

GROUND LEASE
FOR DEVELOPMENT OF A COLD STORAGE FACILITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS GROUND LEASE ("Lease") is made and entered into this _____ day of _____, 2024 (hereinafter referred to as the "Effective Date" as determined in the manner set forth in Section 2.1 below), by and between **LEE COUNTY PORT AUTHORITY**, a special district of the State of Florida with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 (herein referred to as "Authority") and **RSW COLD STORAGE, LLC**, a Delaware limited liability company (herein referred to as "Lessee").

Background

Southwest Florida International Airport (the "Airport"), is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, Lee County has vested the Authority with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges.

The parties have negotiated this Lease, whereby Authority leases to Lessee, and Lessee leases from Authority, a certain parcel of land at the Airport for Lessee's development, construction, and operation of a cold storage warehouse for air cargo and other uses allowed below.

The recitals as set forth above are true and correct and are incorporated into the terms of this Lease as if set out at length.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as above and as follows:

ARTICLE 1

DESCRIPTION OF LEASED PREMISES

Section 1.1 Leased Premises. Subject to the terms, covenants, and conditions contained herein, the Authority does hereby demise and lease to Lessee a parcel of land at the Airport, containing approximately 622,567 square feet (approximately 14.29 acres), located in the County of Lee, State of Florida, referred to herein as the "Leased Premises" or the premises, and generally depicted on the drawing attached hereto as Exhibit "A" as the "Leased Premises," and as more specifically described (after survey as provided in Section 1.2 below) on Exhibit B attached hereto (both Exhibits being specifically incorporated herein), together with the nonexclusive right to use, in common with the Authority and others:

- (1) any public roads, walkways, and other public areas on the Airport for access to and from the Leased Premises; and
- (2) any private access or utility easement or other rights held by the Authority and beneficial to the Leased Premises;

and SUBJECT TO: (a) any state of facts which an accurate survey or physical inspection thereof might show; (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) all covenants, conditions,

easements, reservations and other matters and defects of record.

Section 1.2 Survey. The parties hereto recognize that Exhibit A shows only approximate depictions of the boundaries of the Leased Premises. Accordingly, no later than ninety (90) days after the FAA Approval Date (as defined in Article 25 below), Lessee shall obtain at its own cost (and provide a copy to the Authority) a precise boundary survey and metes and bounds descriptions of said parcel (collectively, the "Survey"), in accordance with said Exhibit A and Section 1.1 above, prepared by a registered professional surveyor and mapper (licensed in the State of Florida), and certified for the benefit of the Authority, Lessee, and any other party Lessee chooses. Authority shall have thirty (30) days from the date it receives the Survey to determine whether it accurately reflects the boundaries of said parcel in accordance with this Lease and to accordingly approve or reject with specificity the Survey. Failure to so approve or reject the Survey within such thirty (30) day period shall be deemed approval, unless the Survey is inconsistent with Section 1.1 or Exhibit A hereto. Upon the Authority's approval of the Survey, and the Authority's filing of the Survey with the Lee County Clerk of Courts, Minutes Department, the Survey shall be deemed incorporated by reference into this Lease, and will be the controlling interpretation of the boundaries of said parcels, and Exhibit "B" to this Lease shall then be deemed to be replaced by the

final legal description set out on the Authority-approved Survey.

ARTICLE 2

TERM

Section 2.1 Effective Date and Initial Term.

"Effective Date" means the date the Lee County Board of County Commissioners, sitting as the Authority's Board of Port Commissioners, approves this Lease.

The "Initial Term" of this Lease will commence on the "FAA Approval Date" (as defined in Article 25 below), and, unless sooner terminated pursuant to the terms of this Lease (including pursuant to Section 2.3 or 2.4 below), will continue until the day immediately preceding the date which is forty (40) years after the "Date of Beneficial Occupancy" defined in Section 4.2 below ("Initial Term"). The word "Term" as used in this Lease (if not immediately preceded by the word "Initial") shall mean and include the Initial Term and any extension of the Lease pursuant to the exercise by Lessee of any option to extend as set forth in Section 2.2 below.

Section 2.2 Options to extend. Lessee shall have two (2) successive options to extend the Term of this Lease. Each of such options shall be for a period of five (5) years, and shall be upon all of the same terms and conditions as the Initial Term of this Lease.

Each option may be exercised only if this Lease is still in full force and effect and shall not have already expired or

been terminated, and only if Lessee is not, on the date of exercise, then in default of this Lease beyond any applicable cure period, and shall only be exercised, if at all, by giving the Authority written notice, in the manner set forth below, no earlier than three (3) years and no later than one (1) year prior to expiration of the Term of the Lease (as extended by any option or options already exercised), TIME BEING OF THE ESSENCE, of Lessee's intent to exercise the option.

It is the intention of the parties to avoid forfeiture of Lessee's rights to extend the Term under the options above through its inadvertent failure to notify the Authority of its election to exercise such option. Accordingly, unless already exercised by Lessee (or waived by Lessee in writing to the Authority), each of Lessee's options to extend the Lease Term under this Section shall continue until the Authority has provided thirty (30) days advance written notice to Lessee of the expiration of its option rights, which notice may be given no earlier than six (6) months before the then-current Term expires. If Authority has not provided such notice to Lessee and Lessee fails to either exercise the option or waive it in writing to the Authority, then the option shall continue until Authority provides said thirty (30) day notice to Lessee and Lessee, within said thirty (30) days, either:

- (a) exercises the option;
- (b) waives the option in writing to the Authority, in which case the option, and any further options, will terminate; or
- (c) fails to exercise the option, in which case the option will expire.

If Lessee fails to validly and timely exercise any option to extend the Term of this Lease, then all subsequent options to extend the Term shall terminate. Nothing in this Section shall be construed to delay any scheduled adjustment to or increase in rent or other payments to Authority. Further, nothing in this Section shall be construed to extend this Lease beyond the date it would otherwise expire assuming any exercised option or options to extend had been exercised by Lessee in a timely manner without the need for any notice or notices to Lessee.

Section 2.3 Due Diligence Period; Lessee's option to terminate. Lessee shall have a due diligence period (the "Due Diligence Period"), as defined below, to, at its sole expense, investigate the Premises and all matters deemed relevant by the Lessee to its development of the Premises, and, through its agents, consultants, employees and engineers, enter into and upon the Leased Premises for the purpose of making such surveys, maps, drawings, and the collection of engineering data as it may in its sole discretion require, provided however that for any areas inside the airfield fencing such access will be subject to the Authority's and the FAA's standard security requirements and access controls (e.g. security badging, background investigation, and/or being under escort). In the event Lessee is not satisfied with the results thereof, Lessee may, at its option, terminate this Lease, without penalty, by giving written notice to Authority at any time prior to the expiration of the Due Diligence

Period, in which case the effective date of such termination shall be the date of Lessee's notice, and any money or security deposited hereunder shall be returned to Lessee and no further rights, obligations, or liabilities shall accrue hereunder after such termination.

The "Due Diligence Period" shall commence upon the FAA Approval Date and shall expire upon the date that is four (4) months after the FAA Approval Date.

Section 2.4 Permitting Period; Lessee's option to terminate. Lessee shall have a permitting period (the "Permitting Period") to obtain any and all permits necessary to construct its development, which may include and may not be limited to Lee County building permits, Lee County development orders, Army Corps of Engineers permits, South Florida Water Management District permits, and any other approvals required by Lee County or the FAA.

The Permitting Period shall commence upon the expiration of the Due Diligence Period, and shall expire six (6) months after the expiration of the Due Diligence Period.

If Lessee, after using good faith efforts, is unable to obtain any and all necessary permits prior to the expiration of the Permitting Period, Lessee may, at its option, terminate this Lease, without penalty, by giving written notice to Authority at any time prior to the expiration of the Permitting Period, in which case the effective date of such termination shall be the date of Lessee's notice, the security deposit provided under Article 8, less any unpaid rent

obligations hereunder, will be returned to Lessee, and no further rights, obligations, or liabilities shall accrue hereunder after such termination.

ARTICLE 3

USE OF LEASED PREMISES

Section 3.1 Allowed use of the Leased Premises.

Lessee shall have the right to use the Leased Premises to develop, construct, operate, and maintain, the Minimum Required Improvements set forth in Section 5.2 below, and to use such improvements, and the Leased Premises, only for commercial storage and warehousing operations, including but not limited to the receipt, sorting, packaging, consolidation, temporary storage, and shipping of truck cargo or air cargo (including loading and unloading of truck cargo or air cargo to and from aircraft, airline ground service equipment, and trucks), along with related vehicle parking and administrative office space ancillary thereto (the "Development").

Section 3.2 Prohibited uses. Except as specifically allowed above, Lessee shall not use or permit the use of the leased premises or any part thereof for any other purpose. Notwithstanding anything above that may appear to the contrary, prohibited uses include, but are not limited to:

- (a) retail or industrial uses;
- (b) maintenance, repair, or overhaul of aircraft;
- (c) storage of cars, boats, travel trailers, recreational vehicles, or other items not related to the allowed uses set forth above;
- (d) sale or provision of fuel to the public or any third parties;

- (e) sale or provision of fueling services to or into airlines or other aircraft, unless specifically permitted pursuant to a separate agreement with the Authority, which will be subject to Authority's standard fees for such activity;
- (f) sale or provision of ground services (as defined in the Authority's standard ground service permit agreements; this includes but is not limited to loading and unloading of aircraft) to any airline, unless specifically permitted pursuant to a separate agreement with the Authority, which will be subject to Authority's standard fees for such activity;
- (g) billboards or other outdoor advertising (excluding signage related to the identification of the project and the tenants on the leased premises which has been approved by Authority as provided in Section 5.10 below);
- (h) rental of individual parking spaces, or any other kind of commercial parking operations (however, with the Authority's written consent, which will not be unreasonably withheld, Lessee may lease areas within its parking lots to other tenants leasing land from the Authority for the development of office space);
- (i) rentals or sales of motor vehicles;
- (j) provision of airfield access to any subtenant not having a bona fide business purpose and Authority-issued security/access badges for same; and
- (k) the presence, placement, or use, of "Mobile Minis" or any other trailers or modular units, whether for office, storage, or otherwise, except for semi-trailers used in conjunction with the allowed uses stated above, and construction trailers temporarily located on the premises while any building is actually under construction.

Lessee's use of the Leased Premises shall be in compliance with the Lee County's Comprehensive Plan and all applicable zoning and land use codes and other laws.

Section 3.3 Non-interference with Airport. Lessee agrees to refrain from and prevent any use of the Leased Premises or the Airport which would interfere with, disturb,

or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard or a nuisance. Lessee shall make no unlawful, improper, or offensive use of the Leased Premises.

Section 3.4 Exclusivity. The Authority will not grant permission for any new airport tenant to engage, on Airport property which is both (a) south of Chamberlin Parkway and (b) within 2,000 feet of the Leased Premises, in commercial warehousing not related to aviation, until the earlier of:

- (1) the first date at which at least 70% of Lessee's Development on the Leased Premises has been leased to subtenants; or
- (2) three (3) years after the Date of Beneficial Occupancy (as defined in Section 4.3 below).

Notwithstanding the above, nothing in this Lease shall preclude an existing tenant from engaging in activities permitted under a lease executed prior to the date hereof, and nothing in this Lease shall preclude the Authority from granting any permission to engage in warehousing of air cargo or any other aeronautical or aviation related use, activity, or business.

ARTICLE 4

RENT

Section 4.1 Development Period Rent. Lessee agrees to pay the Authority, as "Development Period Rent," \$9,259.00 per month, payable monthly in advance, together with applicable sales tax, for and during the period commencing on the "Development Period Rent Commencement Date" (as defined

below), and continuing until and including the day immediately preceding the Date of Beneficial Occupancy (as defined below).

The "**Development Period Rent Commencement Date**" shall mean the first day of the calendar month immediately following the date that is four (4) months after the FAA Approval Date (as defined in Article 24 below).

The Development Period Rent for any partial calendar month will be prorated.

Section 4.2 Ground Rent. Lessee agrees to pay the Authority, monthly, commencing on the Date of Beneficial Occupancy, and for and during the remainder of the Term of this Lease, due in advance on or before the first day of each calendar month, "Ground Rent" of \$46,295.00, together with applicable sales tax, and the Fire District Fee set forth below. Said Ground Rent will be adjusted for CPI changes pursuant to Section 4.3 below.

The Authority shall have the right to receive an appraisal of the Leased Premises from an appraiser licensed under the laws of the State of Florida within thirty (30) days of the Effective Date. If the fair market rental value of the Leased Premises, as determined by the appraisal, is greater than the Ground Rent stated above, in order to meet FAA requirements regarding fair market value rents, the Authority has the right to increase the Ground Rent, by providing written notice to Lessee within thirty (30) days of receiving the appraisal. In the event the Authority so increases the

Ground Rent, the Lessee may, at its option, terminate this Lease via written notice to the Authority within thirty (30) days of the notice of the increase in Ground Rent, in which case any security deposit will be returned and no further rights, obligations, or liabilities shall accrue hereunder.

The "**Date of Beneficial Occupancy**" as used in this Lease means the earlier of:

- (a) the date a temporary or permanent certificate of occupancy is issued for any building on the leased premises; or
- (b) the date any subtenant or invitee of Lessee begins paying rent to Lessee; or
- (c) the date that is thirty-six (36) months after the FAA Approval Date;

whichever occurs first. For the purposes of this Lease, the Effective Date, the FAA Approval Date, the Development Period Rent Commencement Date, and the Date of Beneficial Occupancy will each be set and conclusively determined by the date set out in a written notice from Authority to Lessee, unless Lessee can show that the applicable date has not occurred. Lessee will use due diligence and make good faith efforts to obtain permits, complete its construction, and open the facility for business, as soon as practicable.

The "**Fire District Fee**" as used in this Lease means a monthly amount calculated at the rate of 2.5 mills (i.e., \$2.50 per \$1,000.00 of value) annually, per dollar of assessed value of the improvements on the Premises as determined by the office of the Lee County Property Appraiser. The Fire District Fee will commence upon the Date of Beneficial

Occupancy. If the Premises is lawfully annexed by a fire district with ad valorem taxing power, the Fire District Fee will terminate effective upon such annexation.

Ground Rent and the Fire District Fee for any partial calendar month will be prorated.

Section 4.3 Escalation. Beginning on the Date of Beneficial Occupancy, and every three (3) years thereafter while the lease is in force, the "Ground Rent" will be adjusted for proportionate increases and decreases in CPI but will never be less than the "Ground Rent" specified above. The adjusted Ground Rent will be the product of the initial Ground Rent multiplied by a fraction, the numerator of which is the comparison index and the denominator of which is the base index. The term "base index" means the CPI in effect for the calendar month of March 2024. The term "comparison index" means the CPI in effect for the third month prior to the applicable rent adjustment date.

The term CPI means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84 = 100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982-84 = 100 as a base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to be published, any substitute or successor equivalent index published by any agency of the U.S. government will be used.

Section 4.4 Time and place of payment. The Development Period Rent and Ground Rent shall be paid to the Authority monthly in advance, on or before the first day of each calendar month. All payments must be paid, together with applicable sales tax, without demand, setoff, or deduction, to:

Lee County Port Authority, Finance Department
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida, 33913

or such other place as the Authority may direct in writing. Rents for any partial calendar month will be prorated.

Section 4.5 Interest. Any sums payable by Lessee to Authority that are not paid within ten (10) days of the due date shall bear interest at the rate of eighteen percent (18%) per annum from the date the same became due and payable until the date paid.

Section 4.6 Triple net. This is a so-called "triple net" lease. All costs, including but not limited to design, permitting, construction, development, maintenance, repair, taxes, utilities, and insurance, shall be borne by the Lessee.

ARTICLE 5

CONSTRUCTION OF FACILITIES; MINIMUM REQUIRED IMPROVEMENTS

Section 5.1 Premises is leased "as is." Lessee agrees to accept the Leased Premises strictly in "as is" condition, and no representation has been made to Lessee concerning the suitability of the Leased Premises for Lessee's purposes.

Section 5.2 Lessee's construction of facilities; minimum required improvements; maximum permitted density.

Lessee will, at Lessee's own cost and expense, perform all design, obtain all required permits and governmental approvals, complete all site work, and construct, on the Leased Premises, the following "Minimum Required Improvements":

- (1) a climate-controlled warehouse building which will be one hundred percent (100%) refrigerated and frozen cold storage (excluding only ancillary office space), having at least 150,000 square feet of floor area for such cold storage;
- (2) associated parking; and
- (3) all associated improvements required by the Lee County Land Development Code or any governmental entity, including, but not necessarily limited to, automobile parking, sidewalks, pedestrianways, lighting, utility lines, fire protection, stormwater detention, retention, and control systems, fencing, berms, landscaping, and roads and driveways for ingress, egress, and circulation.

Lessee may also make any other improvements, repairs, or alterations on the Leased Premises that may be reasonably necessary to utilize the Leased Premises for the allowed uses.

Notwithstanding the above-stated minimum required improvements, Lessee's development on the Leased Premises shall be limited to a maximum floor area of 300,000 square feet.

Section 5.3 Time limit for Lessee's commencement and completion of construction; Authority's options to terminate. Lessee will use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises.

Lessee and Authority recognize that time is of the essence of this Lease and that Lessee's failure to use diligent effort to pursue the intended development, obtain necessary governmental permits, and thereafter to commence and continue bona fide construction of the intended development on the Leased Premises will constitute a material breach of this Lease. Accordingly, if either:

- (1) Lessee has not, within 21 months of the FAA Approval Date, obtained all required governmental permits and approvals for the construction of the minimum required improvements and commenced bona fide construction of the Minimum Required Improvements on the Leased Premises; or
- (2) a certificate of occupancy has not been issued for the Minimum Required Improvements by the date that is forty-five (45) months after the FAA Approval Date;

then the Authority may, at its sole option, terminate this lease by providing at least ninety (90) days written notice to Lessee, and if such breach has not been cured by the termination date specified in said notice, this Lease shall thereupon terminate, and no further rights, obligations, or liabilities shall accrue hereunder.

Section 5.4 Lessee to pay costs of project. Lessee will bear the sole cost and expense of all improvements on the Leased Premises, including, without limitation, design, permitting, impact fees, materials, construction, insurance, utilities, maintenance, and repair.

Section 5.5 Design approvals; construction bonds; insurance. Prior to Lessee's submission of its construction plans to the county, Lessee shall submit the plans to the

Authority for approval, utilizing the procedures set out in the Authority's "Leasehold Development Standards," a copy of which has been provided to Lessee. The Authority shall have thirty (30) days to review and approve the plans. If Authority disapproves the plans then such disapproval shall be in writing, with explanations of the reasons for disapproval. If the Authority does not approve or disapprove the plans or otherwise respond with comments within thirty (30) days, then Lessee shall provide written notice to Authority (as of same, provided in Section 20.1) and if Authority has still not approved or disapproved Lessee's plans within 15 days of such written notice, the plans shall be deemed to be approved. If disapproved, Lessee shall modify the plans and resubmit according to the above process. Only after receiving approval of plans by the Authority shall Lessee submit the plans to the county. If the county requires any changes, Lessee will resubmit those to the Authority for its review. Lessee will not commence any construction work (including but not limited to mobilization, earth moving, initial construction, improvements, alterations, and repairs), until after it:

- (1) provides to the Authority any surveys required by Article 1 above;
- (2) obtains and pays for all applicable permits and approvals required for any such work, and pays any applicable impact fees or other development fees;
- (3) provides the Authority with the required performance guarantee as set forth in Article 8 below, and evidence of insurance of the types and in the amounts set forth in Article 13 below;
- (4) executes, delivers to the Authority, and records in

the public records of Lee County, separate payment and performance bonds, which comply with the requirements of Florida Statutes section 255.05(1)(a) if determined to be applicable by the Port Authority Attorney's Office, and are reasonably satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and

- (5) receives a Lee County Port Authority Work Permit pursuant to the Leasehold Development Standards.

Provided Lessee first complies with the above requirements, Lessee may schedule the various construction tasks (e.g. mobilization, vegetative clearing, earth moving, fill placement, soil compaction, infrastructure installation, etc.) in such sequential order or combination as Lessee in its sole discretion seems desirable. All work, whether interior or exterior, ordinary or extraordinary, structural or non-structural, must be performed in a good and workmanlike manner, in full compliance (as of the date of plan approval by the Authority) with: (1) plans and specifications approved by the Authority; (2) the Authority's "Leasehold Development Standards and Procedures" adopted by the Authority on March 12, 2001, as may be amended or replaced from time to time ("Leasehold Development Standards"), which has been delivered to Lessee, except as may be expressly waived by the Authority; and (3) all governmental laws, rules or regulations (including but not limited to the Americans with Disabilities Act).

In recognition of the time for performance obligations contained herein, Authority agrees to respond to any submittals, requests, approvals, and the like submitted to Authority by Lessee in as timely a manner as reasonably

practicable in consideration of the submittal, request, or approval requested, not to be unreasonably withheld, delayed or conditioned.

Section 5.6 Environmental mitigation; open space; native vegetation. If Lessee is required to create or preserve wetlands as "environmental mitigation," Lessee shall locate such required environmental mitigation off-airport, at Lessee's own expense, and not on the Leased Premises or elsewhere on the Airport. All "open space" that is required by any development order allowing Lessee's development of, or construction on, the Leased Premises shall be provided by Lessee within the Leased Premises, including any required indigenous native vegetation and trees (as currently required by the AOPD and by Section 10-415(b) of the Land Development Code).

Section 5.7 As-built drawings. Within ninety (90) days of the final completion of Lessee's initial construction project and any subsequent construction project, Lessee will supply Authority with a disk containing the as-built digital CAD drawings (current Autocad version) and a complete set in Adobe .pdf format, and one complete set of as-built drawings signed and sealed by an architect or engineer licensed in Florida, provided, however, that any minor work for which digital CAD drawings may not be practical may be supplied in an alternative format acceptable to Authority. If Lessee fails to provide said as-built drawings, the Authority may hire a registered architect or engineer to provide same and

shall recover the cost of said work, plus a thirty percent (30%) overhead administrative fee, from Lessee.

Section 5.8 Maintenance, repairs, and replacement.

Lessee must keep or cause to be kept the Leased Premises and any improvements thereon in a clean and orderly condition and good state of repair. Lessee agrees to provide at its own expense such maintenance, custodial, trash removal, pest control, landscaping services, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Leased Premises.

In the event that Lessee, through its construction work or otherwise, damages or destroys any improvement on the Airport, including but not limited to existing landscaping, grading, utilities, or pavement, Lessee must promptly repair such damage and restore, or, at the Authority's sole discretion, replace, the damaged improvement.

Section 5.9 Ownership of improvements; removal of tanks. Any and all buildings and other improvements made by Lessee, which have assumed the nature of realty, will be owned by the Lessee during the Term of this Lease, and will become the property of the Authority on termination or expiration of this Lease, without compensation to Lessee, and free of all liens and claims (except that any signs and trade fixtures which are installed in the Leased Premises by Lessee or a subtenant, and which are allowed to be removed by the Lessee or subtenant under the terms of this Lease or a relevant sublease, may be removed by the Lessee or subtenant during the

Term of this Lease if the Leased Premises can be and is restored to its former condition by said subtenant or by Lessee after the removal).

Lessee will have the right to remove any furnishings, trade fixtures, equipment, and improvements that have not assumed the nature of realty, provided same is done prior to termination or expiration of this Lease, Lessee is not then in default hereunder beyond any applicable cure period, and Lessee repairs any damage caused by such removal. Any such property remaining after the termination or expiration of this Lease will immediately become the property of the Authority unless otherwise agreed by the Authority in writing.

Notwithstanding the above, upon the termination or expiration of this Lease, Lessee shall, at Lessee's expense, if and as requested by the Authority:

- (1) remove any or all underground storage tanks specified by the Authority and restore the site; or
- (2) properly close any or all underground storage tanks specified by the Authority, in the manner provided by state or federal law.

Section 5.10 Signs. Lessee's use or installation or operation of signs shall be subject to the approval of the Authority in its reasonable discretion as to the number, size, height, location, color, and general type and design.

Lessee shall not place any signs outside the boundaries of the Leased Premises.

Section 5.11 Stormwater retention/detention. As provided in the Authority's "Leasehold Development Standards," all

required stormwater retention and detention facilities must be located within the perimeter of the Leased Premises. The Authority agrees to allow Lessee to modify the Authority's existing Environmental Resource Permit ("ERP") to accommodate the positive legal stormwater drainage outfall for: (i) the existing stormwater drainage flow from the Leased Premises not to exceed the pre-construction flow rate; and (ii) the existing stormwater drainage does not negatively impact flow from those portions of Chamberlin Parkway and Paul J. Doherty Parkway, situated adjacent to the Leased Premises.

Any new stormwater detention or retention facilities must be designed in conformance with South Florida Water Management District standards and FAA Advisory Circular 150/5200-33, as amended ("Hazardous Wildlife Attractants on or Near Airports").

Section 5.12 Authority maintenance. Authority shall maintain, during the term of this Lease, roadway access for semi-truck and trailer operations to access the Leased Premises from Daniels Parkway (excluding however any driveway or driveways between Chamberlin Parkway and the Leased Premises, which shall be Lessee's responsibility to construct and maintain).

ARTICLE 6

UTILITIES; INGRESS AND EGRESS

Lessee must extend to the Leased Premises, and install therein, at its own expense, any required utilities not already in place (including but not limited to water, sewer,

and electricity), in such quantities as to properly service the Leased Premises and be in compliance with building code requirements, and pay for any and all impact fees and connection fees.

If Lessee provides boundary sketches and metes and bounds descriptions which are acceptable to Authority, then Authority shall provide any necessary insurable easements (in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer) in favor of, benefitting and appurtenant to the Leased Premises to extend such utilities to the Leased Premises, and for ingress and egress over and across any private roadways adjacent to or otherwise providing access to the Leased Premises as they may exist and/or be reconfigured from time to time in customary form and substance to be approved by the respective counsel for the Authority, Lessee, and the title insurer.

Lessee must pay for all utilities consumed or produced within the Leased Premises, including but not limited to water, sewer, electricity, gas, telephone, television, Internet access, trash removal, grease removal, and hazardous waste removal.

Authority will use reasonable efforts to cause any existing (as of the Effective Date) water and sanitary sewer lines serving the Leased Premises and located on the Airport (but not within the boundaries of the Leased Premises) to be maintained and repaired as reasonably necessary. However, Authority will not be responsible or liable at any time for

loss of life, injury, or damage to any person or property or business of Lessee or any subtenant or others claiming by, through, or under Lessee, caused by or resulting from any interruption of water, electricity, sanitary sewer, or any other utility service.

ARTICLE 7

ASSIGNMENT AND SUBLEASING

Section 7.1 Assignments. Lessee shall not assign this Lease, or the beneficial interest therein, in whole or in part, and any such attempted assignment shall be voidable by the Authority, unless the proposed assignee agrees to assume this Lease, and Lessee provides the Authority with a copy of the proposed assignment and obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably or arbitrarily conditioned or withheld.

After the permitted assignment and assumption of this Lease, Lessee shall be released from further liability arising or accruing under the Lease from and after the effective date of the assignment, but Lessee will remain liable for those events which occurred, and liabilities which arose or accrued, prior to the effective date of the permitted assignment.

Any change in the controlling interest of Lessee, by transfer of capital stock, partnership interest, beneficial interest, or otherwise, will be deemed an assignment for purposes of this section. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in this Lease, any person or entity who owns, directly or indirectly through

one or more intermediate entities, and ownership interest in Lessee may transfer by sale, pledge, hypothecation, exchange, gift, devise, descent, or operation of law all or any part of such direct or indirect ownership interest in Lessee so long as (i) one or more individuals who currently control the manager, general partner, corporation or other entity that controls Lessee continue to maintain such control; and (ii) the manager, general partner, corporation or other entity that currently controls Lessee continues to maintain such control (such transfer are referred to as "Permitted Transfers").

If Lessee requests Authority's consent to an assignment, Lessee shall submit in writing to Authority, not less than ninety (90) days prior to the anticipated transfer:

- (a) the name, type of entity (e.g. corporation, LLC, partnership, individual), state of incorporation or organization, and address, of the proposed assignee or subtenant ("transferee");
- (b) a copy of the proposed agreement of assignment;
- (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, as to the nature and character of its proposed use of the space;
- (d) banking, financial, or credit information relating to the proposed transferee reasonably sufficient to enable Authority to reasonably determine the financial responsibility and character of the proposed transferee.

In recognition of Lessee's obligations to provide the information set forth in the preceding sentence, Authority agrees to respond to any such request for consent to any assignment submitted to Authority by Lessee in as timely a manner as reasonably practicable in consideration of such

consent requested and the normal meeting schedules of the Authority's Airports Special Management Committee and Board of Port Commissioners. In the event of any such request for consent being denied, Authority shall state with specificity the reason or reasons for denying such request.

Further, notwithstanding anything in this Article or elsewhere in this Lease to the contrary, the Authority hereby expressly approves the following and no further consent shall be necessary for:

- (1) assignment of Lessee's interest in this Lease (or up to 100% of the equity interest in Lessee) to any entity (or person) having a net worth of at least \$100 million; or
- (2) the transfer or assignment of Lessee's interest in this Lease to a holder of a leasehold mortgage which is compliance with Section 7.3 below, via foreclosure or otherwise, in either such holder's own name or through a nominee; or
- (3) the transfer or assignment of Lessee's interest in this Lease, acquired pursuant to item (3) above by a holder of a leasehold mortgage, to a third party purchaser, provided however that any subsequent transfers or assignments from such third party purchaser shall be subject to all of the requirements of this Section.

Section 7.2 Subleases. Lessee may sublet the whole or any part or parts of the Leased Premises for any use permitted under this Lease. Authority agrees that it will, within sixty (60) days after written request of Lessee or a subtenant of Lessee, enter into a recordable "Recognition Agreement" (as defined below) with any subtenant, provided that:

- (1) such subtenant's sublease is a "Recognition-Eligible Sublease" (as defined below);
- (2) Lessee gives Authority a copy of such sublease; and

- (3) subtenant will not be given credit by the Authority for any rents or deposits prepaid by the subtenant to the Lessee.

A "**Recognition Agreement**" shall mean an agreement between Authority and Lessee's subtenant whereby such parties agree that in the event of termination of this lease due to any uncured breach or default by Lessee while a sublease is still in full force and effect, Authority will not terminate the sublease or disturb the subtenant's possession of the subleased premises, but instead will continue such sublease in full force and effect and will recognize the subtenant as a direct tenant of the Authority under the terms and conditions of the sublease, and Lessee's subtenant will attorn to Authority and recognize Authority as the subtenant's direct landlord under the terms of such sublease.

A "**Recognition-Eligible Sublease**" means a sublease from the Lessee to a subtenant that is entered into in good faith and at arm's length, provided that:

- (1) the subtenant is not an affiliate, parent, subsidiary, or owner of the Lessee or sublessor;
- (2) the configuration of the subleased premises is commercially reasonable and would not unreasonably interfere with or impair the marketability of any remaining premises;
- (3) the sublease was on commercially reasonable and fair market terms, and any "free rent" or abatement periods are commercially reasonable, but shall not exceed twelve (12) months in the aggregate (except that subrent may abate in a commercially reasonable manner based on a casualty loss or other contingencies commonly addressed in space leases);
- (4) payments of fixed or base subrent are not scheduled to decrease during such sublease (but may abate as

set forth in item (3) above);

- (5) the sublease allows the subtenant to use the premises only for uses allowed in this Lease, and is not otherwise inconsistent with the terms of this ground Lease;
- (6) the term (including option and renewal terms) of the sublease ends before the Term of this Lease (including all optional extensions already exercised by Lessee, but not including any options to extend which at the time remain unexercised by Lessee).

Section 7.3 Leasehold mortgages. Lessee shall have the right at any time during the Term of this Lease to grant a "leasehold mortgage" (as defined below) of all or any part of the Leased Premises, upon such terms, conditions, and maturity as the Lessee shall determine, and to enter into any and all extensions, modifications, amendments and replacements of any such leasehold mortgage as may be required, so long as the leasehold mortgage:

- (1) is granted only to a bona fide "lending institution" (as defined below);
- (2) provides that neither the Authority's nor Lee County's interests in this Lease or the fee title to the Leased Premises shall be subordinated to the leasehold mortgage;
- (3) provides that it is subject to and subordinate to the rights of Lee County Port Authority and Lee County under this Lease;
- (4) provides that in the event of a foreclosure of such leasehold mortgage or of any other action or proceeding for the enforcement thereof or of any sale thereunder, if the sublessee under any existing or future sublease shall not then be in default in the payment of rent for which a proceeding is then pending brought by such sublessee's lessor, then, any provision in such sublease to the contrary notwithstanding, such sublease will not be barred, terminated, cut off, or foreclosed, nor will said sublessee be named a defendant in such foreclosure action or proceeding, nor will the rights and

possession of said sublessee thereunder be disturbed;

- (5) provides that the leasehold mortgagee will give written notice to the Authority, by certified mail, of the occurrence of any event of default under the loan;
- (6) provides that the leasehold mortgagee will give written notice to the Authority, by certified mail, of any default prior to initiating any foreclosure action.
- (7) provides that if any payment of principal or interest required to be made under the provisions of the promissory note(s) and mortgage is not made, or any covenant of the mortgage is not performed, thereby constituting a default under the terms of the leasehold mortgage, the Authority may, at its option, cure said default in accordance with the terms of this Lease.
- (8) provides that the leasehold mortgagee will be bound by the terms and conditions of the Lease in exercising its remedies under the leasehold mortgage, and that any transfer of the leasehold interest from the leasehold mortgagee to a third party (after foreclosure or otherwise) will be subject to the restrictions on assignment as set forth in this Article 7 of this Lease.

The term "**leasehold mortgage**" as used herein shall include a mortgage, deed of trust, deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, assigned, pledged, or otherwise transferred, to secure a debt or other obligation, including, without limitation, obligations to reimburse the issuer of a letter of credit.

The term "**leasehold mortgagee**" as used herein shall refer to a holder of a leasehold mortgage in respect to which notice as hereinafter provided for has been given.

The term "**lending institution**" as used herein shall mean

a savings bank, bank, trust or insurance company, savings and loan association, college, university, pension fund, employees' profit-sharing trust, commercial credit corporation, investment banking company, or any other monetary or lending institution primarily engaged in the making of first mortgage loans, provided such entity has assets totaling not less than \$100 million.

Any leasehold mortgage shall be expressly subject to and subordinate to the rights of Authority and Lee County hereunder, provided that the Authority and Lee County shall be subject to the obligations of the Authority as lessor under this Lease as to any such leasehold mortgage. Neither the Authority's nor Lee County's interests in this Lease or the fee title to the Leased Premises shall be subordinate to any leasehold mortgage or pledge of Lessee's interests in this Lease.

The leasehold mortgage shall not be binding upon Authority in the enforcement of its rights and remedies herein and by law provided, unless permitted by the terms of this Article (or Authority has granted written consent to same), and further shall not be binding on Authority unless and until an executed counterpart thereof or a copy thereof certified by the recording officer shall have been delivered to Authority, notwithstanding any other form of notice, actual or constructive. If Lessee shall grant a leasehold mortgage allowed by this Lease, and Lessee provides the required counterpart or copy thereof to the Authority pursuant to the

preceding sentence, then, so long as such leasehold mortgage remains unsatisfied of record, Authority agrees that the following provisions shall apply:

- (a) No Cancellation or Modification. In the absence of a default by Lessee, Authority will not cancel, accept a surrender of or modify this Lease or attornment of any sublease without the prior consent in writing of the leasehold mortgagee.
- (b) Notice. If the leasehold mortgagee shall register with the Authority his or its name and address in writing, no notice by Authority to Lessee shall be deemed to have been duly given unless and until a copy thereof has been served upon the holder of the leasehold mortgage by registered or certified mail at the address registered with the Authority.
- (c) Notice of Default. In the event of any default under the Lease, the Authority shall not terminate the Lease until sixty (60) days after any such leasehold mortgagee's receipt from the Authority by certified mail, of notice of the occurrence of any such default under the Lease;
- (d) Right to Cure Monetary Default. Authority will allow the leasehold mortgagee, at its option, to cure any default by Lessee within the longer of said sixty (60) day period or such greater period as may be provided by this Lease, if any payment required to be made under the provisions of this Lease is not made or any covenant of this Lease is not performed, thereby constituting a default by Lessee under the terms of the Lease; and
- (e) Leasehold Mortgagee's Right To Cure Non-Monetary Default. In the event Lessee shall be in default hereunder due to any non-monetary default, the leasehold mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied within sixty (60) days from leasehold mortgagee's receipt of notice of any such default from the Authority, and Authority shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Lessee. No non-monetary default on the part of Lessee shall be deemed to exist, if steps shall in good faith have been commenced promptly by Lessee or by the leasehold mortgagee to rectify the same and shall be prosecuted to completion with diligence.

Lessee hereby constitutes and appoints the leasehold mortgagee Lessee's agent and attorney in fact with full power, in the Lessee's name, place and stead, and at the Lessee's cost and expense, to enter upon the Leased Premises and perform all acts required to be performed herein or in any sublease made herein by Lessee.

- (f) No Termination if Cure after Notice of Same. While any such leasehold mortgage remains unsatisfied of record, or an event or events shall occur which shall entitle Authority to terminate this Lease and if before the expiration of sixty (60) days after the date of service of notice of termination under this Lease upon leasehold mortgagee, such leasehold mortgagee shall have paid to Authority all Rent and other payments herein provided for then in default, and shall have complied or shall be engaged in complying with all the other requirements of this Lease, if any, then in default, then Authority shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect, and the Lease shall be deemed to be reinstated in full force and effect.
- (g) Right To Extend Termination Date. If Authority elects to terminate this Lease pursuant to any right of termination possessed by Authority by reason of Lessee being in default of any provision of this Lease, then the holder of the leasehold mortgage shall have, in addition to all other rights herein granted (including, without limitation, the right to be subrogated to any and all rights of Lessee with respect to curing of any default) the right to postpone and extend the specified date for the termination of this Lease, fixed by the Authority in a notice given pursuant to the applicable provisions of this Lease, for a period of not more than six (6) months (subject to extension as provided below) provided such leasehold mortgagee (i) shall promptly cure all defaults which may be cured by the payment of a sum of money and undertake to cure any other existing default of Lessee excepting the vacation or dismissal of any pending bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the then applicable bankruptcy act or other similar federal and state statutes or laws; (ii) the leasehold mortgagee shall continue to pay the Ground Rent during any extension period(s); and (iii) shall promptly thereafter initiate steps to acquire Lessee's interest in this Lease by foreclosure of

its mortgage or otherwise. Such right shall be exercised by the leasehold mortgagee's giving Authority notice of the exercise of the same prior to the termination fixed in Authority's notice of termination. If, before the date specified for the termination of this Lease as extended by such leasehold mortgagee, Lessee shall be duly removed from possession, and if an assumption in writing of performance and observance of the covenants and conditions herein contained on Lessee's part to be performed shall be delivered to Authority by the leasehold mortgagee, then and in such event the default under this Lease shall be removed and the Lease shall not be canceled; and provided, further, that if at the end of said six-month period such leasehold mortgagee shall be actively engaged in steps to acquire Lessee's interest therein by foreclosure of its mortgage, summary dispossession or otherwise, the time for such leasehold mortgagee to comply with the provisions of this subparagraph shall be extended for such period as shall be necessary to complete such steps with diligence and continuity.

- (h) Further Assurances, Cooperation & NDA. The Authority shall execute, acknowledge, and deliver any and all commercially reasonable documents or instruments which Lessee or Lessee's Lending Institution reasonably requests in connection with a leasehold mortgage or the granting of thereof, provided they are not inconsistent with the terms of this Lease, including without limitation any non-disturbance and attornment agreement (having customary terms and provisions).
- (i) Authority Not Liable. Any mortgage or security agreement between Lessee and leasehold mortgagee shall contain a clause stating that any lien or security interest shall not be enforceable against Authority if Authority has terminated the Lease as a result of Lessee's breach or default under the Lease and the leasehold mortgagee, after proper written notification, has elected not to cure Lessee's default, institute foreclosure or other proceedings against Lessee, or otherwise enforce its rights against Lessee or acquire Lessee's leasehold interest.
- (j) Acceptance of Performance. Any payment to be made or action to be taken by a leasehold mortgagee hereunder as a prerequisite to obtaining a new lease or keeping this Lease in effect shall be deemed properly to have been made or taken by the leasehold

mortgagee if such payment is made or action taken by a nominee, agent or assignee of the right of such leasehold mortgagee.

- (k) Condemnation. The parties shall give the leasehold mortgagee notice of any condemnation proceedings affecting the Leased Premises. The leasehold mortgagee shall have the right to intervene and be made a party to any such condemnation proceedings and the parties hereto do hereby consent that the leasehold mortgagee may be made such party or intervenor.
- (l) Exculpation of Leasehold Mortgagee. No leasehold mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate. Upon any assignment of this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any leasehold mortgage or shall have been derived from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment provided that the assignee shall execute and deliver to Authority a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in said Lease contained on Lessee's part to be performed and observed (it being the intention of the parties that once the leasehold mortgagee shall succeed to Lessee's interest hereunder, any and all subsequent assignments, whether by such leasehold mortgagee, any purchaser at foreclosure sale or other transferee, or any assignee of either shall effect a release of assignor's liability).

Anything herein to the contrary notwithstanding, the provisions of this Article shall inure only to the benefit of the holder of the leasehold mortgage.

- (m) Authority's Right to Cure Lessee's Defaults on Leasehold Mortgage. Lessee agrees to use its best efforts to have any leasehold mortgages provide that the leasehold mortgagee therein shall by certified mail and in writing give notice to Authority of the occurrence of any event of default and further provide that Authority shall be given at least thirty (30) days notice of default in debt service payments before the leasehold mortgagee will initiate any mortgage foreclosure action. If any

payments of amortization and interest required to be made under the provisions of the leasehold mortgage(s) shall not be made or any covenants of the leasehold mortgage(s) shall not be performed which shall constitute a default under the terms of the leasehold mortgage, the Authority may cure said default provided Authority gives Lessee ten (10) days notice of Authority's intention to cure such default. If Authority shall elect to cure such default, the Lessee shall pay the cost thereof to Authority together with interest thereon at the rate of eighteen percent (18%) per annum, as additional rent unless the Lessee shall cure such default within said ten-day period or (a) compliance requires more than ten (10) days and the Lessee shall have commenced compliance within a reasonable time after such notice and shall have cured such default within thirty (30) days after commencing compliance or (b) the Lessee shall obtain from the leasehold mortgagee a written extension of time in which to cure such default together with a separate written extension of time granting Authority a reasonable additional time to cure said default if said default is not cured within said extended time and copies thereof are delivered to Authority. Lessee does hereby authorize Authority in Authority's name but without any obligation or duty on Authority to do so, to do any act or thing required of or permitted to the Lessee to prevent any default under said leasehold mortgage or any acceleration thereof, or the taking of any foreclosure or other action to enforce the collection the indebtedness, and Lessee agrees to indemnify and hold Authority harmless and to reimburse Authority upon demand for all reasonable costs, charges and expenses incurred by Authority in such connection. If Lessee at any time shall request any leasehold mortgagee to grant a moratorium on payment, to waive payment or to extend the time for payment, the Lessee shall give Authority written notice thereof by certified mail concurrently with the making of said request and shall further give Authority written notice by certified mail of the granting or denial of said request.

Any leasehold mortgage, or any modification or amendment thereto not meeting the requirements of this Article shall be invalid and of no effect against Authority or Lee County.

ARTICLE 8

GUARANTEE OF PERFORMANCE AND PAYMENT

Lessee has delivered to the Authority a cash security deposit by wire transfer, in the amount of one hundred fifty thousand dollars (\$150,000.00), to serve as security for the full and faithful performance by Lessee of all terms, covenants, and conditions of this Lease including but not limited to the rentals, fees, and charges to be paid.

If the security deposit is drawn upon, Lessee will replenish or replace same so as to maintain the full amount required under this Article available for Authority's protection until such time as the security deposit is required to be returned to Lessee under the terms below.

Once a certificate of occupancy for a building (or buildings) on the Leased Premises containing at least 150,000 square feet of floor area has been issued, and provided the Lessee is not then in default of any obligations under this Lease, then the Authority will release and return the security deposit posted under this Article less any unpaid rent, and a replacement security deposit will not be required again until one (1) year prior to the end of the Term hereof, as extended by any option Lessee has duly exercised pursuant to Section 2.2 above. In the event Lessee delivers any such replacement security deposit or letter of credit but subsequently exercises an option to extend pursuant to Section 2.2 above, then the Authority will promptly refund such security deposit or return such letter of credit (the foregoing does not waive

or otherwise eliminate the requirement that Lessee deliver a replacement security deposit or letter of credit one (1) year prior to the end of the Term hereof, as extended by any option Lessee has duly exercised pursuant to Section 2.2 above). Each replacement security deposit or letter of credit shall be in the amount of \$150,000.00, or, at the Authority's discretion, a higher amount based on Authority's assessment of loss exposure to the Authority and Lessee's performance of its obligations under this Lease, but not to exceed the total payments that were due for Ground Rent (pursuant to Article 4 above) for the immediately preceding twelve (12) full calendar months.

ARTICLE 9

LESSEE'S STANDARDS OF OPERATION

Section 9.1 General. Lessee will make every reasonable effort, in good faith and using due diligence, to obtain all required permits and approvals, and to complete all construction, obtain certificates of occupancy, as promptly as possible. Lessee will maintain and operate all improvements or engage competent management companies to do so.

Section 9.2 Premises. Lessee will maintain the Leased Premises in a first class manner with regard to safety and cleanliness. Lessee will not create a nuisance or allow a nuisance on the Leased Premises. Lessee will, at its sole expense, keep the Leased Premises clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents, and vermin. Lessee will store or require its subtenants to store any

hazardous materials in accordance with all applicable laws.

ARTICLE 10

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the Leased Premises to:

- (a) view and inspect the Leased Premises (excluding the interiors of any spaces occupied by subtenants), with no disruption of the businesses operated thereon, upon twenty four (24) hours' notice during business hours;
- the (b) view and inspect the Leased Premises at any time in event of an emergency;
- (c) show the Leased Premises to prospective tenants, during Lessee's regular business hours with at least twenty-four (24) hours advance notice, if either (a) Lessee is in default beyond any applicable cure period, or (b) there is less than one (1) year remaining on the Term of the Lease and Lessee has not exercised any remaining renewal option; and
- (d) perform any and all things (including maintenance, repairs, and replacements to the Leased Premises) which Lessee is obligated to and has failed to do after Authority has provided at least thirty (30) days advance written notice to Lessee to act, unless Lessee already is making a reasonable effort to effectuate corrective measures. The cost of all labor, materials, and overhead charges required for performance of such work will be promptly paid by Lessee to Authority.

ARTICLE 11

COMPLIANCE WITH LAWS

Lessee (including its officers, agents, servants, employees, contractors, suboperators, and any other person over which Lessee has the right to control) shall comply at all times with all present and future laws, including the Airport Rules and Regulations Ordinance (Lee Co. Ord. 94-09)

as amended, and as may be further amended or superseded, and all other statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, including the Authority, the Transportation Security Administration ("TSA") and the Federal Aviation Administration ("FAA"), which may be applicable to its operations at the Airport.

ARTICLE 12

RELEASE, INDEMNITY, AND HOLD HARMLESS

Notwithstanding any minimum insurance requirements prescribed elsewhere in this contract, Lessee agrees to defend, release, indemnify, and hold harmless Authority and Lee County (and their respective Commissioners, officers, agents, and employees) from:

- (1) any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with the use of the Leased Premises by Lessee, its subtenants, employees, agents, contractors, and invitees, except to the extent caused by the negligence or misconduct of the Authority and/or Lee County (and/or their respective Commissioners, officers, agents, and employees);
- (2) any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with the installation, use, maintenance, repairs, and removal of the USTs or other tanks, including but not necessarily limited to leaks, pollution, or other contamination to the environment, except to the extent caused by the negligence or misconduct of the Authority and/or Lee County (and/or their respective Commissioners, officers, agents, and employees); and
- (3) any and all fines or penalties imposed on the Authority or Lee County by any governmental agency (including but not limited to the Federal Aviation Administration and the Transportation Security Administration) as a result of the failure of Lessee

or its agents, employees, or contractors, to abide by or comply with any statute, ordinance, rule, regulation, or other requirement (including but not limited to environmental damage or breaches of the Airport's security), except to the extent caused by the negligence or misconduct of the Authority and/or Lee County (and/or their respective Commissioners, officers, agents, and employees).

Lessee agrees to release the Authority from any injury, loss, or damage, caused by criminal acts of third parties. Lessee agrees that the Authority is not responsible or liable for any acts, errors, or omissions of the TSA, FAA, or any other governmental agency.

ARTICLE 13

INSURANCE

Lessee must procure and maintain the following insurance coverages during the Term, at its own expense, for the protection of the Authority and Lessee, in form satisfactory to the Authority, with one (1) or more insurers qualified to do business in Florida and having a Best's Rating of at least "A" and a financial size rating of at least "XII" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies:

- (1) Commercial general liability insurance (including premises, products and completed operations, and contractual liability) with a minimum limit of \$3,000,000.00 per occurrence.
- (2) business automobile liability insurance (if the Lessee is to operate any vehicles on the Leased Premises) covering all owned, hired, and non-owned autos operated on the Airport with a minimum combined single limit of \$1,000,000.00 and with umbrella liability insurance coverage of \$3,000,000.00.
- (3) Property insurance for all risks of physical loss or

damage to the improvements on the Leased Premises, including loss or damage by fire, windstorm, flood, and earth movement. Coverages must be maintained in an amount sufficient to prevent either Lessee or Authority from being a co-insurer on any part of the risk, and such amount must be not less than the full replacement value (as determined by a commercially reasonable estimate).

- (4) Workers' compensation and employer's liability insurance, both in the amounts (if any) required by state law for workers' compensation coverage.
- (5) During periods of construction of improvements on the Leased Premises, builder's risk insurance (which may be provided by either Lessee or any subtenant or their respective contractors) in an amount covering the applicable contract price for all work to be performed by or at the direction of Lessee or any subtenant, on an "all risk" form.
- (6) If one (1) or more above or underground storage tanks are to be installed:
 - (A) storage tank liability insurance covering such tank(s), with a single limit of at least \$2,000,000.00, subject to a deductible not to exceed \$100,000.00 per claim, with a \$2,000,000.00 annual overall policy limit; and
 - (B) environmental impairment liability insurance, with a single limit of at least \$2,000,000.00, subject to a deductible not to exceed \$100,000.00 per claim, with a \$2,000,000.00 annual overall policy limit.

The Lessee's insurance policies will be primary and noncontributory and include a waiver of subrogation in favor of the Authority. The Authority must be named as additional insured in all policies of insurance except Lessee's workers' compensation insurance and builder's risk insurance.

Certificates of all policies evidencing the insurance required shall initially be delivered to the Authority by

Lessee by the following dates:

- (1) for the commercial general liability, business automobile, and builders risk policies, prior to the Authority's issuance of any work permit authorization or notice to proceed, and prior to Lessee's commencement of any construction;
- (2) for the storage tank and environmental impairment liability policies, prior to placement of any fuel in any fuel tank installed on the Leased Premises; and
- (3) for the other required policies, prior to the Date of Beneficial Occupancy.

Certificates evidencing renewal or replacement of any expiring policy shall be provided to the Authority prior to such renewal or replacement. Copies of any required policy shall be provided to the Authority upon request.

Each such policy or certificate shall contain a valid endorsement that such insurance will not be canceled or materially changed or altered without first giving advance written notice to the Lee County Port Authority.

After the first five (5) years of the Lease Term, the Authority may from time to time increase any of the required coverage limits provided above to reflect increases in CPI.

The coverages provided for herein shall be subject to commercially reasonable deductible amounts, but in any event, for the property insurance required above, the deductible shall not exceed 3% of the full replacement value of the buildings (or, for a named windstorm, 5%) unless otherwise consented to in writing by the Authority.

ARTICLE 14

DEFAULT BY LESSEE

Section 14.1 Default. Lessee will be deemed in default of this Lease if:

- (1) Lessee fails to provide the security deposit, pay rent, or make any other payment required hereunder within ten (10) days after same is due after ten (10) day written notice;
- (2) Lessee neglects or fails to perform and observe any promise, covenant, or condition set forth in this Lease after receipt of a thirty (30) day written notice of breach from the Authority;
- (3) Lessee becomes, without prior written notice to Authority, a successor or merged corporation in a merger, or a constituent corporation in a consolidation; or
- (4) Lessee fails to use diligent efforts to pursue the intended development, obtain necessary governmental permits and construction financing, and thereafter commence and continue bona fide construction of the intended development on the Leased Premises.

Section 14.2 No waiver. No default will be deemed waived by either party, whether or not such party has knowledge of the default or accepts rent or other payments, unless the waiver is expressed in writing and signed by the party against whom the waiver is sought to be enforced.

Section 14.3 Authority's remedies. In the event of any monetary default by Lessee (i.e. failure to pay rent or other money due) under this Lease, in addition to all other remedies provided herein or at law, Authority will have the right to terminate this lease, by giving at least thirty (30) days written notice to the "Required Notice Recipients" (as defined below), if: (1) Lessee is in default of this Lease as set

forth in Section 14.1 above; and (2) either:

- (a) such default is not cured to the Authority's reasonable satisfaction within said thirty (30) days after the Authority gives Lessee notice of the default; or
- (b) if such default does not relate to the payment of rent or money, and is not curable within said thirty (30) days, Lessee either: (1) fails to demonstrate to the Authority, within said thirty (30) days of receiving notice from the Authority of the default, that Lessee has commenced curing the default; or (2) fails to diligently pursue the cure of such default to completion.

"Required Notice Recipients" means: (1) Lessee; and (2) any holder of a leasehold mortgage of which notice has been previously provided to the Authority pursuant to Article 7 above.

Section 14.4 Lessee's remedies. In the event of a material default by Authority which has not been cured by Authority for a period of thirty (30) days (or, for a material default which cannot be cured by Authority within 30 days, if the Authority has not commenced curing such default) after written notice to Authority from Lessee of such default. Lessee shall have the right to terminate this Lease by providing thirty (30) days written notice to Authority, and Lessee shall have all rights available at law.

In the event of the cessation of the operation of the Airport for a period of thirty (30) days or more, Lessee will have the right, so long as the Airport has not reopened, to terminate this lease.

ARTICLE 15

CASUALTY

Section 15.1 Notice to Authority. If the Leased Premises, or any improvement thereon, is damaged or destroyed by fire, hurricane, tornado, or any other casualty, Lessee shall promptly give written notice to Authority of the date and nature of such damage.

Section 15.2 Damage due to insured or insurable cause within Initial Term, or minor damage. If any improvements on the Leased Premises are damaged and:

- (A) such damage: (1) occurs by fire, hurricane, tornado, or other casualty of the type which Lessee is required to provide coverage for, or which is covered by any insurance policy carried by Lessee; and (2) occurs within the Initial Term (as set forth in Section 2.1 above);

or

- (B) any building or buildings are damaged so as to collectively require, for Restoration, an estimated expenditure of not more than ten percent (10%) of the full insurable value of all buildings on the premises immediately prior to the casualty (as determined by an "Independent Architect" as defined below);

then:

- (1) Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild it, at least to the extent of the value and as nearly as practicable to the character of the premises and improvements existing immediately prior to the occurrence of such damage (the "Restoration");
- (2) Lessee's Restoration shall be made in accordance with the procedures set forth above for Lessee's initial construction (including but not limited to the Authority's review and approval of plans); and

- (3) In the event of a casualty resulting in a loss payment for the improvements in an amount greater than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) as adjusted by the change in the CPI Index from the commencement date of the Lease through the date of the casualty, the proceeds of all insurance policies maintained by Lessee attributable to the replacement of the improvements, but not Lessee's personal property, shall be deposited in Authority's and Lessee's joint names in an escrow account at any bank that is then a leasehold mortgagee, or at Lessee's option any other bank or financial institution agreed by Lessee and Authority, and shall be used by Lessee for the repair, reconstruction, or restoration of the improvements. Such proceeds shall be disbursed periodically upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction, or restoration. Lessee shall obtain, and make available for Authority copies of receipted bills and, upon completion of said work, copies of full and final waivers of lien. In the event of a casualty resulting in a loss payment for the improvements in an amount equal to or less than the amount stated above, the proceeds shall be paid to Lessee, and shall be applied towards repair, reconstruction, and restoration. In the event the insurance company monitors the repair, reconstruction, or restoration of the improvements, the parties acknowledge that the proceeds may not be disbursed in advance of invoices from contractors and therefore not paid in advance in order to escrow the proceeds. In the event the proceeds are not escrowed in advance of payments due for the repair, reconstruction, or restoration of the improvements, the proceeds shall be jointly payable to Authority and Lessee. If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee must pay the shortfall. If the proceeds exceed the cost of Restoration, Lessee will be entitled to the surplus, unless Lessee is in default under this Lease in which case the surplus must be applied to any amounts owed to the Authority by Lessee, and the remainder, if any, will be paid to Lessee.

An "**Independent Architect**" shall mean an architect or engineer that is licensed to practice in the State of Florida, who has experience in estimating cost of construction and

repair, and who is selected by agreement between Authority and Lessee; however, if the parties do not agree and Lessee rejects or does not approve, within thirty (30) days of Authority's written proposal, any two (2) independent licensed architects or engineers, then the "Independent Architect" may be selected unilaterally by the Authority (but shall not be one (1) of the two (2) originally proposed by Authority, if such architect(s) or engineer(s) were expressly rejected by Lessee in writing within said thirty (30) day time period). In any event, the fee charged by the "Independent Architect" shall be split equally between Authority and Lessee.

If the construction work on the Restoration has:

- (1) not commenced by the later of:
 - (a) twelve (12) months after the insurance settlement; or
 - (b) twenty-four (24) months after the casualty;
- or
- (2) has commenced but bona fide work is not actively continuing;

Authority shall give at least sixty (60) days advance written notice to Lessee (and any other Required Notice Recipients as defined in Section 14.3 above), of Authority's intention to terminate the Lease, unless Lessee can demonstrate that Lessee has made and continues to make diligent effort to commence or continue bona fide construction work, failing which this lease shall terminate, and any and all remaining insurance proceeds (whether held by the Authority, the leasehold mortgagee, or

otherwise) shall be applied: first, to completing the required Restoration; second, to paying off the leasehold mortgage (but only to the extent the leasehold mortgage secures amounts actually spent by the Lessee on improvements to the Leased Premises, plus interest); third, to the Authority (to the extent any amounts are owed by Lessee to Authority under this Lease; and fourth, any remainder to the Lessee.

Section 15.3 Major damage due to uninsurable cause or near end of Lease Term. If any building or buildings are damaged and:

- (A) such damage: (1) occurs by a cause, such as war or nuclear attack, not of the type which Lessee is required to provide coverage for, and which is not covered by any insurance policy carried by Lessee; or (2) the damage occurs during the last two years of the Initial Term, or after the end of the Initial Term (as set forth in Section 2.1 above);

and

- (B) the building or buildings are damaged so as to collectively require, for Restoration, an estimated expenditure of more than ten percent (10%) of the full insurable value of all buildings on the premises immediately prior to the casualty (as determined by an "Independent Architect" as defined above);

then Lessee shall have the option to elect to terminate this Lease by providing written notice to Authority, in the manner provided herein, within six (6) months of the date of Lessee's receipt of written evidence of the determination by the Independent Architect of such level of the estimated cost of Restoration.

If Lessee does not so exercise this option to terminate,

then: (1) Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild it, at least to the extent of the value and as nearly as practicable to the character of the Leased Premises and improvements existing immediately prior to the occurrence of such damage; (2) Lessee's Restoration shall be made in accordance with the procedures set forth above for Lessee's initial construction (including but not limited to the Authority's review and approval of plans); and (3) any and all insurance proceeds attributable to the replacement of the improvements, but not Lessee's personal property, shall be deposited in Authority's and Lessee's joint names in an escrow account at a bank or other financial institution designated by Authority (unless otherwise required by any leasehold mortgage approved by the Authority pursuant to Section 7.3 above), to be used by Lessee for the repair, reconstruction, or restoration of the improvements. Such proceeds shall be disbursed periodically upon certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the repair, reconstruction, or restoration. Lessee shall obtain, and make available to Authority, copies of receipted bills, and upon completion of said work, copies of full and final waivers of lien. In the event the insurance company monitors the repair, reconstruction, or restoration of the improvements, the parties acknowledge that the proceeds may not be disbursed in advance of invoices from contractors and therefore not paid in

advance in order to escrow the proceeds. In the event the proceeds are not escrowed in advance of payments due for the repair, reconstruction, or restoration of the improvements, the proceeds shall be jointly payable to Authority and Lessee (unless otherwise required by any leasehold mortgage approved by the Authority pursuant to Section 7.3 above).

If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee must pay the shortfall. If the proceeds exceed the cost of Restoration, Lessee will be entitled to the surplus, unless Lessee is in default under this Lease. In the latter event, the surplus must be applied first to cure of the default, and the remainder, if any, will be paid to Lessee.

If Lessee does so elect to terminate the Lease, then any and all insurance proceeds received and receivable as a result of or on account of casualty damage shall be payable, first, to the Authority to cure any default of Lessee, second, to paying off the leasehold mortgage (but only to the extent the leasehold mortgage secures amounts actually spent by the Lessee on improvements to the Leased Premises, plus interest), and third, any remainder split between the Authority and Lessee on a pro rata basis, with the Lessee's percentage share being equal to the time that was (but for the termination) remaining on the Initial Term of this Lease (as extended by any options already exercised prior to the date of the casualty) as of the date of the casualty, divided by the time

between the Date of Beneficial Occupancy and the end of the Initial Term of this Lease as extended by any options already exercised prior to the date of the casualty, and the Authority's percentage being the remaining share.

Section 15.4 Abatement of rents and other payments. If any one or more of the business operated by subtenants are stopped due to casualty to any of the buildings on the Leased Premises, Lessee's obligation to pay rent and any other applicable fees or charges will abate proportionate to the subtenant spaces stopped from operating, from the date of said cessation of each such business, until the later of date on which a certificate of occupancy for completion repairs of such subtenant's space is issued, but in any event such abatement shall not to exceed a period of eighteen (18) months. Notwithstanding the preceding sentence, in the event Lessee terminates this Lease pursuant to Section 15.3 above, Lessee will pay the Authority all rents and fees which accrue, prorated as of the date Lessee has so terminated and surrendered the Leased Premises to the Authority.

ARTICLE 16

LICENSES AND TAXES

Lessee shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Lessee. Lessee agrees to bear, pay, and discharge, on or before their respective due dates, the amount of all federal, state, and

local taxes, fees, assessments, and levies which are now or may hereafter be levied solely upon the Leased Premises (and not any other property owned by the Authority), the fee interest in the Leased Premises (and not any other property owned by the Authority), Lessee's leasehold interest in the Leased Premises, or upon Lessee, or upon the buildings, improvements, or business conducted on the Leased Premises, or upon any of Lessee's property used in connection therewith.

ARTICLE 17

COMPLIANCE WITH ENVIRONMENTAL LAWS

As a material inducement to Authority to lease the Leased Premises to Lessee, Lessee covenants and warrants that Lessee and Lessee's use of the Leased Premises will at all times comply with and conform to all Environmental Laws.

Reciprocally, the Authority represents to Lessee that, to the knowledge of Authority, upon the Effective Date, the Leased Premises comply with and conform to all Environmental Laws, and that Authority, its officers, employees, and contractors, shall do nothing to violate any such Environmental Laws as to the Leased Premises.

"Environmental Law" shall include any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions relating to the environment or to emissions, discharges, releases or threatened releases of

pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances, materials or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the Handling (as hereinafter defined) of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances or wastes.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

ARTICLE 18

STORM WATER COMPLIANCE

Notwithstanding any other provisions or terms of this Agreement, Lessee acknowledges that certain properties within the Airport, or on Authority owned land, are subject to stormwater rules and regulations. Lessee agrees to observe and abide by such stormwater rules and regulations as may be applicable to Authority's property and uses thereof.

Lessee acknowledges that any stormwater discharge permit issued to the Authority may name Lessee as a co-permitee. Authority and Lessee both acknowledge that close cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. The Lessee agrees to cooperate with the implementation of the Authority's Stormwater Pollution Prevention Plan (SWPPP) and not

intentionally cause any violation to the SWPPP. Lessee acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by Lessee, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations. If applicable, the Lessee operations at the Airport and required under applicable Environmental Law, Lessee shall submit a separate Notice of Intent to use the State of Florida Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity to the Florida Department of Environmental Protection with a copy to the Airport. The Authority may also require the Lessee to secure a separate stormwater discharge permit, if necessary.

Lessee shall comply with any stormwater discharge permit requirements applicable to Lessee including but not limited to; certification of non-stormwater discharges; Airport SWPPP; implementation of best management practices (as such term may be defined in applicable stormwater rules and regulations); annual training, and maintenance and submittal of records required by SWPPP. In complying with such requirements, Lessee will observe applicable deadlines set by the regulatory agency that has jurisdiction over the permit.

Authority will provide Lessee with written notice of any

stormwater discharge permit requirements applicable to Lessee and with which Lessee will be obligated to comply from time-to-time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee agrees that within ten (10) days of receipt of such written notice, it shall notify Authority in writing if it disputes any of the stormwater permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, Lessee will be deemed to assent to undertake such stormwater permit requirements. In that event, Lessee agrees to undertake, at its sole expense, unless otherwise agreed to in writing between Authority and Lessee, those stormwater permit requirements for which it has received written notice from Authority, and Lessee agrees that it will hold harmless and indemnify Authority for any violations or non-compliance with any such permit requirements.

ARTICLE 19

WASTE; SURRENDER OF POSSESSION

Lessee will not commit or permit waste of the Leased Premises and must quit and voluntarily deliver up possession of the Leased Premises at the end of the Term in as good condition as at the beginning of this Lease, and all fixed improvements in as good condition as when installed or

constructed, excepting only ordinary wear and tear. Lessee shall have no obligation to remove any of the fixed improvements. Lessee will have the right, but not the obligation, to remove any proprietary signage prior to the end of the Term, provided Lessee repairs any damage resulting from such removal.

ARTICLE 20

GENERAL PROVISIONS

Section 20.1 Notices. Notices to Authority or Lessee, respectively, will be sufficient if sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight delivery service (e.g. Federal Express, UPS, or DHL), to:

To Authority:

Lee County Port Authority
Attn.: Executive Director
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

with a copy to:

Lee County Port Authority
Attn.: Edward W. Moran, Esq.
11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

To Lessee:

RSW COLD STORAGE, LLC
Attn.: _____
[INSERT ADDRESS]

With a copy to:

Conroy, Conroy & Durant, P.A.
Attn: J. Thomas Conroy
2210 Vanderbilt Beach Rd, Suite 1201
Naples, FL 34109

The parties may designate in writing other addresses for notice. Notice shall be deemed given and received when delivered (if sent by overnight delivery service) or when postmarked (if sent by registered or certified mail, postage prepaid).

Section 20.2 Captions. The captions within this Lease are inserted for convenience only, and are not intended to define, limit, or describe the scope or intent of any provisions, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 20.3 Incorporation of exhibits. All exhibits referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.

Section 20.4 Time. Time is of the essence in the performance of this Lease.

Section 20.5 Governing law; forum selection and venue. This Lease shall become valid when approved by the Authority's Board of Port Commissioners in Lee County, Florida; it will be deemed made and entered into in the State of Florida and will be governed by and construed in accordance with the laws of Florida, exclusive of choice of law rules. In the event of a

dispute between the parties, all actions or proceedings will be brought and litigated exclusively in the state courts located in Lee County, Florida.

Section 20.6 Waiver of right to jury trial. The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this Lease or Lessee's use or occupation of the Leased Premises.

Section 20.7 Attorneys' fees. Should any action or proceeding be commenced to enforce any of the provisions of this Lease or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees, including appellate costs and fees.

Section 20.8 Nonwaiver of rights. No waiver of breach by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 20.9 Airport development. Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as Authority sees fit, without Lessee's interference or hindrance, so long as any developments, changes or improvements are not on the Leased

Premises.

Section 20.10 Lessee's use and construction to conform with Federal Aviation Regulations. Lessee agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

Section 20.11 Lessee's noninterference with aircraft. Lessee and its successors, assigns, and subtenants will not use the Leased Premises or any part of the Airport in any manner, or act in any manner, that might interfere with any aircraft landing, taxiing, or taking off from the Airport or otherwise create a hazard to aviation. If this covenant is breached in any way, Authority reserves the right to enter the Leased Premises and abate or eliminate the interference at the expense of Lessee.

Section 20.12 Administration of Lease. Whenever in this agreement Lessee is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, Lessee shall deal with Authority's authorized representative. Unless and until Authority gives Lessee written notice to the contrary, Authority's authorized representative shall be the Authority's

Executive Director, or the Executive Director's designee.

Section 20.13 Covenant of quiet enjoyment. Authority covenants that Lessee, on paying the rent and all sums provided for in this Lease and on keeping, observing, and performing all the other terms, covenants, conditions, provisions, and agreements herein contained on the part of Lessee to be kept, observed, and performed, shall, during the Term, peaceably and quietly have, hold, and enjoy the Leased Premises subject to the terms, covenants, conditions, provisions, and agreements hereof without interference by any persons lawfully claiming by or through Authority. In the event of any default by either party under this Lease, the other party shall have any and all remedies, available at law or in equity, including without limitation those permitted under the terms and conditions of this Lease.

ARTICLE 21

FAA CLAUSES

Section 21.1 Incorporation of required provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by the Federal Aviation Administration or any other governmental body or agency. In the event that the FAA or any successor requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, then so long as such modifications or changes do not materially adversely affect or interfere with

Lessee's use or occupancy of the Leased Premises, or the operation of any of the business(es) of any subtenant(s) of Lessee, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required.

Section 21.2 Subordination. This agreement is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future agreement entered into between the Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

Section 21.3 Nonexclusivity. Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this lease are non-exclusive and the Authority reserves the right to grant similar privileges to another lessee or other lessees on other parts of the Airport.

Section 21.4 Nondiscrimination. The Lessee, for itself, successors, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded

from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Leased Premises, (2) that 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 benefits of, or be otherwise subjected to discrimination, (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate the Lease and re-enter as if said Lease had never been made or issued; but 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.

Section 21.5 ACDBE Regulations. To the extent Title 49, Part 23, CFR, is applicable to the activities of Lessee under the terms of this Lease, Lessee will:

- (1) comply with said regulations, as may be amended or superseded;
- (2) provide semi-annual reports to the Authority, within

thirty (30) days of the end of each reporting period, covering the six-month reporting periods from October 1 through April 30, and May 1 through September 30, identifying the dollar value of goods and services purchased by Lessee from each such ACDBE and non-ACDBE, and earned by each ACDBE and non-ACDBE partner, joint venturer, or subconcessionaire, calculated in accordance with said regulations, and provide such data and information to the Authority as the Authority requests related to the participation of certified Airport Concession Disadvantaged Business Enterprises (ACDBEs), as defined in 49 CFR Part 23, in Lessee's concession; and

- (3) not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR, part 23, and Lessee will include the above statement in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Section 21.6 Airport protection. It shall be a condition of this Lease, that the 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 said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for the navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the airport.

The Lessee agrees for itself, its successors, and assigns, to restrict the height of structures, objects of natural growth, and other obstructions on the premises to such

a height so as to comply with Federal Aviation Regulations, Part 77.

The Lessee agrees for itself, its successors, and assigns, to prevent any use of the Leased Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

Section 21.7 Property Rights Reserved. This Lease is subject and subordinate to the provisions of any governmental restrictions of record and any existing or future agreement entered into between Authority or Lee County and the United States, for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

ARTICLE 22

CONDEMNATION

Section 22.1 Complete taking. If the whole of the Leased Premises shall be taken or condemned for any public or quasi-public use or purpose other than by Lee County or the Authority, by right of eminent domain or by purchase in lieu thereof, or if a substantial portion of the Leased Premises shall be so taken or condemned that the portion or portions remaining is or are not sufficient and suitable, in the mutual

reasonable judgment of Authority and Lessee, for the continued operation of the business contemplated by this Lease to be conducted thereon, therein, or therefrom so as to effectively render the premises untenable, then this Lease and the Term hereby granted shall cease and terminate as of the date on which the condemning authority takes possession and all rent shall be paid by Lessee to Authority up to that date or refunded by Authority to Lessee if rent has been prepaid by Lessee beyond that date. Lessee and its subtenants shall have the right to pursue any claims they may have for leasehold and leasehold improvement compensation against any such condemning authority.

Section 22.2 Partial taking. If a portion of the Leased Premises is taken other than by Lee County or the Authority, and the portion or portions remaining can, in the mutual reasonable judgment of Authority and Lessee, be adapted and used for the conduct of Lessee's business operation, such that the Leased Premises are not effectively rendered untenable, then the Lessee shall promptly restore the remaining portion or portions thereof to a condition comparable to their condition at the time of such taking or condemnation, less the portion or portions lost by the taking to the extent that proceeds are available to Lessee from the taking, and this Lease shall continue in full force and effect except that the rent payable hereunder shall be equitably adjusted to take into account the portion or portions of the Leased Premises

lost by the taking. Lessee and its subtenants shall have the right to pursue any claims they may have for leasehold and leasehold improvement compensation against any such condemning authority.

Section 22.3 Award. All compensation awarded for any taking of the fee shall belong to and be the property of Authority. All compensation awarded for any taking of the leasehold and leasehold improvements thereon (including without limitation all buildings, infrastructure improvements, lighting fixtures, pavement, and drive parking lot improvements) shall belong to and be the property of Lessee. Authority shall have no right, title, interest or claim in any award made to Lessee for loss of business, the taking of Lessee's property within the Leased Premises, Lessee's improvements to the Leased Premises, the lost fair market value of the Lease, and/or relocation expenses.

Section 22.4 Disputes. If Authority and Lessee cannot agree in respect of any matters to be determined under this Article, a determination shall be requested of the court having jurisdiction over the taking or condemnation; provided, however, that if said court will not accept such matters for determination, either party may have the matters determined by a court otherwise having jurisdiction over the parties.

Section 22.5 Rights of Leasehold Mortgagee. Any mortgagee of Lessee's leasehold interest in the Leased Premises shall be entitled to appear in any such condemnation

proceedings and make claim for such share of any award to which Lessee is entitled by the terms of this Article.

ARTICLE 23

CIVIL RIGHTS AND TITLE VI

23.1 General Civil Rights Provisions. Lessee 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 benefitting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee 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.

23.2 Compliance with Nondiscrimination Requirements. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

A. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

- B. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Port Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Port Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

F. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Port Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Port Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

23.3 Transfer of Real Property Acquired or Improved

Under the Airport Improvement Program.

A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that 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 Lessee 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. 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 lands and facilities thereon.

23.4 Construction/Use/Access to Real Property

Acquired Under the Activity, Facility or Program.

- A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon.

23.5 Title VI List of Pertinent Nondiscrimination

Acts and Authorities. During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-

discrimination statutes and authorities; including but not limited to:

1. 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);
2. 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);
3. 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);
4. 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;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. 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);
7. 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);
8. 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;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. 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;
 11. 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);
 12. 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 24

ENTIRE AGREEMENT

Section 24.1 Integration. This Lease sets out the entire agreement between the parties. There are no implied covenants or warranties except as expressly set forth herein. No agreement to modify this Lease will be effective unless in writing and executed by the Lessee and the Authority's Board of Port Commissioners.

Section 24.2 Brokerage. The Authority and Lessee each warrant and represent to the other that each party has not dealt with any agent, realtor, or broker in connection with this Lease. In the event of any claim(s) by any person or firm for a finder's fee, professional fee or brokerage commission from anyone in connection with this Lease, Lessee shall indemnify and hold harmless Authority from and against any and all claims for commission, fee or other compensation by anyone who claims to have dealt with or represented Lessee in connection with this Lease and for any and all costs incurred by Authority in connection with such claims including, without limitation, attorneys' fees and disbursements. The provisions of this Section 23.2 shall specifically survive the execution of the Lease.

Section 24.3 Radon Gas. Radon is a naturally occurring 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 county public health unit.

ARTICLE 25

LEASE CONTINGENT UPON FAA APPROVAL

This Lease, in its entirety, is contingent upon the FAA's written consent to or approval of the land use proposed herein being received by the Authority (pursuant to 88 FR

85474, i.e. FAA's "Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Land"). Upon Authority's receipt of such written consent or approval, it will provide Lessee a copy of same. If the Authority does not receive such written consent or approval of this lease by the FAA (the date of which shall be known as the "**FAA Approval Date**") within four (4) months of the Effective Date, then, until FAA does provide the Authority with written consent or approval of this lease, either party may terminate this lease by providing written notice to the other of its election to terminate, and in that case this lease will be considered terminated effective upon the date of such termination notice, and any money or security deposited hereunder shall be returned to Lessee (provided Lessee is then current on any rent obligations) and no further rights, obligations, or liabilities shall accrue hereunder after such termination.

ARTICLE 26

MEMORANDUM OF LEASE

The memorandum of lease, attached hereto as Exhibit "C" (the "Memorandum of Lease"), shall be recorded in the public records of Lee County, Florida upon Lessee obtaining all necessary permits for the construction of the improvements. Authority shall execute and deliver an original Memorandum of Lease to Lessee no later than ten (10) days after receipt of notification that all permits have been obtained.

IN WITNESS WHEREOF, the parties hereto, by their duly

authorized representatives, have executed this Lease on the
date first above written.

RSW COLD STORAGE, LLC
(Lessee)

DocuSigned by:
By: Jacob Finley
Title: Manager

Date: 2/13/2024

LEE COUNTY PORT AUTHORITY

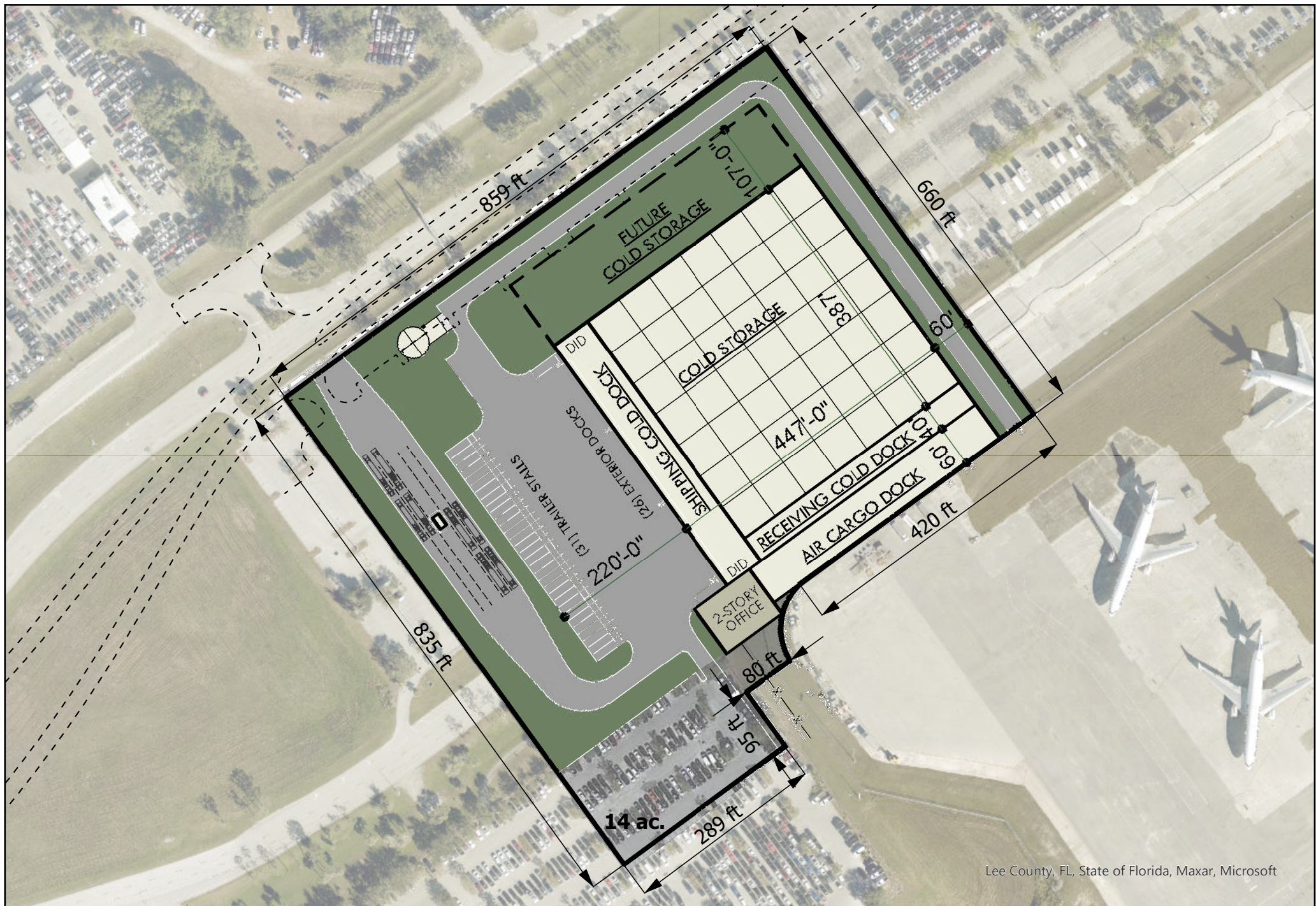
ATTEST:
KEVIN KARNES, CLERK

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners
Date: _____

By: _____
Deputy Clerk

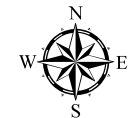
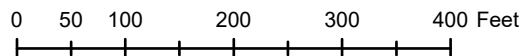
Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney



Legend
- - - Chamberlin Realignment
Proposed Lease Boundary

Cold Storage Karis - Exhibit A



Map Created: 11/16/2023

Exhibit B

[this page to be replaced after survey per Section 1.2]

“Exhibit C”

Property Identification Number:_____

Prepared without opinion of title by
and return after recording to:

[insert name/address/phone of Lessee’s counsel]

(Space Above this Line for Recording Data)

MEMORANDUM OF LEASE

The undersigned, LEE COUNTY PORT AUTHORITY, a special district of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913 ("Landlord"), and RSW Cold Storage, LLC ("Tenant"), entered into a certain Ground Lease, dated _____, 20** (the "Lease"), which provides in part as follows:

EFFECTIVE DATE OF LEASE: _____, 20**.

LEASED PREMISES:

The Premises are located in Lee County, Florida and more particularly described by Exhibit "A" attached hereto.

TERM OF LEASE:

The term of the Lease shall be for a period of forty (40) years, commencing on the FAA Approval Date (as defined in the Lease), unless sooner terminated or extended.

OPTIONS TO EXTEND:

Pursuant to the Lease, Landlord has granted to Tenant the option, if Tenant is not in default under the terms of the Lease, to renew the Lease for two (2) consecutive periods of five (5) years each.

NO LIEN ON LANDLORD’S FEE SIMPLE INTEREST:

The Leased Premises is publicly owned property which is exempt from construction liens under Florida Statutes Chapter 713.

“Exhibit C”

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LANDLORD:

LEE COUNTY PORT AUTHORITY

ATTEST:
KEVIN KARNES, CLERK

By: _____
Chairman or Vice Chairman,

By: _____
Deputy Clerk

Board of Port Commissioners

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney

“Exhibit C”

TENANT:

By: [insert name], a [state/entity type], as

Witness:

By: _____
[insert name], title

Witness:

“Exhibit C”

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____,
20**, by _____, as _____
_____ of Lee County Port Authority. He/She () is personally known to me or () has produced
_____ as identification.

SEAL

Notary Public

Printed Name

Commission No.

Expiration Date

STATE OF FLORIDA)
) SS
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ____ day of _____,
20**, by _____, as ***, of _____, on behalf of the
company. He/She () is personally known to me or () has produced _____
_____ as identification.

SEAL

Notary Public

Printed Name

Commission No.

Expiration Date