

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

MGM/MB 7-0
R-2023-1154

AGENDA ITEM SUMMARY

Meeting Date: August 22, 2023 [] Consent [X] Regular
[] Workshop [] Public Hearing

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) **Approve** a Development Site Lease Agreement (Lease) with PopStroke West Palm Beach, LLC, a Florida limited liability company (PopStroke), for the lease of approximately 146,937 square feet (±3.37 acres) of unimproved ground located near the southwest corner of Australian Avenue at Belvedere Road at the Palm Beach International Airport (PBI), for the development of an indoor/outdoor golf-related entertainment and dining facility, effective upon Board approval and expiring 30 years from the date of beneficial occupancy, for payment of annual rental equal to the greater of ground rental in the initial amount of \$448,158, or percentage rent equal to 4% of annual gross revenues up to \$10,000,000, plus 2% of annual gross revenues greater than \$10,000,000.
- B) **Authorize** the Director of the Department of Airports or designee to execute, on behalf of County, the Owner's Affidavit and Memorandum of Lease in the form attached to the Lease; all applications and similar instruments required to obtain necessary governmental approvals for development of the property; and an amendment to the Lease to reflect the final legal description based on site plan approval.

Summary: The Lease provides for the development of an indoor/outdoor golf-related entertainment and dining facility consisting of two 18-hole outdoor mini-golf courses, and approximately 13,933 square feet of building area with food and beverage service space. Popstroke will pay annual rental equal to the greater of ground rental in the initial amount of \$448,158, or percentage rent equal to 4% of annual gross revenues up to \$10,000,000 plus 2% of annual gross revenues greater than \$10,000,000. Ground rental will be adjusted every three years, commencing October 1, 2025, subject to a consumer price index (CPI) cap. In 2037 and 2049, rental will be adjusted based only on appraised value with no CPI cap. The total anticipated investment to be made by PopStroke is \$8,000,000. The venue is anticipated to create approximately 100 full-time and 60 part-time jobs. The Lease is contingent on receipt of all necessary governmental approvals, including FAA approval. The Lease was submitted to the FAA on June 5, 2023 for approval. Construction must be completed within 16 months of the effective date of the Lease. The Lease is subject to the Airport Concession Disadvantaged Business Enterprises (ACDBE) requirements of 49 CFR Part 23. The ACDBE participation goal was 2.17%. Popstroke has committed to achieve 3% ACDBE participation. Although the Equal Business Opportunity Ordinance does not apply to the Lease, Popstroke also committed to 2.5% Small Business Enterprise (SBE) participation in the construction of its leasehold improvements. The Lease requires the County to deliver an Owner's Affidavit and Memorandum of Lease for title and financing purposes. The Department is requesting a delegation of authority to the Department Director or designee to sign the documents required by the Lease, applications for development approvals when the signature of the property owner is required, and an amendment to the Lease to reflect the final legal description based on site plan approval. **Countywide (HF)**

Background and Policy Issues: On March 1, 2023, the Department issued Request for Proposals (RFP) No. PB 23-7 for the lease and development of approximately 3.37 acres of vacant, non-aeronautical land at PBI for hotel or entertainment/dining purposes. Three proposals were submitted, including a proposal by MSP Partners Realty, LLC (MSP) and Cohen Realty, Inc. (Cohen), to construct hotels. The MSP proposal was deemed non-responsive to the proposal requirements, and on April 26, 2023, the selection committee unanimously recommended award of the Lease to PopStroke over Cohen's proposal. MSP and Cohen submitted protests to the committee's recommendation in accordance with the protest Procedures set forth in the Purchasing Code, which were denied by the Director of the Purchasing Department. PopStroke is a newly-formed subsidiary of PopStroke Holdings, LLC, for the specific purpose of entering into the Lease. PopStroke currently operates ten golf entertainment locations nationally, with an additional 13 under development.

Attachments:

- 1. Lease (3)
- 2. ACDBE Schedules 1 & 2

Recommended By: Paul Lanna Burke Department Director Date: 7-18-23
 Approved By: Chaker County Administrator Date: 8/1/23

II. FISCAL IMPACT ANALYSIS

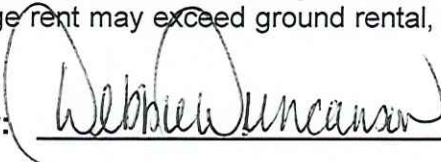
A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>\$-0-</u>	<u>\$-0-</u>	<u>(\$373,465)</u>	<u>(\$448,158)</u>	<u>(\$448,158)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$-0-</u></u>	<u><u>\$-0-</u></u>	<u><u>(\$373,465)</u></u>	<u><u>(\$448,158)</u></u>	<u><u>(\$448,158)</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No x
 Does this item include the use of federal funds? Yes _____ No X
 Budget Account No: Fund 4100 Department 120 Unit 8452 RSource 4416
 Reporting Category _____

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

Rent commences on the date of beneficial occupancy. For purposes of the fiscal impact analysis above, rental is assumed to commence on December 1, 2024. Annual rental is equal to the greater of ground rental in the initial amount of \$448,158, or percentage rent equal to 4% of annual gross revenues up to \$10,000,000 plus 2% of annual gross revenues exceeding \$10,000,000. Rental is shown above in the amount of ground rental. Percentage rent may exceed ground rental, but cannot be accurately forecasted at this time.

C. Departmental Fiscal Review: Webb Duncan  7/17

III. REVIEW COMMENTS

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

Lisa M. [Signature] 7/20/2023
 OFMB 9A 7/20
 EJS
 7-20-2023

[Signature] 7/27/23
 Contract Dev. and Control
 7/27/23

B. Legal Sufficiency:

[Signature] 7/27/23
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 9/03
 ADM FORM 01
 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**ATTACHMENT "11" – RFP PB 23-7
SCHEDULE 1 - LIST OF PROPOSED ACDBE FIRMS**

Name of Proposer: PopStroke Phone No.: 828-215-2486 Fax No: _____
 Contact Person: Shane Robichaud E-mail Address: shane.robichaud@popstroke.com
 Address: 1001 N US Highway 1 Suite 500 Jupiter, FL 33477

In order to provide financial context for the percentages listed below, Proposer has calculated each firm's participation utilizing an ESTIMATED FORECAST VALUE/EXPENDITURE of \$ 7,104,000 TOTAL DOLLARS FOR THE PURCHASE OF GOODS AND SERVICES made during the 1st Contract Year of the Agreement. The Estimated Forecast Value/Expenditure amount above is an estimate only; actual participation will be based on actual expenditures.

Name, Address & Phone No. of ACDBE Firm ⁽²⁾	Description of Type of Work	Classification (Check applicable box)	Percentage of ACDBE Participation by Race/Gender ⁽¹⁾			
			Black	Hispanic	Women	Other (Please Specify)
Chandler & Campbell Investment Group 310 Vizcaya Drive Palm Beach Gardens, FL 33418 404-643-6747	- Shuttle Driver Services - Janitorial Services - ACDBE Management	<input type="checkbox"/> Prime Contractor <input checked="" type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	3.0 %	%	%	%
		<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	%	%	%	%
		<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Joint Venture	%	%	%	%
Total Percentage of ACDBE Participation⁽³⁾			3.0 %	+ %	+ %	= 3.0 %

Notes:

- The percentages listed on this form for each ACDBE Firm must be supported by Schedule 2, "Letter of Intent to Perform as an Airport Concession Disadvantaged Business Enterprise", in order to be counted toward the ACDBE goal.
- It is the obligation of proposer to confirm that firms identified on this form are certified as an ACDBE by the Florida Unified Certification Program. Firms not certified by the Florida Unified Certification Program as an ACDBE, will not be counted toward the ACDBE goal.
- ACDBE participation is measured as a percentage of annual purchases of goods and services.

By signing this form, the undersigned Proposer is committing to utilize the ACDBE Firm(s) listed above pursuant to the Agreement. Substitutions of ACDBE Firms during the term of the Agreement shall be subject to prior written approval of the Department of Airports.

By: Shane Robichaud
Signature

Date: March 27, 2023

Shane Robichaud, President PopStroke Greens
Print Name/Title of Person Executing on Behalf of the Proposer

*Additional sheets may be used if necessary.

SCHEDULE 2

LETTER OF INTENT TO PERFORM AS AN AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE*

Name of PROPOSER: PopStroke

Name of ACDBE FIRM: CHANDLER & CAMPBELLE INVESTMENT GROUP LLC

The undersigned is certified as an Airport Concession Disadvantaged Business Enterprise ("ACDBE") by Palm Beach County or the State of Florida's Unified Certification Program. Check one or more classifications as applicable:

- Black
- Hispanic
- Women
- Other (Please Specify) _____
- Prime Contractor
- Subcontractor
- Manufacturer
- Supplier
- Joint Venture

The undersigned ACDBE firm is prepared to perform the following described work in connection with the above-referenced Agreement (specify in detail the particular work and/or parts thereof to be performed):

Provide staffing services for janitorial and ceaning, shuttle services, and administrative management fo the ACDBE program.
541611, 541613, 561210, 561720

The estimated value of the work is 3.0 % of Proposer's estimated purchase of goods and services.

The undersigned will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If the undersigned intends to subcontract any portion of the work described above to another subcontractor, please complete the following:

		%	<input type="checkbox"/> ACDBE Certified
(Name of Subcontractor)	(Percentage of work subcontracted)		<input type="checkbox"/> Non-ACDBE
		%	<input type="checkbox"/> ACDBE Certified
(Name of Subcontractor)	(Percentage of work subcontracted)		<input type="checkbox"/> Non-ACDBE

The undersigned affirms that it has the resources necessary to perform the work described above without subcontracting the work to another subcontractor, except as noted above. The undersigned ACDBE firm understands that the provision of this form to the Proposer does not prevent the subcontractor from providing quotations to other proposers.

DARRELL SEARCY

Printed Name of ACDBE Firm

By: Darrell Searcy
Signature

Date: 3/29/2023

*This form must be submitted for each ACDBE firm listed on Schedule 1, "List of Proposed ACDBE Firms".

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF FLORIDA

COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Manager of Popstroke West Palm Beach, LLC, a limited liability company organized and existing under the laws of the State of Florida ("Company").

2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.

3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.

4. The company is a manager managed limited liability company.

5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.

6. The undersigned has the right and authority to enter into that certain Development Site Lease Agreement between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.

7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.

8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,



Gregory Bartoli
Individually and as Manager

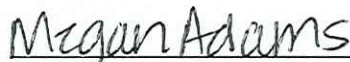
Sworn to (or affirmed) and subscribed before me by means of physical presence -

OR- online notarization, this 12 day of June,
2023, by Gregory Bartoli, Manager of Popstroke Holdings West Palm Beach, LLC, on
behalf of the Company, who **[select one]:**

is personally known to me -OR- produced _____,
as identification and who did take an oath.



Notary Signature



Print Notary Name

NOTARY PUBLIC
State of Florida, at large

My Commission Expires:

10/15/2026



R2023 1154

AUG 22 2023

DEVELOPMENT SITE LEASE AGREEMENT

Department of Airports

Palm Beach County, Florida

and

Popstroke West Palm Beach, LLC

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DEVELOPMENT SITE LEASE AGREEMENT

R2023 1154

AUG 22 2023

THIS DEVELOPMENT SITE LEASE AGREEMENT (this "Lease") is made and entered into this August 22, 2023, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Popstroke West Palm Beach, LLC, a Florida limited liability company, having its office and principal place of business at 1001 North U.S. Highway 1, Suite 500, Jupiter, FL 33477 ("Tenant").

WITNESSETH:

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

WHEREAS, Tenant submitted a proposal in response to Request for Proposals, PB 23-7 issued on March 1, 2023, for the lease and development of certain real property at the Airport, which is managed by the Department on behalf of County.

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 words, terms, and phrases wherever used in this Lease shall have the meanings set forth in this Article and the meanings shall apply to both singular and plural forms of such words, terms and phrases.

- 2.01 "Additional Insured" has the meaning set forth in Section 11.08.
- 2.02 "Additional Rent" has the meaning set forth in Section 5.14.
- 2.03 "Adjustment Date" has the meaning set forth in Section 5.05(A).
- 2.04 "Airport" has the meaning set forth in the Recitals.
- 2.05 "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.
- 2.06 "Annual Report" has the meaning set forth in Section 5.08.

- 2.07 “Appraisal Adjustment Date” has the meaning set forth in Section 5.05(D).
- 2.08 “Approval Deadline” has the meaning set forth in Section 7.01.
- 2.09 “Approved Costs” has the meaning set forth in Section 7.01(B).
- 2.10 “Assignment” has the meaning set forth in Article 16.
- 2.11 “Base Rental” means the initial annual ground rental set forth in Section 5.01, as adjusted in accordance with Section 5.05(D) on the Appraisal Adjustment Dates.
- 2.12 “Base Rental Year” means 2022 for rental adjustments occurring prior to the first Appraisal Adjustment Date. After the first Appraisal Adjustment Date, the Base Rental Year shall be the calendar year of the most recent Appraisal Adjustment Date.
- 2.13 “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.
- 2.14 “Board” means the Board of County Commissioners of Palm Beach County, Florida.
- 2.15 “Bond” has the meaning set forth in Section 5.11.
- 2.16 “Business Day” means any day other than a Saturday, Sunday or County holiday. Use of the word “day” as opposed to Business Day means a calendar day.
- 2.17 “Capital Investment Report” shall have the meaning set forth in Section 7.01(F).
- 2.18 “Consumer Price Index” has the meaning set forth in Section 5.05(C).
- 2.19 “Contingency” or “Contingencies” shall have the meaning set forth in Section 3.02.
- 2.20 “County Party” means the County and its elected officers, employees and agents.
- 2.21 “Damages” has the meaning set forth in Article 18.
- 2.22 “Date of Beneficial Occupancy” has the meaning set forth in Section 3.01.
- 2.23 “Department” means the Palm Beach County Department of Airports.
- 2.24 “Derelict Vehicle” means a vehicle that is in a wrecked, dismantled or partially dismantled condition, or which is discarded and in an inoperable condition.
- 2.25 “Director” means the Director or Acting Director of the Department of Airports.
- 2.26 “EBO” means the Palm Beach County Office of Equal Business Opportunity.

- 2.27 “EBO Ordinance” means the Equal Business Opportunity Ordinance as codified in Sections 2-80.20 – 2-80.40 of the Palm Beach County Code and any policies adopted thereunder, as now or hereafter amended.
- 2.28 “EBO Schedules” has the meaning set forth in Section 7.01(C).
- 2.29 “Effective Date” means the date that this Lease is approved by the Palm Beach County Board of County Commissioners and signed by the parties.
- 2.30 “Environmental Laws” means all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and governmental restrictions relating to the protection of the environment, human health, welfare or safety, or to the emission, discharge, seepage or release of Hazardous Substances into the environment, including, but not limited to, ambient air, surface water, groundwater or land, or otherwise relating to the handling of such Hazardous Substances.
- 2.31 “Exit ESA” has the meaning set forth in Section 20.05.
- 2.32 “FAA” means the Federal Aviation Administration.
- 2.33 “Hazardous Substances” shall mean any contaminant, hazardous or toxic substance, material or waste of any kind or any other substance that is regulated by any Environmental Laws.
- 2.34 “Governmental Approvals” has the meaning set forth in Section 7.01.
- 2.35 “Ground Rental” has the meaning set forth in Section 5.01, as adjusted in accordance with the provisions of Section 5.05.
- 2.36 “Gross Revenues” means all revenues of the business conducted by Tenant upon the Property regardless of where, how (cash or credit), or by whom payment is made, including, without limitation, all revenues from admission/entry, equipment rental or purchase, or the purchase of food, beverages or merchandise. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues payable to Tenant that are derived from, or that arise out of or become payable on account of the business conducted by Tenant upon the Premises, whether directly or indirectly, shall be included in Gross Revenues. In the event Tenant fails or elects not to charge or collect any rentals, concession or license fees, amounts for goods or services or any other amount which would otherwise be included in Gross Revenues, the amount customarily charged by Tenant shall be included in the calculation of Gross Revenues, unless such amount is expressly and specifically excluded from Gross Revenues pursuant to this definition. No deduction shall be made from Gross Revenues by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements. Gross Revenues shall not include:

- (A) All impositions (including, but not limited to, all federal, state and municipal excise, sales, use, and other taxes) collected from patrons or guests as a part of, or based upon, the sales price of any goods or services, including with limitation, gross receipts, room, bed, admission, cabaret, or similar taxes (including any tax credits or refunds, subsidies or other incentives provided by any governmental agency, constructive income, imputed income or similar income resulting from election or the effect of tax or other applicable statutes or laws);
- (B) Rebates, discounts, or credits of a similar nature (not including charge or credit card discounts);
- (D) Allowances, rebates, refunds and accounts written off not included in Gross Revenues;
- (E) Receipts from the financing, refinancing, sale or other disposition of any equipment;
- (F) Casualty, liability or other insurance proceeds;
- (G) Charge-backs, bad debts and other uncollected Gross Revenues;
- (K) The amount of returns to suppliers or manufacturers;
- (L) Cash or credit refunds made for any returned merchandise accepted by Tenant and previously included in Gross Revenues; and
- (M) Refunds of any sums or credits to any customers for lost or damaged items.
- (N) Exchanges of merchandise to the extent of the value of the item exchanged;
- (O) Fees and other charges on account of charge, credit card, or similar transactions, to, among others, credit card companies, point of sale providers and processors;
- (P) Complimentary food and beverage as well as goods or services, giveaways and other promotional items;
- (Q) Allowances, rebates or refunds, arising from participation in any frequent guest/customer loyalty or other award program; and
- (R) Sales of gift cards; provided, however, a redeemed sale using a gift card would be included in Gross Revenues.

2.37 “Initial Leasehold Improvements” has the meaning set forth in Section 7.01(A).

2.38 “Inspection Period” has the meaning set forth in Section 3.06(A).

2.39 “Inspections” has the meaning set forth in Section 3.06(A).

- 2.40 “Lease” means this Lease and all exhibits attached hereto, which are incorporated herein by this reference. Words such as “herein,” “hereafter,” “hereof,” “hereby” and “hereunder” when used with reference to this Lease, refer to this Lease as a whole, unless context otherwise requires.
- 2.41 “Leasehold Mortgage” has the meaning set forth in Section 17.01.
- 2.42 “Leasehold Mortgagee” has the meaning set forth in Section 17.01.
- 2.43 “Lease Year” means a twelve (12) month period beginning on the Date of Beneficial Occupancy, and each twelve (12) month period thereafter, until the expiration or earlier termination of this Lease.
- 2.44 “Letter of Credit” has the meaning set forth in Section 5.11.
- 2.45 “Minimum Capital Investment” has the meaning set forth in Section 7.01(B).
- 2.46 “Monthly Percentage Rent” has the meaning set forth in Section 5.03.
- 2.47 “Monthly Report” has the meaning set forth in Section 5.07.
- 2.48 “NEPA” has the meaning set forth in Section 3.02
- 2.49 “Obstructions” has the meaning set forth in Section 23.03.
- 2.50 “Overnight Parking” has the meaning set forth in Section 8.12.
- 2.51 “Parcel N-11” means the real property identified on Exhibit “B”.
- 2.52 “Percentage Rent” has the meaning set forth in Section 5.01.
- 2.53 “Plans” have the meaning set forth in Section 7.01(D).
- 2.54 “Pre-existing Environmental Condition” means the presence of Hazardous Substances on, in or under the Property (including soil, groundwater and soil vapor) as a result of the discharge, release, disposal, storage, treatment, mitigation or any other activities: (a) occurring prior to the expiration of the Inspection Period (unless caused by the Tenant Parties during the Inspection Period) of this Lease, or (b) occurring as the result of any Person’s activities or operations outside the Premises, other than Tenant Parties, after the Inspection Period.
- 2.55 “Premises” means the Property together with all buildings, facilities and other improvements now or hereafter constructed thereon, subject to easements, rights-of-way and any other encumbrances of record.

- 2.56 “Property” means approximately One Hundred Forty-Six Thousand, Nine Hundred Thirty-Seven (146,937) square feet of unimproved real property as more particularly described on Exhibit “A”, subject to easements, rights-of-way and any other encumbrances of record. Following issuance of approval of the site plan for the Initial Leasehold Improvements by the Department and County’s Planning, Zoning and Building Department, the parties may enter into an amendment to this Lease to reflect the final square footage and location of the Property based upon the approved site plan, if different, and to replace Exhibit “A” with an updated survey and legal description, and the Ground Rental as provided in Section 5.01 shall be adjusted accordingly. Such updated survey and legal description will be prepared by County’s surveyor at no cost to Tenant, or may be prepared by Tenant at County’s request and the cost may be reimbursed to Tenant as a rent credit, subject to prior written approval by County. The Director shall have the authority to sign such amendment on behalf of County.
- 2.57 “Proposal” means the written proposal submitted by Tenant in response to the RFP.
- 2.58 “Release Documents” has the meaning set forth in Section 17.08.
- 2.59 “Request for Proposals” or “RFP” means Request for Proposals No. PB 23-7, issued by County on March 1, 2023, as amended and/or supplemented.
- 2.60 “Risk Management Department” means the Palm Beach County Risk Management Department.
- 2.61 “SBE” means a certified small business enterprise as defined in Palm Beach County’s EBO Ordinance.
- 2.62 “SBE Goal” has the meaning set forth in Section 7.01(C).
- 2.63 “SBE Ordinance” means Palm Beach County’s Small Business Enterprise Program Ordinance, codified in Sections 2-80.21 through 2-80.34 (as amended) of the Palm Beach County Code, and the Small Business Enterprise Program Policies and Procedures Manual, County PPM No. CW-O-043.
- 2.64 “Security Deposit” has the meaning set forth in Section 5.11.
- 2.65 “Tenant Improvements” means all buildings, structures, pavements, facilities, landscaping and other improvements, above and below ground, constructed by Tenant upon the Premises during the Term, including the Initial Leasehold Improvements.
- 2.66 “Tenant Party” means Tenant and its subtenants, contractors, suppliers, employees, officers, licensees, agents and invitees.
- 2.67 “Term” has the meaning set forth in Section 3.03.
- 2.68 “Title Review Period” has the meaning set forth in Section 3.03.

- 2.69 “Traffic Concurrency Allocation” has the meaning set forth in Section 7.06.
- 2.70 “TSA” means the Transportation Security Administration or any successor agency responsible for airport security.
- 2.71 “Year-to-Date Ground Rental” has the meaning set forth in Section 5.04(A).
- 2.72 “Year-to-Date Percentage Rent” has the meaning set forth in Section 5.04(A).

ARTICLE 3 - EFFECTIVE DATE, TERM AND EVALUATION OF PREMISES

3.01 Term. The term of this Lease shall commence on the “Date of Beneficial Occupancy”, which shall be the earlier of: (a) substantial completion of the Initial Leasehold Improvements as defined in Section 7.01(A); (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) twelve (12) months following the Approval Deadline (or such later date agreed to by County pursuant to Section 7.01(A)), and shall expire thirty (30) years thereafter, unless sooner terminated pursuant to the terms of this Lease (the “Term”).

3.02 Contingencies. This Lease is expressly subject to and conditioned upon satisfaction of the following contingencies (each a “Contingency” or collectively “Contingencies”), time being of the essence, unless extended in writing upon mutual agreement of the parties:

- (A) FAA review and approval of this Lease. County shall submit a copy of this Lease to the FAA for review and approval within ten (10) business days of the Effective Date of this Lease.
- (B) Receipt of a categorical exclusion determination from the FAA under the National Environmental Policy Act (“NEPA”) for the Tenant Improvements. County shall submit a request for a categorical exclusion determination from the FAA for the Tenant Improvements, concluding no further environmental review is required within thirty (30) business days of the Effective Date of this Lease.
- (C) If required by the FAA, FAA approval of an amendment to the Airport Layout Plan for the Airport for the Tenant Improvements. County shall submit a request to amend the Airport Layout Plan to the FAA within thirty (30) business days of the last to occur of: (a) receipt of approval from the FAA of this Lease; or (b) County’s receipt of a categorical exclusion determination for the Tenant Improvements.

Either party shall have the right to terminate this Lease upon prior written notice to the other party in the event any Contingency set forth in this Section: (a) is not satisfied within one hundred twenty (120) days of each date that County has submitted its request to the FAA pursuant to Section 3.02(A), 3.02(B) or 3.02(C) above; or (b) either party reasonably determines that a Contingency will not be capable of being satisfied on or before the date specified above for satisfaction of such Contingency. In the event a notice of termination is provided in accordance with the requirements of this Section, this Lease shall be deemed to be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Lease, except for those obligations arising hereunder prior to the termination of this Lease or which expressly survive termination.

3.03 Title Insurance. Tenant shall have sixty (60) days following the Effective Date to examine County's title to the Property (the "Title Review Period") and, at Tenant's option, obtain a title insurance commitment for the issuance of a leasehold title policy, agreeing to issue to Tenant a title insurance policy in such amount as deemed appropriate by Tenant. Tenant shall furnish a copy of the title insurance commitment and title policy, if applicable, to County together with legible copies of all exceptions to coverage reflected thereon upon receipt. The cost of the title insurance commitment and title insurance policy and any premium shall be borne by Tenant. Within thirty (30) days following the Effective Date, and subsequently upon fifteen (15) Business Days prior written request from Tenant, County agrees to provide an owner's affidavit in the form attached hereto as Exhibit "C". The Director shall have the authority to sign the Owner's Affidavit on behalf of County.

3.04 Title Defects. In the event the title insurance commitment shows as an exception any matters which render title unmarketable or would unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, Tenant shall notify County of Tenant's objections thereto prior to expiration of the Title Review Period. County shall have the right, but not the obligation, within sixty (60) days from receipt of the notice, to cure such title defects or to make arrangements with the title insurer for the removal of such objections from the title insurance commitment. If the defect(s) shall not have been so cured or removed from the title insurance commitment by endorsement thereto at the termination of the sixty (60) day period, Tenant shall have the option of: (a) accepting title to the Property as it then exists; (b) providing County with an additional ninety (90) days to remove such defects; or (c) terminating this Lease. Tenant shall provide County with written notice of its election within ten (10) days after expiration of the sixty (60) day period. In the event County is unable to cure such defects within the additional ninety (90) day period, Tenant shall have the option of: (a) accepting title to the Property as it then exists; or (b) terminating this Lease. Tenant shall provide County with written notice of its election within ten (10) days after expiration of the ninety (90) day period. In the event Tenant terminates this Lease pursuant to this Section, the parties shall be released from all obligations under this Lease, with the exception of those obligations arising hereunder prior to termination of this Lease or which expressly survive termination. In the event Tenant fails to properly exercise its right to terminate this Lease, Tenant shall be deemed to have waived such right and shall be deemed to have accepted title to the Property subject to all matters of record.

3.05 Survey. Tenant shall have the right, within the Title Review Period, to obtain a current survey of the Property. The survey shall be prepared in accordance with the minimum technical standards for surveys within the State of Florida. If the survey reveals any encroachments, overlaps, boundary disputes or other defects which render title unmarketable or unreasonably interfere with Tenant's intended development and use of the Property for the uses permitted hereunder, the same shall be treated as title defects as described in Section 3.03 of this Lease and Tenant shall have the same rights and remedies as set forth therein.

3.06 Inspections.

- (A) From and after the Effective Date and expiring one hundred twenty (120) days thereafter ("Inspection Period"), Tenant may conduct any and all Inspections that Tenant deems appropriate with respect to the Premises. All Inspections performed hereunder shall be conducted at Tenant's sole cost and expense and shall be performed by licensed Persons dealing in the respective areas or matters. Tenant agrees to indemnify County from and

against any and all third party damages arising from or out of the acts or omissions of a Tenant party in connection with a Tenant party's inspection of the Premises. Tenant's obligation to indemnify County pursuant to this Section shall survive the expiration or termination of this Lease. Prior to the expiration of the Inspection Period, Tenant shall provide County with one (1) complete copy of all final written reports detailing the results of the Inspections obtained by Tenant hereunder.

- (B) If Tenant reasonably determines that it will be unable to use the Premises for the uses permitted hereunder based on the result(s) of the Inspections (or that while being able to use the Premises, there will be limitations which will materially affect such use) or if environmental assessment(s) reveal the presence of a Pre-existing Environmental Condition, Tenant may elect to terminate this Lease upon written notice to County on or before the expiration of the Inspection Period. In the event Tenant fails to properly exercise its right to terminate this Lease pursuant this Section, Tenant shall be deemed to have waived such right and accepted the Premises "As Is" in its then existing condition, provided, however, that Tenant's acceptance of the Premises will not limit County's obligations with respect to any Pre-existing Environmental Condition as set forth in this Lease. In the event Tenant terminates this Lease pursuant to this Section, Tenant, at its sole cost and expense, shall repair any damage resulting from the Inspections and restore the Premises to the condition in which it existed prior thereto, using materials of like kind and quality.

- (C) If the Inspections reveal a Pre-existing Environmental Condition, Tenant shall notify County in writing of the Pre-existing Environmental Condition with a copy of the Inspection report(s), and County may elect to terminate this Lease upon written notice to Tenant within sixty (60) days of the expiration of the Inspection Period. In the event County fails to properly exercise its right to terminate this Lease pursuant to this Section, County agrees that Tenant shall not be responsible for any Pre-existing Environmental Conditions, including, but not limited to, those identified as a result of the Inspections, and County shall assume the full responsibility and cost to remedy any Pre-existing Environmental Condition in accordance with Environmental Laws ; provided, however, the parties agree that there shall be a rebuttable presumption that any condition of the Premises identified after the expiration of the Inspection Period is not a Pre-existing Environmental Condition, and it shall be Tenant's burden to demonstrate such condition is a Pre-existing Environmental Condition. The parties acknowledge and agree that the means and methods of remedying any Pre-existing Environmental Condition as permitted by applicable law shall be within the sole control and discretion of County; provided, however, that the County shall take commercially reasonable steps to avoid interference with Tenant's construction or operations and shall not agree to any restrictions on the use of the property that limit or impede Tenant's operations on the Premises.

- (D) If a notice of termination is timely given by either party pursuant to this Section, this Lease shall be deemed terminated, and the parties shall be relieved of all further liabilities and obligations under this Lease with the exception of Tenant's indemnification obligations under Section 3.06(B) and Tenant's obligation to restore the Premises under Section 3.06(C) and any party's obligations which expressly survive termination hereof.

ARTICLE 4 - PREMISES AND PRIVILEGES

4.01 Description of Premises. County hereby demises and leases to Tenant, and Tenant rents from County, the Property, subject to the terms, conditions and covenants set forth herein.

4.02 Description of Specific Privileges, Uses and Rights. Tenant shall have the right and obligation to use the Property for the purpose of constructing, operating, and maintaining a first-class indoor and outdoor golf-related entertainment, food and beverage venue on the Property.

4.03 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted in Section 4.02 above, County hereby grants the Tenant the nonexclusive right of ingress to and egress from the Premises on, over and across internal Airport roadways used by the public, including, but not limited to, the internal Airport roadways providing access to the Premises from the public rights-of-way. The right of ingress to and egress from the Premises shall be subject to such laws, rules, regulations and orders as now or may hereafter have application at the Airport. Furthermore, Tenant shall be permitted to transport its customers from the Premises to and from the Airport's commercial terminal building in its courtesy vehicles and provided such transportation is provided at no charge to the customer, Tenant shall not be required to obtain a separate permit or authorization from the Department for such ground transportation activities from the Airport, and any required Airport decals shall be provided at no additional cost to Tenant. Except as expressly set forth in this Section, nothing in this Lease shall be construed to grant or convey 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 herein.

4.04 Prohibited Uses, Products and Services. Tenant agrees the Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. Tenant shall not provide any products or services not specifically authorized by this Lease or the Department.

4.05 Restrictions on Privileges, Uses and Rights.

- (A) 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.
- (B) Parking of boats, motor homes or inoperable vehicles and the stockpiling or storage of inoperable equipment, machinery and containers on the Premises is strictly prohibited.
- (C) All storage and dumpsters must be screened or concealed from public view, and storage shall be limited to storage incidental to Tenant's overall operation on the Premises.

- (D) Tenant shall not permit the Premises to be used for vehicular parking or storage by the public, its customers or employees or any other person whomsoever while traveling from the Airport in lieu of utilizing the Airport's public parking facilities. Tenant further agrees that its customers shall only be permitted to park vehicles on the Premises only while utilizing Tenant's services or facilities on the Premises.
- (E) Tenant shall not use the Premises for the operation of rental car facilities or ground transportation services such as taxicab, limousine, transportation network companies or other similar ground transportations service providers.

4.06 Condition and Use of the Premises. Except as otherwise provided for herein, and subject to Tenant's rights to complete inspections pursuant to Sections 3.03, 3.04 and 3.05, Tenant accepts the Premises in its "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 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 Rental. For the use and occupancy of the Property, Tenant shall pay to County annual rental in the amount of the greater of:

- (A) Initial annual ground rental of Three Dollars and Five Cents (\$3.05) per square foot, for approximately One Hundred Forty-Six Thousand, Nine Hundred Thirty-Seven (146,937) square feet of ground or Four Hundred Forty-Eight Thousand, One Hundred Fifty-Seven Dollars and Eighty-Five Cents (\$448,157.85) annually ("Ground Rental"). The initial annual Ground Rental shall be adjusted based on the updated survey and legal description to be prepared pursuant to Section 2.56; or
- (B) Four Percent (4.0%) on of annual Gross Revenues up to Ten Million Dollars (\$10,000,000.00), plus Two Percent (2.0%) on any amount of annual Gross Revenues greater than Ten Million Dollars (\$10,000,000.00) ("Percentage Rent").

5.02 Commencement and Time of Payment of Ground Rental. Payment of Ground Rental by Tenant to County shall commence upon the Date of Beneficial Occupancy. Ground Rental shall be payable in equal monthly installments, in advance, on or before the first (1st) day of each and every month throughout the Term of this Lease. All payments must be delivered (together with applicable sales taxes), without demand and without any deduction, holdback or set off whatsoever, to: Palm Beach County Department of Airports, 846 Palm Beach International Airport, Finance Division, West Palm Beach, Florida 33406, or at such other address as may be directed by the Department from time to time. Payments shall be made payable to "Palm Beach County."

5.03 Commencement and Time of Payment of Percentage Rent. In the event the Monthly Percentage Rent (as hereinafter defined) is greater than the monthly installment payment of Ground Rental payable to County, Tenant shall pay the difference to County with the Monthly Report required by Section 5.07 on or before the twentieth (20th) day of each and every month for the preceding month, without demand, deduction or setoff, throughout the Term of this Lease. For purposes of this Lease, the term "Monthly Percentage Rent" shall mean the payment, if any, required to be current in payment of Year-to-Date Percentage Rent, as provided in Section 5.04.

5.04 Monthly Reconciliation of Rental Payments. Payment of rental by Tenant shall be reconciled on a monthly basis on or before the twentieth (20th) day of each and every month for the preceding month, as hereinafter provided. If the total amount of rental actually paid by Tenant to County from the beginning of the then current Lease Year exceeds the greater of either the: (1) Year-to-Date Ground Rental; or (2) Year-to-Date Percentage Rent, no further payment of rent shall be due from Tenant, until such time as the amount actually paid by Tenant is less than the greater of either (1) or (2) above. An illustrative example of the monthly reconciliation as provided for herein is attached as Exhibit "F" attached hereto. For purposes of this provision, the terms "Year-to-Date Ground Rental" and "Year-to-Date Percentage Rent" shall have the following meanings:

- (A) Year-to-Date Ground Rental shall mean one-twelfth (1/12) of the amount of annual Ground Rental, multiplied by the number of months that have accrued since the start of the then-current Lease Year. For example, if the Lease Year is January 1 through December 31, and current annual Ground Rental is Four Hundred Forty-Eight Thousand, One Hundred Fifty-Seven Dollars and Eighty-Five Cents (\$448,157.85) annually, payable in monthly installments of Thirty-Seven Thousand, Three Hundred Forty-Six Dollars and Forty-Nine Cents (\$37,346.49), exclusive of applicable sales tax, then as of November 1, eleven (11) monthly installments of Ground Rental are due (January through July), therefore the Year-to-Date Ground Rental as of November 20 is $11 \times \$37,346.49 = \$410,810.39$.
- (B) Year-to-Date Percentage Rent shall be determined by totaling the sum of Gross Revenues accruing from the start of the then-current Lease Year (January 1 through December 31), multiplied by Four Percent (4.0%) up to Ten Million Dollars (\$10,000,000.00), plus Two Percent (2.0%) on any amount of annual Gross Revenues greater than Ten Million Dollars (\$10,000,000.00). For example, if Gross Revenues through October 31 are Fourteen Million, Seven Hundred Fifty Thousand Dollars (\$14,750,000.00), then Year-to-Date Percentage Rent as of November 20 would be: $(\$10,000,000.00 \times 4.0\% = \$400,000.00)$ plus $(\$4,749,999.99 \times 2.0\% = \$94,999.98) = \$494,999.98$, exclusive of applicable sales tax.

Nothing herein shall affect the obligation of Tenant to provide the Monthly Report, as provided in Section 5.07, and to submit payment of Monthly Percentage Rent by the twentieth (20th) day of any month in which Year-to-Date Percentage Rent exceeds the amount actually paid by Tenant to County since the start of the then-current Lease Year. Tenant acknowledges and agrees that nothing herein affects Tenant's annual rental obligations set forth in Section 5.01, or the adjustment of Ground Rental in accordance with Section 5.05. Reconciliation of rental on an annual basis shall be conducted in accordance with Section 5.08.

5.05 Adjustment of Ground Rental.

- (A) On October 1, 2025, and each three (3) year anniversary thereof (each such date, an "Adjustment Date"), the then current Ground Rental shall be adjusted in accordance with the provisions of this Section. The new Ground Rental shall be determined by an appraisal obtained by County, which shall set forth the fair market rental for the Property (exclusive of the Tenant Improvements). 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 Property as established by the appraisal, which shall become the new Ground Rental subject to the limitations set forth in Section 5.05(B) below. Tenant shall commence paying the new Ground Rental on the Adjustment Date. The new Ground Rental shall not be less than the Ground Rental for the prior period. This Lease shall automatically be considered as amended to reflect the new Ground Rental rate, without formal amendment hereto, upon County's written notification of the establishment of the new Ground Rental rate applicable to the Property.
- (B) Notwithstanding the foregoing, the Ground Rental payable hereunder shall not exceed an amount that would be obtained by multiplying the Base Rental by a fraction, the numerator of which shall be the "Consumer Price Index" (as hereinafter defined) figure for May of the calendar year in which such adjustment is to become effective and the denominator of which shall be the Consumer Price Index figure for April of the Base Rental Year.
- (C) For the purposes hereof, the "Consumer Price Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100), not seasonally adjusted, or any successor thereto as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. In the event that the Consumer Price Index ceases to use the 1982 - 1984 average of one hundred (100) as the standard reference index base period, the then current standard reference index base period shall be utilized. In the event the Consumer Price Index (or successor or substitute Consumer Price Index) is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.
- (D) Notwithstanding any provision of this Lease to the contrary, on October 1, 2037 and each twelve (12) year anniversary thereof (each, an "Appraisal Adjustment Date"), the then current Ground Rental shall be adjusted and the new Ground Rental shall be determined as set forth in this Section 5.05(D) by appraisal and such adjustment for that period shall not be subject to the provisions of Sections 5.05(A) and 5.05(B). The new Ground Rental established by this in this Section 5.05(D) shall not be less than the Ground Rental for the prior period. Upon such adjustment, this Lease shall automatically be considered as amended to reflect the new Ground Rental rate, without formal amendment hereto, upon County's written notification

of the establishment of the new Ground Rental rate applicable to the Property. Prior to the Appraisal Adjustment Date, County, at its sole cost and expense, shall obtain an appraisal of the Property to determine its fair market rental value. Prior to the Appraisal Adjustment Date, County shall provide a complete copy of the appraisal to Tenant. In the event Tenant objects to the fair market rental value set forth in the appraisal obtained by County, Tenant shall notify County in writing of its objection within thirty (30) days of receipt of County's appraisal. Provided Tenant has notified County in writing of its objection to County's appraisal within the aforementioned thirty (30) day period, Tenant, at its sole cost and expense, may obtain a second appraisal. Tenant shall provide County with a copy of the second appraisal within sixty (60) days of the date of Tenant's objection notice. In the event a second appraisal is not obtained, Ground Rental shall be adjusted on the Appraisal Adjustment Date in accordance with the rental rate set forth in the first appraisal. In the event a second appraisal is obtained, and the rental rates established in the two (2) appraisals vary by an amount less than or equal to twenty five percent (25%) of the average of the two (2) appraisals, then Ground Rental shall be adjusted on the Appraisal Adjustment Date based on the average of the two (2) appraisals. In the event the two (2) appraisals vary by an amount greater than twenty five percent (25%) of the average of the two (2) appraisals, then County and Tenant shall jointly retain an appraiser, reasonably acceptable to both parties, to perform a third appraisal. Except as otherwise provided for below, the cost of the third appraisal shall be borne equally by the parties. In the event the parties are unable to agree upon the selection of the appraiser to conduct the third appraisal, County shall have the right to select the third appraiser; provided, however, the cost of the third appraisal shall be borne solely by County. In the event a third appraisal is obtained, Ground Rental shall be adjusted, effective as of the Appraisal Adjustment Date, by the average of the three (3) appraisals. The Ground Rental established pursuant to this Section 5.05(D) shall become the new Base Rental for purposes of future rental adjustments pursuant to Section 5.05(B). The parties agree that any appraisers selected pursuant to this Section 5.05(D) shall be qualified M.A.I. appraisers with demonstrated experience in appraising commercial properties.

- (E) 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 rate hereunder to ensure compliance with the provisions of Section 710 (rate covenant) of the Bond Resolution.
- (F) Any delay or failure of County in computing the adjustment in Ground Rental, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such adjusted annual Ground Rental from the applicable Adjustment Date.

5.06 Late Payments - Interest. Tenant shall pay to County interest at the rate of one and one-half percent (1.5%) per month on any late payments commencing ten (10) days after the amounts are due. The Department, in its sole and absolute discretion, may elect to waive the aforementioned late fees in appropriate circumstances as determined by the Department.

5.07 Monthly Report. On or before the twentieth (20th) day of each and every month throughout the Term of this Lease after the Date of Beneficial Occupancy, Tenant shall deliver to County an accurate written accounting statement ("Monthly Report") in a form and detail satisfactory to County, which includes the following information for the preceding calendar month: (a) the Gross Revenues for the preceding calendar month; (b) the Monthly Percentage Rent payable to County; and (d) any exclusions from Gross Revenues. County may require the Monthly Report to be delivered to County electronically. 5.08 Annual Report. Within ninety (90) days after the end of each Lease Year, Tenant shall provide County with an annual audit report covering the preceding Lease Year ("Annual Report"). The Annual Report shall be in a form reasonably satisfactory to County and shall be prepared by an independent Certified Public Accountant, not a regular employee of Tenant, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The Annual Report shall include the following:

- (A) A schedule detailing Gross Revenues for the preceding Lease Year by category and month, which shall also detail any exclusion(s) from Gross Revenues;
- (B) A schedule detailing the payments to County by Tenant during the preceding Lease Year by month; and
- (C) A calculation of the amount owed to either party, if any.

The Annual Report shall include an opinion regarding the information contained in schedules listed above. The Annual Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules. If the Annual Report indicates that the amount (together with any sales taxes thereon) due and owing for any Lease Year is greater than the amount paid by Tenant to County during such Lease Year, Tenant shall pay the difference to County with the Annual Report. If the amount paid by Tenant to County during any Lease Year exceeds the amount due and owing for such Lease Year, County shall credit the overpayment in the following order: (a) against any past due amounts owed to County by Tenant, including interest and late fees; (b) against currently outstanding, but not yet due, rental payments owed to County by Tenant; and (c) against any other sums payable by Tenant to County. Notwithstanding the foregoing, in the event of an overpayment by Tenant during the last Lease Year, County shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Tenant any overpayment amount in excess of the credit. The obligations arising under this paragraph shall survive the expiration or earlier termination of this Lease until satisfied.

5.09 Accounting Records. Tenant shall keep all books of accounts and records customarily used in this type of operation, and as from time to time may be required by County, in accordance with Generally Accepted Accounting Principles prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Lease Year, including three (3) years following the expiration or earlier termination of this Lease. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Tenant's operations hereunder. If the books of accounts and records are kept at locations other than the Premises, Tenant shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this paragraph. The obligations arising under this paragraph shall survive the expiration or termination of this Lease until satisfied.

5.10 Audit by County. Notwithstanding any provision in this Lease to the contrary, County or its representative(s) may perform audits of all or selected operations performed by Tenant under the terms of this Lease upon reasonable notice and during regular business hours. In order to facilitate the audit performed by County, Tenant agrees to make suitable arrangements with the Certified Public Accountant who is responsible for preparing the Annual Report on behalf of Tenant to make available to County's representative(s) any and all working papers relevant to the report prepared by the Certified Public Accountant. County or its representative(s) shall make available to Tenant a copy of the audit prepared by or on behalf of County. Tenant shall have sixty (60) days from receipt of the audit report from County or its representative(s) to provide a written response to the Department regarding the audit report. Tenant agrees that failure of Tenant to submit a written response to the audit report in accordance with the requirements of this paragraph shall constitute acceptance of the audit report as issued. If, as a result of the audit, it is established that Tenant has understated Gross Revenues by five percent (5%) or more, the entire expense of the audit shall be borne by Tenant.

5.11 Security Deposit. Prior to expiration of the Inspection Period, Tenant shall post a security deposit with County equal to three (3) monthly installments of Ground Rental (the "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. In the event of any failure by Tenant to pay any rentals 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 immediately replace the Security Deposit with a new Letter of Credit or Bond 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 Ground Rental payable hereunder; provided, however, if the amount of required Security Deposit increase resulting from adjustment of the Ground Rental is less than fifteen percent (15%) of the amount of Security Deposit currently held, no increase in the Security Deposit shall be required. 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 shall: (a) entitle County to

draw down the full amount of such Security Deposit; and (b) 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. 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.

5.12 Triple Net Lease. This Lease shall be deemed to be "triple net" without cost or expense to County including, but not limited to, cost and expenses relating to taxes, insurance, and the maintenance and operation of the Premises.

5.13 Taxes and Fees. Tenant shall pay, on or before their respective due dates, all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including improvements thereon) or the estate hereby granted, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes, and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property of Tenant. 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/lessor, to the extent as applicable.

5.14 Additional Rent. Any and all sums of money or charges required to be paid by Tenant under this Lease, other than the annual rental, 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.

5.15 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.

ARTICLE 6 - QUALITY AND CHARACTER OF SERVICES

6.01 Quality of Merchandise. Tenant shall offer for sale only products and merchandise, which are safe, free of adulteration, sanitary and properly labeled in accordance with applicable laws.

6.02 Hours of Operation. Tenant shall actively operate the Premises in a business-like manner and the businesses located on the Premises shall maintain such hours of operation of comparable businesses located within general proximity to the Airport, including in the City of West Palm Beach.

6.03 Right to Object. County shall have the right to raise reasonable objections to the appearance or condition of the Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to the Department to be remedied by Tenant.

6.04 Nondiscriminatory Services Requirement. Tenant shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Tenant may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees, Airport employees, seniors and military personnel.

6.05 Type of Operation. Tenant shall maintain and operate the Premises in an orderly, proper, and first-class manner, which does not unreasonably annoy, disturb, or offend others at the Airport considering the nature of such operations.

6.06 Replacements and Refunds. Tenant shall, without any additional charge to the purchaser, exchange any product reasonably determined by the purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price.

6.07 Services to the General Public. Tenant shall, without charge, provide services such as making change, giving directions, and providing general information to the public. Tenant shall strive to ensure that all of its employees know the layout of the Airport and have the ability to provide passengers and visitors with information regarding the locations of Airport services.

6.08 Personnel. Tenant shall ensure the Premises are managed, maintained, and operated under the supervision and direction of qualified and experienced manager(s), as reasonably determined by Tenant. Tenant shall provide County with contact information for one or more local representative(s) of the Tenant who will be available by telephone in case of an emergency.

ARTICLE 7 - CONSTRUCTION OF IMPROVEMENTS

7.01 Tenant Construction Requirements. Except as otherwise provided for herein, Tenant shall make no additions, alterations or improvements to the Premises, or improvements constructed thereon, without the prior written approval of the Department, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges and agrees that it shall not be deemed unreasonable for the Department or County to withhold consent to any improvements determined to be a potential hazard to air navigation by the Department, County or FAA or which would be inconsistent with applicable federal laws or regulations, or FAA orders, advisory circulars or other similar guidance documents. Any such additions, alterations or improvements shall be made in accordance with the construction requirements contained herein and as established by the Department, which shall be applied in a non-discriminatory basis as similar commercial ground leases managed by the Department, taking into consideration the location of the Premises in relation to the Airport's airfield facilities and potential impacts on air navigation. All improvements constructed or placed on the Premises, including drainage and landscaping, shall be of attractive construction and first-class design, shall comply with any and all applicable governmental laws, regulations, rules and orders shall follow standard construction methods, and shall be constructed in accordance with the requirements of this Article. Notwithstanding the foregoing, additions, alterations or improvements to interior improvements to the Premises that do not require a building permit, such as interior painting and replacement of

flooring, and replacement of damaged exterior landscaping with the same landscaping materials, shall not require the Department's prior approval. County shall cooperate with Tenant in the pursuit of governmental approvals, permits and entitlements necessary for Tenant to construct the improvements on the Property, including, any required FAA approvals (collectively, the "Governmental Approvals"), by executing applications and other instruments necessary to obtain the required Governmental Approvals when the property owner is required to execute such applications or instruments, which may be signed on behalf of County by the Director or the Department's Senior Deputy Director or Deputy Director of Airports Planning and Development. Tenant acknowledges that: (a) County shall be acting in its proprietary capacity in executing such applications or instruments and nothing in this Section shall be construed as obligating or requiring County to take any specific action on such applications or instruments when acting in its governmental or regulatory capacity; and (b) any and all costs incurred in the pursuit of the Governmental Approvals shall be borne solely by Tenant. The term "Governmental Approvals" shall not include the Department's internal review or approval on behalf of the County under this Lease, or the contingencies set forth in Section 3.02. Tenant shall obtain all Governmental Approvals necessary for construction within four (4) months following the Effective Date (the "Approval Deadline"). The Director may extend the Approval Deadline provided Tenant provides documentation demonstrating Tenant's diligence in pursuing the Governmental Approvals.

- (A) Initial Leasehold Improvements. Tenant shall cause the design and construction of, at minimum, the following improvements on the Property at Tenant's sole cost and expense: (a) two (2) 18-hole mini-golf courses plus a Challenge Hole, for a total of 37-holes; playground area; and a 2-level dining and entertainment venue consisting of approximately 13,933 square feet; and (b) all other improvements and infrastructure, whether located on or off the Property, necessary to support the development of the Property, including, but not limited to, electrical systems, sewage, wastewater disposal, landscaping, lighting, signage, a minimum of 108 parking spaces, roadways and driveways necessary for ingress, egress and circulation, stormwater control systems, lighting and security measures, as required (the "Initial Leasehold Improvements") at its sole cost and expense. Construction of the Initial Leasehold Improvements shall be completed no later than twelve (12) months following the issuance of Governmental Approvals, unless otherwise approved by the Department in writing, which approval shall not be unreasonably withheld, conditioned or delayed for reasons beyond the reasonable control of Tenant such as an event of "Force Majeure" as provided in Section 27.26. Substantial completion of the Initial Leasehold Improvements will occur when the applicable governmental authority issues a temporary or permanent certificate of occupancy for the Property, as improved by the Initial Leasehold Improvements. Tenant shall promptly notify County in writing of the issuance of a certificate of occupancy for the Initial Leasehold Improvements. The cost of the design and construction of the Initial Leasehold Improvements shall be at Tenant's sole cost and expense.

- (B) Minimum Capital Expenditure. Tenant shall expend not less than Eight Million Dollars (\$8,000,000.00) on the construction of the Project ("Minimum Capital Expenditure"). Capital expenditure costs that may be counted towards satisfaction of the Minimum Capital Expenditure ("Approved Costs") shall include all costs paid for work performed, services rendered and materials furnished for the construction of the Project, subject to the following conditions and limitations:
- (1) The cost of design, construction and acquisition of the Project, including, but not limited to, building, site work, underground utilities, aircraft apron construction costs; all payments to contractors and sub-contractors; construction and Tenant bonds; construction insurance; building, impact and concurrency fees; all permit and inspection fees; utility connection fees; surveying and layout costs; environmental inspection, analysis and remediation costs; geotechnical and materials testing; site lighting, temporary and permanent fencing, and initial landscape and irrigation installation and material costs shall be considered Approved Costs.
 - (2) Payments made by Tenant to independent contractors for engineering, inspections, construction management services and architectural design work shall be considered Approved Costs; provided, however, such costs shall be limited to fifteen percent (15%) of the Minimum Capital Expenditure.
 - (3) True third party costs, payments made by Tenant, and costs typically capitalized under GAAP provisions, shall all be considered Approved Costs.
 - (4) Costs for consultants (other than engineering, environmental and design consultants, as provided above), legal fees and accountant fees shall not be considered Approved Costs.
 - (5) Finance and interest expenses shall not be considered Approved Costs.
 - (6) Administration, supervisor and overhead or internal costs of Tenant shall not be considered Approved Costs.
 - (7) Costs incurred by any of Tenant's affiliates or subtenants for the Project on the Premises shall not be considered Approved Costs.
 - (8) Costs associated with acquisition or installation of personalty, such as furnishings, trade fixtures and equipment that is not permanently affixed to the Premises, or any other personalty whatsoever shall not be considered Approved Costs.

- (9) Costs of interior decorations, special finishes, wall tile or other special wall finishes and coverings; construction photographs; special external and internal lighting; and signage, other than those required by local codes and ordinances, shall not be considered Approved Costs unless Tenant has obtained written approval from County prior to incurring such costs, or the same are included in Tenant's initial construction plans and specifications for the Project.
 - (10) Costs associated with repairs, alterations, modifications, renovations or maintenance of any further improvements on the Premises (including, but not limited to, improvements existing as of the Effective Date and improvements subsequently constructed on the Premises) shall not be considered Approved Costs.
 - (11) Any costs associated with any improvements other than the Project shall not be considered Approved Costs, unless Tenant has obtained written approval from County prior to incurring such costs.
- (C) SBE Goal. Tenant acknowledges and agrees that Tenant has voluntarily agreed to a mandatory minimum SBE participation goal of Two and One-Half Percent (2.5%) to the aggregate of design and construction of the Initial Leasehold Improvements project as a whole (the "SBE Goal"). Achievement of the goal shall be determined as a percentage of the total cost of the design and construction of the Initial Leasehold Improvements as confirmed in the Capital Investment Report.
- (1) Required Documentation. Prior to commencement of construction of the Initial Leasehold Improvements, Tenant shall submit a detailed cost estimate for the project, as well as a completed EBO Schedule 1 (List of Proposed Contractor/Consultant & Subcontractor/Subconsultant Participation) along with corresponding Schedule 2(s) (Letter of Intent). When completed and submitted, the EBO Schedule 1 and EBO Schedule 2(s) (herein collectively referred to as the "EBO Schedules") shall become material terms of this Lease. Tenant understands that each SBE firm utilized for the design and construction of the Initial Leasehold Improvements must be certified by County in order to be counted toward the S/M/WBE participation goal. Tenant agrees to provide any additional information reasonably requested by the County to substantiate participation.
 - (2) SBE Goal Waiver Requests/Good Faith Efforts. If Tenant determines that Tenant will be unable to comply with the SBE Goal, then the Tenant must request a waiver or partial waiver from the EBO. Such waiver request shall be made on the required EBO forms and include documentation that demonstrates good faith efforts were undertaken by Tenant to comply with the SBE participation goal. Tenant acknowledges and agrees that Tenant shall be required to provide the EBO with evidence and supporting documentation demonstrating its good faith efforts as provided in the EBO

Subcontracting Goal Waiver Request Form, or such other form in use or approved by EBO for purpose, and such other documentation and information as may be reasonably requested by the EBO. Tenant acknowledges and agrees that a request for a waiver of the SBE Goal shall be reviewed and approved or denied by the EBO in accordance with the EBO Ordinance.

- (3) SBE Substitutions. Tenant shall only be permitted to replace a certified SBE listed in EBO Schedule 1 that is unwilling or unable to perform. Such substitution must be done with other certified SBEs in order to maintain the SBE percentages submitted in EBO Schedule 1. Requests for substitutions must be submitted to the Department and the EBO for approval. Any desired changes (including substitutions or termination and self-performance) must be approved in writing in advance by the EBO. Upon receiving approval of substitution for the SBE, the Tenant must submit a completed and signed EBO Schedule 2 by the proposed (replacement) SBE.
 - (4) Records and Access. The EBO has the right to review Tenant's construction contracts and related subcontracts and records in order to determine compliance with the requirements of this Section for up to four (4) years from the date of completion of the Initial Leasehold Improvements.
- (D) Construction Requirements. Prior to constructing any improvements on the Premises (including, but not limited to, the Initial Leasehold Improvements, 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. All development on the Premises will need to submit FAA FORM 7460-1 - NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION, in electronic format, thru the FAA's website at <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>, during concept development for determination of no hazard to air navigation and to ensure no interference with radio navigation facilities. Tenant shall comply with any conditions included in any FAA final determination resulting therefrom. The Department shall review the preliminary Plans and provide a written response to Tenant within fifteen (15) Business Days after receipt of the preliminary Plans; provided, however, in the event the preliminary Plans are subject to review by another governmental authority with jurisdiction over the Airport, including, but not limited to, the FAA, the timeframe for review shall be extended by the amount of time necessary for such authority or agency to complete its review. 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 and Department shall

provide a written response to Tenant within fifteen (15) Business Days thereafter whether the modified Plans have been approved; provided, however, in the event the modified Plans are subject to review by another governmental authority with jurisdiction over the Airport, including, but not limited to, the FAA, the timeframe for review shall be extended by the amount of time necessary for such authority or agency to complete its review. 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 governmental approvals required for the commencement of construction. Prior to commencement of construction, Tenant shall deliver to the Department one (1) 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.

- (E) Within sixty (60) days following Tenant's receipt of a certificate of occupancy or certificate of completion, as appropriate, for improvements constructed pursuant to this Article, Tenant, at its sole cost and expense, shall have prepared and deliver to the Department: one (1) complete set of as-built drawings in a hardcopy format, one (1) complete set of as-built drawings in a PDF format and one (1) complete set of as-built drawings in Auto CADD files in the latest version acceptable by the Department.

- (F) Within sixty (60) days following the substantial completion of construction of the Initial Leasehold Improvements, Tenant shall, at its sole cost and expense, have prepared and delivered to the Department a detailed statement attested to and certified by an independent Certified Public Accountant, reasonably acceptable to County, detailing the costs by category and amount incurred by Tenant in accordance with Sections 7.01(A) and 7.01(B) above and to evidence satisfaction of the SBE requirements set forth in Section 7.01(C) for the Initial Leasehold Improvements ("Capital Investment Report"). The Capital Investment Report shall include schedules detailing: (a) the expenses incurred by Tenant to complete the Initial Leasehold Improvements; and (b) the name of each SBE firm that participated in the design and/or construction of the Initial Leasehold Improvements, the total dollars paid to each SBE and the overall percentage of SBE participation. The Capital Investment Report shall be in a form and substance reasonably satisfactory to County and shall be prepared and certified by the chief financial officer of Tenant or a qualified and licensed independent Certified Public Accountant. The Capital Investment Report shall not contain a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, regarding the information contained in the required schedules. In the event the Capital

Investment Report indicates that Tenant failed to satisfy the SBE Goal, as adjusted by the waiver provisions set forth in Section 7.01(C), if applicable, Tenant shall pay to County liquidated damages equal to the difference in dollar value of SBE participation committed to in Tenant's Proposal, and the dollar value of SBE participation as actually achieved, which shall be paid to County concurrent with submission of the Capital Investment Report. Tenant hereby agrees and affirms the amount of liquidated damages specified in this Section reflects a fair compensable value for damages suffered by the County as a result of Tenant's failure to satisfy the SBE requirements of this Lease, the amount is not a penalty and shall not be contested as reflecting the imposition of a penalty against Tenant. Notwithstanding any provision of this Lease to the contrary, the parties acknowledge and agree that liquidated damages shall be County's sole remedy for Tenant's failure to satisfy the SBE requirements of this Lease.

- (G) All improvements constructed upon the Premises shall be completed at Tenant's sole cost and expense and shall be completed in accordance with the approved Plans.
- (H) Tenant acknowledges that the Property is located on one of the main entry roadways to the Airport and that it is of the utmost importance to the parties to ensure that Airport passengers and users are presented with a positive "first impression" of the Airport. Accordingly, County's approval rights shall extend to and include architectural and aesthetic matters, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant acknowledges and agrees that it shall not be deemed unreasonable for County to require modifications to the types, location, size or height of landscaping, exterior signage or fencing or to exterior building color schemes or decorative elements; to require screening from public view of exterior mechanical equipment (including roof appurtenances, such as exhaust fans and heating and air conditioning units, and electrical equipment), loading docks, dumpsters or other similar items; or to disapprove of the use of building materials that do not reflect a high degree of quality, durability or craftsmanship, such as plastic, or aluminum or vinyl siding. The parties agree to work cooperatively and in good faith to avoid any delays in the design approval process.
- (I) County reserves the right, in its sole and absolute discretion, to withhold approval of any improvements within the Premises determined to be a potential hazard to air navigation by the Department, County and/or the FAA or which County determines, in its sole and absolute discretion, would have the potential of affecting future Airport operations or development.

7.02 Lighting Improvements. Tenant acknowledges that certain types of lighting may present a hazard to air navigation due to the location of the Premises; therefore, in addition to all other construction requirements set forth herein, Tenant shall comply with the following restrictions and requirements related specifically to lighting on the Premises:

- (A) All lighting fixtures shall be shielded and installed so as to project the light in a downward manner in order to avoid interference with air navigation. In no event shall lasers or other light shows be permitted on the Premises.
- (B) Lighting shall not be constructed or installed in any manner that may adversely affect pilots in the operation of aircraft or Air Traffic Control personnel's ability to perform their duties at the Airport. Tenant acknowledges that any lighting that results in sky glow or glare will adversely affect the operation of aircraft and Air Traffic Control personnel's ability to perform their duties; therefore, any lighting that results in such effects is strictly prohibited.
- (C) Prior to installation of any lighting improvements on the Premises, whether temporary or permanent, Tenant shall submit a lighting plan to County and the FAA for review and conceptual approval. The lighting plan shall include: (a) the location of proposed lighting improvements; (b) the height of all lighting improvements; (c) the number and type of lighting fixtures proposed to be installed; (d) photometric data from the manufacturer(s) of the lighting fixtures proposed to be installed; and (e) any other information reasonably requested by County or the FAA. Tenant shall not commence installation of any lighting improvements on the Premises prior to submission of the lighting plan and receipt of conceptual approval by County and the FAA. Any modifications to the approved lighting plan shall likewise be submitted to County and the FAA for review and conceptual approval prior to any modifications to the lighting improvements. Notwithstanding any provision of this Lease to the contrary, Tenant acknowledges and agrees that County and/or FAA's approval of the lighting plan or any modifications thereto shall not be construed as preventing County and/or the FAA from requiring future modifications to the lighting improvements upon the determination that such lighting improvements adversely affect air navigation.
- (D) Prior to commencing operation of lighting on the Premises, Tenant shall provide a certification to County that the lighting improvements have been installed in accordance with the approved lighting plan and comply with the requirements of this Lease. The certification shall be in a form satisfactory to County and shall be made by a company specializing in lighting, which is reasonably acceptable to County. Tenant shall be required to provide a similar certification prior to commencing operation of any lighting improvements under a modified lighting plan and following any major storm event, including, but not limited to, tropical storms and hurricanes.
- (E) Upon notification by County that any lighting improvements are adversely affecting air navigation or have resulted in complaints from the FAA or pilots operating aircraft at the Airport, Tenant shall immediately take whatever action is necessary to mitigate such effects, including, but not limited to, termination of the lighting resulting in such effects. In addition to any other remedies provided for herein, Tenant agrees that County shall be entitled to engage in self-help in the event of: (a) any violation of the

lighting provisions of this Lease; or (b) a determination by County and/or the FAA that any lighting improvements are adversely affecting air navigation. Without limiting the generality of the foregoing, Tenant acknowledges that County shall be entitled to enter the Premises and mitigate adverse lighting effects, including, but not limited to, terminating the lighting resulting in such effects.

7.03 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. Prior to the commencement of any improvements to the Premises, the estimated cost of which exceeds Two Hundred Thousand Dollars (\$200,000), Tenant shall cause to be made, executed and delivered to County at Tenant's sole cost a bond that is in a form and substance reasonably satisfactory to County, that a company reasonably acceptable to County issues, and that guarantees Tenant's compliance with its obligations arising under this Lease. Tenant may not subdivide improvements or phase projects for the purpose of avoiding the foregoing bond requirement. County shall be named as the obligee on the bonds. In lieu of the bond required by this Section, Tenant may file with County an alternative form of security in the form of cash, money order, certified check, cashier's check, clean irrevocable letter of credit, or security of a type listed in Part II of Chapter 625, Florida Statutes; provided, however, the form of the security and company issuing such security, if applicable, shall be subject to the prior written approval of County and shall be in accordance with County's standard policies and procedures. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this Section. Any such alternative form of security may be reduced by Tenant subject to approval of County during the construction of the improvements, but not more than once per month, based upon the percentage of completion of the improvements plus retainage, and the Department, on behalf of the County, may execute such certificates, notices or other documents as may be necessary to effectuate such reduction. Tenant shall provide County evidence reasonably satisfactory to County evidencing the percentage of completion of the improvements, including, but not limited to, an executed Application and Certification for Payment (A1A Document G702) indicating the balance to finish the work, including retainage.

7.04 Contractor Bonds/Insurance.

- (A) Tenant shall cause its contractors to furnish for the benefit of County a payment and performance bond satisfying the requirements of 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).
- (B) Tenant shall also require its general contractor to provide the following insurance:
 - (1) Commercial General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) per aggregate, which shall not exclude products/completed operations. County and Tenant shall each be endorsed as an additional insured on the Commercial General Liability policy, and County's endorsement shall comply with the requirements of Section 11.08.

- (2) Business Auto Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (3) Environmental Liability/Pollution Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per pollution condition and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for damages including, without limitation, third-party liability, clean up, corrective action, including assessment, remediation and defense costs, subject to the terms and conditions of the respective policies.
- (4) Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes and all federal laws. The Workers' Compensation policy shall include Employer's Liability with minimum limits of One Million Dollars (\$1,000,000) per accident.
- (5) Builder's Risk in accordance with Section 11.07.

7.05 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.

7.06 Traffic Concurrency Allocation. Tenant acknowledges that Parcel N-11, which includes the Property, was vested with traffic concurrency approval, portions of which have been allocated to existing developments on Parcel N-11, and portions of which will be allocated to Tenant's development on the Property in accordance with Tenant's Proposal, incorporated herein by reference. Tenant acknowledges that County intends to reserve a portion of the remaining trips allocated to Parcel N-11 for use outside the Property. In the event Tenant's development exceeds the equivalent trip generation to support Tenant's development, as detailed in Tenant's Proposal ("Traffic Concurrency Allocation"), Tenant acknowledges and agrees that Tenant shall be obligated, at Tenant's sole cost and expense, to obtain separate traffic concurrency approval for the additional traffic demand generated by Tenant's proposed development in excess of the agreed-upon Traffic Concurrency Allocation, unless otherwise approved in writing by the Department, which approval may be granted, withheld or conditioned in the Department's sole and absolute discretion. Tenant acknowledges and agrees that the Traffic Concurrency Allocation may only be used for the development of the Initial Leasehold Improvements; any remaining trips shall be reallocated to other portions of Parcel N-11 or other County-owned property, as determined by County in its sole and absolute discretion; and Tenant shall not be entitled to reserve such trips from the Traffic Concurrency Allocation for future Tenant Improvements.

ARTICLE 8 - OBLIGATIONS OF TENANT

8.01 Observance of Rules and Regulations. Tenant covenants and agrees to observe and obey, and to require all Tenant Parties 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 a Tenant Party shall pertain only while such Tenant Party is on or in occupancy of any portion of the Premises or Airport.

8.02 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 that is on the Premises or is a part thereof, or is located elsewhere on the Airport; and
- (B) Keep the sound level of its operations as low as reasonably possible.

8.03 Regulation of Conduct. Tenant shall control the conduct, demeanor and appearance of its employees, subtenants and others doing business with Tenant on the Premises.

8.04 Garbage and Debris. Tenant shall be responsible for the provision of trash removal services for the Premises at Tenant's sole cost and expense and agrees to deposit trash, garbage and debris in appropriate containers for collection.

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

8.06 Vapors, Fumes or Emissions. Tenant shall not create, nor permit to be caused or created upon the Premises 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.

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

8.08 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.

8.09 Hazardous Conditions. Tenant shall not do or permit to be done any act or thing upon the Premises that:

- (A) Will invalidate or conflict with any insurance policies covering the Premises or the Airport; or

- (B) May constitute a hazardous condition that increases the risk normally attendant upon the operations permitted by this Lease.

8.10 Flammable Liquids. All flammable liquids that are kept or stored at the Premises must at all times be handled, stored and used in accordance with all applicable Federal, State and local laws.

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

8.12 Overnight Parking/Derelict Vehicles/Towing Services. Tenant shall not permit Overnight Parking, or the temporary or permanent storage of any 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 the Department. Vehicles found to be Overnight Parking shall be removed upon verbal or written notice from the Department. Tenant shall be responsible for obtaining towing services for the removal of Overnight Parking and Derelict Vehicles and abandoned or unauthorized vehicles at no cost to County. For purposes of this Section, the term "Overnight Parking" shall mean a vehicle that remained on the Property after the regularly-scheduled close of business, but shall not include occasional, non-travel related customer parking due to emergency or impairment of the driver, provided the vehicle is removed prior to 10:00 a.m.

8.13 Emergency Evacuation and Hurricane Plans. Tenant shall provide the Department with emergency evacuation and hurricane plans within thirty (30) calendar days of the Effective Date. These plans shall be detailed procedures of actions to be taken by Tenant and its subtenants, if any, in the event of an emergency evacuation or hurricane warning. Tenant shall update its emergency evacuation and hurricane plans annually, if requested by the Department.

8.14 Security of Premises. Tenant acknowledges and accepts full responsibility for the security and protection of the Premises, and any and all 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. Tenant acknowledges and agrees that County may require physical security measures such as lighting, security cameras and fencing in connection with the approval of Tenant Improvements. 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

9.01 Maintenance/Repair of Premises. Tenant shall be responsible for all repairs and maintenance of the Premises (which shall include, but shall not be limited to, all landscaped areas, paved areas, buildings and improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Maintenance and repairs shall be in quality and class comparable to the original work. Tenant shall be required to keep all landscaped areas, paved areas, buildings, equipment and other improvements in good condition and repair throughout the Term of this Lease. Without limiting the generality thereof, Tenant shall:

- (A) Repair and maintain all doors, windows, pavement, equipment, lighting fixtures, furnishings, fixtures, roof, exterior walls, signage and structural support system(s).
- (B) Refurbish the Premises as often as is necessary to preserve the Premises in good condition and repair, including furnishings, fixtures and equipment used in the operation of the Premises. Routine refurbishment may include, but is not limited to, replacement of worn or damaged flooring, furnishings and/or wall coverings; interior and exterior painting; parking lot restriping; and other similar work.
- (C) 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.
- (D) Repair any damage to landscaped areas, paving or other surface(s) of the Premises.
- (E) Take anti-erosion measures, including, but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or otherwise improved.
- (F) Repair and maintain all utilities including, but not limited to, service lines for the supply of water, gas service lines, electrical power, telephone and telecommunications conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises leased to Tenant and which are used exclusively by Tenant or any of its subtenants.
- (G) Repair and maintain those portions of the storm water drainage system located within the Premises, and which serves the Premises.
- (H) Maintain all furnishings, fixtures, machinery, and operating equipment used in the operation of the Premises in good condition and repair.

9.02 Cleanliness of Premises/Maintenance of Landscaping.

- (A) Tenant shall maintain the Premises in a neat, orderly, sanitary, clean and presentable condition and shall cause routine janitorial and pest control services to be provided for the Premises at Tenant's sole cost and expense. Tenant shall maintain vehicular parking, landscaped medians and all surrounding landscaped areas in a clean and neat manner, free from trash and debris. Tenant shall keep the buildings located on the Premises free of insects, vermin and other pests.
- (B) Tenant shall be responsible for maintaining all landscaping on the Premises in good condition and free of unsightly conditions. Tenant's landscaping responsibilities shall include, without limitation, watering grass, shrubs and trees; mowing the grass on a regular basis; trimming the trees and fertilizing grass, shrubs and trees; and replacing damaged or dead landscaping.

9.03 Inspections. The Department shall have the right to enter the Premises during regular business hours upon reasonable prior notice to Tenant 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 the Department, the Department shall provide Tenant with written notice of such noncompliance. If corrective action is not initiated within thirty (30) days and pursued in a diligent manner to completion, the Department may cause the same to be accomplished at Tenant's sole cost and expense. 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 due and payable within thirty (30) calendar days of the date of the Department's written notice.

ARTICLE 10 - UTILITIES

10.01 Utility Costs. Tenant shall pay for all electric and all other utility charges for the Premises. Metering devices shall become the property of County upon installation. Tenant shall be responsible for the extension of utility mains and services to the Property and such utility mains shall become the property of County upon installation.

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 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 Water, Industrial and Sanitary Sewage Systems. Tenant shall operate and maintain, at its sole cost and expense, all the components of any and all water, industrial and sanitary sewage system(s) and storm water drainage facilities serving the Premises that are located within the Premises. 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 - INSURANCE REQUIREMENTS

Unless otherwise specified in this Lease, Tenant shall, at its sole expense, maintain in full force and effect at all times during the Term and any extension thereof, the insurance limits, coverages and endorsements required herein. Tenant acknowledges and agrees that the requirements contained in this Article, or County's review or acceptance of insurance, shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under this Lease.

11.01 Commercial General Liability. Tenant shall maintain Commercial General Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence, including coverage for, but not limited to, Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. This coverage shall be provided on a primary basis. Tenant shall provide an endorsement to the Commercial General Liability Insurance or separate coverage for Liquor Liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

11.02 Business Auto Liability. Tenant shall maintain Business Automobile Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence for owned, non-owned and hired automobiles. In the event Tenant has no owned automobiles, Tenant shall maintain only Hired & Non-Owned Auto Liability Insurance. This coverage may be satisfied by way of endorsement to the Commercial General Liability/Airport Liability policy, or a separate Business Auto Liability policy. This coverage shall be provided on a primary basis.

11.03 Business Interruption Insurance. Tenant shall maintain Business Interruption Insurance, which shall include Rent Insurance in an amount not less than the annual rental payable hereunder. Rent Insurance shall be carried in the name of Tenant as named insured and shall be payable to County to be applied to rental for the period from the occurrence of the damage or destruction until completion of the restoration or repairs.

11.04 Worker's Compensation & Employers Liability. Tenant shall maintain Workers' Compensation & Employers Liability in accordance with Chapter 440, Florida Statutes, and Federal law. This coverage shall be provided on a primary basis.

11.05 Umbrella or Excess Liability. If necessary, Tenant may satisfy the minimum limits required above for Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance. The Umbrella or Excess Liability policy shall have an aggregate limit not less than the highest "each occurrence" limit for the Commercial General Liability, Business or Auto Liability. County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a "Follow-Form" basis.

11.06 Property, Wind & Flood Insurance.

- (A) Builder's Risk Insurance. Tenant shall maintain Builder's Risk insurance covering the Tenant's building(s), betterments and improvements during the course of construction at the Premises in an amount at least equal to one hundred percent (100%) of the estimated completed property or project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. Tenant agrees this coverage shall be provided on a primary basis.

(B) After construction is completed, Tenant shall maintain:

- (1) Property insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on 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 twenty-five percent (25%) of the Property insurance limit. This coverage shall be provided on a primary basis.
- (2) Flood insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program. This coverage shall be provided on a primary basis.
- (3) Windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association. This coverage shall be provided on a primary basis.

11.07 Additional Insured Endorsement. Tenant shall endorse County as "Additional Insured" on each of the liability policies required to be maintained by Tenant hereunder, with the exception of Workers' Compensation/Employers Liability and Business Auto Liability. The "Additional Insured" endorsements shall provide coverage on a primary basis. Each "Additional Insured" endorsement shall read: "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406", or as otherwise approved or modified by County.

11.08 Certificate of Insurance.

- (A) Tenant shall provide the Department with a certificate of insurance, or certificates of insurance, evidencing limits, coverages and endorsements required herein within the time frames set forth below:
 - (1) Commercial General Liability insurance prior to the Effective Date;
 - (2) Business Auto Liability insurance prior to allowing vehicles on to the Premises;
 - (3) Business Interruption and Workers' Compensation insurance on or before the Date of Beneficial Occupancy.

(5) Builder's Risk insurance and Property, Wind and Flood insurance within the time frames set forth in Section 11.06.

(B) All certificates of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or is not renewed, Tenant shall provide County a new certificate of insurance or certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. The certificate holder's name and address shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees, c/o Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406 e-mail properties@pbia.org", or as otherwise approved or modified by County.

11.09 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. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Tenant enters into such an agreement on a pre-loss basis.

11.10 Premiums and Proceeds. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any, condition, provision, or limitation of the property, flood or wind insurance policies. Tenant shall be responsible for all premiums, including, but not limited to, increases for property, flood and wind insurance policies. Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the building, betterments and improvements, including, but not limited to, those made by or on behalf of Tenant.

11.11 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.

11.12 Right to Review or Adjust Insurance. The Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, limits, coverages or endorsements, required by this Article from time to time throughout the Term and any extension thereof. County may also 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 a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt of the notice.

11.13 No Representation of Coverage Adequacy. Tenant acknowledges the limits, coverages and endorsements required by this Article are intended to minimize liability for County. Tenant agrees that it will not rely upon the requirements of this Article 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 12 - DAMAGE TO OR DESTRUCTION OF PREMISES

12.01 Removal of Debris. If the Premises, or any portion thereof, is damaged by fire, the elements or other casualty, Tenant shall promptly remove all debris resulting from such damage from the Premises. Tenant shall take all necessary actions to place the Premises in a neat and orderly condition to ensure the safety of persons entering upon the Premises. If Tenant fails to promptly comply with the provisions of this Section, County may take such measures as it deems necessary to render the Premises in a neat, orderly, and safe condition. Tenant agrees that Tenant shall fully assume and be liable to County for payment of any costs incurred by County, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to County within thirty (30) days from the date of written notice provided by the Department.

12.02 Tenant's Obligations. Tenant assumes full responsibility for the condition of the Premises and the character, acts and conduct of all persons admitted to the Premises by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Premises, or any portion thereof, are damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of a Tenant Party, Tenant shall, at its sole cost and expense, restore the Premises to the condition existing prior to such damage. Tenant shall commence restoration as soon as reasonably practicable after any such damage and shall diligently pursue such restoration to completion in accordance with the construction requirements set forth in Article 7. All repairs and restoration shall be performed by Tenant at Tenant's sole cost and expense, in accordance with the construction requirements contained herein. If Tenant fails to restore the Premises as required by this Section, County shall have the right to enter the Premises and perform the necessary restoration. Tenant agrees that Tenant shall fully assume and be liable to County for payment of the costs of restoration, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee, shall be due and payable to County within thirty (30) days from the date of the written notice provided by the Department.

12.03 Insurance Proceeds. Upon receipt by Tenant of the proceeds of any insurance policy or policies required hereunder, the proceeds shall be deposited in an escrow account so as to be available to pay for the cost of any required repair, replacement or rebuilding. The proceeds shall be disbursed at the direction of Tenant during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding of damaged improvements, Tenant shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant.

ARTICLE 13 - ENCUMBRANCES

Except as otherwise provided for herein, 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 will not be unreasonably withheld, conditioned or delayed. Any such encumbrance without County's approval shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Premises or the furnishing of any materials for use upon the Premises, by, on behalf of or at the direction of a Tenant Party. 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 14 - TITLE TO IMPROVEMENTS

14.01 Title to Improvements on the Premises. Except as otherwise provided for herein, Tenant shall be deemed to be the owner of all Tenant Improvements during the Term. Upon expiration of the Term or earlier termination of this Lease, all buildings, structures, pavements, facilities, landscaping and other improvements, above and below ground, 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 Tenant Improvements together with evidence satisfactory to County that the improvements are free from liens, mortgages and other encumbrances.

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

ARTICLE 15 - EXPIRATION, DEFAULTS, REMEDIES AND TERMINATION

15.01 Expiration. This Lease shall automatically terminate at the end of the Term.

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

- (A) The vacating or abandonment of the Premises by Tenant.
- (B) The failure by Tenant to make payment of rental or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) Business Days after such payment is due and payable.
- (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 thirty (30) days after written notice thereof from County to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in

default if Tenant commenced such cure within such thirty (30) 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: (a) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (b) 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]; (c) 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 (d) 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.

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

15.03 Remedies. In the event of a material default 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 re-enter and re-take 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 remainder, if any, shall be paid to Tenant.

- (C) Treat this Lease as terminated and re-enter and re-take 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 rental 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.

15.04 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 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 within such thirty (30) day period; 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.
- (B) 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.

15.05 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 deemed to be in default if County commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

15.06 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, at the option of County, become the property of County, or alternatively, may be disposed of by County at Tenant's expense.

ARTICLE 16 - ASSIGNMENT, TRANSFER AND SUBLETTING

Tenant shall not, in any manner, assign, transfer or otherwise convey an interest in this Lease, the Premises or any portion thereof ("Assignment"), without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed. County shall not be deemed to have withheld its consent unreasonably unless County has been furnished evidence establishing that the proposed assignee: (a) has the ability to make the rental payments required under this Lease; (b) has sufficient experience to operate the facilities constructed or to be constructed on the Premises in the manner required hereunder; (c) has the ability to otherwise perform all of the terms, conditions and covenants of this Lease; and (d) agrees to assume all obligations, responsibilities and liabilities of Tenant arising on and after the effective date of the Assignment. Any attempted Assignment without County approval shall be null and void. In the event County consents in writing to an Assignment, Tenant shall have the right to assign this Lease to the extent permitted by County's consent to such Assignment, provided that the use of the Premises shall be limited to the same uses as are permitted under this Lease. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein. Tenant shall have the right to sublease the Premises subject to the prior written consent of County, which consent shall not be unreasonably withheld. All subleases shall be subject to the same conditions, obligations, and terms as set forth herein and Tenant shall be fully responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Notwithstanding any provision of this Lease to the contrary, the consent of County shall not be required 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, acquisition, or other business reorganization, provided that Tenant provides written notice to County ten (10) days prior to the change in ownership. County may freely assign this Lease at any time without the consent of Tenant, and upon assumption by such assignee of County's obligations hereunder, County shall be released from all liability and obligation arising hereunder upon such assignment.

ARTICLE 17 - RIGHTS OF LEASEHOLD MORTGAGEES

17.01 Right to Mortgage. Tenant may encumber its leasehold estate and interest in the Premises by mortgage, security agreement or other such instrument (any such instrument is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term of this Lease; provided, however, that the entire proceeds of any loan or future advance secured thereby shall be utilized for the construction and improvement of the Premises and further provided that County shall not be obligated to, nor deemed to have subjected or subordinated County's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated County's interest in this Lease to such Leasehold Mortgage. County's interests in the fee and this Lease are and shall remain at all times superior and prior in right to any Leasehold Mortgage.

17.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to County, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to County, County, upon serving Tenant with any notice under this Lease, shall also serve a copy of that notice upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to County. County agrees to give the Leasehold Mortgagee written notice of any default by Tenant and of County's intention to terminate this Lease for any reason at least sixty (60) days before the effective date of such termination. The Leasehold Mortgagee shall have the right to perform any of Tenant's covenants or to cure any default by Tenant which is curable by it or to exercise any right conferred upon Tenant by the Terms of this Lease within such sixty (60) day period or such longer period if the default by Tenant is of such nature that it cannot be cured within such sixty (60) day period, provided that the Leasehold Mortgagee diligently and actively undertakes to cure such default and pursues such cure to completion within a reasonable period of time under the circumstances. The sole remedy available to Leasehold Mortgagee due to the failure of County to provide Leasehold Mortgagee with notice as required hereunder shall be the tolling of the applicable cure period afforded to Leasehold Mortgagee herein until the earlier of provision of such notice to Leasehold Mortgagee or Leasehold Mortgagee's receipt of actual knowledge of such notice. County's failure to provide Leasehold Mortgagee notice as required hereunder shall not alter or affect Tenant's rights or obligations under this Lease, nor extend any cure period afforded to Tenant hereunder, or entitle Tenant to damages or other remedies.

17.03 Opportunity to Cure. County will recognize the Leasehold Mortgagee as the tenant of the Premises and accept the performance by the Leasehold Mortgagee of Tenant's obligations under this Lease, upon written notice from the Leasehold Mortgagee to County that it has taken possession of the Premises, for so long as the Leasehold Mortgagee is in possession of the Premises, and provided that Leasehold Mortgagee diligently and actively undertakes to cure and pursues such cure to completion within a reasonable period of time under the circumstances any then existing defaults by Tenant, and performs Tenant's obligations under this Lease. County agrees that it will not unreasonably withhold or delay its consent to any future assignment by the Leasehold Mortgagee of the rights of Tenant under this Lease; provided that: (a) there is no existing default under this Lease or the Leasehold Mortgagee or such assignee diligently and actively undertakes to cure any such default and pursues such cure to completion as provided above, and (b) the assignee has similar recent experience and knowledge regarding operations being conducted on the Premises and has the financial ability to perform under this Lease, as reasonably determined by County. Upon any valid permitted assignment of this Lease by the Leasehold Mortgagee, Leasehold Mortgagee shall have no further liability under this Lease for obligations arising after such assignment. Any action by the Leasehold Mortgagee to cure any default by Tenant or otherwise to exercise Tenant's rights under this Lease shall not be deemed to be an assumption by the Leasehold Mortgagee of Tenant's obligations under this Lease unless the Leasehold Mortgagee takes possession of the Premises pursuant to a foreclosure or other enforcement of its security interest in this Lease or otherwise expressly assumes such obligations in writing. If the Leasehold Mortgagee takes possession of the Premises or succeeds to the interest of Tenant, County shall accept the Leasehold Mortgagee as tenant under this Lease, and this Lease shall continue in full force and effect, provided that there are no then existing uncured defaults under this Lease, and Leasehold Mortgagee performs all obligations of Tenant under this Lease.

17.04 No Lease Amendments. This Lease shall not be amended, modified, terminated or canceled by reason of the exercise of any option or election by Tenant under this Lease, or by the giving of any notice by Tenant under this Lease, unless such amendment, modification, termination or cancellation is assented to in writing by any Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without that assent shall be void.

17.05 Limitation of Liability. A Leasehold Mortgagee shall only be liable to perform the obligations imposed on Tenant in this Lease during the period that the Leasehold Mortgagee is in possession or ownership of the leasehold estate created by this Lease.

17.06 Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the current date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge. If requested by Tenant or Leasehold Mortgagee, and provided a notification address is provided and maintained, certificates may contain a provision whereby copies of notices under the Lease shall be provided to the Leasehold Mortgagee, and a statement that this Lease shall not be amended without prior written consent of Leasehold Mortgagee. The Director shall have the authority to sign such a certificate on behalf of County; however, in the event Tenant or Leasehold Mortgagee shall require a certificate beyond the aforementioned statements, or which differs materially from the aforementioned statements, such certificate shall be subject to Board approval, which shall be considered at the next available regularly-scheduled meeting of the Board, generally within sixty (60) days prior written notice.

17.07 Subordination of Landlord's Lien. County does hereby subordinate its statutory landlord's lien to the lien and operation of any Leasehold Mortgage. This subordination of County's lien shall be self-operative.

17.08 Release of Lien. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease including, but not limited to, this Article, Tenant and/or Leasehold Mortgagee, as appropriate, shall promptly execute, in recordable form, and deliver to County, a termination of lease, termination of memorandum of lease, release of mortgage and such other documents as County may reasonably require (collectively, the "Release Documents"). In the event Tenant or Leasehold Mortgagee fails to provide the foregoing Release Documents within thirty (30) days after County's written request therefor, County shall be entitled to execute the same for and on behalf of Tenant and/or Leasehold Mortgagee and Tenant and Leasehold Mortgagee hereby appoint County as attorney in fact for the limited purpose of execution of such Release Documents.

17.09 Indemnification. By acceptance of the rights and benefits conferred upon a Leasehold Mortgagee by this Article, such Leasehold Mortgagee agrees, for itself and its successors and assigns, that it shall be bound by the terms of this Article as if such Leasehold Mortgagee were a direct party hereto and further agrees to protect, defend, reimburse, indemnify and hold the County Parties harmless from and, against any and all Damages arising from to the Leasehold Mortgagee's negligence or willful misconduct in connection with its entry upon the Premises for inspection or other purposes.

17.10 Personal Property. Notwithstanding any other provision of this Lease to the contrary, Tenant may, without County's or Department's consent, from time to time, secure financing or general credit lines and grant the lenders thereof, as security therefor: (a) a security interest in Tenant's personal property located at the Premises, and/or (b) the right to enter the Premises to realize upon any personal property so pledged. Upon Tenant providing notice of such financing to County, County agrees to evidence its consent in writing to such security interest. All of Tenant's personal property shall be and remain the personal property of Tenant. County expressly waives its statutory and common law landlord's liens as same may be enacted or may exist from time to time and any and all rights granted under any present or future laws to levy or distrain for rent, whether in arrears or in advance, against the aforesaid personal property of Tenant on the Premises and further agrees to execute any reasonable instruments evidencing such waiver (upon Tenant's request).

ARTICLE 18 - INDEMNIFICATION

Tenant agrees to protect, defend, reimburse, indemnify and hold the County Parties 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 (collectively referred to herein as "Damages") against, or in which County is named or joined, arising out of this Lease or use or occupancy of the Premises by any Tenant Party, including, but not limited to 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, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with a Tenant Party's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of a Tenant Party or any breach of the terms of this Lease; provided, however, Tenant shall not be responsible to a County Party for Damages that are solely attributable to the negligence or willful misconduct of such County Party. Tenant further agrees to hold harmless and indemnify the County Parties 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 a Tenant Party'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 the activities. This indemnification shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Tenant. Tenant recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges 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 the laws of the State of Florida. The obligations arising under this Article shall survive the expiration or termination of this Lease.

ARTICLE 19 – EXTERIOR SIGNAGE

Tenant may install and operate upon the Premises, at Tenant's sole cost and expense, signs representing the businesses operating on the Premises. Tenant acknowledges County's desire to maintain a high level of aesthetic quality on the Airport and agrees that all signage shall be of first class design and appearance. Tenant covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signage on the Premises, Tenant shall submit to County the size, design, content, and intended location of each and every sign it proposes to install on or within the Premises. No signs of any type shall be installed on or within the Premises without the prior written approval of County as to the size, design, content, and location. Handwritten, hand lettered and hand held exterior signs are prohibited. County shall have the right to require Tenant to remove any unapproved signage. In the event Tenant fails, refuses or neglects to remove any unapproved signage within a fifteen (15) days of County's written notice to do so, County may also elect, at its sole option, to cause such signage to be removed on behalf of and for the account of Tenant. Tenant shall reimburse County the actual cost of such removal services, plus a twenty-five percent (25%) administrative overhead within thirty (30) days of the date of the invoice therefor. County's failure to require removal of any sign placed on or about the Premises without written permission shall not be deemed a waiver of County's authority to require removal of any unapproved sign.

ARTICLE 20 - LAWS, REGULATIONS AND PERMITS

20.01 General. Tenant agrees that throughout the Term and any extension thereof, 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 but not limited to, as now or hereafter amended, including, but not limited to, FAA Advisory Circulars and Airport Rules and Regulations.

20.02 Permits and Licenses Generally. Tenant agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Lease or any extension thereof by any Federal, State or local governmental entity or any court of law having jurisdiction over the operations and activities conducted on the Premises by Tenant, including ensuring that all legal requirements, permits, and licenses necessary for, or resulting directly or indirectly from, Tenant's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request of County, Tenant shall provide to County certified copies of any and all permits and licenses which County may request.

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 Tenant Parties transacting business with or for Tenant, resulting from, or in any way related to, the conduct of a Tenant's business on the Premises. 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, and shall fully comply with, any and all Environmental Laws applicable to Tenant and its operations hereunder.
- (B) Tenant acknowledges that, if its operations involve the generation, processing, handling, storing, transporting and disposal of Hazardous Substances, such operations may be subject to regulation under applicable Environmental Laws. Tenant further expressly covenants, warrants, guarantees and represents that it is fully qualified to handle and dispose of any and all such Hazardous Substances, in a manner which is both safe and in full compliance with any and all applicable Environmental Laws.
- (C) Tenant hereby expressly assumes and accepts full responsibility and liability for compliance with all such applicable Environmental Laws in the handling and disposal of any and all Hazardous Substances resulting from or arising out of Tenant's operations conducted on the Premises, 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 and any Tenant Party required to be so trained working for, or on behalf of, Tenant have been, or will be prior to commencement of operations on the Premises, fully and properly trained in the handling of all such Hazardous Substances, and that such training, at a minimum, complies with any and all applicable Environmental Laws.
- (D) 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.
- (E) If Tenant is deemed to be a generator of hazardous waste, as defined by applicable Environmental Laws:
 - (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 Environmental Laws;

- (2) Tenant shall maintain an accurate inventory list (including quantities) of all such hazardous waste, whether stored, disposed of, or recycled, available at all times for inspection at any time on the Premises by County;
 - (3) Tenant shall notify the Palm Beach County Solid Waste Authority, Palm Beach County Environmental Resources Management Department, and such other appropriate agencies as County may from time to time designate, of all Tenant's hazardous waste activities, if any; and
 - (4) Tenant shall provide to the Department, Risk Management Department - Safety Division, and to all appropriate governmental entities having jurisdiction thereover, contact information for its emergency coordinator in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.
- (F) Violation of any part of the foregoing provisions or disposal by Tenant of any Hazardous Substances in violation of the provisions of this Article 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 receipt 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 Hazardous Substances by a Tenant Party on or from the Premises, 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.
- (G) Tenant agrees to protect, defend, reimburse, indemnify and hold the County Parties harmless from and against any and all Damages arising from, resulting out of or in any way caused by or connected to a Tenant Party's failure to comply with applicable Environmental Laws. Tenant understands that this indemnification is in addition to and is a supplement of Tenant's indemnification agreement set forth in Article 18. 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 shall survive the expiration or earlier termination of this Lease.

20.05 Exit Environmental Assessment. At least one hundred twenty (120) days, but no more than one hundred eighty (180) days, prior to the expiration or earlier termination of this Lease, Tenant shall cause a Phase I Environmental Assessment of the Premises to be prepared and delivered to County. If requested by County or, if the Phase I Environmental Assessment indicates that there is a potential that environmental conditions may exist on the Premises or the adjacent property based on activities of a Tenant Party occurring on or after the Effective Date of this Lease, Tenant shall promptly cause a Phase II Environmental Assessment of the Premises to be prepared and delivered to County (the Phase I Environmental Assessment and Phase II Environmental Assessment, if applicable, shall be collectively referred to as the "Exit ESA"). The Exit ESA shall be prepared by a professional geologist or engineer licensed by the State of Florida, acceptable to County, and shall be prepared to meet the standards of practice of the American Society of Testing and Materials, to determine the existence and extent, if any, of Hazardous Substances on the Property. The Exit ESA shall state that County is entitled to rely on the information set forth in the Exit ESA. The Exit ESA shall be prepared and delivered to County at Tenant's sole cost and expense. The Phase II portion of the assessment must address any potential environmental conditions or areas of contamination identified in the Phase I portion of the assessment. Tenant shall, at its sole cost and expense, promptly commence and diligently pursue to completion any assessment, remediation, clean-up and/or monitoring of the Premises necessary to bring the Premises and/or adjacent property into compliance with Environmental Laws. The requirements of this paragraph shall be in addition to any other provisions of this Lease relating to the condition of the Premises and shall survive the termination or expiration of this Lease. Nothing in this Section shall be construed as obligating Tenant to remediate any condition identified in the County Environmental Assessments or caused by the activities of a County Party.

ARTICLE 21 - AMERICANS WITH DISABILITIES ACT

Tenant shall comply with the applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation 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 THE COUNTY PARTIES, 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 ANY TENANT PARTY 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 A TENANT PARTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A COUNTY PARTY'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 PURSUANT TO THIS LEASE.

ARTICLE 23 - GOVERNMENTAL RESTRICTIONS

23.01 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 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.

23.02 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 County, 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.

23.03 Height Restriction. The height of all temporary and permanent structures, objects of natural growth and other obstructions ("Obstructions") on the Premises, including, but not limited to, lighting poles, flag poles, signage, promotional displays and cranes and other similar equipment, shall be limited to such height so as to comply with 14 CFR Part 77, as now or hereafter amended. All Obstructions to be constructed or installed on the Premises shall be reviewed by the FAA prior to construction or installation. In no event shall any Obstructions be constructed or installed on the Premises, which are determined by the FAA to be an airspace obstruction or to pose a potential threat to air navigation. All Obstructions shall be consistent with the Palm Beach County Airport Zoning Ordinance (as codified in Article 16 of the Palm Beach County Unified Land Development Code), as now or hereafter amended.

23.04 Right of Flight. County hereby reserves unto itself and its successors and assigns, for the use and benefit of the public, the right of flight for: (a) the passage of aircraft in, through, and across the airspace above the surface of the Premises, together with the right of the aircraft to make noise and exhaust emissions, light, vibrations, radio, television and other electromagnetic emissions and other effects as may be necessary for or incidental to the operation of aircraft; (b) navigation of or flight in said airspace; and (c) aircraft landing on, taking off from or operating at the Airport. Tenant on behalf of itself, and its subtenants, successors and assigns, hereby waives, releases and forever discharges County and its elected officials, officers, employees, agents, attorneys, consultants, representatives, successors and assigns from all claims, demands, judgments, orders, awards, liabilities, costs, attorney's fees, causes of action, administrative proceedings and lawsuits of every kind, nature or description, whether known or unknown, fixed or contingent, which County or any person claiming through or under it ever had, now has or hereafter may acquire, upon or by reason of the exercise of the rights reserved herein. It is further agreed that County shall have no obligation whatsoever, now or at any time in the future, to avoid or mitigate damages arising as a result of the exercise of the rights reserved herein or the operation of the Airport.

23.05 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 a hazard to air navigation. Notwithstanding any provision of this Lease to the contrary Tenant, for itself and its sublessees, successors and assigns, agrees that County shall be entitled to self-help in the event a

of an immediate hazard to the flight of aircraft over the Premises exists upon the Premises. Without limiting the generality of the foregoing, Tenant acknowledges that County shall be entitled to enter the Premises and physically remove or mitigate the hazard, at Tenant's expense. In the event Tenant fails to promptly mitigate a hazard or adverse effects on air navigation following notification from County, Tenant shall reimburse County for any and all costs and expenses incurred by County in exercising its self-help rights hereunder, plus a twenty-five percent (25%) administrative overhead fee, which costs, expenses and administrative overhead fee shall constitute Additional Rent hereunder and shall be due and payable within thirty (30) calendar days of the date of the Department's written notice. Tenant acknowledges and agrees that the right of self-help shall be in addition to any and all remedies available under the law and this Lease, including, but not limited to, immediate injunctive relief, both temporary and permanent, and the right of specific performance.

23.06 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.

23.07 Exclusive Rights. Except as otherwise provided for in this Section 23.07, Tenant understands and agrees 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.

23.08 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 the Department prior to constructing new water detention or retention areas, or modifying existing water detention or retention areas within the Premises. If approved by the Department, water detention or retention areas shall be in compliance with the siting, design and construction requirements of the Department. Tenant further agrees to comply with the provisions of FAA Advisory Circular No. 150/5200-33, as now or hereafter amended, as such circular is interpreted by the Department.

ARTICLE 24 - NON-DISCRIMINATION

24.01 Nondiscrimination in County Contracts. Tenant acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Tenant is prohibited from discriminating against any employee, applicant, or client because of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

24.02 Federal Nondiscrimination Covenants. Tenant shall comply with the Nondiscrimination Requirements set forth in Exhibit "E". County may update the Nondiscrimination Requirements by providing written notice thereof to Tenant, whereupon, this Lease shall be considered amended, without formal amendment thereto, to replace Exhibit "E".

24.03 Airport Concession Disadvantaged Business Enterprises (“ACDBE”). This Lease is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. Tenant agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Tenant agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

24.04 Airport Concession Disadvantaged Business Enterprise Participation Goal.

- (A) Tenant agrees that the ACDBE participation in this Lease shall be at least equal to Three Percent (3.0%) of goods and services throughout the Term and any extension thereof, or Tenant shall clearly demonstrate to the Department its good faith efforts to do so in a manner acceptable to the Department.
- (B) “Good faith efforts” are those efforts that could reasonably be expected to result in ACDBE participation. Tenant shall actively seek to obtain ACDBE participation in this Lease and shall document those efforts. Efforts that are merely “pro forma” are not considered good faith efforts in meeting the ACDBE goal. In determining whether or not a Tenant has made such good faith efforts, the Department will refer to the description of good faith efforts as provided in 49 CFR Parts 23 and 26.
- (C) For the purpose of verifying Tenant’s good faith efforts, Tenant shall keep and maintain such books of account and records as necessary to document compliance with 49 CFR Part 23, as now or hereafter amended or any successor regulation, and this Section 25.04. County and its representatives shall have the right to inspect and audit such books of account and records upon reasonable notice to Tenant at a location convenient for County and its representatives.
- (D) Tenant shall provide written quarterly reports on or before the twentieth (20th) day of each reporting month (January, April, July and October of each Lease Year) to the Department, in a form and detail satisfactory to the Department, as to the participation of ACDBE’s in this Lease. The quarterly reports shall detail ACDBE participation for each quarter, as well as the cumulative “to date” participation for the entire Lease Year. Quarterly reports shall be certified by an officer of Tenant as being true and accurate. If requested by the Department, the quarterly reports shall include certification of receipt payment from the ACDBE firms participating in this Lease, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, Tenant shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Tenant shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to the Department documenting such good faith efforts. The Department may require the reports required hereunder to be submitted electronically.

- (E) Tenant shall use good faith efforts to replace any ACDBE that is terminated or has otherwise failed to complete its agreement or subcontract with another ACDBE. Tenant shall notify the Department of any ACDBE's inability or unwillingness to perform and shall provide reasonable documentation. Tenant shall obtain prior approval from the Department of the substitution an ACDBE.
- (F) Tenant shall provide the Department with copies of all subcontracts and agreements with ACDBE firms providing goods or services under this Lease upon request, which shall be subject to review and final approval by the Department to ensure compliance with 49 CFR Part 23.

ARTICLE 25 - 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 sewerage 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 26 - 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 27 - MISCELLANEOUS

27.01 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.

27.02 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 rights 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, or 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.

27.03 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 easements, licenses and rights-of way to others over, under, through, across or on the Premises reasonably necessary for the development, operation or provision of utility services to adjacent County-owned properties; provided that such grant is not materially detrimental to the proper conduct of Tenant's operations. The County agrees to cooperate in good faith with Tenant to determine the appropriate location of such easements, licenses and rights-of-way in an effort to avoid unnecessarily impacting Tenant's operations. Tenant agrees to consent and join to such easements, licenses and rights-of-way upon the written request of County.

27.04 Independent Contractor. 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.

27.05 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 Tenant or its operations. 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, statues and laws, nor to alter or impair County's governmental functions, including, but not limited to, 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 County's governmental authority.

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

27.07 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.

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

27.09 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.

27.10 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 delivered by the United States Postal Service, 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 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:

Attn: Director of Airports
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 Real Estate Attorney
Palm Beach County Attorney’s Office
301 North Olive Ave, Suite 601
West Palm Beach, FL 33401
Fax: 561-355-4398

Tenant:

Greg Bartoli, CEO
Popstroke Holdings, LLC
1001 North U.S. Highway 1, Suite 500
Jupiter, FL 33477
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.

27.11 Inspector General. County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General’s authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Tenant, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

27.12 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.

27.13 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 the Department; provided, however, Tenant may record, at its sole cost and expense, a memorandum of this Lease in the form attached to this Lease as Exhibit "D" after the expiration of the Inspection Period, which may be signed by the Director on behalf of County. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease, Tenant shall promptly execute, in recordable form, and deliver to County a termination of the memorandum of this Lease. In the event Tenant fails to provide the foregoing termination document within thirty (30) Business Days after County's written request therefor, County shall be entitled to execute the same for and on behalf of Tenant and Tenant hereby appoints County attorney-in-fact for the limited purpose of execution of such termination document.

27.14 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 prohibition against or limitations regarding assignment or subletting.

27.15 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.

27.16 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.

27.17 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.

27.18 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.

27.19 Scrutinized Companies. As provided in Section 287.135, 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 perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If County determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Lease may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes.

27.20 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.

27.21 Consent or Action. Wherever this Lease requires County or Department's consent or approval or permits County or Department to act, such consent, approval or action may be given or performed by the Director.

27.22 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.

27.23 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.

27.24 Incorporation by References. All terms, conditions and specifications of the RFP; the Proposal; and all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease by reference. In the event of any conflict and for purposes of resolving any disputes which may arise regarding this Lease, the order-of-precedence shall be: (a) this Lease; (b) the RFP; and (c) the Proposal.

27.25 No Third Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of County and/or Tenant.

27.26 Force Majeure. Notwithstanding anything to the contrary set forth herein, neither party shall be liable for failure to perform any of its obligations under this Lease in the event it is prevented from so performing by an event of force majeure, including, strike, lockout, breakdown, accident, weather, order or regulation of or by any governmental authority or failure to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control. Where there is an event of force majeure the party prevented from or delayed

in performing its obligations under this Lease must immediately notify the other party giving full particulars of the event of force majeure preventing that party from, or delaying that party in, performing its obligations under this Lease and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the Lease. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money.

27.27 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.

27.28 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.

(Remainder of page left blank intentionally.)

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

ATTEST:
JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

R2023 1154 AUG 22 2023
PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS

By: *Joseph Abruzzo*
Deputy Clerk



By: *Gregg K. Weiss*
Gregg K. Weiss, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: *[Signature]*
County Attorney

By: *Laura Beek* *RW*
Director, Department of Airports

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

TENANT:
POPSTROKE WEST PALM BEACH, LLC

Mark Rouzeau
Signature

By: *[Signature]*
Signature

MARK ROUZEAU
Print Name

Gregory Bartoli
Print Name

John Smith
Signature

CEO
Title

John Smith
Print Name

(Seal)

EXHIBIT "A"
THE "PROPERTY"

EXHIBIT "A"

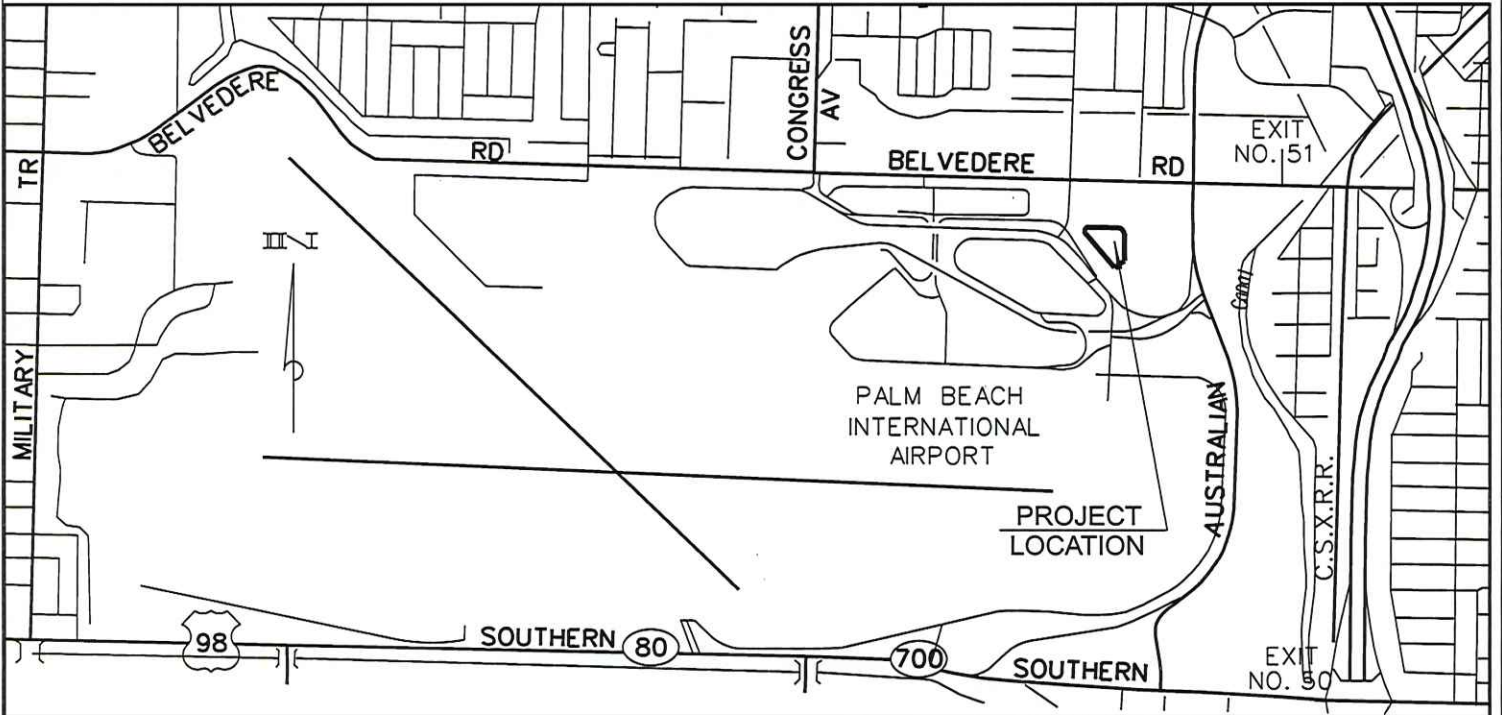
PBIA LEASE PARCEL
N-11-R

A PARCEL OF LAND LOCATED WITHIN PALM BEACH INTERNATIONAL AIRPORT PROPERTY AS RECORDED IN OFFICIAL RECORD BOOK 619, PAGE 334 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SITUATED IN SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 32; THENCE SOUTH 88°26'29" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 32, A DISTANCE OF 172.76 FEET; THENCE SOUTH 01°33'31" WEST AT RIGHT ANGLES TO SAID SECTION LINE, A DISTANCE OF 568.73 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 88°26'30" EAST A DISTANCE OF 248.89 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 58.50 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 69°21'44" AN ARC DISTANCE OF 70.82' TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTH EAST AND HAVING A RADIUS OF 63.50 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°19'10" AN ARC DISTANCE OF 32.49 FEET TO A POINT ON A NONTANGENT LINE; THENCE SOUTH 00°00'00" WEST A DISTANCE OF 327.93 FEET; THENCE SOUTH 55°39'05" WEST A DISTANCE OF 145.37 FEET; THENCE NORTH 40°18'49" WEST A DISTANCE OF 534.89 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 45.50 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 43°27'00" AN ARC DISTANCE OF 34.50 FEET TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 50.50 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 86°28'05" AN ARC DISTANCE OF 76.21 FEET; THENCE SOUTH 00°23'44" EAST ALONG A RADIAL LINE TO THE PREVIOUS CURVE A DISTANCE OF 6.50 FEET; THENCE NORTH 89°02'34" EAST A DISTANCE OF 106.36 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 146,937 SQUARE FEET OR 3.3732 ACRES MORE OR LESS.

SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST



LOCATION MAP
N.T.S.

PROJECT NO.
2019013-08

SHEET 1
OF 3


PROJECT:
PALM BEACH INTERNATIONAL AIRPORT LEASE PARCEL N-11-R

DESIGN FILE NAME S-1-23-4260.DGN	DRAWING NO. S-1-23-4260
-------------------------------------	----------------------------

NO.	REVISION	BY	DATE

SCALE: 1" = 80'
APPROVED: C.S.P.
DRAWN: S.T.A.
CHECKED: C.S.P.
DATE DRAWN: 05/02/2023

FIELD BOOK NO.



PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ROADWAY PRODUCTION
2300 NORTH JOG ROAD
WEST PALM BEACH, FLORIDA 33411

LEGEND

△ = DELTA
L = LENGTH
R = RADIUS
(C) = CALCULATED
(D) = DEED
(P) = PLAT
(D & M) = DIMENSIONED & MEASURED
⊙ = CENTERLINE
L.S. = LICENSED SURVEYOR
P.B. = PLAT BOOK

F.P.L. = FLORIDA POWER & LIGHT
O.R.B. = OFFICIAL RECORD BOOK
P.C.P. = PERMANENT CONTROL POINT
P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
P.R.M. = PERMANENT REFERENCE MONUMENT
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
N.T.S. = NOT TO SCALE
P.B.I.A. = PALM BEACH INTERNATIONAL AIRPORT

BEARINGS ARE BASED ON A GRID (NAD 83, 1990 ADJUSTMENT) BEARING OF SOUTH 88°26'29" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 43 EAST AS DETERMINED BY PALM BEACH COUNTY AND ALL OTHER BEARINGS ARE RELATIVE THERETO.

THIS INSTRUMENT PREPARED BY CRAIG S. PUSEY, P.S.M. IN THE OFFICE OF THE COUNTY ENGINEER, 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA 33411-2745.

NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR. IT IS POSSIBLE THAT THERE ARE DEEDS OF RECORD, UNRECORDED DEEDS, EASEMENTS, OR OTHER INSTRUMENTS WHICH COULD AFFECT THE SUBJECT PROPERTY, WHICH ARE UNKNOWN TO THE SIGNING SURVEYOR.

COORDINATES SHOWN ARE GRID
DATUM = NAD 83, 1990 ADJUSTMENT
ZONE = FLORIDA EAST
LINEAR UNITS = US SURVEY FOOT
COORDINATE SYSTEM 1983 STATE PLANE TRANSVERSE MERCATOR PROJECTION
ALL DISTANCES ARE GROUND. UNLESS OTHERWISE NOTED.
PROJECT SCALE FACTOR = 1.000044878
GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE

ALL FEATURE SYMBOLS SHOWN ARE NOT TO SCALE.

THIS IS NOT A SURVEY

NOT VALID WITHOUT THE DIGITAL SIGNATURE AND/OR ORIGINAL SIGNATURE AND RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY THAT THE LEGAL DESCRIPTION AND SKETCH SHOWN HEREON WAS MADE UNDER MY RESPONSIBLE DIRECTION AND SUPERVISION AND THAT SAID LEGAL AND SKETCH MEETS THE FLORIDA STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J-17.050-.052, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

CRAIG S. PUSEY P.S.M.
FLORIDA CERTIFICATE NO. 5019

DATE

P.O.C.
 NORTH 1/4 CORNER OF
 SECTION 32,
 TWP.43 SOUTH, RGE.43 EAST
 PALM BEACH Co. POSITION
 N: 857935.051
 E: 956911.202

NORTH LINE OF THE
 N.E. 1/4 OF SECTION 32,
 TOWNSHIP 43 SOUTH, RANGE 43 EAST

2664.48 (GROUND)
 2664.60' (GRID)

N.E. CORNER OF
 SECTION 32,
 TWP.43 SOUTH, RGE.43 EAST
 PALM BEACH Co. POSITION
 N: 857862.573
 E: 959574.817

PALM BEACH
 INTERNATIONAL AIRPORT

DRIVE SHACK

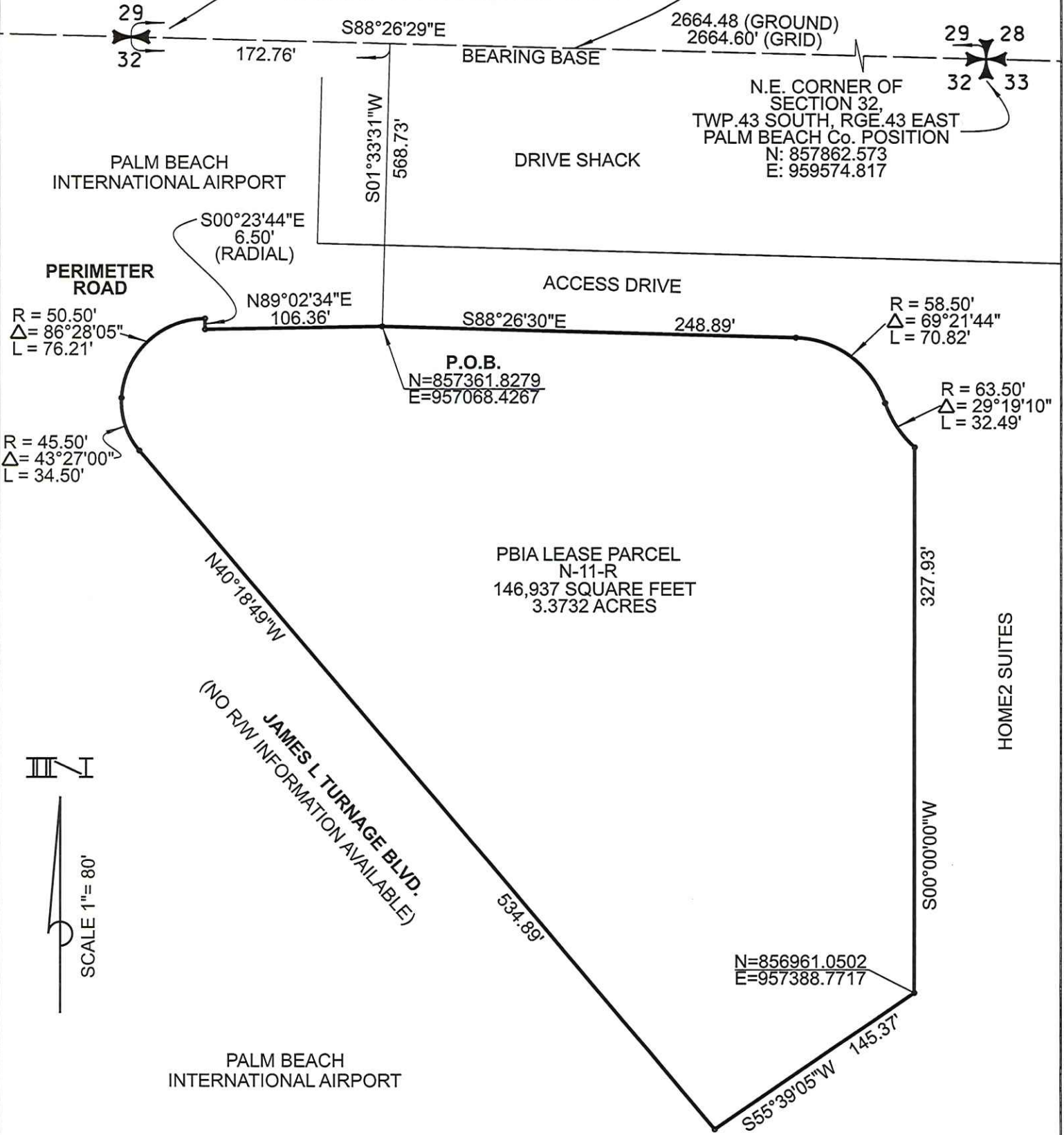
PERIMETER
 ROAD

ACCESS DRIVE

P.B.I.A. LEASE PARCEL
 N-11-R
 146,937 SQUARE FEET
 3.3732 ACRES

HOME2 SUITES

PALM BEACH
 INTERNATIONAL AIRPORT



III I



EXHIBIT "B"
PARCEL N-11

EXHIBIT "C"
FORM OF OWNERS AFFIDAVIT

EXHIBIT "C"

OWNER'S AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared _____ ("Affiant"), whom, first being duly sworn, deposes and says:

1. That Affiant is the Director of the Department of Airports for Palm Beach County, a political subdivision of the State of Florida ("County"), and as such is personally familiar with the facts and circumstances which are the basis of this Affidavit.

2. That the County is the owner of that certain real property as legally described on Exhibit "A" ("Premises") attached hereto, which has been leased to Popstroke West Palm Beach, LLC, a Florida limited liability company ("Tenant") pursuant to that certain Development Site Lease Agreement between County and Tenant dated _____ (R-2023-____) ("Lease"). County has possession of the Premises and there is no other person in possession of the Premises or with a claim of possession to the Premises other than Tenant.

3. That the Lease is in full force and effect and that there are no unrecorded or undisclosed amendments, modifications, or transfers affecting same; and, to the best of Affiant's knowledge, there has been no breach of any covenants, conditions, stipulations, or other provisions of the Lease on behalf of Tenant.

4. That, to the best of Affiant's knowledge and except as set forth in the Title Policy (as hereinafter defined), there are no judgments or decrees, assessments or tax liens pending (or otherwise) against the County or the Premises which remain unpaid; there are no suits, claims, disputes, demands, or other matters pending (or otherwise) against the County or the Premises; and there are no liens, delinquent taxes, or claims that might become a lien on the Premises.

5. That, to the best of Affiant's knowledge, neither the Affiant nor the County have done anything to cause any liens, encumbrances, mortgages, claims, boundary line, or other disputes, demands, or security interests in, on, or against the Premises, except as set forth in the Title Policy, as hereinafter defined; that to the best of the Affiant's knowledge, there are no unpaid taxes, levies, assessments, paving liens, or utility liens against the Premises, other than as set forth in that certain Loan Policy of Title Insurance, Policy No. _____ issued by _____, as agent for _____ Title Insurance Company with an original effective date of _____ at ____ p.m. (the "Title Policy"), a copy of which is attached hereto as Exhibit "B".

6. That, to the best of Affiant's knowledge and except as set forth in the Title Policy, all bills for labor or materials performed upon or furnished for the improvement of the Premises, made through or under the County, have been fully paid and discharged; and the Premises is free and clear of all liens or rights to claims of lien for such labor or materials furnished for the improvements to the Premises. That, to the best of Affiant's knowledge and except as set forth in the Title Policy, there have been no improvements upon the Premises made by Affiant through or under the County within the past ninety (90) days for which there remain any outstanding and unpaid bills for labor, materials, or other charges for which a lien or liens might be claimed by anyone whomsoever. Nothing herein pertains to improvements, labor or materials performed upon or furnished for the improvement of the Premises, made through or under Tenant.

7. That, to the best of Affiant's knowledge, there are no boundary line or other disputes, easements, or claims of easements on or against the Premises not shown in the public records of Palm Beach County, Florida, except as may be set forth in the Title Policy.

8. That, to the best of Affiant's knowledge, there are no violations of governmental laws, regulations, or ordinances pertaining to the use of or relating to the Premises.

9. That, to the best of Affiant's knowledge and except as may be set forth in the Title Policy, there are no matters pending against the County which could give rise to a lien that would attach to the Premises, and that the County has not executed and will not execute any instrument that would adversely affect the title to the Premises, during the period of time between the original effective date of the Title Policy and the time of recording of a memorandum of lease evidencing the leasehold interest of the proposed insured set forth in the Title Policy.

10. That, to the best of Affiant's knowledge, the County has complied with the Florida Sales Tax laws, where applicable.

11. That to the best of Affiant's knowledge, no option agreement or outstanding contract or any other agreement relating to the sale or lease of the Premises to any person or persons whomsoever is in effect as of the date of this Affidavit.

12. That Tenant is the only tenant on the Premises under the Lease.

13. That, to the best of Affiant's knowledge, there are no actions or proceedings now pending in any State or Federal Court to which the County is a party, including but not limited to, proceedings in bankruptcy, receivership, or insolvency, nor are there any judgments, bankruptcies, liens, or executions of any nature which constitute or could constitute a charge or lien upon the Premises.

14. That, to the best of Affiant's knowledge, neither the Affiant nor the County has received notice of any public hearing regarding assessment(s) for improvements or changes in applicable zoning laws concerning the Premises within the past ninety (90) days.

15. That, to the best of Affiant's knowledge, there are no unrecorded easements, unpaid bills, liens, or assessments for sanitary sewers, paving, or other public utilities or improvements made by any governmental instrumentality, and no notice has been received for any public hearing

regarding future or pending assessments for improvements by any governmental instrumentality, which are now unpaid, against the Premises.

16. That, to the best of Affiant's knowledge, the execution and entry into the Lease by County is in accordance with all applicable County ordinances.

17. That, to the best of Affiant's knowledge, County has received no notice of, nor is County aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in all or any part of the Premises being taken by condemnation or conveyed in lieu thereof.

18. That, to the best of Affiant's knowledge, no exclusive rights have been granted to any third party which would in any way restrict or prohibit Tenant from selling any type of merchandise from the Premises.

19. Affiant understands that this Affidavit is given for the express purpose of inducing the Title Company to insure title to the Premises.

20. "Affiant" and "County" include singular or plural as context so requires or admits. This Affidavit is made under the full understanding of the law regarding liability for any misrepresentation herein.

DATED this _____ day of _____ 20____.

Laura Beebe, Director of Airports

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

County Attorney

Approved by Board of County Commissioners:

Agenda Item _____ (R- _____) _____ 20____

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

Sworn to (or affirmed) and subscribed before me by means of *[select one]* physical presence *-OR-* online notarization, this _____ day of _____, 20____, by _____, Director of Palm Beach County's Department of Airports, who is personally known to me or who has produced _____ as identification.

Notary Signature

Print Notary Name

NOTARY PUBLIC, State of Florida at large
My Commission Expires: _____

Exhibit "A"

Legal Description of Premises

Exhibit "B"

Title Policy

EXHIBIT "D"
FORM OF MEMORANDUM OF LEASE

This Instrument Prepared by
and Should be Returned To:

Ray Walter, Deputy Director
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406

MEMORANDUM OF LEASE

THIS IS A MEMORANDUM OF THE FOLLOWING LEASE (the “**Lease**”):

The Lease is made as of _____ (R-_____).

The name of the landlord in the Lease is **Palm Beach County, a political subdivision of the State of Florida** (the “**County**”).

The name of the tenant in the Lease is **Popstroke West Palm Beach, LLC, a Florida limited liability company** (the “**Tenant**”).

The address of the County is 301 North Olive Avenue, West Palm Beach, Florida, 33401.

The address of the Tenant is 1001 North U.S. Highway 1, Suite 500, Jupiter, FL 33477.

County is the owner of that certain real property located at 350 N. Haverhill Road, West Palm Beach, FL 33415, Palm Beach County, Florida, more particularly described on **EXHIBIT “A”** attached to this Memorandum (the “**Premises**”).

The Lease Term (as defined in the Lease) is thirty (30) years and commences on the Date of Beneficial Occupancy as specified in the Lease. Under the Lease, Tenant has no option(s) to extend the Lease Term.

For and in consideration of the mutual covenants, agreements, and conditions set forth in the Lease, County leases to Tenant and Tenant leases from County, upon all terms and conditions of the Lease, the Premises.

The Lease contains the provisions set forth in **EXHIBIT “B”** attached to this Memorandum related to Encumbrances and the Rights of Leasehold Mortgages. (*See attached Exhibit “B” containing Articles 13 and 17 of the Lease.*)

This Memorandum of Lease is executed and delivered by County and Tenant solely for the purpose of recording, in the public records of Palm Beach County, Florida, notice of the existence of the Lease, and, consequently, nothing contained in this Memorandum shall be construed to change or alter the terms, conditions, or provisions of the Lease and reference shall be made to the Lease itself for its terms, conditions, and provisions and the intent of County and Tenant regarding the leasing of the Premises demised by the Lease. In the event of any inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

On the expiration or sooner termination of the Lease Term, County and Tenant shall execute and record a notice of termination stating that the Lease is of no further force or effect and that Tenant no longer has any right, title, or interest in the Property.

This Memorandum of Lease may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

IN WITNESS WHEREOF, County and Tenant have caused this Memorandum of Lease to be duly executed as of the ___ day of _____ 20_____.

[SIGNATURES FOLLOW ON NEXT PAGE]

Signature of Witness 1 for County

Print or type name of Witness 1 for County

Signature of Witness 2 for County

Print or type name of Witness 2 for County

COUNTY:
PALM BEACH COUNTY,
a political subdivision of the State of Florida

By: _____
Name:
Title: Director, Department of Airports

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

Sworn to (or affirmed) and subscribed before me by means of *[select one]* physical presence
-OR- online notarization, this _____ day of _____, 20____, by _____
_____, Director of Palm Beach County's
Department of Airports, who is personally known to me or who has produced
_____ as identification.

OFFICIAL NOTARIAL SEAL

(type, print, or stamp name)
Notary Public
Commission No. _____
My Commission Expires: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

County Attorney

Approved by Board of County Commissioners:
(R-2023-_____) date of BCC approval: _____

Signature of Witness 1 for Tenant

Print or type name of Witness 1 for Tenant

Signature of Witness 2 for Tenant

Print or type name of Witness 2 for Tenant

TENANT:
Popstroke West Palm Beach, LLC

By: _____

Name: _____

Title: _____

(SEAL)

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

Sworn to (or affirmed) and subscribed before me by means of *[select one]* physical presence
-OR- online notarization, this _____ day of _____, 20____, by

[name of person making statement]
of Popstroke West Palm Beach, LLC, who *[select one]* is personally known to me -OR- produced
_____, as
identification and who did take an oath.

OFFICIAL NOTARIAL SEAL

(type, print, or stamp name)

Notary Public

Commission No. _____

My Commission Expires: _____

EXHIBIT "A"
(the "Premises")

EXHIBIT "B"
(Articles 13 and 17 of the Lease)

ARTICLE 13 - ENCUMBRANCES

Except as otherwise provided for herein, 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 will not be unreasonably withheld, conditioned or delayed. Any such encumbrance without County's approval shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Premises or the furnishing of any materials for use upon the Premises, by, on behalf of or at the direction of a Tenant Party. 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 17 - RIGHTS OF LEASEHOLD MORTGAGEES

17.01 Right to Mortgage. Tenant may encumber its leasehold estate and interest in the Premises by mortgage, security agreement or other such instrument (any such instrument is hereinafter referred to as "Leasehold Mortgage", and the holder thereof is referred to as "Leasehold Mortgagee") during the Term of this Lease; provided, however, that the entire proceeds of any loan or future advance secured thereby shall be utilized for the construction and improvement of the Premises and further provided that County shall not be obligated to, nor deemed to have subjected or subordinated County's fee simple interest in the Premises to any Leasehold Mortgage, nor subordinated County's interest in this Lease to such Leasehold Mortgage. County's interests in the fee and this Lease are and shall remain at all times superior and prior in right to any Leasehold Mortgage.

17.02 Notice of Default. A Leasehold Mortgagee may provide written notice of its Leasehold Mortgage in the same manner and at the same address as required by this Lease for notices delivered to County, together with the name and address of the Leasehold Mortgagee. In the event such notice is delivered to County, County, upon serving Tenant with any notice under this Lease, shall also serve a copy of that notice upon the Leasehold Mortgagee in the same manner as required by this Lease for notices delivered to Tenant. The delivery shall be made at the address the Leasehold Mortgagee shall have designated in writing to County. County agrees to give the Leasehold Mortgagee written notice of any default by Tenant and of County's intention to terminate this Lease for any reason at least sixty (60) days before the effective date of such termination. The Leasehold Mortgagee shall have the right to perform any of Tenant's covenants or to cure any default by Tenant which is curable by it or to exercise any right conferred upon Tenant by the Terms of this Lease within such sixty (60) day period or such longer period if the default by Tenant is of such nature that it cannot be cured within such sixty (60) day period, provided that the Leasehold Mortgagee diligently and actively undertakes to cure such default and pursues such cure to completion within a reasonable period of time under the circumstances. The sole remedy available to Leasehold Mortgagee due to the failure of County to provide Leasehold Mortgagee with notice as required hereunder shall be the tolling of the applicable cure period afforded to Leasehold Mortgagee herein until the earlier of provision of such notice to Leasehold Mortgagee or Leasehold Mortgagee's receipt of actual knowledge of such notice. County's failure to provide Leasehold Mortgagee notice as required hereunder shall not alter or affect Tenant's rights or obligations under this Lease, nor extend any cure period afforded to Tenant hereunder, or entitle Tenant to damages or other remedies.

17.03 Opportunity to Cure. County will recognize the Leasehold Mortgagee as the tenant of the Premises and accept the performance by the Leasehold Mortgagee of Tenant's obligations under this Lease, upon written notice from the Leasehold Mortgagee to County that it has taken possession of the Premises, for so long as the Leasehold Mortgagee is in possession of the Premises, and provided that Leasehold Mortgagee diligently and actively undertakes to cure and pursues such cure to completion within a reasonable period of time under the circumstances any then existing defaults by Tenant, and performs Tenant's obligations under this Lease. County agrees that it will not unreasonably withhold or delay its consent to any future assignment by the Leasehold Mortgagee of the rights of Tenant under this Lease; provided that: (a) there is no existing default under this Lease or the Leasehold Mortgagee or such assignee diligently and actively undertakes to cure any such default and pursues such cure to completion as provided above, and (b) the assignee has similar recent experience and knowledge regarding operations being conducted on the Premises and has the financial ability to perform under this Lease, as reasonably determined by County. Upon any valid permitted assignment of this Lease by the Leasehold Mortgagee, Leasehold Mortgagee shall have no further liability under this Lease for obligations arising after such assignment. Any action by the Leasehold Mortgagee to cure any default by Tenant or otherwise to exercise Tenant's rights under this Lease shall not be deemed to be an assumption by the Leasehold Mortgagee of Tenant's obligations under this Lease unless the Leasehold Mortgagee takes possession of the Premises pursuant to a foreclosure or other enforcement of its security interest in this Lease or otherwise expressly assumes such obligations in writing. If the Leasehold Mortgagee takes possession of the Premises or succeeds to the interest of Tenant, County shall accept the Leasehold Mortgagee as tenant under this Lease, and this Lease shall continue in full force and effect, provided that there are no then existing uncured defaults under this Lease, and Leasehold Mortgagee performs all obligations of Tenant under this Lease.

17.04 No Lease Amendments. This Lease shall not be amended, modified, terminated or canceled by reason of the exercise of any option or election by Tenant under this Lease, or by the giving of any notice by Tenant under this Lease, unless such amendment, modification, termination or cancellation is assented to in writing by any Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without that assent shall be void.

17.05 Limitation of Liability. A Leasehold Mortgagee shall only be liable to perform the obligations imposed on Tenant in this Lease during the period that the Leasehold Mortgagee is in possession or ownership of the leasehold estate created by this Lease.

17.06 Certificates. Each party agrees, at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying: (a) whether this Lease is in full force and effect, and if it is alleged that this Lease is not in full force and effect, setting forth the nature thereof in reasonable detail; (b) whether this Lease has been supplemented or amended, specifying the manner in which it has been supplemented or amended; (c) the current date to which all rental payments have been made; (d) the commencement and expiration date of this Lease; and (e) whether or not, to the best of the knowledge of the signer of such statement, the other party is in default or may be with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and if in default, specifying each such default, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by the other party, any prospective assignee of the other party's interest in this Lease or any Leasehold Mortgagee, but reliance on such certificate may not extend to any default as to which the signer shall not have had actual knowledge. If requested by Tenant or Leasehold Mortgagee, and provided a notification address is provided and maintained, certificates may contain a provision whereby copies of notices under the Lease shall be provided to the Leasehold Mortgagee, and a statement that this Lease shall not be amended without prior written consent of Leasehold Mortgagee. The Director shall have the authority to sign such a certificate on behalf of County; however, in the event Tenant or Leasehold Mortgagee shall require a certificate beyond the aforementioned

statements, or which differs materially from the aforementioned statements, such certificate shall be subject to Board approval, which shall be considered at the next available regularly-scheduled meeting of the Board, generally within sixty (60) days prior written notice.

17.07 Subordination of Landlord's Lien. County does hereby subordinate its statutory landlord's lien to the lien and operation of any Leasehold Mortgage. This subordination of County's lien shall be self-operative.

17.08 Release of Lien. Upon the scheduled expiration or early termination of this Lease, provided such termination is in accordance with the terms of this Lease including, but not limited to, this Article, Tenant and/or Leasehold Mortgagee, as appropriate, shall promptly execute, in recordable form, and deliver to County, a termination of lease, termination of memorandum of lease, release of mortgage and such other documents as County may reasonably require (collectively, the "Release Documents"). In the event Tenant or Leasehold Mortgagee fails to provide the foregoing Release Documents within thirty (30) days after County's written request therefor, County shall be entitled to execute the same for and on behalf of Tenant and/or Leasehold Mortgagee and Tenant and Leasehold Mortgagee hereby appoint County as attorney in fact for the limited purpose of execution of such Release Documents.

17.09 Indemnification. By acceptance of the rights and benefits conferred upon a Leasehold Mortgagee by this Article, such Leasehold Mortgagee agrees, for itself and its successors and assigns, that it shall be bound by the terms of this Article as if such Leasehold Mortgagee were a direct party hereto and further agrees to protect, defend, reimburse, indemnify and hold the County Parties harmless from and, against any and all Damages arising from to the Leasehold Mortgagee's negligence or willful misconduct in connection with its entry upon the Premises for inspection or other purposes.

17.10 Personal Property. Notwithstanding any other provision of this Lease to the contrary, Tenant may, without County's or Department's consent, from time to time, secure financing or general credit lines and grant the lenders thereof, as security therefor: (a) a security interest in Tenant's personal property located at the Premises, and/or (b) the right to enter the Premises to realize upon any personal property so pledged. Upon Tenant providing notice of such financing to County, County agrees to evidence its consent in writing to such security interest. All of Tenant's personal property shall be and remain the personal property of Tenant. County expressly waives its statutory and common law landlord's liens as same may be enacted or may exist from time to time and any and all rights granted under any present or future laws to levy or distrain for rent, whether in arrears or in advance, against the aforesaid personal property of Tenant on the Premises and further agrees to execute any reasonable instruments evidencing such waiver (upon Tenant's request).

(end of Exhibit "B")

EXHIBIT "E"
FEDERAL NONDISCRIMINATION COVENANTS

WHEN USED HEREIN, THE TERM "CONTRACTOR" MEANS TENANT-LESSEE-LICENSEE-CONCESSIONAIRE-OPERATOR-PERMITTEE OR OTHER PARTY TO AN AGREEMENT WITH PALM BEACH COUNTY.

COUNTY NONDISCRIMINATION PROVISIONS

Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the CONTRACTOR warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Title VI Clauses for Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, CONTRACTOR, for itself, its assignees, and successors in interest, agrees as follows:

1. Compliance with Regulations: CONTRACTOR will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities ("Nondiscrimination Acts and Authorities" as set forth in paragraph B below), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. CONTRACTOR will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by CONTRACTOR of CONTRACTOR's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: CONTRACTOR will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, CONTRACTOR will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the non-discrimination provisions of this Agreement, County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to CONTRACTOR under this Agreement until CONTRACTOR complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: CONTRACTOR will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. CONTRACTOR will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, CONTRACTOR may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, CONTRACTOR may request the United States to enter into the litigation to protect the interests of the United States.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, CONTRACTOR, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities, as may be amended, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).

C. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. CONTRACTOR for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that CONTRACTOR will use the CONTRACTOR Premises and any License Area in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts And Authorities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter or re-enter and repossess the CONTRACTOR Premises and any License Area and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

D. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

CONTRACTOR for itself and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the CONTRACTOR will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

E. Airport Concession Disadvantaged Business Enterprises ("ACDBE").

This Agreement may be subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. It is the policy of County that ACDBEs shall have the maximum practicable opportunity to participate in the performance of contracts. CONTRACTOR agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. CONTRACTOR agrees to include the aforementioned statement in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

F. General Civil Rights Provision.

CONTRACTOR agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR. This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

EXHIBIT "F"
EXAMPLE WORKSHEET ILLUSTRATING RECONCILIATION OF
"YEAR-TO-DATE GROUND RENTAL" AND
"YEAR TO DATE PERCENTAGE RENT"

In the following illustrative example, the "Year-to-Date Ground Rental" and "Year-to-Date Percentage Rent" are reconciled monthly, there are months where "Monthly Payment Due" is less than "Monthly Ground Rental".

EXAMPLE WORKSHEET FOR ILLUSTRATING "YEAR-TO-DATE GROUND RENTAL" AND "YEAR TO DATE PERCENTAGE RENT"

For illustration purposes, the "LEASE YEAR" is from January 1 through December 31

For illustration purposes, initial annual GROUND RENTAL is assumed to be \$448,157.85 payable in monthly installments of \$37,346.49.

Monthly Reports are due no later than the 20th of each month, reporting Gross Revenues through the end of the prior month.

1	2	3	4	5	6	7	8	9
Month	Monthly Gross Revenue	Total YTD Gross Revenue	Monthly Percentage Rent Due (4.0% of the first \$10M Annual Gross Revenue; 2% of Annual Gross Revenues thereafter)	YTD Percentage Rent Due	Monthly Ground Rental (based on \$448,157.85 annual illustration)	YTD Ground Rental (based on \$448,157.85 annual illustration)	Greater of YTD Base Rental or YTD Percentage	Monthly Payment Due
January	1,300,000.00	1,300,000.00	52,000.00	52,000.00	37,346.49	37,346.49	52,000.00	52,000.00
February	1,400,000.00	2,700,000.00	56,000.00	108,000.00	37,346.49	74,692.98	108,000.00	56,000.00
March	1,400,000.00	4,100,000.00	56,000.00	164,000.00	37,346.49	112,039.47	164,000.00	56,000.00
April	1,450,000.00	5,550,000.00	58,000.00	222,000.00	37,346.49	149,385.96	222,000.00	58,000.00
May	1,555,000.00	7,105,000.00	62,200.00	284,200.00	37,346.49	186,732.45	284,200.00	62,200.00
June	1,625,000.00	8,730,000.00	65,000.00	349,200.00	37,346.49	224,078.94	349,200.00	65,000.00
July	1,550,000.00	10,280,000.00	56,400.00	405,600.00	37,346.49	261,425.43	405,600.00	56,400.00
August	1,570,000.00	11,850,000.00	31,400.00	437,000.00	37,346.49	298,771.92	437,000.00	31,400.00
September	1,550,000.00	13,400,000.00	31,000.00	468,000.00	37,346.49	336,118.41	468,000.00	31,000.00
October	1,350,000.00	14,750,000.00	27,000.00	495,000.00	37,346.49	373,464.90	495,000.00	27,000.00
November	0.00	14,750,000.00	-	495,000.00	37,346.49	410,811.39	495,000.00	0.00
December	0.00	14,750,000.00	-	495,000.00	37,346.49	448,157.88	495,000.00	0.00
Totals	14,750,000.00	14,750,000.00	495,000.00	495,000.00	448,157.88	448,157.88	495,000.00	495,000.00