted to Lessee 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 Lessee agree that, to the extent permitted by authorizing legislation, the holders of the Bonds or their designated representatives may exercise any and all rights of County hereunder to the extent such possession, enjoyment and exercise are necessary to insure compliance by Lessee and County with the terms and provisions of this Lease and Bond Resolution.
- 20.02 Subordination to 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 or improvements thereon, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Lessee 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 any of its 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 federal funds for the development of the Airport.

## ARTICLE 21 MISCELLANEOUS

- 21.01 General Clauses. The general clauses set forth in Exhibit "B" (the "General Clauses") are hereby incorporated herein and made a part hereof and shall control in the event of any conflict or ambiguity.
- 21.02 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 rights 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 Lessee.
- 21.03 County not Liable. County shall not be responsible or liable to Lessee for any claims for compensation or for any losses, damages or injury whatsoever sustained by Lessee including, without limitation, those resulting from failure of any water supply, heat, air conditioning, electrical current, or sewerage or drainage facility 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 onto the Premises shall be at the sole risk of Lessee. County shall not be liable for any damage or loss of said personal property.
- 21.04 Compliance with Laws. Notwithstanding anything to the contrary herein, Lessee 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 Lessee.
- 21.05 Waste or Nuisance. Lessee shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect County's fee interest in the Premises or which results in an unsightly condition. Lessee shall not use, maintain, store or dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, on the Premises.

- 21.06 Waiver. The failure of County 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 County may have for any subsequent breach, event of default, or nonperformance, and County's right to insist on strict performance of this Lease shall not be affected by any previous waiver or course of dealing.
- 21.07 Exclusive Rights. Notwithstanding anything contained in this Lease to the contrary, it is expressly understood and agreed that the rights granted under this Lease are nonexclusive, other than the exclusive right of use of the Premises, and that County may grant similar privileges to another lessee or other lessees on other parts of the Airport.
- 21.08 Public Entity Crimes. As provided in Sections 287.132-133, Florida Statutes, as now or hereafter amended, by entering into this Lease or performing any work in furtherance hereof, Lessee 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.
- 21.09 Governmental Authority. Nothing in this Lease shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Lessee or its operations.
- 21.10 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.
- 21.11 Rights Reserved to County. All rights not specifically granted Lessee by this Lease are reserved to County.
- 21.12 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.
- 21.13 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.
- 21.14 No Recording. Neither this Lease, nor any memorandum or short form hereof, shall be recorded in the Public Records of Palm Beach County, Florida.
- 21.15 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 and assigns, if any. This provision shall not constitute a waiver of any prohibitions or limitations regarding assignment or subletting.

- 21.16 Performance. The parties expressly agree that time is of the essence in this Lease and the failure by Lessee to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of County, in addition to any other rights or remedies, relieve County of any obligation to accept such performance without liability.
- 21.17 No Broker. Lessee warrants to County that no real estate broker or agent has been used or consulted in connection with the transaction contemplated by this Lease and, to the extent permitted by Federal law, agrees to indemnify and hold County harmless from all loss, cost, damage or expense (including reasonable attorneys' fees) incurred by County as a result of any claim arising out of the acts of Lessee (or others on its behalf) for a commission, finder's fee or similar compensation made by any broker or agent who claims to have dealt with Lessee. The terms of this Section shall survive the termination of this Lease.
- 21.18 Force Majeure. Any party delayed by a Force Majeure Event, as defined hereinafter, in performing under this Lease shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Lease. "Force Majeure Event" shall mean any act of God, fire, flood, terrorism, war, earthquake, explosion, riot, sabotage, windstorm, or labor dispute.
- 21.19 Incorporation by References. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by such reference.
- 21.20 Venue and Governing Law. This Lease shall be governed in accordance with Federal law, but shall be construed under the laws of the State of Florida, except to the extent preempted by Federal law. Venue for any action brought pursuant to this Lease shall be as required by the Contract Disputes Act of 1978 (41 USC §601), as referenced in the General Clauses made a part hereof. To the extent permitted by law, the venue for any litigation arising from this Lease shall be in Palm Beach County, Florida, and the parties agree that, should a hearing be held by the GSA Board of Contract Appeals ("GSABCA") pursuant to the Contract Disputes Act (41 USC §601), the Government shall request that any GSABCA hearing be held in Palm Beach County, Florida.
- 21.21 Negotiated Lease. The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions contained in this Lease. Therefor, doubtful or ambiguous provisions, of any, contained in this Lease shall not be construed against the party who physically prepared this Lease.
- 21.22 Entirety of Lease. The parties agree that this Lease sets forth the entire Lease 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.

21.23 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.

21.24 Inspector General. Lessee acknowledges that the Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor and inspect the activities of entities contracting with County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

## **ARTICLE 22**

### **TERMINATION OF PRIOR AGREEMENTS**

Upon the Effective Date of this Lease, those certain Terminal Building Lease Agreements between County and Lessee, dated June 5, 2007 (R2007-0855) (GSA Lease No. LFL47818), as amended, and March 11, 2003 (R2003-0355) (GS-04B-42849), as amended, (collectively referred to as the "Prior Lease Agreements") shall be terminated in their entirety, provided, however, that any claim, cause of action, or other obligation to County or Lessee, then accrued, shall survive said termination of the Prior Lease Agreements.

*{Remainder of page intentionally left blank}*

IN WITNESS WHEREOF, County and Lessee have executed this Lease, or have caused the same to be executed as of the day and year first above written.

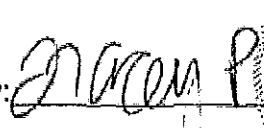
R2011m1160 AUG 16 2011

ATTEST:

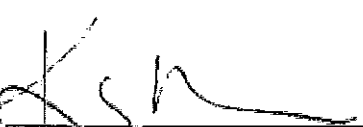
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, a political  
subdivision of the State of Florida by its  
Board of County Commissioners

By:

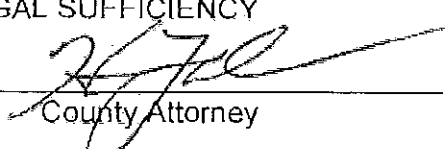
  
(SEAL) Deputy Clerk

By:

  
Karen T. Marcus, Chair

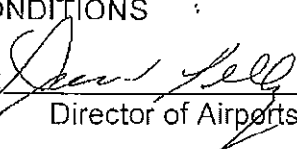
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:

  
County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

By:

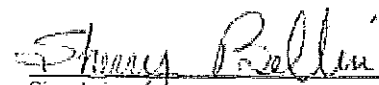
  
Director of Airports

WITNESSES:

Signature

  
Michael Ellis  
Typed or Printed Name

Signature

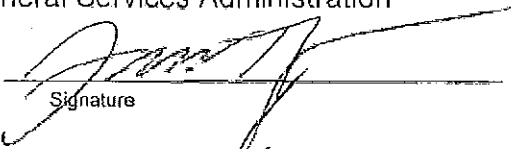
  
Sherry Bellini  
Typed or Printed Name

LESSEE:

General Services Administration

By:

Signature

  
James Thompson  
Typed or Printed Name

Title: Contracting Officer