

CITY OF NAPLES AIRPORT AUTHORITY LEASEHOLD AGREEMENT  
LAND LEASE  
NORTH QUADRANT LAND FILL SITE

1. PARTIES

THIS LEASE AGREEMENT (the "Lease"), made as of the \_\_\_\_ day of May, 2011 (the "Effective Date"), by and between the CITY OF NAPLES AIRPORT AUTHORITY, a political subdivision of the State of Florida (the "Authority"), whose address, telephone number, fax number and email are:

160 Aviation Drive North, Naples, FL 34104  
phone no. 239-643-0733 fax no. 239-643-4084  
e-mail: administration@flynaples.com

as Authority and the CITY OF NAPLES, a Florida Municipal Corporation (the "City"), whose address, telephone number, fax number and email are:

735 Eighth Street South, Naples, Florida 34102  
phone no. 239-213-1000, fax no. 239-213-1033  
e-mail: citymanager@naplesgov.com

(collectively, the "Parties").

RECITALS

WHEREAS, the City is the fee simple owner of the real property located in Collier County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof, which comprises a portion of the Naples Municipal Airport (the "Airport Parcel");

WHEREAS, the City has leased the Airport Parcel to the Authority pursuant to that certain Lease dated December 3, 1969, and recorded at Official Records Book 488, Page 227, of the Public Records of Collier County, Florida (the "Airport Lease");

WHEREAS, the Airport Lease is for a term of ninety-nine (99) years and thus expires on December 3, 2068 (the "Airport Lease Termination Date");

WHEREAS, the City provides solid waste service (including the collection of recyclable materials) to residential and commercial customers within the limits of the City of Naples;

WHEREAS, the City has requested to lease from Authority a portion of the Airport Property (being a 16 +/- acre parcel) generally depicted and legally described on Exhibit "B" attached hereto and made a part hereof (the "Leased Premises") but in no event including any land west of Corporate Flight Drive;

WHEREAS, as the Leased Premises are not included within the future development plans for the Authority, Authority has agreed to lease the Leased Premises to City; and

WHEREAS, a portion of the Leased Premises are currently leased by Collier County, a Florida municipal corporation (the "County") pursuant to a lease agreement entered into by and between the Authority and the County (the "County Lease").

NOW, THEREFORE, for and in consideration of the mutual covenants and premises provided herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

#### 1. RECITALS.

The foregoing recitals are true and correct and are hereby incorporated by reference as if fully set forth herein.

#### 2. PURPOSE.

The purpose of this Lease is for the Authority to lease the Leased Premises to the City for the limited purposes of (i) the development of the Leased Premises (including clearing the land, demolishing existing structures and constructing improvements) for use as a garbage collection and recycle transfer facility for solid waste, vegetative waste, and construction material, only when in compliance with all federal, state and local laws and ordinances and when in compliance with all applicable environmental standards and guidelines, (ii) the temporary storage of hurricane, horticulture and construction debris, (iii) the construction (and use) of an enclosed recycling facility (and related facilities), and (iv) the storage of equipment and vehicles.

#### 3. STATEMENT OF LEASE.

In consideration of the service in lieu of rent and the faithful performance by City of the terms, conditions, and covenants herein contained, Authority does hereby lease to City the Leased Premises together with any improvements now existing or hereafter constructed thereon, as shown and described on Exhibit "B."

#### 4. LEASE TERM.

The Leased Premises are leased to City for a term of thirty (30) years. The term of this Lease, (the "Lease Term") shall commence upon the Effective Date and shall continue uninterrupted for thirty (30) years thereafter, unless the Lease Term shall be sooner terminated as hereinafter provided.

## 5. RECYCLING AND POST-DISASTER SERVICES IN LIEU OF RENT.

In lieu of an annual lease payment to the Authority, the City shall provide recycle material collection services to property owned and operated by the Authority. Furthermore, the City shall assist the Authority in a post-disaster recovery in order to provide the restoration of services provided by the Authority. Such assistance shall include application and compliance monitoring as required by the Florida Department of Environmental Services for temporary storage of storm debris.

The Authority acknowledges and agrees that the foregoing represents good and valuable consideration from the City and that the same is intended to be in lieu of the City's obligation to make monetary rent payments under this Lease. Except as may be otherwise expressly set forth in this Lease, City shall not be required to pay any other fees, costs or expenses (of whatever kind or nature) pursuant to this Lease.

## 6. CANCELLATION.

The Authority reserves the right to cancel and terminate all or portions of this Lease, upon giving City not less than twelve (12) months' written notice, if cancellation is deemed necessary by Authority to implement any phase or portion of any Airport Master Plan adopted by Authority. However, Authority agrees that before such Lease cancellation it may make available and offer to City, for the balance of the Lease Term, upon the same terms and conditions as set forth in this Lease, premises located within the Airport, including structures and improvements, equal to or greater in size than the area of the Leased Premises. After the Authority gives City notice of its intent to relocate City pursuant to this provision, Authority shall elect one of the following options:

A. Relocation. In the event that the Authority in its sole discretion elects to relocate City pursuant to this provision, the actual out-of-pocket costs of moving City's equipment and other property to the new location shall be paid by Authority.

B. Termination. The Authority may terminate this Lease, in which case, as its exclusive remedy, and in lieu of any other claims for costs, expenses and damages of any kind related to the proposed relocation and Authority's election to terminate, the City shall receive a payment from the Authority, equal to an amount calculated as follows:

(1) The amount paid by the City for the hard construction costs of the permanent improvements, constructed on the Leased Premises, shall be multiplied by a fraction, the numerator of which will be the number of months then remaining on the lease term (not including any extension or renewal thereof) and the denominator of which will be three hundred sixty (360) months, less all amounts City owes the Authority of whatever kind or nature whether due or not, liquidated or unliquidated, and the resulting figure shall be the amount that the Authority will pay to City.

(2) For example, assuming \$330,000.00 hard construction cost and 10 years remaining on the Lease upon its termination:  $\$330,000.00 \times 120/360 = \$110,000.00$ .

City hereby waives, disclaims and releases any and all claims for costs, expenses and damages against the Authority, except for this payment.

## 7. PERMITTED USE OF PREMISES.

City, upon the faithful performance of such covenants, agreements and conditions required by law, or this Lease including without limitation City's diligent collection of garbage and trash from the Authority and the proper disposal thereof, shall and may, peaceably enjoy the Leased Premises. Such quiet enjoyment is conditioned upon City adhering to the following terms:

A. Permitted Use of Leased Premises. The City shall be permitted to utilize the Leased Premises for only the following purposes: (i) the development of the Leased Premises (including clearing the land, demolishing existing structures and constructing improvements) for use as a garbage collection and recycle transfer facility for solid waste, vegetative waste, and construction material, only when in compliance with all federal, state and local laws and ordinances and when in compliance with all applicable environmental standards and guidelines, (ii) temporary storage of hurricane, horticulture and construction debris, (iii) the construction (and use) of an enclosed recycling facility (and related facilities), (iv) storage of equipment and vehicles, and (v) all uses incidental or related thereto, as approved by the Authority in writing (collectively, the "Permitted Uses").

B. Non-Exclusive Use. City, as well as City's agents, employees, and customers, are permitted non-exclusive use of all roads, rights-of-way and driveways to and from the Leased Premises in common with other airport users. City has the right to free access, ingress to and egress from the Leased Premises. The Authority may, at any time, temporarily or permanently close or consent to the closing of any roadway or other right-of-way for such access, ingress or other area of the Leased Premises presently or hereafter used as such. In such a case, a means of access, ingress and egress reasonably equivalent to that formerly provided shall be substituted and concurrently made available.

## 8. LIMITS ON USE

A. Aeronautical Uses. City shall not engage in any aeronautical activities.

B. Protection of the Environment. City agrees that it will not use, nor permit the Leased Premises to be used, for any unlawful or environmentally hazardous purpose, defined to include conduct and activity prohibited by Federal, State, local law or ordinance.

C. Improvements. City may construct, install, erect and maintain buildings or other permanent improvements on the Leased Premises, but only in accordance with plans and specifications which have first been approved in writing by the Authority, and in accordance with ordinances, guidelines, rules and regulations of the Federal Aviation Administration (the "FAA"), the Authority, the City of Naples Comprehensive Development Code requirements, and other governmental agencies having jurisdiction over the land constituting the Leased Premises.

## 9. CONSTRUCTION ACTIVITY.

The City may, at any time and from time to time after written approval of the Authority, erect, maintain, alter, remodel, demolish, rebuild, replace and remove buildings and other improvements on the Leased Premises. Prior to commencing the construction of any improvements, the City shall deliver to the Authority a site plan depicting the improvements and the location thereof within the Leased Premises together with all drawings, plans and specifications applicable thereto (collectively, the "Plans and Specs"). The Authority shall provide written notice of any objections to the Plans and Specs within thirty (30) days of receipt from the City, failing which the same shall be deemed to have been approved by the Authority. The foregoing notwithstanding, the Authority's right to object to the Plans and Specs shall be limited to any matters that are in violation of applicable laws including, without limitation, FAA laws (or other regulations applicable to the airport), zoning laws, SFWMD regulations or any other laws or ordinances applicable to the Leased Premises. All construction of improvements must conform with the approved Plans and Specs and shall be constructed or installed in accordance with all applicable statutes, ordinances, building codes, and rules and regulations of the Authority, and any other authority that may have jurisdiction over the Leased Premises. City is solely responsible for determining and obtaining all necessary permits and approvals, and for paying any and all fees required, for the construction. The Authority's approval of City's plans and specifications does not constitute a representation or warranty as to its conformity with City of Naples building standards, codes or zoning.

Prior to commencing construction the City shall comply with the following provisions:

A. Alterations. It is expressly agreed that in the event that the City intends to make external alterations to existing improvements on the Leased Premises, it shall provide the Authority with sixty (60) days written notice prior to the date intended for the commencement of such alterations to permit Authority time to review and consider the planned alterations before making any final determination in connection therewith.

B. Inspection and Acceptance. City shall obtain building permits and approvals required. All improvements including, but not limited to, buildings, site preparation, sub-grade preparation, paving, drainage, and overall development of the premises, shall be subject to inspection, testing, and acceptance in accordance with applicable law.

C. Engineering. City shall set the necessary boundary stakes on the Leased Premises and shall provide any surveys required for the design of the area paving. Any material deviation from the approved Plans and Specification must have prior approval by the Authority (subject to the limitations set forth above) and any required governmental agency.

D. Utilities. Upon the prior written approval by the Authority, City may install other utilities on the Leased Premises at its own cost and expense, including all connection, inspection, and service fees. All utilities must be installed underground, unless agreed to in writing by the Authority. The Authority may negotiate with City for the over sizing or extension of utilities to serve other parcels on the Airport Parcel.

E. Paving and Concrete. Any roadway access must be in accordance with the Florida Department of Transportation standards as set forth in the "Manual on Uniform Standards" for comparable construction. Construction of concrete building slabs will be designed to accommodate building loads and heavy truck loads, as applicable.

F. Finish Site Grading. City shall perform, at City's expense, all finish grading of the Leased Premises.

G. Frontage Clearances. City must construct the improvements so that all frontages and clearance of the improvements are in compliance with City of Naples and County standards and so they do not encroach upon any building restriction line.

H. Transfer of Reclaimed Material by the Authority to the Leased Premises. The Authority reserves the right at anytime during the Lease Term to remove solid waste material from the approximately 7.5 acre parcel west of Corporate Flight Drive and deposit such reclaimed material on the Leased Premises. The Authority shall provide the City with three (3) months prior written notice of its intention to transfer the reclaimed waste material to the Leased Premises and City shall fully cooperate in the transfer process. The City and the Authority shall coordinate in the transfer process to minimize disruption to the City's activities on its Leased Premises.

Notwithstanding anything in this Lease to the contrary, it is expressly understood and agreed by the Parties that any buildings, improvements, fixtures, machinery and equipment of whatsoever nature at any time constructed, placed or maintained upon any part of the Leased Premises shall be and remain the sole and exclusive property of the City during the Lease Term. The City shall have the right at any time to remove any and all buildings, improvements, fixtures and equipment owned or placed by the City in, under or upon the Leased Premises.

## 10. DISCHARGE OF LIENS.

City shall not cause or allow any Lis Pendens, construction, labor, mechanic's or materialman's lien to be filed against the Leased Premises, the Authority or the Authority's real or personal property. In the event of the filing of any lien, or any other

charge whatsoever against the Leased Premises, the Authority or its property, City shall immediately take all necessary action to secure the release of same and shall provide, at City's expense, all bonds, security or undertakings to accomplish the release of such liens. In the event City fails to secure the release of any such liens within forty five (45) days of the date the City is notified of the same, the Authority shall have the right, but not the duty or obligation, to take any action it deems appropriate to secure the release of any such lien including paying the underlying obligation to the lienor. To the extent permitted by law, City agrees to indemnify and hold the Authority harmless from all liability, damages associated with this provision, expense and costs including reasonable attorney's fees.

## 11. RULES AND REGULATIONS.

City shall observe and comply with, at its own expense, all laws, policies, ordinances, rules, and regulations promulgated by the Authority and any appropriate City, County, State, or Federal authority or agency having jurisdiction over the Airport and the Leased Premises during the Lease Term.

## 12. AIRPORT OPERATIONS.

A. Conduct of Business by City. In the use of the Leased Premises pursuant to this Lease, City shall conduct its operations in a environmentally safe, legal, honest, orderly and proper manner so as not to interfere with the rights and privileges of others at the Airport and shall be responsible for the conduct of its employees and invitees. Upon receipt of complaints about the conduct of its business, City agrees to cooperate immediately to address such complaints and correct any improper conduct.

B. Airport Hazards. City agrees to refrain from any act or omission which would interfere with or adversely affect the operation or maintenance of the Airport, disturb the quiet enjoyment of the use of the Airport Parcel or surrounding property or otherwise constitute an Airport hazard. Activities which may constitute airport hazards including but not limited to any activity on the Leased Premises which directly or indirectly attracts birds or other wildlife, produces unlawful amounts or levels of chemical, biological or electromagnetic radiation, air pollution (gasses, particulate matter, odors, fumes, smoke or dust), water pollution, excessive noise, glare, heat emissions, radioactivity, electronic or radio interference with navigation and communication facilities for the operation of the Airport and its use by aircraft, vibration, prop-wash, or jet blast, or which is hazardous or dangerous by reason or risk of explosion, fire, or harmful emissions.

## 13. CONDITION OF PREMISES.

A. Phase II Environmental Site Assessment. The Authority and the City agree that on or about the Effective Date a Phase II Environmental Site Assessment (the "Base Line Phase II") will be conducted by the Parties. The Base Line Phase II shall establish a base line for the environmental condition of the Leased Premises on the

date thereof. The Parties shall sign the Phase II indicating their agreement that it accurately sets forth the environmental condition of the Leased Premises.

One (1) year prior to the expiration of this Lease, if this Lease runs to the Lease Term or within one (1) year after this Lease is terminated by either party prior to term specified in Section 4 above, the Parties shall conduct a second Phase II Environmental Site Assessment (the "Termination Phase II"). The Authority shall compare the Base Line Phase II to the Termination Phase II to establish the increase in contamination caused by the City's activities. The City shall be responsible for any contamination of the Leased Premises occurring during City's tenancy whether or not due to the acts or omissions of the City, its officers, employees, business invitees, subtenants or assigns, and shall decontaminate and clean-up the Leased Premises at its own expense. The City shall document the clean-up or decontamination and provide to the Authority satisfactory evidence that the Leased Premises is no longer contaminated above the Base Line Phase II. The Leased Premises shall not be deemed to be decontaminated until the Authority so states in a written document to City. Any expense incurred by the Authority in clean-up or decontamination shall be paid by the City.

B. City Accepts Leased Premises "As Is". City intends and agrees to improve Leased Premises and accepts the Leased Premises, and any improvements and appurtenances thereto, in addition to the land in its present "as is" condition as suitable for the purpose for which the Leased Premises are leased.

C. No Liability. The Authority shall not be liable for any damages or loss suffered by City, or for injuries to persons or Leased Premises occasioned by (1) lapses in service, (2) malfunctions, bursting, overflowing, or leaking of water or sewer pipes, or from heating, air conditioning or plumbing fixtures, or from (3) electric wires, (4) water leaks of any kind, or (5) erosion or deterioration of the roads, rights-of-way or driveways during the term of this Lease.

D. Non-Liability of City. City further acknowledges that no representations as to the condition of the soil, or the geology of the soil, on the Leased Premises, expressed or implied, have been made by the Authority, its officers, employees or agents prior to or at the execution of this Lease other than those contained in the Base Line Phase II. Notwithstanding the foregoing, City, its officers, employees, agents, successors and assigns, will not be responsible for any damage to or contamination of the Leased Premises in the event that such damage or contamination is directly due to or caused by the act of the Authority, or its officers, employees, agents successors or assigns.

#### 14. FLAMMABLE MATERIALS.

Except as reasonably necessary or incidental to the City's use of the Leased Premises, flammable or explosive gases, liquids or solids shall not be allowed, kept or used on the Leased Premises. All such flammable materials shall only be delivered in amounts, and stored and used, as approved by the Authority in accordance with the rules of the Florida Inspection and Rating Bureau and all other applicable statutes,



guidelines, ordinances, rules and regulations in force and effect during the term of this Lease.

#### 15. WASTE, REPAIR, MAINTENANCE AND CLEANLINESS OF PREMISES.

City understands that good maintenance is an on-going obligation, and agrees to the following:

A. Waste. City shall not commit, nor suffer to be committed, any waste or contamination on the Leased Premises, including physical damage to the Leased Premises, either negligent, intentional, or fail to repair and maintain the Leased Premises.

B. Repair and Paint. Throughout the Lease Term, City shall keep and maintain, at its own cost and expense, the Leased Premises and any improvements, fixtures, equipment, or landscaping thereon, in good order and repair, as reasonably determined by the Authority. City shall make all necessary repairs thereto, including, without limitation, all structural and non-structural repairs, including repairs to building interior, building exterior, paving, site improvements, fixtures, facilities and equipment, and shall replace all broken glass with glass of the same size and quality as that broken. All painted exterior surfaces and surfaces requiring treatment of any kind must be maintained in good condition and must be repainted or treated when reasonably required to preserve the structure and to maintain high standards of appearance at the Airport. All maintenance, repairs, and replacements must be of a quality substantially equal to the original materials and workmanship.

C. Failure to Repair and Maintain. In the event City fails to promptly undertake the obligations imposed herein within ninety (90) days of written notice by the Authority to the City, the Authority, in addition to the other remedies provided herein, shall have the right to enter on to the Leased Premises and effect such repairs and recover those costs and expenses from City.

D. Liquid and Solid Waste. City shall provide, as necessary, safe containment for solid waste and a separate drainage, collection, or separation system to ensure that no untreated liquid waste be discharged directly on adjacent property or into the Airport's storm drainage or sanitary system.

E. Damage Caused. City agrees to immediately report to the Authority any damage City, its customers, visitors, agents, contractors or employees cause to the runways, taxiways, taxi lanes, roads, rights-of-way and driveways to and from the Leased Premises which it uses in common with other Airport users. City shall reimburse the Authority for the actual cost of repairs to these common areas caused by the City or those using the Airport by or through City.

F. Fence. If applicable to the Leased Premises, City shall erect and, at all times during the term of this Lease, maintain an FAA-recommended fence as part of the

Airport perimeter fence line. The City's portion of the fence line shall be specified and approved by the Authority. The City's portion of the fence shall be constructed and maintained at City's sole cost and expense.

## 16. STORM WATER DISCHARGE

City assures that no contaminants, pollution or hazardous material of any type will be discharged onto adjacent property or into the storm water system at the Airport, and agrees to be held responsible for any discharge either by City or by any of City's subtenants, agents, or employees, during the entire Lease Term. Any fine or expense for remedial action required by the Authority, by any agency or agencies having jurisdiction, as a result of actions on or discharges from the Leased Premises, will be charged to City, and City shall immediately reimburse Authority for these costs, including attorneys' fees upon demand.

## 17. SECURITY

The Authority is under no obligation to provide security to the Leased Premises. City may, at City's sole expense, employ security personnel, install security lighting, or maintain alarm systems. If City elects to install outdoor lighting, City must request permission from the Authority prior to installation. If at any time during the Lease Term, additional security requirements are imposed on the Naples Municipal Airport by the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA"), or any other agency having jurisdiction over the Airport, City agrees to comply with such additional security requirements, at City's sole expense, upon notification of such requirements in writing by the Authority.

## 18. UTILITY SERVICES, TAXES/FEEES

A. Utilities. City shall pay for all utilities with respect to the Leased Premises or the occupancy thereof, including without limitation, all costs of electric, water, sewer, telephone and other services. City shall have the privilege, at its expense, to access the water, storm water management, electrical, and phone utility service facilities during the term of this Lease. Should City's operations require additional service facilities, City shall, at its expense, extend such facilities to the Leased Premises and pay the cost for all labor and materials. Authority's obligation under this provision shall be limited to the facilities presently constructed as of the date of this Lease, and nothing herein shall obligate Authority to provide any utility to City that is not presently conveniently available to the Authority within the Airport.

B. Taxes and Fees. City shall pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable to its operation or levied or assessed against the Leased Premises, or improvements thereto. City shall take out and keep current all licenses, permits and certificates (City, County, State and Federal) required for the conduct of its activities at and upon the Airport and Leased Premises, if any.

## 19. INDEMNIFICATION.

Each party shall be liable for losses for the acts or omissions of its own officers, employees, agents and contractors. To the extent permitted by law, each party shall save and hold harmless and indemnify the other and the other's past and present commissioners, council members, directors, managers, employees, agents, insurers, attorneys, representatives, successors, and assigns, in both their individual and representative capacities, of, from and against any and all liabilities, losses, damages, costs, expenses, causes of action, suits, penalties, claims, demands, and judgments of every kind and nature, including, without limitation, attorneys' fees and expenses of defense (through all appeals), arising out of or in connection with:

- A. any negligent act or intentional act of said party or said party's personnel, employees, subtenants, agents, suppliers, subcontractors, licensees, invitees or trespassers;
- B. the failure to fulfill any obligations of said party under this Lease;
- C. the use and possession of the Leased Premises.

The indemnification obligations under this Section shall survive the Lease termination. This Section shall also pertain to any claims brought against any party (and said party's past and present commissioners, council members, officers, employees, agents, insurers, attorneys, representatives, successors, and assigns), in both their individual and representative capacities, by the other party, any of the other party's personnel, employees, agents, suppliers, subcontractors, licensees, invitees or trespassers and anyone claiming by or through the other party. Each party's obligations under this Section shall not be limited in any way by City's limits of, or lack of, sufficient insurance protection. Nothing in this Lease shall constitute a waiver of sovereign immunity under Section 768.28, Florida Statutes, or any other applicable law or regulation.

## 20. INSURANCE REQUIREMENTS.

A. Insurance Coverage. City agrees to secure and maintain in force at its expense, a fire insurance policy with extended coverage endorsement, including vandalism and malicious mischief, covering the Leased Premises and all improvements thereon and contents thereof for full replacement value. City further agrees to secure and maintain, at its own expense, a general liability insurance, covering City's activities, its use of the Leased Premises, its operations at the Airport, including its liability under the indemnities herein. The liability insurance policy shall have coverage limitations providing no less than \$1,000,000.00 per person and \$1,000,000.00 per incident, naming the Authority as an additional covered party; and, shall not be subject to cancellation or change except after thirty (30) days prior written notice of such cancellation or change to the Authority.

B. Changes in Policy. City shall provide Authority with notice of any proposed change to any insurance policy. The Authority maintains the right to reject a proposed change in City's insurance coverage or carrier, and in the event of a policy cancellation, the City is required to obtain satisfactory successor insurance without lapse.

C. Authority as Additional Covered Party. All such insurance policies shall name Authority as an additional covered party.

D. Evidence of Insurance. City shall secure and deliver annually to Authority appropriate insurance certificates showing evidence of coverage as required hereunder.

E. Form of Policies. All policies of insurance required under this Section must be in a standard form and written by qualified insurance companies satisfactory to the Authority. All certificates of insurance shall state that "the City of Naples Airport Authority," is named as an additional covered party under the policy. Further, all policies and certificates must contain a provision that written notice of policy lapses, cancellation, and any changes shall be delivered to the Authority no fewer than thirty (30) days in advance of such effective date. All insurance policies shall contain a clause or endorsement by which the insurance carrier waives all rights of subrogation against Authority, except where the Authority or its agents are liable for a specific act of gross negligence.

F. Notice. City must give the Authority prompt and timely notice of any claim made or suit instituted of which it is aware that in any way directly, indirectly, contingently, or otherwise affects or might affect the Authority, and the Authority shall have the right to participate in the defense of the claim to the extent of its own interest.

G. Lapse of Insurance Coverage. If City shall fail to maintain insurance coverage as required, then the Authority may, but is not obligated to, obtain same and add the cost of such insurance to next due Lease payment. If the Authority does so, it may charge interest thereon at the rate of 18.0% per annum, or at the maximum interest rate permitted by law in the State of Florida, whichever is greater, provided, however, that this provision shall not be construed to create an obligation for City to pay a usurious rate of interest to the Authority, from the time of payment, which shall be added to the rental becoming due, and shall be collected as an additional charge.

## 21. ACCESS TO PREMISES.

City agrees to allow the Executive Director, and other duly authorized representative or agents of Authority, access at all reasonable times to the Leased Premises for the purpose of examining or inspecting same.

## 22. DEFAULT.

The following shall constitute an event of default on the part of City and cause for eviction:

A. Collection of Trash. Failure to collect and dispose of all trash, garbage and refuse as required by the Authority for five (5) business days after the City's receipt of written notification of such lapse.

B. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for ninety (90) business days after the City's receipt of written notification of such default. City shall have the right to extend this ninety (90) day cure period if the failure cannot be reasonably cured within the ninety (90) day period and if, in the reasonable determination of the Authority, the City aggressively and diligently attempted to cure the default within the ninety (90) day period and continues to, diligently address the failure with the intention of eliminating it;

## 23. AUTHORITY'S REMEDIES.

Upon default by the City, the Authority shall have the right to all remedies available at law or equity.

## 24. DESTRUCTION OF PREMISES.

In the event that the Leased Premises or the improvements located thereon shall be destroyed in whole or in part by fire, hurricane, flood or other casualty, then City shall have the right, in its sole and absolute discretion, to terminate this Lease by delivering written notice to the Authority within thirty (30) days following said damage or destruction, failing which this Lease shall continue in effect.

## 25. ATTORNEY FEES.

The prevailing party shall recover the attorney's fees and costs incurred to enforce any provision of this Lease including all costs of collection. Attorney's costs and expenses recoverable shall include all out of pocket expenses and shall not be limited by the Florida Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.

## 26. RIGHT OF FLIGHT OPERATIONS.

City acknowledges and agrees that the Authority reserves itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of the airspace for landing on, taking off from, maneuvering, or operating on the Airport.

City's use and enjoyment of the Leased Premises is subject to such noise and such other disturbance as may be inherent in such operations.

#### 27. AIRCRAFT HAZARDS.

City acknowledges and agrees that the Authority reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent City from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the Authority, would limit the usefulness of the Airport or constitute a hazard to aircraft.

#### 28. OBSTRUCTIONS.

City expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Leased Premises to such height as to comply with Federal Aviation Regulations, Part 77.

#### 29. NOTHING INTENDED TO LIMIT CITY'S RIGHTS AS FEE OWNER.

Nothing contained in this Lease is intended to limit or abridge the City's rights as the fee simple owner of the Airport Parcel or any rights inuring to the City under the Airport Lease.

#### 30. GOVERNING LAW.

This Lease shall be governed by and interpreted according to the laws of the State of Florida. Any litigation involving this Lease or the use and occupancy of the Leased Premises shall be filed and litigated in Collier County, Florida, in a non-jury proceeding. City and Authority hereby waives and releases any right they have or may have to a trial by jury of any issue.

#### 31. BINDING EFFECT.

This Lease shall be binding upon, and inure to the benefit of the parties hereto and their successors and such assigns as may be approved by the Authority. This reference does not authorize an assignment or subletting by City that is inconsistent with the restrictions on assignments and subletting, stated heretofore.

#### 32. REMEDIES CUMULATIVE-NO WAIVER.

The rights and remedies granted to Authority hereunder shall be deemed to be cumulative and non-exclusive. The failure by Authority at any time to assert any such right or remedy shall not be deemed to be a waiver, and shall not preclude the entitlement to or the assertion of such right or remedy at a later date.

### 33. NOTICE TO PARTIES.

It is understood and agreed between the parties hereto that written notice, mailed by certified mail, return receipt requested, or hand delivered to Authority or City or City's agent shall constitute proper and sufficient notice if sent to Authority addressed to: Executive Director, City of Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104, and if sent to City, addressed to the place designated in the opening paragraph of this Lease or at such other address as either party may designate to the other by notice in writing.

### 34. SEVERABILITY.

In the event any immaterial provision of this Lease be determined by a proper judicial authority to be unenforceable, such provision shall be considered separate and severable from the remaining provision of this Lease, which shall remain in force and be binding as though such unenforceable provision had not been included, unless the Authority in the reasonable exercise of its discretion determines that the provision found to be unenforceable goes to the essence of the Lease and its absence renders the Lease defective, then this Lease shall terminate and be of no further force or effect.

### 35. ENTIRE AGREEMENT.

This Lease constitutes the entire agreement between the parties hereto with respect to the subject matter contained in this Lease, supersedes any and all prior written or oral agreements or understandings, and may be modified only by a writing executed by the Parties hereto.

### 36. DOMINANT AGREEMENTS.

The Parties hereto expressly understand that this Lease is subordinate and subject to the Rules and Regulations, any and all lending, bonding, certificate of participation, Airport Master Lease and agreements between Authority and the Federal Aviation Administration, or between Authority and the State of Florida, or between Authority and City of Naples whether presently existing or hereinafter created. During times of war or national emergency, Authority shall have the right to lease the landing area or any part thereof to the United States Government for military or naval or similar use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. Any executed lease, including this one, shall be subordinate to the provisions of any existing or future Agreement between Authority and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

### 37. RADON DISCLOSURE.

Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

### 38. FAA GENERAL CIVIL RIGHTS PROVISION

The City, by execution of this Lease, assures the Authority that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefitting from Federal assistance. This Section obligates the City or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. This Section obligates the City or any transferee for the longer of the following periods: (i) the period during which the Airport Parcel is used by the Authority for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Authority or any transferee retains possession of the Airport Parcel.

### 39. HEADINGS.

The Section headings are included in this Lease for reference purposes only, and shall not be employed to interpret or to construe this Lease.

### 40. AUTHORIZATION.

Each person executing this Lease warrants and covenants that this Lease and his/her execution of it has been duly authorized and approved by his/her respective governing Board.

### 41. AMENDMENT.

This Lease shall not be altered, changed, or amended except by instrument in writing executed by the Authority and the City.



IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their appropriate officials, as of the day and year first above written.

**AUTHORITY:**

ATTEST:

**CITY OF NAPLES AIRPORT AUTHORITY,  
a political subdivision of the State of Florida**

\_\_\_\_\_  
Theodore D. Soliday  
Executive Director

By: \_\_\_\_\_  
Cormac Giblin  
Chairman

Approved as to form and  
legal sufficiency:

\_\_\_\_\_  
F. Joseph McMackin III  
Counsel to the Authority

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_\_ by Cormac Giblin, as Chairman of the City of Naples Airport Authority, who is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY SEAL

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

ATTEST:

**CITY OF NAPLES**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Bill Barnett, Mayor

Approved as to form and  
legal sufficiency:

\_\_\_\_\_  
Robert D. Pritt, City Attorney

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_ by Bill Barnett as Mayor of the City of Naples, who is personally known to me or  
has produced \_\_\_\_\_ as identification.

NOTARY SEAL

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