



August 21, 2020

Mr. Thomas Speno
Preferred Development Madison, LLC
1723 Banks Road
Margate, FL 33063

Subject: Lease Liability Clarification Letter for the Property located at the Dane County Regional Airport,
Madison, Wisconsin
BRRTS #: 07-13-586274, 02-13-584472

Dear Mr. Speno:

The Wisconsin Department of Natural Resources (DNR) received a request for a lease liability clarification from Delanie Breuer with Reinhart Boerner Van Deuren s.c. on behalf of Preferred Development Madison, LLC (Preferred Development) on August 12, 2020 (the "Request"). The Request was submitted with the appropriate review fee. The purpose of this letter is to provide Preferred Development clarification as to environmental liabilities associated with the leasing of real property from Dane County. The subject property is located at the Dane County Regional Airport in Madison, Wisconsin. The DNR completed its review of environmental reports and the lease agreements as part of the Request.

Property Use

A new air cargo facility is proposed to be built on the leased property. The facility will be used by Federal Express Corporation under a sublease with Preferred Development. The facility is planned to be a metal structure including areas for a warehouse, office and vehicle maintenance. The facility and adjacent ramp space will be used for air cargo operations. The leased property includes vacant land adjacent to the airport cargo ramp and assigned ramp spaces that are described and depicted in Attachment A of the attached Lease (the "Property").

Lease Agreement

The DNR received the Air Cargo Ground Lease, Lease No. DCRA 2020-03 (the "Lease"), between Preferred Development Madison, LLC (Lessee) and Dane County (Lessor). The Lease is included as Attachment A to this letter. The lease was signed and executed on June 26, 2020, and includes exhibits with a legal description and maps and a sublease agreement between Preferred Development and Federal Express Corporation (Tenant); the sublease is not signed or executed. The Lease allows the Tenant to use the land and building and includes conditions common in similar leases. Section 27(b) of the Lease describes the restrictions and responsibilities regarding environmental regulations, hazardous substances and environmental cleanup.

Background and Environmental Summary

Wis. Stat. § 292.55(1)(d)1 authorizes the DNR to issue a letter to a person seeking assistance concerning the liability of a person owning or leasing a property for environmental pollution at a property. Specifically, the DNR reviewed the following documents to make this determination:

- Liability clarification letter request, completed Form 4400-237, signed August 11, 2020, including a cover letter and attachments
- Air Cargo Ground Lease, Lease No. DCRA 2020-0 signed and executed on June 26, 2020

- Phase II Environmental Site Assessment dated October 10, 2019, and provided to DNR on August 11, 2020
- Project Summary provided to DNR on August 11, 2020

The proposed Preferred Development structure will be located within the boundaries of the Dane County Regional Airport on land owned by Dane County. Subsurface data collected from this site and other environmental investigations within the airport boundary indicate that site geology generally consists of 1'-2' of fill and below this is intermingled sand, silt and some clay to depths in excess of 50 feet. The water table is generally present between 6'-8' below ground surface.

Five soil borings were completed into the area to be used by Preferred Development (SB-1 through SB-5). Soil samples were collected from the area to be used by Preferred Development and analyzed for Volatile Organic Compounds (VOCs), polyaromatic hydrocarbons (PAHs), and certain metals. No VOCs were detected in soil samples. PAHs were detected in one soil boring (SB-3) at concentrations below levels of concern when evaluated against levels in Wis. Admin. Code ch. NR 720. Concentrations of metals in soil samples were below residual contaminant levels or background threshold values.

Groundwater samples also were collected from borings SB-1 and SB-2. These samples were analyzed for VOCs, PAHs, and metals. No VOCs or PAHs were detected at concentrations exceeding Wis. Admin. Code ch. NR 140 standards. Several metals were detected in groundwater samples from boring SB-2 at concentrations above NR 140 standards. The Phase II ESA notes that the water sample from SB-2 was collected in a temporary well. The temporary well was not developed to clear silt and sediment from the well, nor was the sample field filtered. The water sample was described as turbid. The Phase II ESA notes that it is therefore possible that the metals concentrations are elevated due to metals sorbed to suspended solids in turbid groundwater.

The groundwater sample from SB-1 was also tested for PFOA and PFOS. PFOA and PFOS were detected at concentrations of 13 ppt and 38 ppt, respectively. Groundwater, surface water and soil samples collected from many areas of the airport by responsible parties have previously detected PFAS compounds, the suspected source being AFFF fire-fighting foam use at the airport. The department is aware that other parties are completing investigations to delineate PFAS contamination in various locations on airport property.

Determinations

The DNR reviewed the documents described above and the reports in the DNR files and determined based on proposed use and current environmental conditions that Preferred Development, as Lessee under the Lease, would not "possess or control," as those terms are used in Wis. Stat. § 292.11(3), any hazardous substance discharges or environmental pollution that are discovered in the future to have been present on the Property prior to signing the Lease, conditioned in compliance with the following standards of performance:

- Preferred Development must provide any responsible party, their consultants, and DNR personnel with reasonable access to the Property for the purposes of conducting any necessary environmental assessment or remediation activities.
- Preferred Development or its representatives, agents or contractors, must comply with all applicable state and federal laws that apply if they conduct any excavation, storage, treatment, or disposal of contaminated soils, groundwater, or other materials on the Property.

- Preferred Development must minimize, to the extent practicable, the placement of any structures in areas of the Property impacted by environmental contamination, or construct buildings in such a manner as to allow remedial work to be conducted.
- Preferred Development must comply with the requirements of Wis. Stat. ch. 292 and the Wis. Adm. Code chs. NR 700-799 for the discharge of any hazardous substances or environmental pollution that may be caused by Preferred Development or its contractors.
- Preferred Development has not and will not have direct or indirect business relationships (other than as Lessee under the Lease for the Lease Property) with the person or persons who caused the discharge of any hazardous substance or environmental pollution on the Property.
- There are no relevant provisions in the Lease that would alter the DNR's analysis.

Under these conditions, the DNR agrees not to hold Preferred Development in its capacity as a Lessee under the Lease responsible for investigating or remediating any hazardous substances or environmental pollution that are present on, or migrated from or onto, the Property prior to the date of the Lease, unless any of the conditions are not satisfied.

Environmental Requirements

Preferred Development must ensure that any storage, treatment or disposal of water, soil, or other solid waste generated as part of the site development is conducted in compliance with applicable standards and rules. Any party conducting excavation work at the Dane County Airport in known or suspected areas of environmental contamination will need to characterize and appropriately manage any soil, water or other solid waste generated. The person generating the contaminated soil would need to either dispose of it at a licensed solid waste facility or receive an exemption under Wis. Admin. Code chs. NR 508 or NR 718 to dispose of it on- or off-site. To ensure compliance with standards and rules and to comply with the conditions in this letter, it is the understanding of the DNR that Preferred Development is planning to submit a materials management plan that would address management of soil, water and other materials that may be generated as part of construction activities and will request coverage under a WPDES permit for water discharges.

Any determinations made by the DNR in this letter are based specifically on the information made available to the DNR as part of the request and are subject to change if modifications are made to the Lease or if other information arises. Any property located outside of the area identified as the Property for the purpose of issuing this Lease Liability Clarification Letter is not covered by this letter and would require a request be made for a Lease Liability Clarification Letter for the specific revised area. This letter was written specifically for Preferred Development and is not transferrable to another party.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. The DNR tracks information on all determinations such as this one in a database that is available on the Internet at: <http://dnr.wi.gov/topic/Brownfields/WRRD.html>. See "BRRTS on the web" to access the database. You are reminded that this determination does not relieve you of obligations to comply with all other applicable federal, state and local laws, regulations, and permits.

If you have any questions concerning this letter or other related matters, please contact me at (608) 259-6557 or at Jodie.Peotter@wisconsin.gov or Steve Ales at (608) 400-9187 or stephenm.ales@wisconsin.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jodie Peotter', with a long horizontal flourish extending to the right.

Jodie Peotter, PG
Chief, Brownfields, Outreach and Policy Section
Bureau for Remediation and Redevelopment

Attachment: Lease Agreement

cc: Delanie Breuer, Reinhart Boerner Van Deuren s.c.
Phillip R. Bower, DNR LS
William J. Nelson, DNR LS
Steve Ales, RR/5
Steve Martin, SCR

Dane County Contract Cover Sheet

RES 081
Significant

Dept./Division	Airport/Administration	Contract # <small>Admin will assign</small>	14037
Vendor Name	Preferred Development Madison, LLC	Addendum	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Vendor MUNIS #	30623	Type of Contract	
Brief Contract Title/Description	For construction of a new air cargo facility and for adjacent ramp space for use by the Federal Express Corp. under a sublease with Preferred Development Madison.	<input type="checkbox"/>	Dane County Contract
Contract Term	first day of the month after construction- 41 years with option to extend 5 more years	<input type="checkbox"/>	Grant
Total Contract Amount	\$ \$145,812 second year subject to yearly CPI adjustments thereafter.	<input checked="" type="checkbox"/>	County Lessee
		<input type="checkbox"/>	County Lessor
		<input type="checkbox"/>	Intergovernmental
		<input type="checkbox"/>	Purchase of Property
		<input type="checkbox"/>	Property Sale
		<input type="checkbox"/>	Other

Purchasing Authority	<input type="checkbox"/> \$11,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$11,000 – \$37,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$37,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP #
	<input type="checkbox"/> Bid Waiver – \$37,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$37,000 (N/A to Public Works)	
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Org Code	Obj Code	Amount	\$
Req #	Org Code	Obj Code	Amount	\$
Year	Org Code	Obj Code	Amount	\$

Resolution	A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.		
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.		
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	Res #	081
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	Year	2020

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
MG	Received by DOA	6/9/20		
CH	Controller		6/9/20	approval via email
CAC	Purchasing		6/9/20	approval via email
DG	Corporation Counsel		6/11/20	approval via email
DL	Risk Management		6/9/20	approval via email
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
Name	Rodney Knight, Airport Counsel	Name	Robert Saraga, for Thomas Speno
Phone #	(608) 246-3388	Phone #	(561) 330-0660
Email	knight@msnairport.com	Email	saraga@sl-law.com
Address	4000 International Lane Madison, WI 53704	Address	201 NE 1 ST AVE Delray Beach, FL 33444

Certification: The attached contract is a:	
<input type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input checked="" type="checkbox"/>	Dane County Contract <u>with</u> modifications. The modifications have been reviewed by: Rodney Knight, Airport Counsel
<input type="checkbox"/>	Non-standard contract.

Contract Cover Sheet Signature

Department Approval of Contract		
Dept. Head / Authorized Designee	Signature	Date
	<i>Kimberly Jones</i>	6/8/2020
	Printed Name	
	Kimberly Jones, Airport Directors	

Contracts Exceeding \$100,000 Major Contracts Review – DCO Sect. 25.11(3)

Director of Administration	Signature	Date
	<i>Greg Brockmeyer</i>	6/9/20
	Comments	
Corporation Counsel	Signature	Date
	<i>David Gault</i>	6/11/20
	Comments	

2020 RES-081

**AUTHORIZING EXECUTION OF LEASE
WITH PREFERRED DEVELOPMENT MADISON, LLC FOR PREMISES AT
THE DANE COUNTY REGIONAL AIRPORT**

Dane County and Preferred Development Madison, LLC (“Preferred”) have negotiated a lease under which Preferred will lease land and ramp space in the cargo ramp area of the Dane County Regional Airport. Preferred will construct an air cargo facility, including a building and related improvements, which Preferred will sublease to Federal Express Corporation (FedEx) for use in FedEx’s air cargo operations. The lease between Dane County and Preferred has an initial term of 41 years, with a five year extension option exercisable by Preferred. After rent is phased in during the first year construction period, rent for the second lease year will total \$145,812.84, and thereafter is subject to yearly CPI based adjustments.

NOW, THEREFORE, BE IT RESOLVED that the Dane County Executive and the Dane County Clerk are hereby authorized to execute, on behalf of the County of Dane, a lease with Preferred Development Madison, LLC for land and ramp space at the Dane County Regional Airport, as set forth above.

14037

LEASE NO. DCRA 2020-03

DANE COUNTY, WISCONSIN
LESSOR

AND

PREFERRED DEVELOPMENT MADISON, LLC
LESSEE

AIR CARGO GROUND LEASE

Dane County Regional Airport
Madison, Wisconsin

Lease No. DCRA 2020-03

This Air Cargo Ground Lease (the "Lease") is made and entered into by and between Dane County, a Wisconsin quasi-municipal corporation ("County") and Preferred Development Madison, LLC, a limited liability company organized under the laws of the State of Florida ("Preferred"), and shall be effective as of the date it is fully executed by the authorized agents of both parties (the "Effective Date").

WITNESSETH:

WHEREAS County is the owner of certain lands in the City of Madison, Dane County, Wisconsin, known as the Dane County Regional Airport (the "Airport"), which includes, among other things, vacant land available for improvement and ramp space accessible for aeronautical operations; and

WHEREAS Preferred, a company engaged in the real estate development business, desires to lease from County vacant land on which to construct an air cargo facility and adjacent ramp space for use in air cargo operations; and

WHEREAS Preferred, simultaneously with the leasing of the Leased Premises, desires to sublease to Federal Express Corporation ("FedEx"), a corporation engaged in the air cargo business, the foregoing land and ramp space (collectively, the "Leased Premises") and a building and air cargo facilities to be constructed by Preferred on the Leased Premises; and

WHEREAS County deems it advantageous to itself and its operation of the Airport to lease to Preferred the Leased Premises and to approve the sublease thereof to FedEx, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, County and Preferred agree as follows.

- 1. Term.** The Lease shall have an initial term of 41 years (the "**Term**") commencing on the Rent Commencement Date, as hereinafter defined. Preferred shall have the option to extend the Lease for an additional five years (the "Extension Term"). Preferred may exercise its option to extend the Lease by providing to County written notice of intent to extend no later than 120 days prior to expiration of the Term. If the option to extend is exercised, the Extension Term shall be included in the definition of Term. This Lease is subject to termination, extension or renewal only as provided herein or as otherwise approved in writing executed by both parties hereto. In the event Preferred has not commenced excavation for the foundation of the building to be constructed on the Leased Premises within one year of the Effective Date, this Lease shall be null and void.

2. **Leased Premises and Duty to Vacate.** County hereby leases to Preferred the following described Leased Premises, subject to the stated duty to vacate.

A. **Exclusive Use Land.** The Exclusive Use Land leased hereunder consists of 123,730 square feet (2.84 acres) of vacant land adjacent to the Airport Cargo Ramp, as described and depicted on in Exhibit "A", attached hereto.

B. **Assigned Ramp Space.** The Assigned Ramp Space leased hereunder consists of 107,887.5 square feet (2.47 acres) of paved area on the Airport Cargo Ramp, as described and depicted in Exhibit "A", attached hereto.

C. **Preferential Ramp Space.** The Preferential Ramp Space leased hereunder consists of 65,837.5 square feet (1.5 acres) of paved area on the Airport Cargo Ramp, as described and depicted in Exhibit "A", attached hereto.

D. **Duty to Vacate.** The right of Preferred or its sublessee to use the Preferential Ramp Space, as set forth herein, is subject to notice from the Airport Director to Preferred or its sublessee (whichever is occupying the Leased Premises at the time notice is given) that said occupant is required to remove its aircraft, equipment, and other items and materials and vacate the Preferential Ramp Space, or any portion thereof, by a specified deadline not less than 24 hours from the time said notice is provided. Notwithstanding the foregoing, in the event of exigent circumstances involving federal or state branches of the armed services, the United States Secret Service or charter operations, Preferred or its sublessee (whichever is occupying the Leased Premises at the time notice is given) may be required to vacate the Preferential Ramp Space upon less than 24 hours' advance notice. The notice required under this subsection shall specify the period during which the right to use the Preferential Ramp Space is suspended or rescinded, and shall be sufficient if it is provided to Preferred or its sublessee (whichever is occupying the Leased Premises at the time notice is given) at the address set forth in Section 34 below, by email only if Preferred or its sublessee (whichever is occupying the Leased Premises at the time notice is given) affirmatively responds and acknowledges receipt of the email, or by personal delivery to the office of Preferred or its sublessee located on the Leased Premises.

3. **Rent.** In consideration for the rights granted pursuant to the terms and conditions of this Lease, Preferred shall commence the payment of rent to County on the first day of the month following the date of commencement of excavation for the foundation of the building to be constructed on the Leased Premises by Preferred (the "Rent Commencement Date") and shall pay rent each month thereafter as follows.

A. **Remission of Rent.** Starting on the Rent Commencement Date, all rent due hereunder shall be paid in advance in monthly installments and shall be due on or before the first day of each month thereafter. Payment of rent shall be by check made payable to County of Dane, Wisconsin, and shall be paid at the Office of the Airport Director, 4000 International Lane, Madison, Wisconsin 53704, such that it is received by the close of business on the date due.

Overdue rent payments shall incur interest at a rate of one and one-half percent per month from the due date until paid in full.

- B. Exclusive Use Land Rent. There shall be no rent due in consideration for Preferred's right to use the Exclusive Use Space during the first six months of the Term of this Lease. Thereafter, for the sixth-month period commencing on the first day of the seventh month through the last day of the twelfth month of the Term, Preferred shall pay to County rent for use of the Exclusive Use Land in the amount of One Thousand One Hundred Thirty Four and 19/100 Dollars (\$1,134.19) per month (based on \$.11 per square foot per annum). Thereafter, for the twelve-month period commencing on the first day of the second year of the Term, Preferred shall pay to County rent for use of the Exclusive Use Land in the amount of Eleven Thousand Three Hundred Forty One and 92/100 Dollars (\$11,341.92) per month (based on \$1.10 per square foot per annum). Commencing on the first day of the third year of the Term, rent due for the Exclusive Use Land shall be subject to annual adjustment as provided for in Section 4 below.

 - C. Assigned Ramp Area Rent. There shall be no rent due in consideration for Preferred's right to use the Assigned Ramp Area during the first twelve months of the Term of this Lease. Thereafter, for the twelve-month period commencing on the first day of the second year of the Term, Preferred shall pay to County rent for use of the Assigned Ramp Area in the amount of Eight Hundred Nine and 15/100 Dollars (\$809.15) per month (based on \$.09 per square foot per annum). Commencing on the first day of the third year of the Term, rent due for the Assigned Ramp Area shall be subject to annual adjustment as provided for in Section 4 below.

 - D. Preferential Ramp Area. There shall be no rent due in consideration for Preferred's right to use the Preferential Ramp Area, as conditioned herein, during the entire Term of this Lease.
4. Rent Adjustment. The rent due in consideration for Preferred's right to use the Exclusive Use Space and the Assigned Ramp Area, as set forth above, shall be adjusted as of and effective on the first day of the third year of the Term and, thereafter, the first day of each succeeding year of the Term based on changes in the Consumer Price Index, U.S. City Average, All Items, all Urban Consumers (the "CPI"), provided that the adjusted annual rent for a Lease year shall not be lower than the previous year, or more than two percent greater than the rate for the previous year. Each new annual rent rate shall, be calculated using the following formula:

New Annual Rate:

$$\text{Current Annual Rate} \times \frac{\text{CPI Index for December of the most recent year}}{\text{CPI Index for December of the next most recent year}}$$

For example:

Rate for 2026:

$$\text{Rate for 2025} \times \frac{\text{CPI Index for December of 2024}}{\text{CPI Index for December of 2023}}$$

As adjusted, rent at the annual rate shall be paid in twelve equal monthly installments due as set forth in Section 3 above. In the event a rent adjustment cannot be calculated prior to the due date of the first monthly installment of adjusted rent in a calendar year, rent for such month(s) shall be paid at the rate applicable to the last month of the immediately preceding calendar year until such time as the adjusted rent amount is determined and any additional amounts due from Preferred upon determination of the adjusted rent amount shall thereafter be paid by Preferred together with the next monthly rent installment payment which becomes due not less than 15 days nor more than 45 days after the adjusted rent amount is determined. If publication of the CPI is terminated, or its method of calculation is significantly altered, then the annual rent adjustment shall be made by application of the index that, in County's reasonable discretion, is the index most commonly used in the aviation industry or, if there is no such standard, in the rental industry generally. If the termination of this Lease falls on a date other than the last day of a calendar month, rent for that month shall be paid pro-rata according to the number of days in such month during which this Lease is effective.

5. **Permitted Use of the Leased Premises.** Preferred and any sublessee approved by County shall use the Leased Premises solely for the development, construction, and operation of an air cargo facility, consisting of buildings and other related improvements. Permitted uses of the Leased Premises shall include the following: (a) commercial transportation of lawful express cargo, freight, documents, mail, and merchandise by aircraft, including the receiving, storing, preparing, packing, crating, delivering, and transporting by air of such cargo, freight, documents, mail, and merchandise; (b) the parking, storage, routine maintenance, minor repair, cleaning, deicing, and servicing of aircraft operated in connection with the air cargo facility, and the maintenance and repair of personal property operated in connection with the facility; (c) the storage of aircraft parts and supplies; (d) ground activities necessary for the support of the air cargo operations, including but not limited to the maintenance and mobile fueling of cargo and ground handling equipment used on the Leased Premises; (e) administrative offices, with customary vending machines with food and beverage services; and (f) any other purpose or activity that the County may, from time to time, expressly authorize in advance in writing in County's reasonable discretion (collectively, the "Permitted Use"). All rights granted Preferred with respect to use of the Leased Premises shall be exercised only in compliance with applicable federal, state, and local laws, regulations, policies and rules, including but not limited to Airport security and safety plans, programs and policies, and directives of the Airport Director. Additionally, specifications for the fueling operations and equipment used for the mobile fueling of cargo and ground handling equipment, as authorized herein, are subject to the advance written approved of the Airport Director prior to the implementation of such operations. Notwithstanding

any other provision herein, fuel of any kind or type shall not be kept or stored on the Leased Premises, whether in a tank truck, freestanding tank, underground tank, or otherwise. In the event Preferred determines it would be in its best interest to conduct fueling operations for aircraft using the Leased Premises for air cargo operations, any such fueling operations, and the facilities and equipment used therefor, shall be in strict compliance with the minimum standards for fuel farm operations set forth in Section 68.33 of the Dane County Ordinances, and subject to the advance written approval of the Airport Director. Preferred shall retain throughout the Term, title and ownership of the improvements it constructs or installs or permits others to construct or install on the Leased Premises. Preferred shall not provide passenger air service at the Airport.

6. **No Unauthorized Use.** The Leased Premises are not to be used in any manner other than that expressly authorized under this Lease, or by written consent of the Airport Director. Chapters 67 and 68 of the Dane County Code of Ordinances are fully incorporated into this Lease and violation by Preferred of any provision thereof shall also be a breach of this Lease.

7. **Storm Water Construction Allowance.**

A. **General.** In addition to the construction of improvements on the Leased Premises as authorized herein, Preferred shall upsize, extend, and perform related work (collectively, the "Work") on the existing Airport storm water system (the "Storm Water System") to service the Leased Premises, and shall do so on County's behalf. In consideration for the Work, County shall contribute a sum of up to Two Hundred Thousand Dollars (\$200,00000) (the "Storm Water Construction Allowance") in the form of a credit towards future rent, and Preferred shall advance up to the sum of the Storm Water Construction Allowance toward the cost of the Work. Preferred shall submit to County for its approval, plans and specifications for the Work on the Storm Water System. Preferred shall select a contractor(s) acceptable to County to perform the Work. Payment for the Work shall be made by Preferred directly to the approved contractor(s). In the event it is determined that the cost of the Work to be performed hereunder, exceeds the Storm Water Construction Allowance, County and Preferred shall work together in good faith towards a mutually acceptable modification of the Storm Water Construction Allowance. In the event a mutually acceptable resolution cannot be reached, Preferred shall have the option of either terminating this Lease during the Inspection Period, as defined below, or electing to fund the difference without receiving a credit against future rent for the amount in excess of Storm Water Construction Allowance. Preferred shall not be entitled to receive credit against rent or otherwise for any portion of the Storm Water Construction Allowance which is not used to pay for the Work to be performed hereunder. The Storm Water Construction Allowance may only be used for Work performed on the Storm Water System, as described in this section.

B. **Preferred's Storm Water Construction Allowance Records.**

(i) If required by County, Preferred shall provide County with copies of all available guaranties, warranties and operations manuals issued by the approved contractor(s) and suppliers performing the Work on the Storm Water System or providing materials therefor, which guaranties and warranties shall inure to the benefit of both County and Preferred.

- (ii) County, at any time after payment of the Storm Water Construction Allowance and upon at least five business days prior written notice to Preferred, may cause an audit to be made of Preferred's books and records relating to Preferred's expenditures in connection with Work on the Storm Water System. Preferred shall maintain complete and accurate books and records of all Work on the Storm Water System in accordance with generally accepted accounting principles. Preferred shall make available to County's auditor, within three business days following County's notice requiring the audit, all books and records maintained by Preferred pertaining to the construction and completion of Work on the Storm Water System. In addition to all other remedies which County may have pursuant to the Lease, County may recover from Preferred the reasonable cost of its audit if the audit discloses that Preferred falsely reported to County a material amount of expenditures for the Work which were not made.
- C. Rent Credit for Work on the Storm Water System. Preferred shall receive as a credit towards the payment of rent under this Lease an amount equal to the final Storm Water Construction Allowance (the "Rent Credit"), including any modification thereto approved by County and Preferred. The Rent Credit amount shall be reduced by any amount by which actual payment for the Work was less than the Storm Water Construction Allowance. The Rent Credit shall be applied against rent due hereunder, at times and in amounts to be determined by Preferred, until such time as the amount of the Rent Credit has been fully offset against rent due hereunder.
8. Right of Ingress and Egress. Preferred's employees, agents, contractors, invitees, and suppliers shall have the right to enter and depart from the Leased Premises in accordance with applicable laws, regulations, and rules, including but not limited to, Title 49 Code of Federal Regulations Part 1542, Airport security and safety plans, programs and policies, and directives of the Airport Director.
9. Sublease. County hereby approves the subletting to FedEx of the entirety of the rights to the use and occupancy of the Leased Premises granted Preferred under this Lease. The sublease instrument (the "Sublease") granting the foregoing rights to FedEx shall be substantially identical in content to the document attached hereto as Exhibit "B", which has been reviewed and approved by the County. Preferred may not modify the Sublease, terminate the Sublease, terminate or amend any guaranty entered into in connection with the Sublease, evict FedEx, or grant any consent under the Sublease without County's consent, which consent shall not be unreasonably withheld, conditioned or delayed. The Sublease shall expire no later than one hour before the expiration of the Term.
10. Leasehold Mortgages. Notwithstanding anything in this Lease to the contrary, Preferred shall have the right, to grant leasehold mortgage(s), provided that any leasehold mortgagee may initiate and complete any foreclosure event and exercise any other rights and remedies only against Preferred and the leasehold estate (but not the fee estate) under its leasehold mortgage, and that any transferee through a foreclosure event may assign this Lease only with County's consent, which shall not be unreasonably withheld. Preferred shall be entitled to execute and

deliver leasehold mortgage(s) at any time and from time to time during the Term. County need not join in, or “subordinate the fee estate to,” any leasehold mortgage. No leasehold mortgage shall reduce any party’s rights or obligations under this Lease. A foreclosure event shall not impair the fee estate or any estate or right held by County. Upon notification to County that Preferred has entered, or is about to enter, into a leasehold mortgage, County hereby agrees for the benefit of such leasehold mortgagee, and within 30 days after written request by Preferred, to execute and deliver to Preferred and the leasehold mortgagee a Recognition, Attornment and Assent to Leasehold Mortgage (“Recognition Agreement”) that is reasonably acceptable to both County and the leasehold mortgagee. Notwithstanding the foregoing, County hereby consents to the form of Recognition Agreement attached hereto as Exhibit “C”. Notwithstanding anything set forth in this section to the contrary, County shall accept the leasehold mortgagee’s cure of any default at any time until 10 days after both: (a) Preferred and the leasehold mortgagee have received the default notice for that default; and (b) County has notified the leasehold mortgagee that lessee’s cure period for that default has expired. If the leasehold mortgagee cannot reasonably cure the default within leasehold mortgagee’s cure period under the preceding sentence, it shall have 10 additional days to fully cure the default. If the leasehold mortgagee cannot reasonably cure a default without possession, the leasehold mortgagee shall be entitled to such additional time as it reasonably needs to consummate a foreclosure event and obtain possession, provided the leasehold mortgagee timely proceeds with a foreclosure action and exercises its cure rights for all other defaults. Whenever the leasehold mortgagee’s time to cure a default or, if cure reasonably requires possession by the leasehold mortgagee, consummate a foreclosure event has not expired, County shall not terminate this Lease, accelerate any rent, or otherwise interfere with Preferred’s or leasehold mortgagee’s possession and quiet enjoyment of the leasehold estate. The leasehold mortgagee may enter the Leased Premises to seek to cure a default. This right or its exercise shall not be deemed to give leasehold mortgagee possession.

11. **Quiet Enjoyment.** Upon timely payment of the rent, fees and charges due hereunder and compliance with the terms and conditions set forth in the Lease, Preferred shall peaceably have and enjoy the Leased Premises and all rights and privileges related to the Airport and its facilities as granted herein.
12. **Lease Modification and Administration.** This Lease may be modified or amended only in writing executed by duly authorized representatives of the parties hereto, such representative on the part of County being the Airport Director. County’s Airport Director shall have authority to grant or deny County approvals required hereunder, interpret and administer the provisions in this Lease on behalf of County, and to represent County’s interest in connection with all matters hereunder.
13. **County Access to Premises.** County reserves the right to enter upon the Leased Premises at any reasonable time for the purpose of making any inspection it may deem expedient to the enforcement of the covenants or conditions of this Lease and applicable laws, regulations, rules; Airport security and safety plans, programs and policies; and directives of the Airport Director.
14. **Airport Improvement.** County reserves the right, in its sole discretion, to develop and improve Airport land and facilities, including all ramp, landing and public areas.

- 15. Military Provision.** During time of war or national emergency County shall have the right to lease any part of the Airport to the State of Wisconsin or the United States, or both, for military or governmental use and, if such right is exercised, the provisions of this Lease insofar as they are inconsistent with the provisions of the lease(s) to the state or federal government shall be suspended during the period of military or governmental use authorized therein.
- 16. Subordination.** The provisions of this Lease shall be subject and subordinate to any agreement now existing or hereafter entered into between County and the United States or the State of Wisconsin affecting regulation, operation, development, use, or maintenance of the Airport, provided County's execution or compliance with the terms of such agreement is a condition of acquisition or retention of property for Airport use, or the expenditure or receipt of federal or state funds for the development or maintenance of Airport property or operations. If required by the United States or State of Wisconsin, this Lease shall be amended to reflect the terms of any such agreement. Should the effect of such an agreement hereafter entered into between County and the United States or the State of Wisconsin be to take any of the property interests granted Preferred under this Lease and substantially destroy the value of its interests herein, Preferred shall have the right to terminate this Lease, but shall have no other recourse against County.
- 17. Airport Protection Clause.** County reserves and retains at all times for the benefit of County and the public the right to pursue all operations of the Airport, including the right of aircraft to fly in the airspace overlying the Leased Premises and to cause such noise and vibration as may be inherent in the operation of aircraft on or in the vicinity of an active airport. Preferred shall not use or permit the use of the Leased Premises in any manner that causes or creates glint, glare or reflectivity that adversely impacts the vision of pilots or air traffic controllers, interference with navigational aids or communication between the Airport and aircraft, difficulty in distinguishing Airport lights and markers, interference with visibility in the vicinity of the Airport, conditions that attract birds or other wildlife that may pose hazards to aviation, or other hazards to the operation of aircraft at or in the vicinity of the Airport. Preferred shall restrict the height of objects of any kind on the Leased Premises to a height that is in compliance with Title 14, Code of Federal Regulations, Part 77. County reserves the right to take any action it considers necessary to protect users of the Airport from any condition that may be hazardous to aviation, and may remove, or prevent Preferred from constructing, keeping, placing, or permitting to be constructed, kept or placed, any object, material, device or equipment on the Leased Premises which the Airport Director determines would constitute a hazard to aviation, limit the efficiency of Airport operations, or violate FAA regulation, rule, order or advisory. In the event Preferred is notified by the Airport Director or the FAA that it is non-compliant with any provision of this Section 17, Preferred shall immediately implement and maintain measures to eliminate the non-compliance and any reoccurrence thereof.
- 18. Approval of Improvements on the Exclusive Use Land.** Preferred shall perform all construction permitted hereunder in compliance with any and all applicable construction laws and regulations, and only with County approval. Prior to submitting for building permits for the construction of buildings, related parking, landscaped areas, and other improvements on the Exclusive Use Land, Preferred shall submit Plans and Specifications therefor (as herein defined)

to the County and, as required hereunder, to the Dane County Regional Airport Commission (the "Commission") for approval. As used herein, "Plans and Specifications" shall include, plans and specifications prepared by Preferred's architect, submitted in such machine-readable format as is then customary in the architectural profession, consisting of architectural plans; elevations and sections indicating principal areas, core design and location; location, number, and capacity of elevators; basic structural system; minimum estimated electrical capacity and distribution system; general type of plumbing system; façade, placement, and orientation; gross and rentable square foot analysis; principal types of HVAC systems, and other materials and information as may reasonably be requested by County. Preferred shall provide to the Commission all documents and materials specified by the Commission. Upon approval by County and the Commission, Preferred may modify the Plans and Specifications only so long as such modifications are non-material in nature, as determined by County. Alterations and additions to improvements approved hereunder, or improvements on the Exclusive Use Land not requiring specific approval under this section, require the approval of the Airport Director.

19. Approval and Removal of Improvements in the Ramp Areas.

- A. Installation of Improvements. Preferred may apply install, place, construct or remove ramp markings, aircraft support systems or other improvements on or in the Assigned Ramp Area or the Preferential Ramp Area only upon submittal to County of detailed plans therefor and Preferred's receipt of County's advanced written approval of the plans and a schedule for completion of the work specified in the plans.
- B. Removal of Improvements in the Preferential Ramp Area. Unless otherwise agreed in writing signed by both parties hereto, within 60 days after receipt of County's written notice requesting removal of any ramp markings, aircraft support system or other improvement ("Improvements") applied, placed, installed or constructed ("Installed") in the Preferential Ramp Area by or for Preferred, Preferred shall remove any Improvements and associated equipment and structures identified in such written notice, and shall return all areas of the Preferential Ramp Area affected by removal of said Improvements to the condition such areas were in prior to Installation of the Improvement, normal wear and tear excepted. County grants Preferred reasonable access to and from the Preferential Ramp Area for 30 days following Preferred's receipt of the written notice referenced in the preceding sentence, free from any payment of rent or other charges, for the sole purpose of performing, without interference with other ramp users, the removal and restoration work required hereunder.
- C. Removal of Improvements Upon Lease Termination. Unless otherwise agreed in writing signed by both parties hereto, Preferred shall within 30 days of expiration or earlier termination of this Lease remove all Improvements, including all associated equipment and structures, Installed on or in the Assigned Ramp Area and the Preferential Ramp Area by or for Preferred, and shall return all areas of the Assigned Ramp Area and the Preferential Ramp Area affected by removal of said Improvements to the condition such areas were in prior to Installation of the Improvement, normal wear and tear accepted. County grants Preferred reasonable access to and from the Assigned Ramp Area and the Preferential Ramp Area during said thirty 30-day period, free from any payment of rent or other charges, for the sole

purpose of performing, without interference with other ramp users, removal and restoration work required hereunder. Notwithstanding the foregoing, County, at its sole discretion, may, by written notice provided to Preferred, waive fully or in part, its right to require Preferred to perform removal and restoration work as set forth in this subsection and, in the event of such waiver, Preferred shall upon expiration or earlier termination of this Lease convey to County unencumbered ownership of any Improvements, including all associated equipment and structures, that are the subject of said notice of waiver. The provisions of this Subsection C are not applicable to the Preferential Ramp Area if Improvements thereon have been removed pursuant to the immediately preceding Subsection B.

20. Condition of Leased Premises. Except for Pre-Existing Contamination, as defined in Section 27 (B) herein, Preferred accepts the Leased Premises in its condition on the Effective Date of this Lease, subject only to Preferred's Right to Terminate as set forth in Section 35 below.

21. Maintenance. Preferred shall keep the Leased premises in clean and orderly appearance and condition. Should Preferred fail to keep the Leased Premises in the condition required herein and remedial action is not undertaken by Preferred within 10 days after receipt of County's written notice of such failure, County shall have the right to enter on the Leased Premises and perform the necessary maintenance or repair and charge to Preferred the cost thereof, plus a 15 percent administrative fee. County shall perform and pay for all necessary repairs and maintenance of the surface of the ramp areas leased hereunder unless the need for repairs or maintenance are the result of Preferred's construction activities or necessitated by negligent, excessive, or improper use of such areas by Preferred, its employees, agents, servants, employees, or invitees.

22. Signs and Illumination. Preferred shall secure County's advance written approval before placing exterior lighting or exterior signs on the Leased Premises, unless the lighting or signage is present on the Effective Date of this Lease.

23. Utilities. Unless otherwise provided in this Lease, Preferred shall pay for all utility service and utility connections associated with its use or occupancy of the Leased Premises. If required by a utility provider as a condition of continuing utility service, Preferred shall install and pay for standard metering devices associated with utilities provided to the Leased Premises or improvements thereon. In the event it shall become necessary to make changes in or on the Leased Premises, such as modification of wiring, plumbing or similar installations, as a condition of the continuance of utility services, and Preferred desires to continue such services, the necessary changes and installations shall be made at Preferred's expense, as directed and required by the utility provider or authorized governmental agency, and approved in advance by County. County shall have the right, without cost to Preferred and without reimbursement to Preferred for any inconvenience, to install and maintain in or upon the Leased Premises, sewer, water, fiber optic, gas, electric, steam, telecommunication or data lines, and other equipment and installations necessary to the efficient operation of the Airport or to service other tenants of County. County shall carry out such work and locate any above-ground structures or installations in a manner so as not to unreasonably interfere with Preferred's use of the Leased Premises.

24. Discrimination Prohibited. Preferred, for itself, its representatives, successors and assigns, does hereby covenant and agree that (a) no person on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises or any improvement thereon; (b) that in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person shall be subjected to discrimination on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States; (c) that Preferred, shall use the premises in compliance with all 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, as said regulations may be amended; and (d) that Preferred shall provide access to the Premises for the physically disabled as required by all applicable federal, state and local laws and regulations. Breach of the provisions herein prohibiting discrimination shall be material and grounds for immediate termination of this Lease, subject to the exercise or expiration of appeal rights under Title 49, Code of Federal Regulations Part 21.

25. Compliance with Security Regulation and Plan. Preferred shall at all times comply with Federal Transportation Security Regulation Part 1542, and County's security and safety policies and plans, as such regulation, policies and plans may be amended from time to time. Any forfeitures or fines levied upon County or the Airport through enforcement of any federal, state or local regulation due to the acts or omissions of Preferred, Preferred's employees, agents, suppliers, invitees or guests shall be timely paid by Preferred. Preferred shall, pursuant to applicable federal regulations, conduct an annual self-audit of Airport access badges used by Preferred, Preferred's employees, agents, suppliers, invitees, sublessees or guests. Preferred shall annually provide County with a written report of said audits and provide to County any other requested security related information. Preferred shall bear the cost of replacing or resetting, as appropriate, all affected Airport area access locks or devices whenever missing, lost or stolen access media exceed five percent of the total access media issued for the affected lock or device.

26. Access Control Responsibility. Preferred shall maintain a written policy outlining its Airport access control program, and shall maintain Airport security awareness among its employees, agents, contractors, suppliers and invitees. Preferred shall immediately report to County or Airport Law Enforcement any unauthorized or suspicious individuals, activities, or items in or on the Leased Premises. Preferred shall be responsible for the conduct of its employees, agents, contractors, suppliers and invitees while they are on the Leased Premises.

27. Indemnification and Insurance.

- A. General Indemnification. Preferred is and shall be deemed for all purposes under this Lease to be an independent contractor exclusively responsible for its own acts or omissions. Preferred shall indemnify, hold harmless and defend County, County's agents, representatives, appointees and employees from and against all claims for losses, costs, attorney fees, expenses, and damages arising out of, resulting from or relating to any loss of or damage to any property or business or any injury to or death of any person, where such loss, damage, injury, or death actually or allegedly arises, whether directly or indirectly, wholly or in part, from (i) any action or omission of Preferred, Preferred's employees, agents, contractors, suppliers or invitees while on Airport property; or (ii) the exercise by Preferred, Preferred's employees, agents, contractors, suppliers or invitees of the rights granted herein. Preferred's obligation of indemnification, as set forth herein, shall not apply to damages or liability resulting from the acts or omissions of County, or the acts or omissions of any tenants, occupants, or other parties, occurring prior to the Effective Date of this Lease. The obligations of Preferred under this paragraph shall survive the expiration or termination of this Lease.
- B. Environmental Protection and Indemnification. Preferred covenants and agrees that it will not use, store, maintain, generate, discharge, or operate any "Hazardous Materials" (hereinafter defined), whether intentionally or unintentionally, on the Airport in violation of any applicable federal, state, county, or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses, or permits of any governmental authorities relating to environmental matters (being hereafter collectively referred to as "Environmental Laws") including, by way of illustration and not by way of limitation, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Toxic Materials Control Act (including any amendments or extensions thereof and any government promulgated rules, regulations, standards, or guidelines issued pursuant to any Environmental Laws). Except in compliance with all Environmental Laws, Preferred, its subsidiaries, subcontractors, and suppliers, and anyone on the Airport property with the consent of Preferred, shall not discharge "Hazardous Materials" (hereinafter defined) into the sewer and/or stormwater drainage system serving the Airport or cause any such "Hazardous Materials" to be placed, held, stored, processed, treated, released, or disposed of on or at the Airport. For purposes of this Section 27(B), "Hazardous Materials" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local government authority or authorities having jurisdiction over Preferred's operations hereunder to pose a present or potential hazard to human health and/or safety or to the environment. Hazardous Materials include, by way of illustration and not by way of limitation, any substance defined as a "Hazardous Substance" or "Pollutant" or "Contaminant" pursuant to any Environmental Law; any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids; glycol and formulations of glycol and other deicing or anti-icing chemicals addressed under any Wisconsin Pollutant Discharge Elimination System Permit applicable to the Airport during the term of this Lease; and any other toxic, dangerous, or hazardous chemicals, materials, or substances or waste(s).

Neither Preferred nor its officers, agents, employees, contractors, subcontractors, or invitees shall cause any Hazardous Materials to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Leased Premises or the Airport or transported to or from the Leased Premises or the Airport unless such action is done in compliance with all applicable Environmental Laws. Preferred shall indemnify, defend, and hold County harmless from and against any and all losses arising during or after the term of this Lease and resulting or arising from: (a) a breach by Preferred of its covenants or obligations contained in the preceding Section 27(B) (1); or (b) any "Release" (hereinafter defined) of Hazardous Materials from, in, on, or about the Leased Premises or the Airport caused by any act or omission of Preferred, its officers, agents, employees, contractors, subcontractors, or invitees. For purposes of this Section 27 (B), "Release" shall mean any release, emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Hazardous Materials triggering a response action under, or not permitted, authorized, or allowed under, Environmental Laws. Notwithstanding the foregoing, Preferred does not undertake any obligation to remediate, or any liability for the cost of remediating, any part of the Leased Premises or Airport to a level of contamination that is lower than the level required as a condition for discontinuing enforcement of remedial actions by the governmental authorities having jurisdiction over the remediation. The foregoing obligates Preferred only to take actions that are consistent with the planned use of any contaminated portion of Lease Premises or the Airport such that remediation to industrial/industrial commercial standards, or to such other standards as may be required by the governmental authorities having jurisdiction over the required remediation, shall be sufficient to satisfy Preferred's obligations hereunder and Preferred shall not be required to remediate to more stringent standards that would otherwise be applicable if the planned use of the contaminated portion of the Leased Premises or the Airport was more environmentally sensitive, such as residential use. Moreover, if the governmental authorities having jurisdiction over the required remediation will reduce the scope of the removal, containment, and remedial actions that Preferred must take in order for those authorities to discontinue enforcement of such remedial actions provided only that deed restrictions that will not impair operation of the Airport as a commercial airport are recorded, County shall permit the recordation of those deed restrictions and, to the extent required by the governmental authorities conducting the enforcement of remedial actions, shall join in the execution of such deed restrictions. Notwithstanding anything to the contrary in this Lease, Preferred shall not have any obligations responsibilities, or liabilities with respect to Pre-Existing Contamination on the Leased Premises. For the purposes of this Lease "Pre-Existing Contamination" shall be defined as any Hazardous Materials or substances present on, at, or under the Leased Premises that were (i) introduced prior to the Effective Date; or (ii) not brought to the Leased Premises or released on the Airport by Preferred, FedEx, or the employees, agents, contractors, suppliers or invitees of Preferred or FedEx.

- C. Insurance Requirements. Preferred shall, by the Effective Date, obtain Commercial General Liability Insurance, including automobile, property damage, and environmental impairment (pollution) liability endorsements, with coverage of at least Ten Thousand Dollars (\$10,000,000), combined single limits. Notwithstanding the foregoing, Preferred may satisfy the coverage requirements set forth herein through separate policies, each providing coverage of at least Ten Thousand Dollars (\$10,000,000), combined single limits. The

insurance required hereunder shall be primary and provide coverage for Preferred's obligations of indemnity as set forth above. All insurers providing the insurance required herein shall be authorized to do business in the State of Wisconsin and approved by County. All policies shall name County as an additional insured. Preferred shall, within 10 days of the Effective Date of this Lease and annually thereafter during the term hereof, provide County with a certificate or certificates of insurance evidencing the insurance coverage required under this Lease. Each insurance policy obtained hereunder shall contain a provision that Preferred's insurer shall send to County written notice of cancellation or any material change in said policy at least 10 days in advance of the effective date thereof. Further, if insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the Effective Date and the certificate of insurance provided therefore shall state that coverage is claims-made and indicate the retroactive date. Preferred shall maintain all insurance coverage required hereunder for the duration of this Lease and for one year following the termination or expiration hereof. Preferred may provide the insurance required by virtue of the terms of this Lease by means of a combination of primary and excess or umbrella coverage secured by FedEx under the Sublease and by means of a policy or policies of blanket insurance so long as (i) the amount of the total insurance allocated to the Leased Premises under the terms of the blanket policy or policies furnishes protection equivalent to that of separate policies in the amounts required by the terms of this Lease, and (ii) the blanket policy or policies comply in all other respects with the other requirements of this Lease. The payment of deductibles under any insurance policy required by this Lease shall be made solely by Preferred and County shall not have any liability for payment thereof. In the event that FedEx is no longer the sublessee under this Lease, then County and Preferred will agree upon a reasonable and customary deductible in light of the creditworthiness of the then current sublessee, and the use of the Leased Premises..

28. Assignment and Subleasing. Preferred shall not at any time assign or sublet any privileges or rights granted by this Lease without the written approval of County, which approval will not be unreasonably withheld, conditioned or delayed.

29. Taxes, Fees, and Charges. Preferred shall pay as they become due any and all taxes, fees, assessments or charges of any type levied by any governmental entity based upon, related to, or resulting from any of Preferred's improvements, conditions, property, use, activities or Preferred's operations of any kind on the Leased Premises. Preferred shall have the right at its own cost and expense to contest the amount or validity of any tax, fee, assessment or charge and to bring or defend any actions involving the amount or validity thereof in its own name or, if necessary and approved by County, in the name of County, provided that, if unsuccessful, Preferred shall pay and discharge any such tax, fee, assessment or charge so contested, together with any penalties, fines, interest, costs and expenses, including attorney fees, that may result from any such action by Preferred, and provided that, pending resolution of any proceeding contesting a tax, fee, assessment or charge, Preferred shall take any actions necessary, including conditional payment of the amount in dispute, to prevent the attachment or accrual of any lien or penalty.

30. Report Forms. County shall have the right to prescribe and furnish forms for the making of all reports required of Preferred under this Lease or Airport policy, and Preferred shall use only such forms as may be prescribed.

31. Termination by Preferred. Preferred may terminate this Lease by giving to County 30 days written notice thereof if any of the following events occur:

- A. Preferred is prevented from operating air cargo activities on the Leased Premises by reason of its inability to use any portion of Assigned Ramp Area or its inability to use runways or taxiways at the Airport for at least 30 consecutive days, as the result of any condition not arising from Preferred's own act or omission or permitted under the terms of this Lease;
- B. County shall fail to perform any of its obligations under this Lease within 60 days after receipt of notice from Preferred of such failure, unless remediation of the failure requires remedial activity over a longer period of time and County commences such activity within 60 days after the receipt of notice hereunder and continues such activity without interruption, except for causes beyond its control; or

The payment of rent by Preferred for any period after Preferred has the right to terminate this Lease, but before any default of County has been cured, shall not be deemed to be or construed as a waiver by Preferred of such right of termination.

In addition, should Preferred or FedEx be prevented from operating air cargo activities on the Leased Premises as result of an event of Force Majeure (as defined below), Preferred's performance of this Lease shall be adjusted (including the payment of rent) to the extent and for the amount of time that Preferred is prevented, hindered, or delayed in its ability to operate air cargo activities on the Leased Premises during the period of such Force Majeure. "Force Majeure" shall mean one or more of the following having a material and adverse effect on Preferred's ability to operate air cargo activities on the Leased Premises: (i) fire or other casualty; (ii) storm, blizzard, earthquake, hurricane, tornado, flood or other act of God; (iii) war, act of terrorism, insurrection, rebellion, riots or other civil unrest in the jurisdiction in which the Leased Premises are located; (iv) epidemics, pandemics, quarantine restrictions or other public health restrictions or advisories; (v) strikes or lockouts or other labor interruptions; (vi) disruption to local, national or international transport services; or (vii) any other event that is beyond the reasonable control of either Preferred or FedEx, as the case may be.

32. Termination by County. County may terminate this Lease by giving to Preferred 30 days written notice thereof if any of the following events occur:

- A. Preferred becomes insolvent, seeks protection under any insolvency statute, or makes a general assignment for the benefit of creditors.
- B. Preferred or a creditor of Preferred files a petition seeking the liquidation of Preferred's assets or a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States thereof;

- C. There becomes effective an assignment or other transfer of ownership interest in this Lease or any portion thereof, by operation of law, order of court or otherwise, except as expressly permitted under this Lease;
- D. A receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of Preferred, or an execution or attachment is issued against Preferred or any of its property, whereupon possession of the Leased Premises is to be taken by someone other than Preferred, and any such possession or control shall continue in effect for a period of 15 days;
- E. There is filed a lien against the Leased Premises or any improvements thereon because of any act or omission of Preferred or other user of the Leased Premises and such lien is not removed or bonded within 90 days;
- F. Preferred voluntarily abandons or otherwise, exhibits an intent to permanently discontinue its use of the Leased Premises;
- G Preferred fails to pay the rent due under this Lease or to timely make any other payment to County as required hereunder and such failure shall continue for 30 days after written notice thereof is given to Preferred by County; or
- H. With respect to any obligation hereunder, other than Preferred's obligation to pay rent, Preferred breaches such obligation and fails to cure the breach within 30 days after receipt of written notice of such breach from County, unless cure of the failure requires remedial activity over a longer period of time and Preferred commences such activity within 30 days after the receipt of notice hereunder and diligently continues such activity without interruption, except for causes beyond its control.

No acceptance by County of rents, fees, charges or other payments or waiver by County of any default on the part of Preferred in performance hereunder shall act as a waiver by County of any subsequent default or any right granted County herein.

33. Rights Upon Termination. In the event of termination of this Lease prior to the expiration of the Term hereof, the remedies available to the parties shall be exclusively as follows.

- A. Upon termination of this Lease under Section 31 above, damages to Preferred shall be limited exclusively to the recovery of the value of any improvements constructed on the Leased Premises by or on behalf of Preferred pursuant to rights granted herein. The value of such improvements at the time of termination shall be net book value of the improvements, determined on a straight-line basis, deeming the value of the improvements to be Six Million One Hundred Sixty Thousand One Hundred Twenty-Two Dollars (\$6,160,122.00) at the time of substantial completion and zero on the expiration of the Term of this Lease. Upon payment by County of said damages, clear title to the improvements shall be conveyed to County and the improvements shall become the sole property of County. Preferred may, at its option, in lieu of accepting the net book value of such improvements, and as its exclusive alternative remedy, remove any improvements it has made upon the Leased Premises and restore all areas of the Leased Premises affected by removal of said improvements to the condition such

areas were in prior to construction or installation of the Improvements, normal wear and tear excepted.

- B. Upon expiration of the term of this Lease or termination under Section 32 above, Preferred shall, at County's discretion, either convey to County, without further consideration, clear title to all improvements Preferred, or others on Preferred's behalf, have made upon the Leased Premises or remove at its own expense any such improvements, and restore all areas of the Leased Premises affected by removal of said improvements to the condition such areas were in prior to construction or installation of the Improvements, normal wear and tear excepted.

34. Notices. All notices, approvals, requests, consents and other communications given, required or permitted in accordance with the terms of this Lease must be in writing and, unless otherwise provided herein, must be hand-delivered or sent by email, FedEx overnight service, or United States certified or registered mail, return receipt requested. If a party delivers a notice by means of email, it must also send a copy of the notice by one of the other means specified above. Notices shall be given or delivered when received or when the recipient refuses delivery. The parties shall address notices as follows:

TO COUNTY: Airport Director
Dane County Regional Airport
4000 International Lane
Madison, WI 53704
Email: Jones.kimberly@msnairport.com

With a copy to:
Airport Counsel
Dane County Regional Airport
4000 International Lane
Madison, WI 53704
Email: Knight@msnairport.com

TO PREFERRED: Preferred Development Madison, LLC
13865 W. Dixie Highway
North Miami, FL 33161
Attention: Thomas R. Speno, Manager
Email: tspeno@prd-realty.com

With a copy to:
Preferred Development Madison, LLC
1723 Banks Road
Margate, FL 33063
Attention: Richard Speno
Email: rspeno@prd-realty.com

With a copy to FedEx:
Federal Express Corporation
3680 Hacks Cross Road Building H, 3rd Floor

Memphis TN 38125
Attention: Manager, Airport Relations & Development
Email: _____

With an additional copy to:
Federal Express Corporation
3680 Hacks Cross Road Building B, 3rd Floor
Memphis, TN 38125
Email: _____

A party or other addressee may change the address to which it wishes notices to be sent by delivering notice of the change of address to the other party in accordance with the terms of this Section 34.

35. Inspection Period. Preferred has the right, upon written notice as set forth below, to terminate this Lease without incurring liability to County for such termination (the “Right to Terminate”) for a period of 180 days after the Effective Date (the “Inspection Period”), as provided in this Section 35.

- A. Governmental Regulation. Preferred may exercise the Right to Terminate in the event it determines that it is not economically feasible for Preferred to develop the Leased Premises as an air cargo facility due to City of Madison building permit requirements or other requirements imposed by the County or another governmental entity or agency impacting development of an air cargo facility on the Leased Premises. During the Inspection Period, County will use reasonable efforts to make available to Preferred upon request, without any warranty or representation, communications, letters, inquires, or notices addressing development or activities on Leased Premises and received by County or the Airport in the two (2) year period prior to the Effective Date from any regulatory body regarding environmental matters, water quality and air quality. Preferred shall have reasonable access to the Leased Premises during the Inspection Period for the purposes of surveying, inspecting, examining, and testing the Leased Premises (including soil borings, percolation tests and environmental tests). Preferred shall pay all costs incurred in making tests, analyses and investigations of the Leased Premises and shall indemnify, defend, and hold County harmless from any liens, claims, losses, liabilities or expenses of any type (including attorneys’ fees, court costs and other expenses) resulting from Preferred’s exercising the right to go upon the Leased Premises and conducting work or tests thereon. The indemnification set forth in this paragraph shall survive the termination of this Lease.
- B. Financing. Preferred may exercise the Right to Terminate in the event it is unable to obtain firm financing for design and construction of the planned air cargo facility, and the final form of the Recognition, Attornment and Non-Disturbance document(s) has not been agreed upon in writing by County prior to the expiration of the Inspection Period. Preferred shall provide initial drafts of the aforesaid documents to the Airport Director within 30 days of the Effective Date of this Lease.

- C. Written Notice of Exercise of Right to Terminate. Preferred may exercise the Right to Terminate by providing County written notice thereof prior to expiration of the Inspection Period.
- D. Waiver of Right to Terminate. Preferred may at any time provide written notice to County of its waiver of the Right to Terminate and commence work on the Leased Premises as authorized under this Lease. The Right to Terminate is waived and ineffective unless Preferred notifies County in writing before the expiration of the Inspection Period that is exercising its Right to Terminate.

36. County's Cooperation During Inspection Period. County agrees to make available to Preferred during the Inspection Period, without any warranty or representation, documents and information in County's possession, as reasonably identified and requested by Preferred, that are directly relevant to Preferred's investigation of the Leased Premises, including without limitation, books, records, leases, and related documents, working drawings, plans and specifications, surveys, appraisals, engineers' reports, geotechnical reports, environmental reports, insurance policies, service contracts, annual operating statements, title information, and information on existing liens, bonds or conditions. All information and materials made available to Preferred by County during the Inspection Period shall be provided without any representation or warranty, and Preferred hereby acknowledges the same. Notwithstanding anything set forth herein to the contrary, it is Preferred's obligation and duty to perform its own due diligence with respect to the Leased Premises and this Lease, and County shall have no liability to Preferred hereunder for failing to provide information, providing incomplete information, or otherwise.

37. Construction before Expiration of Inspection Period. Unless otherwise approved in writing by County, which approval may be granted or withheld in County's sole discretion, no construction or work unrelated to surveying, inspecting, examining, and testing as permitted in Section 35 above, shall be performed on the Lease Premises until Preferred has waived its Right to Terminate the Lease or the Inspection Period has expired and Preferred has not exercised the Right to Terminate. In any event, any construction or work of any type on the Leased Premises done by Preferred or on its behalf before Preferred has waived its Right to Terminate or the Inspection Period has expired shall be done at Preferred's sole risk and expense. Preferred will be fully responsible for the timely and complete restoration of the Leased Premises to its condition on the Effective Date in the event Preferred terminates this Lease within the Inspection Period. All restoration work required under this **Section 37** shall be completed with 30 days of Preferred's exercise of its Right to Terminate.

38. NPDES Discussions. County may engage in discussions with the Wisconsin State agency (the "Agency") responsible for National Pollution Discharge Elimination System ("NPDES") permits (the "Permit") with respect to the Permit currently in effect for the Airport and regarding the impending and any subsequent renewal of such Permit. It being understood and acknowledged by County that Preferred's operations at the Airport will or could be affected by requirements or conditions imposed by the Agency in issuing the renewal Permit, County shall give Preferred at least thirty days' prior written notice of County's first discussion with the Agency regarding the imposition of requirements or conditions that may affect Preferred's operations and shall permit

reasonable participation by Preferred in that and any further such discussions to the extent that the Agency permits Preferred's participation. Before agreeing to any Permit requirements in connection with any renewal of the Permit during the Term, where such Permit requirements will or might be applicable to Preferred and its operations at the Airport, County shall provide Preferred with a reasonable opportunity within which to review such requirements and provide comments to County and to the Agency, to the extent that the Agency allows or is required to accept comments from Preferred.

- 39. Misrepresentation and Invalid Provisions.** All terms and conditions with respect to the subject matter of this Lease are contained herein, and each party hereto agrees that it has not relied upon any representation or promise with respect to this Lease that is not expressly contained herein. In the event any covenant, condition, or provision in this Lease is held to be invalid by a court of competent jurisdiction, such invalidity shall in no way affect any other covenant, condition or provision of the Lease.
- 40. Time is of the Essence.** With respect to performance of all the terms and conditions of the Lease, time is of the essence. The covenants and conditions set forth in this Lease are meant to be binding upon the parties and are not to be construed as mere recitals.
- 41. Headings.** The headings of the sections contained in this agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this agreement.
- 42. Counterparts and Copies.** The parties may evidence their agreement to be bound by the terms of this Lease upon one or several counterparts of this document, which together shall constitute a single instrument. A photocopy, facsimile, or electronic copy of this Lease shall have the same effect for all purposes as an original.


{SIGNATURES TO FOLLOW}

FOR DANE COUNTY



Joe Paris
Dane County Executive

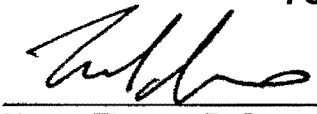
Date: 6-26-20



Scott McDonell
Dane County Clerk

Date: 6-26-20

FOR PREFERRED DEVELOPMENT MADISON, LLC



Name: Thomas R. Speno
Title: Manager

Date: 6-1-20

EXHIBIT "A"
LEASED PREMISES



Madison Regional Office
161 Horizon Drive, Suite 101
Verona, WI 53593
608.848.5060

EXHIBIT A
1 OF 3

EXCLUSIVE USE LAND
Legal Description

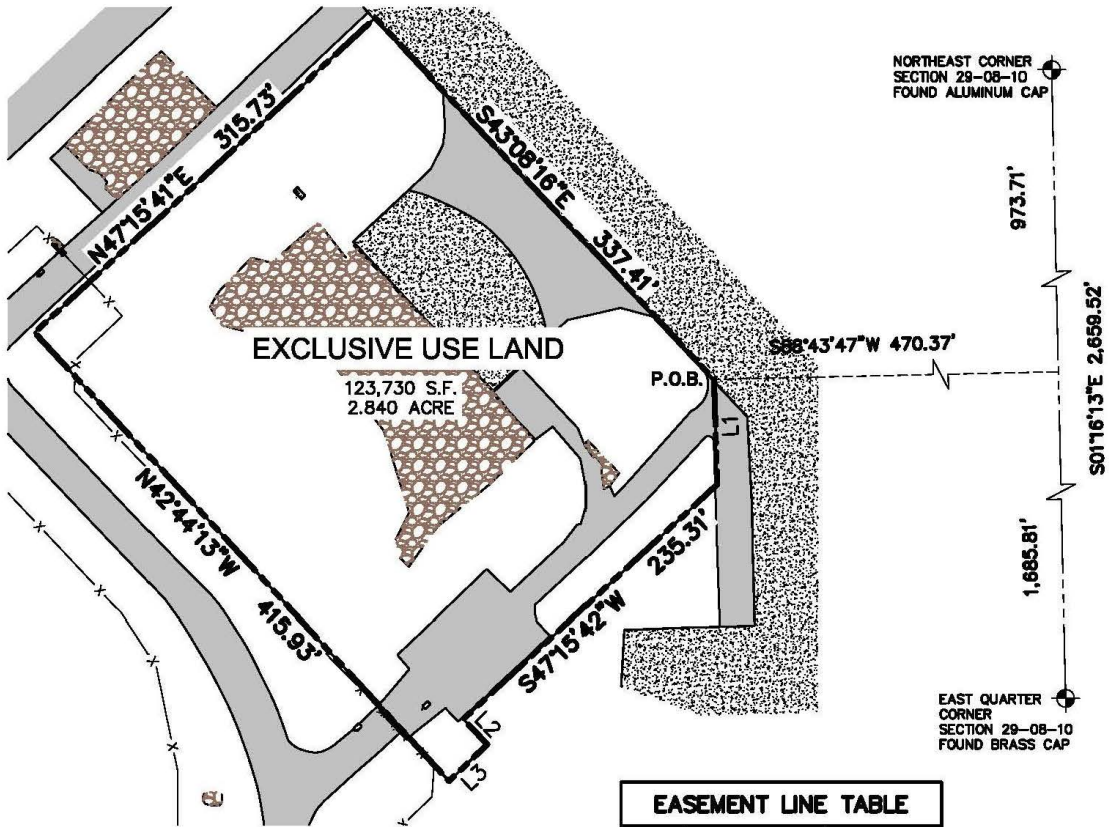
Part of the Northeast Quarter of the Northeast Quarter of Section 29, Township 08 North, Range 10 East, City of Madison, Dane County, Wisconsin, more particularly described as follows:

Commencing at the Northeast Corner of Section 29, aforesaid; thence South 01 degree 16 minutes 13 seconds East along the East line of the Northeast Quarter of Section 29, aforesaid, 973.71 feet; thence South 88 degrees 43 minutes 47 seconds West, 470.37 feet to the Point of Beginning; thence South 01 degree 44 minutes 51 seconds East, 71.66 feet; thence South 47 degrees 15 minutes 42 seconds West, 235.31 feet; thence South 43 degrees 47 minutes 30 seconds East, 23.78 feet; thence South 46 degrees 12 minutes 31 seconds West, 36.23 feet; thence North 42 degrees 44 minutes 13 second West, 415.93 feet; thence North 47 degrees 15 minutes 41 seconds East, 315.73 feet; thence South 43 degrees 08 minutes 16 seconds East, 337.41 feet to the Point of Beginning.

Said lease area contains 123,730 square feet or 2.840 acres.

EXHIBIT A

2 OF 3



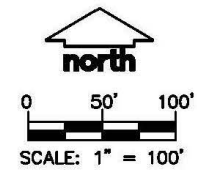
EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
L1	S01°44'51\"E	71.66'
L2	S43°47'30\"E	23.78'
L3	S46°12'31\"W	36.23'

LEGEND

- GOVERNMENT CORNER
- LEASE BOUNDARY
- SECTION LINE
- EDGE OF PAVEMENT
- EDGE OF GRAVEL
- FENCE LINE
- BITUMINOUS PAVEMENT
- CONCRETE PAVEMENT
- GRAVEL

NOTES

- FIELD WORK PERFORMED ON DECEMBER 17, 2019.
- BEARINGS FOR THIS SURVEY AND MAP ARE REFERENCED TO THE WISCONSIN COUNTY COORDINATE SYSTEM, DANE COUNTY. THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 29-08-10, RECORDED AS S01°16'13\"W.



File: I:\2019\199100\DWG\SURVEY\Survey\199100 Exhibit - Exclusive Use Land.dwg Layout: EM-Exclusive Use Land User: kyeeka Plotted: Apr 23, 2020 - 8:08pm

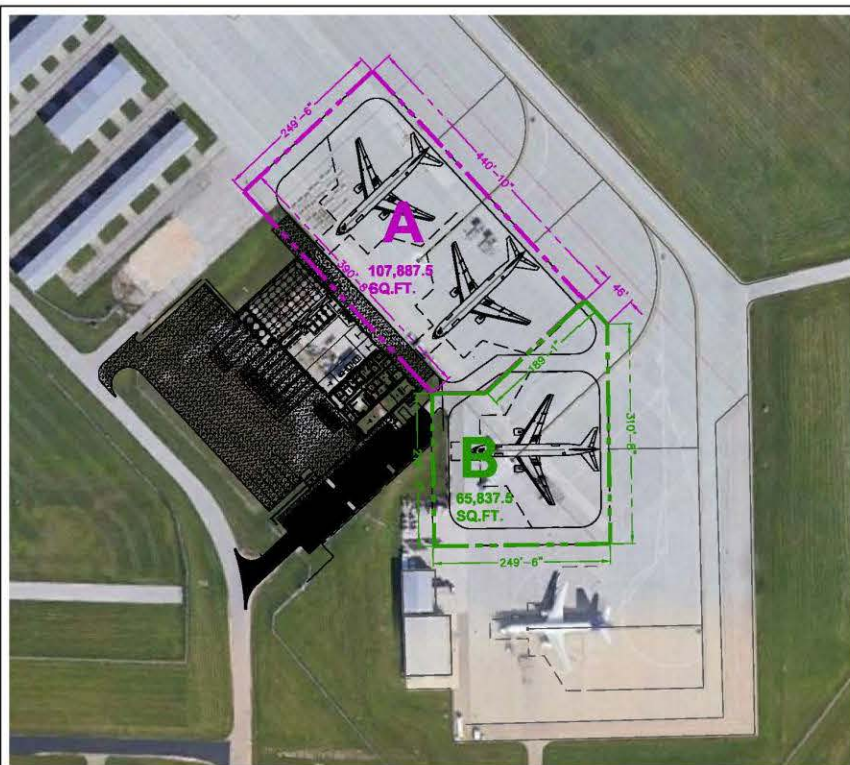
JSD Professional Services, Inc.
 Madison Regional Office
 161 HORIZON DRIVE, SUITE 101
 VERONA, WISCONSIN 53593
 P. 608.248.6080

PROJECT:
**FedEx AIRPORT FACILITY
 WAREHOUSE/
 DISTRIBUTION CENTER**
 CITY OF MADISON, WI

SHEET TITLE:
 PREFERRED DEVELOPMENT
 MADISON, LLC.
 LEASE BOUNDARY EXHIBIT

JSD PROJECT NUMBER:
 19-9100
 DRAWN BY: BCK
 CHECKED BY: CJO
 DATE:
 20 FEBRUARY 2020

SHEET NUMBER:
 2



**Assigned
Ramp Space
A = 107,887.5
SQ.FT
(2.47 Acres)**

**Preferential
Ramp Space
B = 65,837.5
SQ.FT
(1.5 Acres)**



Date: 03/26/2020 10:55 AM User: 20207
 File: P:\GIS\Projects\Aerial\Map_Striping\Map_Striping.mxd 2.184 m



MSNR AIRPORT
DANE COUNTY REGIONAL

LEASE EXHIBIT
PARKING PLAN
STRIPING PLAN

03-2020	
NTS	XXX
3 of 3	0

EXHIBIT "B"

FORM OF APPROVED SUBLEASE WITH FEDEX

FedEx No: 20-0295-000

SUBLEASE AGREEMENT

Between

**PREFERRED DEVELOPMENT MADISON, LLC
("Landlord")**

and

**FEDERAL EXPRESS
CORPORATION
("Tenant")**

Dated June _____, 2020

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- A-1. Description of Land
- A-2. Land Lease
- B. Preliminary Plans and Specifications
- C. Final Plans and Specifications
- D. Form of Change Orders
- E. Form of Commencement Date Acknowledgment
- F. Form of Estoppel Certificate
- G. Form of Subordination, Non-Disturbance and Attornment Agreement
- H. Form of Memorandum of Lease
- I. Interim Construction Completion Objective
- J. Guaranty

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "**Agreement**") is made this ____ day of June 2020 ("Effective Date") between **PREFERRED DEVELOPMENT MADISON, LLC**, a Florida limited liability company, licensed to do business in the State of Wisconsin ("**Landlord**") and **FEDERAL EXPRESS CORPORATION**, a Delaware corporation, licensed to do business in the State of Wisconsin ("**Tenant**").

RECITALS

Landlord desires to design, construct and sublease to Tenant in accordance with the terms, and subject to the conditions, of this Agreement a facility (the "**Building**") and other improvements (the Building and other improvements are sometimes referred to collectively as the "**Improvements**") on a site within the Dane County Regional Airport ("**MSN**") leased to Landlord by Dane County, a Wisconsin quasi-municipal corporation (the "**Master Landlord**").

Tenant desires to have constructed and to sublease from Landlord the Improvements and Land (as defined below) in accordance with the terms and subject to the conditions contained in this Agreement.

AGREEMENTS

FOR AND IN CONSIDERATION of the mutual covenants contained in this Agreement, Landlord and Tenant (sometimes referred to jointly as the "**parties**") agree as follows:

Section 1. Demise of Premises; Land Lease. (a) Subject to the conditions set forth below, Landlord shall design, construct and sublease to Tenant, and Tenant shall sublease from Landlord, the Land and the Improvements to be constructed by Landlord on the site described in **Exhibit A-1** (the "**Land**"). The Land is the real property that Master Landlord leases to Landlord under the terms of a Lease Agreement (the "**Land Lease**") executed contemporaneously with this Agreement. A copy of the Land Lease is attached to this Agreement as **Exhibit A-2**. Tenant's obligations under this Agreement are contingent upon the satisfaction of the condition that Master Landlord executes an agreement in favor of, and in form acceptable to, Tenant whereby (A) Master Landlord consents to the execution of this Agreement; and (B) Master Landlord that, as long as no Event of Default, as defined in **Section 25** below, has occurred and is continuing, Master Landlord may not disturb Tenant's possession of the Premises (as defined below) in accordance with the terms of this Agreement notwithstanding any default on Landlord's part in the performance of the obligations it undertakes under the terms of the Land Lease. If Landlord fails to cause the foregoing condition to be satisfied on or before 180 days from of the Effective Date, this Agreement will terminate and the parties will have no further rights or obligations under its terms.

(b) The parties' respective interests in the Land will be subject only to the operation and effect of the Land Lease, as that term is defined in **Section 8** below. Landlord must maintain title to its leasehold estate in the Land and Improvements (collectively referred to as the "**Premises**") at all times subject only to (i) the Land Lease, (ii) other encumbrances that initially affect title to the Premises after the execution of this Agreement and that are subordinate to the operation and effect of this Agreement, (iii) mortgage liens that Landlord grants in favor of lenders that execute non-disturbance agreements satisfying the requirements of **Section 30** below in favor of Tenant, (iv) any other matter that affects title to the Premises and that arises by virtue of any act or omission on Master Landlord's part without Landlord's consent or acquiescence, and (v) any other matter that affects title to the Premises, but that will not result in interference with the conduct of Tenant's business activities on the Premises or increase the cost of conducting those activities on the Premises. The parties do not intend the covenant set forth in the preceding sentence to preclude or restrict sales of Landlord's interest in the Premises. Without Tenant's prior written consent, Landlord may not amend or terminate the Land Lease, or offer to surrender possession of any part of the Premises that is demised under the terms of the Land Lease as long as no termination of this Agreement has occurred in accordance with its terms. The preceding sentence will not apply to amendments to the Land Lease that only become effective after the expiration of the Term, as defined below. With Tenant's prior written consent, Landlord may grant easements that delineate easement areas traversing the Land, but that do not require the relocation of any of the Improvements or any other improvements that Landlord or Tenant make to the Premises prior to the granting of the easement and do not otherwise interfere with Tenant's use or enjoyment of the Premises for the permitted use specified in **Section 9(a)** below. Tenant may not unreasonably withhold, condition or delay any consent required by virtue of the preceding sentence.

(c) Except for (i) obligations that arise, or conditions and restrictions that must be observed, before the Commencement Date (as defined below), (ii) the obligations set forth in **Sections 2, 3 and 4** of the Land Lease, (iii) the obligations, if any, to pay rent and other sums becoming due prior to the Commencement Date or after the Expiration Date in accordance with the terms of **Sections 3 and 4** of the Land Lease, and (iv) obligations, the performance of which would occur upon Landlord's performance of obligations that Landlord expressly undertakes to perform before or during the Term under the terms of this Agreement, Tenant shall fully and punctually perform all obligations, and observe all restrictions and conditions, that are incumbent upon the "Tenant" under the terms of the Land Lease. To that end, but without intending to limit the generality of the foregoing, Tenant shall pay directly to Master Landlord when due all rent becoming due during the Term in accordance with the terms of the Land Lease. Upon request that Landlord makes from time to time, Tenant shall furnish to Landlord evidence of its payment of that rent and the performance of other Land Lease obligations and its observance of Land Lease restrictions. Tenant may not apply any provision of this Agreement that empowers Tenant to offset against Base Rent or Additional rent (both as defined in Section 6(a) below) payable in accordance with the terms of this Agreement in order to recover amounts Landlord owes to Tenant so as to withhold from Master Landlord any rent becoming due in accordance with the terms of the Land Lease. Tenant shall indemnify and hold

Landlord harmless against all liability, loss, cost and expense, including, without limitation, reasonable attorneys' fees that Landlord may sustain by virtue of Tenant's failure to perform the obligations set forth above in this **Section 1(c)**. Landlord shall indemnify and hold Tenant harmless against all liability, loss, cost and expense, including, without limitation, reasonable attorneys' fees that Tenant may sustain by virtue of Landlord's failure to perform obligations, or to observe conditions or restrictions, that the "**Tenant**" must perform or observe under the terms of the Land Lease and that Tenant does not expressly undertake to perform or observe by virtue of this **Section 1(c)**. These indemnities will survive the expiration of the Term or any earlier termination of this Agreement.

(d) As appurtenances to the leasehold estate created by this Agreement, Landlord grants to Tenant the exclusive right to enforce at any time during the Term that no Event of Default (as defined below) has occurred and is continuing Master Landlord's obligations that arise under the terms of the Land Lease. To that end, Tenant may initiate suit against Master Landlord in its own name or in Landlord's name and Landlord shall cooperate to the extent Tenant reasonably requests with any enforcement effort that Tenant makes on the authority of this **Section 1(d)**. Tenant shall indemnify and hold Landlord harmless against all liability, loss, cost and expense that Landlord may incur by virtue of any action Tenant takes on the authority of this **Section 1(d)**. This indemnity will survive the expiration of the Term or any earlier termination of this Agreement. The parties intend that, as long as no Event of Default has occurred and is continuing, the decision to enforce any of Master Landlord's obligations that arise during the Term will remain discretionary with Tenant and Tenant has no obligation to take any action to enforce any of Master Landlord's obligations arising during the Term.

Section 2. Construction of Improvements. (a) Landlord shall furnish, at Landlord's sole cost and expense, all of the material, labor and equipment necessary for the construction of the Improvements in accordance with the terms of this Agreement. Landlord shall construct the Improvements in a good and workmanlike manner in accordance with the Preliminary Plans and Specifications attached as or described in the attached **Exhibit B** and the Final Plans and Specifications defined below. Landlord shall complete the construction of the Improvements in accordance with all applicable statutes and building codes, governmental rules, regulations and orders, the Land Lease, all MSN performance and development standards (including creating a seamless transition from the Land to the airport ramp) and recorded covenants, conditions and restrictions affecting title to the Premises ("**Legal Requirements**"). Without intending to limit the generality of the foregoing, Landlord must obtain from Master Landlord all approvals that are required by virtue of the terms of the Land Lease for the design and construction of the Improvements, including, without limitation, approvals of all signage included as part of the Improvements, and must obtain from the Federal Aviation Administration and Transportation Security Administration all approvals of the design of the Improvements that are required by virtue of those agencies' regulations. Within 30 days after the date Landlord substantially completes the construction of the Improvements, Landlord shall deliver to Tenant a detailed itemization of the sums Landlord invested in the design and construction of the Improvements and such additional documentation as Tenant may reasonably request in order to corroborate the entries on that itemization. In addition, without

intending to limit the generality of the foregoing, Landlord must comply throughout the construction of the Improvements with all requirements of the Land Lease applicable to the construction of the Improvements or that become applicable by virtue of circumstances connected with the construction of the Improvements, including, without limitation, the construction requirement set forth in **Section 8.3** of the Land Lease, the requirement to provide financial assurances to Master Landlord, as set forth in **Section 5** of the Land Lease, the indemnity requirements set forth in **Section 11** of the Land Lease, the security requirements set forth in **Section 35** of the Land Lease and the insurance requirements set forth in **Section 13** of the Land Lease.

(b) Landlord must cause final plans and specifications to be prepared in accordance with the comments that Tenant has previously furnished to Landlord with respect to the Preliminary Plans and Specifications and to submit those final plans and specifications for Tenant's approval within 60 days from the date of the execution of this Agreement. Upon Tenant's approval, Landlord's proposed final plans and specifications will constitute the "Final Plans and Specifications". Tenant must not withhold its approval except for just and reasonable cause and must not act in an arbitrary or capricious manner with respect to the approval of the Final Plans and Specifications. Only the signature or initials of Landlord and an authorized representative of Tenant will evidence approval of the Final Plans and Specifications. The parties will attach copies of, or a list describing, the Final Plans and Specifications to each execution counterpart of this Agreement as **Exhibit C**. Following its attachment to this Agreement, **Exhibit C** will supersede **Exhibit B** except as to matters that are not related to the design and construction techniques and processes that will apply to the construction of the Improvements and that **Exhibit C** does not expressly and specifically supersede. Landlord must appoint competent personnel to either prepare, or coordinate the preparation of, the Final Plans and Specifications, and Tenant's Project Manager (as defined in **Section 2(o)** below) will review the plans and specifications that Landlord proposes for adoption as the Final Plans and Specifications so as not to delay unreasonably the completion of the Improvements.

(c) As construction of the Improvements progresses, Landlord shall furnish to Tenant copies of all shop drawings and samples furnished to it or its agents by contractors, subcontractors and suppliers engaged in that construction. Landlord must make its submissions to both Tenant and to such consultants as Tenant may designate. The submissions of shop drawings and samples that Landlord makes in accordance with the terms of this **Section 2(c)** must bear the review stamp of the architect or engineer of record engaged in the design of the Improvements. In connection with each submission that Landlord makes, Landlord must cause manufacturer's information and cuts reasonably required for a meaningful review of the submission to be delivered to Tenant at such times as are consistent with industry practices. Landlord's submission of a shop drawing or sample to Tenant must include a written representation from Landlord or alternatively Landlord's architect or engineer of record that it has verified all field measurements, field construction criteria, materials, catalog numbers and other data and that it has checked and coordinated the shop drawing or sample with the requirements of the Final Plans and Specifications. Tenant's right to review shop drawings and samples does not constitute a right to approve them. Tenant will conduct its review of shop

drawings and samples solely for the purposes of determining the extent of conformity with the design concept and other information reflected in the Final Plans and Specifications and coordinating the design of the Improvements and the design of equipment Tenant intends to install in the Premises. Tenant's review of shop drawings or samples will not relieve Landlord of responsibility for any deviation from the requirements of the Final Plans and Specifications unless Landlord has informed Tenant in writing of such deviation at the time of submission and Tenant has acknowledged the specific deviation. Further, Tenant's review will not relieve Landlord from responsibility for subsequently discovered errors or omissions in shop drawings or samples. Landlord may permit construction of that part of the Improvements for which the shop drawing or sample was submitted to proceed in advance of Tenant's review of the shop drawing or sample, but, if it elects to do so, it accepts the risk that Tenant's subsequent review will reveal a deviation from the Final Plans and Specifications or the requirements of this Agreement that Landlord must then correct. Moreover, if during construction of the Improvements, deviations from the Final Plans and Specifications occur and Landlord has failed to correct the same within 30 days after receipt of notice of such failure from Tenant and prior to Tenant incurring architectural or engineering fees for evaluating and correcting same, then Landlord shall reimburse Tenant within 30 days after receipt of Tenant's invoice for all architectural or engineering fees that Tenant incurs in connection with evaluating both the need for correcting the deviation and alternative means of making the correction.

(d) Landlord shall provide Tenant with "as-built" drawings of the Improvements within 60 days after substantial completion. The submission of "as-built" drawings that Landlord makes in accordance with the preceding provisions of this **Section 2(d)** must include a disk on which the drawings are recorded electronically in AutoCADD format, one set of reproducible drawings, two sets of blue-line drawings, and one set of drawings reduced in size sufficiently to be included in the maintenance manual prepared for use at the Premises. If Landlord fails to provide the "as-built" drawings in accordance with the foregoing requirement, Tenant shall notify Landlord in writing and if Tenant does not receive the "as-built" drawings within 30 days after Landlord's receipt of such written notice, then Tenant may defer the payment of rent until Landlord provides those "as-built" drawings. Within 10 business days following the date on which Landlord delivers the "as-built" drawings, Tenant shall remit to Landlord all rent, the payment of which Tenant has deferred on the authority of this **Section 2(d)**.

(e) Landlord shall commence construction of the Improvements within 30 days of receiving all required building permits and governmental approvals for the Improvements, the commencement of site excavation and the completion of the pouring of footings will constitute the commencement of construction for purposes of the foregoing requirement. Landlord shall diligently proceed with the construction of the Improvements and shall substantially complete that construction, secure a certificate of occupancy (the "**Certificate of Occupancy**") permitting Tenant's lawful occupancy of the Improvements and deliver possession of the Improvements to Tenant on or before the date which is 230 days from the date of the issuance of the building permits and all governmental approvals for the construction of the Improvements. Landlord may satisfy the requirement for securing a Certificate of Occupancy by securing a temporary or

conditional Certificate of Occupancy so long as (i) Tenant determines that the condition of the Improvements in the absence of those items of construction that Landlord must complete as a condition to the issuance of a final, unrestricted certificate of occupancy is adequate for the conduct of Tenant's business on the Premises following the installation of leasehold improvements, equipment and other personal property that Tenant plans to install after Landlord substantially completes the construction of the Improvements, and (ii) that the ongoing construction activity that will be necessary in order for Landlord to secure the issuance of a final, unrestricted certificate of occupancy will not materially, adversely affect the conduct of Tenant's business on the Premises. If Landlord satisfies the requirement for securing a Certificate of Occupancy by securing a temporary or conditional certificate of occupancy under the circumstances described above, Landlord must secure the issuance of a final, unrestricted certificate of occupancy within 90 days after the date of the issuance of the temporary Certificate of Occupancy. If Landlord fails to obtain a final, unrestricted certificate of occupancy within that period of time, Tenant shall notify Landlord in writing and if Tenant does not receive the final unrestricted Certificate of Occupancy within 30 days after Landlord's receipt of Tenant's written notice, Tenant may defer the payment of all installments of Base Rent becoming due after the expiration of that 90-day period until Landlord obtains the final, unrestricted certificate of occupancy.

(f) If delays in the commencement or completion of the construction of the Improvements occur by reason of acts or omissions on the part of Tenant or those acting for or under the direction of Tenant, existing environmental conditions on the Land not disclosed by the Master Landlord, casualties, acts of God, inclement weather, frozen soils, acts of the public enemy, governmental embargo restrictions, or action or inaction on the part of public utilities or local, state or federal governments affecting the work, including, without limitation, the failure of Master Landlord to give any permit or approval required by virtue of the terms of the Land Lease or to perform any obligation that it undertakes under the terms of the Land Lease and that is essential to the timely construction of the Improvements (all of which delays are collectively referred to in this Agreement as "**Excused Delays**" and those that occur by reason of acts or omissions on the part of Tenant or those acting for or under the direction of Tenant are collectively referred to in this Agreement as "**Tenant Delays**"), the dates established in **Section 2(e)** from the commencement and completion of the construction of the Improvements and the interim completion dates established in **Section 2(i)** will be postponed by the aggregate duration of the Excused Delays. Non-availability or shortages of labor or materials, local strikes and lockouts will not constitute Excused Delays and will not be cause for extending the dates established in **Section 2(e)** and in **Section 2(i)** for the performance of Landlord's construction obligations.

(g) Within five (5) business days prior to the date on which Landlord anticipates that Landlord will substantially complete the construction of the Improvements, Landlord shall furnish to Tenant a preliminary "punch list" that sets forth the construction deficiencies that Landlord acknowledges must be completed in order for Landlord to finally complete the construction of the Improvements in accordance with the requirements of this Agreement. Within five (5) business days after the date on which Landlord substantially completes the

construction of the Improvements, the parties will conduct a joint “walk-through” of the Premises and Tenant will prepare a preliminary “punch list” setting forth the construction deficiencies the parties observe during that walk-through, using the preliminary “punch list” described above as a guide, will prepare a “punch list” that deletes any construction deficiencies that Landlord noted on its preliminary “punch list” and that Tenant acknowledges Landlord has rectified satisfactorily since Landlord’s submission to Tenant of the preliminary “punch list” and that adds any additional construction deficiencies that either Landlord or Tenant observes during the walk-through. In addition, Tenant shall prepare and deliver to Landlord a final “punch list” within 30 days after the Commencement Date, as defined below. Landlord shall commence the rectification of the deficiencies noted on the preliminary punch list prepared at the time of the walk-through within 5 business days after the date on which Landlord receives a copy of it and shall complete the rectification of all deficiencies noted on the preliminary and final “punch lists” within 90 days after the date on which Landlord receives a copy of the final punch list, subject to Excused Delays. If Landlord fails to complete the rectification of the punch list items within the time specified above, Tenant may complete those punch list items and offset the costs Tenant incurs in doing so against subsequently accruing installments of Base Rent becoming due under the terms of this Agreement.

(h) If, as a result of Tenant Delays, Landlord is delayed in completing the construction of the Improvements or securing the Certificate of Occupancy by 230 days from the date of the issuance of the building permits and all governmental approvals for the Improvements, Landlord may seek from Tenant whatever damages to which Landlord is entitled under Wisconsin law by reason of Tenant’s interference with Landlord’s performance.

(i) Tenant has no obligation to pay Base Rent or Additional Rent until Landlord substantially completes construction of the Improvements in accordance with the Final Plans and Specifications and all Legal Requirements, secures the Certificate of Occupancy and tenders’ possession of the Improvements to Tenant. If, prior to Landlord’s substantial completion of the Improvements, the Improvements are partially ready for occupancy, Tenant may, but need not, occupy the portion of the Improvements that is ready for occupancy and, in the event of such occupancy, Tenant shall pay to Landlord a proportionate part of the Base Rent and Additional Rent, with that proportionate part being equitably calculated on the basis of the value and area of that part of the Improvements Tenant occupies. If, prior to substantial completion of the construction of the Improvements, Tenant occupies a portion of the Improvements, the terms of this Agreement will apply to that occupancy. Landlord must keep Tenant informed of the progress of Landlord’s construction of the Improvements and must give Tenant written notice of the date upon which Landlord anticipates substantial completion of that construction will occur at least 105 days in advance of that projected date. Landlord will have no liability if substantial completion of the Improvements occurs on a date other than the date Landlord specifies in that notice. By the date that is 90 days in advance of that projected date, Landlord must have substantially completed the construction of certain portions of the Improvements to the extent specified in the attached **Exhibit I** and, commencing on that date, Tenant’s employees and contractors may enter the Improvements, at its own risk and without causing any Tenant Delays for the purpose of installing in accordance with Legal Requirements

Tenant's machinery and sort equipment. In connection with the installation and testing of Tenant's machinery and sort equipment in the Improvements, Tenant shall cause the installation of a second electrical meter, shall cause all electrical power that Tenant's employees and contractors consume in connection with that installation and testing to be measured by that meter, and shall pay directly to the utility provider that provides electrical power to the Premises all consumption charges for the power use measured by that meter. Landlord shall ensure that none of the workmen engaged in the construction of the Improvements will use electrical power drawn from the second meter described above. Commencing 30 days in advance of the date Landlord projects as the date on which construction of the Improvements will be substantially completed, Tenant's employees and contractors may enter portions of the Improvements for the purpose of installing in accordance with Legal Requirements Tenant's machinery, equipment, fixtures and other personal property. Any such entry upon the Premises by Tenant shall be at Tenant's sole risk and expense and shall be subject to the terms and conditions of this Agreement. Tenant may exercise the privilege of early entry for which provision is made in this **Section 2(i)** and the privilege set forth in Section 2(p) below only if Tenant ensures that its employees and contractors do not interfere with Landlord's completion of the construction of the Improvements. If Tenant's employees or contractors interfere with Landlord's completion of the construction of the Improvements and the interference persists for more than 24 hours after the time at which Landlord gives Tenant oral or written notice of the occurrence of the interference, the time in excess of 24 hours during which that interference persists will constitute a Tenant Delay. Entry by Tenant's employees and contractors for this limited purpose will not constitute Tenant's acceptance of the Improvements or give rise to any obligation to pay Base Rent or Additional Rent with respect to the Improvements.

(j) Landlord shall incorporate only new materials and equipment into the construction of the Improvements. Landlord guarantees the Improvements against defective design, workmanship and materials, latent or otherwise, for a period of one year from the date Landlord substantially completes the construction of the Improvements, secures the Certificate of Occupancy and tenders' possession of the Improvements to Tenant (the "**Warranty Period**"). Landlord also guarantees the foundations, slab, structural frame, roof deck and exterior walls of the Improvements against defective design, workmanship and materials, latent or otherwise, for a period of three years from the date Landlord substantially completes the construction of the Improvements, secures the Certificate of Occupancy and tenders' possession of the Improvements to Tenant (the "**Structural Warranty Period**"). In making the foregoing warranty, Landlord warrants that the design of the Improvements will result in structurally sound improvements that comply with all applicable Legal Requirements and in building systems that function at the levels of performance specified in the Final Plans and Specifications, but does not warrant that the design of the Improvements are adequate to permit the efficient conduct of Tenant's intended operations within the Improvements. By virtue of the foregoing guaranties, Landlord shall repair or replace at its sole cost and expense any defective item occasioned by defective design, workmanship or materials that Tenant discovers during the Warranty Period or the Structural Warranty Period, as the case may be. On the expiration of the Warranty Period or the Structural Warranty Period, as the case may be, Landlord must deliver to Tenant originals of all continuing, express and assignable guaranties

and warranties issued or made in connection with the construction of the Improvements and must assign to Tenant, free and clear of all liens and encumbrances, Landlord's interest in all continuing guaranties and warranties (whether express or implied) made in connection with that construction by means of a duly executed and acknowledged assignment in form and substance satisfactory to Tenant. From and after the expiration of the Warranty Period or the Structural Warranty Period, as the case may be, Landlord shall cooperate with Tenant in Tenant's enforcement, at Tenant's sole cost and expense, of any express or implied warranties or guaranties of workmanship or materials given by subcontractors, architects, draftsmen, or materialmen that guarantee or warrant against defective design, workmanship or materials for a period of time in excess of the Warranty Period or the Structural Warranty Period, as the case may be. The obligations Landlord undertakes under the terms of this **Section 2(j)** are in addition to the maintenance and repair obligations that Landlord undertakes under other terms of this Agreement.

(k) Tenant's making of a claim for repair or replacement of a defective item of Improvements construction will toll the running of the Warranty Period or the Structural Warranty Period, as the case may be, with respect to the item that is the subject of that claim and the warranties set forth in **Section 2(j)** will remain in effect as to that item until Landlord properly corrects it even though the Warranty Period or the Structural Warranty Period would otherwise have expired. If defects covered by the warranties set forth in **Section 2(j)** deprive Tenant of possession of the Improvements or otherwise constructively evict Tenant from the Improvements, all installments of Base Rent and Additional Rent becoming due under the terms of this Agreement will abate and will not be due and payable for the entire period of that dispossession or constructive eviction. If the dispossession or constructive eviction occurs with respect to only a portion of the Improvements, the Base Rent and Additional Rent will partially abate with the abatement being equitably calculated on the basis of the area and value of that portion of the Improvements from which Tenant is dispossessed or constructively evicted.

(l) Landlord warrants to Tenant that the advent of any date or year will not adversely affect the performance of any system, equipment or equipment component that Landlord incorporates as part of the Improvements. If a breach of the foregoing warranty occurs with respect to any system, equipment or equipment component, Landlord shall make the system, equipment or equipment component comply with the foregoing warranty, or replace it with an equivalent system, equipment or component that does comply, at Landlord's expense within 30 days or within a reasonable amount of time should the system, equipment or equipment component not be readily available after the date on which Landlord discovers, or Tenant gives Landlord written notice of, the breach of the warranty.

(m) Landlord shall complete construction and equipping of the Improvements in accordance with the terms of this Agreement, all Legal Requirements and the Final Plans and Specifications, free of mechanic's liens or other liens arising in favor of those that Landlord directly or indirectly engages in the design and construction of the Improvements, and shall defend, indemnify and hold Tenant harmless from and against all claims, actions, losses, costs, damages, expenses, liabilities and obligations, including, without limitation, reasonable

attorneys' fees, resulting from (i) the assertion or filing of any claim for amounts alleged to be due to the claimant for labor, services, materials, supplies, machinery, fixtures or equipment furnished in connection with the construction of the Improvements, (ii) the foreclosure of any mechanic's or materialman's lien that allegedly secures the amounts allegedly owed to the claimant, or (iii) any other legal proceedings initiated in connection with that claim.

(n) Without invalidating this Agreement, at Tenant's sole cost and expense (*by way of an adjustment to Base Rent as herein provided*), Tenant may order changes in the Final Plans and Specifications consisting of additions, deletions or other revisions to the Improvements and extensions of the progress schedule as long as Master Landlord grants any consent required with respect to the requested changes under the terms of the Land Lease. Except as expressly provided below, the parties will authorize all changes by signing change orders ("**Change Orders**") in the form of the attached **Exhibit D** and, upon the signing of a Change Order, Landlord shall prosecute the changes in accordance with the requirements of that Change Order. (*The remainder of this Section has been intentionally redacted*).

(o) Before implementing any change to the design of the Improvements that Tenant requests after approval of the Final Plans and Specifications, Landlord must submit to both the Project Manager and the Senior Airport Properties Representative that Tenant has assigned to the project for which the parties executed this Agreement a statement of the Change Order Cost that will occur by virtue of that change and a statement of the terms and conditions under which Landlord will undertake to implement Tenant's requested change, including, without limitation, the effect that implementation of the requested change will have on the anticipated date for Landlord's substantial completion of the Improvements; that statement will be in the form of a proposed Change Order. Until Tenant signs that proposed Change Order, Landlord has neither obligation nor authority to proceed to implement the requested change. Each fully executed Change Order will become part of the Final Plans and Specifications. A delay occurring with respect to Landlord's substantial completion of the Improvements by virtue of the review of a design change that Tenant requests, the negotiation of a mutually acceptable Change Order in connection with that request made after the Effective Date, and the implementation of the requested change will constitute a Tenant Delay.

(p) Landlord must afford Tenant and Tenant's contractors reasonable access to the Improvements during construction for the purposes of inspecting the Improvements.

(q) Tenant and Landlord must each designate in writing one or two representatives to act in its behalf in dealings with the other party in matters relating to the construction of the Improvements. Each representative must (i) attend each regular project meeting relating to the construction of the Improvements, (ii) be qualified to give authorizations, render decisions and take such other action as may be required at those meetings, and (iii) be authorized to approve Change Orders providing for a Change Order Cost not in excess of **Five Thousand and 00/100 Dollars (\$5,000.00)** in any one instance. Any consents or approvals that a designated representative gives will bind the party on whose behalf the representative acts. Either party may change its designated representatives at any time by giving notice of a change of

designation to the other party. The designated representatives will exert their best efforts to render decisions and take actions in a timely manner so as to avoid unreasonable delay in the other party's work and actions relating to the Improvements.

(r) Throughout the period between the date on which Landlord commences construction of the Improvements and the date on which Landlord substantially completes the construction of the Improvements, secures and presents to Tenant the Certificate of Occupancy, and tenders possession of the Improvements to Tenant, Landlord shall maintain in force with respect to the Improvements a policy of multiple peril (all-risk) builder's risk insurance that has been written by an insurer reasonably satisfactory to Tenant on a completed value basis in an amount equal to the full replacement cost of the Improvements and that contains no exclusions from coverage that Tenant determines to be objectionable. That policy must name Tenant as an additional insured and must assure Tenant that its coverage will continue for Tenant's benefit notwithstanding any act or omission on Landlord's part. That policy must provide that no cancellation, surrender or material change will become effective unless Tenant receives written notice at least 30 days in advance of the time at which that cancellation, surrender or material change becomes effective. That policy must also allow for continued coverage notwithstanding Tenant's use or occupancy of any part of the Improvements prior to the time at which Landlord substantially completes the construction of the Improvements. The form of that policy must otherwise be reasonably satisfactory to Tenant. Throughout the same period, Landlord shall maintain in force all other insurance required by virtue of **Section 13** of the Land Lease. Prior to commencing the construction of the Improvements, Landlord shall furnish to Tenant and Master Landlord certificates evidencing that all insurance required by virtue of this **Section 2(r)** is in force.

(s) Landlord's obligation to construct the Improvements will include de-watering the site and providing any treatment of any ground water that is required by virtue of Environmental Laws (as defined in **Section 22** below) as a condition to the disposal of that ground water or its discharge into public sewer systems, including, without limitation, the procurement of all permits required in connection with that treatment.

(t) If Landlord fails to substantially complete the construction of the Improvements, secure and present to Tenant the Certificate of Occupancy and tender possession of the Improvements to Tenant within 230 days from the date of the issuance of the building permits and all governmental approvals for the construction of the Improvements, or such later date to which Landlord's obligation to tender possession of the completed Improvements to Tenant is deferred in accordance with the terms of this **Section 2** by reason of Excusable Delays, for the first ten (10) days that Landlord fails to timely deliver possession of the Improvements, Tenant may deduct from installments of Base Rent and Additional Rent subsequently becoming due under the terms of this Agreement, liquidated damages{ *intentionally redacted*} for each day that that failure continues. Thereafter if Landlord has failed to complete the construction of the Improvements, secure and present to Tenant the Certificate of Occupancy and tender possession of the Improvements to Tenant within 241 days from the date of the issuance of the building permits and all governmental approvals for the construction of the Improvements, or

such later date to which Landlord's obligation to tender possession of the completed Improvements to Tenant is deferred in accordance with the terms of this **Section 2** by reason of Excusable Delays, Tenant may deduct from installments of Base Rent and Additional Rent subsequently becoming due under the terms of this Agreement, liquidated damages for each day that that failure continues. The parties do not intend any such deduction as a penalty. If Landlord fails to substantially complete the construction of the Improvements, secure and present to Tenant the Certificate of Occupancy and tender possession of the Improvements to Tenant by the date which is 540 days from the commencement of construction of the Improvements, for any reason other than Tenant Delays or Excused Delays, and Landlord's failure continues for more than 30 days after the date on which Tenant delivers written notice of the delinquency to Landlord, Tenant may terminate this Agreement by delivering written notice of its election to terminate to Landlord at any time before Landlord rectifies that failure. If Tenant terminates this Agreement on the authority of the foregoing, Tenant will have no further obligation to Landlord by virtue of the terms of this Agreement and Tenant will be entitled to receive and retain the liquidated damages that accrued in accordance with the foregoing through the effective date of the termination. Landlord's liability for liquidated damages that become payable by virtue of the foregoing will survive any termination of this Agreement.

(u) If Landlord fails to substantially complete the construction of the Improvements, secure and present to Tenant the Certificate of Occupancy, and tender possession of the Improvements to Tenant by 360 days from the commencement of the construction of the Improvements, or such later date to which Landlord's obligation to tender possession of the completed Improvements to Tenant is deferred in accordance with the terms of this **Section 2** by reason of Excused Delays and that failure continues for more than 30 days after the date on which Tenant delivers written notice of the delinquency to Landlord, Tenant's employees, agents and contractors may enter the Premises with tools, equipment and materials and undertake the completion of the construction of the Improvements in accordance with the Legal Requirements and with the Final Plans and Specifications, as Tenant may amend them during the course of the activities that Tenant conducts on the Premises on the authority of this **Section 2(u)**. If Tenant exercises the remedy set forth in this **Section 2(u)**, Tenant may use and amend the Final Plans and Specifications and may contract with any third party to complete the construction of the Improvements, including, without limitation, any party previously engaged in the design or construction of the Improvements. Landlord shall include in the contracts it executes with architects, engineers and other consultants and with contractors in connection with the design and construction of the Improvements an acknowledgment of the rights Tenant will have by virtue of this **Section 2(u)** and a commitment on the part of each of those parties to contract with Tenant at Tenant's request to provide services and materials needed to achieve the completion of the construction of the Improvements on reasonable terms. Landlord will cause the other parties to those contracts to obtain a similar acknowledgment and commitment from their respective subcontractors and suppliers. Landlord waives, and shall cause each architect, engineer, consultant, contractor, subcontractor and supplier that it directly or indirectly engages to provide materials or services needed for the design and construction of the Improvements to waive, any claim or action that it may later have against Tenant by virtue

of Tenant's exercise of the foregoing rights, including, without limitation, any claim for tortious interference with contractual relations. Within five business days after the date on which Tenant gives Landlord written notice of its decision to exercise the remedy set forth in this **Section 2(u)**, Landlord shall deliver to Tenant all prints of the Final Plans and Specifications and a copy of all records and correspondence (whether recorded on paper or in an electronic medium) relating to the design and construction of the Improvements in the possession of Landlord or any of its agents and contractors, including, without limitation, contracts, subcontracts, schedules, logs, journals, shop drawings, invoices, and payment records. Landlord shall pay to Tenant within 30 days after the date of Landlord's receipt of Tenant's invoice the full amount of the reasonable cost and expense Tenant incurs in attempting to complete the construction of the Improvements on the authority of this **Section 2(u)**, together with the amount of any reasonable attorneys' fees Tenant incurs in instituting, prosecuting or defending any action or proceeding by reason of Landlord's failure to complete the construction of the Improvements within the time required by this Agreement or to observe the requirements of this **Section 2(u)**. Among the costs and expenses that Tenant may recover from Landlord on the authority of this **Section 2(u)** are architectural and engineering fees and other design costs, an administrative fee payable to Tenant in an amount equal to fifteen percent (15%) of the aggregate amount of the design and construction costs Tenant incurs on the authority of this **Section 2(u)**, and interest accruing with respect to each expenditure that Tenant makes on the authority of this **Section 2(u)** until repaid at a rate equal to Tenant's cost of funds at the time of the expenditure. If Landlord fails to pay those amounts within that 30-day period, Tenant may offset the amount owed against Base Rent, Additional Rent and any other sums that become due to Landlord. If the circumstances described in this **Section 2(u)** occur, and if the application of the provisions of this **Section 2(u)** to those circumstances would produce a different outcome than the application of the provisions of **Section 27**, the provisions of this **Section 2(u)** will govern.

Section 3. Performance and Payment Bonds. Landlord shall furnish and maintain in force or shall cause its general contractor to furnish and maintain in force, throughout the construction of the Improvements performance and payment bonds, written by a surety acceptable to Tenant and Master Landlord, in the full amount of the contract for construction of the Improvements, as that amount may be increased by amendments and Change Orders. The bonds must name Master Landlord and Tenant as obligees and must be in a form that Tenant approves in writing. Tenant may not unreasonably withhold or delay its approval of the surety or the form of the bonds. The bonds may provide that Tenant may only exercise the obligee's rights if Landlord or any mortgagee designated as an obligee either fails to make its initial efforts to exercise those rights within 30 days after the date on which Landlord's general contractor defaults in respect of any of its obligations relating to the construction of the Improvements or, after making that initial effort, fails to diligently pursue the enforcement of those rights. Landlord must obtain, or cause its general contractor to obtain, those bonds and deliver conclusive evidence of the bonds to Tenant before commencing the construction of the Improvements. If Landlord fails to obtain, or to cause its general contractor to obtain, those bonds, as provided in this **Section 3**, and that failure continues for more than 30 days after the date on which Tenant delivers written notice of the default to Landlord, Tenant may acquire such performance and payment bonds at Landlord's sole cost and expense. If Tenant acquires

such performance and payment bond, the parties will reduce the Base Rent that is payable after the Commencement Date by the cost of such performance and payment bonds acquired by Tenant. If Landlord's general contractor defaults in respect of any of its obligations relating to the construction of the Improvements and Tenant exercises the obligee's rights consistent with any limitation set forth in either of the bonds, Landlord shall pay to Tenant within 30 days after the date of Landlord's receipt of Tenant's invoice the full amount of any sums Tenant expends to cause the surety to fulfill its obligations under either of those bonds, including, without limitation, reasonable attorneys' fees. If Landlord fails to pay those sums within that 30-day period, Tenant may offset the amount owed against Base Rent, Additional Rent and any other sums that become due to Landlord. If Landlord pays those sums to Tenant or Tenant offsets the amount owed against Base Rent, Additional Rent or other sums that become due to Landlord, Tenant shall assign to Landlord any rights Tenant has to recover those sums from the surety.

Section 4. Financing. Landlord has advised Tenant that Landlord may seek third party financing for the design and construction of the Improvements. Notwithstanding however if Landlord does seek third party financing, and Landlord is unable to commence construction of the Improvements on or about the issuance of a building permits for the construction of the Improvements due to a lack of financing funding, then either party may terminate this Agreement by delivering written notice to the other party.

Section 5. Initial Term. (a) The term of this Agreement (the "**Initial Term**") will begin on the date (the "**Commencement Date**") on which Landlord substantially completes the construction of the Improvements, secures the Certificate of Occupancy, and tenders possession of the Improvements. The Initial Term will end at 11:59 p.m. (Central Time) on the earlier of (i) the day prior to the twentieth anniversary of the Commencement Date, if the Commencement Date occurs on the first day of a calendar month, or (ii) the day prior to the twentieth (20th) anniversary of the first day of the first full calendar month following the calendar month in which the Commencement Date occurs, if the Commencement Date does not occur on the first day of a calendar month, whichever is applicable, applicable, or (ii) the date on which a termination of the Land Lease occurs for any reason other than Tenant's failure to perform any obligation it undertakes under the terms of this Agreement or to observe any condition or restriction set forth in this Agreement. If Tenant exercises the remedy set forth in **Section 2(u)**, the Commencement Date will be the date on which Tenant substantially completes the construction of the Improvements and secures the Certificate of Occupancy. Tenant has the right to renew the term of this Agreement, as set forth in **Section 7** below, and the Initial Term and any Renewal Term with respect to which Tenant exercises that option in accordance with **Section 7** are collectively called the "Term" in this Agreement.

(b) Within 30 days after the Commencement Date, the parties will execute an acknowledgment letter for the purpose of confirming the Commencement Date, the Expiration Date (as defined in Section 6 below), the rentable area of the Building, and the annual Base Rent. That acknowledgment will be substantially in the form of the attached **Exhibit E**.

Section 6. Base Rent and Additional Rent.

(a) Subject to adjustment as provided in **Section 6(b)**, Tenant shall pay to Landlord (except as otherwise specifically provided for in this Agreement, without demand, deduction, offset or setoff) for the Premises as base monthly rent ("**Base Rent**") the sum of (*The remainder of this Section has been intentionally redacted*) payable monthly as follows:

Period	Annual Base Rent	Monthly Base Rent
The Commencement Date thru the last day of the 60 th month	Intentionally Redacted	Intentionally Redacted
The first day of the 61 st month thru the last day of the 120 th month	Intentionally Redacted	Intentionally Redacted
The first day of 121 st month thru the last day of the 180 th month	Intentionally Redacted	Intentionally Redacted
The first day of 181 st month thru the last day of the 240 th month	Intentionally Redacted	Intentionally Redacted

Unless Tenant makes the election set forth in **Section 6(f)** below, Tenant shall pay each monthly installment of Base Rent in advance on the first day of each month during the Term, with the first installment of Base Rent being due on the Commencement Date. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent for the month in which the Commencement Date occurs will be equal to the monthly installment amount specified above multiplied by a fraction, the numerator of which is the number of days in the period between the Commencement Date and the last day of that month, and the denominator of which is the total number of days in that month. Landlord's federal tax identification number is _____.

(b) In addition to the Base Rent as set forth in **Section 6(a)**, Tenant shall pay, on or before the date payable, all fixed rent, additional rent and other charges payable by Landlord to Master Landlord under the Land Lease including Exclusive Use Land Rent and Assigned Ramp Area Rent and no other rent (collectively referred to as "**Ground Rent**"). Master Landlord has agreed not to charge any rent for the Preferential Ramp Area and Landlord shall not charge Tenant for the use of the Preferential Ramp Area. Such payments of Ground Rent shall be in addition to the Base Rent and shall be made directly to the Landlord. Notwithstanding that Base Rent shall not commence until the Commencement Date, Tenant agrees to commence paying the Ground Rent to Landlord on the date that Landlord is obligated to commence paying Ground Rent to Master Landlord as provided for in the Land Lease. Such payments by Tenant, together with real estate taxes and installments of special assessments levied against the Premises, as provided below and any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Agreement, are hereinafter collectively referred to as the "**Additional Rent**". Upon Tenant's request, Landlord shall deliver to Tenant documentary evidence demonstrating the payment of the Ground Rent by Landlord to Master Landlord.

Anytime during the Term of this Agreement, should Landlord fail to provide Tenant within 30 days of written request that Landlord has paid the Ground Rent to the Master Landlord, Tenant can elect to commence start paying the Ground Rent directly to the Master Landlord in accordance with the Land Lease.

If the Aggregate Change Order Cost calculated in accordance with the terms of **Section 2(n)** as of the Commencement Date is a number other than zero (\$0), then the parties will adjust the monthly Base Rent that is payable during the Initial Term by an amount equal to the product achieved by dividing the Aggregate Change Order Cost by the number of months in the Initial Term of this Agreement.

Notwithstanding anything in this Section 6(b), Tenant's payment of Ground Rent shall not entitle Tenant to the Storm Water Construction Allowance (as defined and provided for in the Land Lease. As a result of the Storm Water Construction Allowance, Landlord shall be entitled to monthly rent credits against the Ground Rent owed to the Master Landlord up to the amount of the Storm Water Construction Allowance. For each month that Landlord is entitled to such Ground Rent credit, Tenant shall pay monthly the amount of such monthly Ground Rent credit directly to Landlord and shall likewise deduct the same against the Ground Rent that Tenant would have otherwise paid to Master Landlord had there been no Ground Rent credit on account of the Storm Water Construction Allowance.

(c) If a termination of this Agreement occurs prior to the last day of the Term (the "**Expiration Date**") for reasons other than Tenant's default and if the effective date of termination is other than the last day of a calendar month, the parties will prorate the Base Rent and Ground Rent payable with respect to the calendar month in which the effective date of termination occurs based on the number of days in that month, and Landlord shall promptly refund to Tenant, without demand, setoff or deduction, any previously paid Base Rent or Additional Rent attributable to any period of time following the termination date.

(d) Tenant will pay all real estate taxes and installments of special assessments levied against the Premises. Tenant's obligation to pay real estate taxes shall commence with the term of the Land Lease and continue throughout the Term of this Agreement. If the Premises constitute a separate tax lot and if the taxing authorities will send the tax bills for the Premises directly to Tenant, Landlord shall direct the taxing authorities to send the tax bills to Tenant at Federal Express Corporation, Tax Department, Building C, 3630 Hacks Cross Road, Memphis, Tennessee 38125-8800, or such other address as Tenant may designate by written notice to Landlord, and Tenant shall pay each Imposition directly to the taxing authority and, at least 15 days in advance of the date on which payment of that Imposition will become delinquent, Tenant shall deliver to Landlord a copy of a paid receipt that the taxing authority issues and that demonstrates the payment of that Imposition. If the Premises do not constitute a separate tax lot or if the taxing authorities refuse to send tax bills directly to Tenant, Tenant shall pay each Imposition to Landlord within 30 days after the date of Landlord's submission of an invoice to Tenant at Federal Express Corporation, Tax Department, Building C, 3630 Hacks Cross Road, Memphis, Tennessee 38125-8800, or such other address as Tenant may designate by written notice to Landlord. Each invoice Landlord submits for Additional Rent must include

a copy of the tax bill or tax statement issued by the taxing authorities with respect to the Additional Rent for which Landlord is seeking payment from Tenant. Within 30 days after Tenant's remittance to Landlord of any payment Tenant makes on account of an Imposition, Landlord shall deliver to Tenant a copy of a paid receipt that the taxing authority issues and that demonstrates the payment of that Imposition. If Landlord submits an invoice to Tenant for an Imposition less than 30 days in advance of the date after which interest or penalties will commence to accrue in respect of that Imposition if not paid sooner, Tenant will not have any obligation to pay any interest or penalties that accrue in respect of that Imposition so long as Tenant makes payment of the Imposition to Landlord within 30 days after the date of its receipt of Landlord's invoice. If, however, Landlord submits an invoice to Tenant for an Imposition at least 30 days in advance of the date after which interest or penalties will commence to accrue in respect of that Imposition if not paid sooner and Tenant fails to make its remittance of the Imposition to Landlord within 30 days after the date of that submission, Tenant must pay all interest and penalties that accrue in respect of that Imposition prior to the date that is 15 days after the date on which Tenant makes its remittance of the Imposition to Landlord. Landlord must pay all interest and penalties that are not Tenant's responsibility by virtue of the foregoing. The foregoing will not require Tenant to pay any municipal, state or federal income, excess profits or franchise taxes assessed against Landlord, or any municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of Landlord. Moreover, with respect to Additional Rent that may lawfully be paid in installments over a period of years, with or without interest, the foregoing will not require Tenant to pay any portion of those installments or interest that become due to the taxing authority after the Expiration Date. With respect to the Additional Rent levied in respect of any period of time within which either the Commencement Date or the Expiration Date occurs, Tenant must only pay a proportionate part of the Additional Rent, which part will bear the same ratio to the total amount of the Additional Rent as the number of days in the period between the Commencement Date and the end of that period of time or in the period between the beginning of that period of time and the Expiration Date, whichever is applicable, bears to the total number of days in that period of time.

As long as the contest does not bring about a default in respect of any of the "Tenant's" obligations under the terms of the Land Lease, Tenant may contest in good faith and at its expense the amount or validity of any Imposition that it is obligated to pay in accordance with the foregoing and, if successful in that regard, is entitled to recover from Landlord any refund paid to Landlord as a result of that successful contest. Landlord shall join in any contest undertaken by Tenant in accordance with the foregoing at Tenant's expense if the provisions of any law, rule or regulation at the time in effect require that the proceedings be brought by or in the name of Landlord.

In addition, if at any time throughout the Term of this Agreement, any state or local taxing authority should impose a sales or use tax on the Base Rent or Additional Rent, Tenant shall pay, as Additional Rent, all sales, use, rental, rental use and other taxes assessed by any governmental authority against the Base Rent and Additional Rent (or otherwise related to the Premises), as applicable, stated herein ("**Sales Tax**"). The payment of all Sales Tax shall be made by Tenant on a monthly basis, concurrently with payment of the Base Rent and Ground Rent. In addition, Tenant

shall also pay before delinquency in its entirety all taxes and assessments, if any on the furniture, fixtures, equipment, and other property of Tenant located in the Premises; all taxes and assessments on additions and improvements in the Premises belonging to Tenant; all taxes and assessments attributable to its signs, personal property and leasehold improvements; all occupancy taxes or other taxes on its right to occupy the Premises; and other taxes imposed on tenants generally, if any in the State of Wisconsin.

(e) Unless Tenant makes the election set forth in **Section 6(f)** below, Tenant will pay Base Rent, Ground Rent and Additional Rent to Landlord at the address set forth in **Section 39(j)** or at such other address as Landlord may from time to time designate.

(f) Tenant may elect to make payments of monthly Base Rent, Ground Rent and Additional Rent to Landlord by means of electronic funds transfer. Tenant will deliver to Landlord written notice of its election to make payments of Base Rent, Ground Rent and Additional Rent in that manner and, in response to that notice, Landlord shall deliver to Tenant written notice of the name of the bank and the number of the account into which Landlord wishes Tenant to make those payments. Landlord may change the name of the bank and the number of the account into which Landlord wishes Tenant to make payments of Base Rent and Ground Rent at any time by delivering written notice to Tenant at least 30 days in advance of the date the change becomes effective. If Tenant elects to make payments of Base Rent and Ground Rent to Landlord by means of electronic funds transfer, Tenant shall cause the transfer of each monthly installment of Base Rent and Ground Rent to be made on the fifth day of each calendar month or, if the fifth day of a calendar month is a non-banking day or a United States holiday that Tenant observes, on the next business day following the fifth day of the calendar month. Having made an election to make payments of Base Rent and Ground Rent by means of electronic funds transfer, Tenant has no obligation to continue to make payments in that manner and may cease making payments in that manner after delivering written notice of its election to Landlord. After Tenant notifies Landlord of its election to discontinue making payments of Base Rent and Ground Rent to Landlord by means of electronic funds transfer, payments of Base Rent and Ground Rent will subsequently become due in accordance with the terms of **Sections 6(a) and 6(e)** above. Tenant shall send to Landlord payment remittance information with respect to each payment that Tenant makes in accordance with the terms of this **Section 6(f)** in a format mutually acceptable to the parties. The National Automated Clearing House Association's Operating Guidelines regarding the Corporate Trade Exchange Format, as amended from time to time, and **Article 4A** of the Uniform Commercial Code, as adopted in Tennessee and as amended from time to time, will govern all payments Tenant makes in accordance with the terms of this **Section 6(f)**. For purposes of this **Section 6(f)**, Landlord warrants that it is not a "consumer," as that term is defined in Regulation E of the Federal Reserve Board. If, by reason of any error, mistake or fraud in the payment information Landlord furnishes to Tenant, misdirection of any payment of Base Rent occurs, Tenant will have no liability to Landlord for the misdirected payment.

Section 7. Renewal of the Term. (a) Tenant may renew the Term for three renewal terms with the first renewal term equal to ten years ("**1st Renewal Term**"), the second renewal term equal to ten years plus 6 months ("**2nd Renewal Term**") and the third renewal term equal

to five years (“**3rd Renewal Term**”) so long as this Agreement is in full force and effect and Tenant is not in default in respect of the performance of any obligation it undertakes under the terms of this Agreement both at the time that Tenant exercises that option and at the time the Renewal Term commences. Tenant will exercise that renewal option, if at all, by delivering written notice (the "**Option Notice**") to Landlord not less than 9 months prior to the Expiration Date. The provisions of this Agreement will govern the relationship between the parties during the Renewal Term, except that the Base Rent for the Renewal Term will be determined as provided below.

(b) The annual Base Rent payable during the 1st Renewal Term shall be the sum of {*The remainder of this Section has been intentionally redacted*} payable monthly as follows:

Period	Annual Base Rent	Monthly Base Rent
1 st day of the 241 st month thru the last day of 300 th month	Intentionally Redacted	Intentionally Redacted
1 st day of the 301 st month thru the last day of 360 th month	Intentionally Redacted	Intentionally Redacted

And the annual Base Rent payable during the 2nd Renewal Term shall be the sum of {*The remainder of this Section has been intentionally redacted*} payable monthly as follows:

Period	Annual Base Rent	Monthly Base Rent
1 st day of the 361 st month thru the last day of 420 th month	Intentionally Redacted	Intentionally Redacted
1 st day of the 421 st month thru the last day of 486 th month	Intentionally Redacted	Intentionally Redacted

And the annual Base Rent payable during the 3rd Renewal Term shall be the sum of {*The remainder of this Section has been intentionally redacted*} payable monthly as follows:

Period	Annual Base Rent	Monthly Base Rent
1 st day of the 487 st month thru the last day of 546 th month	Intentionally Redacted	Intentionally Redacted

Section 8. Title Matters. (a) Within 10 days after execution and delivery of this Agreement, Landlord shall order from a title company acceptable to Tenant ("**Title Company**") (i) a current Title Insurance Commitment ("ALTA Form "B" 2006 Form) (the "**Title Report**") that commits to insure Tenant's leasehold interest in the Premises and (ii) one copy of all recorded documents to which reference is made in the schedules to that Title Report. Landlord must cause the Title Company to deliver the Title Report and the associated

documents to Tenant within 30 days after the date of full execution of this Agreement. Within that same time period, Landlord must also deliver to Tenant a copy of all unrecorded instruments affecting title to the Premises and a certificate by which Landlord certifies to the best of Landlord's actual knowledge, Tenant that those copies are true, correct and complete and there are no other unrecorded instruments in force that affect title to the Premises.

(b) Within 60 days after the date of Tenant's receipt of the last of the Title Report, the other documents that Landlord must deliver or cause to be delivered in accordance with the terms of **Section 8(a)**, and the survey plat required by virtue of **Section 8(d)** below, Tenant must either submit to Landlord written objections to the condition of title to the Premises, as reflected in those delivered items, or give Landlord written notice that it finds the condition of title to the Premises, as reflected in the delivered items, to be acceptable. Without Tenant's prior written approval, with the exception of any leasehold mortgage in favor of Landlord's lender, a Memorandum of Land Lease with the Master Landlord or required utility easements or right of ways in favor of public utilities or municipal entities, which do not interfere with the normal operations of Tenant's business on the Premises, Landlord will not permit title to the Premises to be affected by any liens, encumbrances, easements, rights-of-way, restrictions, conditions, covenants, rights or other matters that come into existence or appear of record for the first time after the effective date of the Title Report but before the Commencement Date ("**Intervening Encumbrances**"), except for Intervening Encumbrances that come into existence by operation of law without action on Landlord's part. If Landlord proposes to create an Intervening Encumbrance or an Intervening Encumbrance comes into existence by operation of law without action on Landlord's part, Tenant must either submit to Landlord written objection to the Intervening Encumbrance or manifest by written notice to Landlord its acceptance of the Intervening Encumbrance within 20 days after the date of Tenant's receipt of the last of a written notice by which Landlord describes the Intervening Encumbrance, a copy of the instrument that creates or will create, or that evidences, the Intervening Encumbrance, and, if Tenant requests, a revised survey plat showing the areas within the Premises affected by the Intervening Encumbrance. Within 10 days after the Commencement Date, Landlord shall deliver to Tenant a revised Title Report that reflects the status of the title to the Premises as of the Commencement Date and a copy of all recorded documents to which reference is made in that revised Title Report, but to which reference was not made in the Title Report Landlord initially furnished to Tenant. Tenant may object to title matters in accordance with the terms of this **Section 8(b)** only if Tenant determines in its sole discretion that those matters render title to the Premises unmarketable or could result during the Term in unreasonable interference with the normal operation of its business on the Premises. Among the matters to which Tenant may object are (i) the depiction on the Survey of any encroachment of improvements from or onto the Land or any encroachment across any building setback line or into any easement, (ii) the failure of the legal description set forth in **Exhibit A-1** to close, (iii) the depiction on the Survey of any strips or gores, or (iv) the inability of the surveyor preparing the Survey to specifically locate and to depict on the Survey any appurtenant easements because of incomplete descriptions or for other reasons.

(c) If Tenant objects to any title matter in accordance with the terms of **Section 8(b)**,

Landlord shall eliminate the effect of that title matter on the title to the Premises within 60 days after the date of the delivery of Tenant's objection, provided however, that if Landlord requires additional time to complete the curing of any such title defect which is not reasonably susceptible of being cured within such 60 day period, then, provided Landlord has commenced to cure such title defect within such 60 day period and thereafter prosecutes the same to completion with reasonable diligence, Landlord shall be entitled to such additional time as is reasonably necessary to cure such title defect. If Landlord fails to timely perform the foregoing obligation within the 60 day period described above in this **Section 8(c)**, Tenant may terminate this Agreement by delivering written notice to Landlord or take whatever actions it deems reasonably necessary to successfully complete the title curative action itself and Landlord shall reimburse Tenant for all reasonable costs Tenant incurs in connection with the discharge of any lien or correcting any other objectionable title defect, which could render title to the Premises unmarketable or could result during the Term in unreasonable interference with the normal operation of Tenant's business on the Premises including, without limitation, reasonable attorneys, engineering, surveying, title fees or other related professional fees within 30 days after receipt of Tenant's invoice. Landlord shall have the right, at its sole cost and expense, to join any appeal, application or suit contemplated by this Section as a party thereto and to participate in any and all proceedings relating thereto.

(d) Unless Tenant waives the requirement in writing, Landlord shall deliver to Tenant at Landlord's expense within 60 days after the date of full execution of this Agreement an ALTA survey plat (the "**Survey**") that depicts the Land and that a land surveyor, who is duly licensed in the state where the Land is located and is acceptable to Tenant and the Title Company, prepares on the basis of a current survey of the Land. The surveyor must conduct his or her survey of the Land, and prepare and certify the Survey, in accordance with the requirements of this **Section 8(d)** and such other standards as required by ALTA. The Survey will show such state of facts as a detailed physical inspection of the Land would reveal, including, without limitation, (i) the courses and measured distances of the exterior property lines of the Land, (ii) the area of the Land expressed in square feet, (iii) the location of adjoining streets, (iv) the location of setback lines and easements, each identified, if appropriate, by the recording references of the recorded instrument that created that setback line or easement, (v) the location of encroachments, if any, upon the Land and (vi) the location and path of utility connections, if any, for the Improvements. With respect to the easements burdening and benefiting the Land, the Survey will specifically identify their location and dimensions. The Survey will include a certification that, with respect to any support utility and mechanical easements depicted on the Survey, there are no gaps or gores between the Land and the point of commencement of the easements and those easements run, with no gaps or gores, from the Land to dedicated and accepted public utility easements. The legal description of the Land appearing on the Survey will be the same as that appearing in the Title Report. In addition, the surveyor must prepare and certify the Survey in accordance with the Minimum Standard Detail Requirements for land title surveys adopted by the American Land Title Association and American Congress on Surveying and Mapping. The Survey will include a certification as to whether any part of the Land lies within an area that the Federal Emergency Management Agency has designated as a flood-prone or flood-hazard area. Landlord must also cause, at Landlord's cost and expense,

such additional survey work as may be necessary or required by the Title Company to be completed in a timely fashion for issuance of the final title insurance policy free and clear of survey exceptions. If required by the Title Company, Landlord must also cause the surveyor to re-certify the Survey to the satisfaction of Tenant and the Title Company no more than five days prior to the Commencement Date.

(e) At Tenant's election, but subject to Tenant's payment of the applicable premium, Landlord must cause the Title Company to issue in Tenant's favor on the Commencement Date an extended form ALTA 2006 Form B owner's policy of title insurance (the "**Title Policy**"), together with any endorsements that Tenant considers necessary and are available in the state in which the Premises are located. The Title Policy must insure Tenant's good and marketable leasehold interest in the Premises in an amount designated by Tenant subject only to exception from insurance coverage for exceptions agreed to in writing by Tenant. Without limiting the generality of the foregoing, in order for the Title Policy to satisfy the requirements of this **Section 8(e)**, (i) the Title Company must delete all standard exceptions from the Title Policy; (ii) the Title Policy must affirmatively insure over all survey matters, whether based upon matters of record or otherwise; (iii) the Title Company must endorse the exception as to restrictive covenants "None of Record"; (iv) if available in the state in which the Premises are located, the Title Policy must include an owner's restrictions and easements endorsement, a zoning endorsement and a contiguity endorsement and a statement that all taxes and general and special assessments that became due prior to the Commencement Date have been paid; (v) the Title Company must limit the exception as to the lien for taxes to general real property taxes for the current year not yet due and payable and subsequent years, and must endorse that exception "Not yet delinquent by nonpayment"; and if available in the state in which the Premises are located, the Title Policy must include an endorsement that insures unconditional legal access to the Premises from all adjoining public or private streets or ways and from any parking facility adjoining and serving the Premises.

Section 9. Use. (a) Tenant, and its subsidiaries and affiliates, may use the Premises solely for the uses permitted in the Land Lease. To wit: (a) commercial transportation of lawful express cargo, freight, documents, mail and merchandise by aircraft, including the receiving, storing, preparing, packing, crating, delivering and transporting by air of such cargo, freight, documents, mail and merchandise; (b) the parking, storage, routine maintenance, minor repair, cleaning and servicing of aircraft, including the deicing of aircraft, operated in connection therewith and the maintenance and repair of personal property operated in connection with operations hereunder; (c) the storage of aircraft parts and supplies; (d) ground activities necessary for the support of the air cargo operations occurring on the Premises; (e) administrative offices, with customary vending machines with food and beverage services; (f) mobile fueling; and (g) any other purpose or activity that the Master Landlord may, from time to time, expressly authorize in advance in writing in the Master Landlord's reasonable discretion (the "**Permitted Use**"). Tenant may petition Master Landlord at any time to expand the Permitted Use allowed under the Land Lease at its sole discretion and all approvals granted by the Master Landlord shall be deemed approved by Landlord. This Agreement does not grant Tenant the right to provide passenger air service at the MSN. The foregoing notwithstanding,

at all times in using the Premises, Tenant must observe all conditions and restrictions in the Land Lease that are applicable to that use.

(b) If no Event of Default, as defined below in Section 25, has occurred and is continuing and if a suspension or revocation of the Certificate of Occupancy or other governmental use authorization related to the Premises occurs by virtue of Landlord's failure to have constructed the Improvements in accordance with the requirements of Section 2, and if, as a result, Tenant can no longer operate its business in the Premises, Tenant may terminate this Agreement in its entirety by giving written notice to Landlord at least 30 days in advance of the effective date of the termination. If, however, after Tenant's delivery of that notice of termination, either party secures during the 15-day period immediately following the giving of the notice of termination, the reinstatement of the Certificate of Occupancy or other governmental use authorization related to the Premises and, as a consequence, Tenant's ability to use the Premises for the purpose described in Section 9(a) is restored, the notice of termination will be of no effect and this Agreement will continue in full force and effect. Following the effective date of the termination, Tenant will no longer have any obligation to pay Base Rent or any other sum required by virtue of the terms of this Agreement.

Section 10. Alterations. (a) During the Term, Tenant may not make structural or exterior alterations to the Premises without Landlord's prior written consent, but Tenant will have the right, without Landlord's consent, to make non-structural alterations to the interior of the Premises ("**Alterations**") required for the conduct of Tenant's business. In making any Alterations, Tenant shall do the following:

- (i) notify Landlord at least seven days prior to commencement of the Alterations; and
- (ii) comply with all Legal Requirements affecting the Alterations and the Premises; and
- (iii) pay all contractors and suppliers of material and labor incorporated into the Alterations, furnish to Landlord upon request evidence of the payments, and ensure that any mechanics' or materialmen's lien claims asserted in connection with the making of an Alteration are discharged before the claimant initiates any action to enforce its lien or purported lien against the Premises.

(b) Tenant's trade fixtures, furnishings and equipment in the Premises will remain Tenant's property for all purposes and Tenant may remove them at its option and expense at any time on or before the Expiration Date. Upon the expiration of the Term or any earlier termination of this Agreement, Tenant shall return the Premises to substantially the condition that existed on the Commencement Date, except for ordinary wear and tear and damage that Landlord has the obligation to repair under the terms of this Agreement. Except to the extent that **Sections 13 and 14** expressly provide to the contrary, the foregoing covenant does not

obligate Tenant to remove Alterations or other leasehold improvements made with respect to the Premises, including, without limitation, concealed telecommunications cabling installed within the Premises, all of which become part of the Premises and will remain with the Premises upon the expiration of the Term or any earlier termination of this Agreement.

(c) Tenant must not permit any mechanics' or materialmen's lien to be filed against the Premises by reason of work, labor, services or materials furnished to Tenant at its direction. If the filing of a lien occurs in contravention of the foregoing, Tenant shall cause the lien to be discharged of record by payment, by the posting of a bond, by order of a court of competent jurisdiction, or by other lawful means within 30 days after Tenant receives notice of the filing from Landlord. If Tenant fails to discharge a lien within the time set forth above, Landlord may discharge the lien in any lawful manner without investigating the validity of the lien claim. Tenant shall reimburse Landlord for all reasonable costs Landlord incurs in connection with the discharge of the lien, including, without limitation, reasonable attorneys' fees, within 30 days after receipt of Landlord's invoice.

Section 11. Maintenance of Premises. (a) During the initial year of the Term, Landlord shall correct all defects in, and maintain in good condition, (i) the structure of the Building, including, without limitation, the roof (including roof membrane and deck), footings, foundations, exterior wall assemblies (including weather walls), floor slabs, subfloors, bearing walls, structural columns, and beams, and drains, gutters, and down spouts, (ii) the parking areas, drives, sidewalks and landscaping situated on the Land, (iii) the drains, electrical, mechanical, plumbing and drainage works leading up to the Building, from and under the Land, (iv) all systems and components serving the Premises, including, without limitation, the plumbing, electrical and HVAC systems and the exterior doors, but excluding leasehold improvements Tenant makes and Tenant's trade fixtures, furnishings and equipment. After the initial year of the Term, Landlord shall correct all defects in, and maintain in good condition, (i) the structure of the Building (exclusive of expansions that Tenant makes, as distinguished from expansions that Landlord makes at Tenant's request), including, without limitation, the roof (including roof membrane and deck), footings, foundations, exterior wall assemblies (including weather walls), floor slabs, subfloors, bearing walls, structural columns, and beams, (ii) the parking areas, drives, sidewalks and other exterior paving on the Land, and (iii) the drains, electrical, mechanical, plumbing and drainage works leading up to the Building, from and under the Land. If, in order for a structural component of the Building to remain in good condition, replacement of that component becomes necessary, Landlord's obligation with respect to that structural component includes the obligation to replace it. Landlord shall also make all repairs and replacements to those portions of the Premises that Tenant would otherwise have the obligation to repair or replace by virtue of other provisions of this Agreement if the repair or replacement becomes necessary because of damage caused by a defect in any portion of the Building that Landlord has the obligation to repair or replace under the terms of this **Section 11(a)**. Moreover, Landlord shall also make all capital replacements of components of the systems serving the Premises (exclusive of expansions that Tenant makes, as distinguished from expansions that Landlord makes at Tenant's request), including, without limitation, the electrical, plumbing and HVAC systems, that become necessary in order for

those systems to continue to operate at the level of performance contemplated by the original design specifications for those systems. Tenant shall, however, make any of those capital replacements that become necessary because of the misuse of the systems by Tenant or any of its agents, employees or contractors, Tenant's failure to perform routine maintenance on those systems, or alterations or improvements that Tenant makes to the Premises. In addition, Landlord shall replace all landscape plantings that die during the initial year of the Term for reasons not attributable to a failure on Tenant's part to make arrangements for the landscaping care described in **Section 11(d)** below.

(b) Landlord shall perform all repairs and maintenance required by virtue of **Section 10(a)** in a good and workmanlike manner or in accordance with any higher standard that the Land Lease may establish. Landlord shall perform all repairs and maintenance required by virtue of **Section 11(a)** at its expense unless the repair or maintenance becomes necessary by virtue of the negligence or willful misconduct of Tenant or any of its agents, employees or invitees, Tenant's failure to properly perform the maintenance required of it by virtue of **Section 11(d)**, or any alteration or improvement Tenant makes to the Premises; in that case, Tenant shall reimburse Landlord within 30 days after Tenant's receipt of Landlord's invoice for the amount, if any, by which the aggregate amount of all reasonable costs Landlord incurs in performing the maintenance or making the repair exceeds the amount of proceeds, if any, payable in respect of the damage to the Premises under the terms of the policy of property insurance Tenant maintains in force in accordance with the terms of **Section 18(a)(1)**.

(c) Landlord shall accomplish all maintenance for which it is responsible as soon as practicable following receipt of notice from Tenant. If a hazardous or emergency situation exists, however, Landlord shall have the maintenance performed immediately.

(d) Except as otherwise provided in this Agreement, Tenant shall be responsible for maintaining in good condition the interior of the Building and the systems serving the Building to the extent that the location of the needed repair lies within the Building. Moreover, during the entire Term, Tenant must keep the parking areas clean, must remove trash, snow and debris from the parking areas and adjoining sidewalks, must maintain and water the landscape plantings situated on the Land at suitable intervals and perform routine maintenance of the HVAC and other building systems serving the Premises. Upon Landlord's request, Tenant shall furnish to Landlord a copy of the contracts for those services that are then in force. Tenant shall perform all repairs and maintenance required of it by virtue of this **Section 11(d)** at its expense unless the repair or maintenance becomes necessary by virtue of the negligence or willful misconduct of Landlord or any of its agents, employees or invitees, or Landlord's failure to properly perform the maintenance required of it by virtue of **Section 11(a)** above; in that case, Landlord shall reimburse Tenant within 30 days after Landlord's receipt of Tenant's invoice for the amount, if any, by which the aggregate amount of all reasonable costs Tenant incurs in performing the maintenance or making the repair exceeds the amount of proceeds, if any, payable in respect of the damage to the Premises under the terms of the policy of property insurance Tenant maintains in force in accordance with the terms of **Section 18(a)(1)**. With regard to the parking areas and landscaped plantings, as provided above and for purposes of

further clarification, Tenant shall keep the same clean, trimmed, watered, and keep the same in good and clean condition in accordance with the requirements of the Land Lease and all Legal Requirements.

Section 12. Utilities. Tenant shall pay for all utilities and other services furnished to the Premises.

Section 13. Satellite Dish. Tenant has the right to use a portion of the roof area of the Building or such other location on the Land, as Tenant may reasonably select and as Legal Requirements permit, for the installation, operation, maintenance, security, repair and replacement of one satellite dish serving the Premises and related cable connections (the "**Telecommunications Equipment**"). Tenant's use of the Premises in respect to the Telecommunications Equipment will be subject to such reasonable rules as Landlord may from time to time designate and to the following additional conditions: (i) Tenant is solely responsible for the installation, maintenance, repair, operation and replacement of the Telecommunications Equipment; (ii) Tenant is solely responsible for obtaining and maintaining all necessary permits and approvals for the installation and operation of the Telecommunications Equipment; (iii) Tenant must install screening around the Telecommunications Equipment to the extent the Land Lease requires. Within 30 days after the expiration of the Term or the earlier termination of this Agreement, Tenant shall remove the Telecommunications Equipment and repair any damage to the Premises that the removal causes. Tenant shall pay Landlord within 30 days after Landlord's demand the cost of repairing any damage to the Premises arising from the removal and restoration.

Section 14. Signs. Tenant has the right to place exterior signs on the Premises subject only to any restrictions applicable by virtue of Legal Requirements. Tenant shall maintain its signs in good condition and shall remove them and repair any damage the removal causes on or before the Expiration Date.

Section 15. Landlord's Right of Access. (a) Landlord, the Master Landlord and their respective authorized representatives have the right to enter the Premises during Tenant's regular business hours for the purpose of (i) determining whether the Premises are in good condition and whether Tenant is complying with its obligations arising under the terms of this Agreement, and (ii) performing any maintenance or repairs for which Landlord is responsible under the terms of this Agreement. Landlord has the right to enter the Premises at all times without notice in the event of an emergency or for the purpose of making emergency repairs; under other circumstances, Landlord must give Tenant written notice of Landlord's intended entry at least 48 hours in advance of that entry.

(b) Landlord shall conduct its activities in the Premises in a manner that will cause the least possible interference with Tenant's business operations and Tenant's access to the Premises and shall observe all reasonable rules and conditions that Tenant imposes, including, without limitation, Tenant's security measures.

Section 16. Tenant's Indemnity. Except as provided in **Section 19**, Tenant shall indemnify and hold Landlord harmless from and against all claims, actions, demands, judgments, damages, liabilities and expenses, including reasonable attorneys' fees, that may be asserted against Landlord or that Landlord may sustain by virtue of the occurrence of the death of or bodily injury to any person or the loss of, damage to, or destruction of, any property arising from Tenant's use of the Premises, except to the extent the claims, actions, demands, judgments, damages, liabilities or expenses arise from the intentional or negligent acts or omissions of Landlord or any of its representatives, agents, employees, contractors or invitees. With respect to claims, actions, demands, judgments, damages, liabilities or expenses arising by reason of the occurrence of any circumstances prior to the expiration of the Term or any earlier termination of this Agreement, the foregoing indemnity will survive that expiration or termination.

Section 17. Landlord's Indemnity. Except as provided in **Section 19**, Landlord shall indemnify and hold Tenant harmless from and against all claims, actions, demands, judgments, damages, liabilities and expenses, including reasonable attorneys' fees, that may be asserted against Tenant or that Tenant may sustain by virtue of the occurrence of the death of or bodily injury to any person or the loss of, damage to, or destruction of any property arising in connection with any latent or patent defect in the condition of the Premises existing as of the Commencement Date , or arising from the negligent or intentional acts or omissions of Landlord, or any of its representatives, agents, employees, contractors or invitees, except to the extent any such claims, actions, demands, judgments, damages, liabilities or expenses arise from the intentional or negligent acts or omissions of Tenant or any of its representatives, agents, employees, contractors or invitees. With respect to claims, actions, demands, judgments, damages, liabilities or expenses arising by reason of the occurrence of any circumstances prior to the expiration of the Term or any earlier termination of this Agreement, the foregoing indemnity will survive that expiration or termination.

Section 18. Insurance. (a) Tenant shall provide property, time element and liability insurance throughout the Term as follows:

1. Tenant shall maintain in force with respect to the Building and the leasehold improvements Tenant makes to the Building special form property insurance in an amount equal to the replacement cost of the Building above its foundations and Tenant's leasehold improvements. The policy by which Tenant provides that insurance must name as insured parties Tenant, Landlord and those of Landlord's mortgagees as Landlord designates by written notice to Tenant and must contain a mortgagee clause in favor of Landlord's designated mortgagees.
2. Tenant shall maintain in force special form property insurance covering personal property Tenant places upon or installs within the Premises in an amount equal to the replacement cost of that personal property.

3. Tenant shall maintain in force time element insurance covering the loss of rental income that may occur as a result of loss or damage to the Building caused by any peril covered by the property insurance described in **Section 18(a)(1)** above. The policy by which Tenant provides that time element insurance must provide for the payment of the Base Rent and the other sums that become due under the terms of this Agreement for a period following the occurrence of a fire or other casualty equal to the lesser of the period during which Tenant pursues the restoration of the Premises in accordance with **Section 20** below or the time that is reasonably required with the exercise of due diligence and dispatch to restore the damaged Premises to tenantability. The policy by which Tenant provides that insurance must name as insured parties Tenant, Landlord and those of Landlord's mortgagees as Landlord designates by written notice to Tenant and must contain a mortgagee clause in favor of Landlord's designated mortgagees.
4. Tenant shall maintain in force a policy of commercial general liability insurance insuring Landlord, Tenant, Master Landlord, Landlord's designated mortgagees and their respective councilors, trustees, agents, officers, servants and employees against liability arising from Tenant's use, occupancy or maintenance of the Premises and appurtenant areas and providing contractual liability coverage for the indemnities Tenant makes in **Section 16**. The limit of that insurance must be at **least One Hundred Million and No/100 Dollars (\$100,000,000.00)** per occurrence for bodily injury to or death of any persons or property damage. Tenant must cause the policy by which Tenant provides that commercial general liability insurance to be endorsed in order to confirm that (i) that insurance is primary insurance and (ii) insurance maintained by or for the benefit of Landlord or Master Landlord will not reduce the proceeds payable in respect of any claim made on the insurance Tenant furnishes in accordance with the terms of this **Section 18(a)(4)**. Tenant must cause the policy by which Tenant provides that commercial general liability insurance to be further endorsed to include a severability of interest or cross-liability endorsement that provides that the coverage shall act for each insured and each additional insured against whom a claim is or may be made in a manner as though a separate policy had been written for each insured or additional insured.
5. Tenant shall maintain in force an insurance policy for coverage for owned, hired, and non-owned automobiles. The policy or policies shall provide for limits of at least **Ten Million and No/100 Dollars (\$10,000,000.00)**.
6. Tenant shall maintain all other coverages, if any required by the Master

Landlord as set forth in the Land Lease and shall name Landlord, Tenant, Master Landlord, Landlord's designated mortgagees as additional insureds.

7. If Tenant does not qualify as a self-insurer in accordance with the rules and regulations of the agency or commission that administers the workers' compensation program in the State where the Premises are located, Tenant shall maintain in force workers' compensation insurance in the amount required by applicable law and employer's liability insurance in an amount not less than **One Million and No/100 Dollars (\$1,000,000.00)**.

(b) Each policy of insurance that Tenant maintains in accordance with the terms of this Agreement must be written by insurance companies authorized to do business in the state where the Premises are located, must be in form and substance reasonably satisfactory to Landlord, must satisfy any additional requirements set forth in the Land Lease, and must provide that the insurer will cancel, terminate or materially change the policy only after it has given Landlord, Master Landlord, Landlord's designated mortgagees and Tenant written notice of the anticipated cancellation, termination or material change at least 30 days in advance of the time at which the cancellation, termination or material change becomes effective. In the event Landlord receives notice of cancellation or material modification of such insurance which is inconsistent with Tenant's obligations under this Lease, Landlord shall have the right, but not the obligation, to procure All-Risk insurance for the Building in accordance with **Section 18** and Tenant shall pay Landlord upon demand the actual out-of-pocket cost of such insurance.

(c) Tenant may provide the insurance required by virtue of the terms of this Agreement by means of a combination of primary and excess or umbrella coverage and by means of a policy or policies of blanket insurance so long as (i) the amount of the total insurance allocated to the Premises under the terms of the blanket policy or policies furnishes protection equivalent to that of separate policies in the amounts required by the terms of this Agreement, and (ii) the blanket policy or policies comply in all other respects with the other requirements of this Agreement. The payment of deductibles under any insurance policy required by this Agreement shall be made solely by the Tenant, and the Landlord shall not have any liability for payment thereof. In the event that Federal Express Corporation (or any subsidiary of FedEx Corporation) is no longer the "tenant" under this Lease, then Landlord and Tenant will agree upon a reasonable and customary deductible on said Improvements and Building in light of the creditworthiness and use of the Premises of the "new tenant".

(d) As soon as practicable, Tenant shall furnish to Landlord, Master Landlord, and Landlord's designated mortgagee certificates of insurance reflecting that the policies Tenant has agreed to maintain are in force, and it shall also provide certificates evidencing all renewals of those policies.

(e) Throughout the Term, Landlord shall maintain in force any insurance that may be required by virtue of the terms of the Land Lease and that Tenant does not undertake to provide in

accordance with the foregoing terms of this **Section 18**.

Section 19. Waiver of Subrogation. Each party waives and releases, to the extent of the proceeds that are or would be payable to it in respect of the policies of property insurance and time element insurance required by virtue of Section 18 above, all rights of recovery, claim, action or cause of action that it may now or later have against the other or the other's agents, officers and employees, by virtue of (A) any loss or damage that may occur to the Building, improvements to the Building or personal property within the Building or (B) any diminution in the rent derived from the operation of the Building or in the revenue derived from the conduct of business within the Building, regardless of cause or origin, including, without limitation, the negligence of Landlord or Tenant or any of their respective representatives, agents, employees, contractors and invitees. Because this Section 19 will preclude the assignment of any claim mentioned in it by way of subrogation or otherwise to an insurance company or any other person, the parties agree immediately to give to each insurance company that has issued to it policies of insurance covering risks of direct physical loss, written notice of the terms of the mutual waivers contained in this **Section 19**, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers contained in this **Section 19**, and to secure from their respective insurers waivers of the insurers' subrogation rights.

Section 20. Casualty. (a) If the damage caused by a fire or other casualty renders the Premises untenable, no abatement of the Base Rent and any Additional Rent payable in accordance with the terms of this Agreement will occur with respect to the period during which the Premises is untenable. As long as no Event of Default has occurred and is continuing, however, Tenant is entitled to receive all proceeds payable in respect of the time element insurance that Tenant maintains in accordance with the terms of **Section 18(a)(3)** above by reason of the damage to the Premises. If, however, an Event of Default has occurred and is continuing at the time of the insurer's disbursement of those proceeds, Landlord is entitled to receive those proceeds to the extent reasonably necessary to rectify Tenant's default.

(b) If fire or other casualty damages the Premises during the final year of the Term to the extent that the estimated cost of the restoration exceeds one third of the replacement cost of the Building, Tenant may terminate this Agreement by delivering written notice to Landlord within 30 days after the date of the occurrence of the fire or casualty. If fire or other casualty damages the Premises and a termination of this Agreement occurs in accordance with the foregoing, Landlord is entitled to receive all proceeds, if any, payable in respect of the property insurance Tenant maintains in accordance with the terms of **Section 18(a)(1)** above ("Tenant's property insurance") by reason of the damage to the Premises (as distinguished from Tenant's leasehold improvements, trade fixtures, equipment or other personal property). Moreover, if Tenant terminates this Agreement in accordance with the terms of the second sentence of this **Section 20(b)**, Tenant shall also pay to Landlord the amount of the deductible that Tenant's insurer applies in adjusting the loss in accordance with the terms of Tenant's property insurance.

(c) If fire or other casualty damages the Premises and a termination of this Agreement does not occur, Tenant shall restore the Premises (inclusive of leasehold improvements Tenant makes) in a good and workmanlike manner to substantially the condition that existed prior to the occurrence of the fire or other casualty and shall pursue the restoration with diligence and continuity and complete the same in accordance with the requirements of the Land Lease. In so doing, Tenant shall comply with all applicable Legal Requirements. In performing its restoration obligation, Tenant must restore the Improvements so that they comply with the Legal Requirements applicable at the time of the restoration and not just the Legal Requirements that were applicable at the time of original construction of the Improvements.

(d) Subject to the requirements of the Land Lease, if fire or other casualty damages the Premises, a termination of this Agreement does not occur and no Event of Default has occurred and is continuing, Tenant is entitled to receive disbursements of the proceeds payable in respect of Tenant's property insurance as restoration progresses in order to pay for the costs Tenant reasonably incurs in connection with the restoration and Landlord relinquishes all interest it has as an additional insured and a loss payee with respect to the proceeds that will be payable by virtue of the damage to the Premises under the terms of Tenant's property insurance. If, however, an Event of Default has occurred and is continuing at the time of the insurer's disbursement of those proceeds, Landlord is entitled to receive those proceeds to the extent reasonably necessary to rectify Tenant's default. If the damage occurring to the Building is a result of a risk covered by Tenant's property insurance and the aggregate amount of the proceeds payable in respect of that insurance (after the application of any deductible or self-insured retention applicable to that insurance) is less than the aggregate amount of the costs Tenant reasonably incurs in connection with the restoration, Tenant shall pay the amount of the deficiency. If the aggregate amount of those insurance proceeds exceeds the aggregate amount of the costs Tenant reasonably incurs in connection with the restoration, Tenant is entitled to the excess. Moreover, if, at the time of the occurrence of the damage to the Building, Tenant does not have in force the property insurance required by virtue of the terms of **Section 18(a)** and that insurance would have covered the loss had it been in force, Tenant shall pay all reasonable costs required in connection with the restoration. The obligations set forth in this **Section 20** will survive the expiration of the Term or any earlier termination of this Agreement.

(e) Following Tenant's repair in accordance with the terms of this **Section 20** of those portions of the Building for which Landlord has general maintenance responsibility under the terms of this Agreement, so long as the Improvements are restored using similar building supplies and materials utilized in the original Building, Landlord will not deny responsibility for making any repair that subsequently becomes necessary with respect to any of those portions of the Building based on a claim that the need for the subsequent repair arises, in whole or in part, because of Tenant's failure to repair the casualty-caused damage in a good and workmanlike manner. Landlord's making of any such repair under circumstances where Landlord believes that the repair became necessary, in whole or in part, because Tenant failed to repair the casualty-caused damage in a good and workmanlike manner will not preclude Landlord from initiating the procedures set forth in **Section 38** below to establish that Tenant defaulted in respect of its obligation arising by virtue of **Section 20(c)** above.

Section 21. Condemnation. (a) If either party receives Notice of Intended Taking, as defined below, service of any legal process relating to the condemnation of the Premises or the Improvements, or notice in connection with any proceedings or negotiations related to such a condemnation, the receiving party shall promptly give the other party written notice of the receipt, contents and date of the notice or service received. For purposes of this Section 21, “Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and that such person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. “Notice of Intended Taking” includes, without limitation, the service of a condemnation summons and complaint on a party to this Agreement. The parties will consider any such notice to have been received when a party to this Agreement receives from the condemning agency written notice of the intent to take that contains a description or map reasonably defining the extent of the Taking. For purposes of this Section 21, an “Intended Taking” means a Taking that is planned and intended by the condemning authority as distinguished from a mere preliminary inquiry or proposal with respect to a Taking. For purposes of this Section 21, a “Taking” means the taking or damaging, including severance damage, by eminent domain or by condemnation for any public or quasi-public use. The transfer of title may be either a transfer resulting from a recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation. For purposes of this Section 21, a “Total Taking” means the Taking of the fee title of all of the Premises. For purposes of this Section 21, a “Substantial Taking” means the Taking of so much of the Premises that the conduct of Tenant’s business would be substantially prevented or impaired. For purposes of this Section 21, a “Partial Taking” means a Taking that is neither a Total Taking nor a Substantial Taking.

(b) Each party will have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. Each party will execute and deliver to the other any instrument that may be required or that would facilitate the provisions of this Agreement relating to the condemnation.

(c) Upon a Total Taking, Tenant’s interest in the Premises will continue until the Taking is completed by deed, contract or final order of condemnation. If, however, the condemning authority secures an order that allows it to take physical possession of the Premises prior to the date the Taking is completed, as specified above, Tenant’s obligation to pay rent and other charges in accordance with the terms of this Agreement will terminate on the date the condemning authority takes physical possession of the Premises in accordance with the terms of the order. If the Taking is a Substantial Taking, Tenant may elect to treat the Taking as a Total Taking by delivering written notice to Landlord within 75 days after the date Tenant receives notice of the Intended Taking. If Tenant does not make that election within the time set forth above, the parties will treat the Taking as a Partial Taking. Upon a Partial Taking, this Agreement will remain in full force and effect covering that portion of the Premises not affected by the Taking, except that the parties will equitably adjust the Base Rent payable in accordance with the terms of this Agreement.

(d) All condemnation awards made in connection with a Total Taking or Partial Taking will be Landlord's exclusive property, subject to the restriction set forth in **Section 21(e)** and subject to the rights of its mortgagees and Master Landlord, but Tenant reserves the right to bring an action in its own name for loss of business, the taking of Tenant's trade fixtures or other personal property, or moving expenses to the extent that those amounts are compensable to Tenant without diminution of Landlord's award.

(e) Promptly after any Partial Taking, Landlord shall repair, alter, modify or reconstruct the Improvements at its expense so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which Tenant is leasing the Premises. All condemnation proceeds for any Partial Taking will be paid to Landlord to be held by it in trust and used for the repair and reconstruction of the Premises. If, however, a Partial Taking occurs during the last year of the Term, Tenant may terminate this Agreement by delivering written notice to Landlord within 20 days after the date on which Tenant receives notice of the Intended Taking. If Tenant exercises the foregoing right of termination, the termination will be effective as of the earlier of the date on which the Partial Taking is completed or the date on which the condemning authority takes actual possession of the Premises in accordance with a court order and Landlord will have no obligation to repair, alter, modify or reconstruct the Improvements in accordance with the terms of this **Section 21(e)**. Landlord shall comply with the terms of **Section 2** of this Agreement in connection with the repair and reconstruction, to the extent those provisions are applicable to the repair and reconstruction.

(f) Upon any Taking of the temporary use of all or any part of the Premises for a period not exceeding 12 months in duration and ending on or before the expiration of the Term, neither the Term nor the Base Rent will be reduced or affected in any way and Tenant will be entitled to any award for the use or estate taken. If the Taking necessitates expenditures for reconstruction of the Improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which Tenant is leasing the Premises, Landlord shall perform that work after the termination of the Taking. Tenant shall make available to Landlord any portion of the award for the Taking intended to compensate Tenant for the reconstruction. If that portion of the award exceeds the aggregate amount of the costs Landlord reasonably incurs for the reconstruction, Tenant is entitled to the excess. If a temporary Taking is for a period that exceeds 12 months in duration or extends beyond the expiration of the Term, the parties will treat the Taking in accordance with the foregoing provisions of this **Section 21** relating to Total Taking, Substantial Taking and Partial Taking.

Section 22. Compliance with Environmental Laws. (a) During the construction of the Improvements and throughout the Term, Landlord shall fully and punctually comply with all present and future Legal Requirements that are applicable to the Premises and that relate to the quality or protection of the environment or the use, storage, handling and disposal of Hazardous Material (as defined below), including, without limitation, the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Toxic Substances Control Act, 15 U.S.C.

§2601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 *et seq.*, and the Clean Air Act, 42 U.S.C. §7401 *et seq.*, and all regulations promulgated on the authority of the foregoing (the “**Environmental Laws**”), except to the extent that the Master Landlord has responsibility for that compliance under the terms of the Land Lease or Tenant has responsibility for that compliance under the terms of this Agreement. In that regard, Landlord must secure all permits and approvals required by virtue of applicable Environmental Laws in order for Landlord to lawfully construct the Improvements and must fulfill all conditions imposed by such permits and approvals including, without limitation, any such conditions that survive substantial completion of those Improvements; provided, however, the foregoing shall not apply to any air operating permits that are required after the Improvements have been substantially completed. The term "Hazardous Material" means any substance:

- (i) the presence of which requires or may later require notification, investigation or remediation under any Environmental Law; or
- (ii) that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or “contaminant” under any Environmental Law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*) and the associated regulations; or
- (iii) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state; or
- (iv) the presence of which on the Premises causes or threatens to cause a nuisance on the Premises or to adjacent properties or poses or threatens to pose a hazard to the Premises or to the health or safety of persons on or about the Premises; or
- (v) that contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or
- (vi) that contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or
- (vii) that contains or emits radioactive particles, waves or material, including, without limitation, radon gas.

Landlord must also fully and punctually observe all requirements set forth in the Land Lease pertaining to Hazardous Materials that Landlord or any of its employees, agents, contractors or invitees (other than Tenant or Tenant's employees, agents, contractors or invitees) brings on to the Premises in connection with the construction of the Improvements or its other activities on the Premises.

(b) Landlord shall defend, indemnify and hold Tenant and their respective directors, officers, agents, employees and contractors harmless from and against all suits, actions, legal or administrative proceedings, demands, claims, liability, fines, penalties, loss, injuries, damages, expenses and costs, including, without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of the indemnitee's choice, and costs of defense (direct and on appeal), settlement or judgment, (i) that may be incurred or suffered by, or claimed or assessed against, any of the indemnitees under any Environmental Law for, with respect to, or as a direct or indirect result of, the presence on, within or beneath the Premises or in the stormwater retention areas, if any, into which the Premises drain (the "**Stormwater Retention Areas**") of, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission or release to or from the Premises or the Stormwater Retention Areas of, any Hazardous Material that is present or brought on the Premises, (ii) that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts, contamination of or adverse effects in the environment, and (iii) with respect to which Master Landlord has no responsibility under the terms of the Land Lease and neither Tenant nor any of its agents, employees, contractors or other invitees (individually called a "Tenant Party" and collectively called the "Tenant Parties") has responsibility under the terms of this Agreement.

(c) Tenant, its agents, employees, contractors or other invitees (individually called a "**Tenant Party**" and collectively called the "**Tenant Parties**") shall fully and punctually comply, with all present and future Environmental Laws, except to the extent that Master Landlord has responsibility for that compliance under the terms of the Land Lease or that Landlord has responsibility for that compliance under the terms of this Agreement. In that regard, Tenant must secure all permits and approvals required by virtue of applicable Environmental Laws in order for Tenant to lawfully use the Premises. Tenant must also fully and punctually observe all requirements set forth in the Land Lease pertaining to Hazardous Material that Tenant or any of its employees, agents, contractors or invitees brings on to the Premises in connection with the conduct of its activities on the Premises. Tenant may not release or discharge, and will not permit any Tenant Party to release or discharge, air emissions, waste, effluent, Hazardous Material or contaminants from the Premises in such a manner that the release or discharge will unlawfully pollute or contaminate air, ground (including sub-surface strata), or water (including ground water) or become a public nuisance. Any treatment, testing or control of releases or discharges, including monitoring or mitigation measures, required as a result of Tenant's operations will be solely Tenant's responsibility.

(d) Tenant shall defend, indemnify and hold Landlord, Master Landlord, Landlord's mortgagee and their respective members, constituent partners, directors, officers, agents, employees and contractors (the "**Indemnified Parties**") harmless from and against all suits,

actions, legal or administrative proceedings, demands, claims, liability, fines, penalties, loss, injuries, damages, expenses and costs, including, without limitation, interest and reasonable attorneys' and paralegals' fees for attorneys of the indemnitee's choice, and costs of defense (direct and on appeal), settlement or judgment, (i) that may be incurred or suffered by, or claimed or assessed against, any of the Indemnified Parties under any Environmental Law for, with respect to, or as a direct or indirect result of the presence on, within or beneath the Premises or the Stormwater Retention Areas of, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission or release to or from the Premises or the Stormwater Retention Areas of, any Hazardous Material that is brought on the Premises during the Term in connection with Tenant's or any Tenant Party's use of the Premises and that does not fall within the scope of Landlord's indemnity set forth in **Section 22(b)**, and (ii) that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts, contamination of or adverse effects in the environment. In making the covenant set forth in **Section 22(c)** and the indemnity set forth in this **Section 22(d)**, Tenant does not undertake any obligation (i) to remediate, or any liability for the cost of remediating, the Premises to a level of contamination lower than that which exists as of the Effective Date or to a level of contamination lower than that which the governmental authorities having jurisdiction over the environmental condition require in order to discontinue enforcement actions, or to the Indemnified Parties that utilized the Lease Premises prior to the Effective Date. The parties, however, do not intend the foregoing to limit Master Landlord's or Landlord's right to seek contribution or cost-sharing under any applicable Environmental Law for costs that any of them may incur in connection with inspections, investigations, studies, design, construction, remediation, or operations or maintenance of remedial activities at, on or near the Premises from parties responsible for any contamination occurring at, on, or near the Premises.

(e) Further, if the correction of any environmental condition not attributable to Tenant's or any Tenant Party's use and occupancy of the Premises partially or totally impairs Tenant's use of the Premises, Tenant's obligation to pay Base Rent will abate during the period the corrective activity takes place in proportion to the diminished utility of the Premises in the conduct of Tenant's business.

(f) The indemnities of Landlord and Tenant contained in this **Section 22** will not extend to loss of business, lost rentals, diminution in property value, or incidental, indirect or consequential damages.

(g) The provisions of this **Section 22** will survive the expiration of the Term or the earlier termination of this Agreement.

(h) Notwithstanding anything in the contrary herein, Tenant shall have no obligations, responsibilities, or liabilities with respect to Pre-existing Contamination on the Premises. For the purposes of this Agreement, "Pre-existing Contamination" shall be defined as any hazardous materials or substances present on, at, or under the Premises that were: (i) introduced prior to the Commencement Date; or (ii) on the Premises whether brought or not brought to the Premises by Landlord or Master Landlord.

Section 23. Compliance with Legal Requirements. Landlord warrants that, when constructed, the Improvements will comply with all Legal Requirements, including, without limitation, those governing non-discrimination in public accommodations and commercial facilities ("**Public Accommodation Laws**"), such as the requirements of the Americans with Disabilities Act (42 U.S.C. § 12101) and all rules and regulations made on the basis of authority granted in that Act. Except as provided in Section 23(b), Tenant shall comply with all Legal Requirements applicable to its use of the Premises during the Term, including, without limitation, Public Accommodation Laws insofar as they relate to (i) any improvements or alterations that Tenant or its contractors initiate and construct within the Premises or that Landlord constructs after the Commencement Date at Tenant's request or (ii) any change occurring during the Term in the business operations that Tenant conducts on the Premises.

Section 24. Landlord's Warranties. Landlord warrants that:

(a) to the best of Landlord's actual knowledge, Landlord does not have actual knowledge of, or reason to believe that there are, grounds for the filing of any lien against the Premises;

(b) to the best of Landlord's actual knowledge, Landlord does not have actual knowledge of any pending condemnation or similar proceeding affecting any part of the Premises;

(c) to the best of Landlord's actual knowledge, Landlord does not have actual knowledge of any legal actions, suits, or other legal or administrative proceedings that are now pending or threatened against either Landlord or the Premises and that would adversely affect Tenant's possession of the Premises in accordance with the terms of this Agreement if finally adjudicated in a manner adverse to the interests of Landlord;

(d) Landlord has neither granted any leases or licenses nor created any tenancies affecting the Premises and there are no parties in possession of any portion of the Premises as trespassers or otherwise;

(e) to the best of Landlord's actual knowledge, Landlord does not have actual knowledge of any uncured violations of Legal Requirements affecting any portion of the Premises and, if any such violations exist, Landlord shall rectify them before Tenant's occupancy of the Premises begins;

(f) the Premises have legal access to abutting public highways, streets and roads adequate for the use of the Premises that Tenant intends at the time of the execution of this Agreement and all entrances to, and exits from, the Land are permitted under applicable Legal Requirements and allow free and uninterrupted ingress to the Premises from those highways, streets and roads and free and uninterrupted egress from the Premises to those highways, streets and roads;

(g) to the best of Landlord's actual knowledge, Landlord does not have actual knowledge of any pending or threatened governmental or private proceedings that would impair

or result in the termination of access from the Premises to abutting public highways, streets, and roads;

(h) to the best of Landlord's actual knowledge, no easements, municipal agreements or development or site plan requirements of any kind affecting any part of the Land will interfere with the use, maintenance, repair, construction, reconstruction or operation of the Improvements and all easements necessary for the lawful operation of the Premises, including, without limitation, all access, ingress, support and mechanical easements, currently exist, are in full force and effect and are not subject to termination, cancellation or rescission;

Landlord does not have knowledge, or reason to believe, that (i) there are any environmental hazards or defects affecting the Premises or adjacent property, (ii) there is radon or radon decay products or asbestos or asbestos decay products or any products containing asbestos within the Building at greater than generally accepted safe levels, (iii) there are mines or other subsurface conditions that would have a material adverse effect on the Premises; (iv) there are any polychlorinated biphenyls ("PCBs") or substances containing PCBs on the Premises; or (v) there is any urea formaldehyde foam in any product on the Premises; Tenant has provided Landlord with complete copies of the following environmental reports: Phase I Environmental Site Assessment Proposed FedEx Facility Dane County Regional Airport, prepared by St. John-Mittelhauser & Associates, Inc, dated September 11, 2019; and Limited Phase II Environmental Site Assessment Proposed FedEx Facility Dane County Regional Airport, prepared by St. John-Mittelhauser & Associates, Inc, dated October 10, 2019. (the "Environmental Reports") and Landlord represents that Landlord does not have knowledge of, or reason to believe that, except as reflected in the Environmental Reports, there are (i) any environmental defects affecting the Premises or adjacent property, or (ii) mines or other subsurface conditions that would have a materially adverse effect on the Premises;

(i) Except as otherwise indicated in the Environmental Reports, Landlord does not have knowledge that the Premises or any adjacent property now is or has been the site of any place of business engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal or release of Hazardous Material or wastes on-site, whether above or below ground;

(j) on the Commencement Date, there will be water, electrical, sanitary sewer, storm sewer, telephone and gas utility service adequate for Tenant's intended use of the Premises available at the Premises and the infrastructure providing those services will be fully paid for and not chargeable against the Premises as local improvements or otherwise and will enter the Land through public rights of way or, if traversing privately owned land, through validly executed and recorded easements;

(k) Tenant's intended use and occupancy of the Premises fully comply with all requirements of applicable building, zoning and land development ordinances and all conditions

of applicable planning board, subdivision, site plan and variance approvals, if any, issued in connection with the development of the Premises;

(l) Except as otherwise indicated in the Environmental Reports, there are no above ground or underground storage tanks located on the Land or, to Landlord's knowledge after due inquiry, within any adjacent property and there have been no such tanks in the past;

(m) Landlord will obtain prior to the Commencement Date all required governmental permits and authorizations, site plan approvals and permits and certificates of occupancy necessary for Tenant's occupancy and intended use;

(n) Except as reflected in the Environmental Reports, there are no above ground or underground storage tanks located on the Land or, to Landlord's knowledge after due inquiry, within any adjacent property and there have been no such tanks in the past;

(o) Landlord knows of no releases of, or the presence of, any Hazardous Material on or about the Premises or any adjacent property, except as reflected in the Environmental Reports;

(p) Landlord has no knowledge of or information regarding the presence of any Hazardous Material at adjacent properties that could migrate to, through, over or under the Premises, except as reflected in the Environmental Reports;

(q) the lease of the Premises, the construction of the Improvements and Tenant's operation of the Improvements in the normal course of its business will not constitute a violation, default or breach of any Legal Requirement or cause or create any occurrence or condition that will constitute such a violation, default or breach with the giving of notice, the passage of time or both.

Landlord's tender of possession of the Premises to Tenant following substantial completion of the construction of the Improvements will constitute Landlord's re-affirmation of the warranties set forth in this **Section 24** as of the date of that tender.

Notwithstanding Landlord's Warranties contained in this **Section 24** to the contrary, Tenant pursuant to an existing lease with the Master Landlord for premises adjacent to the Premises occupies an adjacent property to the Premises and Tenant represents to Landlord that it has no knowledge of or information of any Hazardous Material on the adjacent property currently occupied by Tenant that has migrated onto the Premises prior to the date of the execution of this Agreement. Landlord is relying on the Tenant's representation in making the representations contained in this **Section 24** in favor of Tenant.

Section 25. Tenant's Default. The occurrence of any one or more of the following events (the "**Events of Default**") will constitute a default and breach of this Agreement by Tenant:

- (i) Tenant's failure to pay any Base Rent or Additional Rent when due and the continuance of that failure for more than 10 days after the date on which Landlord gives Tenant written notice of the delinquency;
- (ii) Tenant's failure to observe or perform any of the covenants, conditions or provisions of this Agreement that Tenant must observe or perform, other than the late payment of Base Rent or Additional Rent, where the failure continues for a period of 30 days after Tenant's receipt of written notice from Landlord; if, however, the nature of the obligation that Tenant has failed to perform is such that more than 30 days are reasonably required for its rectification, an Event of Default will not occur so long as Tenant commences the rectification within that 30-day period and diligently and continuously prosecutes the rectification to completion; or
- (iii) the making by Tenant of any general assignment or general arrangement for the benefit of its creditors; the filing by or against Tenant of a petition seeking relief under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, Tenant causes the petition to be dismissed within 60 days after the date of its filing); the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Agreement, where possession is not restored to Tenant within 60 days after the date of the appointment; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Agreement unless Tenant causes the seizure to be discharged within 60 days after the date of the initiation of the seizure.

Section 26. Landlord's Remedies. At any time after the occurrence of an Event of Default, with or without additional notice or demand, Landlord may do one or more of the following:

- (i) terminate Tenant's right to possession of the Premises and repossess the Premises by any lawful means without terminating this Agreement. In that event Landlord shall use good faith and commercially reasonable efforts to re-let the Premises for the account of Tenant for such rent and upon such terms as may be satisfactory to Landlord. For the purposes of that re-letting, Landlord may repair, remodel or alter the Premises. Until such time as the Premises are relet upon commercially reasonable terms and conditions, Tenant shall continue to timely pay to Landlord the Base Rent and Additional Rent reserved in this Agreement for the balance of the Term as those amounts become due in accordance with the terms of this Agreement. If Landlord re-lets the Premises, but fails to realize a sufficient sum from the re-letting to pay the full amount of Base Rent and Additional Rent reserved in this Agreement for the balance of the Term as those amounts become due in accordance with the terms of this

Agreement, after paying all of the costs and expenses of all decoration, repairs, remodeling, alterations and additions and the expenses of the re-letting and of the collection of the rent accruing from the re-letting, including reasonable attorney's fees, Tenant shall pay to Landlord the amount of any deficiency upon Landlord's demand from time to time made;

(ii) terminate this Agreement and repossess the Premises by any lawful means. In that event Landlord may recover from Tenant as damages (a) all Base Rent and Additional Rent that became due prior to the termination and that remains unpaid, (b) the discounted present value (determined based on then commercially reasonable rates) of the amount, if any, by which (I) the Base Rent reserved under the terms of this Agreement for the balance of the Term that remained as of the effective date of the termination exceeds (II) the fair market rent for the Premises for the balance of the Term after deduction of all anticipated reasonable expenses of re-letting for that period, and (c) all reasonable costs and expenses Landlord reasonably incurs in connection with the enforcement of Tenant's obligation to pay those damages, including, without limitation, reasonable attorneys' fees. If the amount described in division (II) above exceeds the amount described in division (I) above, Landlord has no obligation to pay Tenant any part of the excess or to credit any part of the excess against any other sums or damages for which Tenant may be liable to Landlord at the time of the termination; or

(iii) pursue any other remedy available to Landlord under the laws of the jurisdiction in which the Premises are located, subject only to (a) the limitations set forth in **Section 22(f)** on the amount of money damages that the parties may seek under the circumstances described in that Section, (b) the limitation that, except as specifically provided in division (ii) above, Landlord may not seek as damages amounts becoming due under the terms of this Agreement in advance of the time that they become due or would have become due absent a termination of this Agreement and (c) the limitation set forth in **Section 38** on the procedures available for the resolution of certain categories of disputes.

Section 27. Self-Help Remedy and Other Tenant's Remedies. (a) If either party defaults in the performance of any of its obligations set forth in this Agreement, and if (i) the default creates or increases the risk of imminent danger of bodily injury to or death of persons or material damage to or destruction of property, including, without limitation, the Building or either party's property, and either the defaulting party does not commence the rectification of its default immediately upon the other party's delivery of oral or written notice of the default to the defaulting party or the defaulting party fails to pursue the rectification of its default with diligence and continuity or (ii) the default does not create or increase the risk of imminent danger of bodily injury to or death of persons or material damage to or destruction of property, including, without limitation, the Building or either party's property and the defaulting party fails to rectify its default within 30 days after the other party's delivery of written notice of the default to the defaulting party or within such longer period of time following the delivery of

that notice as may be reasonably required to accomplish the rectification of the default through the exercise of prompt, diligent and continuous efforts, the other party may perform the obligation on behalf of the defaulting party. The defaulting party shall pay to the other within 30 days after the date of the defaulting party's receipt of the other party's invoice the full amount of the reasonable cost and expense that the other party incurs in performing the obligation on behalf of the defaulting party, together with interest accruing at the rate specified in **Section 28** and the amount of any reasonable attorneys' fees the other party incurs in instituting, prosecuting or defending any action or proceeding by reason of any default in respect of any obligation the defaulting party has undertaken under the terms of this Agreement. If Landlord fails to pay within that 30-day period any amounts that it must pay in accordance with the terms of this **Section 27(a)**, and such failure to reimburse by Landlord does not involve a contest of such reimbursement obligation being made by Landlord in good faith, then in such event Tenant may offset the amount owed against Base Rent due Landlord. Nothing done on the authority of this **Section 28(a)** will constitute a waiver of the defaulting party's default or a waiver of any covenant, term or condition set forth in this Agreement or its performance or observance.

(b) Any right of offset against Base Rent that Tenant may have under this agreement shall continue each month until it has been reimbursed in full, but such offset amount shall be limited to no more than 20% of the monthly Base Rent amount each month.

Section 28. Interest on Late Payments. If Tenant becomes delinquent with respect to the payment of any Base Rent or any Additional Rent becoming due under the terms of this Agreement more than twice during any calendar year, the amount with respect to which Tenant becomes delinquent upon the third or any subsequent occasion during that calendar year will bear interest from the date due until the date paid at the rate of ten percent (10%) per annum. Any amount with respect to which Landlord becomes delinquent in making payment to Tenant as required by this Agreement will bear interest from the date due until the date paid at the rate of ten percent (10%) per annum.

Section 29. Quiet Enjoyment. Landlord warrants that, so long as Tenant pays all Base Rent and Additional Rent that becomes due under the terms of this Agreement and no Event of Default has occurred and is continuing, Tenant may peaceably and quietly enjoy the Premises at all times during the Term without disturbance.

Section 30. Subordination, Attornment & Non-Disturbance. (a) At Landlord's request, Tenant shall subordinate its rights under this Agreement to the lien of any mortgage or deed of trust executed in favor of any bank, insurance company or other lender and now or in the future in force against the Premises. As a condition to any subordination that Landlord requests, the mortgage holder must execute an agreement in favor of Tenant and in substantially the form of the attached **Exhibit G** whereby it agrees (i) not to disturb Tenant's quiet possession of the Premises so long as no Event of Default has occurred and is continuing, (ii) to permit any proceeds paid in respect of the insurance Tenant maintains in force in accordance with the terms of **Section 18(a)(1)** to be used for the restoration of the Premises and otherwise applied as provided in **Section 20 and (iii)** to permit any condemnation award paid in connection with a

Partial Taking or any proceeds of a sale made in lieu of a Partial Taking to be used for the repair and alteration of the remainder of the Premises as provided in **Section 21**. For the benefit of that mortgage holder, Tenant will further agree in the instrument by which Tenant accomplishes the subordination of its rights under this Agreement that, if proceedings are brought for foreclosure of the lien of the mortgage or deed of trust or if the mortgage holder causes the exercise of the power of sale set forth in the mortgage or deed of trust, Tenant shall attorn to the purchaser upon the conclusion of the foreclosure or sale and recognize the purchaser as the landlord under this Agreement.

(b) Contemporaneously with the execution of this Agreement, Landlord shall cause each mortgagee now holding a lien that affects the Premises to execute in favor of Tenant and deliver a non-disturbance agreement satisfying the requirements set forth in **Section 30(a)**.

Section 31. Landlord's Sale of Premises. Landlord's sale of the Premises and the purchaser's assumption of the obligations Landlord undertakes under the terms of this Agreement will relieve Landlord from liability arising under the terms of this Agreement by reason of any act, occurrence or omission occurring after the consummation of the sale. The parties do not intend the foregoing to relieve Landlord from those obligations that the terms of this Agreement require Landlord to perform prior to the sale. If Landlord transfers its interests arising under the terms of this Agreement (the transferor of those interests being called the "Transferor" and the transferee of those interests being called the "Transferee"), the Transferor and the Transferee shall jointly provide Tenant without demand from Tenant:

- (i) An IRS form W-9 that sets forth the Transferee's federal tax identification number;
- (ii) A copy of the written agreement or agreements that evidence the Transferor's assignment to the Transferee of its interests arising under the terms of this Agreement, and the Transferee's assumption of the obligations Landlord undertakes under the terms of this Agreement, including, if applicable, a copy of a recorded deed reflecting the Transferor's transfer to the Transferee of title to the Premises; and
- (iii) The addresses to which the Transferee wishes Tenant to send notices to Landlord and to which the Transferee wishes Tenant to remit Base Rent and other sums becoming due in accordance with the terms of this Agreement.

The Transferee shall also provide Tenant promptly upon Tenant's request such information regarding the Transferee that Tenant's internal policies and procedures may reasonably require and that Tenant requests within 10 business days after the date Tenant receives written notice from the Transferor of the transfer to the Transferee. Following the receipt of the documents and information described above, Tenant will require 30 days within which to change its systems and records to reflect the Transferee's ownership of Landlord's interests arising under

the terms of this Agreement. If, following Tenant's receipt of notice of the Transferor's assignment to the Transferee, but prior to the expiration of the 30-day transition period described above, Tenant remits to the Transferor any Base Rent or Additional Rent becoming due in accordance with the terms of this Agreement, that remittance will constitute Tenant's performance of the obligation to make that remittance to Landlord and the Transferor shall promptly forward to the Transferee any such remittance that it receives from Tenant. If, following Tenant's receipt of notice of the Transferor's assignment to Transferee, but prior to the expiration of the 30-day transition period described above, Tenant remits to the Transferor any Base Rent or Additional Rent on or before the date it becomes due in accordance with the terms of this Agreement, but the Transferee does not receive the remittance from the Transferor until after the date the remittance became due from Tenant under the terms of this Agreement, no default will occur in respect of Tenant's obligation to make that remittance and the Transferee may not exercise any remedies against Tenant or its leasehold interest that are available to Landlord under the terms of this Agreement or at law or in equity. The foregoing will not preclude the Transferee from exercising any remedies it may have against the Transferor by reason of the Transferor's failure to forward to the Transferee any remittance, as required above. Tenant, the Transferor and the Transferee shall act in good faith with each other at all times in order to achieve a smooth transition in the ownership of the Landlord's interest arising under the terms of this Agreement. **Section 38** of this Agreement will apply to any dispute that arises as to the interpretation of this **Section 31** or the reasonableness of any request Tenant makes for information regarding the Transferee. The Transferor's obligations arising under the terms of this Section will survive the effective date of the assignment to the Transferee of its interests arising under the terms of this Agreement.

Section 32. Broker's Commissions. Each party represents to the other that it has had no dealings with any broker or other finder in connection with the negotiation of this Agreement. Each party shall defend and indemnify the other from and against any claims, demands and actions brought by any broker or other finder to recover a brokerage commission or any other damages on the basis of alleged dealings with the indemnifying party contrary to the foregoing representation.

Section 33. Estoppel Certificate. Within 30 days after Tenant's receipt of Landlord's written request, Tenant shall execute and deliver to Landlord a statement in substantially the form of the attached **Exhibit F** that (i) certifies that this Agreement is unmodified and in full force and effect (or, if modified, states the nature of the modification and certifies that this Agreement as so modified is in full force and effect) and the date to which Base Rent is paid in advance, if any, and (ii) acknowledges that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord or specifies such defaults if Tenant claims any.

Section 34. Holding Over.

If Tenant remains in possession of the Premises after the Expiration Date, that occupancy will be a tenancy from month-to-month and (i) for the first three (3) months of any such period holdover rent shall be at a Base Rent equal to the Base Rent payable during the month in which

the Expiration Date occurs and (ii) thereafter at a Base Rent equal to one hundred and fifty percent (150%) of the Base Rent payable during the month in which the Expiration Date occurs, and subject to all of the other terms and conditions of this Agreement.

Section 35. Assignment and Subletting. Except as expressly permitted below, Tenant may not transfer, assign or otherwise alienate its interest in the Premises without first obtaining Landlord's written consent and, if required by the terms of the Land Lease, the Master Landlord's written consent. Landlord may not unreasonably withhold or delay that consent. Tenant may, however, sublet all or any part of the Premises, upon written notice to Landlord, but without first obtaining Landlord's written consent as long as Tenant observes all relevant requirements set forth in the Land Lease. Tenant may also assign all or any part of its rights, sublet any part of the Premises, or delegate its duties, under this Agreement to an entity that controls, is controlled by, or is under common control with, Tenant, to the surviving corporation in a merger, consolidation or other reorganization involving Tenant, or to the purchaser of all or substantially all of Tenant's assets, without Landlord's written consent as long as Tenant observes all relevant requirements set forth in the Land Lease. Unless otherwise agreed to by Landlord, no subletting, assignment of rights or delegation of duties that Tenant may make will relieve Tenant from liability for the performance of the obligations Tenant undertakes under the terms of this Agreement.

This Agreement involves a lease of real property within the meaning of Section 365(b)(3) of the Bankruptcy Code, U.S.C. Section 101, et seq. (the "Bankruptcy Code"). In the event a bankruptcy case is filed by or against Tenant, and if Tenant assumes this Agreement and proposes to assign it pursuant to the provisions of the Bankruptcy Code to any person or entity who has made a bona fide offer to accept an assignment of this Agreement on terms acceptable to the Tenant, then notice of the proposed assignment, setting forth (i) the name and address of that person or entity, (ii) all of the terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord, to assure future performance under the Agreement, including, without limitation, the assurance referred to in Section 365(b)(3) of the Bankruptcy Code, shall be given to Landlord by the Tenant no later than twenty (20) days after receipt of the offer by the Tenant, but in any event no later than ten (10) days prior to the date that the Tenant makes application to a court of competent jurisdiction for authority and approval to enter into the assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the effective date of the proposed assignment, to accept an assignment of this Agreement upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by that person or entity, less any brokerage commissions which may be payable out of the consideration to be paid for the assignment of this Agreement.

Section 36. Change of Control. Tenant may immediately terminate this Agreement if, before the Commencement Date, any change in the majority decision-making authority, ownership or voting control of Landlord's capital stock or assets occurs or Landlord sells or assigns its interest in the Premises or in this Agreement. Tenant may also immediately terminate this Agreement if, after the Commencement Date, any change in the majority decision-making

authority, ownership or voting control of Landlord's capital stock or assets occurs or Landlord sells or assigns its interest in the Premises or in this Agreement and, as a result of the change, sale or assignment, a competitor of Tenant gains direct or indirect control of any part of the Premises and such default is not cured by Landlord within 10 days written notice from Tenant to Landlord and Landlord's mortgagee. Under circumstances other than those identified in the preceding sentence, Tenant may not terminate this Agreement following the Commencement Date because of a change in the majority decision-making authority, ownership or voting control of Landlord's capital stock or assets or because of a sale or assignment of Landlord's interest in the Premises or in this Agreement. Landlord must, however, notify Tenant in writing at least 30 days before the occurrence of any change in control of the decision-making authority, capital stock, business or assets of Landlord or any pending assignment or sale of Landlord's interest, whether occurring before or after the Commencement Date. Neither a mortgage or deed of trust encumbering Landlord's interest in the Premises nor a collateral assignment of that Landlord makes in order to secure the repayment of any indebtedness it incurs to finance the design and construction of the Improvements will entitle Tenant to terminate this Agreement on the authority of this **Section 36**. For purposes of this **Section 36**, a "competitor" of Tenant means any air or ground carrier offering express delivery or cargo transportation services on a for-hire basis or any person or entity that such a carrier directly or indirectly controls.

Section 37. Financial Information. Within one hundred and twenty (120) days after the end of each of fiscal year of Guarantor (as defined in Section 48 below), Tenant must cause to be provided to Landlord a financial statement of Guarantor prepared in accordance with generally accepted accounting principles and prepared by an independent, certified public accountant ("**Financial Report**"). Notwithstanding the preceding sentence, so long as (i) Tenant remains a subsidiary of Guarantor and (ii) Guarantor is a publicly traded corporation, Tenant shall have no obligation to cause such Financial Reports to be provided.

Section 38. Media Information Releases. Landlord shall obtain in each instance Tenant's prior written approval regarding the exact text and timing of news releases, articles, brochures, advertisements, prepared speeches and other information releases relating to Tenant's execution of this Agreement or any subsequent amendment of this Agreement, the terms of this Agreement, or the purpose for which Tenant is leasing the Premises. If, however, Landlord elects to market the Premises for sale or finance or refinance the Premises, Landlord or its agent may also disseminate without Tenant's approval marketing brochures, marketing materials or financial information that reveal Tenant's leasehold interest in the Premises and the terms of this Agreement and may furnish a copy of this Agreement to prospective purchasers or lenders. If Landlord uses an agent in conducting its negotiations with Tenant or solicits information from any prospective contractor or consultant or other third party for use in its negotiations with Tenant, Landlord shall require that such agent, prospective contractor, prospective consultant or other third (3rd) party also observe the foregoing restriction. Landlord's failure to observe the foregoing will constitute a default entitling Tenant to exercise all remedies available to it under the terms of this Agreement or at law or in equity. In the case of any threatened breach of the foregoing, Tenant may seek an injunction or other equitable relief to enforce the foregoing obligations on Landlord's part.

Section 39. Intentionally Omitted.

Section 40. Miscellaneous. (a) This Agreement inures to the benefit of and binds each of the parties and their respective heirs, administrators, successors and assigns.

(b) All section headings and captions used in this Agreement are purely for convenience and do not affect the interpretation of this Agreement.

(c) All Exhibits described in this Agreement are incorporated in and made a part of this Agreement, except that, if there is any inconsistency between this Agreement and the provisions of any Exhibit, the provisions of this Agreement control.

(d) This Agreement will be governed by and interpreted in accordance with the laws of the state where the Premises are located, and the parties submit to the jurisdiction of any appropriate court within that state for adjudication of disputes arising from this Agreement. The foregoing choice of jurisdiction is mandatory and not permissive in nature and precludes the possibility of litigation or trial in any jurisdiction other than as specified above. EACH PARTY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM THAT THE OTHER PARTY BRINGS WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE USE AND OCCUPANCY OF THE PREMISES. The party not prevailing in any litigation between Landlord and Tenant that relates to, or involves, this Agreement or Tenant's interest in the Premises shall pay the reasonable costs and expenses that the prevailing party, as designated by the court adjudicating the litigation, incurs in connection with that litigation, both at the trial and appellate levels, including, without limitation, attorneys' fees, the value of services provided by in-house counsel, witness fees, court costs, and interest accruing with respect to such costs from the date paid by the prevailing party through the date repaid to the prevailing party at the rate specified in Section 28, within ten days after the prevailing party's demand. The provisions of this Section 39(d) will survive the expiration of the Term or any earlier termination of this Agreement.

(e) Except as otherwise provided, the parties may amend this Agreement only by means of written agreements signed on behalf of Tenant and Landlord by their respective authorized signatories.

(f) This Agreement supersedes all prior understandings, representations, negotiations and correspondence between the parties and constitutes the entire agreement between them with respect to the matters described in this instrument. No course of dealing, course of performance or usage of trade will modify or affect this Agreement.

(g) The invalidity, illegality or unenforceability of any provision of this Agreement will not affect or impair the validity, legality and enforceability of the remaining provisions.

(h) The failure of either party at any time to require performance by the other of any provision of this Agreement will not affect that party's right to enforce that provision, nor will the waiver by either party of any breach of any provision of this Agreement constitute a waiver of any further breach of the same provision or any other provision.

(i) The parties may execute this Agreement in any number of counterparts and all those counterparts taken together will constitute a single agreement.

(j) All notices, approvals, requests, consents and other communications given, required or permitted in accordance with the terms of this Agreement must be in writing and must be hand-delivered or sent by facsimile transmission, Federal Express overnight service or United States certified or registered mail, return receipt requested. If a party delivers a notice by means of facsimile transmission, it must also send a copy of that notice by one of the other means specified above. The parties will consider notices given or delivered when received or when the recipient refuses proper delivery. The parties will address notices as follows:

If to Landlord:

Vendor#007512106
Preferred Development Madison, LLC
13865 W. Dixie Highway
North Miami, Florida 33161
Attention: Thomas R. Speno, Manager
Facsimile: () _____

With a copy to:
Preferred Development Madison, LLC
1723 Banks Road
Margate, FL 33063
Attention: Richard Speno
Facsimile: () _____

If to Tenant:

Federal Express Corporation
Attn.: Manager, Real Estate (#20-0295)
3680 Hacks Cross Road
Building H, 3rd Floor
Memphis, Tennessee 38125 Telephone: () _____

with a copy to:
Federal Express Corporation, Legal Department
3620 Hacks Cross Road, Building B, 3rd Floor
Memphis, Tennessee 38125
Attn: Managing Director, Business Transactions (#20-0295)
Telephone: (901) 434-8600

A party may change the address to which it wishes notices to be sent by delivering notice of the change of address to the other party in accordance with the terms of this **Section 40(j)**.

(k) At the time the parties execute this Agreement, the parties shall also execute a Memorandum of Lease in the form attached as **Exhibit H**. Promptly following that execution, Landlord shall cause that Memorandum of Lease to be recorded at its expense among the appropriate public records of the jurisdiction in which the Land is located, if allowed by the Land Lease, and shall furnish to Tenant a copy of the recorded instrument certified as being an accurate copy by the recording authority.

(l) For purposes of determining the amount of time a party would reasonably require to rectify a default through the exercise of prompt, diligent and continuous effort and applying **Sections 25 and 27** of this Agreement, the parties will take into account any delay that a party encounters in rectifying a default occurring by reason of acts or omissions on the part of the other party or those acting for or under the direction of the other party, casualties, condemnation, acts of God, inclement weather, acts of the public enemy, civil commotion, governmental embargo restrictions, action or inaction on the part of public utilities or local, state or federal governments affecting the rectification effort, non-availability or shortages of labor or materials, strikes, or lockouts. This **Section 39(l)** will not apply in any circumstance where its application will result in the occurrence of a default that will entitle Master Landlord to terminate the Land Lease.

(m) Except for determinations expressly described as being within the “absolute discretion” of the applicable party, neither Landlord nor Tenant may unreasonably withhold or delay any consent, approval or other determination for which provision is made in this Agreement, and determinations that are within the absolute discretion of a party may not be unreasonably delayed. If either party disagrees with any determination that the other makes (other than a determination within the absolute discretion of the determining party) and requests the reasons for that determination, the determining party shall furnish its reasons in writing and in reasonable detail within five business days following the request. Furthermore, in addition to the foregoing, whenever this Agreement grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations, make allocations or other determinations, or otherwise exercise rights or fulfill obligations, Landlord and Tenant shall act reasonably and in good faith and take no action that might result in the frustration of the reasonable expectations of a sophisticated landlord and sophisticated tenant concerning the benefits to be enjoyed under this Agreement.

(n) Landlord shall obtain in each instance Tenant's prior written approval regarding the exact text and timing of news releases, articles, brochures, advertisements, prepared speeches and other information releases relating to Tenant's execution of this Agreement or any subsequent amendment of this Agreement, the terms of this Agreement, or the purpose for which Tenant is leasing the Premises. If Landlord uses an agent in conducting its negotiations

with Tenant or solicits information from any prospective contractor or consultant or other third party for use in its negotiations with Tenant, Landlord shall require that such agent, prospective contractor, prospective consultant or other third party also observe the foregoing restriction. Landlord's failure to observe the foregoing will constitute a default entitling Tenant to exercise all remedies available to it under the terms of this Agreement or at law or in equity. In the case of any threatened breach of the foregoing, Tenant may seek an injunction or other equitable relief to enforce the foregoing obligations on Landlord's part.

Section 41. Time of Essence. Time is of the essence with respect to this Agreement. If the final day of any period of time described in this Agreement is a Saturday, Sunday or a legal holiday under the laws of the United States, the State of Tennessee or the State of Utah, that period is extended to the next day that is not a Saturday, Sunday or legal holiday.

Section 42. Validity of Agreement. This Agreement will not be valid or bind Tenant unless an officer of Tenant has signed it on behalf of Tenant and Tenant's counsel has manifested its approval of the legal form of this Agreement by initialing it in the space provided below.

Section 43. Required Provisions of Master Lease. All terms, covenants, and provisions of this Agreement and all rights, remedies, and options of Tenant under this Agreement are and shall at all times remain fully subject and subordinate in all respects to the Land Lease. If the Land Lease and Landlord's leasehold estate therein (the "**Leasehold Estate**") terminate, then this Agreement shall terminate. In that event, Tenant, only at the option and request of Landlord (except as Landlord has agreed otherwise in writing), shall attorn to Landlord and recognize Landlord as Tenant's direct landlord under this Agreement. Tenant shall execute and deliver, at any time and from time to time, upon the request of Tenant, Landlord, or any Landlord mortgagee, any instrument necessary or appropriate to evidence such attornment. Tenant appoints each of the foregoing as Tenant's attorney-in-fact, irrevocably, with full power of substitution, to execute and deliver any such instrument. This appointment is coupled with an interest and is irrevocable. Tenant waives any Law that may allow Tenant to terminate this Agreement or surrender possession of the demised sub-premises if the Land Lease terminates.

Section 44. Aviation Operations.

(a) Release. Tenant releases the Landlord and Master Landlord from any present or future liability whatsoever and covenants not to sue the Landlord or Master Landlord for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, air currents, electronic or other emissions or flight (including overflight of the Premises) occurring as a result of aviation or Airport or Airport-related operations at or otherwise associated with the Airport, said release and covenant to include, but not be limited to claims (known or unknown) for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that neither the Landlord or Master Landlord shall have no duty to avoid or mitigate such damages by, without limitation,

setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating Airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by governmental authority.

(b) Easement Reservation. The Master Landlord reserves from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said parcel of noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or MSN related operations at or otherwise associated with use of MSN. Tenant accepts the Premises subject to the risks and activities hereinabove described.

Section 45. Security.

(a) Maintenance. Tenant shall provide and maintain adequate security within and around the Premises and shall be responsible for monitoring the use of the Premises and preventing unauthorized access to or use of the same. Tenant shall take any action that may be required to insure compliance with those requirements promulgated by the Master Landlord acting in its regulatory capacity and by the United States Transportation Security Administration and Department of Homeland Security or other federal or state governmental agencies having jurisdiction relative to Airport security. Tenant shall also take any and all actions that may be required to insure compliance with all airport standards and directives and any requirement of the Master Landlord's Airport Public Safety and Security Manager or other authorized Master Landlord representative. Tenant shall at all times exercise control over any employee or vehicle at MSN. Tenant shall reimburse the Landlord the amount of any civil penalty or fine that may be assessed against the Landlord by any governmental agency for a violation of security rules or regulations which violation is caused by Tenant's failure to comply with security rules, regulations and other applicable security requirements.

(b) Noncompliance. If Landlord is deemed to be in noncompliance with any laws governing access to secure areas of MSN including the areas of the airfield, and said noncompliance is the result of the acts or omissions of the Tenant or of any of Tenant's employees, agents, or contractors or subcontractors, and such noncompliance results in a civil penalty action by the federal government against the Landlord, then in addition to any rights and remedies that the Landlord may have on account of such default of Tenant, Tenant agrees to reimburse the Landlord for all expenses, including reasonable attorney fees incurred by the Landlord in defending against the civil penalty action and for any civil penalty or settlement amount paid by the Landlord as a result of the civil penalty action. Landlord shall give Tenant reasonable notice of any allegation, investigation, or proposed or actual civil penalty sought for such noncompliance to the extent possible and Tenant may participate in such matter.

Section 46. Federal Government Inclusion.

(a) Government Agreements. Notwithstanding anything set forth herein to the

contrary, this Lease shall be subordinate to the provisions of any existing or future agreements between Landlord and/or the Dane County Wisconsin and the United States Government or other governmental authority relative to the operation or maintenance of MSN or the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the MSN to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority. Landlord agrees to provide Tenant with written advance notice of any provisions that would adversely modify the material terms of this Agreement.

(b) Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the MSN or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the MSN by the United States of America.

Section 47. Guaranty.

As a material inducement for Landlord to enter into this Lease with Tenant and as a condition precedent to Landlord's agreement to lease the Premises to Tenant, Tenant's parent corporation, FedEx Corporation, a Delaware corporation, (the "**Guarantor**") has agreed to guaranty the obligations of the Tenant. Simultaneously herewith, the Guarantor has executed the Guaranty annexed hereto as **Exhibit I** and made a part hereof.

{Signatures on Next Page}

The parties have signed this Agreement on the date first above written.

PREFERRED DEVELOPMENT MADISON, LLC,
a Florida limited liability company

FEDERAL EXPRESS CORPORATION
a Delaware corporation

By: _____

By: _____

Title: _____

Title: _____

("Landlord")

("Tenant")

Exhibit A-1

to that certain

Agreement

Between

("Landlord")

and

Federal Express Corporation ("Tenant")

Dated _____, 2020

DESCRIPTION OF THE LAND

Exhibit A-2

to that certain

Agreement

Between

("Landlord")

and

Federal Express Corporation ("Tenant")

Dated _____, 2020

LAND LEASE

Exhibit B
to that certain
Agreement
Between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

PRELIMINARY PLANS AND SPECIFICATIONS

Exhibit C
to that certain
Agreement
Between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

FINAL PLANS AND SPECIFICATIONS

The parties will attach a list describing the final plans and specifications when prepared and approved.

Exhibit D
to that certain
Agreement
Between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

FORM OF CHANGE ORDER

CHANGE ORDER

Agreement No. _____

Change Order Date: _____

To Landlord:

Address:

City/State:

As provided in your Lease Agreement with Federal Express Corporation dated _____, 2020, the following changes in the Work are made:

This Change Order when signed by the parties will have the following effect:

This Change Order in no other way alters the terms and conditions of the Lease Agreement, which are ratified and confirmed other than as amended by this Change Order.

FEDERAL EXPRESS CORPORATION

By: _____

By: _____

Title: _____
("Landlord")

Title: _____

By: _____

Title: _____
("Tenant")

[CHANGE ORDERS MUST BE EXECUTED ON BEHALF OF FEDEX EITHER BY A VICE PRESIDENT OF THE CORPORATION OR BY BOTH A REPRESENTATIVE OF THE FEDEX REAL ESTATE AND AIRPORT RELATIONS GROUP AND A REPRESENTATIVE OF THE FEDEX PROPERTIES PROJECT MANAGEMENT GROUP.]

Exhibit E-1
to that certain
Agreement
Between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

FORM OF ACKNOWLEDGMENT LETTER

ACKNOWLEDGMENT LETTER

Reference is made to that Lease Agreement (the "Lease") dated _____, 2020, between _____, as Landlord, and Federal Express Corporation, as Tenant. Terms that are defined in the Lease have the same meanings when used in this acknowledgment. The parties agree as follow:

1. Landlord has satisfactorily completed the construction of the Improvements, including, without limitation, the Building and parking areas, that Landlord undertook to build under the terms of the Lease, subject to the completion of the punch list items listed on the attachment to this acknowledgment.
2. Landlord has tendered possession of the Premises to Tenant and Tenant has accepted possession.
3. The Commencement Date of the Initial Term is _____, and the Expiration Date is _____.
4. The floor area of the Building, as completed, is _____ square feet.
5. The monthly Base Rent payable during the Initial Term is \$_____.
6. The terms and conditions of the Lease will continue in full force and effect and the parties ratify and confirm those terms and conditions.

By: _____

Witness

Title: _____

("Landlord")

FEDERAL EXPRESS CORPORATION

By: _____

Witness

Title: _____

("Tenant")

Exhibit F
to that certain
Agreement
Between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

FORM OF ESTOPPEL LETTER

ESTOPPEL CERTIFICATE

THIS ESTOPPEL CERTIFICATE is given as of the _____ day of _____, 2020, by FEDERAL EXPRESS CORPORATION ("Tenant") at the request of _____ ("Landlord") and _____[("Lender")][("Buyer")].

RECITALS

1. In accordance with the terms and provisions of a certain lease (the "Lease") dated _____, 2020, Tenant leased from Landlord certain premises (the "Leased Premises") located at _____, and more particularly described in the Lease.

2. [Landlord has obtained, or proposes to obtain, a loan ("Loan") to be evidenced by a promissory note ("Note") dated _____, 2020 in favor of Lender, which Note will be secured by a deed of trust or mortgage and assignment of rents.][Landlord proposes to sell the Leased Premises to Buyer.]

STATEMENTS

Tenant hereby confirms and represents that:

1. Tenant has accepted possession of the Leased Premises;
2. Improvements and space required to be furnished according to the Lease have been satisfactorily completed, except as follows:

_____;
3. Landlord has fulfilled all of its duties of an inducement nature and, to Tenant's knowledge, Landlord is not in default in the performance of any of the obligations it undertook under the terms of the Lease;
4. The Lease is in full force and effect and has not been modified or revised except as follows:

_____;
5. The term of the Lease commenced on _____ and expires on _____;

6. Tenant has [no]_____option[s] to extend the term of the Lease[for_____years each];
7. [Tenant has [deposited the sum of \$ _____ with Landlord to be held as a][not deposited any] security deposit [in accordance with the terms of the Lease][with Landlord], and Tenant is not entitled to credit for any other sums on deposit with Landlord;
8. The monthly base rental under the Lease is \$ _____ ;
9. All rent, charges or other payments due Landlord under the terms of the Lease have been paid through_____, 2020, and Tenant has not prepaid any rent or other charges more than 30 days in advance of the _____ dates on which that rent or those charges have become due under the terms of _____ the Lease;
10. Tenant knows of no claims, counterclaims, credits, defenses or set-offs that it currently has against Landlord in connection with the tenancy created by the Lease, nor is Tenant entitled to any concessions, rebate, allowance or free rent for any period after the date of this certificate;
11. To Tenant's knowledge, Landlord is not in default in respect of any of its obligations and no event has occurred, and no condition exists, that would permit Tenant to terminate the Lease with the passage of time, the giving of notice or both; and
12. Tenant has received no notice of an assignment, hypothecation or pledge of Landlord's interest in the Lease or the rents becoming payable under the terms of the Lease, with the exception of [the][a] pledge to [Lender] [_____].

IN WITNESS WHEREOF, Tenant has executed this Estoppel Certificate on the _____ day of _____, 2020.

FEDERAL EXPRESS CORPORATION

By: _____

Its: _____

("Tenant")

Exhibit G
to that certain
Agreement
Between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

FORM OF SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement") is entered into as of the day of _____, 2020, by and among FEDERAL EXPRESS CORPORATION ("Tenant"), _____ ("Borrower") and _____ ("Lender").

RECITALS:

A. Borrower owns certain real property (the "Premises") located in _____.

B. Lender has made or is planning to make a loan (the "Loan") to Borrower in the principal amount of \$_____. Borrower's obligation to repay the Loan is evidenced by its promissory note (the "Note"); the obligation to pay the indebtedness evidenced by the Note is secured by the lien of a deed of trust or mortgage (the "Mortgage") that encumbers title to the Premises. The Note, the Mortgage, this Agreement and all other documents evidencing, securing the repayment of, or relating to, the Loan are collectively referred to as the "Loan Documents."

C. Tenant and Borrower (as landlord) entered into a lease (the "Lease") dated _____, 2020, under the terms of which Borrower leased the Premises to Tenant.

D. Lender is willing to continue the Loan to Borrower if Tenant agrees to subordinate Tenant's rights under the Lease to the lien or charge of the Loan Documents and to attorn to Lender on the terms and conditions of this Agreement. Tenant is willing to agree to such subordination and attornment and other conditions if Lender agrees not to disturb Tenant's possession in accordance with the terms of the Lease, all as set forth more fully below.

AGREEMENTS:

The parties agree as follows:

1. Subordination. The Loan Documents and all supplements, amendments, modifications, renewals, replacements and extensions of and to them are and will remain at all times a lien or charge on the Premises prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of Tenant arising under its terms. Tenant subjects and subordinates the Lease, Tenant's leasehold estate and all rights and privileges arising in Tenant's favor under the terms of the Lease to the lien or charge of the Loan Documents in favor of Lender. Tenant consents to Borrower's execution and delivery of the Note and the Mortgage. Tenant further acknowledges that, in making disbursements in accordance with the Loan Documents, Lender has no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses them, and any application or use of such proceeds will not defeat the subordination that Tenant makes in this Agreement, in whole or in part.

2. Definitions of "Transfer of the Premises" and "Purchaser". The term "Transfer of

the Premises" means any transfer of Borrower's interest in the Premises by foreclosure or trustee's sale or as a result of any other action or proceedings for the enforcement of the Mortgage or any transfer by deed in lieu of foreclosure. The term "Purchaser" means any transferee, including Lender, that acquires Borrower's interest in the Premises as a result of a Transfer of the Premises, and all successors and assigns, including Lender, of that initial transferee.

3. Non-Disturbance. Notwithstanding any Transfer of the Premises, Lender's seizure of possession of the Premises, any other similar action to enforce the Mortgage, or any other action taken in connection with the Mortgage:

- (a) the holder or beneficiary of the Mortgage will not name or join Tenant in any foreclosure, trustee's sale or other proceeding to enforce the Mortgage unless an Event of Default, as defined in Section 25 of the Lease, has occurred and is continuing or the joinder is required by law in order to perfect the foreclosure, trustee's sale or other proceeding;
- (b) the enforcement of the Mortgage will not terminate the Lease or disturb Tenant in its possession and use of the Premises unless an Event of Default has occurred and is continuing; and
- (c) the leasehold estate granted by the Lease will not be affected in any manner so long as no Event of Default has occurred and is continuing and in no event neither Lender, if it becomes the Purchaser or if it takes possession of the Premises in accordance with the terms of the Mortgage, nor any other Purchaser will:
 - (i) be liable for any damages attributable to any act, omission, representation or warranty of any prior landlord (including Borrower);
 - (ii) be subject to any offset, counterclaim or defense that the parties have not specifically contemplated in the Lease and that Tenant may have against any prior landlord; or
 - (iii) be bound by any prepayment that Tenant makes more than 30 days in advance of the date on which the payment becomes due under the terms of the Lease or for any security deposit not actually delivered to Purchaser or by any modification or amendment of the Lease made without Lender's consent unless the Lease specifically contemplates the prepayment, amendment or modification and the parties observe all conditions set forth in the Lease that relate to the prepayment, amendment or modification.

The foregoing agreement will not affect Tenant's right to exercise or to continue to exercise after Purchaser succeeds to Borrower's interest in the Premises any remedy, including, without limitation, the offsetting of rent, that may be available to Tenant by virtue of any default that occurs in respect of the performance of Borrower's obligations under the terms of the Lease and of which

Tenant has given Lender written notice and an opportunity to rectify Borrower's default prior to Purchaser's succession to Borrower's interest. The foregoing agreement in Section 3(c)(iv) will also not affect Tenant's right to exercise or to continue to exercise the remedies set forth in Section 2 of the Lease if substantial completion of pre-occupancy construction work required of Landlord under the terms of the Lease does not timely occur.

4. Attornment. If any Transfer of the Premises occurs, the Purchaser will be bound to Tenant and Tenant will be bound to the Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease and any extensions or renewals of that term, whether occurring by reason of the exercise of any valid extension or renewal option contained in the Lease or otherwise, all with the same force and effect as if the Purchaser had been the original landlord designated in the Lease. Tenant attorns to the Purchaser, including Lender if it becomes the Purchaser, as the landlord under the Lease. Subject to the terms of Section 6 below, this attornment will be effective and self-operative without the execution of any further instruments, upon the Purchaser's succession to the landlord's interest under the terms of the Lease.

5. Use of Proceeds. So long as no Event of Default has occurred and is continuing and the Lease is in full force and effect according to its original terms or as amended with Lender's consent, Lender will (i) permit any proceeds paid in respect of the insurance Tenant maintains in force in accordance with the terms of Section 18(a)(1) of the Lease to be used for the restoration of the Premises and otherwise applied as provided in Section 20 of the Lease, and (ii) permit any condemnation award paid in connection with a taking of any part of the Premises or any proceeds of a sale made in lieu of condemnation of a part of the Premises to be used for the repair and alteration of the remainder of the Premises as provided in Section 21 of the Lease. Lender may, however, impose reasonable conditions on the time and manner of the disbursement of the insurance proceeds, condemnation awards or sales proceeds.

6. Default By Borrower If Borrower defaults in the performance of obligations it undertakes under the terms of the Loan Documents, Tenant will recognize the assignment of rents Borrower made to Lender in the Mortgage and will pay to Lender as assignee all rents that become due under the terms of the Lease after Tenant receives all of the following:

- (i) written notice from Lender that Borrower is in default under the terms of the Loan Documents;
- (ii) an IRS form W-9 that sets forth Lender's federal tax identification number;
- (iii) the addresses to which the Lender wishes Tenant to send notices to Lender and to which Lender wishes Tenant to remit Base Rent and other sums becoming due in accordance with the terms of the Lease; and
- (iv) such information regarding Lender that Tenant's internal policies and procedures may reasonably require and that Tenant requests within 10

business days after the date Tenant receives written notice from Lender of Borrower's default.

Moreover, if a Transfer of the Premises occurs, Tenant will pay to Purchaser all rents that become due under the terms of the Lease after Tenant receives all of the following from Purchaser:

- (i) written notice from Purchaser that Borrower is in default under the terms of the Loan Documents;
- (ii) an IRS form W-9 that sets forth Purchaser's federal tax identification number;
- (iii) the addresses to which the Purchaser wishes Tenant to send notices to Purchaser and to which Purchaser wishes Tenant to remit Base Rent and other sums becoming due in accordance with the terms of the Lease;
- (iv) such information regarding Purchaser that Tenant's internal policies and procedures may reasonably require and that Tenant requests within 10 business days after the date Tenant receives written notice from Purchaser of the Transfer of the Premises; and
- (v) a copy of the written agreement or agreements that evidence the Transfer of the Premises, including, if applicable, a copy of a recorded deed or assignment reflecting the transfer of Borrower's interest in the Premises to Purchaser (whether one deed or assignment or a chain of successive deeds or assignments, as applicable).

Borrower authorizes Tenant to accept the direction of Lender or the Purchaser and waives all claims against Tenant for any sums so paid at Lender's or Purchaser's direction. Lender, on behalf of itself and any Purchaser, acknowledges, however, that Tenant will be making payments of rent to Borrower by means of computer-generated checks or electronic funds transfers and that Tenant will require a period of time within which to re-program its accounts payable computer system to reflect Tenant's receipt of Lender's or Purchaser's direction. Consequently, Tenant will have no liability to Lender or Purchaser for any regularly scheduled installment of rent remitted to Borrower or any prior transferee of title to the Premises during the period that begins on the date of Tenant's receipt of Lender's or Purchaser's direction and that ends 30 days after that date. Tenant's payment of rents to Lender in accordance with the foregoing will continue until the first to occur of the following:

- (a) no further rent is due or payable under the terms of the Lease;
- (b) Lender gives Tenant notice that Borrower has rectified the default that existed in respect of its obligations under the terms of the Loan Documents and instructs Tenant to make subsequent remittances of the rent to Borrower; or

- (c) a Transfer of the Premises occurs and the Purchaser gives Tenant notice of that Transfer. The Purchaser will automatically succeed to Borrower's interest under the terms of the Lease as provided in Sections 3 and 4 above, after which time the rents and other benefits accruing in favor of Borrower under the terms of the Lease will be payable to the Purchaser as the holder of the leasehold estate in the Premises previously existing in favor of Borrower, subject to the terms of this Section 6.

7. Limitation on Lender's Performance. Nothing in this Agreement obligates Lender to perform any covenant made by Borrower as landlord in the Lease unless and until Lender obtains title to the Premises as Purchaser or takes possession of the Premises in accordance with the terms of the Mortgage, and then only during the time when Lender holds title to or possession of the Premises.

8. Tenant's Covenants. During the term of the Lease, without Lender's prior written consent, Tenant may not:

- (a) pay to any landlord (including Borrower) any installment of rent or Additional Rent more than one month in advance of the time it becomes due under the terms of the Lease; or
- (b) cancel, terminate or surrender the Lease, except through the exercise of a right expressly accorded to Tenant in the Lease; or
- (c) assign the Lease or sublet any portion of the Premises, except as expressly permitted without the landlord's consent in the Lease.

9. Notices of Default; Material Notices. Tenant must send to Lender a copy of any notice of default or similar statement connected with the Lease at the same time that it sends that notice or statement to Borrower. Borrower must also send to Lender copies of all material notices that it gives to Tenant in connection with the Lease. Tenant and Borrower will deliver those notices to Lender in the manner and at the addresses set forth below.

10. Limitation on Liability. Regardless of anything in the Lease or this Agreement apparently to the contrary, Tenant may not seek to satisfy any judgment that Tenant obtains by reason of the negligence of any Purchaser or any of its directors, officers, agents, employees or contractors or by reason of that Purchaser's failure to perform any of the obligations incumbent upon the landlord under the terms of the Lease from any source other than that Purchaser's

interest in the Premises and the revenue generated by the operation of the Premises, except as provided below. Tenant may, however, satisfy any such judgment by offsetting the amount of the judgment against rent becoming due under the terms of the Lease. The foregoing limitation on the sources of Tenant's recovery will not apply in those instances (i) where proceeds of any insurance

are available to satisfy the judgment, (ii) where Tenant obtains the judgment because of the Purchaser's misapplication of funds that an insurer or a condemning authority pays to the Purchaser and that the Purchaser must use for restoration of the Premises in accordance with the terms of the Lease, (iii) where Tenant obtains the judgment because of the Purchaser's misapplication of funds that Tenant pays to the Purchaser for remittance to a third party, such as a taxing authority, or (iv) where Tenant obtains the judgment because of the Purchaser's fraud. After application of the proceeds of any insurance that are available to satisfy a judgment that Tenant obtains by reason of the negligence of any Purchaser or any of its directors, officers, agents, employees or contractors or by reason of that Purchaser's failure to perform any of the obligations incumbent upon the landlord under the terms of the Lease, Tenant may not seek to satisfy the balance of such judgment remaining after such application from any source other than that Purchaser's interest in the Premises and the revenue generated by the operation of the Premises, except as expressly provided above. Nothing contained in this Section impairs, affects, lessens, abrogates or otherwise modifies the obligations of Borrower to Tenant under the terms of the Lease.

11. Lender's Rights to Cure Default. If any act or omission by Borrower gives Tenant the right to terminate the Lease or to claim a partial or total eviction, Tenant may not exercise that right or make that claim until it has given Lender written notice of the occurrence of that act or omission and Lender has failed to rectify the condition giving rise to that right or that claim within (i) 10 days, if Lender can accomplish the rectification by the mere payment of money, (ii) 30 days, if Lender cannot accomplish the rectification by the mere payment of money and the rectification does not require Lender to obtain possession of the Premises, and (iii) a reasonable time, if Lender cannot accomplish the rectification by the mere payment of money, the rectification requires Lender to obtain possession of the Premises, and Lender both commences efforts to obtain possession of the Premises and to rectify the condition within 15 days after the delivery of Tenant's notice and diligently and continuously pursues those efforts. The foregoing does not obligate Lender to undertake the rectification of any default by Borrower in respect of the performance of its obligations under the terms of the Lease.

12. Termination of Agreement. If no Transfer of the Premises occurs, this Agreement becomes void upon payment in full of the indebtedness evidenced by the Note and the recordation of a release or satisfaction of the Mortgage.

13. Integration. This Agreement integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Lease and the leasehold estate that it creates to the lien or charge of the Loan Documents. This Agreement supersedes and cancels all oral negotiations and all prior writings relating to that subordination including any provisions of the Lease that provide for the subordination of the Lease. The parties intend this Agreement as the final expression of their agreement relating to the subordination of the Lease to the operation and effect of the Loan Documents. The parties may amend this Agreement only by means of a written agreement that the parties or their respective successors in interest sign.

14. Notices. All notices connected with this Agreement must be in writing and the parties must deliver those notices by means of messenger service, Federal Express overnight

delivery service, or by registered or certified United States mail, postage prepaid, sent to the recipient at its address specified below. Notices will be effective upon receipt or when the recipient refuses proper delivery. Any party may change its address for the delivery of notices connected with this Agreement by delivering notice to all other parties in accordance with this Section. Service of any notice on any one Borrower will be effective service on Borrower for all purposes.

To Lender: _____

Attn: _____
Telephone: _____

To Borrower: _____

Attn: _____
Telephone: _____
Fax: _____

with a copy to:

Telephone: _____

To Tenant: Federal Express Corporation
3680 Hacks Cross Road
Building H, 3rd Floor
Memphis, Tennessee 38125
Attn: Manager, Real Estate (#_____)

with a copy to:
Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, Tennessee 38125
Attn: Managing Director,

15. Attorneys' Fees. If any lawsuit or arbitration arising out of or relating to this Agreement commences, the prevailing party is entitled to recover from each other party, in addition to costs and expenses otherwise allowed by law, such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees in the action or arbitration, including the reasonable value of services rendered by in-house counsel.

16. Miscellaneous Provisions. This Agreement inures to the benefit of and binds the parties and their respective successors and assigns. The laws of the state where the Premises are located, without regard to the choice of law rules of that State, will govern the interpretation and enforcement of this Agreement. As used in this Agreement, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

TENANT: FEDERAL EXPRESS CORPORATION,
a Delaware Corporation

By: _____
Name: _____
Title: _____

BORROWER: _____
a _____

By: _____
Name: _____
Title: _____

LENDER:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On _____ before me, _____, a Notary Public in and for the State of _____, personally appeared _____ [and _____], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] authorized [capacity/capacities], and that by [his/her/their] signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.

(Signature)

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On _____ before me, _____, a Notary Public in and for the State of _____, personally appeared _____ [and _____], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] authorized [capacity/capacities], and that by [his/her/their] signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.

(Signature)

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On _____ before me, _____, a Notary Public in and for the State of _____, personally appeared _____ [and _____], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] authorized [capacity/capacities], and that by [his/her/their] signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.

(Signature)

Exhibit H
to that certain
Agreement
between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

FORM OF MEMORANDUM OF LEASE

Contract No. _____

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into as of the ____ day of _____, 2020, between **FEDERAL EXPRESS CORPORATION**, a Delaware corporation (“Tenant”) and _____, a _____ (“Landlord”).

RECITALS

The parties have entered into a certain Lease Agreement (the “Lease”) dated _____, 2020, by which Landlord demised to Tenant the property described below, which Lease is made a part of this Memorandum as fully and particularly as if set out verbatim.

The parties desire to enter into and record this Memorandum of Lease, in order to give notice of the parties' respective interests under the terms of the Lease.

For and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENTS

1. **Lease.** Subject to the reservations, terms and conditions set out in the Lease, Landlord leases to Tenant, and Tenant leases from Landlord the real property (the “**Property**”) described in the attached **Exhibit A** for an initial term that will commence on the date (the “Commencement Date”) Landlord substantially completes construction of the Improvements in accordance with the Final Plans and Specifications and Legal Requirements (as those terms are defined in the Lease), obtains a Certificate of Occupancy permitting Tenant's lawful occupancy of the Property, and tenders possession of the Property to Tenant and that will expire on the _____ anniversary of the day prior to that Commencement Date, if the Commencement Date occurs on the first day of a calendar month, or on the _____ anniversary of the last day of the calendar month in which the Commencement Date occurs, if the Commencement Date occurs on a day other than the first day of a calendar month, unless terminated earlier or extended in accordance with the terms of the Lease.

2. **Renewal.** Landlord grants to Tenant the option to renew the Lease for a renewal term 120 months upon certain terms and conditions more fully described in the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease on the day and year first above written.

FEDERAL EXPRESS CORPORATION _____

By: _____

By: _____

Title: _____
("Tenant")

Title: _____
("Landlord")

Date: _____

Date: _____

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On _____ before me, _____, a Notary Public in and for the State of _____, personally appeared _____ [and _____], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] authorized [capacity/capacities], and that by [his/her/their] signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.

(Signature)

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On _____ before me, _____, a Notary Public in and for the State of _____, personally appeared _____ [and _____], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] authorized [capacity/capacities], and that by [his/her/their] signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.

(Signature)

Exhibit I
to that certain
Agreement
between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

INTERIM CONSTRUCTION COMPLETION OBJECTIVES

By the date specified in Section 2(i) of the foregoing Agreement, Landlord must have caused the construction of the Improvements to have progressed so that:

1. Receipt of Notice to Proceed and all permits/approvals through Foundations complete: 45 days
2. Foundations complete to PEMB complete: 65 days
3. PEMB complete to Substantial Completion: 120 days

Exhibit J
to that certain
Agreement
between

("Landlord")

and

Federal Express Corporation
("Tenant")

Dated _____, 2020

GUARANTY

GUARANTY

As a material inducement to Landlord to enter into the attached Sublease Agreement between PREFERRED DEVELOPMENT MADISON, LLC, a Florida limited liability company, as Landlord and FEDERAL EXPRESS CORPORATION, a Delaware corporation, dated _____, 2020 (the "**Sublease**"), FEDEX CORPORATION, a Delaware corporation ("**Guarantor**") hereby unconditionally and irrevocably guarantees the complete and timely payment of all Rents and other sums payable by Tenant under the Sublease and performance of each obligation of Tenant under the Sublease including but not limited to Tenant's attornment obligations under Section 42 of the Sublease. This Guaranty is an absolute, primary, and continuing, guaranty of payment and performance of Tenant's obligations under the Sublease. Guarantor waives any right to require Landlord to (a) join Tenant with Guarantor in any suit arising under this Guaranty, (b) proceed against or exhaust any security given to secure Tenant's obligations under the Lease, or (c) pursue or exhaust any other remedy in Landlord's power. Until all of Tenant's obligations under the Sublease have been discharged in full, Guarantor shall have no right of subrogation against Tenant. The liability of Guarantor under this Guaranty will not be affected by (1) the release or discharge of Tenant from, or impairment, limitation or modification of, Tenant's obligations under the Sublease in any bankruptcy, receivership, or other debtor relief proceeding, whether state or federal and whether voluntary or involuntary; or (2) the rejection or disaffirmance of the Sublease in any such proceeding. This Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of Guarantor and shall inure to the benefit of Landlord's successors and assigns.

This Guaranty may only be modified, amended, changed or terminated by an agreement in writing signed by the Landlord and the Guarantor. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by Landlord and if so given, shall only be effective in the specific instance in which given. Capitalized terms not defined in this Guaranty are as defined in the Sublease.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of Delaware and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of Delaware. No defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of Delaware.

The Guarantor irrevocably agrees to submit to personal jurisdiction of any Delaware State or Federal Court sitting in Delaware in any action or proceeding arising out of this Guaranty and, in furtherance of such agreement, the Guarantor hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Guarantor in any such action or proceeding may be obtained within or without the jurisdiction of any court located in Delaware. The Guarantor irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such court and any claim that any such suit, action or proceeding

brought in such a court has been brought in an inconvenient forum. The Guarantor agrees that a final judgment in any such suit, action or proceeding brought in such a court, after all appropriate appeals, shall be conclusive and binding upon the Guarantor. Process may be served in any suit, action or proceeding of the nature referred to above by mailing copies thereof by registered or certified mail, postage prepaid, return receipt requested, to the address of the Tenant set forth in the Lease for Tenant or to any other address of which the Guarantor shall have given written notice to the Landlord. The Guarantor agrees that such service (i) shall be deemed in every respect effective service of process upon the Guarantor in any such suit, action or proceeding and (ii) shall to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the Guarantor. Nothing in this Guaranty shall affect the right of Landlord to serve process in any manner permitted by law or limit the right of Landlord to bring proceedings against the Guarantor in the courts of any appropriate jurisdiction or jurisdictions.

This Guaranty and the obligations hereunder shall automatically terminate and be of no further force and effect upon the termination of the obligations of Tenant set forth in the Sublease, except in respect of any claim by Landlord for damages, if any, due to such termination, and except as to matters arising prior to such termination, which all shall survive.

FEDEX CORPORATION, a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

PROJECT SUMMARY

Preferred Development Madison LLC is proposing to develop a FedEx Airport Ramp Sort Facility consisting of approximately 27,770 square feet to be located at the Dane County Regional Airport in Madison, WI. The FedEx facility will serve as an airline cargo terminal, container and package sort as well as pickup and delivery facility for FedEx package carriers. The approximate area to be improved includes a 2.84-acre leased boundary with vehicular access from Bowman Street.

Packages arrive containerized via FedEx aircraft and are offloaded and transported to the adjacent facility via tug and dolly. Various containers will pass through the facility directly to awaiting containerized transport vehicles (CTV) and transported to other FedEx and customer facilities throughout the region. The remainder of the containers will be unloaded within the FedEx facility, sorted and loaded into other containers, bulk truck and pickup/delivery vans for transportation to other FedEx and customer facilities. Packages leaving Madison will arrive at the FedEx facility and from there be loaded into containers, transported and loaded onto aircraft for transport to Memphis, TN.

The FedEx facility is planned to be a pre-engineered metal structure building. It will include three main elements 1) Warehouse area 2) Office area and 3) Vehicle Maintenance area, with Mezzanine. This facility will NOT serve as a retail Ship Center for the general public.

