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**GROUND LEASE AGREEMENT**

(Airport Rail Park)

**THIS IS A GROUND LEASE AGREEMENT** dated as of 24<sup>th</sup> day of May, 2016 (the "Agreement") by and between HERNANDO COUNTY a subdivision of the State of Florida existing under the laws of the State of Florida, whose address is 20 N. Main Street, Room 263, Brooksville, FL 34601 (hereinafter referred to as the "Lessor" or the "County") and the BRN Development, LLC a Florida Limited Partnership, whose address is 301 West Platt Street # 144 Tampa, FL, 33606; (hereinafter referred to as "Lessee"), individually and collectively referred to as the "Party" or "Parties".

**WITNESSETH**

**WHEREAS**, the Brooksville – Tampa Bay Regional Airport (the "Airport") is subject to the requirements of various federal laws and regulations including, without limitation, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949, as amended, and the rules and orders promulgated by the Federal Aviation Administration (the "FAA"); and,

**WHEREAS**, FAA Compliance Order No. 5190.6A, including but not limited to Chapter 4 thereof, requires that surplus property airports (which includes the Airport herein) generate revenue, income or its functional equivalent to the airport; and,

**WHEREAS**, pursuant to a directive of Congress, as a surplus airport property, the Airport is subject to compliance review by the FAA and the United States Department of Transportation Inspector General Office; and,

**WHEREAS**, FAA Compliance regulations require that use of surplus airport property be authorized by a written instrument providing for payment of fair, reasonable and non-discriminatory fees, rentals or other user charges; and,

**WHEREAS**, all leases at the Airport are further governed by Chapter 3 of the Hernando County Code of Ordinances, as amended from time to time.

**NOW THEREFORE**, the **Lessor** and the **Lessee** hereby agree as follows:

The above recitals are incorporated herein and made a part hereof.

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## ARTICLE I - REPRESENTATIVES

1. Designated Representatives. For the purpose of this Agreement, each party designates the following representatives: **Lessee's Representative** - **Lessee's** full-time employee or agent that the **Lessee** designates to the **Lessor** in writing, which for contract purposes at this time is Brennan M. Smith. **Lessor's Representative** - the Airport Manager or such person that the **Lessor** designates by written notice delivered to the **Lessee**.

## ARTICLE 2 - LAND, IMPROVEMENTS AND PREMISES

2.A. Lessor hereby demises and leases the real property designated Rail Park Lot 1, street address of 2180 American Flyer Way, Brooksville, FL, containing approximately 2.5 acres, more or less, and legally described in **Exhibit "A"** to the **Lessee** and **Lessee** hereby hires, takes and leases the Leased Land from the **Lessor** pursuant to the terms and conditions in this Agreement.

2.B. Improvements. **Lessee**, at **Lessee's** sole expense, will be purchasing a facility containing 6,000 square feet of interior floor space together with certain improvements (hereinafter collectively referred to as the "Improvements"). This ground lease shall be contingent upon Lessor's fee simple purchase of the said improvements located at 2180 American Flyer Way, Brooksville, FL.

2.C. Premises. The **Land** and the Improvements shall hereinafter collectively be referred to as "Premises".

2.D. Due Diligence and Inspections. It is responsibility of the **Lessee**, at the **Lessee's** sole expense, to satisfy itself, prior to the execution of this Agreement or as provided herein, as to the condition of the real property subject to this Agreement including, without limitation, permitted land uses, zoning codes, building regulations, height limitations, set backs, applicable building codes, permits, soil conditions, and environmental conditions (the **Lessee**, at the **Lessee's** sole expense, may obtain any environmental tests that it deems necessary including Environmental Phase I or Phase II Reports as part of its due diligence). In connection with any and all inspections performed by or for the **Lessee**, the **Lessee** shall indemnify and hold harmless the **Lessor** for any damage or injury done to the Land, Airport property, or the property of others as a consequence of such inspection(s) and the **Lessee** shall promptly repair or have repaired in good workmanship manner such damage caused.

2.F. No Warranties or Representations. **Lessor** makes no warranties or representations to the **Lessee**, and the **Lessee** agrees the **Lessor** has made no warranty or representation respecting the condition of the **Land**, or applicable zoning laws and regulations, or applicability of the uses contemplated by the **Lessee**, or environmental conditions, or any matters which a survey, prepared pursuant to Chapter 427, *Fla. Stat.*, and Rule Chapter 61G17, *Fla. Admin. Code*, would disclose, or the applicability of any covenants or restrictions of public record, except as otherwise expressly provided herein.

2.G. Acceptance of Land. **Lessee** further acknowledges it has had adequate opportunity to inspect the Land hereunder (as also referenced in **Exhibit "A"**) prior to entering into this **Agreement** or has made adequate provision herein. Accordingly, the taking of possession of the Land by the **Lessee**

shall be conclusive evidence against the **Lessee** that the Land was in good and satisfactory condition when possession was so taken.

**2.H. Grant of Option Parcel 1.2.** The **Lessor**, in consideration of the execution of this lease by **Lessor** and **Lessee**, hereby grants to the **Lessee** the exclusive right, at his option, for and during the period of five (5) years from the date hereof, to lease an additional 1.9 acres to the North (Parcel 1.2) of the lease site as shown on "**Exhibit B**", subject to existing utility easements. **Lessee** shall have the right to renew this option for successive annual periods at the cost outlined in the Airport property policy at the time of renewal. During the term of this option if another party desires to execute a lease for this 1.8 acre tract, the **Lessee** will have the option to add the property to this agreement at the prevailing rate within forty-five days thereof, or this option will terminate.

### **ARTICLE 3 - PRIVILEGES, USES, EXCLUSIONS AND SERVICES**

**3.A. Lessee** shall enjoy the following nonexclusive rights on the Airport subject to the conditions of this Agreement and as further provided below:

- **Lessee** shall use the Land for administrative operations, warehousing, distribution and associated offices. Article 30 of this lease must be complied with all subleases.

**3.B.** It is understood and agreed that any other use or occupancy that may now or in the future be proposed for said building(s) or the Land hereunder shall conform to the type of industry or business envisioned by Park restrictions and covenants, the conformance of which shall be determined and approved in advance in writing by the **Lessor** through the Airport Manager or his designee.

### **ARTICLE 4 - TERM AND COMMENCEMENT**

**4.A. Effective Date.** This Agreement shall become binding and effective (the "Effective Date") upon approval and execution by the **Lessee** and the **Lessor**.

**4.B. Term.** The lease term for this Agreement shall commence on the \_\_\_\_ of May, 2016 and shall end on the anniversary date thirty (30) years hence (the "Anniversary Date").

**4.C. Renewal Options.** **Lessee** shall have the option, in its sole discretion and upon giving written notice to the **Lessor** not less than three months prior to the Anniversary Date, to renew this Agreement for up to two (2) additional 15-year terms, provided the **Lessee** has complied with all of the terms and conditions of this Agreement and is not otherwise in default hereunder. At the time of renewal, all other terms and conditions of this Agreement shall remain the same subject to adjustment of Land Rent as provided for in **Sections 6.A.2 and 6.A.3** and adjustment of required insurance coverage as provided for in **Section 16.C** herein. In addition to the foregoing, if at the time of renewal, the Current Fair Market Value has not been attained (by virtue of the 5% cap limitations being applied over one or more years), then the Land Rent shall immediately be adjusted upward to equal the Current Fair Market Value (as defined in **Section 6.A.2** below). At the request of the **Lessee** the term of this lease may,

subject to the regulations in effect at that time, be further extended under mutually agreeable lease provisions and conditions.

## **ARTICLE 5 - OBLIGATIONS OF LESSEE**

**Lessee** further covenants and agrees:

**5.A.** The use and occupancy of the Premises by the **Lessee** shall be without cost or expense to the **Lessor** except as provided herein.

**5.B.** **Lessee** shall provide adequate utility services to the Premises as determined by the **Lessor**. It is understood and agreed that the **Lessee** shall be responsible for obtaining, at its sole expense, any and all utility services, such as electricity, water, sewer or gas needed by the **Lessee** during the period of occupancy. **Lessee** shall pay all charges for providing said utility service and the cost of necessary meters for measuring said utility services.

**5.C.** **Lessee** agrees, at its sole expense, to maintain the Premises and Improvements thereto, as described herein, in a presentable condition consistent with good business practice and in good repair as of the date this Agreement was executed, normal wear and tear excepted and that it will procure and keep in force during the term of this Agreement all necessary occupational licenses and permits as are required by law for the operation and maintenance of the **Lessee's** business on the Premises. **Lessee** agrees to keep the Premises mowed and groomed and will not allow the accumulation of materials, parts or other materials on the Premises.

**5.D.** **Lessee** agrees to conduct its business in a proper and first-class manner at all times. **Lessee** further agrees to operate in harmony with others on the Airport and will at all times operate safely and with a concern for others and in accordance with all covenants and restrictions of public record.

**5.E.** **Lessee** will provide or cause to be provided all necessary dumpsters or other types of storage receptacles or devices as may be necessary. The piling of boxes, cartons, barrels or similar items in an unsightly manner on or about the Premises shall not be permitted. **Lessee**, at **Lessee's** sole expense, shall cause to be removed from Premises all waste, garbage and rubbish. Further, the **Lessee** agrees not to deposit said waste on any part of the Airport, except in connection with collection or removal. Said waste shall be placed in a location and container approved by the **Lessor**.

**5.F.** **Lessee** shall neither create nor permit to be caused or created upon the Premises, or elsewhere on the Airport, any obnoxious odor, smoke or noxious gases or vapors. The creation of exhaust fumes by the operation of internal-combustion engines or engines of other types, so long as such engines are maintained and are being operated in a proper manner, shall not be a violation of this Agreement.

**5.G.** **Lessee** shall not keep or store flammable liquids within any covered and enclosed portion of the Premises in excess of the **Lessee's** working requirements. Any such liquids having a flash

point of less than 110 degrees Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

## ARTICLE 6 - RENTALS AND FEES

**6.A.** Lessee shall pay to the Lessor the following Land Rent:

**6.A.1. Land Rent.** Lessee shall pay monthly Land Rent (1/12th of annual Land Rent) in advance and without demand, on or before the first day of each month upon commencement of the term of this Agreement pursuant to the schedule below for the first five (5) years and then adjusted, thereafter, as provided for in **Section 6.A.2** herein. Land Rent shall be calculated as ten percent (10.0%) per annum of the then current fair market appraised value for unimproved land within the applicable area or park of the Airport (see **Section 6.A.2** below) and calculated on a per square foot rate using the gross square footage contained in the Survey (described in **Section 2.D**), or as established by the Lessor if no Survey is obtained by the Lessee. The parties agree that the gross square footage of the Land for purposes herein is 108,900 square feet.

During the first five years of this Agreement, annual Land Rent shall be at as follows:

- (1) Annual Land Rent during year one shall be at \$0.08 per square foot
- (2) Annual Land Rent during year two shall be at \$0.09 per square foot
- (3) Annual Land Rent during year three shall be at \$0.10 per square foot
- (4) Annual Land Rent during year four shall be at \$0.11 per square foot
- (5) Annual Land Rent during year five shall be at \$0.12 per square foot

**6.A.2. Adjustment of Land Rent.** Beginning in the sixth year, and every fifth year thereafter (i.e. years 6, 11, 16, 21, 26, etc. including renewal and extension periods), the Land Rent shall be adjusted to equal ten percent (10.0%) per annum of the then current fair market appraised value (hereinafter referred to as "Current Fair Market Value"). The Current Fair Market Value shall be based upon the most recent appraisal performed for and paid for by the Lessor, but in no event shall said appraisal be older than 18 months (hereinafter referred to as the "Lessor's Appraisal"). The Lessor's Appraisal shall be prepared by a Florida-registered or Florida-licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and Chapter 475, Part II, *Fla. Stat.* and Rule Chapter 61J1, *Fla. Admin. Code* ("Florida Appraisal Law") as applicable to the Land. Not less than 90 days and not more than 180 days before imposition of the new adjusted rent, the Lessor shall advise the Lessee in writing (the "Notice") of the new adjusted rent amount. Not later than thirty (30) days from the date of the Notice, the Lessee may dispute the new adjusted rent amount by notifying the Lessor in writing of such dispute; however, no later than

60 days from the date of the Notice, the **Lessee** shall provide the **Lessor**, at the **Lessee's** sole expense, its appraisal (the "Lessee's Appraisal") performed in accordance with USPAP and Florida Appraisal Law. In the event that there is a five percent (5%) or less difference in the appraised Current Fair Market Value amount between the Lessor's Appraisal and the Lessee's Appraisal, then the Lessor, in the Lessor's sole discretion, may chose either value or may chose a middle value. In the event that there is more than a five percent (5%) difference in appraised Current Fair Market Value amount between the Lessor's Appraisal and the Lessee's Appraisal, then within 15 days of the date of the Lessee's Appraisal, the two appraisers shall communicate as necessary and agree on the name of a third appraiser who shall be a Florida-registered or Florida-licensed appraiser. The Third Appraisal shall be performed in accordance with Florida Appraisal Law and USPAP. The third appraiser may review and utilize the first two appraisals to the extent permitted under USPAP. The cost of the Third Appraisal shall be split evenly between the **Lessor** and the **Lessee** and an appraisal report shall be prepared within 30 days from the date ordered. The Current Fair Market Value amount stated in the Third Appraisal shall be binding on the parties as the new adjusted rent for that five year period. The provisions in this Section shall be the **Lessee's** sole remedy for disputing the new adjusted rent for each and every five year period.

**6.A.3. Cap on Adjustment of Land Rent.** Notwithstanding **Section 6.A.2**, rent shall not be adjusted more than five percent (5%) in any one year (or adjusted more than twenty five percent (25%) over any five year period). Adjustments in excess of five percent (5%) in any one year shall be carried over to the subsequent year (not to exceed said cap in such year), and each year thereafter until the Current Fair Market Value is attained or a new appraisal is a required (in connection with the subsequent five year period).

**6.A.4. Late Rent; Other Fees.** Land Rent shall be due monthly as set forth above and shall be due and payable on the first day of each month. A ten percent (10%) penalty will be applied to all rents received after 5:00 p.m. on the tenth (10th) day of the month. The **Lessee** is separately responsible for all applicable taxes, sales taxes, late fees, special assessments, charges, other fees and penalties.

**6.B.** In addition to the Land Rent in **Section 6.A**, the **Lessee** shall pay the **Lessor** an Annual Fee of five hundred dollars (\$500) relating to the cost, operation and maintenance of the common areas of the Airport. This Annual Fee shall be paid to the Lessor in equal monthly installments (1/12th of the Annual Fee) at the time the Land Rent is paid. The Lessor reserves the right to adjust this fee every five (5) years; provided, however, that any adjustment shall not exceed five (5%) percent of the preceding period.

6.C. Lease payments shall be forgiven for the first sixty days of this agreement.

## ARTICLE 7 - LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

7.A. **Lessor** hereby grants permission to the **Lessee** to execute and deliver unto Centennial Bank, a Leasehold Mortgage and Security Agreement pledging this Agreement, and the buildings and attendant facilities, excluding fixed **Lessor** property, erected upon the Land, as security for said loan, as contemplated by this Section.

**Lessor** agrees that, in the event that the **Lessee** shall pledge this Agreement pursuant to the terms of a Leasehold Mortgage and Security Agreement, then the **Lessor**, so long as said Leasehold Mortgage and Security Agreement remains outstanding and has not been satisfied of record, will not enter into any agreement with the **Lessee** purporting to change, modify, amend or terminate this Agreement without the mortgagee's joinder and prior consent, which consent shall not be unreasonably withheld as to any non-material change, modification or amendment. The **Lessor** agrees that any attempted change, modification, amendment or mutual termination between the **Lessor** and the **Lessee** without the mortgagee's joinder and prior written consent shall be void and of no force or effect. However, in no event shall the **Lessee** enter into any Leasehold Mortgage or Security Agreement for a duration longer than the Anniversary Date of this Agreement.

In the event that the **Lessee** shall pledge this Agreement pursuant to a Leasehold Mortgage and Security Agreement as herein provided, then the **Lessor** agrees that if and when the **Lessor** notifies the **Lessee** of a default or claim of default by the **Lessee** under this Agreement, **Lessor** shall send a copy of the written notice or a written explanation of any oral notice concurrently therewith to the mortgagee, at an address certified to the **Lessor** in writing by said mortgagee upon the granting of said Leasehold Mortgage and Security Agreement. The mortgagee shall be permitted to remedy any such default or claimed default specified in the notice within an equal period of time, commencing on the date mortgagee receives or is deemed to have received such notice, as the **Lessee** would be permitted to remedy same pursuant to this Agreement. Notwithstanding the foregoing provisions of this paragraph, said mortgagee shall have a minimum of thirty (30) days after its receipt of the notice to remedy the default. The **Lessor** further agrees that in the event that **Lessee** pledges the Agreement pursuant to a Leasehold Mortgage and Security Agreement, then should said mortgagee, or a purchaser at a foreclosure sale, acquire the **Lessee's** interest under this Agreement, through foreclosure or otherwise, the **Lessor** shall recognize said mortgagee, or such purchaser, as the lessee or tenant under this Agreement and shall accept performance by said mortgagee or purchaser under this Agreement provided that said mortgagee or e firm conducting cleanuound by the terms and conditions for the rest of the unexpired term of this Agreement or that the **Lessor**, mortgagee or purchaser can reach mutual agreement on any changes to the terms of this Agreement. The **Lessor** further agrees that in the event that the **Lessee** shall hereafter file for protection under the bankruptcy laws of the United States and shall reject or otherwise terminate this Agreement, the **Lessor** shall enter into a new ground lease on the exact same terms and conditions as this Agreement with the mortgagee, but only to the extent of the original terms of this Agreement. It is further understood and agreed that the Leasehold Mortgage and Security Agreement described herein and in favor of the named mortgagee shall be the only mortgage, pledge or encumbrance permitted on

the Land absent prior written consent of the **Lessor**, which consent the **Lessor** may withhold for any reason or no reason.

**7.B.** The mortgagee named above shall be a bona fide federal or state chartered financial institution insured through the Federal Deposit Insurance Corporation.

**7.C.** The parties further understand and agree that any requests for the **Lessor** (County) to subordinate in any manner or form its position relative to, or any rights under, this Agreement shall be in the sole discretion of the County; and the County reserves the right to refuse requests for "subordination" for any reason or no reason. Notwithstanding anything in this Article, in no event shall the County, as a political subdivision of the State of Florida, give, lend, pledge or use its taxing powers or credit to any corporation, association, partnership or person in connection with or furtherance of this Agreement.

#### **ARTICLE 8 - MAINTENANCE OBLIGATIONS OF LESSOR**

**8.** **Lessor's** maintenance obligations shall be limited to normal and ordinary maintenance of the Airport common areas.

#### **ARTICLE 9 - MAINTENANCE OBLIGATIONS OF LESSEE**

**9.A.** General Obligations. **Lessee** shall be obligated to maintain the Premises and every part thereof in good appearance, repair and safe condition, consistent with good business practices, whether installed by the **Lessor** or the **Lessee**, such maintenance shall be without cost to the **Lessor**. Such maintenance shall include, but not be limited to, the scheduled maintenance of the Premises listed in Section 9.B. **Lessee** shall repair all damages to the Premises caused by its employees, patrons or its operations thereon. All such maintenance, repair and replacements shall be of a quality equal to the original in materials and workmanship. All paint colors shall be submitted to and approved in writing by the Airport Manager prior to any exterior painting.

**9.B.** Required Scheduled Maintenance to Premises. In addition to the **Lessee's** maintenance obligations included in this Agreement, the **Lessee** further agrees to maintain, at a minimum, certain components (singular use shall not limit the **Lessee's** obligations herein where buildings or the parts thereof exist in the plural) of the Premises according to the following maintenance schedule: **(1) Building Exterior.** Buildings' exteriors shall be inspected annually. Mildew, staining, dirt, cobwebs, etc., shall be cleaned as needed. **(2) Landscaping.** The landscaping shall be maintained in a manner consistent with good horticultural practices, and free of unsightly conditions. **(3) Electrical Service and HVAC.** Area shall be kept free of debris and foreign objects at all times. **(4) Parking Lots.** Shall be cleaned, swept, removed of oil and debris, repaired and striped, on a routine basis.

**9.C.** Condition of Premises at End of Term. In addition to manufacturer's recommended scheduled maintenance and the provisions in **Section 9.B** above, the **Lessee** shall maintain the Premises whereas at the end of the term of this Agreement said condition of the Premises shall be in a good state of repair and comply with the following conditions: **(1)** The Roofs shall be free of any leaks; **(2)** The HVACs system shall cool and heat properly; **(3)** The exterior paint shall be free of unsightly



conditions; and (4) The interior of the Premises shall be painted within one year prior to the termination of this Agreement.

**9.D. Failure to Repair and Maintain Premises.** If the **Lessee** fails to perform the **Lessee's** maintenance responsibilities, the **Lessor** shall have the right, but not the obligation, to perform such maintenance responsibilities, provided the **Lessor** has first, in any situation not involving an emergency, by written notice to the **Lessee**, delivered in accordance with **Article 33**, afforded the **Lessee** a period within which to correct the failure of thirty (30) days, or of such longer duration as may be reasonably required to rectify the failure through the exercise of prompt, diligent and continuous effort said extension must be approved by the **Lessor**. All costs incurred by the **Lessor** in performing the **Lessee's** maintenance responsibility, plus a fifteen percent (15%) administrative charge, shall be paid by the **Lessee** within thirty (30) days of receipt of billing therefore. Failure of the **Lessee** to pay within thirty (30) days after receipt of the **Lessor's** notice of delinquency shall be deemed a condition of default. The **Lessor** retains the right, after giving reasonable advance notice to the **Lessee**, to enter upon the Land to repair any utilities thereon that serve any areas, including the **Lessee's** Premises. **Lessor** shall endeavor to use commercially reasonable efforts to minimize interference or disruption to the **Lessee's** operations.

#### **ARTICLE 10 - FUTURE IMPROVEMENTS AND ALTERATIONS BY LESSEE**

**10.A. Written Approval.** The **Lessee** shall make no further improvements or alterations whatsoever to the Premises without the prior written approval of the **Lessor**, which consent shall not be unreasonably withheld, provided, however, that such improvements do not conflict with the current use and future development of the Airport and that such alterations or fixed leasehold improvements shall be commenced only after plans and specifications thereof have been submitted to and approved in writing by the **Lessor**, and the **Lessee** has obtained the required building permits. Within thirty (30) days after receipt by the **Lessor** of the **Lessee's** plans and specifications, the **Lessor** shall inform the **Lessee** that the plans are either approved, approved subject to certain stated conditions and changes; or not approved. The **Lessor's** failure to either approve or disapprove the **Lessee's** plans and specifications within thirty (30) business days after the **Lessee** delivers written notice to the **Lessor** that the **Lessor** has not acted within the thirty (30) day period described above will constitute the **Lessor** approval of the **Lessee's** plans and specifications.

**10.B. Conditions.** If the **Lessee's** request for approval to make improvements or alterations is permitted pursuant to **Section 10.A** (whether by express grant of the **Lessor** or by estoppel), the following conditions shall apply: **(1) Lessee** shall obtain all required permits and licenses necessary under, and shall comply with applicable zoning laws, building codes and other laws or regulations of all appropriate governing entities, including the Federal, State and County, applicable to the construction or installation of approved improvements or alterations.; **(2) Lessee** agrees that all construction shall conform to the general architectural and construction requirements of the Florida Building Code, as may be amended, from time to time, as well as the development standards and ordinances of Hernando County; **(3) Lessee** agrees to hire only licensed contractors and subcontractors and to indemnify the **Lessor** in the event of any loss or damage resulting from work performed on the Premises by its contractors and subcontractors; **(4) Lessee** shall comply with all then current building, permitting and licensing requirements; **(5) Lessee** covenants and agrees to accept and pay all costs necessary to

complete the approved alterations or improvements; and **(6) Lessee** agrees to be solely responsible for any damage (other than normal wear and tear) resulting from the removal by the **Lessee** of its personal property or signs.

#### **ARTICLE 11 - SURRENDER OF PREMISES**

**11.** Upon the expiration date or earlier termination of this Agreement, the **Lessee** shall quit and surrender the Land together with all Improvements, Alterations and equipment at any time made or installed in, upon or to the Land, and together with all keys and combinations to all locks, and excepting all personal property and trade fixtures installed at the **Lessee's** expense. The **Lessee** agrees to repair any damage caused by the removal of the **Lessee's** personal property or trade fixtures. If the **Lessee** fails to remove any personal property or trade fixtures, said property shall, at **Lessor's** sole discretion, be deemed abandoned and become the property of the **Lessor**, or the **Lessor** shall have the right to remove and store such property at the expense of the **Lessee** without further notice to the **Lessee**, and hold the **Lessee** responsible for any and all charges and expenses incurred by the **Lessee** therefor. All expenses incurred by the **Lessor** in the removal and storage of the **Lessee's** personal property or trade fixtures shall be reimbursed by the **Lessee** on demand as Additional Rent. The provisions of this Section shall survive the expiration date or earlier termination of this Agreement.

#### **ARTICLE 12 - EVENTS OF DEFAULT AND REMEDIES**

**12.A. Events of Default.** The occurrence of any one or more of the following events shall constitute a default on the part of the **Lessee**: **(1)** the **Lessee** fails to pay when due any rental (including Land Rent and Additional Rent) or any other sum of money payable hereunder within ten days after such rental or payment is due; **(2)** the conduct of any business or performance of any acts at the Airport not specifically authorized in this Agreement or by other agreements between the **Lessor** and the **Lessee**, and the **Lessee's** failure to discontinue that business or those acts within thirty (30) days of receipt by the **Lessee** of the **Lessor's** written notice to cease said business or acts; **(3)** the **Lessee** breaches or fails to comply with any other term, provision, covenant or condition of this Agreement and such breach or failure shall continue for a period of thirty (30) days or more after written notice thereof from the **Lessor**; **(4)** the **Lessee** transfers, assigns, or sublets this Agreement, in whole or part, other than as provided for in **Article 30** herein; **(5)** the **Lessee** mortgages, pledges or encumbers the Premises, in whole or part, or this Agreement, other than as expressly provided for in this Agreement or upon prior written consent of the **Lessor**; **(6)** the **Lessee** abandons, deserts or vacates the Premises; **(7)** the divestiture of the **Lessee's** estate herein by operation of law, by dissolution or by liquidation (not including a merger or sale of assets); or **(8)** a receiver, custodian or trustee is appointed to take possession of all or substantially all of the assets of the **Lessee**, or an assignment is made by **Lessee** for the benefit of its creditors, or any action is taken or suffered by the **Lessee** under any insolvency, bankruptcy or reorganization act. Any or all of the foregoing shall hereinafter be referred to as "Events of Default".

**12.B. Lessor's Remedies.** Upon the occurrence of any of the above Events of Default, the **Lessor** shall have the option to perform any one or more of the following, in addition to, and not in limitation of, any other remedy or right permitted by law or in equity: **(1)** the **Lessor** may at once or any time thereafter, without notice to the **Lessee** or any other person, re-enter and repossess the Premises

and remove all persons and effects therefrom, using such forces as may be needed without being deemed guilty in any manner of trespass or forcible entry or detainer; (2) the **Lessor** may at once or any time thereafter, without notice to the **Lessee** or any other person, re-enter the Premises and cure, correct or repair any condition which shall constitute a failure on the **Lessee's** behalf to keep, observe, perform, satisfy or abide by any term, condition, covenant, agreement or obligation of this Agreement or any alteration, amendment, change or addition thereto, and the **Lessee** shall fully reimburse and compensate the **Lessor** upon demand for any costs and expenses incurred in connection with such cure, correction or repair, which sums shall be deemed to be Additional Rent hereunder; (3) the **Lessor** may at once or any time thereafter either declare this Agreement to be terminated without prejudice to any and all rights which the **Lessor** may have against the **Lessee** for rents, damages or breach of this Agreement, or attempt to relet the Premises on such terms as the **Lessor** shall determine. In the event the **Lessor** relets the Premises, such reletting shall not be considered as a surrender or acceptance back of the Premises or a termination of this Agreement, and the **Lessee** shall pay the **Lessor** any deficiency between the amount received, if any, from such reletting after such amount is applied first to **Lessor's** expenses in connection with re-entry, taking possession and reletting, including brokerage fees and commissions, alterations and redecorating as the **Lessor** may deem appropriate to prepare the Premises for reletting, and the amount of Land Rent, Additional Rent and other fees payable by the **Lessee** hereunder. The **Lessee** hereby waives the service of any notice of intention to terminate this Agreement or to re-enter the Premises, and waives the service of any demand for payment of rent or repossession. The **Lessee** further waives any and all rights of redemption granted by or under any present or future laws in the event of the tenant being evicted or dispossessed for any cause, or in the event of the **Lessor** obtaining possession of the Premises by reason of the violation by the **Lessee** of any of the covenants and conditions of this Agreement or otherwise.

**12.C. Continuing Responsibilities of Lessee.** Notwithstanding the occurrence of any Events of Default, the **Lessee** shall remain liable to the **Lessor** for all payments payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless the **Lessor** elects to cancel this Agreement pursuant to **Section 12.B**, the **Lessee** shall remain liable for and promptly pay any and all payments accruing hereunder until such time as this Agreement has been duly canceled. No retaking of possession of the Premises by the **Lessor** (under **Section 12.B** above) shall be construed as an election on its part to terminate this Agreement, unless a written notice of such intention be given to the **Lessee**, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any payments or other moneys due to the **Lessor** hereunder, or of any damages accruing to the **Lessor** by reason of the violations of any of the terms, provisions, and covenants herein contained. **Lessor's** acceptance of payments or other moneys following any event of default hereunder shall not be construed as the **Lessor's** waiver of such event of default unless the event of default is the delinquency in the payment of the amount accepted. No forbearance by the **Lessor** of action upon any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions and covenants herein contained. Forbearance by the **Lessor** to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any such remedy. It is agreed by the Parties that losses or damages that the **Lessor** may suffer by reason of termination of this Agreement, or the deficiency from any reletting as provided for above, shall include the expense of repossession or reletting, any unpaid amounts for

construction of improvements, and any repairs or remodeling undertaken by the **Lessor** following repossession.

**12.D. Lessee's Remedies.** **Lessee** may, in its option, terminate this Agreement and all of its obligations hereunder, if the **Lessee** is not in default in the payment of any payments or other charges to the **Lessor** or in breach of any of the provisions of this Agreement, and only upon or after the happening of any of the following events: **(1)** the inability of the **Lessee** to use Airport for a period of longer than ninety (90) consecutive days due to war, terrorism, disaster or Act of God; **(2)** the issuance of any order, rule or regulation by a competent governmental authority or court having jurisdiction over this Agreement, preventing the **Lessee** from operating its business for a period of ninety (90) consecutive days, provided, however that such inability or such order, rule or regulation is not due to any fault of the **Lessee**.

**12.E. Time of the Essence.** Time is of the essence of this Agreement.

### **ARTICLE 13 - NO LIENS**

**13. Lessee** shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Premises by the **Lessee**, and shall keep said Premises and the **Lessee's** possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by the **Lessee's** act or omission (excluding any Leasehold Mortgage and Security pursuant to **Article 7** herein). **Lessee's** Personal Property is not subject to this provision.

### **ARTICLE 14 - TAXES AND FEES**

**14. Lessee** shall timely pay applicable sales, use, intangible and ad valorem taxes of any kind, against the Premises, the real property and any improvements thereto or leasehold estate created herein, or which result from the **Lessee's** occupancy or use of the Premises, whether levied against the **Lessee** or the **Lessor**. In this regard, **Lessor** will attempt to cause the appropriate taxing authorities to send the applicable tax bills directly to the **Lessee** and the **Lessee** shall remit payment directly to such authorities, and to the extent that such notices are sent to the **Lessor**, the **Lessor** agrees to immediately forward same to the **Lessee**. Additionally, **Lessee** shall timely pay any and all other taxes, assessments and fees (including, without limitation, Hernando County Fire Rescue assessment fees) against the Premises or leasehold estate created herein or any part thereof. **Lessee** may reserve the right to contest such other taxes or assessments and withhold payment of such taxes upon written notice to the **Lessor** of its intent to do so, so long as the nonpayment of such taxes does not result in a lien against the real property or any improvements thereon or a direct liability on the part of the **Lessor**. The lessee's failure to timely pay its taxes, assessments, and fees hereunder shall be deemed a material breach of this Agreement.

### **ARTICLE 15 - INDEMNIFICATION**

**15.A. Lessee** agrees to protect, defend, reimburse, indemnify and hold the **Lessor**, its agents, employees and officers and each of them forever, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including reasonable attorney fees)

and causes of action of every kind and character (this is to the extent allowed by law, and except to the extent caused by the **Lessor's** gross negligence or intentional misconduct) by reason of any damage to property, or the environment (including, without limitation, any contamination of Airport property, such as the soil or storm water, or by fuel, gas, chemicals or any Hazardous Substances as defined in **Section 18.A**, or as may be redefined by the appropriate regulatory agencies in the future), or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, or any other person whomsoever, or any governmental agency, arising out of or incident to or in connection with the **Lessee's** performance under this Agreement, the **Lessee's** use or occupancy of the Premises, the **Lessee's** acts, omissions or operations hereunder or the performance, non-performance or purported performance of this Agreement or any breach of the terms of this Agreement. **Lessee** recognizes the broad nature of this indemnification and hold harmless 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 the **Lessor** in support of this indemnification in accordance with laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with the insurance requirements herein shall not relieve the **Lessee** of its liability or obligation to indemnify the **Lessor** as set forth in this Article.

**15.B.** Notwithstanding anything to the contrary in the foregoing or within this Agreement, the **Lessor** shall not relinquish or waive any of its rights as a sovereign local government and the **Lessor** reserves all rights and defenses under applicable sovereign immunity law.

## **ARTICLE 16 - INSURANCE**

**16.A. General Insurance Terms and Conditions.** In the event the **Lessee** becomes in default of the following requirements, the **Lessor** reserves the right to take whatever actions deemed necessary to protect its interests. All insurance herein shall have a Best's Rating of "A" or better.

**16.B. Minimum Coverage Requirements.** **Lessee** shall maintain the following minimum limits and coverages uninterrupted or amended through the life of this agreement as set forth below:

**16.B.1. Workers' Compensation/Employer's Liability.** The minimum limits of insurance (inclusive of any amount provided by an umbrella or excess policy) shall be no less than the "Statutory" requirement for Part One.

**16.B.2. Liability Insurance.** Coverage shall be provided for liability resulting out of, or in connection with, ongoing operations performed by, or on behalf of, the **Lessee** under this Agreement or the use or occupancy of the Premises by, or on behalf of, the **Lessee** in connection with this Agreement. The minimum limits of liability insurance covering the **Lessee** under this Agreement shall be no less than \$1,000,000 and the Hernando County Board of County Commissioners shall be listed as an additional insured on an endorsement to all policies under this provision.

**16.B.3. Property Insurance.** This insurance shall cover any existing or hereafter constructed (including while under construction) buildings, structures, or any other improvements to the Land leased, rented or otherwise demised by the **Lessor** to the **Lessee** under this Agreement. Property insurance shall at all times be maintained in such amount to adequately cover the replacement cost of all buildings, structures and improvements located on the Land. The Hernando County Board of County Commissioners shall be listed as an additional insured on all policies hereunder.

**16.B.4. Business Interruption Insurance.** **Lessee**, at its option and sole expense, may obtain business interruption or rental insurance to cover its loss for any period that the Premises may be wholly or partially untenable or otherwise unusable hereunder; however, in no event shall the **Lessor** be responsible to pay, credit, or set off such sums or any Land Rent hereunder in the event the Premises become untenable or otherwise unusable for any reason whatsoever.

**16.C. Evidence of Insurance.** The **Lessee** shall deliver to the **Lessor** all certificates or binders, together with the required endorsements, evidencing the existence of the insurance upon execution of this Agreement and shall be obligated to provide evidence of continuing coverage throughout the term of this Agreement. The insurance binder shall provide that the insurance carrier shall notify the Lessor twenty (20) days prior to the date of expiration of coverage thereunder. The **Lessee** shall notify the Lessor in writing a minimum of twenty (20) days in advance in the event of future insurability cancellation.

**16.D. Periodic Review of Coverage Limits.** Beginning in year six (6), and every five years thereafter, the **Lessor**, in its sole discretion, may review and adjust the required coverage limits set forth in **Section 16.B**; however, in no event may the **Lessor** increase required coverage in excess of one hundred and twenty five percent (125%) of the preceding five-year period.

## **ARTICLE 17 - DAMAGE OR DESTRUCTION OF PREMISES**

**17.A. Partial Damage.** In the event all or a portion of the Premises are partially damaged by fire, explosion, the elements, a public enemy, terrorism, aircraft accident, or other casualty, but not rendered untenable, the **Lessee** will make the repairs immediately, at its own cost and expense.

**17.B. Extensive Damage.** In the event damages as referenced in **Section 17.A** shall be so extensive as to render all or a significant portion of the Premises untenable, but capable of being repaired within one hundred twenty (120) days, the **Lessee** will make the repairs with due diligence, at its sole expense.

**17.C. Complete Destruction.** In the event the Premises are completely destroyed by fire, explosion, the elements, a public enemy, terrorism, aircraft accident, or other casualty or are so damaged that they are untenable and cannot be replaced within one hundred twenty (120) days, the **Lessee** shall

fully restore the Premises within twelve (12) months or, pay to the **Lessor**, the **Lessee's** insurance payment equal to the replacement value of the Premises prior to the destruction.

## **ARTICLE 18 - ENVIRONMENTAL REGULATIONS AND GENERAL CONDITIONS**

**18.A.** Hazardous Substances. The term "Hazardous Substance" means any substance:

**18.A.1.** The presence of which requires or may later require notification, investigation or remediation under any environmental law; or,

**18.A.2.** That is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*) and the Code of Federal Regulations thereunder, as said regulations may be amended or renumbered; and including Chapters 376 and 403, *Fla. Stat.*, and the Florida Administrative Rules thereunder, as said regulations may be amended or renumbered; or,

**18.A.3.** That is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States and/or the State of Florida; or,

**18.A.4.** The presence of which on the Premises causes or threatens to cause a nuisance on the Premises or to adjacent properties or poses or threatens to pose a hazard to the Premises or to the health or safety of persons on or about the Premises; or,

**18.A.5.** That contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or,

**18.A.6.** That contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or,

**18.A.7.** That contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

**18.B.** General Conditions: Environmental. Notwithstanding any other provisions of this Agreement, and in addition to any and all other requirements of this Agreement or any other covenants, representations or warranties of the **Lessee**, the **Lessee** hereby expressly covenants, warrants and represents to the **Lessor**, in connection with the **Lessee's** operations on the Premises, the following:

**18.B.1. Lessee** is knowledgeable of all applicable federal, State and local environmental laws, ordinances, rules, regulations and orders, that apply to the **Lessee's** operations at the Airport and acknowledges that such environmental laws, ordinances, rules, regulations and orders change from time-to-time, and the **Lessee** agrees to keep informed of any such future changes.

**18.B.2. Lessee** agrees to comply with all applicable federal, State and local environmental laws, ordinances, rules, regulations and orders that apply to the **Lessee's** operations. **Lessee** agrees to hold harmless and indemnify the **Lessor** for any violation by the **Lessee** of such applicable federal, State and local environmental laws, ordinances, rules, regulations and orders and for any non-compliance by the **Lessee** with any permits issued to the **Lessee** pursuant to such environmental laws, which hold harmless and indemnify shall include but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures and monitor environmental conditions and for any monetary penalties, costs, expenses or damages, including natural resource damages, imposed against the **Lessee**, its employees, invitees, suppliers or service providers or the **Lessor** by reason of the **Lessee's** violation or non-compliance.

**18.B.3. Lessee** agrees to cooperate with any investigation, audit or inquiry by the **Lessor** or any governmental agency, regarding possible violation of any environmental law or regulation upon the Airport premises.

**18.B.4. Lessee** agrees that all remedies of the **Lessor** as provided herein with regard to violation of any federal, State or local environmental laws, ordinances, rules, regulations or orders shall be deemed cumulative in nature and shall survive termination of this Agreement.

**18.B.5. Lessee** agrees that any notice of violation, notice of non-compliance, or other enforcement action of the nature described in **Section 18.B.2** shall be provided to the **Lessor** within twenty-four (24) hours of receipt by the **Lessee** or the **Lessee's** agent. Any violation or notice of violation or non-compliance with federal, State or local environmental law or ordinance that the **Lessee** fails to rectify within the earlier of thirty (30) days or such applicable provision herein shall be deemed a default under this Agreement. Any such default which is not cured shall be grounds for termination of this Agreement.

**18.B.6.** In entering this Agreement, the **Lessor** expressly relies on the covenants, representations and warranties of the **Lessee** as stated herein.

**18.C. General Conditions: Stormwater**

**18.C.1.** Notwithstanding any other provisions or terms of this Agreement, the **Lessee** acknowledges that certain properties within the Airport, or on the **Lessor**



owned land, are subject to stormwater rules and regulations. **Lessee** agrees to observe and abide by such stormwater rules and regulations as may be applicable to the Premises.

**18.C.2. Lessee** acknowledges that any stormwater discharge permit issued to the **Lessor** may name the **Lessee** as a co-permittee or the **Lessee** may be required to submit a separate Notice of Intent for the Premises before the expiration date of the existing EPA NDPES Stormwater Multi-Sector General Permit (MSGP). The **Lessor** and the **Lessee** both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize cost of compliance. The **Lessee** acknowledges further that it may be necessary to undertake actions to minimize the exposure of stormwater to "significant materials" (as such term may be defined by applicable stormwater rules and regulations) generated, stored, handled or otherwise used by the **Lessee** by implementing and maintaining "best management practice" (as such term may be defined in applicable stormwater rules and regulations).

**18.C.3. Lessor** will provide the **Lessee** with written notice of any stormwater discharge permit requirements applicable to the **Lessee** and with which the **Lessee** will be obligated to comply including the submittal of Notice of Intent to the appropriate agency along with a copy to the **Lessor**. **Lessee** may also be required to comply with the following requirements including but not limited to: certification of non-stormwater discharges; collection of stormwater samples; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance and submittal of necessary records. In complying with such requirements, the **Lessee** shall observe applicable deadlines set by the regulatory agency that has jurisdiction over the permit. **Lessee** agrees to undertake, as its sole expense, those stormwater permit requirements for which it has received written notice from the regulatory agency and that apply to the Premises, and the **Lessee** agrees that it will hold harmless and indemnify the **Lessor** for any violations or non-compliance with any such permit requirements.

**18.D. General Conditions: Solid and Hazardous Waste.**

**18.D.1.** If the **Lessee** is deemed to be a generator of hazardous waste, as defined by federal, State or local law, the **Lessee** shall obtain a generator identification number from the U.S. Environmental Protection Agency ("EPA") and the appropriate generator permit and shall comply with all federal, State and local laws, and any rules and regulations promulgated thereunder, including but not limited to, ensuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.

**18.D.2. Lessee** agrees to provide the **Lessor**, within ten (10) days after the **Lessor's** request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation responses, storage and disposal plans and material safety data sheets prepared or issued in connection with the **Lessee's** use of the Premises.

**18.E. Installation of Underground Tanks.** **Lessee** shall not be permitted to install underground storage tanks of any kind.

**18.F. Environmental Inspection at End of Agreement Term.**

**18.F.1.** At least thirty (30) days, but no more than ninety (90) days, before the expiration of the Term of this Agreement, including renewals or extensions thereto (as provided in **Article 4** herein), the **Lessee**, shall conduct an environmental inspection, examination and audit to be performed within the aforementioned time period. The cost for professional consulting and engineering services required for such audit shall be at the sole cost of the **Lessee**. **Lessee** agrees to pay all associated laboratory and testing fees incurred to test and analyze samples collected during the audit process. If the existence of Hazardous Substances or hazardous waste are detected, the **Lessee** shall immediately take such action as is necessary to clean up the contamination at its own expense, and in accordance with applicable federal, State and local law and the foregoing provisions of this **Article 18**.

**18.F.2.** If the **Lessor** is unable to lease the Premises during the period of a cleanup, referred to in this Article, due to the environmental condition of the Premises, in addition to any other damages for which the **Lessee** may be liable, the **Lessee** shall be responsible for payment of lost Land Rent or lost use to the **Lessor**.

**18.F.3.** The firm conducting cleanup work must be approved by the **Lessor**, and the methodology used by such firm shall be consistent with then current engineering practices and methods required by the State of Florida or the United States government and be reasonably acceptable to the **Lessor**.

**18.G. Lessor Contamination.** Nothing in this **Article 18** shall be construed to make the **Lessee** liable to the **Lessor** in any way for any contamination or release of Hazardous Substances that occurs as a result of the actions of the **Lessor** or any of its employees, agents or contractors.

**18.H. Site Contamination.** Nothing in this **Article 18** shall be construed to make the **Lessee** liable to the **Lessor** in any way for any contamination or release of Hazardous Substances affecting the Premises that occurs by reason of the migration or flow to the Premises from verifiable or documented offsite contamination that is not attributable in any way whatsoever to the **Lessee's** activities at or upon the Premises or under this Agreement.

## **ARTICLE 19 - COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, RULES**

**19.A.** Lessee and its subcontractors shall at all times comply with all applicable federal, State and local laws and regulations, Airport rules, regulations and operating directives as are now or may hereinafter be prescribed by the Lessor, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, State or local government, or the Lessor including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of the Airport. If the Lessee, its officers, employees, agents, subcontractors or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the Lessor, then, in addition to any other remedies available to the Lessor, the Lessee shall be responsible and shall reimburse the Lessor in the full amount of any such monetary penalty or other damages. This amount must be paid by the Lessee within ten (10) days of written notice.

**19.B.** Further, where the Lessee is a corporation, limited liability company, limited partnership, professional association or any other business entity, whether domestic or foreign, which is required to be registered with the Florida Secretary of State, then the Lessee shall be so registered and in good standing at the time of execution of this Agreement and the Lessee shall remain current and in good standing with the Florida Secretary of State at all times during this Agreement (including renewals or extensions thereto).

## **ARTICLE 20 - GOVERNMENTAL INCLUSIONS**

**20.** This Agreement is subordinate to the provisions of the deed and other instruments from the United States of America conveying title to the Airport or otherwise imposing restrictions of record concerning use and operation of the Airport. This Agreement is further governed by all rules, regulations and orders of the Federal Aviation Administration (FAA) including, but not limited to, Compliance Order 5190.6A, as amended from time to time, relative to the operation of surplus airport property which includes the Airport herein.

## **ARTICLE 21 - NON-EXCLUSIVE**

**21.** Notwithstanding any other provision of this Agreement, it is understood and agreed that the rights granted under this Agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges, licenses or use to another operator(s), tenant(s) and/or licensee(s) on other portions of Airport property. Nor shall this Agreement be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) or 49 U.S.C. § 47107(a), as said regulations may be amended or renumbered.

## **ARTICLE 22 - RIGHT TO DEVELOP AIRPORT**

22. It is covenanted and agreed that the **Lessor**, in its sole discretion, reserves the right to further develop or improve the Airport and all landing areas and taxiways.

## **ARTICLE 23 - RIGHT OF FLIGHT**

23.A. **Lessor** reserves, for the use and benefit of the public, a right of flight for the passage of airspace above the surface of the real property owned by the **Lessor**, including the Premises, together with the right to cause in said airspace, such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on Airport.

23.B. **Lessee** expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to fully comply with all requirements imposed pursuant to 14 C.F.R. Part 77 (Objects Affecting Navigable Airspace), as said regulations may be amended or renumbered. **Lessee** further expressly agrees for itself, its successors and assigns, to prevent any use of the Premises which adversely affect the operation or maintenance of Airport, or otherwise constitute an Airport hazard.

## **ARTICLE 24 - RIGHT OF ENTRY**

24. **Lessor** shall have the right to enter the Premises for the purpose of periodic inspection of the Premises from the standpoint of safety and health, and monitoring the **Lessee's** compliance with the terms of this Agreement.

## **ARTICLE 25 - PROPERTY RIGHTS RESERVED**

25. This Agreement shall be subject and subordinate to all the terms and conditions documents under which the **Lessor** acquired the land or improvements thereon, of which said Premises are a part. **Lessee** understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement(s) between the **Lessor** and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport, and to any terms or conditions imposed upon the Airport by any other governmental entity.

## **ARTICLE 26 - SUBORDINATION OF TRUST AGREEMENT**

26. This Agreement and all rights of the **Lessee** hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation or assignment made (at any time) by the **Lessor** to secure financing. Conflicts between this Agreement and the documents mentioned above shall be resolved in favor of such documents.

## **ARTICLE 27 - NONDISCRIMINATION / AFFIRMATIVE ACTION**

27. **Lessee** for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the **Lessee** shall maintain and operate such facilities and services so as to fully comply with all requirements imposed pursuant to 49 CFR Part 21 (Non-Discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended or renumbered.

## **ARTICLE 28 - SIGNS**

28. **Lessee** may, at the **Lessee's** sole expense, erect such exterior signs concerning the **Lessee's** business, as may conform and comply with all requirements of appropriate governmental authorities including, but not limited to, existing sign ordinances and regulations of Hernando County. The **Lessee** agrees to obtain all necessary permits or licenses with respect to said signs, to maintain said signs in a good state of repair, to save the **Lessor** harmless from any loss, cost or damage as a result of the erection, maintenance, existence or removal of said signs and to repair any damage which may have been caused by the erection, existence, maintenance or removal of said signs, and providing further that the plan and location for said signs be submitted to and approved by the **Lessor** in writing prior to the erection or alteration thereof. At the end of the term of this Agreement, the **Lessee** agrees to remove, at the **Lessee's** sole expense, any exterior signs erected during the term of this Agreement and to repair, at the **Lessee's** sole expense, any damage caused thereby.

## **ARTICLE 29 - ENJOYMENT**

29. **Lessor** represents and warrants that the **Lessee** shall peaceably have, hold and enjoy the Premises during the Term of this Agreement (including renewals and extensions thereto) without hindrance or molestation from the **Lessor** subject, however, to all the terms and provisions hereof and covenants, easements and other encumbrances affecting the Premises.

## **ARTICLE 30 - ASSIGNMENT AND SUBLETTING**

30. **Lessee** may not voluntarily assign this Agreement or sublease the Premises, in whole or in part, without the prior written consent of the **Lessor**, which consent will not be unreasonably withheld, conditioned or delayed; however, in the event of any voluntary assignment (excluding bankruptcy, forfeiture, and foreclosure) or sub-lessee, the **Lessee** agrees that it shall remain jointly and severally liable, together with any assignee or sub-lessee, for the performance of all terms and conditions in this **Agreement** unless otherwise released by the **Lessor** in writing. In determining whether to grant or deny its consent to any assignment or sublease, the **Lessor** may review and consider the financial capacity and business experience of the proposed assignee or sub-lessee.

### **ARTICLE 31 - WAIVER OF CLAIM**

31. Lessee hereby waives any claim against the Lessor, and its officers, board members, agents or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

### **ARTICLE 32 - APPLICABLE LAW; VENUE; ATTORNEY'S FEES**

32. This Agreement shall be governed by the laws of Florida and shall be deemed to have been prepared jointly by the Lessee and the Lessor, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements. Each party hereto shall bear their own attorneys' fees and costs in the event of any dispute, claim, action or appeal arising out of or related to this Agreement. To the extent permitted by law, the respective parties in this instrument agree to and do waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this lease, lessee's use or occupancy of the unit, or any claim of damage resulting from any act or omission of the parties or either of them in any way connected with this lease or the unit.

### **ARTICLE 33 - NOTICES AND COMMUNICATIONS**

33. All notices or communications whether to the Lessor or to the Lessee will be considered valid upon receipt by the party addressed to, and shall be addressed as follows:

TO LESSOR: c/o Airport Manager, 15800 Flight Path Drive, Brooksville, FL 34604; *and copy to:* County Attorney's Office, 20 Main Street, Suite 462, Brooksville, FL 34601

TO LESSEE: Brennan Smith, BRN Development, LLC, 301 West Platt Street # 144 Tampa, FL, 33606 or to such other address as either Party may designate in writing by notice to the other party in accordance with the provisions of this Article. If the Notice is sent through the U.S. Mail or private delivery company (e.g. FedEx, UPS), a verifiable tracking documentation such as certified receipt or overnight mail tracking receipt shall be used.

### **ARTICLE 34 - AGENT FOR SERVICE OF PROCESS**

34. Lessee agrees that service of process may be made against its Florida registered agent, any of its officers or directors, its on-site manager, or its designated representation in **Article 1** hereunder. It is further expressly understood that Lessee hereby agrees to the process so served, submits to the jurisdiction of Hernando County courts and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

## **ARTICLE 35 - COMPLETE AGREEMENT; AMENDMENTS; SUPERSEDES**

35. This Agreement represents the complete understanding between the Parties, and any prior agreements or representations, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the Parties hereto. Any and all amendments or modifications to this Agreement shall be in conformity with the provisions herein and shall comport with all laws, regulations, rules and orders regarding the leasing of surplus airport property and including, without limitation, the provisions referenced in **Article 20** herein.

## **ARTICLE 36 - SEVERABILITY**

36. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be declared invalid or deemed unenforceable by a court of competent jurisdiction or superseding law, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law notwithstanding the invalidity of any other term or provision hereof.

## **ARTICLE 37 - BINDING EFFECT**

37. This Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of the **Lessor** and its successors and assigns, and shall be binding upon the **Lessee** and its successors and assigns.

## **ARTICLE 38 - RECORDING OF LEASE AGREEMENT**

38. **Lessor** shall record this Agreement in the public records of Hernando County. The **Lessee** shall pay all recording costs.

## **ARTICLE 39 - BROKERS**

39. **Lessor** shall not be liable for any brokerage fees or commissions except pursuant to a brokerage fee agreement duly signed by the **Lessor**, or the Airport Manager as designee, prior to the Effective Date of this Agreement and which agreement shall name or refer to the **Lessee** herein, shall state the brokerage fee or commission and time of payment of such fee or commission, and shall name the broker(s) entitled to such fee or commission (the "Brokerage Agreement"). The Brokerage Agreement shall be attached as an Exhibit hereto. Other than the broker(s) named in the Brokerage Agreement, the parties represent that there are no other brokers involved regarding the negotiation or consummation of this Agreement or of the leased fee herein.

## **ARTICLE 40 – MISCELLANEOUS**

40.A. Wherever used, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

**40.B.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

\*\*\*\*\*

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

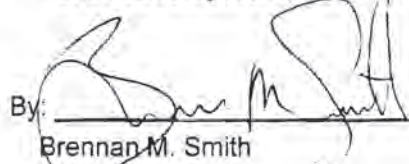


IN WITNESS WHEREOF, the **Lessor** and the **Lessee** have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers or representatives.

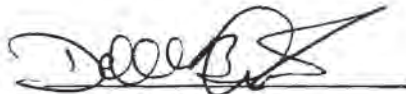
ATTEST:

  
\_\_\_\_\_  
Kevin Damberty

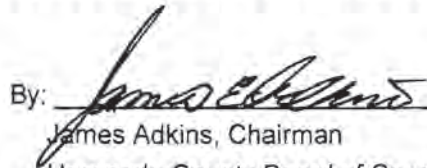
**BRN Development, LLC (LESSEE)**

By:  \_\_\_\_\_ 4-29-16  
Brennan M. Smith Date  
Managing Member

ATTEST:

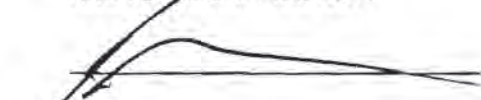
  
\_\_\_\_\_  
Donald C. Barbee, Jr.  
CLERK OF CIRCUIT COURT

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA (LESSOR)**

By:  \_\_\_\_\_ 5-24-16  
James Adkins, Chairman Date  
Hernando County Board of County Commission



APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
County Attorney

STATE OF FLORIDA  
COUNTY OF HERNANDO

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of April, 2016, by Brennan M Smith as Managing Member of BRN Development, LLC, who is personally known to me or who has produced nlc as identification.



Gina Grimmer  
(Signature of person taking acknowledgment)  
Gina Grimmer  
(Name typed, printed or stamped)  
Financial Specialist / Notary  
(Title or rank) (Serial number, if any)

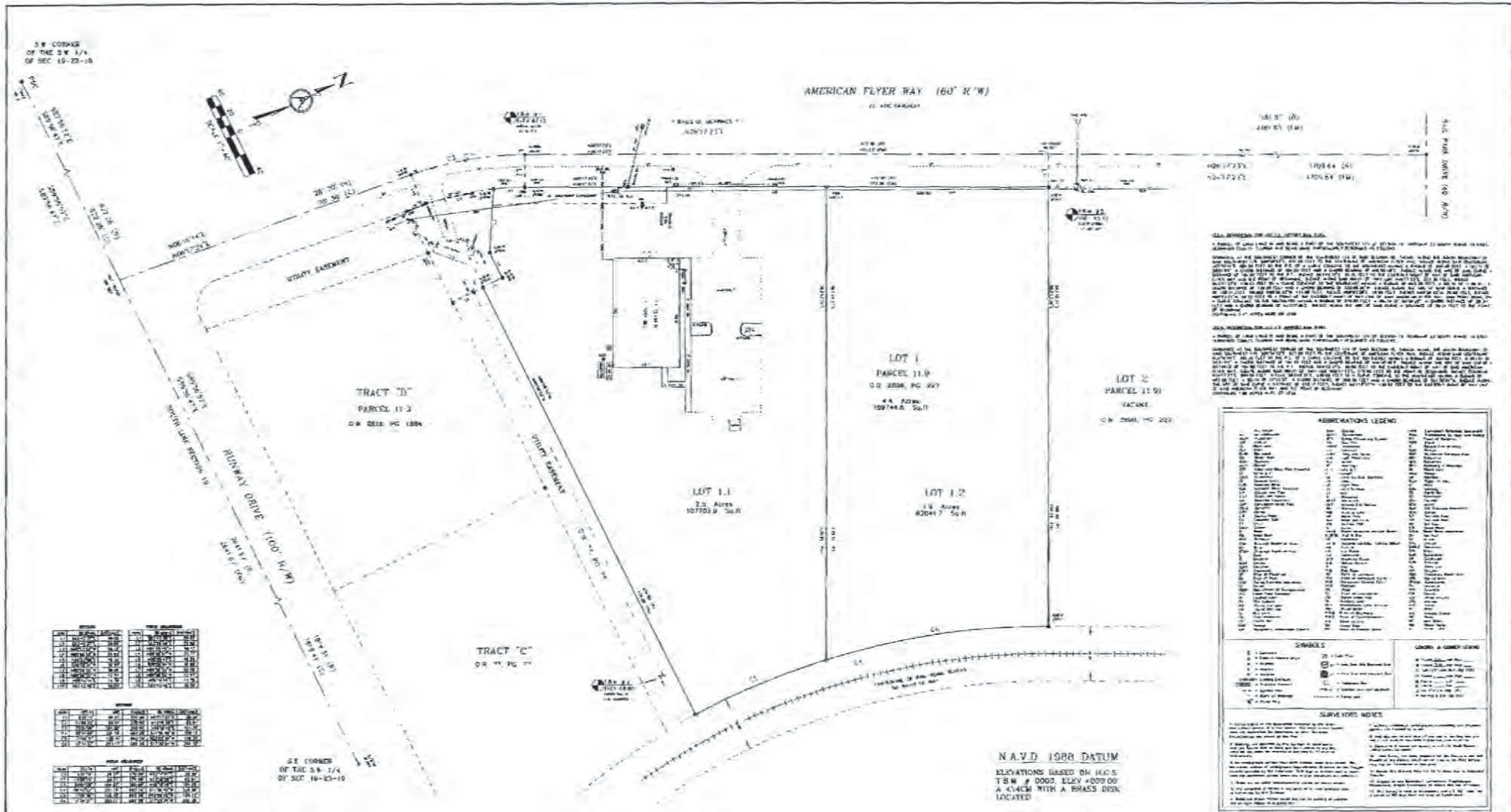
STATE OF FLORIDA  
COUNTY OF HERNANDO

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 2016, by JAMES E. ADKINS, Chairman of the Hernando County Board of County Commissioners, who is personally known to me or who has produced \_\_\_\_\_ as identification.



Mary E. Spencer  
(Signature of person taking acknowledgment)  
Mary E. Spencer  
(Name typed, printed or stamped)  
Notary  
(Title or rank) (Serial number, if any)

# "Exhibit A"



## RECORD SURVEY AND TOPOGRAPHIC SURVEY LOT 1, AIRPORT RAIL PARK IN SEC 19 TWP 23 S. RNC 19 E HERNANDO COUNTY, FLORIDA

©2018 AIRPORT SURVEYING AND MAPPING, LLC

**ArcPoint**  
SURVEYING & MAPPING, LLC  
4230 Road Drive  
Spring Hill, Florida 34608  
PHONE (352)882-7702 JULY (2018)01-0801

**CERTIFIED TO**  
BY DEVELOPMENT, LLC  
WACKER CONSTRUCTION

BOUNDARY, TOPO & TREE LOCATION  
SURVEY OF LOT 1 IN THE HERNANDO  
COUNTY AIRPORT RAIL PARK IN AMERICAN  
FLYER WAY

DATE: 07/18/2018	SCALE: AS SHOWN	PROJECT: LOT 1, AIRPORT RAIL PARK
BY: [Signature]	DATE: 07/18/2018	PROJECT: LOT 1, AIRPORT RAIL PARK
FOR: [Signature]	DATE: 07/18/2018	PROJECT: LOT 1, AIRPORT RAIL PARK

SHEET 1 OF 1