

**AIRSPACE AGREEMENT**

ITEM/SEGMENT NO.: 2107124  
MANAGING DISTRICT: Two  
F.A.P. NO.: SFTI-184-R  
STATE ROAD NO.: 200 (A1A)  
COUNTY: Nassau  
PARCEL NO.: 107 (Part)

THIS AGREEMENT, made this 2nd day of November, 2011, between Nassau County at 96135 Nassau Place, Suite 1, Yulee, Florida 32097 (Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency of the State of Florida (State).

**WITNESSETH:**

**WHEREAS**, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

**WHEREAS**, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

**WHEREAS**, the Department has acquired sufficient legal right, title, and interest in the right of way of SR200 (A1A) 2107124 Parcel 107 which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

**WHEREAS**, the Department desires to lease to Lessee the airspace above or below gradeline of the property described in Exhibit "A", attached and made a part hereof for the following purpose: Sign for James S. Page Governmental Complex

**WHEREAS**, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

**NOW, THEREFORE**, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of 30 years beginning with the date of this Agreement. One renewal of this Agreement may be made for NA. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

### 3. Rent

a. Lessee shall pay to the Department as rent each  month  quarter  year on or before the first day of each rent payment period, 0.00 plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: Florida Department of Transportation, District Two,  
Office of Right of Way, 1109 S. Marion Avenue, MS 2020, Lake City, Florida 32025-5874

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

### 4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: Placement of sign with frangible posts  
in the southwest corner of parcel 107 directing motorists to the James S. Page Governmental Complex

c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the airspace so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the airspace shall not adversely affect the use, safety, appearance, or enjoyment of the highway by smoke, fumes, vapors, odors, droppings, or any other objectionable discharges or emissions, or nuisances of any kind therefrom.

i. When, for the proposed use of the airspace, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.

j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the airspace.

k. Lessee shall not occupy, use, permit, or suffer the airspace, the property, the facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.

l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the airspace under lease, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Department from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

m. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb or interfere with the same.

5. Indemnification. To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its officers, agents, or employees, during the performance of the Agreement, except that neither Lessee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Note: No longer required for local governments.

6. Insurance. Lessee at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting the Department and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the land arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than NA (\$ 0.00 ) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than NA (\$ 0.00 ) for property damage, or a combined coverage of not less than NA (\$ 0.00 ). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

## 7. Termination

a. This Agreement may be terminated by either party without cause upon thirty ( 30 ) days prior written notice to the other party.

b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.

c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.

d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.

e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.

f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

## 8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

## 9. Miscellaneous

a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:

1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

g. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

**NASSAU COUNTY, FLORIDA**

LESSEE (Company Name, if applicable)

By: *Walter J. Boatright*

Name: Walter J. Boatright

Title: Chairman, Board of County Commissioners

Attest: *[Signature]* (Seal)

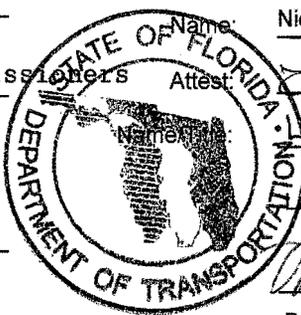
Name: John A. Crawford

Title: Ex-Officio Clerk

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: *Nick J. Tsengas*  
District Secretary

Name: Nick J. Tsengas



Name: *Lisa Lambert*

Name: *Lisa Lambert*

Legal Review:

*Melissa K. Blackwell* 10-11-11  
District Counsel

Name: *Melissa K. Blackwell*

*EAH*  
*10/20/11*  
*At*  
*10/20/11*

Approved as to form by the  
Nassau County Attorney:

*[Signature]*  
David A. Hallman

**ADDENDUM**

This is an Addendum to that certain Airspace Agreement between Nassau County

and the State of Florida Department of Transportation dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011  
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (d) of said Agreement:

1. Lessee shall at its own cost and expense maintain the sign and the area around it that is leased from the State of Florida Department of Transportation and identified in Exhibit "A" attached to this Agreement.
2. Lessee shall at its own cost and expense relocate and/or remove the sign if/when it needs to be relocated and/or removed.
3. Lessee shall resolve any/all utility issues prior to execution of the lease agreement.
4. Construction Plans must be approved by Department staff prior to commencement of construction. Placement of the sign will meet all department standards and guidelines to ensure a clear sight triangle at the corner for vehicular traffic.

NOTE: This document has a second addendum.

and the State of Florida Department of Transportation dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011  
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (d) of said Agreement:

**NASSAU COUNTY, FLORIDA**

LESSEE (Company Name, if applicable)

By:

*Walter J. Boatright*

Name: Walter J. Boatright

Title: Chairman, Board of County Commissioners

Attest:

*John A. Crawford*

(Seal)

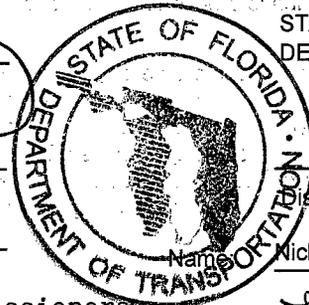
Name: John A. Crawford

Title: Ex-Officio Clerk

Approved as to form by the  
Nassau County Attorney:

David A. Hallman

*EBH  
10/20/11  
SS  
10/20/11*



STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

District Secretary

Name: Nick J. Tsengas

Attest:

*Lisa Lambert*

Name/Title:

Lisa Lambert

Legal Review:

*Melissa K. Blackwell 10-11-11*

District Counsel

Name:

Melissa K. Blackwell

**SECOND ADDENDUM TO AIRSPACE AGREEMENT**

**THIS SECOND ADDENDUM TO AIRSPACE AGREEMENT** ("Second Addendum") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Nassau County, Florida ("Lessee").

**-RECITALS-**

1. The terms and provisions set forth in this Second Addendum are incorporated in and made part of the Airspace Agreement ("Agreement") executed by the parties contemporaneously herewith.
2. The purpose of the Agreement is to allow the Lessee to place a sign indentifying the James S. Page Governmental Complex, in Yulee, Florida, on Department right-of-way.
3. There is also an original Addendum ("First Addendum") to the Agreement, a copy of which is attached to the Agreement, incorporating additional terms and conditions to Paragraph 9(d) of the Agreement; and
4. The purpose of this Second Addendum is to strike paragraph five (5) of the Agreement in its entirety.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

**1. RECITALS & EXHIBITS**

The recitals set forth above and exhibits attached hereto are specifically incorporated by reference and made part of this Second Addendum.

**2. DELETION OF INDEMNIFICATION LANGUAGE**

1. ~~5. Indemnification. To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its officers, agents or employees, during the performance of the Agreement, except that neither Lessee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.~~

~~When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in~~

this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Note: No longer required for local governments.

- 2. All other provisions of the Agreement shall remain in full force and effect.

Attest as to Chairman's signature:

BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

*[Handwritten signature]*  
\_\_\_\_\_  
JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

*[Handwritten signature]*  
\_\_\_\_\_  
WALTER J. BOATRIGHT  
Its: Chairman

Approved as to form by the  
Nassau County Attorney:

*[Handwritten signature]*  
\_\_\_\_\_  
DAVID A. HALLMAN

*esd  
cd&du  
10/20/11*

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

*[Handwritten signature]*  
\_\_\_\_\_  
Interim District Two Secretary

Name: Nick J. Tsengas

Attest: *[Handwritten signature]*

Name/Title: Lisa Lambert

Legal Review:

*[Handwritten signature]* 10-11-11  
\_\_\_\_\_  
District Counsel

Name: Melissa K. Blackwell

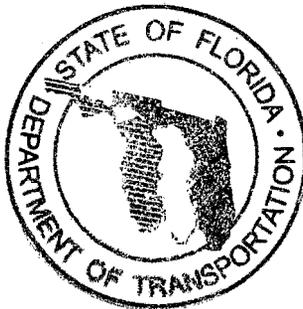


Exhibit "A"

SECTION 74060  
F.P. NO. 2107124

STATE ROAD NO. 200 (A1A)

NASSAU COUNTY

LEASE

A Part Of Section 25, Township 2 North, Range 28 East, Nassau County, Florida, Being More Particularly Described As Follows:

**Commence** At The Intersection Of The Easterly Existing Right Of Way Line Of Nassau Center Court (An 80.00 Foot Right Of Way Easement For Ingress And Egress, As Recorded In Official Records Book 1319, Page 567, Of The Public Records Of Nassau County, Florida), With The Northerly Existing Right Of Way Line Of State Road No. 200 (A1A) (A Variable Width Right Of Way Per Florida Department Of Transportation Right Of Way Map Section No. 74060 F.P. No. 2107124); Thence South  $72^{\circ}46'51''$  East, Departing Said Easterly Existing Right Of Way Line Of Nassau Center Court, Along Said Northerly Existing Right Of Way Line Of State Road No. 200 (A1A), A Distance Of 858.41 Feet To An Intersection With The Easterly Existing Right Of Way Line Of Nassau Place Road, (A 60.00 Right Of Way Easement For Ingress And Egress, As Recorded In Official Records Book 893, Page 1168, Of The Public Records Of Said County), And The **Point Of Beginning**; Thence North  $17^{\circ}13'09''$  East, Departing Said Northerly Existing Right Of Way Line And, Along Said Easterly Existing Right Of Way Line, A Distance Of 17.00 Feet; Thence South  $72^{\circ}46'51''$  East, Departing Said Easterly Existing Right Of Way Line, A Distance Of 12.00 Feet; Thence South  $17^{\circ}13'09''$  West, A Distance Of 17.00 Feet; To The Northerly Existing Right Of Way Line Of Said State Road No. 200 (A1A); Thence North  $72^{\circ}46'51''$  West, Along Said Northerly Existing Right Of Way Line Of State Road No. 200 (A1A), A Distance Of 12.00 Feet To The **Point Of Beginning**.

Containing 204 Square Feet, More Or Less.