

**GROUND LEASE**  
**OF CERTAIN NON-AVIATION LAND**  
**AT PAGE FIELD**

THIS GROUND LEASE (this "Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), 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 the "Authority"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation, with its principal office at 2455 Paces Ferry Road, C-20, Atlanta, Georgia 30339 (herein referred to as "Lessee").

**Background**

The airport known as Page Field (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.

Lessee is the prospective assignee of the leasehold interest of Morales Real Estate, LLC (herein "Morales") under a "Ground Lease of Certain Non-Aviation Land at Page Field" between the Authority and Morales, dated March 12, 2020 (herein the "Morales Lease"). Contingent upon said assignment occurring, Lessee desires to lease certain additional land from the Authority, to accommodate Lessee's development, construction, and operation of a retail store.

The parties have negotiated this Lease, whereby, contingent

upon Lessee becoming the assignee of the Morales leasehold interest, the Morales Lease will be terminated and replaced with this Lease covering a certain parcel of land at the Airport (including both the existing Morales premises and an adjacent area of approximately 9.7 acres) for Lessee's development, construction, and operation of a Home Depot store.

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

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

#### **ARTICLE A**

##### **EFFECTIVE DATE; CONTINGENCY UPON ASSIGNMENT OF MORALES LEASE**

This Lease entered into in contemplation of Lessee becoming the assignee of the leasehold interest of Morales under the Morales lease, by or prior to the date that is twenty-five (25) months after the Effective Date of this Lease (herein the "Assignment Deadline").

Upon such assignment, Lessee will immediately notify Authority of the assignment and provide Authority a copy thereof.

In the event Lessee does become the assignee of the leasehold interest of Morales under the Morales Lease, on or prior to the Assignment Deadline, then the Morales Lease will be deemed terminated, and automatically will be superseded and replaced by this Lease as of the date after the assignment of the Morales Lease to Lessee.

The continuation of this Lease beyond the Assignment Deadline and Lessee's development hereunder is contingent on



Lessee becoming the assignee of the leasehold interest of Morales under the Morales Lease on or prior to the Assignment Deadline. In the event Lessee does not become the assignee of the leasehold interest of Morales under the Morales Lease, on or prior to the Assignment Deadline, then this Lease shall terminate and any deposit provided by Lessee to the Authority will be returned to Lessee (without interest).

For the purposes of this Lease, the Effective Date will be the date this Lease is approved by the Authority's Board of Port Commissioners.

## **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 (herein the "Leased Premises") at the Airport, containing approximately 14.9 acres, located north and east of the RaceTrac parcel at the northeast corner of the intersection of U.S. 41 and North Airport Road, at Page Field, in the City of Fort Myers, County of Lee, State of Florida, as generally depicted on the drawing attached hereto as Exhibit A, together with the nonexclusive right to use, in common with the Authority and others, any public roads, walkways, and other public areas on the Airport for access to and from the Leased Premises; but 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 including, but not necessarily limited to:

- (A) an Access Easement granted to RaceTrac Petroleum, Inc. on March 3, 2016 and recorded in the Official Records of Lee County, Florida as instrument number 2016000098147;
- (B) a Drainage/Sewer Easement granted to RaceTrac Petroleum, Inc. on March 3, 2016 and recorded in the Official Records of Lee County, Florida as instrument number 2016000098147; and
- (C) a Utility Easement granted to Florida Power & Light Company on March 3, 2016 and recorded in the Official Records of Lee County, Florida as instrument number 2016000053574.

**Section 1.2 Survey.** The parties hereto recognize that Exhibit A shows only an approximate depiction of the boundaries of the Leased Premises. Accordingly, no later than six (6) months after the Effective Date, Lessee shall obtain at its own cost (and provide a copy to the Authority) a precise boundary survey (herein the "Survey") and metes and bounds description of said parcel, 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 and Lessee. Authority shall have thirty (30) days from the date it receives the Survey and metes and bounds description to determine whether they accurately reflect the boundaries of said parcel in accordance with this Lease. Upon the Authority's written approval of same (or the passage of thirty (30) days without objection by the Authority, provided the

Survey and metes and bounds description are not materially inconsistent with Exhibit A and Section 1.1 above) and the filing of the Survey and metes and bounds description with the Clerk of Courts, Minutes Department, the Survey and metes and bounds description shall be deemed incorporated by reference into this Lease, and will be the controlling interpretation of the boundaries of the Leased Premises, 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 Initial Term.** The "Initial Term" of this Lease will commence on the Effective Date, and, unless sooner terminated pursuant to the terms of this Lease will continue until the day immediately preceding the date which is twenty (20) years after the "Date of Beneficial Occupancy" defined in Section 4.3 below. 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 this 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 five (5) 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 this 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      *Lessee's Due Diligence Period and option to terminate therein.*** Lessee shall have the period up until and including the date that is thirty (30) months after the "Effective Date" (herein the "Due Diligence Period") to (1) perform such studies, tests and examinations of the Leased Premises as Lessee may desire and (2) obtain all required governmental permits (including, without limitation, site plan approval from the FAA and an FAA tall structures permit) and other third-party approvals for its desired development. During said Due Diligence Period, Lessee may, at its option, terminate this Lease, without penalty, by giving advance written notice to Authority at any time prior to the expiration of the Due Diligence Period. The Authority shall cooperate with Lessee with

respect to such tests and examinations.

### **ARTICLE 3**

#### **USE OF LEASED PREMISES**

**Section 3.1 Use of Leased Premises.** Lessee shall have the right to use the Leased Premises for the construction and operation of a "Home Depot" brand retail home improvement store (herein the "Retail Store"). Lessee may also use the Leased Premises for any other lawful retail or office purposes except for:

- (a) convenience stores;
- (b) automobile fueling;
- (c) 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);
- (d) rental of parking spaces, or any other kind of commercial parking operations (except that parking spaces which are related to subtenants' occupancy of space on the Leased Premises may be included in Lessee's subleases to such subtenants);
- (e) the presence, placement, or use, of "Mobile Minis" or any other trailers or modular units, whether for office, storage, or otherwise, unless they are (i) ancillary to the Retail Store; (ii) used for and during actual construction on the Leased Premises; or (iii) trailers or storage sheds that are available for sale or rent from Lessee as part of the regular business of the Retail Store);
- (f) storing or parking vehicles on non-paved areas;
- (g) storing of inoperable vehicles in excess of ten (10) days;
- (h) rental of motor vehicles which are delivered to or picked up from any portion of the Airport other than the Leased Premises;



- (i) rental of motor vehicles to customers which Lessee directly or indirectly deliver to or pick up from any portion of the Airport other than the Leased Premises; and
- (j) those uses described on Exhibit C (attached hereto and incorporated herein).

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.

Subject to the restrictions set forth above and in Exhibit C, Lessee shall have the right to use the entire Leased Premises as Lessee sees fit in connection with the operation of the Retail Store on the Leased Premises, including without limitation, the right to use the sidewalks adjacent to the building, parking areas and other common areas on the Leased Premises for any lawful purpose, including without limitation (i) the display, sale, and storage of merchandise and/or for special operational programs; (ii) the display of vehicles, trailers, small tractors and other equipment for sale and/or rental to Lessee's customers; and (iii) the sale of food (including the sale of food from a food truck or stand), accompanied by tables and seating for eating purposes. In addition to the foregoing, Lessee shall have the right to install, relocate, modify, remove and/or replace facilities and systems used for the transmission of electricity to and for the Building and improvements located on the Leased premises, including, without limitation, electrical conduits and systems, in order for Lessee to utilize solar energy, new

technology, alternative energy, renewable energy and/or other energy efficient sources and alternatives designed to lower energy costs, improve energy efficiency and/or lower energy consumption. Notwithstanding any provision contained herein or in any other documents, Lessee shall not have any obligation to construct any improvements on the Leased Premises or open or operate in the Leased Premises or generate any level of sales in or from the Leased Premises.

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.

**Section 3.2      *Type and quality of development.***    The development to be developed by Lessee will be a high quality, aesthetically attractive, first-class development. It is the mutual intention of the parties to provide for a high-quality development on the Leased Premises, to foster the aesthetic and fiscal value of the Leased Premises and improvements thereon, as well as surrounding airport lands, without restricting the Authority's ability to develop the Airport.

**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. The Authority agrees that the current customary operations of a "Home

Depot" brand home improvement retail store will not constitute a violation of this Section 3.3, provided it is properly permitted and complies with all laws including but not necessarily limited to FAA requirements and restrictions regarding height, reflective surfaces, lighting, stormwater, and the runway protection zone.

#### **ARTICLE 4**

##### **RENT**

**Section 4.1 Interim Rent.** Lessee agrees to pay the Authority, as "Interim Rent," \$8,113.65 per month, payable monthly in advance, together with applicable sales tax, on or before the first day of each calendar month, for the period beginning on day the Morales Lease is assigned to Lessee and continuing until and including the day immediately preceding the Date of Beneficial Occupancy (as defined below).

The Interim 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 (as defined below), 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, together with applicable sales tax, "Ground Rent," which will initially be \$22,238.00 per month, and subsequently adjusted pursuant to Section 4.4 below.

Lessee will use reasonable efforts to obtain permits, complete its construction, and cause the Date of Beneficial Occupancy to occur as soon as practicable.



The Ground Rent for any partial calendar month will be prorated.

**Section 4.3      Definition of Date of Beneficial Occupancy.**

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

- (a) the date Lessee or any subtenant of Lessee opens any part of the Leased Premises (other than the former Moralez premises) to the public for business; or
- (b) the date that is thirty (30) months after the Effective Date;

whichever occurs first.

**Section 4.4      Rent adjustment every five years.** Beginning on March 1, 2029, and every five (5) years thereafter while the term of this lease is in force, the Ground Rent will be increased by 12.8 percent.

**Section 4.5      Time and place of payment.** The 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  
Attention: Finance Department  
Base Operations at Page Field  
5200 Captain Channing Page Drive  
Fort Myers, Florida, 33907

or such other place as the Authority may direct in writing.

Rents for any partial calendar month will be prorated.

**Section 4.6      Interest.** Any sums payable by Lessee to Authority that are not paid when due shall bear interest at the

rate of eighteen percent (18%) per annum, or the maximum amount allowed by law, whichever is less, from the date the same became due and payable until the date paid.

**Section 4.7 Triple net.** This is a so-called "triple net" lease. All costs, taxes, utilities, and insurance costs shall be borne by the Lessee.

## **ARTICLE 5**

### **CONSTRUCTION OF FACILITIES; LESSEE'S IMPROVEMENTS**

**Section 5.1 Leased 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. Lessee acknowledges that a portion of the Leased Premises is within a Runway Protection Zone ("RPZ") and that construction or placement of certain improvements, including but not necessarily limited to buildings, ponds or other waterbodies or stormwater facilities, will not be permitted within the RPZ.

**Section 5.2 Lessee's construction.** Subject to Section 5.5 below, Lessee may also make any improvements, repairs, or alterations on the Leased Premises that may be reasonably necessary to utilize the Leased Premises for the allowed uses.

All exterior work, ordinary or extraordinary, structural or non-structural, must be performed in a good and workmanlike manner, in full compliance with all governmental laws, rules or regulations (including but not limited to all FAA requirements and restrictions, as well as the Americans with Disabilities

Act).

**Section 5.3 Authority's option to terminate.**

Notwithstanding any other provisions of this lease that may appear to the contrary, if within thirty-six (36) months after the Effective Date of this lease:

- (a) Lessee fails to obtain all necessary permits for construction and actually commence construction of the Retail Store (described in Section 5.2 above); or
- (b) Authority does not receive the FAA's written consent to the land use provided under this Lease pursuant to 88 FR 85474 ("Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land"), if applicable;

then the Authority may, at its sole option, terminate this lease. The Authority may extend said time period in writing, but will be under no obligation to do so. If Authority's right to terminate is exercised as herein provided, this lease shall thereafter be null and void, and any money or security deposited hereunder shall be returned to Lessee (provided Lessee is then current on any rent obligations) and no additional liability will accrue from either party to the other.

**Section 5.4 Cost of development; no liens on fee interest.** 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.

The interests of the Authority and Lee County in the Leased Premises shall not be subject in any way to any liens, including construction liens, for improvements to or other work performed



in the Leased Premises by or on behalf of Lessee. Lessee shall have no power or authority to create any lien or permit any lien to attached to the present estate, reversion, or other estate of Authority or Lee County in the Leased Premises.

***Section 5.5 Design approvals; construction bonds;***

***insurance.*** Prior to commencing any interior construction work on the Retail Store building subsequent to a certificate of occupancy being issued for the building, Lessee shall:

- (a) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (b) for any project in excess of the then-current dollar threshold set forth in Florida Statutes section 255.05 (currently, \$200,000.00), execute, deliver to the Authority, and record 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) and are reasonably satisfactory to the Authority, in at least the full amount of the contract price for completing the work; and
- (c) upon Authority request submit to the Authority evidence of insurance of the types and in the amounts set forth in Article 13 below.

Prior to commencing any exterior construction work on the Leased Premises (including but not limited to site preparation, initial construction, improvements, alterations, and repairs), Lessee shall:

- (a) obtain and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (b) for any project in excess of the then-current dollar threshold set forth in Florida Statutes section 255.05 (currently, \$200,000.00), execute, deliver to the Authority, and record 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) and are reasonably satisfactory to the Authority, in at least the full amount of the contract price for completing the work;

- (c) submit to the Authority for the Authority's approval, complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's Leasehold Development Standards referenced above;
- (d) Upon Authority request submit to the Authority evidence of insurance of the types and in the amounts set forth in Article 13 below;
- (e) submit to the Authority a completed FAA Form 7460 (which the Authority will submit to the FAA) and obtain a satisfactory determination from the FAA ("FAA Notice of Determination") based on the results of the FAA's aeronautical study; the Authority will be under no obligation to allow Lessee's proposed construction if FAA determines it would interfere with an unobstructed line of sight from the Airport tower's cab to all points on runways and taxiways or otherwise constitute an airport obstruction; and
- (f) obtain from Authority a written work permit authorization confirming compliance with (a) through (e) above.

Additionally, prior to any construction work (whether interior or exterior) which affects the structure of a building, or is exterior work that would (i) change the dimensions or elevations of any improvements; (ii) change the color scheme of any improvement on the Leased Premises (except that Lessee may touch up exterior paint if it uses the same color used on such improvement when initially constructed); or (iii) change the layout of the development, Lessee will:

- (1) comply with 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"), except as may be expressly waived by the Authority;

- (2) submit to the Authority for the Authority's approval, complete plans and specifications for the proposed work, utilizing the procedures set out in the Authority's Leasehold Development Standards referenced above;
- (3) for work that would impact traffic flow, provide a safety and maintenance of traffic plan that describes what measures will be taken during construction; and
- (4) obtain from Authority written approval of the design plans and specifications and a written work permit authorization. The Authority reserves the right to require Lessee to resubmit designs and plans until acceptable to the Authority.

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 deems desirable.

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. In the event Authority fails to respond to any submittal, request, or approval requested by Lessee within thirty (30) days after the date of Authority's receipt thereof, such submittal, request, or approval shall be deemed approved. Said thirty (30) days is the maximum response time for any substantial submittal, request, or approval required to be made by Lessee hereunder. In the event any such submittal, request, or approval is denied,



Authority shall state with sufficient detail the reasons for disapproval. Authority shall respond to any responsive resubmittal following a disapproval of Authority within thirty (30) days, if not sooner, failing which such resubmittal shall be deemed approved.

**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 Lessee's initial construction project and any subsequent construction projects, Lessee will supply the Authority with an external drive (without executable files) containing the digital as-built drawings ("As-built" is defined as the revised set of drawings that reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the contract) covering the site civil work, and coordinates and elevations of the

building corners, in either PDF format or the latest Autodesk CAD version, and signed and sealed by an architect or engineer licensed in Florida. If the Lessee fails to provide said as-built drawings within thirty (30) days after notice that same are overdue, the Authority may hire a registered architect or engineer to provide same and shall recover the cost of said work, plus a ten percent (10%) overhead administrative fee, from the 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 at all times, ordinary wear and tear excepted. 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, ordinary wear and tear excepted, 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, to the extent they

exist upon termination or expiration of this Lease, will become the property of the Authority upon such termination or expiration, without compensation to Lessee, and free of all liens and claims.

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 (unless such tank pre-dates both Lessee's and Moralez's leasehold interests):

- (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. Signs shall not be placed 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, except that Lessee may utilize an existing common-use stormwater retention system if the Authority is satisfied that there is one that serves the leasehold area and it has sufficient capacity (without enlargement) to accommodate the requirements of the leasehold. Any new stormwater detention or retention facilities must be designed in conformance with FAA Advisory Circular 150/5200-33A, "Hazardous Wildlife Attractants on or Near Airports."

**Section 5.12 Access to and from Leased Premises.** The Authority and Lessee agree that, if Lessee obtains such approvals as may be required by the Lee County Department of Transportation, the Florida Department of Transportation, the FAA, and any other governmental agencies having jurisdiction, then Lessee may use the following areas for ingress to and egress from the Leased Premises: (1) the entry and exit driveways between the adjoining RacTrac parcel and U.S. 41, to the extent allowed for in the lease between the Authority and RaceTrac Petroleum, Inc. ("RaceTrac"), dated November 12, 2014, as amended March 3, 2016 (the "RaceTrac Lease"), copies of which have been provided to Lessee; and (2) the 50 foot wide area adjoining, and to the east of, the easterly boundary of RaceTrac's premises, as defined in the RaceTrac Lease.

## **ARTICLE 6**

### **UTILITIES**

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. 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.

## **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 Lessee provides the Authority with a copy of the proposed assignment (provided, however, that economic terms may be redacted) and obtains written consent of the Authority's Board of Port Commissioners, which will not be unreasonably or arbitrarily conditioned or withheld.

Any: (1) change in the controlling interest of the original Lessee (but not any subsequent assignee of Lessee), by transfer of capital stock, partnership interest, beneficial interest, or otherwise; or (2) transfer of original Lessee's leasehold

interest to an affiliate entity in control of, or under common control with, the original Lessee; will not be deemed an assignment for purposes of this section and Lessee will not be required to seek Authority consent for such 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 form of assignment agreement;
- (c) a description of the nature and character of the business of the proposed transferee, and 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, upon such information being provided to the Authority in writing, Authority will schedule consideration of the requested assignment for the agenda of the next available Airports Special Management Committee and Board of Port Commissioners meetings (which may not be the next meeting, if the agenda for such next meeting has already been closed pursuant to the Authority's regular procedures), 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. Failure of the Authority to approve or disapprove the proposed assignment within five (5) business days of the Authority's Board of Port Commissioners meeting at which the proposed assignment was considered shall constitute Authority's deemed consent to the proposed assignment. In the event of any such request for consent being denied, Authority shall state with specificity the reason or reasons for denying the request.

Consent by Authority to one or more assignments shall not operate as a waiver of Authority's rights as to any subsequent assignment.

Notwithstanding anything to the contrary contained in this Lease:

- (a) Lessee shall have the right, without Authority's consent, to assign or this Lease to an entity with a net worth of \$25,000,000.00 or greater, and in such event, on the effective date of the assignment (and the assumption of this Lease by such entity) Lessee will be released from any and all liability under this Lease arising from and after the date of the assignment;
- (b) the following will not constitute an assignment for the purposes of this Lease, nor will the Authority's consent be required for: (i) the transfer of stock in connection with a merger or consolidation of Lessee and another corporation, provided that Lessee's successor is, as a result of the reorganization, legally bound to pay and perform all of the terms of this Lease; (ii) the transfer of all or substantially all of the assets of Lessee; or (iii) any transfer of Lessee's stock or other equity interests not addressed in the foregoing clauses;
- (c) if such an assignment is proposed to occur prior to the Date of Beneficial Occupancy, it may be conditioned upon provision of a security deposit to the Authority.

**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, without the written consent of Authority's Executive Director or his or her designee, provided that: (a) Authority is provided with a copy of the sublease agreement; and (b) such subtenant has a net worth of at least \$25,000,000.00. Any subletting of the Leased Premises which does not meet the obligation set forth in the preceding sentence shall be subject to the prior written consent of Authority's Executive Director or his or her designee, which consent shall not be unreasonably withheld, delayed or conditioned.

**Section 7.3      Leasehold mortgages.** Neither Lessee, nor Lessee's successors, assigns, or subtenants, shall grant a "leasehold mortgage" (as defined below) of all or any part of the Leased Premises, and any such leasehold mortgage shall not be binding upon Authority in the enforcement of its rights and remedies herein and by law provided, unless Lessee first obtains written consent of the Authority's Board of Port Commissioners, which consent will be granted if and only if the proposed leasehold mortgage:

- (1) is to be 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; and
- (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 required by a proposed leasehold mortgagee for the issuance of loan backed by a leasehold mortgage that meets the

requirements set forth above, the Authority will agree to:

- (1) give written notice to the mortgagee, by certified mail, of the occurrence of any default under the lease at least fifteen (15) days prior to terminating the lease;
- (2) allow the leasehold mortgagee, at its option, to cure a default by the Lessee, 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
- (3) 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.

Any amendment to a leasehold mortgage will be subject to review and approval of the Authority and shall have no force or effect against either the Authority's or Lee County's interest in the Leased Premises until that consent is obtained; such consent to an amendment to a leasehold mortgage will be granted or withheld by the Authority based on the requirements set forth above for consent to a leasehold mortgage. Any leasehold mortgage or amendment thereto without full compliance with the requirements of this lease shall be invalid and of no effect against Authority or Lee County.

## **ARTICLE 8**

### **DEPOSIT TO BE PROVIDED BY LESSEE**

Within thirty (30) days of the Effective Date, Lessee will deliver to the Authority a deposit by check or wire transfer, in the amount of one hundred thousand dollars (\$100,000.00), which will be returned to Lessee, retained by the Authority, or

applied to rent, as follows:

- (1) If, within one hundred twenty (120) days of the Effective Date of this Lease, Lessee exercises its option to terminate this Lease, then such deposit provided by Lessee to Authority will be returned to Lessee (without interest).
- (2) If Lessee does not, within one hundred twenty (120) days of the Effective Date of this Lease, exercise its option to terminate this Lease, then such deposit will be deemed non-refundable and the Authority will retain such deposit, subject however to being applied against rent as provided in item (3) below of this Article 8.
- (3) If Lessee does not exercise its option to terminate this Lease by the Date of Beneficial Occupancy, and this Lease is still in full force and effect upon the Date of Beneficial Occupancy, Authority will apply such deposit (without interest) as credit against rent which would otherwise accrue under this lease, until said credit is exhausted.

## **ARTICLE 9**

### **LESSEE'S STANDARDS OF OPERATION**

**Section 9.1      General.** Lessee will maintain and operate all improvements.

**Section 9.2      Maintenance of Leased 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, with no disruption of the businesses operated thereon, at any time during Lessee's regular business hours;
- (b) view and inspect the Leased Premises at any time in the 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) in the event the original Lessee has assigned its interest in this Lease and is no longer the ground tenant, perform any and all things (including maintenance, repairs, and replacements to the Leased Premises) which such assignee, as 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 (except to the extent cause by negligent acts of the Authority, Lee County, or their respective Commissions, officers, agents, or 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 (whether within or outside of the Leased Premises);
- (2) 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); and
- (3) 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 any underground storage tanks or other tanks installed or used on the Leased Premises by Lessee or Moralez, including but not necessarily limited to leaks, pollution, or other contamination to the environment.

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.

The Authority has the benefit of sovereign immunity. As a result, to the extent allowed by law and subject to the limitations contained in Section 768.28, Florida Statutes, the Authority assumes responsibility for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within an authorized capacity, arising from the activities under this Agreement, under circumstances in which a private person would be held liable in accordance with the general laws of the State of Florida. However, nothing in this provision will require the Authority to indemnify Lessee for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of Lessee's employees, agents or representatives. The parties agree that, by execution of this Agreement, the Authority will not be deemed to have waived its defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as it may be amended from time to time.

An indemnified party shall have the right to engage its own attorneys in connection with any of the provisions of this Section or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such party.



## ARTICLE 13

### INSURANCE

**Section 13.1 Insurance during term of lease.** 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 an average 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) prior to issuance of a work permit authorization by the Authority, and prior to commencement of any construction, and for the remainder of the lease term (including any extensions or renewals thereof) commercial general liability insurance (including premises, products and completed operations, and contractual liability) with a minimum combined single limit of \$3,000,000.00, which may be subject to a commercially reasonable deductible.
- (2) business automobile liability insurance (if the Lessee is to operate any vehicles on the Leased Premises) during the Lease term (including any extensions or renewals thereof) covering all owned, hired, and non-owned autos operated on the Airport with a minimum combined single limit of \$1,000,000.00, which may be subject to a commercially reasonable deductible.
- (3) no later than issuance of a certificate of occupancy (temporary or permanent), and for the remainder of the Lease term (including any extensions or renewals thereof), property insurance for all risks of physical loss or damage to the Leased Premises and improvements including loss or damage by fire, windstorm, and other such causes commonly referred to as "extended coverages," in an amount not less than the full replacement value and sufficient to prevent either Lessee or Authority from being a co-insurer on any part of the risk, except that the coverage may be subject to a deductible not to exceed 3% of the full replacement value of the buildings, or, if Lessee provides Authority documentation evidencing Lessee's net worth

of at least \$150 million, such deductible may be up to 10% of the full replacement value.

- (4) no later than issuance of a certificate of occupancy (temporary or permanent), and for the remainder of the Lease term (including any extensions or renewals thereof), workers' compensation insurance in the amounts required by state law.
- (5) no later than issuance of a certificate of occupancy (temporary or permanent), and for the remainder of the Lease term (including any extensions or renewals thereof), employer's liability insurance, in the amounts of \$500,000/ \$500,000/ \$500,000, which may be subject to a commercially reasonable deductible.
- (6) prior to issuance of a work permit authorization by the Authority and prior to commencement of any construction, builder's risk insurance, written on an all-risk, replacement cost, and completed value form basis, in an amount equal to at least 100% of the contract price of the work.
- (7) no later than issuance of a certificate of occupancy (temporary or permanent), and for the remainder of the lease term (including any extensions or renewals thereof) 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.
- (8) If one (1) or more above or underground storage tanks are to be installed, then prior to installation or any storage tank, and for the remainder of the lease term (including any extensions or renewals thereof):
  - (A) storage tank liability insurance covering such tank(s), with a single limit of at least \$5,000,000.00, subject to a deductible not to exceed \$100,000.00 per claim, with a \$10,000,000.00 annual overall policy limit; and
  - (B) environmental impairment liability insurance, with a single limit of at least \$5,000,000.00, subject to a deductible not to exceed \$100,000.00 per claim, with a \$10,000,000.00 annual overall policy limit.

**Section 13.2 General insurance requirements.** 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:

- (a) for the commercial general liability, business automobile, and builder's 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;
- (b) 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
- (c) for the other required policies, prior to the Date of Beneficial Occupancy.

Certificates of all policies evidencing the insurance required, including renewal policies, must be delivered to the Authority. 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.

**Section 13.3 Original Lessee's option to self-insure.** So long as Lessee (or an affiliate of Lessee with a book value of at least \$100 million) remains the holder of the leasehold interest under this Lease, Lessee shall have the option, in lieu of third-party insurance, to self-insure all of the insurance Lessee is required to carry pursuant to Section 13.1 above. For the avoidance of doubt, the term "self-insure" shall mean Lessee is itself acting as though it were the insurance company providing the insurance required under the provisions of this Lease and Lessee shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease. If an event or claim occurs for which a defense and/or coverage would have been available from the insurance company issuing insurance for which Lessee is required to maintain pursuant to Section 13.1 above and Lessee has self-insured with respect to such required insurance, Lessee shall, to the extent required under this Lease, (i) undertake the defense of any such claim, including a defense of the Authority at Lessee's sole cost and expense; and (ii) use its own funds to pay any claim or replace any property or otherwise provide the funding that would have been available from insurance proceeds but for such election by Lessee to self-insure.

Any undertaking by Lessee to self-insure pursuant to this

Section shall not relieve Lessee from any of Lessee's other obligations under this Article, nor shall it serve to adversely affect Authority. The rights and obligations of Authority shall remain the same as if Lessee had obtained and maintained separate insurance from an independent institutional insurer of recognized responsibility for the coverages as provided herein.

## **ARTICLE 14**

### **DEFAULT BY LESSEE**

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

- (1) Lessee fails to pay rent or make any other payment required hereunder within ten (10) days after receipt of written notice of failure to pay from the Authority;
- (2) Lessee neglects or fails to perform and observe any promise, covenant, or condition set forth in this Lease, other than the payment of money, within thirty (30) days after receipt of written notice of breach from the Authority; or
- (3) Lessee becomes a corporation in dissolution for a period exceeding six (6) months.

**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 cumulative rights to terminate this lease by giving at least thirty (30)

days written notice to Lessee, if such default is not cured within said thirty (30) days after the Authority gives Lessee written notice of the default.

**Section 14.4 Remedies upon Authority's default.** In the event that Authority shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Authority hereunder and any such default shall continue for a period of thirty (30) days after written notice to Authority (if such default is by its nature not reasonably susceptible of being cured within such thirty (30) day period, such thirty (30) day period shall be extended as necessary to provide Authority the opportunity to cure said default, provided Authority within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed), then Lessee shall be entitled at its election, in addition to all remedies otherwise provided in this lease and otherwise available at law or in equity under the laws of the United States of the State in which the Leased Premises is located:

- (a) to bring suit for the collection for any amounts for which Authority may be in default, or for the performance of any other covenant or agreement devolving upon Authority, without terminating this Lease, and/or
- (b) to terminate this Lease without waiving Lessee's rights to damages for Authority's failure to perform any of its covenants or agreements hereunder. In the event Lessee shall elect to terminate this Lease, upon such termination the accrual of any further rights and obligations of Lessee, or any permitted successors or assigns, shall cease and terminate, and the parties shall have and retain full right to sue for and collect



all amounts the payment of which are in default and all damages for any breach.

**Section 14.5 Remedies cumulative.** All remedies of Authority and Lessee herein created or remedies otherwise existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other, except that (i) in no event shall the parties have the right to seek to recover punitive or consequential damages upon a default, or shall Authority have the right to terminate this Lease for any default of Lessee other than a payment of an amount due, and (ii) any remedy afforded in this Lease which is expressly provided as a sole remedy upon a default of a specific provision of this Lease shall be the sole remedy of the non-defaulting party.

If Lessee defaults, and vacates the Leased Premises before the end of the term of this Lease, Authority may opt to retake possession for the account of the Lessee, in which case Authority will have a duty to mitigate damages by making a good faith effort to re-lease the property at a fair rental and will credit the Lessee for any rents obtained from another tenant for the Leased Premises during the Lease term.

All such rights and remedies may be exercised and enforced concurrently and whenever and as often as either Authority or Lessee shall, as applicable, deem necessary.

## **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 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;

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 Leased 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 Leased Premises and improvements existing immediately prior to the occurrence of such damage (the "Restoration"); and
- (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).

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 not commenced by the later of:

(a) twelve (12) months after the insurance settlement;  
or

(b) twenty-four (24) months after the casualty;

then Authority may, at its option, terminate this Lease, by giving Authority at least sixty (60) days advance written notice to Lessee 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 during the last three (3) years of the Initial Term or any extension term as set forth in Section 2.2; and (2) such damage collectively requires, for Restoration, an estimated expenditure of more than ten percent (10%) of the full insurable value of all buildings on the Leased Premises immediately prior to the casualty (as determined by an "Independent Architect" as defined above), or
- (B) such damage: (1) is of a nature such that it is not covered by Lessee's insurance policies or self-insurance; and (2) such damage collectively requires, for Restoration, an estimated expenditure of more than ten percent (10%) of the full insurable value of all buildings on the Leased 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 (unless Lessee's insurance proceeds are not enough to restore the Leased Premises, in which case Lessee will follow the applicable provisions set forth in the next

grammatical paragraph); and (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).

If the insurance proceeds are insufficient to pay the cost of Restoration, Lessee is not required to restore the Leased Premises, but will be required to remove all debris and construction material and leave the Leased Premises in a clean, safe, sightly condition. 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), 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 Term of this Lease 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 Lessee is forced to cease business operations in the Retail Store, or any of Lessee's indoor subtenants are forced to cease business operations in their applicable space, for any period of more than five (5) calendar days due to casualty damage to the Retail Store building or applicable subtenant space, Lessee's obligation to pay rent and any other applicable fees or charges will partially abate, in the proportion the square footage of such indoor floor area which is, as a result of such casualty, unusable and unused for business operations, bears to the square footage of indoor floor area of all buildings on the Leased Premises, from the date of said cessation of business, until the date a certificate of occupancy for completion of Lessee's repairs is issued, or until Lessee reopens the Leased Premises for business (whichever occurs first), but in any event not to exceed a period of two (2) years. 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 upon the Leased Premises, the fee interest in the Leased Premises, 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**

**Section 17.1 Covenants and Indemnity.** 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. Lessee agrees not to cause a Release of any Hazardous Substance, or otherwise violate any Environmental Law with respect to the Leased Premises, and will release, hold harmless, and indemnify Authority for any and all claims, demands, damages, actions, causes of action, and suits, whether at law or in equity, of any

nature whatsoever, for any third party claims with respect to Lessee's breach of the covenants in this Article 17.

**Section 17.2 Remediation.** If it is determined by the EPA, FDEP, or other governmental entity having jurisdiction, that environmental investigation, sampling, testing, monitoring (via monitoring wells, or otherwise), abatement, cleanup, removal or treatment of contaminated soils or groundwater, or closure or removal of underground tanks or other facilities, or some combination thereof (herein collectively referred to as "Remediation"), is required due to contamination or potential contamination arising out of, or related to, the use or occupancy of the Leased Premises by Lessee or its employees, agents, subtenants, or contractors, then:

- A) Lessee will perform such required Remediation at Lessee's sole cost and expense;
- B) Such Remediation shall not include imposition of new zoning, building, deed, or other restrictions on the Leased Premises, unless consented to in writing by the Authority, and the Authority shall be under no obligation to consent to such restrictions; and
- C) Such Remediation shall be completed to the satisfaction of the EPA, FDEP, and all other governmental entities having jurisdiction.

**Section 17.3 Definitions.** "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.

"Hazardous Materials" includes pollutants, contaminants, chemicals, or industrial, toxic, or hazardous substances, materials or wastes (including but not limited to oils, petroleum, and petroleum products).

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

"Release" shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

## **ARTICLE 18**

### **STORM WATER COMPLIANCE**

Lessee acknowledges that the Airport's storm water discharge permit is incorporated by reference into this Lease. Lessee covenants that its use of the Leased Premises will not cause any violation of said permit. Further, Lessee agrees to participate in any Authority-organized task force or other work group established to coordinate storm water activities at the Airport.



## 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 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.** Notice to Authority will be sufficient if sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight delivery service (e.g. FedEx, UPS, or DHL), to: Executive Director, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913. Notice to Lessee will be sufficient if sent in the same manner, addressed to Lessee at:

To Lessee (Pre-Date of Beneficial Occupancy):

Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Building C-19  
Atlanta, Georgia 30339  
Attention: Trey Conway

with a copy to via email to: [trey\\_conway@homedepot.com](mailto:trey_conway@homedepot.com)

To Lessee (Post-Date of Beneficial Occupancy):

Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Building C-19  
Atlanta, Georgia 30339-4024  
Attention: Property Management

With a copy in all cases to:

Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Building C-19  
Atlanta, Georgia 30339-4024  
Attention: Property Management

The parties may designate in writing other addresses for notice. Notice shall be deemed given when delivered (if sent by a delivery company such as FedEx) or when postmarked (if sent by mail).

**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 federal or 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, each party shall pay its own costs and attorneys' 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 and regardless of Lessee's views and desires. Notwithstanding the foregoing, to the extent the Authority owns the roads and vehicular routes directly adjacent



to the Leased Premises, the Authority shall not alter such roads or vehicular routes without Lessee's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; provided that if the FAA or other controlling governmental body (other than the Authority itself) requires the surrounding roads to be altered, Lessee's consent right will be null and void.

**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 Leased 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 Leased 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 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.

**Section 20.13 Administration of lease.** Unless and until Authority gives Lessee written notice to the contrary, Authority designates its Executive Director, and his or her designees, as its authorized representatives in dealing with Lessee pursuant to this lease, including but not limited to exercising any of the Authority's rights or options herein to terminate, suspend, continue, or extend this agreement, giving or withholding approvals to Lessee, consulting with, giving notice to, receiving notice from, or otherwise dealing with Lessee, and executing estoppel statements and memorandum of lease documents consistent with the terms 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, 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, provided however that if such changes are required of Lessee, and would materially interfere with Lessee's use and enjoyment of the Leased Premises, then Lessee will have the right to terminate this Lease upon advance written notice to Authority, and to pursue an inverse condemnation action against the entity requiring such changes.

**Section 21.2 Nondiscrimination.** This agreement is (or may be) subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Lessee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The Lessee agrees, if it is subject to such regulations, to include the above statements in any subsequent concession agreement, sublease, or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

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 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 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 Leased 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 (if applicable), 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 21.3 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 Leased 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 21.4 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.

**Section 21.5 Exclusivity.**

(A) During the term of this Lease (as the same may be earlier terminated or extended), and provided that Lessee continues to operate a "Home Depot" brand retail store on the

Leased Premises, Authority agrees not to: (1) grant a new permission to any other Airport tenant, within 4,000 linear feet of the Leased Premises, to operate a store engaging primarily in the sale of "Exclusive Items" (as defined below) except for the incidental sale of such "Exclusive Items" ("incidental sale" means, for any one tenant or occupant, that no more than the lesser of five percent of the total floor area of such business or 1,000 square feet may be used for the sales and/or display area for such "Exclusive Items"), or (2) grant a new permission to any other Airport tenant for the sale of "Exclusive Items" if such new permission would cause the total area for the allowed sale of Exclusive Items to exceed 10,000 square feet for the entirety of the Airport (excluding the Leased Premises, and any uses permitted under the Authority's leases existing on the Effective Date of this Lease).

For purposes of this section, "Exclusive Items" shall mean lumber, hardware, tools, roofing materials, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wall coverings, window treatments (including, without limitation, draperies, curtains and blinds), kitchens or bathrooms or components thereof (including, without limitation, tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), doors, windows, hard and soft flooring (including, without limitation, tile, wood flooring, rugs and carpeting), siding, ceiling fans, lawn and gardening and garden nursery supplies, natural plants, lawn equipment (including,



without limitation, lawnmowers) and products, outdoor cooking equipment and accessories, patio furniture and patio accessories, Christmas trees (both live and artificial), holiday décor and accessories, home automation systems and smart home devices, indoor and outdoor lighting systems and light fixtures, cabinets, kitchen and other household appliances, cleaning supplies, closet organizing systems, interior design services, automotive parts, products and accessories, or other products generally sold in a retail home improvement center.

Nothing contained in this Section 21.5 shall limit, impair, or otherwise affect or apply to uses already allowed under the Authority's leases existing on the Effective Date of this Lease, or any extensions, renewals, modifications, assignments, and/or subletting of such existing leases. Lessee recognizes that such existing leases include but may not necessarily be limited to the ground leases of Page Field Commons, Racetrac, and Aldi, and the lease of office space to Ace Hardware.

(B) Authority acknowledges that the above restrictions on Exclusive Items ("Exclusive Use Right") was a material inducement to Lessee entering this Lease. Upon a violation of Lessee's Exclusive Use Right causing the actual sales of Exclusive Items contrary to item (A) above, Lessee shall be entitled to immediately: (i) partially abate the Rent and any other charges due hereunder, from the time of such sales until such time as such violation or resulting sales cease, with such abatement being equal to the proportion that the floor area devoted to the

sales of the Exclusive Items as a result of such violation bears to the floor area of Lessee's Retail Store; or (ii) terminate this Lease by written notice to Authority; provided however that if actual sales of Exclusive Items by another tenant occur which would violate Lessee's Exclusive Use Right if made pursuant to a new permission being granted by the Authority, but are in fact made instead by virtue of such other tenant violating the terms of its lease (a "Rogue Tenant"), the abatement of Rent and other charges shall not occur until sixty (60) days after Authority's receipt of Lessee's notice of such violation, if Authority within said sixty (60) days notifies such Rogue Tenant in writing of such violation and breach and/or default of its lease, as applicable. If such violation by the Rogue Tenant has not ceased within one hundred eighty (180) days of Authority's receipt of Lessee's notice of such violation, Lessee shall at any time thereafter be entitled to terminate this Lease by written notice to Authority. Authority agrees that in addition to the foregoing, Lessee shall have the right to enforce Lessee's Exclusive Use Right against the Rogue Tenant by appropriate injunctive or other equitable relief in addition to any and all remedies at law.

## **ARTICLE 22**

### **CONDEMNATION**

**Section 22.1 Complete taking.** If the entire Leased Premises are taken or condemned for any public or quasi-public use or purpose, by right of eminent domain, this lease will

terminate on the date title to the Leased Premises vests in the taking authority. Rent will be prorated to the date of termination.

**Section 22.2 Lessee's option to terminate in the event of partial taking.** If a portion of the Leased Premises (or reasonable access to the adjacent roadways from the then-existing or comparable curb cut locations) shall be taken or condemned for any public or quasi-public use or purpose, by right of eminent domain, such that the portion or portions remaining is or are not sufficient and suitable, in the reasonable judgment of Lessee, for the continued successful operation of the business contemplated by this Lease to be conducted thereon, therein, or therefrom, then Lessee shall have the option to terminate this lease by advance written notice to Authority, given at any time after the taking authority files its notice of taking, but no later than 90 days after entry of the order of taking, specifying the date on which the lease will terminate, which date shall be the last day of any calendar month that falls within the period for giving Lessee's notice of its election to terminate. Rent will be prorated to the date of termination.

If Lessee does not elect to exercise this option, then: (1) Lessee will be entitled to participate in the award of the taking only to the extent an award is made for business damages; (2) Lessee shall promptly restore the remaining portions of the Leased Premises to a condition comparable to the condition of the Leased Premises at the time of such taking; and (3) this lease



shall continue in full force and effect except that the rent payable hereunder shall be adjusted pro rata to take into account the portion or portions of the Leased Premises lost by the taking.

**Section 22.3 Award.** If this lease is terminated by reason of a taking, any compensation awarded for such taking of the Leased Premises will be equitably apportioned between the Authority and Lessee to reflect the respective values of the encumbered fee and the leasehold interest.

**Section 22.4 "Taking" defined.** The term "taking" includes any taking by a governmental body, or by a public or private utility authorized by law to exercise the power of eminent domain and includes a voluntary sale to such body or entity as an alternative to taking.

## **ARTICLE 23**

### **CIVIL RIGHTS AND TITLE VI**

**Section 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.

**Section 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.

**Section 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.

**Section 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 Leased 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.

**Section 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 Memorandum of Lease.** Upon request by Lessee, Authority shall execute and deliver a Memorandum of Lease or Short Form Lease (the "Memorandum") in recordable form, prepared by Lessee, and not inconsistent with the terms of this Lease, which will constitute a short form of this Lease. Lessee is hereby authorized to record the Memorandum in the applicable public records. Any and all recording costs required in connection with the recording of the Memorandum shall be paid by Lessee. The provisions of this Lease shall control in regard to any omissions or conflicts with the Memorandum executed by Lessee and the Authority. If for any reason the Memorandum is not executed in proper recordable form or must be otherwise amended



to comply with this Lease or the local recording requirements, the Authority agrees to execute, upon Lessee's request, a corrected Memorandum substantially similar to the one previously executed.

**Section 24.3 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 transaction other than Lessee's agent, Retail Property Advisors LLC. ("Broker").

Authority, Lessee, and Broker agree that in lieu of any commission pursuant to the Authority's "Real Estate Broker Compensation Policy," Authority will pay Broker, as commission, \$66,084.00, payable within sixty (60) days of receipt of an invoice from Broker for said amount, but if and only if, prior to issuance of said invoice, the following occur:

- (a) full execution of this lease by both parties;
- (b) Lessee's payment of the required security deposit to the Authority pursuant to Article 8 of this Lease; and
- (c) Lessee's waiver of, or satisfaction of, any lease contingencies, including the contingency that neither party terminates this lease, pursuant to Section 2.3, Section 5.3, or otherwise, prior to the Date of Beneficial Occupancy.

Payment of commissions, if any, to Broker by Lessee will be controlled solely by Lessee's contract with Broker.

The execution and delivery of this lease by the parties shall be conclusive evidence that each party acknowledges that the other party has relied on the foregoing representations and warranties. Each party shall indemnify and hold harmless the other from and against any and all claims for commission, fee or other compensation by anyone other than Broker who claims to have dealt with or represented the indemnifying party in connection with this lease and for any and all costs incurred by the other



party in connection with such claims. This provision shall survive the expiration and earlier termination of this lease.

**Section 24.4 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.

**Section 24.5 Day of performance.**

Wherever there is a day or time period established for payment or performance and the day or the expiration of such time period is a Saturday, Sunday, or Federal holiday, then the applicable day or time period will, for all purposes, be automatically extended to the next business day.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Lease on the date first above written.

**LESSEE:**  
**HOME DEPOT U.S.A. INC.**

By: 

Name: John Chesavage

Title: Sr. Corporate Counsel

Date: \_\_\_\_\_

**AUTHORITY:**  
**LEE COUNTY PORT AUTHORITY**

By: \_\_\_\_\_  
Chairman or Vice Chairman,  
Board of Port Commissioners  
Date: \_\_\_\_\_

ATTEST:  
KEVIN KARNES, CLERK

By: \_\_\_\_\_  
Deputy Clerk

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

By: \_\_\_\_\_  
Port Authority Attorney

Broker is executing the below signature line for the sole purpose  
of acknowledging and consenting to Section 24.3.

**BROKER:**  
**RETAIL PROPERTY ADVISORS LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Broker is executing the below signature line for the sole purpose of acknowledging and consenting to Section 24.3.

**BROKER:**

**RETAIL PROPERTY ADVISORS LLC,**  
a Florida limited liability company

By: \_\_\_\_\_

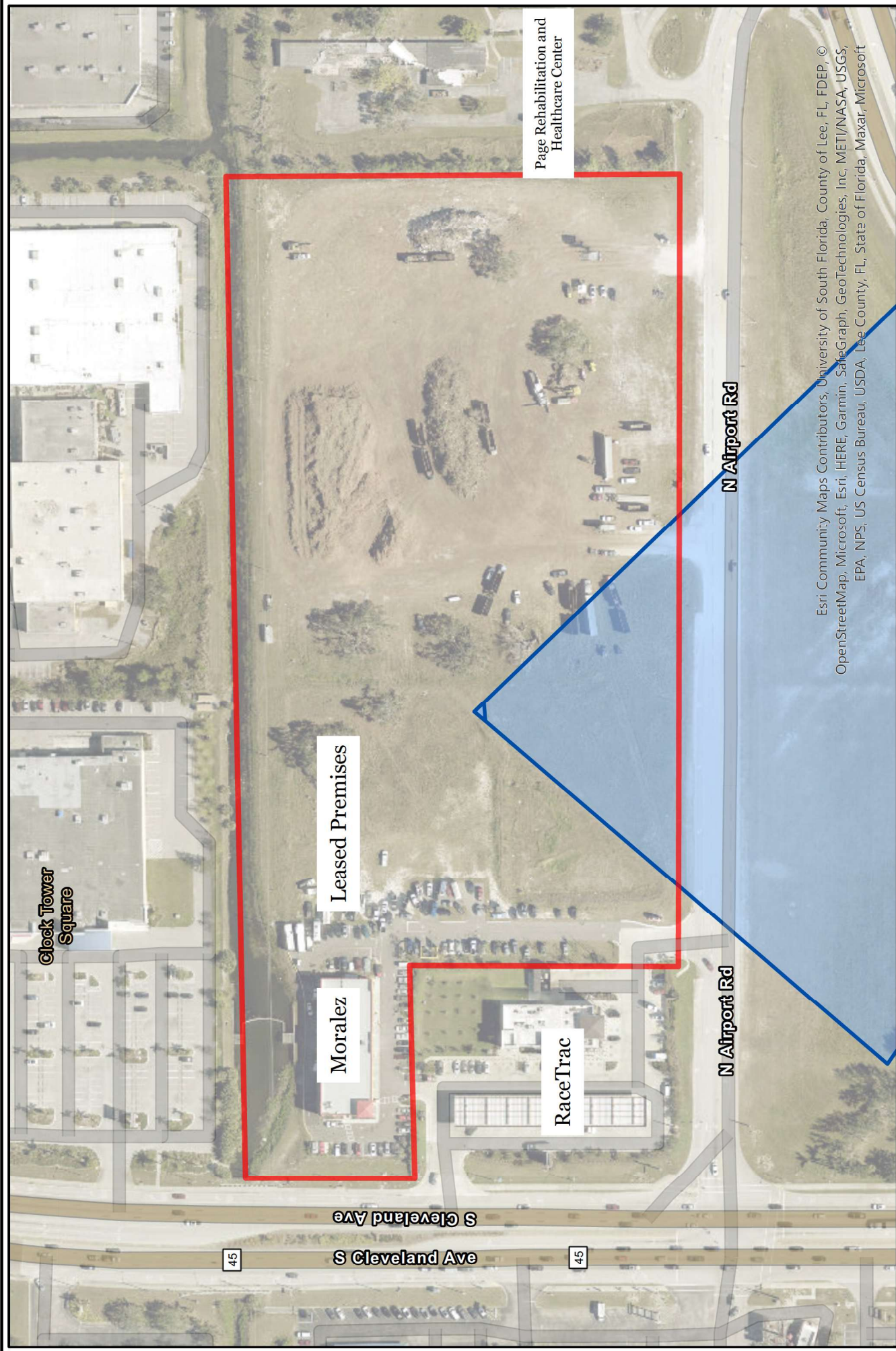
A handwritten signature in blue ink, appearing to read 'Ken Stephens', is written over a horizontal line.

Name: Ken Stephens


Title: Managing Principal

Date: \_\_\_\_\_



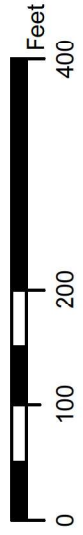


Legend

 Leased Premises

 Runway Protection Zone

## Exhibit A



Date: 12/19/2023

Exhibit B

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



**Exhibit C**  
**Prohibited Uses**

1. Bowling alley, pool hall, or billiard hall.
2. Amusement arcade, skating rink, roller rink, pinball, video, or electronics gameroom.
3. Any bar (unless included as part of a restaurant) or night club, providing beer, wine, liquor, or other alcoholic beverages for on-premises consumption, whether for sale, complimentary, or otherwise.
4. Fire sale, bankruptcy sale (unless pursuant to court order), or flea market.
5. Dry cleaning facility (unless all cleaning is done off-premises).
6. Engaging in the business of repairing automobiles, trucks, trailers, mobile homes, campers, or recreational vehicles, except that (1) automotive repair will be allowed on the Moralez parcel; and (2) this restriction does not apply to repairs of rental equipment or vehicles or otherwise incidentally required for the operation of the Retail Store.
7. Any establishment providing sexually oriented services or products, including but not limited to, topless, bottomless, or totally nude establishment, adult bookstore, adult theater, adult amusement facility, or other establishment selling, exhibiting, or displaying pornographic or erotic materials.
8. Any massage parlor (excluding, subject to zoning, any nationally recognized chain offering massage therapy or spa services, such as Massage Envy, Massage Heights, or Elements Massage).
9. Any store specializing in the sale of drug paraphernalia (excluding tobacco, and/or smokeless tobacco or e-cigarette stores, or areas within any subtenant stores selling tobacco, and/or smokeless tobacco or e-cigarettes, which are hereby specifically permitted).
10. Any gaming facility or operation, including, without limitation, a bingo hall, off-track or sports betting parlor, and table games such as blackjack, poker, slot machines, video poker, keno machines, or similar devices
11. The use of any subleased premises solely for a nursery, daycare center, or children's playground (but no such restriction shall apply to any subleased premises when the foregoing uses are not the sole use of the subleased premises; any such uses shall be subject to FAA approval however).
12. Any use which creates a legal nuisance or emits a noxious odor, noise, or sound which can be heard or smelled outside the Leased Premises, except that such cooking odors as are common to the operations of restaurants shall not be prohibited hereby.