



DATE: Thursday – November 17, 2022  
TIME: 5:00 P.M.  
LOCATION: Airport Administration Building | 355 Golden Knights Blvd | Titusville, FL 32780

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#### **MEETING AGENDA**

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approval of Agenda
- E. Approval of Meeting Minutes
  - a. October 20, 2022 (Regular Meeting)
- F. Action Items
  - a. Approval of Alliance Capital Management, LLC Aeronautical Ground Lease Agreement for unimproved property located along Center Lane at the Space Coast Regional Airport.
  - b. Approval of Contract Award to C&D Construction for construction of the North Corporate Hangar project at Merritt Island Airport (not to exceed \$888,016).
  - c. Approval of Invoices
- G. Deputy Director of Operations & Maintenance Report
  - a. Capital Improvement Projects Update
  - b. Hurricane Nicole Report
- H. On-Going Business
  - a. Spaceport Name Change (Exploration Spaceport)
- I. Attorney's Report
  - a. Welsch Construction Proposed Settlement Agreement

J. Deputy Director of Finance & Administration Report

a. Check Register

b. Financial software update (QuickBooks)

c. Wells Fargo Update

d. Preliminary September 2022 Financials

K. Authority Members Report

L. Public Comments

M. Adjournment

**TITUSVILLE – COCOA AIRPORT AUTHORITY**

The Regular Meeting of the Titusville - Cocoa Airport Authority was held on October 20th, of 2022 at 5:00 p.m. at the Titusville - Cocoa Airport Authority Office at 355 Golden Knights Boulevard, Titusville, Fl and via video conference. The following members were present: Mr. John Craig, Chairman; Mr. Donn Mount, Vice Chairman/Treasurer; Mr. Roger Molitor, Secretary; Mr. Brad Whitmore; Mr. Al Voss; Mr. Kevin Daugherty, AAE, Director of Airports; Mr. Adam Bird; Attorney. Mr. Mark Grainger and Ms. Jessica Curry were absent.

**Call to Order**

Mr. Craig called the meeting to order and determined a quorum was present.

**Pledge of Allegiance****Approval of the Agenda**

Mr. Craig questioned Mr. Daugherty as to any changes in the agenda. Having none, Mr. Craig called for motion to approve as presented. Mr. Molitor made the motion. Mr. Voss seconded the motion. Motion passed.

**Approval of Meeting Minutes:****1. September 15, 2022 – Regular Meeting**

Mr. Craig called for motion to approve both the Regular Meeting minutes and the Second Budget Meeting minutes. Mr. Voss made the motion to approve. Mr. Whitmore seconded the motion. Motion carried.

**Action Items****1. Approval of 321 Launch, LLC Ground Lease Agreement for unimproved property located along Center Lane at the Space Coast Regional Airport.**

Mr. Daugherty introduced Ms. Cheree Kiernan to make presentation. Ms. Kiernan gave a detailed overview of what her company would provide to the space industry. Ms. Kiernan stated the facility would attract multiple people to Brevard County.

Ms. Kiernan stated their goal is to break ground the first part of 2023 and to be operational by 2024. Ms. Kiernan discussed the positive feedback

received about the facility being located in Titusville. Ms. Kiernan believes there is a ton of potential in this industry.

Mr. Molitor questioned the number of employees involved. Ms. Kiernan stated they are quite small with having only five employees and about ten consultants.

Mr. Whitmore commented on the nice presentation and found it very exciting.

Mr. Voss questioned the security due to having international visitors. Ms. Kiernan discussed the security levels that will be put in place such as the security used by Kennedy Space Center which includes a badging process.

Mr. Daugherty recommended approval of 321 Launch; LLC Ground Lease Agreement as presented. Mr. Whitmore made motion to approve. Mr. Voss seconded the motion. Mr. Craig questioned Mr. Bird as to having any concerns regarding approval before vote is passed. Mr. Bird stated none. Motion passed.

## **2. Airport Master Plan Studies**

Mr. Daugherty stated the overall excitement in moving forward with the Airport Master Plan Studies as presented and requests approval.

Mr. Daugherty introduced Mr. Brad Weston from Ricondo & Associates to discuss the Master Plan. Mr. Weston stated this would be an FAA / FDOT process. The plans will take approximately 16 months to complete, and Mr. Weston is positive about the projects.

Mr. Mount called for motion to approve. Mr. Voss made the motion. Mr. Whitmore seconded the motion. Motion passed.

## **3. Approval of Invoices**

Mr. Hopman gave an overview of all invoices.

Mr. Mount made motion to approve all invoices. Mr. Molitor made motion to approve. Mr. Voss seconded the motion. Motion passed.

## **Deputy Director of Operations and Maintenance Report**

### **1. Capital Improvement Projects Update**

Mr. Hopman stated that drainage work is in process at runway 9-27 at Space Coast Regional Airport.



Hangar 52 Demo project is waiting on closeout documents from the contractor stated Mr. Hopman.

Mr. Hopman gave details on the completion of the VAC ramp.

Mr. Hopman stated the Corporate Hangar project is still under negotiation.

Nothing new is reported on the EA for T-Hangar Development project.

Mr. Hopman gave details in the delay of NASI project and stated it should be completed in approximately three months.

Mr. Hopman stated there was nothing new to report on the tower and the design is in progress.

The Fuel Farm Relocation design is also in process stated Mr. Hopman and being worked on with the state for construction funding.

## **2. Hurricane Ian Report**

Mr. Hopman discussed the results of Hurricane Ian consisting of minimal damage to the facilities. Mr. Hopman gave information of the airport being a major site for FP&L which became a twenty-four-hour operation.

## **3. Hangar Inspections**

Mr. Hopman gave details on the progress of hangar inspections. Mr. Hopman stated inspections are now, well underway, which were delayed due to Hurricane Ian.

## **On-Going Business**

### **1. Space Coast Innovation Park Update**

Mr. Daugherty discussed updates regarding Space Coast Innovation Park.

### **2. Director of Airports Annual Evaluation**

Being tabled for the presence of Mr. Craig.

## **Attorney's Report**

### **1. Welsh Construction Update**

Mr. Bird discussed updates including a potential settlement that is being addressed.

**Deputy Director of Finance & Administration Report****1. Check Register**

Ms. Kinard called for any questions from the Board.  
There were none.

**2. Financial Software Update (QuickBooks)**

Ms. Kinard stated the new software went live on October 1<sup>st</sup> and staff is pleased with the software's capabilities.

**3. Request for Write-Off Bad Debts**

Ms. Kinard discussed the details of the debts which are requested to be written off such as the Delta Hotel Aviation Ground Lease.

Mr. Daugherty stated the Delta Hotel Aviation Ground Lease never got off the ground but kept accruing debt. Mr. Bird provided details involving the steps required for termination of the lease.

Mr. Molitor voiced concerns of the repetition of this debt happening again.

Mr. Voss questioned issues involving the Merritt Island Airport Storage Units that have been abandoned.

Mr. Mount called for motion to approve the write-off of bad debts. Mr. Voss made the motion. Mr. Whitmore seconded the motion. Motion carried.

**4. August 2022 Financial Statements**

Ms. Kinard discussed the financial statements of August 2022 and called for any questions. Mr. Voss requested information regarding the use of any of the \$100,000.00 in contingency of the budget. Ms. Kinard stated that none has been used.

Ms. Kinard discussed the issue regarding fraud with the airport's bank account at Wells Fargo. Several checks have been written from our account in the amount of over \$208,000. Ms. Kinard stated a police report was filed and our insurance does not cover this type of fraud. Ms. Kinard gave details of a future insurance policy that is being looked at for protection.

Mr. Mount questioned information regarding the status of the airport's switching to a different bank. Ms. Kinard stated the merging from Sun Trust Bank to Truist has caused a delay but is in process.

Mr. Molitor questioned the chance of our return of the stolen funds. Mr. Bird stated that the Airport Authority has done everything that should be done on their end at this time.

### **Authority Member's Report**

Mr. Whitmore discussed the excitement involved in the Space Industry.

Mr. Voss stated the need for fire extinguishers on board the lawn equipment used by maintenance in case of emergency. Mr. Voss also questioned the building permit status for Space Perspective located at 1 Bristow Way. Mr. Daugherty stated the permit has been issued by the City of Titusville.

Mr. Mount discussed issues involving the gate entrances at Merritt Island Airport in not being secure regarding tenant use.

### **Public Comments**

Mr. Don White from EAA in Merritt Island discussed the upcoming Young Eagles event on October 29, 2022. Mr. White gave details regarding the Poker Run that will be held on November 12, 2022, and the November 29, 2022 Toys for Tots event that can be found on the Toys for Tots website.

### **Adjournment**

Mr. Mount adjourned the meeting at 6:18 p.m.

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JOHN CRAIG, CHAIRMAN

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DONN MOUNT, VICE CHAIRMAN/TREASURER

## **ABSTRACT OF AERONAUTICAL GROUND LEASE**

**AIRPORT:** Space Coast Regional Airport (TIX)

**TENANT:** Alliance Capital Management Group, LLC

**LANDLORD:** Titusville-Cocoa Airport Authority

**LEASED PREMISES:** 5.0 Acres (MOL)  
(exact size subject to final site plan + legal description)

**LEASE TERM:** Twenty (20) years with three (3) renewal options of ten (10) years each

**LEASE RENT:  
ESTIMATED** 12% of FMV with annual fixed rate adjustments of 5%.

**IMPROVMENTS TO BE  
CONSTRUCTED  
BY TENANT:** two 25,000 square foot corporate hangars with associated infrastructure

**PRELIMINARY SITE  
PLAN:** Has not been prepared.

**AUTHORITY  
IMPROVEMENT  
OBLIGATIONS:** None

TITUSVILLE-COCOA AIRPORT AUTHORITY  
AND  
ALLIANCE CAPITAL MANAGEMENT GROUP, LLC

AERONAUTICAL LEASE AND DEVELOPMENT AGREEMENT

AT THE

SPACE COAST REGIONAL AIRPORT (TIX)

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## AERONAUTICAL LEASE AND DEVELOPMENT AGREEMENT

THIS AERONAUTICAL LEASE AND DEVELOPMENT AGREEMENT (hereinafter referred to as the “Lease” or “Agreement”), made and entered into on the Lease Commencement Date (defined below), by and between the TITUSVILLE-COCOA AIRPORT AUTHORITY (the “Authority”), having an office and place of business at Space Coast Regional Airport (TIX) (the “Airport”), 51 Bristow Way, Titusville, FL 32780, and Alliance Capital Management Group, LLC, a Florida Limited Liability Corporation with its principal place of business located at 601 Brickell Key Drive Suite 700 Miami, FL 33121 (the “Tenant” and together with the Authority, the “Parties”).

WITNESSETH THAT:

WHEREAS, Authority has the exclusive right, power and authority to lease that certain Property (as herein identified) located within the City of Titusville, State of Florida; and,

WHEREAS, Authority desires to lease to Tenant, and Tenant desires to lease from Authority, said Property located at the Airport upon the terms and conditions hereinafter set forth; and

WHEREAS, subject to this Lease, Tenant intends to sublease portions of the Leased Premises (defined below), including without limitation airplane hangars for private corporate use to be constructed on the Property, to third parties, and Authority has consented to such subleasing as further provided in this Lease; and

NOW, THEREFORE, in consideration of the promises, covenants, terms and conditions herein set forth, the Parties have agreed and do agree as follows:

**ARTICLE 1**  
**LEASE AGREEMENT, TERM, OPTIONS AND RENTAL**

**SECTION 1.1.** Subject to the terms and conditions set forth hereinafter, Authority leases to Tenant and Tenant rents from Authority the real property described on [Exhibit A-1](#) attached hereto, consisting of approximately 217,800 square feet of land (MOL), together with any and all improvements, rights, and appurtenances connected to, or arising from, the land (collectively, the "**Property**"), including, without limitation, all rights of way necessary for ingress to and egress from the Tenant Improvements. Tenant's preliminary site plan for the Leased Premises is attached as [Exhibit B](#) (as such plan may be amended from time to time with the prior consent of Authority, "Tenant's Site Plan,"). Within one hundred and eighty (180) days after the Lease Commencement Date, or such additional time as agreed by the Parties in writing, the Parties will substitute a copy of the final, approved Tenant's Site Plan for the Leased Premises for the preliminary Tenant's Site Plan initially attached as Exhibit B to this Lease, without the need for further amendment.

Under this Lease, the Landlord leases the Property to Tenant as of the Lease Commencement Date for the purpose of developing, constructing, owning and operating the Tenant Improvements pursuant to this Lease (the Property together with the Tenant Improvements, the "Leased Premises"). Tenant, its officers, directors, employees, agents, assigns, subtenants, guests, invitees, customers, suppliers, contractors, and subcontractors, shall have the right of ingress to, and egress from, the Leased Premises over Airport roadways, including without limitation the use of the public access and non-licensed vehicular roadways, expressly subject to the Rules and Regulations established by Authority, a current copy of which is attached as [Exhibit D](#), with respect to such use and subject to applicable law. Further, Tenant, its sublessees, and assigns, shall have the right to use the runways, taxiways, taxilanes, ramps, ground run-up enclosure and run-up areas, compass rose, and other areas

of the airfield in common with others, including, without limitation, any taxilane adjacent to the Leased Premises, subject to such reasonable rules and regulations as may be established by Authority with respect to such use.

## **SECTION 1.2. TERM AND RENEWAL OPTIONS**

**Subsection 1.2.1. Term of Lease.** The date this Lease is signed by all Parties is the “Lease Commencement Date” and the date that this Lease shall become binding on the Parties. The initial term of this Lease shall be for a period of twenty (20) Lease Years following the Rent Commencement Date (as defined in Exhibit C below). A “Lease Year” shall mean each successive twelve (12) month period commencing on the Rent Commencement Date and each anniversary thereof during the term of the Lease, except that (i) if the Rent Commencement Date is not on the first day of a month, then the first Lease Year shall include the remainder of the month in which the Rent Commencement Date occurs and the second Lease Year, and each Lease Year thereafter shall commence on the anniversary of the first day of the month following the month in which the Rent Commencement Date occurs, and (ii) in the event of the termination of this Lease on any day other than the last day of a Lease Year, then the last Lease Year shall be the period from the end of the preceding Lease Year to such date of termination.

**Subsection 1.2.2. Subsection 102.2. Options to Extend.** Authority does hereby grant to Tenant the right, privilege and option to extend the term of this Lease for three (3) additional terms of ten (10) years each (each an “Option to Extend” or “Option Period”), upon the terms and conditions of this Lease; provided (i) written notice to Authority of Tenant’s intention to exercise said option is given by Tenant at least one-hundred twenty (120) days prior to the expiration of the then-current term (“Tenant's Option Deadline”) but not more than one (1) year prior to the expiration of the then-current term, (ii) Tenant shall not be in material default under

the terms of this Lease beyond any applicable cure period at the time of such notice, and (iii) that this Lease is then in effect. Whenever reference is made herein to the “term” of this Lease, it shall include the initial term described in **Subsection 102.1** above and any renewal term for which Tenant has exercised its Option to Extend as described in this **Subsection 102.2**.

No earlier than eighteen (18) months prior to each of Tenant's Option Deadlines, Tenant shall, in its sole discretion, deliver to Authority written notice that it wishes to evaluate its Option to Extend and requesting Authority's estimate of the FMV (as defined below) of the Property to be used to establish Base Rent for the Leased Premises for the upcoming Option Period (the “Written FMV Request”). Within sixty (60) days of Authority's receipt of the Written FMV Request from Tenant, Authority shall provide to Tenant Authority's estimate of the fair market value (“FMV”) of the Property for the upcoming Option Period (the “Notice of Fair Market Value Rent”) to enable Tenant to determine whether or not to elect its Option to Extend by the Tenant's Option Deadline. The FMV shall be obtained by an appraiser who is not an employee of (or otherwise affiliated with) Authority, is a member of the American Institute of Real Estate Appraiser (“M.A.I.”), and has a reasonable amount of experience (i.e., not less than ten years) appraising non-aeronautical use of real property at public-use airports (an “Appraiser”). Every appraisal performed to determine FMV under this lease shall be conducted pursuant to FAA regulations and guidelines for appraising property at public airports. For the Leased Premises, the initial annual Base Rent for the upcoming Option Period shall be equal to twelve percent (12%) of the FMV of the Property (the “Updated Rent”), with the FMV to be determined as set forth below.

In the event Authority fails to provide the Notice of Fair Market Value Rent for the Property within the sixty (60) day period provided above, then Tenant may at its sole cost and expense obtain its own appraisal of FMV for the Property performed by an Appraiser and within sixty (60) days after

the deadline for the Authority to have provided the Notice of Fair Market Value Rent for the Property shall provide a Notice of Fair Market Value Rent to Authority.

Upon receipt of the Notice of Fair Market Value Rent, if the receiving Party accepts the FMV contained within the Notice of Fair Market Value Rent or fails to object to the FMV contained within the Notice of Fair Market Value Rent within sixty (60) days after receipt of the Notice of Fair Market Value Rent, the FMV identified in the Notice of Fair Market Value Rent shall conclusively establish the FMV for the Leased Premises for the upcoming Option Period. However, nothing in this paragraph shall operate as Tenant's exercise of one of its Options to Extend, and Tenant must still validly and timely exercise each such Option(s) to Extend in its sole discretion in order for the Lease to be extended thereby.

Upon receipt of the Notice of Fair Market Value Rent, if the receiving Party disagrees with the Notice of Fair Market Value Rent, the receiving Party shall provide written notice of each objection, within sixty (60) days of receipt of the Notice of Fair Market Value, including a statement of what the receiving party believes the FMV should be for the Property for the upcoming Option Period and an appraisal from an Appraiser supporting that statement. If the receiving Party delivers a timely objection, then upon the other party's receipt of the objection, the Parties shall, for a period of thirty (30) days (the "Negotiation Period"), negotiate in good faith to agree on the FMV of the Property for the upcoming Option Period. If the Parties agree, said agreed-upon FMV for the Property shall establish the Base Rent for the Leased Premises for the upcoming Option Period. However, nothing in this paragraph shall operate as Tenant's exercise of one or both of its Option to Extend, and Tenant must still validly and timely exercise such Option(s) to Extend in its sole discretion in order for the Lease to be extended thereby.

If the Parties are unable to agree on the FMV of the Property for the upcoming Option Period prior to the end of the Negotiation Period, then the Parties' respective Appraisers shall cooperate to mutually select a third Appraiser ("Deciding Appraiser"), and each party shall submit its respective proposed FMV and appraisal(s) to the Deciding Appraiser, who will conclusively determine the FMV of the Leased Premises using "baseball style arbitration." Once the Deciding Appraiser has been selected, then, as soon thereafter as practical but in any case within ten (10) days, each party will submit a proposed FMV for the Leased Premises to the Deciding Appraiser for a determination as to the FMV thereof, and the Deciding Appraiser must select one of the FMV allocations proposed by the Parties and may not choose or determine his/her own allocation of FMV. All costs and/or fees of the Deciding Appraiser shall be borne equally by the Parties. The determination by the Deciding Appraiser shall be rendered in writing to both Authority and Tenant and shall be final and binding on them. The FMV for the Leased Premises established through "baseball style arbitration" shall establish the rental value of the Leased Premises for the upcoming Option Period, subject to Tenant's exercise of one or both of its Option to Extend, and Tenant must still validly and timely exercise such Option(s) to Extend in its sole discretion in order for the Lease to be extended thereby.

If Tenant exercises its Option to Extend commences before the FMV for the Leased Premises can be established, Tenant shall continue to pay to Authority monthly the same monthly rent and amounts due under the Lease for the last full month immediately preceding commencement of the Option Period. Once the FMV and, thus, the rent due Authority from Tenant for the Leased Premises during the Option Period is determined as set forth herein, Authority shall provide a "true up" calculation to Tenant going back to the commencement of the Option Period through the date FMV is established (the "True Up Period"). If Tenant paid more than monthly FMV for the Leased Premises during the True Up Period, then Tenant shall receive a credit toward its next monthly rent

payment(s) and continue receiving a credit until the credit is used up. If Tenant paid less than monthly FMV for the Leased Premises during the True Up Period, then Tenant shall pay to Authority the difference between what it actually paid and the FMV for the Leased Premises for the entire True Up Period within thirty (30) days of Authority providing written notice of the amount due or within some other time as agreed to by the Parties in writing.

### **SECTION 1.3. USE OF PROPERTY.**

**Subsection 1.3.1. Tenant Improvements to the Property.** Authority acknowledges hereby that Tenant is leasing the Property generally for the purpose of constructing, owning, and maintaining the Tenant Improvements on the Property. In furtherance of these purposes, it will be necessary to construct, at a minimum, buildings, corporate hangars, and related improvements (collectively, the “Tenant Improvements”) that can be subleased to one or more third parties subject to the terms of this Lease. The Parties understand and agree that Tenant may make alterations and renovations to such Tenant Improvements at Tenant's sole cost and expense, unless otherwise provided in this Lease. As it pertains to the Property, a depiction of the Tenant Improvements is set forth on [Exhibit B](#). Tenant agrees that its construction of the Tenant Improvements is an integral and material part of this Lease and Authority's assent to lease the Leased Premises to Tenant. Tenant agrees to comply with all applicable rules, laws, regulations and requirements pertaining to its construction of the Tenant Improvements and the use of the Leased Premises, including, but not limited to, applicable building codes and zoning ordinances of state and local governments. Other improvements to be constructed on the Leased Premises of structural or exterior nature that have not yet been reviewed by the Authority as of the Lease Commencement Date, shall be subject to additional approval by Authority, provided, however, Authority's approval shall not be unreasonably withheld, delayed or conditioned. Tenant hereby



agrees to indemnify and to save Authority harmless from any and all costs and/or expenses of any kind relating to construction of the Tenant Improvements to the extent arising by, through, or under Tenant, except to the extent arising from the obligations that are the responsibility of Authority at law or under this Lease or within Authority's control, and, further, except to the extent such costs and/or expenses arise from Authority's, or its agents', tenants' or contractors' acts or omissions, interference, negligence or willful misconduct.

**Subsection 1.3.2.** For purposes of this Lease, the term "Construction Period" shall mean the period from the Lease Commencement Date (as defined in **Subsection 102.1** above) until the Rent Commencement Date (as defined in **Subsection 104.1** below). Tenant, subject to approval by Authority, which approval shall not be unreasonably withheld, delayed or conditioned, shall, upon obtaining any and all necessary government permits and/or approvals, have the right to change, alter, raze or add to any Tenant Improvements, or any part thereof, now existing, or change, alter or add to any Tenant Improvements, or any part thereof hereafter erected, constructed or installed on the Leased Premises and remove the personal property (the "Personalty") installed or placed by Tenant in, on, or about the Tenant Improvements on the Leased Premises, assuming Tenant is not in monetary default of this Lease. Authority acknowledges and agrees that title to all Tenant Improvements and Personalty shall not be in Authority but is and shall remain in Tenant during the term of this Lease.

**Subsection 1.3.3. Delivery and Acceptance of the Property.** Tenant will use all reasonable efforts to submit for the appropriate building permits, licenses, and other approvals necessary to construct the Tenant Improvements from all appropriate governmental authorities having or asserting jurisdiction over the Leased Premises. In the event that (a) Tenant is unable to or does not obtain, within one hundred eighty (180) days from the Lease Commencement Date,

such building permits, licenses, and other approvals necessary to construct, operate, and maintain the Tenant Improvements on the Property from all appropriate governmental authorities having or asserting jurisdiction over the Property, or (b) Tenant is unable to or does not obtain, within one hundred eighty (180) days from Lease Commencement Date, Authority's approval of the plans and specifications for the Tenant Improvements for the Property on terms and conditions acceptable to Tenant, then at the sole option of Tenant, Tenant shall have the right to terminate this Lease by written notice given within thirty (30) days after the expiration of said 180-day period. The Tenant may request approval from Authority to extend either of the periods set forth above, and Authority agrees that it will not unreasonably withhold, condition or delay its consent to extend said periods. Authority also shall provide such support and assistance as Tenant reasonably requests in connection with obtaining any license, permit or other approval necessary to construct, own, operate, or maintain the Tenant Improvements and use and occupy the Leased Premises as contemplated by Tenant, provided that Authority shall not be required to expend any money or incur any costs and/or expenses in assisting Tenant unless the expenditures and costs were contemplated or required by Authority to be incurred or paid under other provisions of this Lease or such costs are de minimis. Authority does not and cannot guarantee the successful or timely issuance of said approvals, grants, permits, or authorizations.

**Subsection 1.3.4. Compliance with Section 255.05, Florida Statutes/No Lien.**

Authority and Tenant acknowledge that as a result of Authority's reversionary interest in any Tenant Improvements to the Leased Premises at the end of the term of the Lease, including without limitation the Tenant Improvements, as set forth in this Lease, no individual or entity is entitled to a construction lien on the same as provided in chapter 713, Florida Statutes. Accordingly, Tenant

shall be required at its sole cost and expense to comply with the provisions of section 255.05, Florida Statutes (2021), as may be amended from time to time.

**SECTION 1.4. BASE RENT AND ADJUSTMENTS.**

**Subsection 1.4.1. Base Rent.** Annual Base Rent due to Authority from Tenant shall be calculated and paid as set forth below commencing on the Rent Commencement Date. The “Rent Commencement Date” has been negotiated by the Parties and will occur 180 days from the Lease Commencement Date as identified within Exhibit C.

A. The initial annual Base Rent for the Property shall be equal to twelve percent (12%) of the FMV of the Property as of the Rent Commencement Date as established pursuant to the procedure set forth in **Subsection 102.2**, above, for determining Updated Rent. Said initial annual Base Rent shall then be adjusted or re-calculated as set forth in this Lease. As used in this Lease, the term “Base Rent” shall mean the rent due and payable from Tenant to Authority for real property not including taxes, fees, expenses, utilities or other charges related to said real property. One-twelfth (1/12) of the annual Base Rent due Authority from Tenant shall be paid to Authority on or before the first day of each month without notice, in advance.

B. Tenant’s obligation to pay Base Rent to Authority hereunder, as adjusted pursuant to the terms of the Lease, shall continue from the Rent Commencement Date through expiration or sooner termination of the Lease, except as expressly provided in this Lease, including without limitation as provided in Article 5 (prevention of use of Property) and Article 7 (default of Authority). As soon as reasonably possible after the Rent Commencement Date, the Parties shall insert such Rent Commencement Date on **Exhibit C** as then revised and annexed to this Lease and execute the same; however, no delay in executing **Exhibit C** hereto shall affect Tenant’s obligation to pay rent as set forth above.

C. In addition to the Base Rent, as may be adjusted from time to time pursuant to the terms of the Lease, Tenant shall pay to Authority, as additional rent, any sales tax that may be due under applicable state law on all Base Rent and any other sums due to Landlord from Tenant hereunder, if applicable, at the rate prescribed by Florida or local law from time to time. Authority agrees to remit such sales tax, if applicable, to the State of Florida or other legal authority as required by law.

**Subsection 1.4.2. Service Fee For Off-Site Drainage Service.** Although Tenant's current anticipated site plan does not require off-property drainage or stormwater management, should that change and Tenant utilize off-property drainage and/or stormwater storage or management, with Authority's approval, Tenant shall be obligated to pay Authority an Off-Site Drainage Fee commensurate with such fees charged by Authority to similarly situated tenants for off-site drainage and/or stormwater management or storage, including the benefit of all discounts for such use and repeated use as available and/or may be provided to other tenants at the Airport. If Tenant pays Off-Site Drainage Fees under this Subsection, that charge will be adjusted as set forth below in **Subsection 104.3.**

**Subsection 1.4.3. Rent Adjustments.** Each year on the anniversary of the Commencement Date (the "Rent Adjustment Date(s)"), Base Rent shall increase by a fixed rate of [five] ([5]%) percent over and above the immediate-prior year's Base Rent.

**Subsection 1.4.4. Additional Rent.** The term "Additional Rent" shall mean any monetary obligation of Tenant under this Lease other than Base Rent.

**ARTICLE 2**  
**AUTHORITY AND TENANT OBLIGATIONS**

**SECTION 2.1. COMPLIANCE WITH ALL LAWS.** Tenant agrees that it will substantially observe and comply with all laws, ordinances, orders and regulations applicable to the business operated by Tenant on the Leased Premises. Authority warrants and represents that on the Commencement Date, the Property is in compliance with all applicable laws, rules, ordinances, orders, and regulations, including, without limitation, laws regarding hazardous wastes.

**SECTION 2.2. REPAIRS, ALTERATIONS AND MAINTENANCE.** Authority shall not be obligated to maintain the Leased Premises during the Lease term unless such maintenance is a result of the negligence or wrongful acts or omissions of Authority or its officers, directors, employees, agents, assigns, tenants, subtenants, guests, invitees, suppliers, contractors, or subcontractors. Tenant shall maintain the Leased Premises in good, clean and neat condition at its own cost and expense and shall ensure that all regular maintenance and repairs normally and customarily performed by commercial tenants are performed by Tenant on and for the Leased Premises including all Tenant Improvements thereon. Furthermore, Tenant agrees, at its sole cost and expense, to maintain all of the Tenant Improvements, including any parking and service areas, and utilities on the Leased Premises in a good state of repair.

Additionally and without regard to any other term of this Lease, at the expiration or earlier termination of this Lease pursuant to the terms hereof, Tenant shall have thirty (30) days to have conducted on the Leased Premises at Tenant's sole cost and expense a Phase 1 Environmental Site Assessment, and Tenant shall provide the final, written conclusions and recommendations from the Phase 1 Environmental Site Assessment(s) to Authority within five (5) business days after Tenant's receipt thereof.

**SECTION 2.3. UTILITIES AND SITE ACCESS.** Authority will, to the extent feasible and without incurring any costs or expenses, assist Tenant in obtaining the required engineering studies and in the application process of extending utilities and transportation access in relation to Tenant's use of the Leased Premises. The capacity and availability of public and private utilities is not guaranteed by Authority to the extent it has no control over the same. Further, Authority cannot guarantee approvals for road entrances, traffic island crossovers, signalization, turning lanes, or acceleration lanes, etc. In the event a critical utility (potable water, sewer, electricity, natural gas and/or telecommunications) or adequate transportation access (as required and determined by Tenant in its sole and absolute discretion) cannot be made available to the Property within one hundred eighty (180) days of the Lease Commencement Date, Tenant may terminate this Lease without prejudice.

**SECTION 2.4.** Tenant shall have the right to grant any easements, rights of way, and licenses required by any public or quasi-public utility company with respect to the construction, operation and use of the Tenant Improvements and Personalty. Authority shall execute any instruments which any such public or quasi-public utility companies may reasonably request or require from Authority; provided, however, that in each case such easement, right of way or license (i) does not materially impair the value, utility and remaining useful life of the Leased Premises, (ii) is reasonably necessary in connection with the construction, operation or use

of the Tenant Improvements and Personalty, and (iii) does not cause the Leased Premises or any portion thereof to fail to comply with all material requirements of law.

**SECTION 2.5. UTILITY CHARGES.** Tenant shall be responsible for charges for electricity, water, sewer, telecommunications, solid waste, heat, janitor service or any other utility or service consumed by or for the occupants of the Leased Premises.

**SECTION 2.6. ADDITIONAL TENANT OBLIGATIONS.** The City of Titusville (City) will determine if the Tenant Improvements are of sufficient size to require a transportation concurrency study and/or other traffic access studies. Tenant is responsible for all studies and costs associated with this requirement, as well as the assessments and improvements required by the City. In addition, Tenant is responsible for all transportation, utility and other impact fees associated with this project related solely to Tenant's improvements levied by the City, and Tenant shall be solely entitled to the benefit of any credits provided by such governmental entities related thereto.

**SECTION 2.7. FAILURE OF TENANT TO COMMENCE OR COMPLETE CONSTRUCTION.**

A. [In the event Tenant does not commence construction of the Tenant Improvements (defined as beginning physical work on the Property) within [One Hundred Eighty (180) days] after the Lease Commencement Date (as defined in [Subsection 102.1](#)) for any reason not directly caused by Authority or its officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, or subcontractors, which period will be extended due to Force Majeure or delays outside of Tenant's reasonable control, then in that event, Authority may terminate this Lease. In order to effectuate termination, Authority shall provide a notice of non-monetary default in the manner provided under [Article 6](#), provided, however, that Tenant shall have sixty (60) days to cure this default after notice. If Tenant does not cure within this 60-day

period and Authority terminates the Lease, the Lease shall terminate and the Parties shall have no further liabilities to each other except to as expressly provided otherwise in the Lease.

B. Tenant shall substantially complete construction of the Tenant Improvements identified in [Exhibit B-1](#) hereto on or before a date [eighteen (18) months after the Lease Commencement Date unless the delay in construction was caused by elements of Force Majeure or delays caused by the Authority or its officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, or subcontractors, in which event this period shall be extended by Authority for a reasonable length of time to allow Tenant to complete the construction of the improvements referenced herein.

C. In the event Tenant fails to complete the Tenant Improvements specified in [Subsection B](#), above, by the date specified therein, or by the date of any extensions granted by Authority, the Authority shall deliver written notice to Tenant of said failure to complete construction of said improvements within the allotted time period and notice of its intent to terminate this Lease (“Notice of Intent to Terminate”) effective one hundred twenty (120) calendar days after the delivery of the Notice of Intent to Terminate to Tenant. Tenant shall then have the right to complete the construction of said improvements during the one hundred twenty (120) calendar days period or may otherwise request a good faith extension of the time to complete said improvements providing the reason for said extension. The Parties understand that significant investment will be made by the Tenant to the Leased Premises and any requests for an extension of the time to complete the improvements should be allowed, as long as Tenant provides reasonable assurance of how the Tenant Improvements will be completed. Should Tenant fail to respond to the Notice of Intent to Terminate or fail to take any actions to complete construction of the Tenant Improvements within the allotted time, then Authority shall have the right to terminate this Lease



by written notice to Tenant given any time after the expiration of the 120-day period without obligation of Authority to pay Tenant any compensation for work performed and funds expended prior to such termination.

**SECTION 2.8. SIGNS.** Tenant shall have the right to erect and maintain such sign or signs on the Leased Premises and Tenant Improvements as may be permitted by applicable law, ordinances and codes and Tenant shall have the right to expressly name its facilities as Tenant deems appropriate and allowed under applicable law.

### **ARTICLE 3 TAXES**

**SECTION 3.1. AD VALOREM TAXES.** If applicable, Tenant shall pay all ad valorem taxes levied or assessed against the Leased Premises by the appropriate governmental authorities as a result of Tenant's occupancy or use of the Leased Premises pursuant to this Lease, whether the billing is addressed to Authority or Tenant, together with all taxes levied against any stock of merchandise, furniture, furnishings, equipment and other property located in, on or upon the Leased Premises, including without limitation the Tenant Improvements, if applicable. Tenant shall have the right to contest the validity or amount of any ad valorem tax imposed against the Leased Premises and the Tenant Improvements at Tenant's sole cost and expense. Upon adjudication (including all appeals) of such contest, Tenant shall pay all court costs, interest, penalties and other expenses related to the appeal.

**SECTION 3.2. SOLID WASTE FEES.** If applicable, Tenant shall pay all solid waste fees assessed against the Leased Premises by the appropriate governmental authorities as a

result of Tenant's occupancy or use of the Leased Premises pursuant to this Lease, whether the billing is addressed to Authority or Tenant.

**SECTION 3.3. STORM WATER FEES.** Tenant shall pay all storm water fees assessed against the Leased Premises by the appropriate governmental authorities (excluding the Authority for the purposes of this Section) as a result of Tenant's occupancy or use of the Leased Premises pursuant to this Lease.

**SECTION 3.4. EMERGENCY AMBULANCE FEES.** If applicable, Tenant shall pay all emergency ambulance fees assessed against the Leased Premises by the appropriate governmental authorities as a result of Tenant's occupancy or use of the Leased Premises pursuant to this Lease, whether the billing is addressed to Authority or Tenant.

**SECTION 3.5. OTHER TAXES AND FEES.** If applicable, Tenant shall pay any and all lawful and reasonable tax, fee, or assessment that may be levied by third parties as a result of Tenant's occupancy or use of the Leased Premises pursuant to this Lease and not known at this time. For the avoidance of doubt, Tenant shall not be obligated to pay any taxes, fees or assessments which may be levied, imposed, or created by Authority, other than those taxes, fees or assessments expressly set forth in this Lease as of the Commencement Date.

**SECTION 3.6. BILL RECEIVED BY AUTHORITY.** For the purposes of **Sections 301-305**, should a billing be addressed to the Authority that Authority believes is the responsibility of Tenant, Authority shall provide the bill to the Tenant promptly, and in no more than 5 days after receipt by the Authority. Should Authority not provide the billing to Tenant within an appropriate time such that Tenant may contest the amount or pay timely, Authority shall be responsible for all losses suffered by Tenant as a result of Authority's tardiness in providing the billing to Tenant. Further, Tenant shall have the right to contest the validity or amount of any ad

valorem tax, assessment or fee imposed against the Property and/or the Tenant Improvements at Tenant's sole cost and expense.

#### **ARTICLE 4 INSURANCE AND INDEMNITY**

**SECTION 4.1.      LIABILITY INSURANCE.** In addition to such insurances as may be required by law, Tenant shall maintain, without lapse or material change, for so long as it occupies the Property and/or the Tenant Improvements thereon, the following insurance:

A.      Commercial General Liability Insurance, including Contractual Liability, to cover Tenant's property, Tenant Improvements and operations in an amount not less than \$5,000,000.00 combined-limit, per-occurrence for bodily injury and property damage. Authority must be shown as an additional insured with respect to this coverage. Coverages shall be for each occurrence or an annual policy aggregate of no less than twice the amount of coverage required for each occurrence. A combination of umbrella or excess liability insurance may be combined with such commercial general liability insurance to arrive at such annual policy aggregate amount. In the event that Tenant's available coverage falls below the per occurrence amount shown above, Tenant shall secure a new certificate of insurance evidencing the required coverage. Tenant acknowledges that Authority reserves the right not to accept policies with deductibles in excess of \$50,000.00.

B.      Automobile Liability Insurance covering all owned, non-owned and hired vehicles (including ground or mobile equipment) used by Tenant in connection with its operations under this Lease in an amount not less than:

(1)    \$5,000,000.00 combined single-limit, per-occurrence for bodily injury and property damage covering all vehicles used by Tenant in connection with its business operation; and

(2) \$5,000,000.00 combined single-limit, per-occurrence for bodily injury and property damage covering such vehicles when being used by Tenant off of the Airport.

C. A policy of insurance, if applicable, such as a Pollution Legal Liability (PLL) policy if compliant herewith, in a coverage amount not less than \$1,000,000.00 single-limit, per-occurrence intended to provide coverage for environmental risks, including without limitation hazardous materials (whether known or unknown), spill or seepage of pollutants or other hazardous materials or waste, negligent or otherwise improper disposal of waste and other risks related to Tenant's use of the Property. The Authority shall be named in the policy as an additional insured.

D. The insurance coverages required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of Tenant under this Lease. All insurance policies required pursuant to the terms of this Lease shall be issued by companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "B" as to management, and no less than "V" as to strength, in accordance with the latest edition of "Best's Insurance Guide," published by A.M. Best Company, Inc., or its equivalent, subject to approval of Authority.

#### **SECTION 4.2. PROPERTY INSURANCE.**

A. Builders Risk and Hazard Insurance: Tenant, at its sole cost and expense throughout the term of this Lease shall keep the Tenant Improvements insured on an "All Risk" basis in an amount not less than 100% of the full replacement value of the Tenant Improvements against loss or damage (in excess of a reasonable per occurrence deductible amount, which shall be the responsibility of Tenant) by fire, lightning, tornado, hurricane, windstorm, hail, flood, explosion, riot, riot attending strike, civil commotion, vandalism and malicious mischief, water

leakage or seepage, sprinklers and sprinkler leakage, aircraft, vehicles and smoke, or any other casualty to the extent such coverage is commercially available at commercially reasonable rates. The full replacement value of the Tenant Improvements shall be established as of the Commencement Date of this Lease and shall be established at intervals of not more than three (3) years thereafter by the firm and professional property evaluators used by Authority for establishing replacement values for Authority property or any other firm and/or individual chosen by Authority in the reasonable exercise of its discretion. Any deficiency in the amount of the proceeds from such property insurance resulting from a failure by Tenant to properly establish the full replacement value of the Tenant Improvements shall be the sole responsibility of Tenant, and Tenant shall be liable therefor. In addition, subject to the rights of any Tenant note or mortgage/prior lien holder, Authority shall be shown on the policies as a loss payee as its interest appears and as required pursuant to this Lease.

(1) Damage or Destruction and Restoration of the Tenant Improvements: In case of substantial damage to or destruction of all or a portion of the Tenant Improvements, Tenant shall give prompt notice thereof to Authority, and Tenant shall promptly commence and complete with due diligence (subject only to Force Majeure and insurance adjustment and receipt of insurance proceeds), the restoration of the damaged or destroyed portion of the Tenant Improvements as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction. In the event of such damage or destruction, the proceeds of all property insurance policies shall be used to restore the facility to make it function for the uses permitted under this Lease. Tenant shall receive reimbursement from the proceeds of all applicable property insurance policies it has procured in restoring the Tenant Improvements to their pre-loss condition as set forth in this paragraph to the extent determined by Tenant, and Tenant shall be

obligated to provide any additional monies necessary for such restoration as determined by Tenant. Notwithstanding the foregoing, Tenant's obligation to rebuild shall be expressly contingent on the availability of sufficient insurance proceeds including availability of such proceeds being made available from any lender of Tenant.

(2) Damage or Destruction Near End of Lease: Within the last five (5) years of the base Lease term or the last five (5) years of any Option Period, in case of damage to or destruction of all or a portion of the Tenant Improvements, Tenant shall have the right within thirty (30) days of the damage to give notice to Authority ("Notice of Damage Termination") of the loss and elect not to restore the Property, but rather to assign all applicable proceeds of all property insurance policies to the Authority to the extent the proceeds are applicable to Tenant Improvements (and not Personalty) and terminate the Lease effective one hundred twenty (120) days after the Notice of Damage Termination is sent to the Authority.

B. Business Interruption Insurance: Tenant at its sole cost and expense throughout the term of this Lease and any extension hereof shall maintain business interruption insurance, at a minimum, in an amount sufficient to continue making all payments hereunder and maintaining the insurance required hereunder during the rebuilding period as a result of damage to the Tenant Improvements.

**SECTION 4.3. INSURANCE CERTIFICATES.** Prior to the commencement of operations hereunder and annually thereafter, Tenant shall furnish or cause to be furnished certificates of insurance to Authority which certificates shall clearly indicate that:

A. Tenant has obtained insurance in the types, amounts and classifications as required for compliance with this Lease;

B. The policy cancellation notification provisions specify at least thirty (30) days advance written notice of cancellation to Authority, provided, however, only ten (10) days' notice of cancellation shall be required if due to failure to pay premiums;

C. Authority is named as an additional insured with respect to Tenant's commercial general liability policies;

D. Authority is named as a loss payee with respect to Tenant's builders risk and property insurance policies; and

E. On said insurance certificates, liability coverage shall include contractual liability and notification of cancellation.

**SECTION 4.4. ADDITIONAL INSURANCE.** The Parties acknowledge that should the industry standards for insurance coverages being required for comparable properties and uses exceed the minimum insurance amounts set forth in this Lease, the Parties will negotiate in good faith to reasonably review such requirements amend this **Article 4** as mutually agreed.

**SECTION 4.5. COMPLIANCE.** Compliance with the requirements of this **Article 4** shall not relieve Tenant of its liability under any other portion of this Lease or any other agreement between Authority and Tenant, and Tenant's obligations to Authority hereunder are not limited to available insurance proceeds unless otherwise provided in the Lease.

**SECTION 4.6. RIGHT TO EXAMINE.** Authority reserves the right, upon reasonable notice to Tenant, to examine true copies of applicable portions of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. Tenant agrees to permit such inspection.

**SECTION 4.7. PERSONAL PROPERTY.** Any personal property of Tenant or of others placed in or on the Leased Premises, Tenant Improvements and anywhere else at the Airport

shall be at the sole risk of Tenant or the owners thereof, and Authority shall not be liable for any loss or damage thereto, except to the extent such loss or damage was caused by the negligence or wrongful acts or omissions of the Authority officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, or subcontractors, as limited or otherwise affected by section 768.28, Florida Statutes.

**SECTION 4.8. INDEMNITY.** Each party (the “Indemnifying Party”) shall indemnify and hold harmless the other party and/or its officers, directors, employees, agents and assigns, (the “Indemnified Party”) from any and all liability, losses or damages, including reasonable attorneys’ fees and costs of defense, that Indemnified Party incurs or may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the negligence or wrongful acts and/or omissions of the Indemnifying Party and/or its officers, directors, employees, agents or assigns. The Indemnifying Party shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of Indemnified Party, where applicable, including appellate proceedings, and shall pay costs, judgments and reasonable attorney’s fees which may issue thereon. The Indemnifying Party expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by such Indemnifying Party shall in no way limit its responsibility to indemnify, keep and save harmless and defend the Indemnifying Party and/or its officers, directors, employees, agents or assigns as herein provided. The obligation of Indemnifying party hereunder shall survive the termination of this Lease. The Indemnifying Party's obligation to indemnify the Indemnified Party hereunder shall in no way affect, abridge or amend an Indemnifying Party’s right to assert governmental or sovereign immunity as to any claims, other than those by the Parties or their respective permitted transferees



and assignees, including without limitation the immunity afforded under section 768.28, Florida Statutes.

## **ARTICLE 5 PREVENTION OF USE OF THE PROPERTY**

If, after the Lease Commencement Date, Tenant is precluded or prevented from constructing or operating the Leased Premises as contemplated by Tenant under this Lease by reason of (any such reason, a "Prohibition"): (i) any federal law, zoning law, zoning ordinance or zoning regulation of any public authority having jurisdiction over the Property, (ii) force majeure, or (iii) national security concerns, and such Prohibition shall continue for a period of at least [forty-five (45)] days, then Tenant may terminate this Lease by giving to Authority not less than thirty (30) days prior written notice of termination.

## **ARTICLE 6 DEFAULT BY TENANT**

**SECTION 6.1. EVENT OF DEFAULT.** As used in this Lease, the term "event of default" shall mean any of the following:

A. Any failure to pay any sums due Authority under this Lease, including without limitation Base Rent and Additional Rent, where such failure to pay is not cured within sixty (60) days following written notice to Tenant by Authority;

B. Other than for non-payment of sums due Authority, the failure of the Tenant, after receipt of written demand from Authority specifying the nature of the default, to fulfill any duty or obligation imposed on Tenant by this Lease within seventy five (75) days of said written demand unless a different cure period is specifically provided elsewhere in this Lease or, if such default cannot be cured within seventy five (75) days, to commence to remedy or correct such default and to diligently pursue cure of such default throughout the seventy five (75) day cure period and diligently thereafter through complete cure;

C. The appointment of a receiver for Tenant, Tenant filing a petition seeking bankruptcy protection of any kind, the assignment by the Tenant for the benefit of creditors and/or the participation by the Tenant in any other insolvency proceeding, except if such appointment, order, assignment or proceeding is stayed, dismissed or vacated within ninety (90) days of the commencement thereof; or

D. The transfer of Tenant's interest in the Leased Premises pursuant to a foreclosure of a valid lien against Tenant's interest in the Leased Premises.

**SECTION 6.2. DELINQUENT PAYMENTS.** If any rent payment, including any Additional Rent, due to Authority pursuant to this Lease is not paid (the "Delinquent Payment") within fifteen (15) days of the date the same is due, the Delinquent Payment shall bear interest at the rate of eighteen percent (18%) per annum (the "Interest Rate") until the date the same is paid in full to Authority. If the Delinquent Payment is not paid by Tenant within sixty (60) days following notice of monetary default from Authority to Tenant, then the Delinquent Payment shall thereafter bear interest at the maximum allowable rate under Florida law ("Default Interest Rate") until the date the same is paid in full to Authority.

**SECTION 6.3. AUTHORITY'S REMEDY UPON DEFAULT.** Upon the happening of any event of default beyond any applicable cure period(s), the Authority may, at its option, terminate this Lease and obtain possession of the Leased Premises from Tenant through any lawful means and without prejudice to any other remedy available to Authority, provided however, that as a prerequisite to Authority's termination of this Lease or of Tenant's right of possession of the Leased Premises (unless otherwise addressed elsewhere in this Lease as to a specific event of default), the Authority shall deliver written notice to Tenant of said event of default and notice of Authority's intent to terminate this Lease ("Notice of Intent to Terminate")

effective one hundred twenty (120) calendar days after the delivery of the Notice of Intent to Terminate to Tenant and any Leasehold Mortgagee (“Final Cure Period”). Tenant and any Leasehold Mortgagee shall then have the right to cure the event of default during the Final Cure Period. Should Tenant (or any Leasehold Mortgagee) not cure the event of default within the Final Cure Period, unless Authority consents in writing or a longer cure period is provided elsewhere in this Lease as to a specific event of default, the Lease shall be terminated.

#### **ARTICLE 7 DEFAULT BY AUTHORITY**

It shall be an “Authority Default” if Authority fails to perform any of its covenants, agreements or other obligations under this Lease, and such failure continues for a period of [forty-five (45)] days after receipt by Authority of written notice from Tenant of such failure, or, in the event of an emergency, if such failure is not remedied reasonably promptly (and no later than thirty days) after written notice. Tenant shall have the right (but not the obligation) to take such actions and to expend such monies as are reasonably necessary to correct the Authority’s failure to perform if and only if:

(1) the Authority fails to commence and continue to cure the default within the 45-day cure period, or (2) the Authority provides written notice to Tenant that it cannot cure its alleged failure to perform.

In such event, Tenant may expend such sums as are reasonably necessary to cure Authority’s default, and no approval of the reasonable sums by the Authority is necessary. Tenant shall be entitled to offset the cost to cure, plus an administrative fee of five percent (5%) of such costs incurred by or on behalf of Tenant, against its next monthly rent payment(s) and continue applying the offset as a credit until the credit is used up. The foregoing rights of self-help and set-off shall be in addition to, not in lieu of, any rights and remedies which Tenant has at law, in equity or under this Lease. [In the alternative, in the event of an Authority Default, Tenant shall have the right to terminate the Lease. If such termination occurs before completion of the Tenant Improvements, the Authority shall

reimburse Tenant all Pursuit Costs on or before the date of termination. If such termination occurs after the completion of the Tenant Improvements but prior to the last ten years of the lease term, then Authority shall pay Tenant a portion of the unamortized costs of the Tenant Improvements on or before the date of termination.

## **ARTICLE 8 REAL ESTATE COMMISSION**

Authority and Tenant covenant and warrant one each to the other that it has not authorized any person, firm or corporation as a real estate agent or broker to deal on behalf of Authority with Tenant or Tenant with Authority. The provisions of this Article 8 are subject to the indemnifications of Subsection 408.

## **ARTICLE 9 IDENTITY OF INTEREST**

The execution of this Lease or the performance of any act pursuant to the provisions hereof shall not be deemed or construed to have the effect of creating between Authority and Tenant the relationship of principal and agent or of a partnership or of a joint venture, and the relationship between them shall be and remain only that of Authority and tenant.

## **ARTICLE 10 NOTICES AND REPORTS**

Any notice, report, statement, approval, consent, designation, demand or request to be given or any option or election to be exercised by a party in writing under the provisions of this Lease shall be delivered by hand, sent by U.S. Mail, postage prepaid, by registered or certified mail, return receipt requested, or by nationally recognized overnight delivery service, e.g., FedEx or UPS, addressed to the respective Parties at the respective addresses set forth below, and shall be deemed delivered upon actual receipt or upon the date shown on the proof of dispatch if delivery is refused or unclaimed:

Authority: Director of Airports  
Titusville-Cocoa Airport Authority  
51 Bristow Way  
Titusville, FL 32780

With a required copy to: WhiteBird, PLLC  
2101 Waverly Place, Ste. 100  
Melbourne, FL 32901  
Attn: Adam M. Bird, Esq.

Tenant: Alliance Capital Management Group, LLC  
601 Brickell Key Drive Suite 700  
Miami, FL 33131  
Attn: Bruno Duarte, Manager

With a required copy to: Frederick L. Klein  
DLA Piper LLP (US)  
500 Eighth Street, N.W.  
Washington, D.C. 20004

Provided, however, that either party may designate a different address from time to time by giving to the other party notice in writing of the change. Any payments to Authority under this Lease shall be made by Tenant at Authority's address provided in this **Article 10** hereinabove.

Notwithstanding foregoing, the Parties agree that routine reports, approvals, and consents provided in the ordinary course of business may be delivered electronically provided that any report, approval or consent that adversely impacts the material rights or obligations of a party under this Agreement shall additionally be delivered by one of the other methods specified in this **Article 10**.

## **ARTICLE 11**

### **MEMORANDUM OF LEASE**

Either party may file a Memorandum of this Lease with the Brevard County Property Appraiser's Office or have the same recorded by the Brevard County Clerk of Court at the recording party's expense.

## **ARTICLE 12 ENTRY OF AUTHORITY**

Authority may enter the Leased Premises, except as set forth hereinbelow, during Tenant's normal business hours with reasonable advance notice (not less than three (3) business days, except in emergencies constituting an immediate threat to life or property) and subject to Tenant's reasonable security rules and regulations as follows:

- A. To inspect or protect the Leased Premises;
- B. To determine whether Tenant is complying (as required under this Lease) with the applicable laws, orders or regulations of any lawful authority having jurisdiction over the Leased Premises or any business conducted therein; or
- C. To show the Leased Premises to prospective tenants or buyers during the last six (6) months of the term of this Lease (as such term may be extended pursuant to the Lease).
- D. Authority will make best efforts not to interfere with, disturb, or otherwise adversely affect the use or operations of Tenant or any subtenant in any part of the Leased Premises.

## **ARTICLE 13 LEASE EXPIRATION**

Subject to the default provisions under Article 6 of this Lease, at the expiration of the Lease, all improvements erected on the Property, including without limitation the Tenant Improvements, shall become the sole property of Authority, and Tenant hereby knowingly and voluntarily waives any claims related to the same, including without limitation claims for unjust enrichment or any other legal or equitable relief seeking value of any kind for such Tenant Improvements. Any and all trade fixtures, signs, moveable equipment, and other personal property placed on the Leased Premises by Tenant in which Tenant (or its lenders) has (have) legal or equitable title shall remain Tenant's sole property, and Tenant shall have the right to remove the same within ten (10) business days after expiration of the Lease, provided any damages caused by such removal are repaired by Tenant at the

time of removal and provided, further, that Tenant is not in material default of the Lease. In the event Tenant is not in material default of the Lease and fails to remove all of its personal property within ten (10) business days after expiration of the Lease, the Authority will provide written notice to Tenant and an opportunity to remove personal property from the Leased Premises within thirty (30) days of Tenant's receipt of the notice. Should Tenant fail to remove the personal property after the thirty (30) days of receipt of the notice, said failure to remove shall be deemed to be an abandonment of the property. In the event of such abandonment, Authority shall have the right to remove and sell or dispose of the personal property without any liability to the Tenant which obligation shall survive the expiration of or termination of the Term of this Lease. All monies received from any sale or disposal of the personal property by Authority shall first be used to reimburse Authority for any expenses incurred including without limitation reasonable attorney's fees and costs of all kind and nature and any expenses related to removal, storage and/or sale of said personal property, and the balance remaining after setting off any sums still owed by Tenant to Authority shall be remitted to the Tenant.

#### **ARTICLE 14 QUIET ENJOYMENT**

Subject to the provisions of this Lease, Authority covenants that Tenant, on paying all sums due hereunder and fully and timely performing the covenants of this Lease on its part to be performed within applicable notice and cure periods set forth in the Lease, shall and may peaceably and quietly have, hold, and enjoy the Leased Premises for the term of this Lease. Authority represents that it has authority to execute this Lease, that it has obtained all necessary governmental authorizations or approvals to execute this Lease and that this Lease constitutes a valid and binding obligation of Authority, enforceable against Authority in accordance with its terms.

**ARTICLE 15**  
**GOPHER TORTOISE AND OTHER PROTECTED SPECIES RELOCATION**

Within sixty days of the Commencement Date (or of the commencement date for the Property should Tenant lease same), or such other times as the Parties may agree in writing, Authority shall obtain all required permits or licenses and shall relocate any gopher tortoises found on the Leased Premises to Authority's chosen gopher tortoise preserve or such other location as may comply with all applicable law. The Tenant shall pay the cost of such relocation. If any other species of plants or animals are identified on the Leased Premises at any time that have been listed as endangered, threatened, of special concern or protected in any respect pursuant to any applicable federal, state or local laws or regulations, the removal of or mitigation for which has any impact upon the construction of the Tenant Improvements or Tenant's use and occupancy, Authority and Tenant shall cooperate to expedite the removal or mitigation of such condition by the Authority at Tenant's sole cost and expense; any performance deadlines of either party effected by such condition shall be extended. Proper permits for the removal and relocation of any animal or plant, if required, shall be obtained by the Authority from the applicable governmental authority and removal and relocation of such animals or plants shall be performed in accordance with state statute or the regulations of all applicable government authorities.

**ARTICLE 16**  
**AIRPORT SECURITY**

Tenant shall comply with applicable Airport security access control, to include, but not limited to, all doors and gates that access the Airport Operations Area (AOA). Any changes or modifications regarding access will need prior written approval from the Director of Airports or his/her designee. Tenant shall comply with all reasonable security directives as outlined within the Airport's Security Program and should direct any questions or concerns about Airport security matters to the Director of Airports. As long as Tenant takes appropriate steps to train, monitor and discipline its employees,



agents, contractors and subcontractors concerning the Airport's security requirements, Tenant shall not be in default of this Lease for violations of the Airport's security requirements by its employees, agents, contractors and subcontractors.

Additionally, Authority recognizes and acknowledges that Tenant may be enacting and enforcing its own reasonable security protocols necessary for Tenant's operation of its business at the Airport and consents to the same to the extent they are not in conflict with existing Airport security protocol.

## **ARTICLE 17 RULES AND REGULATIONS**

The current Rules and Regulations for the Authority are attached as [Exhibit D](#) (the "Rules and Regulations"). From time to time Authority may adopt and amend the Rules and Regulations with respect to the occupancy and use of the Leased Premises and Authority owned property; provided that if any change in the Authority's Rules or Regulations drives additional cost to Tenant, Tenant either shall be afforded a waiver from such new or amended Rules and Regulations or an equitable adjustment shall be made in Tenant's rent to offset the additional costs of complying with such new or amended Rules and Regulations. Tenant shall observe and obey such Rules and Regulations and shall require its officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, and subcontractors to observe and obey the same (provided that Tenant will not be deemed to have violated any new rule or regulation unless the Authority has provided at least thirty (30) days prior notice of such change to Tenant). Authority reserves the right to deny access to the Leased Premises, Authority-managed airports and airfields and/or Authority facilities to any person or entity that repeatedly fails or refuses to obey and comply with such Rules and Regulations and/or any applicable laws, despite notices advising such person or entity of such violations. Authority's Rules and Regulations will not be inconsistent with the terms of this Lease nor with valid rules,

regulations orders and procedures of the Federal Aviation Administration or any superior government authority duly authorized to make or enforce rules and regulations for the operation of the Airport and the operation of aircraft using the Airport. Additionally, to the extent any change to the Authority's Rules and Regulations affects Tenant's then-existing Tenant Improvements, Personalty, site plans and/or business operations, Tenant's affected Tenant Improvements, Personalty, site plans and/or business operations shall be "grandfathered" in and not affected by such changes to the Rules and Regulations to the extent such changes are not reflective of any change in applicable and mandatory law or regulation to which the Airport and/or Authority are subject.

#### **ARTICLE 18 MINIMUM STANDARDS**

In addition to the covenants herein contained, this Lease is further subject to the applicable provisions of those certain minimum standards pertaining to tenants as adopted by Authority. The current Minimum Standards are attached as part of [Exhibit D](#). In addition, if Tenant qualifies as a Fixed Base Operator (FBO), the design of the Fixed Base Operation, to include modern facilities, must be approved by Authority, which approval shall not be unreasonably withheld, delayed or conditioned.

## **ARTICLE 19 HEIGHT RESTRICTIONS**

Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Leased Premises to such a height so as to comply with Federal Aviation Regulations, Part 77, as applicable to the Leased Premises, and as amended from time to time if such amendments are made after the Commencement Date and are retroactive. Authority shall, to the extent it is able, assist and work with Tenant for Tenant to submit to the FAA for approval of the height of the Tenant Improvements such that the FAA may determine that the planned Improvement will not violate the height requirements underlying Federal Aviation Regulations, Part 77, as of the Commencement Date of this Lease.

Tenant expressly agrees for itself, its successors and assigns, to prevent any use of the Leased Premises by, through or under Tenant which would interfere with or adversely affect the operation or maintenance of any Authority owned airport and/or airfield, or otherwise constitute an airport hazard. Authority covenants and acknowledges that the use of the Leased Premises as proposed by Tenant does not and will not, to Authority's knowledge, interfere with or adversely affect the operation or maintenance of the airport or otherwise constitute an airport hazard.

Authority reserves unto itself, its successors and assigns for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in such airspace such noise as may be permitted by law and inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of said airspace for landing on, taking off from, or the operation of, any Authority owned airport and/or airfield.

**ARTICLE 20**  
**NONDISCRIMINATION**

A. Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration for this Lease, does hereby covenant and agree, as a covenant running with the land comprising the Leased Premises, that in the event Tenant Improvements are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a Authority of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Authority of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Authority of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

B. Tenant, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration for this Lease, does hereby covenant and agree, as a covenant running with the land comprising the Leased Premises, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination, and (3) that Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Authority of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

C. This provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed including exercise or expiration of appeal rights. The remedies for breach of this provision shall be limited to those remedies provided under said regulations. Nothing herein shall be interpreted or deemed to preclude Tenant from complying with all applicable export control laws and regulations and applicable government security requirements.

## **ARTICLE 21 WARRANTIES**

Apart from the warranties provided in this Lease [and the development agreement], Authority makes no representations and provides no other warranties concerning the Leased Premises or its use.

**SECTION 21.1.** Authority was established in 1963 as a special taxing district created by the cities of Titusville and Cocoa in Brevard County and it operates under the laws of the State of Florida.

**SECTION 21.2.** Authority has the full power and authority to enter into this Lease, and has taken, as applicable, all entity actions required for the execution and delivery of this Lease and for the consummation of the transactions contemplated by this Lease. The joinder of no person or entity other than the Authority is necessary for the Authority to fulfill its obligations under this Lease. Authority will warrant and defend the leasehold interest created hereby against all parties whomsoever and that Tenant upon observing and complying with the terms, covenants and

conditions of this Lease shall enjoy the quiet and undisturbed use and occupancy of the Property during the Lease term and any renewals thereof.

**SECTION 21.3.** The party(ies) executing this Lease on behalf of the Authority has/have full power and authority to bind the Authority to the obligations of the Authority set forth in this Lease.

**SECTION 21.4.** To Authority's knowledge, the terms and conditions of this Lease do not conflict with or cause a material breach of, the terms, conditions or provisions of any agreement to which the Authority is a party or by which Authority or the Leased Premises is otherwise bound. Authority warrants and represents that there are (i) no mortgages, liens or encumbrances, (ii) no covenants or restrictions, and (iii) no agreements with third parties that may prevent or impair Authority from performing any of its covenants under this Lease.

**SECTION 21.5.** Authority warrants and represents that upon the Commencement Date, there are no encumbrances except ad valorem taxes not yet due and payable, if applicable, for the current calendar year and that there are no easements, restrictions of record, environmental condition or other condition that will impair, preclude or adversely affect Tenant's use and development of the Property or interfere with Tenant's rights under this Lease. There are no service, maintenance, repair, management or supply contracts or other contracts affecting the Property, oral or written, except as set forth on the schedule attached hereto as Exhibit C. There are no leases, licenses or other occupancy agreements relating to the Property, oral or written.

There are no unpaid leasing commissions, brokerage commissions, or other fees relating to the Property or any portion thereof.

**SECTION 21.6.** Authority has no knowledge of, and has not received any written notice of, any pending or threatened condemnation proceeding with respect to the Property.

**SECTION 21.7.** Authority has not received any written notice from any governmental body, authority or agency of any violation of any Legal Requirements affecting the Property which has not been fully cured as of the Commencement Date.

**SECTION 21.8.** The execution of this Lease by Authority, and the performance by Authority of its obligations hereunder, will not (a) violate any of the provisions of its organizational documents, (b) to the Authority's knowledge, violate any provision of any applicable Legal Requirements currently in effect, (c) to the Authority's knowledge, violate any judgment, decree, writ, injunction, award, determination or order currently in effect that names or is specifically directed at the Authority or the Property, or (d) to the Authority's knowledge, require the consent, approval, order or authorization of, or any filing with or notice to, any court or other governmental authority.

**SECTION 21.9.** Except for matters of public record, and matters heretofore disclosed in writing to Tenant by Authority, Authority has not made or entered into, and has no knowledge of, any commitments, proffers or agreements with any state, county, federal or local governmental or quasi-governmental authority, utility company, school board, church or other religious body, or any public or private organization or individual, which proffers, commitments and/or agreements would impose any obligation upon Tenant or its successors and assigns after the Lease

Commencement Date, whether to make any contribution of money or dedications of land or to construct, install or maintain any improvements of a public or private nature on or off the Property.

**SECTION 21.10.** To the Authority's knowledge, there are no presently uncured material violations of any federal, state and local laws, ordinances and regulations applicable to the Property with respect to hazardous or toxic substances or industrial hygiene.

**SECTION 21.11.** Authority is not a party to any lawsuit, arbitration, governmental investigation or other legal proceeding relating to its ownership, operation, development, use or occupancy of the Property, and to the Authority's knowledge, no such lawsuit, arbitration, governmental investigation or other legal proceeding is threatened against the Authority.

**SECTION 21.12.** To the Authority's knowledge, the Authority (A) is not in violation of any "Anti-Terrorism Law" (as defined below), (B) is not a "Prohibited Person" (as defined below), or (C) is not and will not knowingly (1) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (2) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 (as defined below); or (3) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose or intent of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein: (A) "Anti-Terrorism Law" is defined as any Law relating to terrorism or money-laundering, including Executive Order No. 13224 and the USA Patriot Act (as defined below); (B) "Executive Order No. 13224" is defined as the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism."; (C) "Prohibited Person" is defined as (i) person or entity that is



listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) an entity that is listed in the Annex to, or is otherwise subject to the provisions of, a person or entity owned or controlled by, or acting for or on behalf of, any person or Executive Order No. 13224; (iii) a person or entity with whom any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; person or entity who commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; (iv) a person or entity that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/sdn/tltsdn> or at any replacement website or other official publication of such list; or (v) a person or entity who is affiliated with a person or entity described in clauses (1)-(4) of this definition; and (D) “USA Patriot Act” is defined as the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Public Law 107-56). After the Lease Commencement Date, Authority agrees to reasonably cooperate with Tenant in providing such additional information and documentation on Authority’s legal or beneficial ownership, policies, procedures and sources of funds as the Tenant reasonably deems necessary or prudent to enable it to comply with Anti-Money Laundering Laws as now in existence or hereafter amended.

## **ARTICLE 22**

### **ASSIGNMENT AND SUBLETTING**

**Subsection 22.1.1.** Except as provided in this **Article 22**, Tenant shall not assign this Lease or sublet the Leased Premises or any portion thereof, or otherwise transfer any right or interest hereunder, without the prior written consent of Authority, which consent shall not be unreasonably withheld, delayed or conditioned. Authority’s consent to a sub-tenancy under this

Agreement shall not be required if said sublease is substantially in agreement with a form sublease supplied by Tenant and pre-approved by the Authority to be used by Tenant.

**Subsection 22.1.2.** The Parties agree and acknowledge that Tenant is leasing the Leased Premises for the purpose of constructing, owning, and operating the Tenant Improvements, which will be mostly or entirely sublet to third parties for occupancy and use. Tenant is and shall remain liable to Authority should Tenant sublet any portion of any of the Leased Premises to any third party where such sublease causes a breach and/or violation of any applicable rule, regulation and/or law (the “Governing Authorities”), including without limitation those promulgated enforced by the Federal Aviation Administration, regardless of whether Tenant was aware that such sublease was violative of any such applicable rule, regulation or law. Additionally, should Tenant sublet any portion of the Leased Premises in violation of the Governing Authorities, said sublease shall be null and void, and Tenant shall be solely liable for any and all damages or liabilities of any kind related to such sublease, including without limitation any claim brought by the subtenant. In the event of a void sublease as set forth above, Tenant shall take all reasonable steps to remove the subject subtenant from the Leased Premises at Tenant’s sole cost and expense, including without limitation instituting an eviction and/or ejectment action to remove such subtenant from the Leased Premises. Tenant shall indemnify and hold Authority harmless from any and all expenses, claims and liabilities arising out of Tenant’s intentional or negligent violation of this **Article 22** and/or Tenant’s subleases. Tenant shall maintain with Authority a written and/or electronic list of existing subtenants occupying any of the Leased Premises and shall update said list with Authority each month no later than the 15<sup>th</sup> day of each month.

**Subsection 22.1.3.** In addition, notwithstanding anything to the contrary contained in this Agreement, provided Tenant shall give Authority written notice of the same, Authority’s

consent shall not be required in connection with an assignment of the lease or a sublet of the Property or any part thereof to any entity which is controlled by, under common control with, or which controls Tenant, or in which Tenant holds an equity interest, or any entity which acquires all or substantially all of the ownership interest in or assets of Tenant or into which Tenant is merged or consolidated. In the event Tenant assigns the Lease, Tenant shall be released from any and all liability on and after the date of such assignment.

**ARTICLE 23**  
**ENVIRONMENTAL REPRESENTATIONS, WARRANTIES, AND**  
**INDEMNIFICATION**

**SECTION 23.1. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES BY TENANT.** Tenant represents and warrants that it will comply and will be in compliance in all material respects with all applicable federal, state and local environmental laws, regulations, codes or ordinances, as it relates to the Leased Premises commencing after its occupancy thereof. The Parties recognize that Tenant's operation may involve the use of hazardous substances (as defined in the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, the Resources Conservation and Recovery Act of 1986, as amended, or any successor or similar law). Any hazardous substances used by Tenant, its assigns, subtenants, agents or contractors at the Leased Premises will be processed, discharged, stored, treated, disposed of or managed by Tenant, its assigns, subtenants, agents or contractors at the Leased Premises in accordance with all federal, state and local environmental laws, regulations, codes or ordinances.

**SECTION 23.2. ENVIRONMENTAL INDEMNIFICATION BY TENANT.** Tenant hereby agrees to indemnify, defend and hold Authority harmless from and against any and all claims, lawsuits, losses, liabilities, damages, and expenses (including without limitations cleanup costs and reasonable attorney's fees arising by reason of the aforesaid or an action against

Tenant under this indemnity) resulting directly or indirectly from, out of or by reason of (i) any hazardous waste being located on the Leased Premises which is attributed to Tenant, its officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, or subcontractors, or (ii) any breach of **Section 2301**, above, or (iii) an Environmental Complaint occurring as a result of occupancy of the Leased Premises by Tenant, its subtenants or assigns and which is determined by applicable authorities and adjudication to be the responsibility of Tenant under this Lease. “Environmental Complaint” as used in the Lease means any complaint, order, citation or notice from a governmental entity with regard to any federal, state or local environmental laws, regulations, codes or ordinances.

**SECTION 23.3. ENVIRONMENTAL REPRESENTATIONS BY AUTHORITY.** Authority represents and warrants to Tenant that no hazardous or toxic waste or substances exist on (or under) the Property, as of the Lease Commencement Date, complies with all applicable federal, state and local environmental laws, regulations, codes or ordinances. Authority represents and warrants that it will comply and will be in compliance in all material respects with all applicable environmental laws, ordinances, orders or decree of all federal, state and local environmental laws, regulations, codes or ordinances, as it relates to the Property with respect to ownership of the Property. Should hazardous substances be discovered in the Property that are not attributed to Tenant, its officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, or subcontractors, or should Authority breach its obligations under this Article, Authority shall take all actions necessary to comply with all environmental laws and shall, at Authority’s sole cost and expense, perform any required remediation necessary to remedy the condition without unreasonable interference with Tenant’s business. Authority hereby agrees, subject to and without waiving its right to assert any form of

governmental and/or sovereign immunity as to any claims made in relation to this **Article 23**, including that set forth in section 768.28, Florida Statutes, to indemnify, defend and hold Tenant harmless from and against any and all claims, lawsuits, losses, liabilities, damages, and expenses (including without limitations cleanup costs and reasonable attorney's fees arising by reason of the aforesaid or an action against Tenant or Approved Subtenant under this indemnity) resulting directly or indirectly from, out of or by reason of (i) any hazardous waste being located on (or under) the Property prior to the date of this Lease, and (ii) any hazardous waste being located on (or under) the Property which was not caused or necessitated by the actions of Tenant, its officers, directors, employees, agents, assigns, subtenants, guests, invitees, suppliers, contractors, or subcontractors.

## **ARTICLE 24 MORTGAGE INTEREST**

**SECTION 24.1. MORTGAGE INTEREST.** Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to mortgage, [encumber, lien, or otherwise grant a security interest (collectively, a "Lien") in Tenant's interest in the Leased Premises, or a direct or indirect interest in Tenant, to a federal or state savings and loan association, institutional lenders, bank or trust company, insurance company, pension fund or trust, private individuals, corporations, companies or other lenders without obtaining the prior consent of Authority, subject, however, to the other terms and conditions of this Lease. The provisions hereinafter set forth shall apply to the holder of record (the "Leasehold Mortgagee") of the [Lien]:

A. If the holder of the leasehold mortgage shall forward to Authority a copy of the recorded leasehold mortgage (or security interest) together with a written notice setting forth the name and address of the Leasehold Mortgagee, then, until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Section shall apply.

(1) When giving notice to Tenant with respect to any default under the provisions of this Lease, including but not limited to the failure of Tenant to pay rent, Authority will also serve a copy of such notice upon the Leasehold Mortgagee(s), which copy shall be sent by Authority by Certified Mail, Return Receipt Requested, to such mortgagee(s), which notice must specify the nature of each such default.

(2) The Leasehold Mortgagee, upon receipt from Authority of the notice referred to in **subparagraph (1)** above, shall have, in addition to any period of grace extended to Tenant under the terms and conditions of this Lease, a period of ninety (90) days within which to cure the default or cause the same to be cured, or to commence to cure such default and proceed diligently thereafter through completion of such cure if the default cannot be cured within the 90-day period; provided, however, that as to any default of Tenant for failure to pay rent, the Leasehold Mortgagee shall be given written notice of such default by certified mail by Authority, and the Leasehold Mortgagee shall have sixty (60) days from the date the notice of default was mailed within which to cure such default.

B. Should the Leasehold Mortgagee foreclose its leasehold mortgage, Authority agrees to recognize the Leasehold Mortgagee as Tenant under this Lease for so long as the Leasehold Mortgagee holds this Lease as a result of a foreclosure of its mortgage or as a result of the assignment of this Lease in lieu of foreclosure, or otherwise, whereupon such Leasehold Mortgagee shall immediately become and remain liable under this Lease, except as provided below without having to obtain the consent of Authority to same. In such event, the term "Tenant" as used in this section means only the owner or holder of Tenant's interest for the time being so that in the event of a sale, assignment or other disposition of Tenant's interest in this Lease by the Leasehold Mortgagee, the mortgagee shall be entirely freed and released of all covenants and

obligations of Tenant under this Lease from the time it transfers the leasehold interest to a third party.

C. References in this Lease to acquisition of Tenant's interest in this Lease by the Leasehold Mortgagee shall be deemed to refer, where circumstances require, to acquisition of Tenant's interest in this Lease by any purchaser at a sale on foreclosure of the leasehold mortgage, and all provisions applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to any such purchaser.

D. Any [Lien] shall be specifically subject and subordinate to Authority's rights in and to the Property and this Lease. However, the foregoing shall not be deemed or construed to impose or establish upon Tenant's interest in this Lease or upon the Lien the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against Authority. Any fee mortgage shall be subject and subordinate to, and shall not attach to: (1) Tenant's interest this Lease or the Leased Premises; (2) any estate (including a subleasehold and a Leasehold Mortgagee estate) directly or indirectly arising from this Lease or any New Lease (so long as this Lease or such New Lease has not been terminated in accordance with its terms); (3) Tenant's (or any tenant under a New Lease) and any Leasehold Mortgagee's rights and remedies under this Lease; and (4) any rights of a Leasehold Mortgagee with respect to the Leased Premises to a New Lease. Any fee mortgagee, and, in the event of a foreclosure pertaining to a fee mortgage, the grantee or successful bidder at the foreclosure sale, shall succeed only to the fee estate. Notwithstanding the foregoing or anything to the contrary in this Lease, it is agreed that: (i) any Leasehold Mortgage shall only attach to the Leasehold Estate; (ii) any fee mortgage shall only attach to the Fee Estate (including any reversionary interest in any Tenant Improvements thereon); (iii) under no circumstances shall any

foreclosure of a Leasehold Mortgage impair any estate or right of Landlord or any fee mortgagee under any fee mortgage or result in any transfer or conveyance of any interest in the Premises other than the Leasehold Estate; and (iv) under no circumstances shall any foreclosure of any fee mortgage impair any estate or right of Tenant under this Lease or result in any transfer or conveyance of any interest in the Leased Premises other than Landlord's Fee Estate.]

E. In the event of any conflict or inconsistency between the terms of this Article and any other provision of this Lease, the terms of this Article shall control.

F. Landlord and Tenant agree to provide by separate agreement or by amendment of this Lease from time to time, such Leasehold Mortgagee [and Mezzanine Lender] protections as may be reasonable and customary in respect of long-term leases in Florida.

G. Within ten (10) days after written request by Tenant or Tenant's Leasehold Mortgagee, or in the event that upon any sale, assignment or mortgage of Tenant's interest in this Lease by Tenant or Tenant's Leasehold Mortgagee, an estoppel certificate shall be required from Authority, Authority agrees to deliver in recordable form an estoppel certificate to any proposed Leasehold Mortgagee, purchaser or assignee, or to Tenant certifying (if such be the case): (i) the amount of rental and additional rental due under the Lease, if any, and the date to which rentals have been paid; (ii) that this Lease is in full force and effect; (iii) that Authority has no knowledge of any default under this Lease or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which may be asserted by Authority against Tenant in respect of obligations pursuant to this Lease or if defenses or offsets exist specifying the nature of such offsets or defenses.

H. Authority agrees that the Leasehold Mortgagee need not pay or otherwise satisfy any claim, the lien of which would be extinguished upon the conclusion of foreclosure



proceedings brought by the Leasehold Mortgagee, nor shall Leasehold Mortgagee be required to cure any default relating to the insolvency, financial condition or bankruptcy of Tenant, nor shall Authority be entitled to terminate this Lease, accelerate the rent or exercise any other remedy under this Lease for any reason including as a consequence of Tenant's refusal, inability or failure to assume and affirm this Lease as an asset of Tenant's bankruptcy estate so long as, within ninety (90) days following the Leasehold Mortgagee's acquisition of title to the leasehold interest following a foreclosure of the Leasehold Mortgagee's mortgage on said interest, or through a Deed in Lieu of Foreclosure, the Leasehold Mortgagee commences to cure defaults required to be cured by it under the language above in this paragraph and thereafter diligently prosecutes the same, and any notice of termination theretofore given shall be void and of no force and effect. Authority further acknowledges and agrees that if, during the course of a bankruptcy proceeding involving Tenant as debtor, Tenant rejects or otherwise fails to assume and affirm this Lease as an asset of Tenant's bankruptcy estate, this Lease shall not terminate and the Leasehold Mortgagee may, within ninety (90) days of receipt of written notice from Authority of such rejection or other failure to assume this Lease and the irreversible release of such leasehold estate from Tenant's bankruptcy estate, assume this Lease by effecting a cure of the defaults required to be cured by the Leasehold Mortgagee under the language above in this paragraph and thereafter preserve the same. Authority further agrees that in the event the Leasehold Mortgagee forecloses its leasehold interest in the property or assigns Tenant's leasehold interest to a third party, Authority will not terminate the Lease solely on account of any event of default relating to the insolvency, financial condition or bankruptcy of Tenant, including, without limitation, Tenant's refusal, inability or failure to assume and affirm the Lease as an asset of Tenant's bankruptcy estate, in which event, Authority shall recognize the Leasehold Mortgagee as Tenant under the Lease. Authority further agrees that the

Leasehold Mortgagee may, pending foreclosure of its mortgage, take possession of the Leased Premises by and through its representative or receiver, as the Leasehold Mortgagee may elect and, provided it does so in accordance with the terms and provisions of the Lease, administer the Leased Premises as if it were Tenant thereunder.

I. If Tenant, or any trustee of Tenant, shall reject the Lease pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 101, et seq (the "Bankruptcy Code"), (i) Tenant shall without further act or deed be deemed to have elected under Section 365(h) (1) of the Bankruptcy Code to remain in possession of the Leased Premises for the balance of the Term of the Lease, (ii) any exercise or attempted exercise by Tenant of a right to treat the Lease as terminated under Section 365(h)(1) of the Bankruptcy Code shall be void and (iii) neither the Mortgage nor any other aspect of the Loan shall be affected or impaired by rejection of the Lease. (For the purposes of Section 365(h) of the Bankruptcy Code, the term "possession" shall mean the right to possession of the Leased Premises granted to Tenant under the Lease notwithstanding that all or part of such Leased Premises shall have been subleased.)

J. If, notwithstanding the provisions of **subparagraph (J)** above, the Leasehold Mortgagee reasonably determines that a new lease will be necessary to give legal or practical effect to the unimpaired or unaffected continuation of the leasehold mortgage, Authority will negotiate with the Leasehold Mortgagee and attempt to agree upon and enter into a new lease ("New Lease") of the Leased Premises. In the event of termination of the Lease as a result of Tenant's default, or otherwise, without the prior written consent of Leasehold Mortgagee, Authority shall, in addition to providing the notices of default and termination as required by **subparagraph (C)** above, provide the Leasehold Mortgagee with written notice that the Lease has been terminated together with a statement of all sums which would at the time be due under the Lease, but for such termination,

and of all other defaults, if any, then known to Authority (“Notice of Delinquency”). Authority agrees to negotiate and, if accord is reached, enter into a New Lease of the Leased Premises with the Leasehold Mortgagee or its designee for the remainder of the term of the Lease effective, as of the date of termination, at the rent and additional rent, and upon the terms, covenants and conditions (including all options to renew but excluding requirements which are not applicable or which have already been fulfilled) of the Lease, provided:

(1) Leasehold Mortgagee shall make written request upon Authority for such New Lease within sixty (60) days after the date Leasehold Mortgagee receives Authority's Notice of Delinquency;

(2) Leasehold Mortgagee or its designee shall pay or cause to be paid to Authority at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to the Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney fees, which Authority shall have incurred by reason of termination and the execution and delivery of the New Lease and which have not otherwise been received by Authority from Tenant or other parties in interest under Tenant;

(3) Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which Leasehold Mortgagee was notified by Authority's Notice of Delinquency and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee;

(4) any New Lease made pursuant to this subparagraph shall be prior to any mortgage or other lien, charge, or encumbrance on the fee of the Leased Premises and Tenant under such New Lease shall have the same right, title and interest in and to the Leased Premises and the buildings and improvements thereon as Tenant had under the Lease;

(5) Tenant under any such New Lease shall be liable to perform the obligations imposed on Tenant by such New Lease only during the period such person has ownership of such leasehold estate.

K. In the event the Leasehold Mortgagee becomes the legal owner and holder of the leasehold estate under the Lease by foreclosure of its leasehold mortgage, or as a result of an assignment of the Lease in lieu of foreclosure (which assignment is hereby consented to by Authority), or in the event Leasehold Mortgagee is granted a New Lease pursuant to **subparagraph L** above, Authority hereby agrees that upon receipt of a written application for consent to the assignment of Lease from either Tenant or Leasehold Mortgagee to a new lessee to whom Leasehold Mortgagee desires to transfer its interest, Authority will execute a written consent to such assignment provided there is no outstanding default with respect to the payment of rental under the Lease. Authority further agrees that, upon becoming the owner and holder of the leasehold estate, Leasehold Mortgagee shall have all rights and privileges of Tenant. Further, Authority agrees that upon acquisition of the leasehold estate by Leasehold Mortgagee, or its assigns, any default which is not reasonably capable of being cured by Leasehold Mortgagee, or which is personal to Leasehold Mortgagee, shall not be required to be cured by Leasehold Mortgagee or its assigns.

L. In the event that Leasehold Mortgagee shall acquire the interest of Tenant under the Lease and, in accordance with the foregoing subparagraph, assign such interest to a successor lessee, upon such assignment Leasehold Mortgagee shall thereupon be relieved of any further liability under the Lease.

M. To the extent required pursuant to the provisions of any mortgage encumbering the Leased Premises or the leasehold created hereunder, this Lease may not be amended without prior written consent of Leasehold Mortgagee.

N. Authority and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by a proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in the Lease and allowing such mortgagee reasonable means to protect or preserve the lien of the leasehold on the occurrence of a default under the terms of this Lease. Authority and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to affect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Authority under this Lease.

**SECTION 24.2. ALTERNATIVE FINANCING.** Notwithstanding any provision of this Lease to the contrary, the Tenant or its subtenant(s) may obtain private financing, opportunity zone funding, or other forms of funding and Authority agrees to reasonably accommodate any additional notice or appropriate agreements to facilitate such funding agreements so long as such agreement shall not in any way affect the term or rent under this Lease, nor otherwise in any material respect adversely affect any rights of Authority under this Lease or cause Authority to incur any costs or expenses. Further, Authority shall negotiate and agree to reasonable amendments to the Lease consistent with the purpose and intent set out herein to facilitate the financing.

## **ARTICLE 25**

### **ATTORNEYS' FEES**

If any legal action or other proceeding is commenced in relation to this Lease or any documents incidental thereto and/or the Leased Premises, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such action or proceeding from the non-prevailing party, including all reasonable attorneys' fees and costs incurred on appeal, in litigating entitlement to and/or amount of attorneys' fees and costs to be awarded and in connection with the prevailing party's efforts to collect on any judgment. The phrase "prevailing party" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. The provisions of this section shall survive the termination of this Lease.

## **ARTICLE 26**

### **OTHER PROVISIONS**

**SECTION 26.1. REASONABLENESS AND GOOD FAITH.** Except to the extent expressly set forth or limited in this Lease otherwise, whenever this Lease grants the Authority or Tenant the right to take action, exercise discretion, establish rules and regulations, make allocations, or other determinations, or otherwise exercise rights or fulfill obligations, the Authority and Tenant shall act reasonably and in good faith and take no action that might result in the frustration of the reasonable expectations of a sophisticated Authority and sophisticated tenant concerning the benefits to be enjoyed under this Lease.

**SECTION 26.2. FORCE MAJEURE.** Except as provided below, any prevention, delay or stoppage attributable to strikes, lockouts, labor disputes, hurricanes, floods, earthquakes, tornadoes, or other natural disasters, acts of God, civil commotion, terrorism, war or national emergency, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, the "Force Majeure") will excuse the performance of that party

for a period equal to the duration of the prevention, delay or stoppage. If, therefore, this Lease specifies a time period for performance of an obligation of either party, a delay that a Force Majeure causes will extend the period, day-for-day, within which the party must complete its performance.

**SECTION 26.3. HEADINGS.** Any headings preceding the text of any articles, paragraphs or sections of this Lease shall be solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

**SECTION 26.4. BINDING EFFECT.** The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

**SECTION 26.5. FEDERAL SUBORDINATION.** This Lease shall be subordinate to the provisions of any existing agreements between the Authority and the United States of America that have been provided to the Tenant relative to the operation and 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.

**SECTION 26.6. RIGHTS RESERVED.** Rights not specifically granted the Tenant by this Lease are reserved to the Authority.

**SECTION 26.7. NO WAIVER.** There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms and covenants of this Lease nor shall there be any waiver of any breach, default or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and

covenants of this Lease with respect to any subsequent event or occurrence of any subsequent breach, default or nonperformance hereof by the other party.

**SECTION 26.8. SEVERABILITY.** If any provision of this Lease or the application thereof to either party to this Lease is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Lease which can be given effect without the invalid provision, and to this end, the provisions of this Lease are severable.

**SECTION 26.9. PAYMENT OF TAXES.** If applicable, Tenant shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Leased Premises and its interest in the Tenant Improvements, other improvements and its operations under this Lease; provided, however, Tenant shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes or amounts, if and only if such legal proceedings stay Tenant's obligations to pay such taxes pending the case outcome. Failure to pay the taxes, if any, determined by the court of applicable authorities upon the final unappealable conclusion of such legal proceedings against Tenant and the continuation of that failure for more than the applicable grace period established in **Article 6** shall constitute a default.

**SECTION 26.10. INTERPRETATION OF LEASE.** This Lease is the result of negotiation between the Parties hereto and has been typed/printed by one party for the convenience of both Parties, and the Parties covenant that this Lease shall not be construed in favor of or against any of the Parties hereto or against the "drafter" hereof.

**SECTION 26.11. NO AGENCY.** Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the Parties hereto.



It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the Parties hereto creates a relationship other than the relationship of Authority and tenant.

**SECTION 26.12. RIGHTS NON-EXCLUSIVE.** Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Lease, except in the Leased Premises and Tenant Improvements and as to Tenant's rights under **Article 24**, are "nonexclusive," and the Authority reserves the right to grant similar privileges to other persons, firms or corporations.

**SECTION 26.13. JURISDICTION AND VENUE.** The Parties acknowledge that a substantial portion of negotiation, anticipated performance and execution of this Lease occurred or shall occur in Brevard City, Florida, and that, therefore, each of the Parties: (a) agrees that this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Florida without regard to its conflict of law provisions; (b) agrees that any suit, action or legal proceeding arising out of or relating to this Lease shall be brought exclusively in the courts of record of the State of Florida in Brevard County, Florida; or in the federal courts in the Middle District of Florida, (c) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (d) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any such courts.

**SECTION 26.14. ENTIRETY OF AGREEMENT.** The Parties hereto 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 as may be specifically authorized herein or by written instrument executed by the Parties hereto.

**SECTION 26.15. JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDINGS, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS LEASE, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, TRIAL SHALL BE TO A COURT AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EITHER PARTY MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS LEASE WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

## **ARTICLE 27 REQUIRED FEDERAL PROVISIONS**

**SECTION 27.1. ADDITIONAL CIVIL RIGHTS PROVISION.** Tenant 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 Tenant transfers its obligation to another, the transferee is obligated in the same manner as Tenant. This provision obligates Tenant for the period during which the property is used and/or possessed by Tenant 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.

**SECTION 27.2. REQUIRED CLAUSE FOR TRANSFER OF REAL PROPERTY.** The following clauses will be included in deeds, licenses, permits, or similar

instruments/agreements entered into by Authority pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The Tenant for itself, its successors in interest and its assigns, as a part of the consideration for this Lease, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease 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 Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination 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..

B. With respect to this Lease, in the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the Lease and to enter, re-enter, and repossess said Property and the facilities thereon, including without limitation the Tenant Improvements, and hold the same as if the Lease had never been made or issued.

**SECTION 27.3. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES.** During the performance of this Lease, Tenant, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities:

- 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); and
- 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).

## **ARTICLE 28 FLORIDA SPECIFIC PROVISIONS**

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR CITYPUBLIC HEALTH UNIT. [NOTE: THIS PARAGRAPH IS PROVIDED FOR INFORMATIONAL PURPOSES PURSUANT TO SECTION 404.056(8), FLORIDA STATUTES, (1988).]

**ARTICLE 29  
FOREIGN TRADE ZONE**

It is acknowledged that the Airport is currently designated as a part of Foreign Trade Zone 136 ("FTZ"). Authority agrees that, at the request of Tenant, it shall take such actions as may be necessary to bring certain portions of Tenant's business within the FTZ.

**ARTICLE 30  
BOND FINANCING**

If Tenant elects to seek financing for the Tenant Improvements through the issuance of Industrial Revenue Bonds or other taxable or tax-exempt bonds or notes ("Bonds"), the Authority agrees to fully support Tenant in its effort and assist to obtain financing for the project as long as the Authority is not obligated as to such Bonds and is not required to incur expenses related thereto. Further, if the issuance of Bonds for the project or any portion thereof requires it, Authority shall negotiate and agree to reasonable amendments to the Lease consistent with the purpose and intent set out herein to facilitate the issuance and sale of such Bonds.

[SIGNATURES ON NEXT PAGE]

SIGNATURES

IN WITNESS WHEREOF the Parties hereto have set their hands and seals the date and year first above written.

Signed, Sealed and Delivered  
in the presence of:

AUTHORITY:  
TITUSVILLE-COCOA AIRPORT AUTHORITY

Witness

By:  
Kevin Daugherty, AAE  
Director of Airports

Attest:

Witness

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
(corporate seal)

TENANT:  
ALLIANCE CAPITAL MANAGEMENT GROUP,  
LLC

Witness

By:  
Bruno Duarte, Manager

Printed Title: \_\_\_\_\_

Witness

Attest:  
(corporate seal)

## EXHIBIT A

### DESCRIPTION OF PROPERTY

217,000 square feet (MOL) of unimproved property located at the terminus of Center Lane. The aeronautical property will be developed for two 25,000 square foot corporate hangars and associated infrastructure improvements.



EXHIBIT B-1

TENANT'S SITE PLAN

EXHIBIT C

RENT COMMENCEMENT CERTIFICATE

The TITUSVILLE-COCOA AIRPORT AUTHORITY and ALLIANCE CAPITAL MANAGEMENT GROUP, LLC hereby agree to the delivery and acceptance of the Property, and that May 16, 2023, shall be the "Rent Commencement Date".

**EXECUTED BY THE AUTHORITY**, this 17 day of November 2022.

TITUSVILLE-COCOA AIRPORT AUTHORITY

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Kevin Daugherty, AAE  
Director of Airports

\_\_\_\_\_  
Witness

**EXECUTED BY TENANT**, this 17 day of November, 2022.

TENANT

\_\_\_\_\_  
Witness

By:  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

Printed Title: \_\_\_\_\_

## EXHIBIT D

### RULES AND REGULATIONS AND MINIMUM STANDARDS









September 30, 2022

Mr. Kevin Daugherty, AAE  
Director of Airports  
Titusville-Cocoa Airport Authority  
355 Golden Knights Blvd.  
Titusville, FL 32780  
Via email: [kdaugherty@flyspacecoast.org](mailto:kdaugherty@flyspacecoast.org)

Subject: **Merritt Island Airport – Corporate Hangar**  
**Bid Tabulation, Evaluation, and Recommendation of Award - Transmitted Via Email**

Dear Mr. Daugherty:

Michael Baker International (Michael Baker) has reviewed the bids submitted on September 20, 2022 at 2:00 pm for the subject project. A total of two bids were received and evaluated. A copy of the Bid Tabulation is attached. **C & D Construction, Inc.** is the apparent low bidder with a Total Bid of \$888,016.00. The bid amounts for both bidders and the Engineer's Estimate are as follows:

	Bid Schedule A	Bid Schedule B	Total Bid
Engineer's Estimate			\$694,970.00
C & D Construction, Inc	\$484,491.00	\$403,525.00	\$888,016.00
Carr & Collier Inc	\$944,500.00	\$746,500.00	\$1,691,000.00

We have reviewed the bid proposals submitted. The bid prices appear high at 27.8% and 143.3% higher than the most recent Engineer's Estimate. Receiving only two bids on the project limits the amount of information we can gather about current market conditions. Rebid of this project was done under the mutual belief that the original bids received on August 10, 2022, were too high, however, given how close the low bidder is to those original bids, it appears that the low bid more accurately reflects current market conditions. It was noted, in general, that the unit prices for most Pay Items were higher than the Engineer's Estimate. Given the recent Hurricane Ian storm event, one can expect construction pricing and availability of materials to be further stressed and will increase in the future.

Of the bids received, Michael Baker recommends the project be awarded to C & D Construction. Due to the limited availability of funds for the project and various funding sources (FDOT and Private Tenant), Bid Schedule A, Bid Schedule A and B, or Bid Schedule A and a portion of Bid Schedule B may be awarded. This recommendation is contingent upon review by the Airport Authority, consultation with the tenant, Airport Authority Board approval, and the availability of funds.

If you have any questions or if we can be of further assistance, please do not hesitate to contact us.

Sincerely,



Greg Kern  
Michael Baker International

**BID TABULATION**

**Baker Project Number:** 179595  
**FDOT FPN:** 438461-1-94-01  
**Date:** 9/20/2022

BID SCHEDULE A					C&D CONSTRUCTION, INC.		CARR & COLLIER, INC.		AVERAGE	
ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	02000-1.3	Construction Layout and Topographic As-Built Survey	1	LS	\$5,500.00	\$5,500.00	\$6,000.00	\$6,000.00	\$5,750.00	\$5,750.00
2	01030-3.3	Maintenance of Air Traffic Operations	1	LS	\$5,000.00	\$5,000.00	\$14,000.00	\$14,000.00	\$9,500.00	\$9,500.00
3	C-100-1	Contractor Quality Control Program (CQCP)	1	LS	\$5,000.00	\$5,000.00	\$9,000.00	\$9,000.00	\$7,000.00	\$7,000.00
4	C-102-1	Temporary Erosion Prevention and Sediment Control	1	LS	\$1,300.00	\$1,300.00	\$6,000.00	\$6,000.00	\$3,650.00	\$3,650.00
5	C-105-1	Mobilization	1	LS	\$20,000.00	\$20,000.00	\$148,720.00	\$148,720.00	\$84,360.00	\$84,360.00
6	C-170-1	Electrical	1	LS	\$17,000.00	\$17,000.00	\$40,000.00	\$40,000.00	\$28,500.00	\$28,500.00
7	C-170-1	Plumbing	1	LS	\$5,000.00	\$5,000.00	\$500.00	\$500.00	\$2,750.00	\$2,750.00
8	C-170-2	Sanitary Sewer System	1	LS	\$105,000.00	\$105,000.00	\$120,000.00	\$120,000.00	\$112,500.00	\$112,500.00
9	C-170-3	Water Service	1	LS	\$35,000.00	\$35,000.00	\$54,000.00	\$54,000.00	\$44,500.00	\$44,500.00
10	C-170-4	Landscape	1	LS	\$11,000.00	\$11,000.00	\$95,000.00	\$95,000.00	\$53,000.00	\$53,000.00
11	C-170-5	Site Communications	1	LS	\$0.00	\$0.00	\$18,000.00	\$18,000.00	\$9,000.00	\$9,000.00
12	C-180-1	Unforeseen Conditions No. 1	1	ALL	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00
13	C-180-2	Utility Permitting and Fees No. 2	1	ALL	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
14	P-101-5.1	Pavement Removal	1	LS	\$4,000.00	\$4,000.00	\$12,000.00	\$12,000.00	\$8,000.00	\$8,000.00
15	P-151-4.2	Clearing and Grubbing	1	LS	\$6,000.00	\$6,000.00	\$23,000.00	\$23,000.00	\$14,500.00	\$14,500.00
16	P-152-4.1	Unclassified Excavation and Muck Excavation	370	CY	\$2.00	\$740.00	\$30.00	\$11,100.00	\$16.00	\$5,920.00
17	P-152-4.2	Embankment	360	CY	\$6.00	\$2,160.00	\$25.00	\$9,000.00	\$15.50	\$5,580.00
18	P-152-4.3	Subgrade Preparation	1,100	SY	\$16.00	\$17,600.00	\$22.00	\$24,200.00	\$19.00	\$20,900.00
19	P-211-5.1	Lime Rock Base Course (6-Inch Depth)	1,200	SY	\$27.00	\$32,400.00	\$30.00	\$36,000.00	\$28.50	\$34,200.00

BID SCHEDULE A					C&D CONSTRUCTION, INC.		CARR & COLLIER, INC.		AVERAGE	
ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
20	P-401-1	Bituminous Surface Course	250	TON	\$184.00	\$46,000.00	\$385.00	\$96,250.00	\$284.50	\$71,125.00
21	P-610	Concrete	110	SY	\$90.00	\$9,900.00	\$165.00	\$18,150.00	\$127.50	\$14,025.00
22	P-620-1	Yellow Reflective Pavement Markings	1	LS	\$1,100.00	\$1,100.00	\$1,500.00	\$1,500.00	\$1,300.00	\$1,300.00
23	P-620-2	Black Non-Reflective Pavement Markings	1	LS	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
24	D-701-1	Reinforced Concrete Pipe, 15"	30	LF	\$350.00	\$10,500.00	\$150.00	\$4,500.00	\$250.00	\$7,500.00
25	D-701-2	Reinforced Concrete Pipe, 18"	20	LF	\$500.00	\$10,000.00	\$200.00	\$4,000.00	\$350.00	\$7,000.00
26	D-701-3	Underdrain system Pipe, 4"	60	LF	\$100.00	\$6,000.00	\$200.00	\$12,000.00	\$150.00	\$9,000.00
27	D-752-5.1	Slot Drain System	1	LS	\$13,000.00	\$13,000.00	\$40,000.00	\$40,000.00	\$26,500.00	\$26,500.00
28	D-752-5.2	Rain Leader System	1	LS	\$3,000.00	\$3,000.00	\$7,000.00	\$7,000.00	\$5,000.00	\$5,000.00
29	D-752-5.3	Control Structure	1	LS	\$11,000.00	\$11,000.00	\$15,000.00	\$15,000.00	\$13,000.00	\$13,000.00
30	D-752-5.4	Storm Manhole	1	LS	\$10,000.00	\$10,000.00	\$8,000.00	\$8,000.00	\$9,000.00	\$9,000.00
31	D-752-5.5	Removal of Existing Drainage and Disposal	1	LS	\$2,000.00	\$2,000.00	\$4,000.00	\$4,000.00	\$3,000.00	\$3,000.00
32	D-752-5.6	Relocate Existing Drainage Structure	1	LS	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
33	T-901-5.1	Seeding	940	SY	\$1.65	\$1,551.00	\$2.00	\$1,880.00	\$1.83	\$1,715.50
34	T-904-1	Sodding, Argentine Bahia & Topsoiling	740	SY	\$6.00	\$4,440.00	\$20.00	\$14,800.00	\$13.00	\$9,620.00
35	F-162-1	Temporary Chain-Link Fence and Gate, 7-ft High	1	LS	\$5,000.00	\$5,000.00	\$11,000.00	\$11,000.00	\$8,000.00	\$8,000.00
36	F-162-2	Permanent Chain-Link Fence and Gate, 7-ft High, 3 Strands Barbed Wire	1	LS	\$14,000.00	\$14,000.00	\$15,000.00	\$15,000.00	\$14,500.00	\$14,500.00
37	FDOT	Site Signs (1 Stop and 1 Handicap)	2	EA	\$400.00	\$800.00	\$700.00	\$1,400.00	\$550.00	\$1,100.00
38	FDOT-710	Parking Lot Pavement Marking	1	LS	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
BID SCHEDULE A TOTAL:					\$484,491.00		\$944,500.00		\$714,495.50	



BID SCHEDULE B					C&D		CARR-N-COLLIER		AVERAGE	
ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	02000-1.3	Construction Layout and Topographic As-Built Survey	1	LS	\$5,500.00	\$5,500.00	\$5,000.00	\$5,000.00	\$5,250.00	\$5,250.00
2	C-100-1	Contractor Quality Control Program (CQCP)	1	LS	\$5,000.00	\$5,000.00	\$1,000.00	\$1,000.00	\$3,000.00	\$3,000.00
3	C-102-1	Temporary Erosion Prevention and Sediment Control	1	LS	\$5,500.00	\$5,500.00	\$1,000.00	\$1,000.00	\$3,250.00	\$3,250.00
4	C-105-1	Mobilization	1	LS	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
5	C-170-1	All required labor and materials to erect pre-fabricated metal building (supplied by the owner - 60'x60') as specified on plans and specifications - ALL COMPLETE	1	LS	\$160,000.00	\$160,000.00	\$375,000.00	\$375,000.00	\$267,500.00	\$267,500.00
6	C-170-1	Building Preparation	1	LS	\$12,000.00	\$12,000.00	\$11,000.00	\$11,000.00	\$11,500.00	\$11,500.00
7	C-170-1	Building Finishes	1	LS	\$52,000.00	\$52,000.00	\$67,000.00	\$67,000.00	\$59,500.00	\$59,500.00
8	C-170-1	Electrical	1	LS	\$77,000.00	\$77,000.00	\$72,000.00	\$72,000.00	\$74,500.00	\$74,500.00
9	C-170-1	Plumbing	1	LS	\$20,000.00	\$20,000.00	\$74,000.00	\$74,000.00	\$47,000.00	\$47,000.00
10	C-170-1	Fire Sprinkler Design, permit and install + (1)FDC	1	LS	\$18,500.00	\$18,500.00	\$87,000.00	\$87,000.00	\$52,750.00	\$52,750.00
11	C-170-6	Yard Drain System	1	LS	\$11,000.00	\$11,000.00	\$17,000.00	\$17,000.00	\$14,000.00	\$14,000.00
12	C-180-3	Building Permitting Fee No. 3	1	ALL	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
13	C-180-4	Hangar Foundation/Slab Engineering	1	ALL	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
13	T-904-1	Sodding, Argentine Bahia & Topsoiling	75	SY	\$27.00	\$2,025.00	\$20.00	\$1,500.00	\$23.50	\$1,762.50
BID SCHEDULE B TOTAL					\$403,525.00		\$746,500.00		\$575,012.50	
BID SCHEDULES A & B TOTAL					\$888,016.00		\$1,691,000.00		\$1,289,508.00	

\*Yellow highlight indicates mathematical error.



The following invoices are presented to the Board for approval at the Regular Board Meeting being held November 17, 2022:

**Arthur Dunn Airport**

**X21 – AWOS Replacement, Design, Bidding and Construction Services**

AVCON, Inc. – Pay App #5 – (8/1/2022 – 8/31/2022) - **\$1,772.92**

AVCON, Inc. - Pay App #6 – (9/1/2022 – 9/30/2022) - **\$3,707.03**

**Space Coast Regional Airport**

**TIX – Design & Construction VAC Taxi Lane & Apron**

Request #7 – Carr & Collier, Inc. – (10/1/2022 – 10/31/2022) - **\$434,516.81**

**TIX – Fuel Farm Relocation**

AVCON, Inc.- Pay App #7 – (9/1/2022 – 9/30/2022) - **\$15,371.13**

**TIX – ATCT Design & Bidding**

AVCON, Inc. - Pay App #6 – (9/1/22 – 9/30/22) - **\$13,980.71**

**Merritt Island Airport**

**COI – AWOS Replacement, Design, Bidding and Construction Services**

AVCON, Inc. – Pay App #4 - (6/1/2022 – 7/31/2022) - **\$1,689.40**

AVCON, Inc. – Pay App #6 – (9/1/2022 – 9/30/2022) – **\$5,490.55**

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**John Craig, Chairman**

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**Roger Molitor, Secretary**

# Airport Project Updates

## Legacy Projects

- TIX RWY 09/27 Rehab
- TIX Hangar 52 Demo
- TIX VAC Apron
- COI Corporate Hangar
- COI EA for Hangar Development
- COI NASI

# PROJECT: RUNWAY 9-27 REHAB – SPACE COAST REGIONAL AIRPORT

BUDGET: \$3.8M (\$0 Local Match)

CURRENT STATUS: **Awaiting City of Titusville drainage permit, negotiating project with contractor.**

SCHEDULE: 10 MONTHS OF CONSTRUCTION PLUS 1 MONTH OF CLOSEOUT



# PROJECT: HANGAR 52 DEMO – SPACE COAST REGIONAL AIRPORT

BUDGET: \$320K (\$64K LOCAL MATCH)

CURRENT STATUS: **Awaiting closeout documents from contractor.**

SCHEDULE: 1 MONTH CONSTRUCTION AND 1 MONTH CLOSEOUT





# PROJECT: TCAA/VAC APRON AND TAXILANE – SPACE COAST REGIONAL AIRPORT

BUDGET: \$1.62M (\$0 LOCAL MATCH)

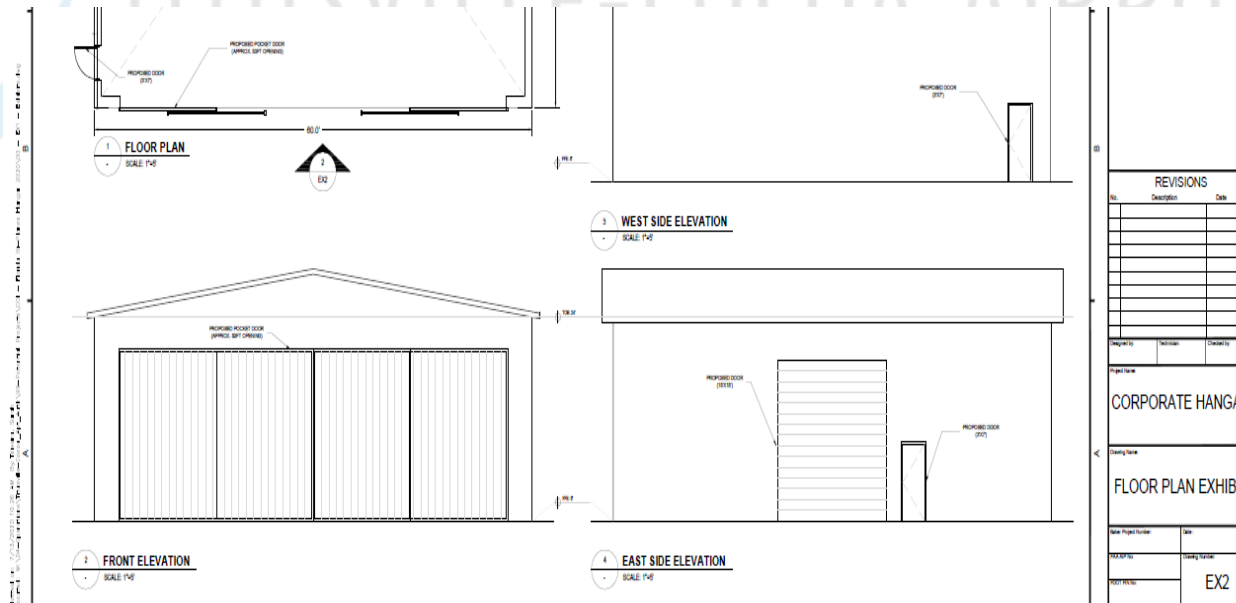
CURRENT STATUS: Substantially complete, final markings and then closeout paperwork.

SCHEDULE: 8 MONTHS OF CONSTRUCTION PLUS 1 MONTH OF CLOSEOUT



**BUDGET: \$700K (\$0 LOCAL MATCH)**

**SCHEDULE: 7 MONTHS OF CONSTRUCTION PLUS 1 MONTH OF CLOSEOUT**



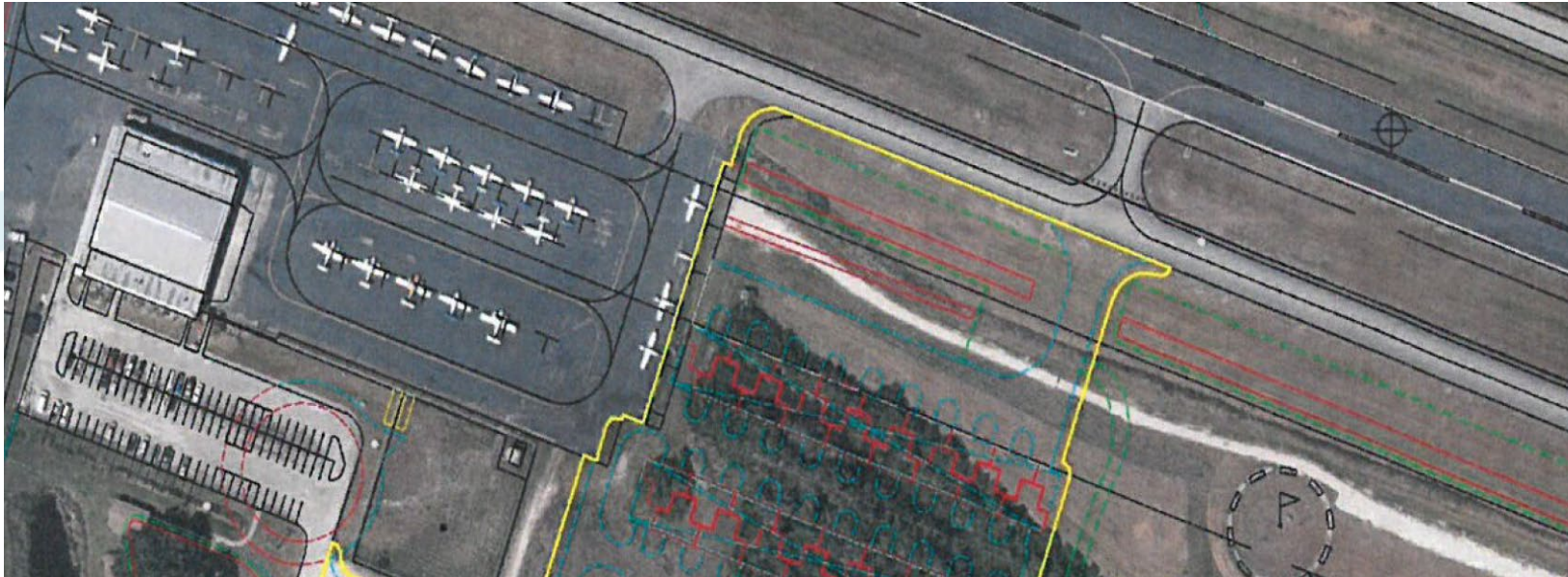


# PROJECT: EA FOR T-HANGAR DEVELOPMENT – MERRITT ISLAND AIRPORT

BUDGET: \$269K (\$0 LOCAL MATCH)

CURRENT STATUS: PROJECT STARTED; EXPECTED COMPLETION IN LATE 2023; ON-GOING; FAA REQUIRING NOISE STUDY BUT NO ALP UPDATE; **Expected completion late 2023; revising alternatives to reflect adjacent private hangar development.**

SCHEDULE: 12 MONTHS IS BASED ON PUBLIC MEETINGS AND NOTICES REQUIRED BY THE FAA





# PROJECT: NORTH AREA SECURITY AND INFRASTRUCTURE – MERRITT ISLAND AIRPORT

BUDGET: \$949K (\$189,800 LOCAL MATCH)

CURRENT STATUS: **Delays from Hurricane Nicole, started dewatering 11/14/22.**

SCHEDULE: 5 MONTHS OF CONSTRUCTION PLUS 1 MONTH OF CLOSEOUT



# Airport Project Updates

## New Projects

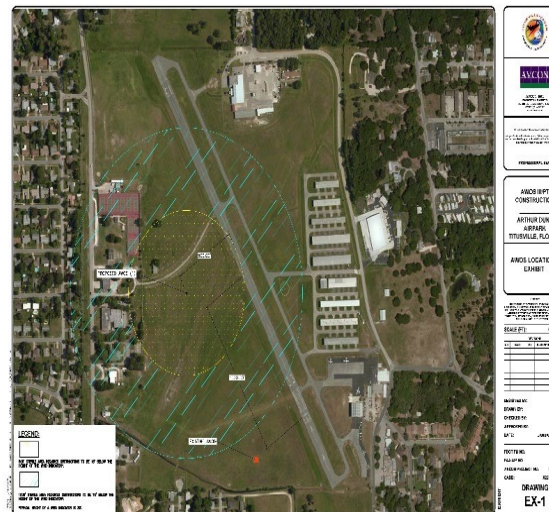
- X21 AWOS
- COI AWOS
- TIX ATCT Siting Study
- TIX Fuel Farm Relocation
- Challenger Drive Extension

# **PROJECT:** Automated Weather Observation System (AWOS) Replacement – Arthur Dunn Airpark

**BUDGET:** \$365,000 (80/20 FDOT Grant)

**CURRENT STATUS:** Pre-bid meeting 11/16/22.

**SCHEDULE:** Design will commence once the location is determined. Design and bidding is anticipated to take 90 days. Construction will commence upon award of bid. Equipment procurement is taking 6+ months from date of purchase.



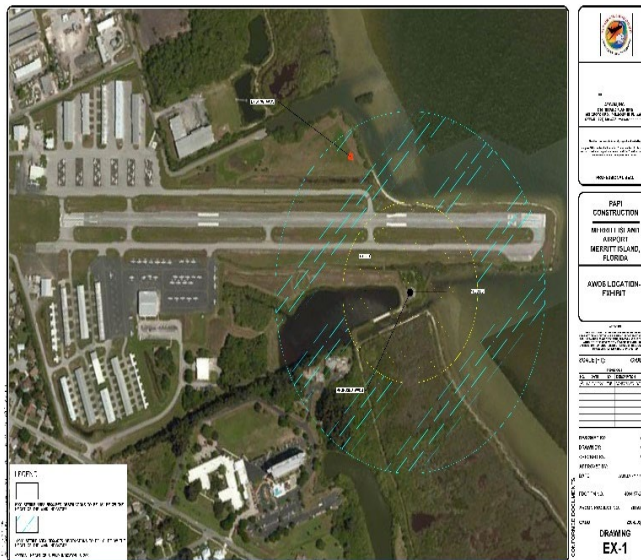


# **PROJECT:** Automated Weather Observation System (AWOS) Replacement – Merritt Island Airport

**BUDGET:** \$500,000 (80/20 FDOT Grant)

**CURRENT STATUS:** Pre-bid meeting 11/16/22.

**SCHEDULE:** Design will commence once the location is determined. Design and bidding is anticipated to take 90 days. Environmental permitting on the alternative site might take an additional 120 days. Construction will commence upon award of bid. Equipment procurement is taking 6+ months from date of purchase.



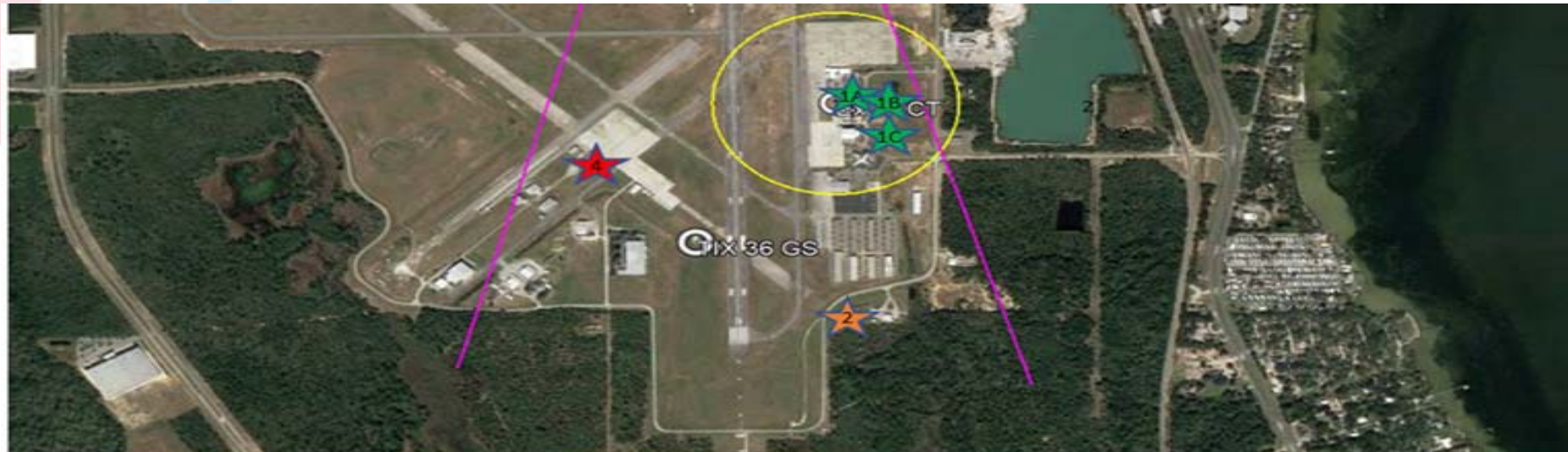
**PROJECT:** Design of the Replacement Airport Traffic Control Tower – Space Coast Regional Airport

**BUDGET:** \$960,000 (80/20 FDOT Grant)

**CURRENT STATUS:** Design is underway, applied for BIL grant.

**SCHEDULE:** 12 months

FLY SPACE COAST  
TITUSVILLE-COCOA AIRPORT AUTHORITY

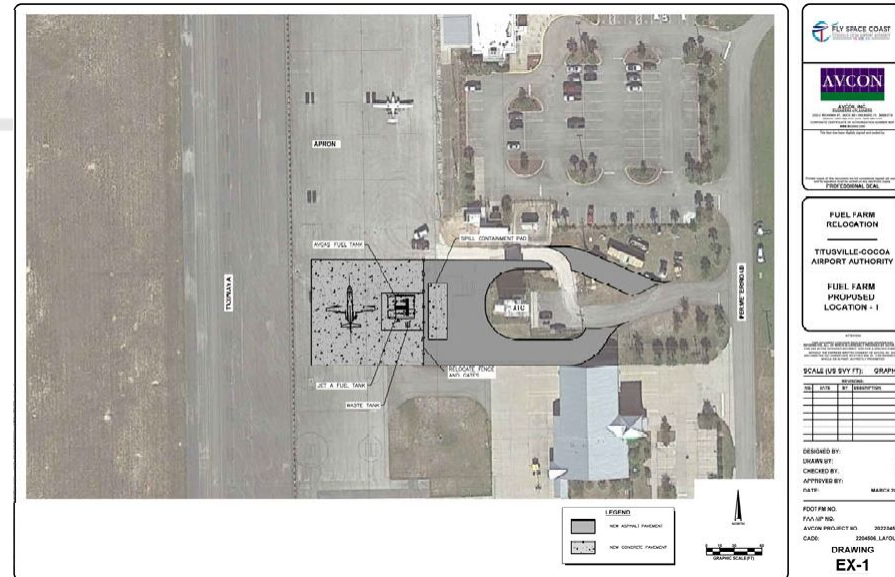


# PROJECT: Fuel Farm Relocation – Space Coast Regional Airport

**BUDGET:** Current cost estimate is \$ 1.1m

**CURRENT STATUS:** Working with FDOT on construction the funding.

**SCHEDULE:** 12 months



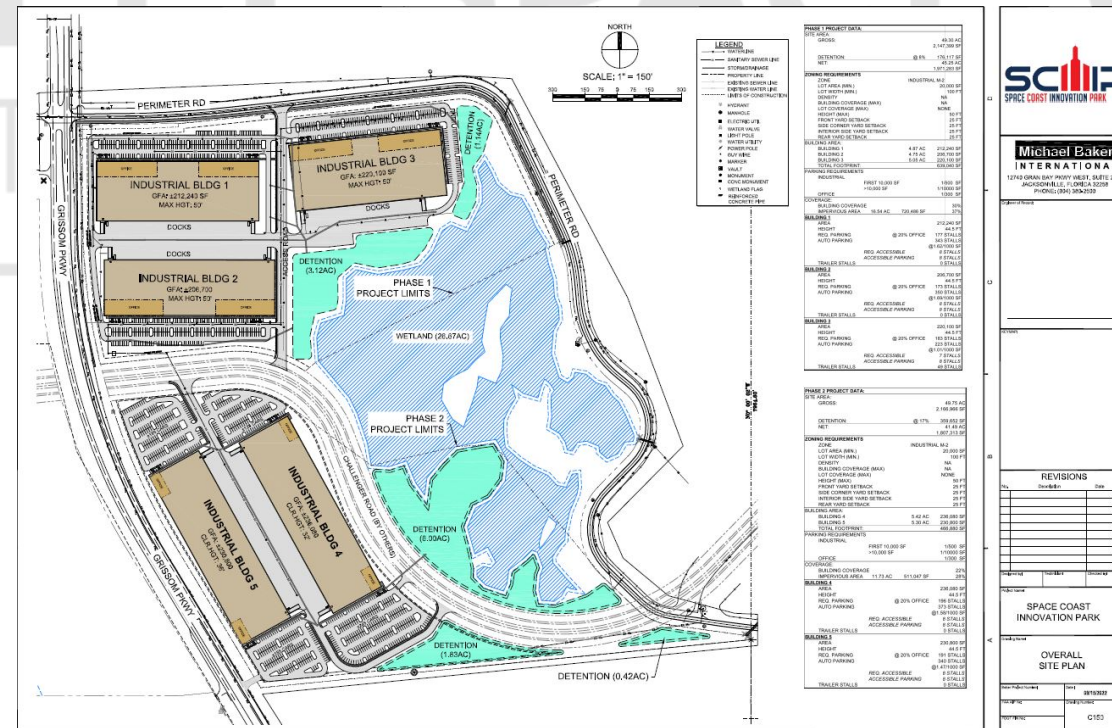


# PROJECT: Challenger Drive Extension (Design)– Space Coast Regional Airport

**BUDGET:** Current cost estimate is \$461,000

**CURRENT STATUS:** Submitted application for grant funding to the North Brevard Economic Development Zone

**SCHEDULE:** 90 Days



# Hurricane Nicole







## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE** (this "Agreement") is entered into by and between **WELSH CONSTRUCTION LLC**, a Florida limited liability company, d/b/a **WELSH COMPANIES** ("Welsh"), and **TITUSVILLE-COCOA AIRPORT AUTHORITY**, a Florida Body Politic and a Florida Body Corporate ("TCAA"). The parties may be hereinafter collectively referred to as the "Parties." This Agreement shall be effective on the date of execution by the last of the parties hereto ("Effective Date").

### **RECITALS:**

**WHEREAS**, on or about August 9, 2022, a Final Judgment was entered in favor of Welsh and against TCAA in the matter of Welsh Construction, LLC d/b/a Welsh Companies v. Titusville-Cocoa Airport Authority, Case No. 05-2016-CA-043161 in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida (the "Lower Court Judgment"), which Final Judgment was recorded on August 12, 2022, at Book 9584 Page 2714 of the Official Records of Brevard County, Florida, which Judgment has not been satisfied; and

**WHEREAS**, Welsh and TCAA have each filed a Motion to Tax Attorney's Fees and Costs in the aforesaid Case No. 05-2016-CA-043161 (the "Lower Court Case"), Plaintiff Welsh on August 26, 2022, and Defendant TCAA on September 8, 2022, which Motions both remain pending and unresolved; and

**WHEREAS**, on or about September 6, 2022, TCAA filed a Notice of Appeal of the aforesaid Judgment, which was subsequently assigned Case Number 5D22-2153 by the Fifth District Court of Appeal of Florida (the "Appellate Case"), which appeal remains pending; and

**WHEREAS**, the unsatisfied Lower Court Judgment, the parties' respective Motions to tax attorney's fees and costs in the Lower Court Case, and the pending Appellate Case may hereinafter collectively be referred to collectively as the dispute between the Parties ("Dispute"); and

**WHEREAS**, subject to the terms of this Agreement, the Parties have agreed to settle the Dispute and resolve any and all disputes between or among them which were or could have been raised regarding the Lower Court Judgment, the pending Motions in the Lower Court Case, or the pending Appellate Case; and

**WHEREAS**, because TCAA is a Florida Body Politic and a Florida Body Corporate in Brevard County, Florida, this Agreement is subject to and expressly conditioned upon approval by vote of the TCAA Board of Directors; and

**WHEREAS**, no party admits or otherwise concedes liability or fault in any fashion by entering into this Agreement but rather does so to amicably resolve the Dispute.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions which constitute full settlement of the Dispute:



1. **Recitals:** The Parties acknowledge that all of the "WHEREAS" clauses preceding section 1 are incorporated as material parts of this Agreement.

2. **Payment:** In consideration for Welsh's execution of this Settlement Agreement and Mutual Release, and subsequent recording of a Satisfaction of Judgment, TCAA agrees to pay to Welsh the sum of Four Hundred Seventy Thousand Dollars (\$470,000.00), in certified funds payable to Welsh (the "Payment"), within sixty (60) days of an affirmative vote of approval by the TCAA Board of Directors, by delivering the same to the office of Welsh's attorney, Scott A. Blaue, made payable to Blaue & Peters, P.A. Trust Account, Tax ID# 81-4756119.

3. **Delivery of Lighted Runway Closure Markers:** In consideration for TCAA's execution of this Settlement Agreement and Mutual Release, the Payment described in Paragraph 2 above, and subsequent filing of a withdrawal of the Notice of Appeal and dismissal of the Appellate Case, Welsh agrees to deliver to TCAA possession of the two (2) lighted runway closure markers that were procured during the course of the contracted-for improvements to the Runway 11-29 Safety Area at the Merritt Island Airport, within five (5) days after receipt of the aforesaid Payment.

4. **Recording of Satisfaction of Judgment:** Welsh agrees to cause a Satisfaction of the Lower Court Judgment to be recorded in the Official Records of Brevard County, Florida, within ten (10) days after receipt of the Payment described in Paragraph 2 above.

5. **Withdrawal of Notice of Appeal and Dismissal of Appellate Case:** TCAA agrees to file a notice of withdrawal of the Notice of Appeal in the Lower Court Case, and a voluntary dismissal of the Appellate Case, within five (5) days after approval by the TCAA Board of Directors.

6. **Board Approval:** This Agreement and the obligations of the Parties herein shall be and is expressly conditioned upon an affirmative vote of the TCAA Board of Directors approving this Agreement. TCAA agrees to bring this Agreement before the TCAA Board of Directors at the regularly scheduled meeting set for November 17, 2022 with this proposed Agreement being identified on the TCAA Board Agenda as an action item for consideration and vote. If the TCAA Board of Directors votes to approve this Agreement, then TCAA's counsel will confirm such approval to Welsh's counsel upon receipt. If, however, TCAA Board of Directors does not approve this Agreement, then TCAA's counsel will provide written notice of the same to Welsh's counsel, and this Agreement shall be null and void in all respects, shall be treated as though it never existed and none of the terms and provisions herein shall have any force or effect.

7. **Welsh's Release:** In consideration for the Payment described in Paragraph 2 above, the withdrawal of the notice of appeal in the Lower Court Case and dismissal of the Appellate Case as described in Paragraph 5 above, and for TCAA's release as set forth in Paragraph 8 below, Welsh and its legal representatives, agents, administrators, managers, members, directors, officers, parents, subsidiaries, affiliates, heirs, successors and assigns (jointly and severally referred to as the "Welsh Releasors") hereby remise, release, acquit, satisfy, and forever discharge TCAA, together with its respective legal representatives, agents, administrators, managers, members, shareholders, directors, officers, parents, subsidiaries, affiliates, heirs, successors and assigns (jointly and severally referred to as, the "TCAA Releasees") of and from

any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, representations, warranties, judgments, executions, claims, demands and liabilities whatsoever, whether known or unknown or suspected to exist by anyone and whether statutory, in law or in equity, which the Welsh Releasors ever had, now have or may now have against the TCAA Releasees for or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the Effective Date of this Agreement, *with the sole exception of actions for the enforcement of this Agreement.*

8. **TCAA's Release:** In consideration for the transfer of possession of the two (2) lighted runway closure markers as described in Paragraph 3 above, the recording of a Satisfaction of Judgment as described in Paragraph 4 above, and for the Welsh Releasors' release in Paragraph 7 above, TCAA, together with its respective legal representatives, agents, administrators, managers, members, shareholders, directors, officers, parents, subsidiaries, affiliates, heirs, successors and assigns (jointly and severally referred to as, the "TCAA Releasors") hereby remise, release, acquit, satisfy, and forever discharge Welsh, together with its legal representatives, agents, administrators, managers, members, directors, officers, parents, subsidiaries, affiliates, heirs, successors and assigns (jointly and severally referred to as the "Welsh Releasees") of and from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, representations, warranties, judgments, executions, claims, demands and liabilities whatsoever, whether known or unknown or suspected to exist by anyone and whether statutory, in law or in equity, which the TCAA Releasors ever had, now have or may now have against the Welsh Releasees for or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the Effective Date of this Agreement, *with the sole exception of actions for the enforcement of this Agreement and those items specifically enumerated in paragraph 9, below.*

9. **Claims/Potential Claims Not Released:** Without regard to any other term or provision of this Agreement, TCAA does not waive, release or relinquish any claims against Welsh related to (a) any warranty, whether express, contractual, statutory or otherwise, for the work performed by Welsh and/or at Welsh's direction (e.g. by its contractors, subcontractors, etc.) for TCAA, and (b) any claim for construction defects, including without limitation those available under chapter 558, Florida Statutes, for the work performed by Welsh and/or at Welsh's direction (e.g. by its contractors, subcontractors, etc.) for TCAA. Currently, TCAA represents that it has not made any such warranty or defective construction claims against Welsh and is not presently aware of the existence of any such claims.

10. **Assignment:** Each Party hereby represents and warrants to the other that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim against the other Party or any portion thereof or interest therein.

11. **Voluntary Acceptance:** The Parties represent and acknowledge that (1) they have consulted with their respective attorneys prior to executing this Agreement or made an informed decision not to do so after having ample time to pursue such consultation; (2) they have carefully read and fully understand all of the terms of this Agreement; (3) they have had ample time and

opportunity to consider the terms of this Agreement; and (5) they have voluntarily entered into this Agreement.

12. **No Reliance:** The Parties represent and acknowledge that in executing this Agreement, they did not rely and have not relied upon any representation or statement made by any of the Parties or by any of the Parties' agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement, other than the promises and representations made in this Agreement.

13. **Binding Nature of Agreement:** This Agreement shall be binding upon each of the Parties and upon its/their respective heirs, successors and assigns and shall inure to the benefit of each party and to their respective heirs, successors and assigns.

14. **Governing Law and Jurisdiction:** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Florida without giving effect to the laws, rules or principles of the State of Florida regarding conflicts of laws. Each party agrees that any proceeding arising out of or relating to this Agreement or the breach or threatened breach of this Agreement shall be exclusively commenced and prosecuted in the state or federal courts located in Brevard County, Florida. Each party consents and submits to the exclusive personal jurisdiction of any such court in respect of any such proceeding. If any action is filed or initiated to enforce any of the provisions of this Agreement, the prevailing party shall, in addition to all other relief to which they are otherwise entitled, be entitled to recover all costs, expenses, and reasonable attorneys' fees, at both trial and all appellate levels, from the non-prevailing party.

15. **Interpretation:** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This Agreement shall not be construed against the "drafter" of the Agreement. If any portion or provision of this Agreement (including, without implication of limitation, any portion or provision of any section of this Agreement) is legally determined to be unenforceable, the remainder of this Agreement shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said unenforceable portion or provision shall be deemed not to be a part of this Agreement.

16. **Modification of Agreement:** This Agreement may be amended, revoked, changed, or modified only upon a written agreement executed by all Parties. No waiver or release of any provision of this Agreement will be valid unless it is in writing and signed by the party against whom such waiver is charged.

17. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior agreements or understandings between the Parties hereto pertaining to the subject matter hereof.

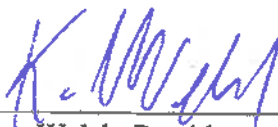
18. **Headings:** The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

19. **Signatures in Counterparts:** This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. All counterparts combined shall constitute one and the same document.

20. **Authority:** Each Party represents that each person executing this Agreement on its behalf has been authorized to sign on behalf of the respective party and to bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the dates set forth below.

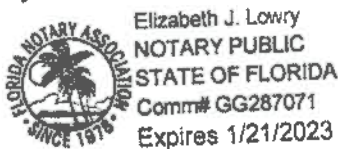
WELSH CONSTRUCTION, LLC, d/b/a WELSH  
COMPANIES


By:   
Ken Welsh, President

STATE OF FLORIDA       )  
                                      ) ss:  
COUNTY OF BREVARD    )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ remote online notarization this 9<sup>th</sup> day of November, 2022, by Ken Welsh, who ☒ is personally known to me or who ☐ has produced \_\_\_\_\_ (type of identification) as identification.

Notary's Seal:



  
NOTARY PUBLIC  
Elizabeth J. Lowry  
(Print Name of Notary Public)

[Signatures Continue on the Following Page]

TITUSVILLE-COCOA AIRPORT AUTHORITY

By: \_\_\_\_\_  
Kevin Daugherty, Executive Director

STATE OF FLORIDA       )  
                                      ) ss:  
COUNTY OF BREVARD    )

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ remote online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by  
\_\_\_\_\_, who ☐ is personally known to me or who ☐ has produced  
\_\_\_\_\_ (type of identification) as identification.

Notary's Seal:

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Print Name of Notary Public)