

TERMINAL BUILDING LEASE AGREEMENT

BETWEEN

BROWARD COUNTY

AND

THE UNITED STATES GENERAL SERVICES ADMINISTRATION

GS-04B-62488

**TERMINAL BUILDING LEASE AGREEMENT
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**TERMINAL BUILDING
LEASE AGREEMENT**

THIS TERMINAL BUILDING LEASE AGREEMENT ("Agreement") is entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida ("County") and the UNITED STATES GENERAL SERVICES ADMINISTRATION (the "GSA or Lessee") for the use by the [REDACTED], ("Lessee").

W I T N E S S E T H:

WHEREAS, County is the owner of the Fort Lauderdale-Hollywood International Airport, located in Broward County, Florida; and

WHEREAS, County has the right to lease and license the use of property on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Lessee, as duly authorized by governmental authority, is engaged in the airline service business with respect to persons and property at the Airport and elsewhere; and

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

NOW, THEREFORE, in consideration of the agreements set forth herein, County and Lessee agree as follows:

**ARTICLE I
DEFINITIONS**

The following words, terms and phrases wherever used in this Agreement shall, for the purpose of this Agreement, have the following meanings:

- 1.1 **Affiliated Airline** shall mean an airline (i) that is directly or indirectly controlled by or under common control with Lessee; or (ii) that owns directly or indirectly ten percent (10%) or more of equity securities of Lessee; or (iii) of which Lessee directly or indirectly owns ten percent (10%) or more; (iv) or is a Named Affiliate. The foregoing ownership interests and relationships must be established by Lessee to the reasonable satisfaction of the Aviation Department.
- 1.2 **Agreement** shall mean Articles 1 through 17, inclusive, of this Terminal Building Lease Agreement together with the exhibits and schedules which are attached to this Agreement and made a part hereof and the other documents that are expressly incorporated herein by reference.
- 1.3 **Aircraft Parking Apron** shall mean that part of the Ramp Area immediately adjacent

to the Terminal that is used for the parking of aircraft and support vehicles and the loading and unloading of passengers and cargo.

- 1.4 **Airline Service Company** shall mean a commercial company that performs ground handling services to airlines using the Airport Terminals.
- 1.5 **Airport** shall mean the Fort Lauderdale-Hollywood International Airport owned and operated by the County.
- 1.6 **Aviation Department** shall mean the County's Aviation Department or such other named County organization that from time to time may exercise functions equivalent or similar to those now exercised by the Aviation Department.
- 1.7 **Board or Commission** shall mean the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.8 **Common Use Area** shall mean that portion of the Commuter Terminal Building designated for the non-exclusive use in common by the public, Lessee, other commuter airlines and other duly authorized users of the Airport.
- 1.9 **Commuter Air Carriers** shall mean those air taxi operators who perform, pursuant to a published schedule, at least five (5) round trips per week between two or more points, or who carry mail pursuant to a contract with the United States Postal Service and whose aircraft carries less than thirty (30) passenger seats. Commuter aircraft shall not be of a turbo-jet aircraft or larger.
- 1.10 **County** shall mean Broward County, a political subdivision of the state of Florida.
- 1.11 **Director of Aviation** and **Director** shall mean the Director or Acting Director of the Aviation Department and from time to time shall include such person or persons as may from time to time be authorized in writing by the Broward County Board of County Commissioners, the Broward County Administrator or by the Director of Aviation to act for the Director with respect to any or all matters pertaining to this Agreement.
- 1.12 **Effective Date** shall mean that date specified in Article IV.
- 1.13 **Federal Aviation Administration** or **FAA** shall mean that agency of the United States Government created and established under the Federal Aviation Act of 1958, as codified in the United States Code, Title 49, or its successor.
- 1.14 **Fiscal Year** shall mean the then current annual accounting period of the County for its general accounting purposes.
- 1.15 **Leased Premises** and **Premises** shall mean the Terminal space leased to, or to be leased to Lessee, as shown on **Exhibit A** attached hereto and made a part hereof.

- 1.16 **Lessee** shall mean the GSA, and its permitted successors pursuant to Article X.
- 1.17 **Ramp Area** shall mean the aircraft parking and maneuvering areas adjacent to a Terminal Building.
- 1.18 **Terminal Building** and **Terminal** shall mean the airline terminal buildings and the commuter terminal building located at the Airport (as applicable), including any expansion thereof or any improvements thereto.

ARTICLE II LEASE OF PREMISES

- 2.1 **Premises.** Subject to the terms and conditions hereof, County does hereby lease and demise to Lessee, the Leased Premises described and depicted on **Exhibit A** attached hereto and made a part hereof.
- 2.2 **Relocation, Change of Locations.** In the event the Aviation Department desires that Lessee operate at different location(s) than that reflected on **Exhibit A**, or at additional locations, or in reduced space, from that shown on **Exhibit A**, then upon written notice from the Aviation Department, Lessee shall be required to move into or out of such areas and Lessee shall occupy such areas. In the event of any change as provided hereunder, then an exhibit reflecting such areas, the effective date and the applicable square footage(s) shall be attached to this Agreement through an amendment and the rentals payable hereunder shall be adjusted as necessary according to the square footage of the resulting space. The Director of Aviation is authorized to execute any amendment(s) pursuant to the provisions of this Section 2.2. Relocated space may not be similar in size or configuration to the Premises leased herein.

ARTICLE III IMPROVEMENTS BY LESSEE

- 3.1 **Ownership of Lessee Installed Improvements and Property.** Lessee will retain ownership of moveable trade fixtures, equipment and other personal property installed and paid for by Lessee, except as may be otherwise provided in this Agreement or other agreements.
- 3.2 **Improvements by Lessee.** All of Lessee's improvements are subject to prior written approval of the Aviation Department and must conform to the standard requirements of the Aviation Department that are applicable to tenants of the Airport Terminals, including any that are specific to a particular Terminal Building. All improvements hereafter made to the Premises shall be in conformity and consistent with all applicable provisions of the Americans with Disability Act of 1990, as same may be amended from time to time and with all other federal, state, County, and local laws, ordinances, advisory circulars, rules and regulations. Any addition, fixture or other improvement that is nailed, bolted, stapled, or otherwise affixed to the Premises is a

leasehold improvement, and title thereto shall vest with the County upon the termination of this Agreement, whether by expiration of the term or otherwise. All utilities conduits installed at the Premises, including without limitation cable, electric and telecommunications, shall be deemed leasehold improvements and ownership thereof shall be vested in the County upon installation. All such conduits as shall be installed by Lessee shall be free of all liens, claims and encumbrances, including any claims of any utilities provider. The provisions of **Exhibit G** are hereby made a part of this Agreement.

- 3.3 Improvements to Additional Space.** Lessee shall be responsible for the design and construction of any additional space as requested by Lessee and approved by County. All improvements will be subject to Aviation Department approval as specified in Section 3.2 above and other applicable provisions and exhibits.

ARTICLE IV TERM

- 4.1** This Agreement shall be effective ("Effective Date") on **September 15, 2012** and shall terminate on the fifth (5th) annual anniversary of the Effective Date, unless sooner terminated as provided herein. This Agreement may be terminated at any time by the Board, the Director of Aviation or the Lessee, with or without cause, upon thirty (30) calendar days' prior written notice to the other party. In the event the Director of Aviation reasonably determines in writing that termination is necessary to protect the public health, safety or welfare, this Agreement may be terminated by the Director of Aviation upon such reasonable notice as the Director of Aviation deems appropriate under the circumstances, which shall be followed-up by a written "Notice of Termination" to the Lessee and a copy of the written determination.
- 4.2** Termination of this Agreement shall not relieve Lessee of any liabilities or obligations hereunder which shall have accrued on or prior to the effective termination date. Upon the expiration or termination of this Agreement, Lessee shall cease forthwith all operations upon the Premises, shall immediately vacate the Premises, and shall pay in full all fees and other amounts payable to County as set forth in this Agreement then due and owing.
- 4.3** In the event that Lessee ceases to operate at the Airport and fails to provide notice to the Aviation Department and fails to respond to written notice from the Aviation Department requesting Lessee's intent to continue operating at the Airport, then, in that event, the Director of Aviation shall have the right to immediately terminate this Agreement by a written "Notice of Termination" to said Lessee.

ARTICLE V MAINTENANCE OF LEASED PREMISES/UTILITIES

- 5.1** Lessee will at all times maintain its Leased Premises in a neat, orderly, sanitary and presentable condition. Lessee shall furnish its own janitor service in its Leased Premises and shall cause to be removed, at Lessee's own expense, from such

spaces all waste, garbage and rubbish and agrees not to deposit the same on any part of the Airport, except that Lessee may deposit same temporarily in its Leased Premises or in space designated by County in connection with collection for removal. The Lessee shall make arrangements for trash removal directly with a company that is authorized by the County to provide such services at the Airport. Upon failure of Lessee to carry out the terms of this Section 5.1, County may have the work performed and the applicable charges shall be paid by Lessee. Notwithstanding the foregoing, interior maintenance on County-owned property and janitorial service in holdrooms and ticket counter areas will be provided by County and charged back to Lessee. Lessee shall be responsible for all utilities charges in connection with its use of the Leased Premises.

- 5.2 The responsibility for maintenance, cleaning and operations of the facilities in the Terminal(s), including the Leased Premises, shall be as set forth on **Exhibit F**, attached hereto and incorporated herein by reference.

ARTICLE VI RENTALS, FEES AND CHARGES

- 6.1 Commencing on the Effective Date, the annual rental shall be due in such amounts, as are established pursuant to the provisions set forth below, for the use of the Leased Premises. Rent shall be paid by the Lessee in twelve (12) equal monthly installments, together with all applicable sales taxes thereon, in arrears and without demand, set off or deduction. The first monthly installment of the annual rent shall be paid on the Effective Date, if the Effective Date occurs on the first business day of a calendar month. In the event, the Effective Date does not occur on the first day of a calendar month, then a partial payment of the first monthly installment of the annual rent shall be paid on the Effective Date; which partial payment shall be an amount equal to the first monthly rental payment due prorated based on the number of calendar days occurring between the Effective Date and the first calendar day of the following month, together with all applicable sales taxes thereon. Thereafter, each and every monthly installment of annual rent shall be payable in arrears on the first business day of each and every calendar month.
- 6.2 The rental amounts for the areas described in **Exhibit A**, shall be based on the rates promulgated from time to time by the County pursuant to resolutions adopted by the Board. Lessee agrees that it shall pay monthly rentals to County on the first day of each month, in arrears for the areas described on **Exhibit A**, based on the rates established from time to time by the Board-adopted resolutions.
- 6.3 The Lessee acknowledges that the County has or will establish, from time to time, various fees and charges for the use of various facilities, equipment and services provided by the County and not leased to or specifically provided to the Lessee hereunder (which may include but are not limited to landing fees), and the procedures relating to payment of same. The Lessee shall pay for its use of such facilities, equipment and services at the rates and in the manner prescribed by the County. In addition to the foregoing, Lessee shall be obligated to collect from its customers and

tenants, as applicable, and remit to the County, any user fees or other fees or charges that may in the future be established by the County regarding general aviation uses of the Airport (which may include but are not limited to landing fees), pursuant to a resolution adopted by the Board. In addition to rentals for the Leased Premises assigned to Lessee hereunder, Lessee agrees to pay all rentals, rates, fees and charges payable by Lessee for use of any Airport facilities or under any agreement between Lessee and the County pertaining to Lessee's operations at the Airport, including without limitation landing fees, applicable utilities charges, all rates, fees and charges under any terminal services permit or field usage agreement, and all other rentals, rates, fees, and charges, including all sales taxes, interest, costs, damages, and the same may be added to any rent payment thereafter due hereunder, and each and every part of the same shall be and become additional rent recoverable by the County in the same manner and with like remedies as if it were originally a part of the rent as established by this Article VI. All such sums of money shall be paid by Lessee within thirty (30) calendar days after written demand therefore.

- 6.4 The rentals, fees and charges payable under this Agreement will be reviewed and adjusted, as necessary, at any time a rate is adjusted by the Board pursuant to a resolution.
- 6.5 Payments received by County more than ten (10) calendar days after the due date shall be subject to interest in accordance with federal law and regulations.
- 6.6 Lessee shall reimburse the County, , all federal, state, County, and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the Premises (including improvements) or the estate hereby granted, or upon Lessee, or upon the business conducted on the Leased Premises, or upon any of Lessee's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to any ad valorem taxes (based upon the Lessee's pro rata share according to the area of the Leased Premises), and sales or excise taxes on rentals, and personal property taxes against tangible and intangible personal property. Lessee shall maintain in current status all federal, state, County and local licenses and permits required for the operation of the business conducted by Lessee.

**ARTICLE VII
DEFAULT BY LESSEE**

- 7.1 **Event of Default.** Each of the following shall constitute an "Event of Default by Lessee":
 - (a) Lessee shall fail to pay any rentals, fees or charges when due, or
 - (b) Lessee shall fail after the receipt of written notice from County to keep, perform or observe any other term, covenant or condition of this Agreement to be kept, performed or observed by Lessee.

7.2 Remedies for Lessee Default.

- (a) Upon the occurrence of an Event of Default by Lessee, County, in addition to any other rights or remedies it may have at law or in equity, shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises and Lessee's property may be stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee. Should County elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Agreement or re-let the Leased Premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Agreement) and at such fees and charges and upon such terms and conditions as County in its sole discretion may deem advisable, with the right to make alterations and repairs to improvements on said Leased Premises. No re-entry of the Leased Premises by County shall be construed as an election on County's part to terminate this Agreement unless a written notice of such intention is given to Lessee.
- (b) Unless County elects to terminate this Agreement, Lessee shall remain liable for fees, charges and rentals due hereunder if County re-enters and re-lets the Leased Premises.
- (c) Upon the occurrence of an Event of Default by Lessee, County may, at any time thereafter, elect to terminate this Agreement by written notice to Lessee (which termination shall be in addition to any other remedy it may have), and in such event, County may recover from Lessee all damages to which it may be entitled by reason of such Event of Default by Lessee, including the cost of recovering the Leased Premises, damages for the balance of the amounts due hereunder for the full term of this Agreement. In the event of such termination, Lessee shall have no further rights under this Agreement and shall cease forthwith all operations upon the Airport premises and Lessee shall be liable for all damages incurred by County in connection with Lessee's default or the termination of this Agreement upon such a default, including without limitation, all direct, indirect, consequential, and all other damages whatsoever.

7.3 Curative Provisions; Payment Under Protest.

- (a) A termination of this Agreement for a default under Section 7.1(a) or 7.1(b) shall be effective immediately upon giving ten (10) calendar days written notice of same to the Lessee. No termination of this Agreement for a default under Section 7.1(b) shall be effective unless and until thirty (30) calendar days have elapsed after Lessee has received written notice specifying the Event of Default. No such termination shall be effective if the Event of Default has been cured or removed during such period, or if by its nature such Event of Default cannot be cured within such period, such termination shall not be effective if Lessee commences to cure or remove such Event of Default within said period and cures or removes same as promptly as possible.

(b) Notwithstanding anything to the contrary in this Agreement, if a dispute arises between County and Lessee with respect to any obligation or alleged obligation of Lessee to pay money, the payment under protest by Lessee of the amount claimed by County to be due shall not waive any of Lessee's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then County shall as promptly as reasonably practicable reimburse Lessee any amount determined as not due, provided the County shall not be required to pay any interest on any such reimbursed sums.

7.4 **Holdover.** It is agreed and understood that any holding over of Lessee after the termination of this Agreement shall not renew and extend same, but shall operate and be construed as a month to month lease. County reserves the right to pursue all remedies available to it under applicable law as a result of Lessee's holdover. It is expressly agreed that acceptance of rent or any other payments by the County in the event that Lessee fails or refuses to surrender possession shall not operate as County's consent to Lessee's continued possession nor shall it constitute a waiver by the County of its right to immediate possession of the Premises.

7.5 **Habitual Default.** Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, and regardless of whether the Lessee has cured each individual condition of breach or default, the Lessee may be determined by the Aviation Department to be an "habitual violator." At the time that such determination is made, the Aviation Department shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise Lessee that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to the Lessee, such termination to be effective upon delivery of the notice to the Lessee.

7.6 **Terminal Services Permit, Field Usage Agreement.** A default by Lessee under any Terminal Services Permit or Field Usage Agreement entered into between Lessee and County shall also be a default under this Agreement, and shall entitle the County to any and all remedies available under this Agreement, including without limitation, termination as provided herein.

**ARTICLE VIII
WAIVER OF RIGHTS; NO REMEDY EXCLUSIVE**

8.1 **Waiver of Breach and Materiality.** Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of

this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. County and Lessee agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

- 8.2 **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the County or Lessee is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

ARTICLE IX SURRENDER OF LEASED PREMISES

- 9.1 Lessee agrees to surrender possession of the Leased Premises upon termination of this Agreement in broom clean condition, and in the same condition as existed on the first day of occupancy of the Leased Premises by the Lessee. Lessee shall have the right at any time during the term of this Agreement to remove any furnishings, trade fixtures or equipment it has installed in, on or about, the Leased Premises; subject, however, to any lien that County may have thereon for unpaid fees, charges, or other amounts payable under this Agreement, and provided that Lessee shall restore any damage to the Leased Premises and the Leased Premises shall be returned to the County in the same condition as existed on the first day Lessee entered into occupancy of the Leased Premises. Any property not removed by Lessee immediately upon the expiration or termination of this Agreement shall become part of the Premises, and title thereto shall vest in County.

ARTICLE X ASSIGNMENT AND SUBLETTING

- 10.1 Lessee shall not sublet the Leased Premises or any part thereof or transfer, assign, pledge, or otherwise encumber this Agreement or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise (any such action being called an "assignment"). Any such action shall be null and void and of no force or effect.
- 10.2 The Lessee must obtain the prior written consent of the County to keep this Agreement in effect upon any transfer or merger of ownership between the Lessee and any other corporation or company or upon any sale or transfer of a majority of the ownership interest in Lessee (whether accomplished by one transaction or a series of transactions). Notwithstanding the foregoing, the provisions of this Article X shall not apply to any public trades of registered stock that occurs on a national stock exchange.

**ARTICLE XI
DAMAGE OR DESTRUCTION**

- 11.1 **Lessee Responsibilities.** County shall not be liable to Lessee for damage to Lessee's property, improvements and facilities from any cause whatsoever, including, without limitation, any act of negligence of any tenants, occupants or other users of the Airport or any other person, unless caused by the sole negligence of County, its agents, servants or employees. Lessee shall have the right, however to claim and recover its damages from any third party other than County who may be liable for such damages.
- 11.2 **Abatement of Rentals.** In the event of damage or destruction to all or any portion of the Leased Premises which renders the same untenable, there shall be an appropriate abatement or reduction of the rental, fees, and charges payable hereunder, at the reasonable discretion of and as determined by County, commencing at the time of such damage or destruction and continuing until such time as County's engineers certify that said Leased Premises are again ready for use and occupancy by Lessee. In the alternative, the County may, in its sole and exclusive discretion and cost, relocate the Lessee to other suitable premises, pursuant to Article II, hereof and in such event there shall be no abatement or reduction of the rental, fees, and charges payable hereunder, but rentals shall be adjusted in accordance with the square footage of the resulting space occupied by the Lessee.

**ARTICLE XII
INSURANCE**

- 12.1 **Insurance.** The Parties hereto acknowledge that Broward County and the General Services Administration () are self-insured governmental entities. Broward County is subject to the limitations of Section 768.28, Florida Statutes. GSA is subject to applicable Federal law. Each of these entities agrees that it has instituted and maintains a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28 Florida Statutes as may be amended from time to time and applicable federal law; including Worker's Compensation in accordance with Chapter 440, Florida Statutes, as may be amended from time to time, including Employer's liability with a minimum of \$100,000. Nothing herein is intended to serve as a waiver of each party's sovereign immunity. Each entity will provide each other with written verification of liability protection in accordance with state/federal law prior to final execution of this Agreement, upon request. GSA represents, that as an agency of the United States, it is self-insured.

**ARTICLE XIII
NOTICES**

- 13.1 Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by overnight courier with receipt acknowledgment, or by hand-delivery

with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided herein. For the present, the parties designate the following:

FOR BROWARD COUNTY:

County Administrator
Governmental Center
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

with a copy to:

Director of Aviation
2200 SW 45 Street
Dania Beach, Florida 33312

FOR LESSEE:

Contracting Officer
UNITED STATES GENERAL SERVICES ADMINISTRATION
PROPERTY ACQUISITION & REALTY SERVICE
7771 Oakland Park Boulevard, Suite 119
Sunrise, FL 33351-6737
Attn.: James F. Thompson

- 13.2 All notices, approvals and consents required hereunder must be in writing to be effective.

ARTICLE XIV OPERATIONS OF LESSEE

- 14.1 Lessee shall comply with all federal and state laws, codes, ordinances, advisory circulars, rules and regulations in performing its duties, responsibilities, and obligations related to this Agreement. In addition, Lessee shall comply with all County laws, codes, ordinances, rule and regulations in performing its duties, responsibilities and obligations related to this Agreement.
- 14.2 Lessee agrees to observe and obey all rules and regulations of the County and the Aviation Department governing the safe conduct on and operation, maintenance and use of the Airport, including without limitation any minimum standards that are established for operations of Airport tenants.
- 14.3 The Lessee shall, at its own expense, provide and maintain in full force and effect, any and all licenses and permits required for the legal operation of all aspects of the Lessee's business conducted at the Leased Premises. Lessee shall pay all license