

**FLAGLER COUNTY  
GROUND LEASE**

**FLAGLER COUNTY**, a political subdivision of the State of Florida, (the “County”), by its execution hereof, hereby authorizes **Upstate Flagler I LLC** (the “Tenant”), a Florida Profit Corporation, to occupy space at the Flagler Executive Airport for the purpose or purposes and on the terms and conditions hereinafter stated. The County and the Tenant are hereinafter collectively referred to as the “Parties” and individually referred to as “Party”.

**1. Tenant.** The name, address and telephone number of the Tenant is as follows:

Name: **Upstate Flagler I LLC**  
Address: **8324 A1A S  
Saint Augustine, FL 32080**

Contact: **Brian Zaczek**  
Telephone: **(607) 867-4025** Fax: **N/A**  
E-mail **briansz@upstatecompany.com**

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**Tenant Financial Billing Contact(s):**

Name: **Janet Boni**  
Address: **1690 State Highway 8  
Mount Upton, NY 13809**

Telephone: **518-281-8136** Fax: **N/A**  
E-mail **janetb@upstatecompany.com**

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**2. Description of Leased Land.** The County hereby leases to Tenant, that certain vacant real property more specifically depicted and described on Exhibit “A” attached hereto and incorporated herein (hereinafter the “Leased Land”). The initial Exhibit A contains a conceptual graphic depiction of the Leased Land, which shall be replaced, and this Ground Lease re-recorded, upon completion of the as-built survey of the Leased Lands as required by Section 9.E(10) hereof. Tenant warrants and represents to County that it has examined the title and boundaries of the Leased Land and acknowledges that this Ground Lease is subject to any and all conditions, restrictions, encumbrances and limitations now

31 recorded against the Leased Land, including but not limited to, a Drainage Easement  
32 recorded at Official Records Book 836, Page 368, Public Records of Flagler County, and  
33 Tenant's satisfactory performance of all terms and conditions of this Ground Lease. The  
34 Leased Land shall include easements for water, sewage and electricity to the extent such  
35 utilities are not located in the public road abutting the Leased Lands. Pending installation  
36 of sewage lines in the abutting public road, the County will permit Tenant to maintain either  
37 a septic tank system or a sewage retaining system to be periodically pumped. Tenant's  
38 rights also include the rights to utilize the roadways, runways and taxiways of the airport  
39 in common with other users at the airport and subject to applicable FAA regulations.  
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41 **3. Use of Leased Land.** The general purpose of this Ground Lease is for Tenant to  
42 construct and to operate a facility for operations associated with, storage of aircraft, sale of  
43 aircraft and parts, and related services.  
44

45 A. Tenant shall have the right (but not the obligation) to provide the following  
46 services and products, within the Tenant's business discretion and without further approval  
47 of the County so long as the facilities, activities, and services are based within the footprint  
48 and structures of the Premises and any such service meets the Airport's Minimum  
49 Standards as amended from time to time:

- 50 (1) Aircraft Sales
- 51 (2) Aircraft Leasing and Rental
- 52 (3) Flight Training
- 53 (4) Aircraft Charter and Air Taxi
- 54 (5) Aircraft Management
- 55 (6) Aircraft storage to the public
- 56 (7) MRO and FBO without fuel sales
- 57 (8) Any other Aviation related service.

58 Said use is hereby deemed consistent with the Flagler Executive Airport Master Plan (the  
59 "Airport Master Plan") and all local rules, regulations, and ordinances. To effectuate this  
60 use, the Tenant is required to construct those Improvements as further specified in Section  
61 9 hereof on the Leased Land, which will have airside access. (Collectively, the Leased  
62 Land and the Improvements, as defined in Section 9.A. below, are hereinafter referred to  
63 as the "Premises"). Operations on the Premises shall comply with all Federal Aviation  
64 Administration (FAA), Florida Department of Transportation, Airport Master Plan, State  
65 and local rules, regulations and ordinances. The Tenant may also use the Premises for any  
66 other legal and lawful aviation related purpose that is approved, in writing, by the County's  
67 Administrator and providing such uses are in compliance with all federal, state, and local  
68 regulations, including but not limited to permitting and parking.  
69

70 B. The Parties agree that the manner in which the Premises are used,  
71 developed, operated and maintained is important to the County by reason of its interest in  
72 having a premier airport facility for use by County's residents and visitors to the County.  
73 Notwithstanding anything else herein to the contrary, the Tenant understands and agrees  
74 that during times of emergency, the County's Airport Director or designee is empowered  
75 to take action within his or her discretion that is necessary or desirable to protect the health,  
76 welfare, and safety of persons and property. During such an emergency, the County's

77 Airport Director may suspend normal rules, regulations, and protocols, or any part thereof,  
78 at his or her discretion and issue oral orders, rules, or protocols. Tenant's use of the  
79 Premises shall be subject to, and in conformance with, such emergency directives, and such  
80 directives shall not be considered a breach of the County's obligations under this  
81 Agreement. The Tenant therefore agrees to develop, operate and maintain the Premises  
82 consistent with the standards agreed upon herein.

83  
84 C. The Tenant shall not convert the use of the Premises, or any portion thereof,  
85 to any time-sharing, time interval or cooperative form of ownership, or to subject the  
86 Premises to any condominium regime. Furthermore, in no event shall the Premises be used  
87 for any purpose which would constitute a public or private nuisance or waste, including  
88 but not limited to, outside storage, salvage or junk, paint shop, automotive repair shop, fuel  
89 facilities, or any use not specifically permitted in this Ground Lease. The County shall have  
90 the right to terminate this Ground Lease in accordance with the procedures set forth in  
91 Paragraph 12(J), should Tenant utilize the Premises in any manner inconsistent with the  
92 approved uses set forth herein.

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94 D. Notwithstanding anything herein to the contrary, all activities conducted  
95 upon the Premises shall be under the exclusive control, management and direction of the  
96 Tenant. County will have no involvement or role in Tenant's business or operations in any  
97 manner or way and shall only occupy the status of a landlord.

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99 E. Tenant will have peaceable and quiet enjoyment of the Leased Land.

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101 F. In the event that runways or taxi lanes at the airport become defective or are  
102 damaged or destroyed such that any aircraft located in the hangar on the Leased Land are  
103 unable to fly to and from the airport for a period of more than five (5) calendar days, rent  
104 shall abate from the beginning of the month of such inability to fly until the end of the  
105 month during which the condition is remedied.

#### 106 107 **4. Rent.**

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109 A. **Rent Payments.** The Tenant agrees to pay the County monthly Rent, plus  
110 sales tax. Rent payments shall be paid in advance of the first day of each calendar month  
111 following the issuance of a Certificate of Occupancy for the building constructed pursuant  
112 to Section 9. The amount of the Rent payment shall be determined at the time the survey  
113 of the Premises is completed, and made part of Exhibit "A" and shall be calculated at the  
114 rate of \$1,089.00 per month/per acre or a portion thereof. (For example, the Rent payment  
115 for 1.43 acres shall be \$1,557.27 or \$1,089.00 x 1.43 acres).

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117 B. **Late Payment.** Penalties for late payment shall begin to accrue after the  
118 tenth calendar day of each month at the rate of five percent (5%) for each month the Rent  
119 payment is late. If by the first day of the month following the delinquency, the Rent remains  
120 unpaid, a penalty of ten percent (10%) of the total amount which remains unpaid shall be  
121 assessed and continue thereafter for each month, assessed at the same ten percent (10%)  
122 rate on the accrued delinquent outstanding amount until the arrearage is completely paid.

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C. **Annual Adjustment.** The Base Rent amounts payable herein shall be adjusted annually for the succeeding years of this Agreement, which adjustment shall be effective as of October 1<sup>st</sup> of each succeeding year, beginning with October 1, 2027. The adjustment applied for any increases shall be 3%. The County shall provide the Tenant with thirty (30) calendar days' notice of such adjustment, which shall become effective on the next Rental payment date following such thirty (30) calendar day notice.

**5. Effective Date/Term.**

A. The Ground Lease shall become effective on the date of signature of the last party to sign this Ground Lease ("Effective Date"), but rent payments shall not begin until Tenant receives a certificate of occupancy for the Improvements (the "Rent Commencement Date").

B. The Term of this Ground Lease for which rents are due will commence on the Rent Commencement Date and shall remain in full force and effect for a period of **thirty (30) years** thereafter, unless sooner terminated in accordance with the terms and provisions hereof. Upon the expiration of the initial term of thirty years, this Ground Lease will automatically renew for two additional ten (10) year renewal terms unless Tenant provides County notice of its intent to not renew at least one hundred eighty (180) days prior to the expiration of the then-current term.

**6. Amount of Insurance Required.** The following insurance is required to be carried by the Tenant, at its own cost and expense, throughout the Term of this Ground Lease. The amounts of such required coverages are:

Commercial General Liability (CGL)	\$1,000,000 combined single limits, per occurrence based, including fire legal liability of \$1,000,000, and property casualty insurance
Worker Compensation	As required by the laws of Florida

Prior to the Effective Date, the Tenant shall cause certificates of insurance to be furnished to the County, evidencing all such coverage and naming the County as an additional insured except with respect to Workers Compensation coverage. In addition, all such certificates shall provide that the policies shall not be cancelled, nor the limits thereunder reduced, without first providing at least thirty (30) calendar days' written notice thereof to the County. The above coverage amounts may be increased, if mandated by changes in state law.

159 7. **Security Deposit.** A security deposit in the amount of Five Thousand Dollars  
160 (\$5,000.00) is due upon execution of this Agreement. The security deposit payment shall  
161 be held by the County subject to the provisions of Paragraph 12(P).  
162

163 8. **Condition of Leased Land.** The Tenant has inspected the Leased Land and  
164 represents it is suitable for Tenant's proposed use, and Tenant acknowledges that County  
165 has made no representations or warranties relating to the suitability of the Leased Land for  
166 any particular use.  
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168 9. **Tenant's Obligation to Construct Improvements.**  
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170 A. The Tenant shall design, permit and construct in compliance with all  
171 governmental regulations, at its sole cost and expense, the following improvements: a  
172 metal approximately 450' X 115' hangar, 200' X 100' apron, 450' X 30' office space,  
173 associated taxilane, associated driveway and parking lot, and site improvements (the  
174 "Improvements") on the Leased Land. The Improvements shall include, but not be limited  
175 to, the construction of any and all utilities required by the Tenant for the Tenant's use of  
176 the Premises and the construction or installation of any access, parking, stormwater  
177 drainage, retention and detention system improvements.  
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179 B. The design for the Improvements is subject to the approval of the County  
180 Administrator which shall not be unreasonably withheld provided the plans and  
181 specifications are consistent with this Ground Lease. Upon written approval of the design,  
182 the plans and specifications for the Improvements to be constructed are subject to site plan  
183 and permitting approval by the County. The Tenant agrees: (i) to submit initial engineering  
184 site plans for its planned Improvements to the County's Airport Director and Planning  
185 Director within six (6) months of the Effective Date; (ii) to commence construction within  
186 six (6) months of the date of approval of the site plans by County; and (iii) to complete  
187 construction and obtain a Certificate of Occupancy for all Improvements within twelve  
188 (12) months, of the date of approval of the plans by the County, subject to the County's  
189 compliance with its obligations pursuant to Paragraph 9(C). It is expressly agreed that  
190 should the design plans not be submitted, or the construction not be commenced and/or  
191 completed within the time periods identified herein, this Ground Lease may be terminated  
192 by the County. The review and approval of the plans and specifications shall be subject to  
193 all applicable federal, state and local regulations, including but not limited to all zoning  
194 and airport development regulations. All Improvements shall be consistent with the  
195 County's Comprehensive Plan, Airport Master Plan, Building Codes, and Land  
196 Development Code. In the event of a conflict among such regulations, the more restrictive  
197 shall apply unless expressly waived by the County Administrator in writing based on  
198 discretion conferred by applicable legal requirements. Such plans, to include a FAA  
199 "Airspace Study Checklist" (On-Airport Construction), shall also be completed and  
200 submitted to the FAA for approval to the extent required by Federal and State law. All  
201 construction shall be performed in a workmanlike manner and shall meet all applicable  
202 federal, state and local laws, ordinances, codes and regulations.  
203

204 C. Prior to the County's issuance of a building permit for the Improvements,  
205 the Tenant must provide to the County a form of security for the Tenant's obligation to  
206 complete construction of the Improvements. Acceptable forms of security include, but are  
207 not limited to, a performance bond, personal guarantees by principals of the Tenant, or a  
208 letter of credit in the amount of the estimated improvement costs. The form of security  
209 must include a guaranteed source of funds to be available to the Tenant to complete  
210 construction of any unfinished Improvements. The security must be satisfactory to the  
211 County, in its sole discretion.

212 D. Utility and Service Charges. The Tenant, at its sole cost and expense, shall  
213 cause to be constructed all necessary utilities, communications and other services that are  
214 needed by the Tenant for Tenant's use of the Premises. The Tenant shall promptly pay all  
215 installation and monthly service charges for all utility, communication and other services  
216 furnished to, or consumed within, the Premises, including, but not limited to, electricity,  
217 cable, water, sewer, heat, telephone, janitorial, grounds maintenance, solid waste handling  
218 and removal, including garbage pickup and any use of commercial dumpsters, and all  
219 charges related to any of these services, including any required tap-in, connection and/or  
220 user fees.

221 E. During construction, the Tenant shall:

222 (1) Perform and complete the work (which includes the labor and  
223 materials required to complete construction of the Improvements on the Leased Land, in a  
224 good and workmanlike manner, in accordance with the plans and specifications and all  
225 applicable governmental regulations); and  
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228 (2) Select the means and methods of construction, using only adequate  
229 and safe procedures, methods and equipment; and  
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232 (3) Furnish, erect, maintain and remove any construction equipment and  
233 temporary structures that may be required to perform the work, be responsible for the  
234 safety, efficiency and adequacy of the construction equipment and methods used, and be  
235 responsible for any damage which may result from any failure of the construction  
236 equipment or any failure in the method of construction; and  
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238 (4) Provide all architectural and engineering services, scaffolding,  
239 hoists, temporary structures, light, heat, power, temporary utility connections, equipment,  
240 tools, and materials and whatever else may be required for the proper performance of the  
241 work; and  
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243 (5) Order and have delivered all materials required for the work and be  
244 responsible for properly securing, protecting and insuring the materials and making certain  
245 they remain in good condition; and  
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247 (6) Maintain the Premises in a clean and orderly condition at all times  
248 commensurate with the nature of the Airport, and promptly remove all paper, cartons and  
249 other debris from the Premises; and

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251 (7) Protect all work prior to its completion and acceptance; and

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253 (8) Preserve all property adjacent to and leading to the Leased Land,  
254 and restore and repair any such property damaged as a result of the construction of the  
255 Improvements; and

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257 (9) Implement and maintain in place at all times a comprehensive  
258 hurricane plan for the Premises and the work, and provide a copy of same to the County's  
259 Airport Director; and

260  
261 (10) Upon completion, deliver to the County's Airport Director an "as  
262 built" survey and "as built" plans and specifications for the Improvements; and

263  
264 (11) Upon completion, deliver to the County's Airport Director a copy  
265 of the final Certificate of Occupancy for the completed Improvements; and

266  
267 (12) Carry on any construction, maintenance or repair activity with  
268 diligence and dispatch and use diligent effort to complete the work in the shortest  
269 commercially reasonable time under the circumstances; and

270  
271 (13) At all times enforce discipline and good order among Tenant's  
272 employees and the general contractor at the Leased Land work site.

273  
274 **F. Changes to the Improvements.** After the Improvements have been  
275 completed, the Tenant will not make any material alterations or additions ("Changes") to  
276 the Improvements without the written consent of the County's Airport Director, which will  
277 not be unreasonably withheld. Any permitted Changes will be made in a good and  
278 workmanlike manner, in accordance with approved plans, if required, and in accordance  
279 with all governmental regulations. The Tenant's obligations during construction for the  
280 Improvements shall apply during construction of any Changes to the Improvements. Any  
281 such approved changes shall be deemed to be part of the Improvements contemplated by  
282 this Section.

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284 **G. Construction Agreements.** Any construction agreements entered into  
285 between the Tenant and a general contractor or other contractor in privity with the Tenant  
286 must provide that the County will not be liable for any work performed or to be performed  
287 on the Leased Land for the Tenant, nor shall they be liable for any of the financial  
288 consideration or other obligations under such agreements.

289  
290 **10. Ownership of Improvements.** During the Term of this Ground Lease, all  
291 Improvements, furnishings, inventory, machinery, and equipment constructed or installed  
292 on the Leased Land by the Tenant shall be the property of the Tenant, and the Tenant shall

293 have legal title thereto. Upon the expiration, or termination, of this Ground Lease, title to  
294 all permanent Improvements constructed on the Premises and any fixtures therein, except  
295 trade fixtures removed in accordance with Paragraphs 12(C) and 12(K)(3) of this Ground  
296 Lease, shall automatically revert to, and vest in, the County without necessity of any act by  
297 the Tenant. However, the Parties agree that, to confirm the automatic vesting of title as  
298 provided for herein, each will execute and deliver such further assurances and instruments  
299 of assignment and conveyance as may be reasonably required by the other for that purpose.

300 **11. Interest of County Not Subject to Liens.** It is mutually agreed that neither the fee  
301 simple title to the Leased Land, nor any interest of the County in the Premises, may be  
302 subject to liens of any nature arising by reason of any act or omission of the Tenant or any  
303 person claiming under, by or through the Tenant, including but not limited to, mortgage  
304 liens, mechanics' and materialmen's liens. If, because of the Tenant's act or omission, any  
305 construction lien, claim of lien or professional lien is filed pursuant to Chapter 713, Florida  
306 Statutes, or any successor law against the County on any portion of the Premises, or in the  
307 event any other type of lien is filed against the County on any portion of the Premises, the  
308 Tenant shall, at its own expense and cost, cause said liens to be discharged, released or  
309 satisfied within ninety (90) days from the date of County's written notice.

310 **12. General Terms and Conditions.**

311 **A. Repairs and Maintenance Generally.** The Tenant, at its own cost and  
312 expense, shall keep the Premises, together with such equipment, fixtures, furnishings,  
313 mechanical systems, and other property installed thereon and therein, in good condition  
314 and repair, in a clean and attractive condition, and free of impairment from physical  
315 deterioration and functional obsolescence. The Tenant shall be responsible for maintenance  
316 and for making repairs to all portions of the Premises during the Term of this Ground Lease.  
317 The Tenant shall use all reasonable precaution to prevent waste, damage or injury to the  
318 Premises. Should the Tenant fail to keep and maintain the Premises in good condition and  
319 repair or shall fail to use all reasonable precaution to prevent waste, damage or injury to  
320 the Premises, the Tenant shall be deemed to be in default, pursuant to Paragraph 12(J).

321 **B. Maintenance By Default.** In the event the Tenant does not cure the breach  
322 of its duty to maintain the Premises, the County shall have the option in its sole discretion  
323 to perform the maintenance and to recover such costs from the Tenant. The Tenant shall  
324 promptly pay or reimburse the County for the cost of any and all maintenance, replacement  
325 and repair which may be required to restore the Premises and any of its improvements,  
326 fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage  
327 caused by, the Tenant or any of its officers, employees, agents, invitees or licensees, or  
328 which otherwise results from the Tenant's use or occupancy of the Premises, reasonable  
329 use and wear excepted. The County shall have the right, at any time and from time to time,  
330 to cause maintenance to be performed and repairs to be made in and to the Premises and  
331 the improvements, fixtures, equipment and mechanical systems located therein, and the  
332 Term of this Ground Lease shall not be extended nor shall there be any abatement of the  
333 sums payable to the County hereunder by reason thereof. The Tenant shall promptly pay  
334 or reimburse the County for the cost to the County of any and all maintenance, replacement  
335 and repair which may be required to restore the Premises and any of its improvements,

336 fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage  
337 caused by, the Tenant or any of its officers, employees, agents, invitees or licensees, or  
338 which otherwise results from the Tenant's use or occupancy of the Premises. Any sums not  
339 paid by Tenant within thirty (30) days from the date of County's invoice(s) for its costs  
340 incurred under this subparagraph shall be treated as additional Rent owed to County by  
341 Tenant and shall be treated under the same provisions as are applicable to delinquent Rent  
342 payments. Further, the performance of maintenance and repair by the County shall in no  
343 event be construed as a waiver of the Tenant's duty to maintain and repair as herein  
344 provided.

345 **C. Tenant's Property.** Any and all property belonging to, or brought onto the  
346 Premises by, the Tenant or any of its officers, employees, agents, invitees or licensees shall  
347 be at the sole risk of the Tenant. The Tenant may place and install trade fixtures and other  
348 personal property on the Premises for use in connection with its operations hereunder. The  
349 Tenant shall, however, be responsible for the cost of repairing any damage to the Premises  
350 or any other improvements which are caused by the removal of any such trade fixtures and  
351 personal property.

352 **D. County's Right to Enter.** The County and its designated agents shall have  
353 the right to enter the Premises at any reasonable time upon reasonable notice for inspection,  
354 maintenance, repair, attending to emergencies or any other lawful purpose. In emergency  
355 situations, where loss or damage to the Premises is occurring or imminent, the County may  
356 enter any portion of the Premises for the purpose of controlling the emergency situation.

357 **E. Access.** The Tenant and its officers, employees, agents and invitees shall be  
358 subject to the Airport minimum standards as currently in effect or as may be amended along  
359 with all laws, rules and regulations of the County, State, or Federal Government, and have  
360 the right of ingress and egress to and from the Premises, as illustrated on Exhibit "B".

361 **F. Taxes and Assessments.** The Tenant shall pay, on or before the due date  
362 established therefor, all taxes, assessments (including, without limitation, storm water  
363 utility charges) and impact fees which are levied against or in connection with the Premises,  
364 the Tenant's interest therein and the property and improvements of the Tenant for the Term  
365 hereof or attributable to the Tenant's activities at the Premises or at the Airport. If the Term  
366 of this Ground Lease expires or is earlier terminated prior to the close of the tax year for  
367 which any such tax is payable, or if the term of this Ground Lease commences on a date  
368 other than the first day of such tax year, the Tenant shall be responsible for paying a  
369 percentage of the tax calculated by dividing the number of days that this Ground Lease was  
370 in effect during such tax year by the total number of days of the applicable tax year. If this  
371 Ground Lease is in effect for a period less than any entire period for which an assessment  
372 other than a tax is imposed, the Tenant shall pay a percentage of the assessment calculated  
373 by dividing the number of days this Ground Lease was in effect during that assessment  
374 period by the total number of days in the assessment period. The Tenant's obligations under  
375 this Paragraph 12(F) shall survive the expiration or earlier termination of this Ground  
376 Lease. Nothing contained herein shall be construed as a release or waiver on the part of  
377 the County, as a political subdivision of the State of Florida, of the right to assess, levy or

378 collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment  
379 which it may lawfully impose on the business or property of the Tenant.

380 **G. Rules and Regulations.** The Tenant covenants and agrees to observe and  
381 comply with all Airport minimum standards along with all laws, rules, and regulations of  
382 the County which now exist or may hereafter be promulgated or amended from time to  
383 time, governing conduct on and operations at the Airport and the use of its facilities. The  
384 Tenant further covenants and agrees to observe and comply with any and all valid and  
385 applicable requirements of all duly constituted public authorities and with all federal, state  
386 and local statutes, ordinances and regulations applicable to the Tenant, the Premises, or the  
387 Airport, including the Airport Rules and Regulations and the Airport Minimum Standards.  
388 In addition, the Tenant shall endeavor to comply with the Airport's Voluntary Noise  
389 Abatement Procedures. The Tenant agrees to pay or reimburse the County for any fines  
390 which may be assessed against the County as a result of the violation by the Tenant of any  
391 applicable regulation at the Airport, which payment shall be made by the Tenant within  
392 fifteen (15) calendar days from the date of the County's invoice for such amount and  
393 documentation showing that payment of such fine is the Tenant's responsibility hereunder.  
394 Any sums not timely paid shall be treated as additional Rent owed to County by Tenant  
395 and shall be treated under the same provisions as are applicable to delinquent Rent  
396 payments.

397 **H. Indemnification.** The Tenant agrees to indemnify, defend and hold  
398 harmless the County, and the members (including, without limitation, members of the  
399 County's Board of County Commissioners), officers, employees and agents of each, from  
400 and against liability (including, without limitation, liability under the Comprehensive  
401 Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq.,  
402 or any other federal, state or local environmental statute, ordinance regulation or rule),  
403 losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses  
404 (including all costs for investigation and defense thereof, including, but not limited to, court  
405 costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings  
406 and at both trial and appellate levels), which may be incurred by, charged to or recovered  
407 from any of the foregoing: (i) by reason or on account of damage to or destruction of any  
408 property of the County, or any property of, injury to or death of any person to the extent  
409 resulting from or arising out of the acts or omissions of the Tenant's officers, agents,  
410 employees, contractors, subcontractors, invitees or licensees, regardless of where the  
411 damage, destruction, injury or death occurred, unless such liability, loss, suit, claim,  
412 demand, judgment, damage, fine, penalty, cost or expense was proximately caused  
413 primarily by the County's negligence or by the joint negligence of the County and any  
414 person other than the Tenant or its officers, agents, employees, contractors, subcontractors,  
415 invitees or licensees, or (ii) to the extent arising out of the failure of the Tenant to keep,  
416 observe or perform any of the covenants or agreements in this Ground Lease to be kept,  
417 observed or performed by the Tenant. The provisions of this subparagraph shall survive  
418 the expiration or earlier termination of the Term of this Ground Lease with respect to any  
419 acts or omissions occurring during the Term of this Ground Lease.

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421 **I. Assignment, Subletting, and Mortgaging.**

422 (1) The Tenant may not assign this Ground Lease without the express  
423 prior written consent of the County, which shall not be unreasonably withheld.

424 (2) Subleasing. Tenant may sublease Hangar / Ramp Space where the  
425 subtenant is a provider of commercial aeronautical services and operates such aeronautical  
426 services from the hangar. Such sublease will be subject to the County's approval, which  
427 will not be unreasonably withheld. Any purported sublet without the express written  
428 consent of the County, and any failure to provide the County with a sublease, or  
429 amendments thereto, shall be considered void from its inception, and shall be grounds for  
430 the immediate termination of this Ground Lease. Any sublease or assignment shall  
431 incorporate and be subject to all the provisions in this Agreement; however, the County  
432 shall not be a party to a sublease. Moreover, no sublease shall relieve the Lessee of its  
433 obligations under this Agreement, including without limitation, the obligation to pay the  
434 rent provided for in this Agreement, and a default by a subtenant shall not relieve the  
435 Tenant from its obligations hereunder.

436 (3) Mortgaging. Tenant may grant a first mortgage lien in its leasehold  
437 interest to an institutional mortgagee subject to County's approval of such mortgagee,  
438 which shall not be unreasonably withheld. If Tenant enters into a leasehold mortgage with  
439 such an institutional mortgagee (an "Approved Mortgagee"), an assignment to such  
440 Approved Mortgagee (or its wholly owned subsidiary) occurring by reason of a deed-in-  
441 lieu of foreclosure or a foreclosure shall be permitted, provided that further assignment by  
442 the Approved Mortgagee (or by its subsidiary or any transfer of such subsidiary) shall  
443 require the approval of the County, which shall not be unreasonably withheld. Neither the  
444 County's interest in this Ground Lease nor its fee title to the lands demised hereunder shall  
445 be subordinate to any mortgage secured by Tenant's interest in this Ground Lease, and all  
446 rights acquired under such mortgage shall be subject to all the covenants, conditions and  
447 restrictions set forth in this Ground Lease and to all rights and interests of County herein.

448 In determining whether to consent to a proposed Approved Mortgagee or any  
449 assignment from such Approved Mortgagee, County will consider the following factors:  
450 i.) the financial capacity and credit-worthiness of the proposed mortgagee or assignee; ii.)  
451 in the case of an assignee, the experience of such assignee or its principals relates to the  
452 ability to perform the Tenant's obligations hereunder; and iii.) if the proposed use of the  
453 assignee is to be different, the compatibility with airport operations and applicable  
454 regulations.

455 County agrees that the name of the Approved Mortgagee may be added to the Loss  
456 Payable Endorsement of any insurance policies required to be carried by Tenant hereunder,  
457 on condition that the insurance proceeds are first to be applied toward the repair or  
458 restoration of the damaged Premises and/or any default hereunder and then to any default  
459 under the leasehold mortgage.

460 a. Notice to Mortgagee. If tenant shall mortgage this leasehold, or any  
461 part/s thereof, and if the holder of such mortgage shall, within thirty (30) days of its

462 execution, send to County a true copy thereof, together with written notice specifying the  
463 name and address of the Approved Mortgagee and the pertinent recording information with  
464 respect to such mortgage, County agrees that so long as any such leasehold mortgage  
465 remains unsatisfied of record or until written notice of satisfaction is given by holder to  
466 County, (i) there shall be no cancellation or modification of this Agreement by the joint  
467 action of the County and Tenant without prior notice to the Approved Mortgagee; and (ii)  
468 County shall, upon serving Tenant with any notice of default, simultaneously serve a copy  
469 of such notice upon the holder of the leasehold mortgage. The Approved Mortgagee shall  
470 thereupon have the same period, after service of such notice upon it **by both email and**  
471 **certified mail**, to remedy or cause to be remedied the defaults complained of to the  
472 satisfaction of the County, and the County shall accept such performance by or at the  
473 direction of such Approved Mortgagee as if the same had been done by Tenant.

474           b.       Mortgagee Cure of Default. While a leasehold mortgage remains  
475 unsatisfied of record or until written notice of satisfaction is given by the holder to County,  
476 if any default shall occur which, pursuant to any provision of this Agreement, entitles  
477 County to terminate this Agreement, if before the expiration of ten (10) days from the date  
478 of service of notice of termination upon the Approved Mortgagee, such Approved  
479 Mortgagee shall have paid County all rent and other payments provided for herein and then  
480 in default and shall have complied or shall commence the work of complying with all of  
481 the other requirements of this Agreement and shall prosecute the same to completion with  
482 reasonable diligence in the determination of the County, then in such event, County shall  
483 not be entitled to terminate this Agreement and any notice of termination theretofore given  
484 shall be void. County agrees that the Approved Mortgagee will not be obligated to cure  
485 defaults that are personal to Tenant, such as those in paragraph 12J(1)(d) thru (g).

486           c.       Rights of Mortgagee Upon Termination. County agrees that in the  
487 event of termination of this Agreement by reason of any default by Tenant, that County  
488 shall enter into a new lease of the demised premises with the Approved Mortgagee or its  
489 nominee for the remainder of the term, effective as of the date of such termination, upon  
490 the same terms and conditions, covenants and agreements as herein contained, and subject  
491 only to the rights, if any, of any parties then in possession of any part of the demised  
492 premises, provided:

493                   i.) The Approved Mortgagee or its nominee shall make written request  
494 upon County for such new lease within thirty (30) days after the date of notice to Approved  
495 Mortgagee of such termination, or within thirty (30) days after receipt of notice of  
496 termination by the Approved Mortgagee, whichever is earlier.

497                   ii.) The Approved Mortgagee shall pay to County at the time of  
498 execution and delivery of said new lease, any and all sums which would at the time of the  
499 execution and delivery thereof, be due pursuant to this Agreement but for such termination,  
500 and in addition thereto, any expenses, including attorney's fees and all other litigation fees  
501 and costs, which County incurred by reason of such default. County will provide an  
502 accounting and summary of such sums prior to the scheduled execution and delivery of the  
503 new lease.

504                   iii.) The Approved Mortgagee shall perform and observe all covenants  
505 herein contained on Tenant's part to be performed, and shall further remedy any other  
506 conditions which Tenant, under the terminated Agreement was obligated to perform  
507 (excluding those obligations personal to the former Tenant as provided in paragraph  
508 12(I)(3)(b) above; and upon execution and delivery of such new lease, any subleases which  
509 may have theretofore been assigned and transferred by Tenant to County, as security under  
510 this Agreement, shall thereupon be deemed to be held by County as security for the  
511 performance of all the obligations of Approved Mortgagee under the new lease.

512                   The Approved Mortgagee under such new lease shall have the same right, title, and  
513 interest in and to the Improvements on the demised Premises as Tenant had under the  
514 terminated Agreement.

515                   d.       Notice to County. Tenant shall deliver to County any notice of  
516 default from the Approved Mortgagee with respect to any mortgage affecting the demised  
517 Premises. Tenant shall deliver said notice to County within five (5) days after receipt of  
518 said notice by Tenant.

519                   (4)       In order to permit financing of tangible personal property and to  
520 avoid any liens on aircraft on the Leased Land, Landlord waives any statutory landlord's  
521 lien it may have on personal property brought onto the Leased Land.

522                   **J.       Defaults and Remedies.**

523                   (1)       Defaults by Tenant. The occurrence of any of the following events  
524 and the expiration of the applicable cure period set forth below without such event being  
525 cured or remedied will constitute a "Default by Tenant" to the greatest extent allowed by  
526 law:

527                   a.       Tenant's failure to pay Rent due under this Agreement, and the  
528 failure to pay is not cured within ten (10) calendar days after written notice has been given  
529 by the County to Tenant.

530                   b.       Abandonment of the Premises, or discontinuation of the Tenant's  
531 operations.

532                   c.       Tenant's material misrepresentation of any matter related to this  
533 Ground Lease.

534                   d.       Filing of insolvency, reorganization plan, or arrangement of  
535 bankruptcy.

536                   e.       Adjudication as bankrupt.

537                   f.       Making a general assignment for the benefit of creditors.

538                   g.       If Tenant suffers this Ground Lease to be taken under any writ of  
539 execution and/or other process of law or equity.

540 h. Tenant's failure to utilize the Premises as required in this Ground  
541 Lease after ten (10) days' written notice from County.

542 i. Any lien is filed against the Leased Land, or County's interest  
543 therein or any part thereof in violation of this Ground Lease, or otherwise, and the same  
544 remains unreleased for a period of ninety (90) days from the date of filing unless within  
545 such period Tenant is contesting in good faith the validity of such lien and such lien is  
546 appropriately bonded.

547 j. Failure to cause insurance to be continuously in effect as required  
548 by the insurance provisions Section 6.

549 k. Failure of Tenant to perform or comply with any other material  
550 covenant or condition made under this Ground Lease, which failure is not cured within  
551 thirty (30) calendar days from the date of the County's written notice stating the  
552 noncompliance shall constitute a default (other than those covenants for which a different  
553 cure period is provided), whereby the County may, at its option, terminate this Ground  
554 Lease by giving Tenant thirty (30) days' written notice. However, the occurrence of any of  
555 the events set forth in this Paragraph J.(1) above shall constitute a material breach and  
556 default by Tenant, and this Ground Lease may be immediately terminated by County by  
557 written notice except to the extent then prohibited by law.

558 (2) Notwithstanding the foregoing or any provision in this Lease to the contrary,  
559 if the building and other improvements on the Leased Land have a value in excess of  
560 \$1,000,000, so long as Tenant or any Approved Mortgagee are paying current rent owed  
561 under this Lease and tender the cure of any back rent owed and are diligently pursuing the  
562 cure of other defaults, the County will not terminate Tenant's rights or Approved  
563 Mortgagee's rights to occupy or charge double rent so long as Tenant or Approved  
564 Mortgagee are utilizing commercial due diligence to cure any non-monetary default that  
565 may exist. It is understood that the default and remedy provisions of this Lease are  
566 intended to protect the finances of County and the investment of Tenant in the Leased Land.

567 (2) Remedies of County.

568 a. In the event of the occurrence of any of the foregoing defaults and  
569 except as otherwise provided, the Tenant shall become immediately a tenant-at-sufferance  
570 in accordance with Florida law, and County, in addition to any other rights and remedies it  
571 may have, shall have the immediate right to double rent. The acceptance of such double  
572 rent shall not constitute a renewal of this Ground Lease. In addition, the County may obtain  
573 a court order authorizing the County to re-enter and remove all individuals, entities and/or  
574 property from the Premises. Such property may be removed and stored in a public  
575 warehouse or elsewhere at the cost of, and for the account of, the Tenant, all without service  
576 of notice or resort to legal process and without being deemed guilty of trespass, or being  
577 liable for any loss or damage which may be occasioned thereby. If the Tenant does not cure  
578 the defaults in the time frames as set forth above, and the County has removed and stored  
579 property, the County shall not be required to store such property for more than thirty (30)  
580 days. After such time, such property shall be deemed abandoned and the County shall

581 dispose of such property in any manner it so chooses and shall not be liable to the Tenant  
582 for said disposal.

583           b.       The County may also sue for direct, actual damages arising out of  
584 such default by the Tenant or apply for injunctive relief as may appear necessary or  
585 desirable to enforce the performance and observance of any obligation, agreement or  
586 covenant of the Tenant under this Ground Lease or otherwise. For this purpose, Tenant  
587 agrees that County need not post a surety bond with the court, and the right to any bond is  
588 hereby waived.

589           c.       The County shall be entitled to reasonable attorneys' fees and costs  
590 incurred arising out of the Tenant's default under this Ground Lease.

591           **K.       Surrender at End of Term/Termination.**

592           (1)       At the end of the Term or upon the earlier termination of this Ground  
593 Lease, the Tenant agrees to surrender and yield possession of the Premises, improvements  
594 constructed and remaining thereon and fixtures to the County, peacefully and without  
595 notice, free and clear of all debts, mortgages, encumbrances and liens. It shall be lawful for  
596 the County to re-enter and to repossess the Improvements without further process of law.

597           (2)       The improvements and fixtures existing at the Effective Date of this  
598 Ground Lease shall be in good condition and repair in all respects, reasonable use and wear  
599 excepted, and the Tenant agrees to reimburse the County for the cost of any alterations,  
600 replacement, repairs or cleaning required to restore the same to such condition.

601           (3)       If otherwise in compliance with this Agreement, the Tenant may  
602 remove furnishings, inventory, personal property, trade fixtures and any improvements not  
603 a part of any structure upon the expiration or termination of this Ground Lease if the  
604 removal can be done in a manner that does not injure or damage the Premises. If the Tenant  
605 fails to remove such personal property and improvements within ten (10) days after the  
606 effective date of the expiration or termination, or within ten (10) days from the date of  
607 written notice by the County, whichever is later, the County may remove and dispose of  
608 any improvements and personal property not removed by the Tenant. In that case, the  
609 Tenant is deemed by this Ground Lease to have sold, assigned and transferred to the County  
610 all of the Tenant's right, title and interest in the improvements and personal property not  
611 removed by the Tenant. For purposes of this section, the phrase "trade fixtures" is defined  
612 as any article of personal property annexed or affixed to the Premises by the Tenant as a  
613 necessary part of the Tenant's trade or business, and other lawfully present personal  
614 property on the Premises.

615           (4)       If the Ground Lease is terminated after the Effective Date, but prior  
616 to the completion of new or pending construction, the Tenant agrees that, to the extent  
617 assignable, the County is entitled to use the plans, specifications, designs, governmental  
618 approvals, permits and other work product produced by or for the Tenant or others for use  
619 in the development, construction and operation of the Improvements. The County is

620 entitled to use these documents without payment or further permission from either the  
621 Tenant or the professionals that created or prepared them.

622 (5) The Parties agree that, to confirm the automatic vesting of title as  
623 provided for herein, each will execute and deliver such further assurances and instruments  
624 of assignment and conveyance as may be reasonably required by the other for that purpose.

625 **L. Holding Over.** It is agreed that if the Tenant, or any assignee or subTenant  
626 thereof, shall continue to occupy the Premises after any termination of this Ground Lease  
627 without the prior written consent of the County, then such tenancy shall be a tenancy-at-  
628 sufferance, the County shall be entitled to double the monthly Rent specified in Section 4  
629 hereof, and acceptance by the County of any sums after any such termination shall not  
630 constitute a renewal of this Ground Lease or a consent to such occupancy, nor shall it waive  
631 the County's right of re-entry or any other right available to it under the laws of Florida or  
632 the provisions of this Ground Lease.

633 **M. Costs and Attorneys' Fees.** In the event that either party uses the services  
634 of an attorney to collect any sums due hereunder from the other party, or to pursue any  
635 remedies or resolution related to a default hereunder, or in the event a party is the prevailing  
636 party in any action to enforce any provision of this Ground Lease or in any other legal  
637 proceeding at law or in equity arising hereunder or in connection herewith, including any  
638 bankruptcy or bankruptcy appeals, the non-prevailing party shall reimburse the prevailing  
639 party for all reasonable costs, attorneys' fees and all other actual expenses incurred by the  
640 prevailing party, whether the prevailing party uses in-house or contracted counsel, in the  
641 defense and/or prosecution of such legal proceeding and in any appeals, including, but not  
642 limited to, fees and expenses for paralegals, investigators, legal support personnel and  
643 expert witnesses.

644 **N. Notice.** Any notice given by one party to the other in connection with this  
645 Ground Lease shall be in writing and shall be sent by certified mail, return receipt  
646 requested. Any notice shall be deemed received when signed for or five business days after  
647 being transmitted, whichever is sooner. If Tenant mortgages its interest in this Ground  
648 Lease according to the provisions herein, Tenant shall provide County with contact  
649 information for the Approved Mortgagee for notice purposes, along with contact  
650 information for the holder of the mortgage note, if any.

651 If to Tenant, addressed to:

**Upstate Flagler LLC  
C/o Upstate Companies I, LLC  
8324 A1A South  
St. Augustine, FL 32082  
Attn: Brian Zaczek**

652 If to County, addressed to:

**Airport Director, Flagler Executive Airport  
201 Airport Road  
Palm Coast, FL 32164**

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With a second copy to:

**County Administrator  
1769 E. Moody Boulevard  
Building 2  
Bunnell, FL 32110**

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**O. Sums Paid by County.** If the County has paid any sum or sums or has incurred any obligation or expense which the Tenant has agreed to pay or reimburse the County for, or if the County is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of the Tenant to perform or fulfill any of the terms or conditions of this Ground Lease, then the same shall be deemed additional Rent due hereunder and the Tenant shall reimburse the County therefor promptly upon demand. Any unpaid sums shall be treated under the same provisions as are applicable to delinquent Rent.

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**P. Security Deposit.** The Tenant shall pay the security deposit as required under Section 7, and such sums shall be retained by the County as security for the faithful performance of the Tenant's obligations hereunder. The County shall have the right, but not the obligation, to apply said security deposit to the payment of any sum due to the County which has not been paid, including, but not limited to, reimbursement of any expenses incurred by the County in curing any default of the Tenant, or to the cost of restoring the Premises or its improvements, furnishings, fixtures or equipment to good condition and repair, reasonable use and wear excepted. In the event that all or any portion of the security deposit is so applied, the Tenant shall promptly upon demand by the County remit to the County the amount of cash required to restore the security deposit to its original sum, and the Tenant's failure to do so within ten (10) calendar days from the date of County's written notice of such demand shall constitute a default under this Ground Lease. If said deposit shall not have been applied for any of the foregoing purposes, it shall be returned to the Tenant, without interest, within sixty (60) calendar days after the end of the Term of this Ground Lease. The County will not pay interest on any security deposit.

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Should the design plans not be submitted, or the construction not be commenced and/or completed within the time periods identified Paragraph 9(B), the security deposit shall be forfeited to the County.

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**Q. Brokerage Commissions.** Unless expressly provided otherwise herein, the Lessee warrants that no real estate commission is payable by the Lessor to any person or entity in connection with this Ground Lease and Lessee hereby indemnifies the Lessor against any claims for such commissions.

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**R. County's Reserved Rights.**

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(1) Subject to the approval of the Tenant, which shall not be unreasonably withheld, the County reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Premises, and to run water, electrical, telephone, gas, drainage and other lines over, under, across and through the Premises and to grant necessary utility easements therefor. The County will identify any such easements prior to the Effective Date.

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(2) The County reserves the right (a) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to the Tenant for loss of business or damages of any nature whatsoever to the Tenant occasioned during the making of such improvements, repairs, alterations and additions, provided that County will maintain insurance or cause its contractors to maintain insurance for any damages resulting from negligence of the County or its employees, agents or contractors, and (b) to establish such fees and charges for the use of the Airport by the Tenant and all others as the County may promulgate for the Airport. In the event that improvements, repairs and/or alterations are made as contemplated herein, the County will endeavor to minimize disruptions to the Tenant that may occur during any associated construction activities.

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(3) The Tenant covenants and agrees that this Ground Lease shall be subject and subordinate to the provisions of any existing or future agreement between the County and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds for the development or operation of Airport. In the event that the FAA or its successors shall require any modifications to this Ground Lease as a condition precedent to the granting of such federal funds, the Tenant shall promptly consent in writing to such modifications.

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**S. Discrimination Not Permitted.**

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(1) The Tenant, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises or the Airport under the provisions of this Ground Lease; (b) that in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (c) that the Tenant shall use the Premises in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

733                   Likewise, the Tenant shall comply with laws of the State of Florida  
734 prohibiting discrimination because of race, color, religion, sex, national origin, age,  
735 handicap or marital status. Should the Tenant authorize another person, with the County's  
736 prior written consent, to provide services or benefits from the Premises or at the Airport,  
737 the Tenant shall obtain from such person a written agreement pursuant to which such  
738 person shall, with respect to the services or benefits which it is authorized to provide,  
739 undertake for itself the obligations contained in this Paragraph. The Tenant shall furnish  
740 the original or a true copy of such agreement to the County. The County may from time to  
741 time be required by the United States Government, or one or more of its agencies, to adopt  
742 additional or amended provisions, including non-discrimination provisions, concerning the  
743 use and operation of the Airport, and the Tenant agrees that it will adopt any such  
744 requirement as a part of this Ground Lease.

745                   (2)     If the Tenant shall furnish any services to the public at the Airport,  
746 it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all  
747 users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for  
748 each unit of service, provided that the Tenant shall be allowed to make reasonable and non-  
749 discriminatory discounts, rebates or other similar types of price reductions.

750                   (3)     In the event of breach of any of the above nondiscrimination  
751 covenants, the County shall have the right to terminate this Ground Lease and to re-enter  
752 and repossess the Premises, and hold the same as if this Ground Lease had never been made  
753 or issued. The right granted to the County by the foregoing sentence shall not be effective  
754 until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed  
755 and completed, including exercise or expiration of appeal rights.

756                   (4)     Further, the Tenant assures the County that no person shall be  
757 excluded on the grounds of race, creed, color, national origin or sex from participating in  
758 or receiving the services or benefits of any program or activity covered by Title 14, Code  
759 of Federal Regulations, Part 152, Subpart E, Non-discrimination in Airport Aid Program,  
760 and that it will be bound by and comply with all other applicable provisions of such Subpart  
761 E, as it may be amended. The Tenant also assures the County that it will require its covered  
762 suborganizations to provide written assurances to the same effect and provide copies  
763 thereof to the County.

764                   (5)     The Tenant assures the County that the Tenant will comply with  
765 pertinent statutes, Executive Orders, and such rules as are promulgated and that no person  
766 shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded  
767 from participating in any activity conducted in connection with its operations under this  
768 Ground Lease. The Tenant also assures the County that it will require any contractors and  
769 subtenants (to the extent that such subtenants are allowed under other provisions of this  
770 Ground Lease) to provide assurances to the same effect and ensure that such assurances  
771 are included in subcontracts at all tiers which are entered into in connection with the  
772 Tenant's operations under this Ground Lease.

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774           **T.       Federal Aviation Administration (FAA) Requirements.**

775           (1)     The Tenant shall comply with all applicable regulations of the FAA  
776 relating to Airport security and shall control the Premises so as to prevent or deter  
777 unauthorized persons from obtaining access to the air operations area of the Airport.

778           (2)     The County reserves unto itself, and unto its successors and assigns,  
779 for the use and benefit of the public, a right of flight for the passage of aircraft through the  
780 airspace above the surface of the Premises, together with the right to cause in said airspace  
781 such noise as may be inherent in the operation of aircraft now known or hereafter used, and  
782 for navigation of or flight in the said airspace, and use of said airspace for landing on,  
783 taking off from or operating on the Airport.

784           (3)     The Tenant expressly agrees, on behalf of itself and its successors  
785 and assigns, to restrict the height of structures, objects of natural growth and other  
786 obstructions on the Premises in compliance with the requirements of Federal Aviation  
787 Regulations, 14 CFR Part 77.

788           (4)     The Tenant agrees to require any lights in the Premises to be  
789 constructed, focused or arranged in a manner that will prevent them from casting their  
790 beams in an upward direction so as to interfere with the vision of pilots in aircraft landing  
791 at or taking off from the Airport.

792           (5)     The Tenant expressly agrees, on behalf of itself and its successors  
793 and assigns, to prevent any use of the Premises which would interfere with or adversely  
794 affect the operation or maintenance of the Airport, or which would otherwise constitute a  
795 hazard or nuisance at the Airport.

796           (6)     The Tenant agrees that it will not exercise or grant any right or privilege  
797 which would operate to prevent any person, firm or corporation operating aircraft on the  
798 Airport from performing any service (including, but not limited to maintenance and repair)  
799 on its own aircraft with its own employees that it may choose to perform.

800           (7)     All vehicles shall remain outside of the Airport Operating Area (AOA).  
801 All portions of aircraft parked on the concrete aircraft parking apron shall remain clear of  
802 the Taxiway Object Free Area (TOFA) at all times.

803           **U.       Hazardous Materials.**

804           (1)     **Definitions.** As used herein, the following terms shall have the  
805 meanings hereinafter set forth:

806           i.     **“Environmental Laws”** shall mean any federal, state, local or  
807 administrative law, rule, regulation, order or requirement relating to industrial hygiene,  
808 environmental conditions or Hazardous Materials, whether now in effect or hereafter  
809 adopted.

810 ii. **“Hazardous Materials”** shall mean any material that, because of  
811 its quantity, concentration or physical or chemical characteristics, is deemed by any federal,  
812 state or local governmental authority to pose a present or potential hazard to human health  
813 or safety or to the environment. **“Hazardous Material”** includes, without limitation, any  
814 material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant”  
815 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act  
816 of 1980, also commonly known as the “Superfund” law, as amended (42 U.S.C. Sections  
817 9601 et seq.) (“CERCLA”), or pursuant to Chapters 376 and 403, Florida Statutes; any  
818 “hazardous waste” listed pursuant to Section 403.72, Florida Statutes, or any waste which  
819 conforms to the criteria for hazardous material adopted by the County; any asbestos and  
820 asbestos containing materials; lead based paint; petroleum, including crude oil or any  
821 fraction thereof; natural gas or natural gas liquids; and any materials listed as a hazardous  
822 substance in the County’s rules and regulations.

823 iii. **“Release”** when used with respect to Hazardous Material shall  
824 include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying,  
825 discharging, injecting, escaping, leaching, dumping, or disposing into or on any property  
826 except as otherwise provided herein.

827 (2) **Tenant’s Agreement.** The Tenant agrees that if its officers, agents,  
828 employees, contractors, subcontractors, subTenants, licensees or invitees shall cause any  
829 Hazardous Materials to be brought upon, kept, used, stored, generated or disposed of in,  
830 on or about the Airport, or transported to or from the Airport, the County will require the  
831 Tenant to do so in a manner in strict compliance with all applicable laws and regulations.

832 (3) **Environmental Indemnity.** The Tenant shall indemnify, defend  
833 and hold harmless the County from and against any and all loss, damage, cost or expense  
834 (including attorneys’ fees) arising during or after the Term of this Ground Lease as a result  
835 of or arising from (i) a breach by the Tenant of its obligations contained in Subparagraph  
836 (U)(2) above, or any Release of Hazardous Materials from, in, or about the Airport caused  
837 by the act or omission of the Tenant, its officers, agents, employees, contractors,  
838 subcontractors, subtenants, licensees or invitees.

839 (4) **Environmental Audit.** Upon reasonable notice to the Tenant, the  
840 County may conduct or cause to be conducted through a third party that it selects, an  
841 environmental audit or other investigation of the Tenant’s operations to determine whether  
842 the Tenant has breached its obligations under Subparagraph (U)(2) above. The Tenant shall  
843 pay all costs associated with said investigation if such investigation shall disclose any such  
844 breach by the Tenant.

## 845 V. **Estoppel Certificates.**

846 (1) **Landlord Estoppel Certificates.** Upon written request by Approved  
847 Mortgagee, County shall, within thirty (30) days after receipt of such request by certified  
848 U.S. Mail or reputable overnight courier, execute and deliver to Mortgagee an estoppel  
849 certificate in form reasonably acceptable to Mortgagee, certifying:

- 850 (a) That this Ground Lease is in full force and effect and has not been modified, or if  
851 modified, identifying all modifications;
- 852 (b) The amount of Rent currently payable and the dates through which such rent has been  
853 paid;
- 854 (c) Whether, to County's knowledge, Tenant is in default under this Ground Lease, and  
855 if so, specifying the nature of such default;
- 856 (d) The amount of any security deposit held by County;
- 857 (e) Whether County has received any notice of default from Tenant; and
- 858 (f) Such other matters as Mortgagee may reasonably request.

859 **(2) Tenant Estoppel Certificates.** Upon written request by County or Approved  
860 Mortgagee, Tenant shall, within thirty (30) days after receipt of such request, execute and  
861 deliver an estoppel certificate containing information similar to that described in Section  
862 paragraph 12 V(1) above, modified as appropriate to reflect Tenant's or Approved  
863 Mortgagee's perspective.

864 **(3) Failure to Deliver Estoppel.** If County fails to deliver an estoppel certificate  
865 within the time period specified in paragraph 12 V(1) above, Approved Mortgagee may  
866 rely upon the representations contained in its request as being true and correct, and County  
867 shall be estopped from denying the accuracy of such representations.

868 **W. Miscellaneous.**

869 (1) The section and paragraph headings contained in this Ground Lease  
870 are inserted only as a matter of convenience and for reference, and in no way define, limit  
871 or describe the scope or intent of any provision hereof.

872 (2) Notwithstanding anything herein contained that may appear to be to  
873 the contrary, it is expressly understood and agreed that, except for the Tenant's right to  
874 possession of the Premises, the rights granted under this Ground Lease are non-exclusive.

875 (3) Except as expressly prohibited herein, the provisions of this Ground  
876 Lease shall bind and inure to the benefit of the successors and assigns of the Parties hereto.

877 (4) Time is of the essence to this Ground Lease.

878 (5) This Ground Lease shall be governed by and construed in  
879 accordance with the laws of the State of Florida, except for its conflict of law provisions.  
880 It is agreed that if any covenant, condition or provision contained herein is held to be  
881 invalid by any State of Florida court of competent jurisdiction, such invalidity shall not  
882 affect the validity of any other covenant, condition or provision herein contained.

883 (6) No recourse under or upon any obligation, covenant or agreement  
884 contained in this Ground Lease, or any other agreement or document pertaining to the  
885 operations of the Tenant hereunder, as such may from time to time be altered or amended  
886 in accordance with the provisions hereof, or under any judgment obtained against the  
887 County, or by the enforcement of any assessment or by any legal or equitable proceeding  
888 by virtue of any statute or otherwise, under or independent of this Ground Lease, shall be  
889 had against any member (including, without limitation, members of the County's Board of  
890 County Commissioners), officer, employee or agent, as such, past, present and future, of  
891 the County, either directly or through the County, or otherwise, for any claim arising out  
892 of this Ground Lease or the operations conducted pursuant to it, or for any sum that may  
893 be due and unpaid by the County. Any and all personal liability of every nature, whether  
894 at common law or in equity, or by statute or by constitution or otherwise, of any County  
895 member, officer, employee or agent, as such, to respond by reason of any act or omission  
896 on his or her part or otherwise for any claim arising out of this Ground Lease or the  
897 operations conducted pursuant to it, or for the payment for or to the County, or any receiver  
898 therefor or otherwise, or any sum that may remain due and unpaid by the County, is hereby  
899 expressly waived and released as a condition of and as consideration for the execution of  
900 this Ground Lease.

901 (7) The Tenant represents and warrants to the County that no member,  
902 officer, employee or agent of the County has any material interest, either directly or  
903 indirectly, in the business of the Tenant to be conducted hereunder.

904 (8) This Ground Lease constitutes the entire agreement between the  
905 Parties hereto with respect to the subject matter hereof, and any representation or  
906 statements heretofore made with respect to such subject matter, whether oral or written, are  
907 merged herein. This Ground Lease may be altered or amended only by written instrument  
908 specifically referring to this Ground Lease and executed by both parties hereto with the  
909 same formalities as the execution of this Ground Lease.

910 (9) As required by Florida law, the County hereby includes the  
911 following notifications as part of this Ground Lease:

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

919 PUBLIC ENTITY CRIMES: A person or affiliate who has  
920 been placed on the convicted vendor list following a  
921 conviction for a public entity crime may not submit a bid on  
922 a contract to provide any goods or services to a public entity,  
923 may not submit a bid on a contract with a public entity for  
924 the construction or repair of a public building or public work,

925 may not submit bids on leases of real property to a public  
926 entity, may not be awarded or perform work as a contractor,  
927 supplier, subcontractor, or consultant under a contract with  
928 any public entity, and may not transact business with any  
929 public entity in excess of \$15,000 for a period of 36 months  
930 from the date of being placed on the convicted vendor list.

931 (10) The exclusive jurisdiction and venue for any action to interpret  
932 and/or enforce the terms of this Ground Lease shall be in the Seventh Judicial Circuit Court  
933 in and for Flagler County, Florida. In the event of a dispute arising out of this Agreement  
934 is litigated, the parties expressly agree to a bench trial and waive the right to trial by jury.

935 (11) Nothing in this Ground Lease shall abrogate or waive the County's  
936 Sovereign Immunity or the provisions of § 768.28, *Florida Statutes*, nor shall any provision  
937 hereof be construed as consent by the County to be sued by third parties.

938 (12) Continued performance by either Party hereto pursuant to any  
939 provision of this Ground Lease after a default of any provision herein shall not be deemed  
940 a waiver of any right to cancel this Ground Lease for any subsequent default, and no waiver  
941 of any such default shall be construed or act as a waiver of any subsequent default.

942 (13) Recordation. This Ground Lease shall be recorded by the County in  
943 the Official Records of Flagler County, Florida, within fourteen (14) days after the  
944 Effective Date. This Ground Lease shall be rerecorded after the survey required by Section  
945 9.E(10) is completed and made a part of Exhibit A.

946 (14) Relationship of the Parties. Nothing in this Ground Lease shall be  
947 construed by the Parties hereto, nor by any third party, as creating the relationship of  
948 principal and agent or of partnership or of joint venture between the Parties hereto, it being  
949 understood and agreed that neither the method of computation of rent, nor any other  
950 provision contained herein, nor any acts of the Parties herein, shall be deemed to create any  
951 relationship between the Parties hereto other than the relationship of County and Tenant.

952 (15) Possession. The Tenant shall be granted possession of the Premises  
953 immediately upon the Effective Date of this Ground Lease and shall be entitled to full use  
954 of said Premises subject to the terms hereof.

955 (16) Force Majeure. Neither Party shall be considered in default in the  
956 performance of its obligations hereunder to the extent that performance of such obligations,  
957 or any of them singularly, is delayed or prevented by a bona fide force majeure. For  
958 purposes of this Agreement, a bona fide force majeure is defined in accordance with the  
959 common law of the state of Florida as being an event or circumstance beyond the control  
960 and authority and without the fault or negligence of the Party seeking relief under this  
961 subsection. The maximum relief granted to either Party under this subsection shall be the  
962 tolling of time for the duration of the force majeure. A force majeure may be deemed to  
963 excuse performance pursuant to this Agreement only to the extent such performance is  
964 actually prevented or precluded by such force majeure.

965                   In addition, if the Improvements are damaged or destroyed by a force  
966 majeure event, the Tenant shall have thirty (30) days to provide notice to the County of (i)  
967 Tenant's intent to terminate this Ground Lease, which termination shall be effective no  
968 later than sixty (60) days after receipt of the notice by the County, or (ii) Tenant's intent to  
969 repair the damage or rebuild substantially similar improvements; provided, however, that  
970 if Tenant's casualty insurer has not within such sixty (60) day period advised Tenant of the  
971 available insurance proceeds, Tenant will have an additional sixty (60) days to notify the  
972 County.

973                   If the damage from a force majeure event is such that the repairs necessary  
974 to restore the Premises to its condition before the damage exceeds fifty percent of the value  
975 of the Improvements as determined by the Chief Building Official of the County, then the  
976 Tenant must rebuild substantially similar improvements in accordance with then-current  
977 Florida Building Code and all other laws and ordinances then in effect in order to finish  
978 out the term of this Ground Lease or to enter into a new ground lease negotiated in good  
979 faith by the County and Tenant.

980

981

982

983

[Signature pages to follow.]

*Signature Page of County to Airport Lease with  
Upstate Companies II LLC*

IN WITNESS WHEREOF, the County and Tenant have executed this Ground Lease by their duly authorized representatives on the dates indicated below.

**APPROVED by Flagler County this \_\_\_ day of \_\_\_\_\_, 2026.**

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
**Leann Pennington, Chair**

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

1769 E. Moody Blvd., Bldg. 2  
Bunnell, FL 32110

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Tom Bexley, Clerk of the  
Circuit Court and Comptroller

**Sean S. Moylan** Digitally signed by Sean S. Moylan  
Date: 2026.02.18 16:52:59 -05'00'  
\_\_\_\_\_  
Sean S. Moylan,  
Deputy County Attorney

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by **Leann Pennington**, as Chair of the Flagler County Board of Commissioners. Such person(s) (Notary Public must check applicable box):

is/are personally known to me.  
 produced valid government identification.

(SEAL)

\_\_\_\_\_  
Notary Public

[SIGNATURE PAGE TO FOLLOW]

*Signature Page of Upstate Companies II LLC to Airport Lease with  
Board of County Commissioners, Flagler County*

**UPSTATE FLAGLER I LLC**

Witness 1:

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Brian Zaczek, as its Manager

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

Address:

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

\_\_\_\_\_  
Witness 2:

\_\_\_\_\_  
Signature

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

Address:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

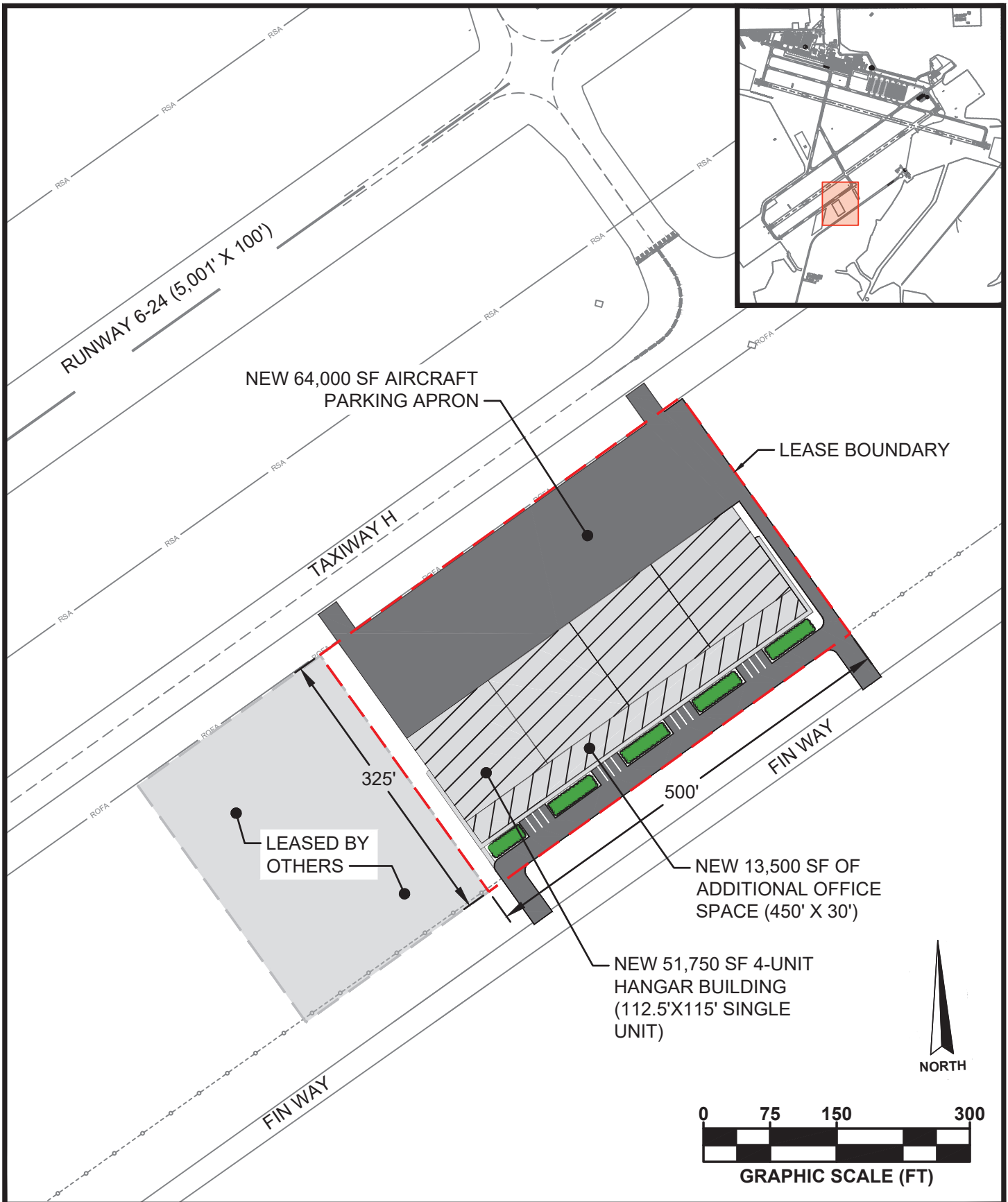
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by Brian Zaczek, as Manager of Upstate Flagler I LLC. who swore or affirmed that he/she is authorized to enter into this Ground Lease and to bind Upstate Companies II LLC. Such person(s) (Notary Public must check applicable box):

is/are personally known to me.  
 produced valid government identification.

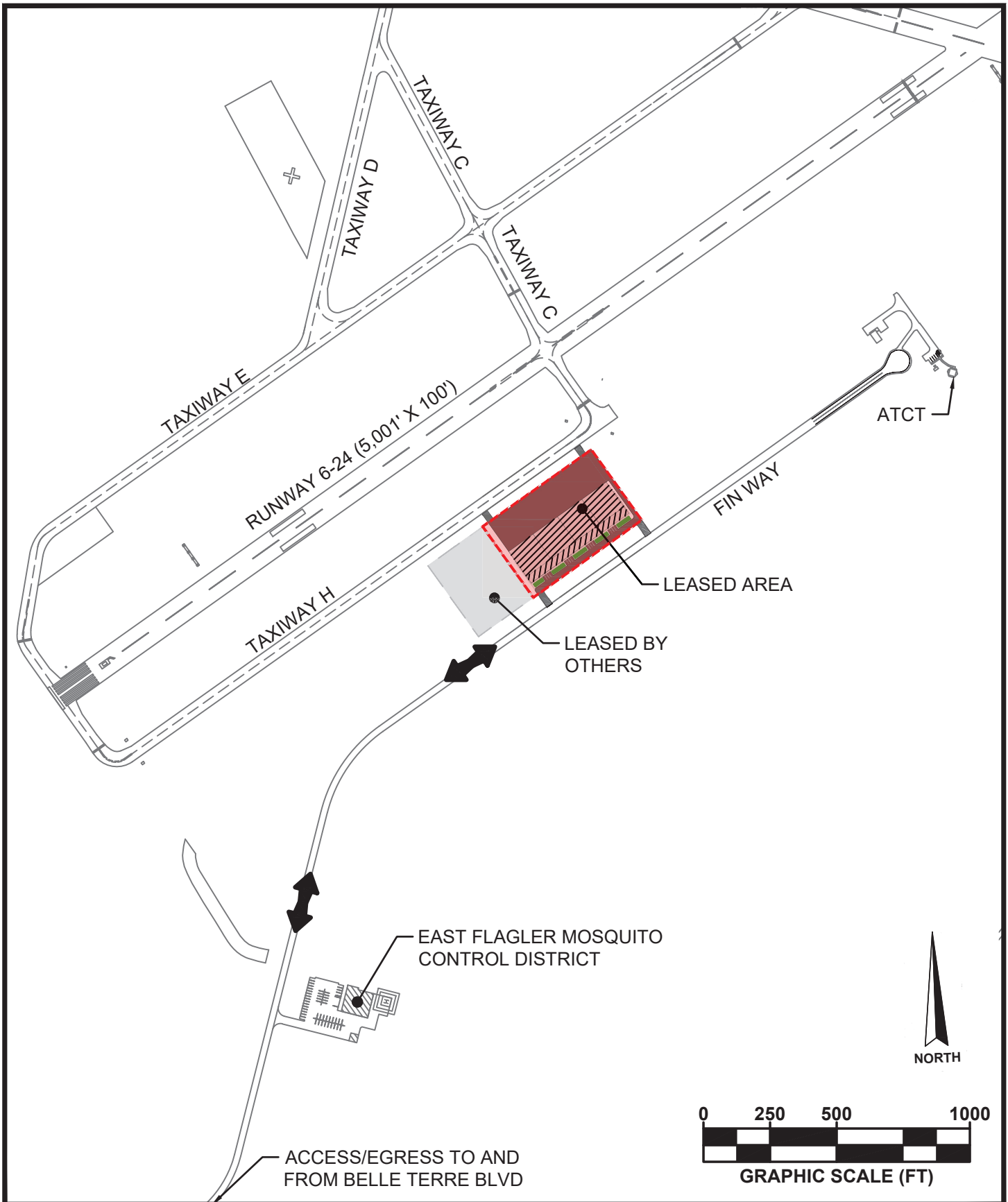
(SEAL)

\_\_\_\_\_  
Notary Public

[EXHIBITS TO FOLLOW]



# EXHIBIT A



# EXHIBIT B