U. S. Department of Transportation
Federal Aviation Administration

Record of Decision
For the Participation of
Airglades Airport, Hendry County, Clewiston Florida
In the Airport Investment Partnership Program

U. S. Department of Transportation
Federal Aviation Administration
FAA Docket 2010-1052

Record of Decision
For the Participation of
Airglades Airport, Hendry County, Clewiston Florida
In the Airport Investment Partnership Program

I. Introduction

This Record of Decision sets forth the basis for the Federal Aviation Administration (FAA) decision to approve the application filed jointly by Hendry County, Florida, Sponsor, and Airglades LLC for the participation of Airglades Airport (2IS/Airport) in the Airport Investment Partnership Program (Program). The FAA issues this decision including certain exemptions from existing requirements under the authority of Title 49 U.S. Code § 47134 (§ 47134). Approval of the exemption of Hendry County from certain federal obligations and the approval of Airglades LLC for a limited exemption from existing airport revenue use restrictions, and the transfer and assumption of the operation of the Airport is made under the authority of § 47101 *et seq*., 47133, 47134, 47151, 47152, and 47153 of Title 49 U.S. Code, and the Airport Privatization Pilot Program: Application Procedures, 62 Federal Register (FR) 48693, (September 16, 1997) (Application Procedures).[1] The Airport Privatization Pilot Program is now called the Airport Investment Partnership Program in accordance with the FAA Reauthorization Act of 2018.[2]

Section 47134 authorizes the Secretary of the U.S. Department of Transportation and through delegation, the FAA Administrator (Administrator), to exempt a public sponsor of a public use airport that has received federal assistance from certain federal requirements, in connection with the privatization of an airport by sale or lease to a private party. Specifically, the Administrator may exempt the public sponsor from all or part of the requirements to use airport revenue for airport-related purposes (for a non-primary airport, after the airport has consulted with at least 65 percent of the owners of aircraft based at that airport).

If the revenue use exemption is granted to a sponsor, the Administrator will grant an exemption to the sponsor to the extent necessary to waive any obligation of the sponsor to repay federal grants or return airport property deeded by the Federal Government. Additionally, if the revenue use exemption is granted to a sponsor, the Administrator will grant an exemption to the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operation of

[1] See also Policy Amendment, 62 FR 63211-01, (November 26, 1997).
[2] See FAA Reauthorization Act of 2018, 115 H.R. 302, § 160, Pub. L. No. 115-254.

the airport. The Application Procedures and the complete Final Application for 2IS are available for review at www.regulations.gov under FAA Docket No. 2010-1052.

References to statutes, rules, regulations, guidelines, and circulars shall include the referenced citations as they may be amended, modified, supplemented, renewed or replaced, and would thus include any successor thereto.

II. Background and Procedural History

The Airglades Airport is a general aviation airport in Clewiston, Florida, owned by Hendry County (County) and operated by Airglades International Airport, LLC (AIA) under a management agreement. AIA is a limited liability company, organized under the laws of the State of Florida.

Hendry County submitted an initial preliminary application to the Airport Privatization Pilot Program for Airglades Airport on August 31, 2010. The FAA requested additional information and Hendry County submitted that information on October 6, 2010, the filing date of the preliminary application. On October 20, 2010, the FAA issued a notice accepting the County's preliminary application for further review.

On August 8, 2019, the County and AIA filed the Final Application for the privatization of Airglades Airport, under which the County will sell the Airport to AIA in partnership with Star America to operate the Airport. Hendry County will retain an Access Easement in favor of the County that allows it to take over control of the Airport in the event of a default, or to enter the Airport under emergency conditions. The Application provided an unexecuted Purchase and Sale Agreement by and between Hendry County and AIA providing that AIA will develop a Cargo Complex at the Airport.

On September 9, 2019, Hendry County and AIA filed the First Supplement to the Final Application that provides that AIA and Star America will form a new limited liability company "Airglades LLC" under the laws of Delaware to serve as the Airport Sponsor and the private operator. Airglades LLC will have its principal place of business in Hendry County, Florida, and will execute the Purchase and Sale Agreement with Hendry County to obtain title to the Airglades Airport land. The transfer will also include the existing runway 13/31, associated airfield pavements, lighting, and navigational aids, buildings, structures, and improvements situated on the Airport.

The Purchase and Sale Agreement, its exhibits, and all other transactional documents, including the third party beneficiary rights provided in those documents, will be modified to reflect that Airglades LLC, not AIA, will serve as the airport sponsor.

On September 13, 2019, in an effort to clarify certain parts of the Application, by letter the FAA requested additional information from the Applicant. A copy of this Request for Additional Information was made available for public view in Docket 2010-1052.

On September 18, 2019, Hendry County and AIA filed the Second Supplement to the Final Application that provides that on September 13, 2019, Airglades LLC and Airglades Holdings LLC were formed as limited liability companies under the laws of Delaware. Airglades Holdings LLC is currently managed by AIA.

Public Comments

On August 19, 2019, the FAA published a notice in the Federal Register at 84 FR 42977, acknowledging the receipt and availability of the Final Application for the Airglades Airport. The notice commenced the 30-day public review and comment period. The public comment period closed September 18, 2019.

The FAA received approximately 284 public comments posted in FAA Docket 2010-1052 on www.regulations.gov. Approximately 247 of the comments were from Hendry County residents, on filled-in postcards, all in support of the privatization concept and corresponding development. One postcard in support of the project raised concerns regarding drug trafficking. Additional comments in support came from multiple associations and community leaders.

While there were no objections to the proposal, two commenters raised concerns. Huntsville Madison County Airport Authority (HSV) stated that it is a public sponsor ranked the 17th largest international air cargo airport in the Continental United States. HSV asked that if the privatization moves forward and the private operator receives $150 million in federal funding, will the operator be subject to the same grant assurances as a public sponsor. HSV stated that exempting the private operator for the same requirements, as a public sponsor will create an uneven playing field and competitive disadvantage for HSV and other public sponsors. HSV requested clarification on this issue.

FAA's Response:

> Under the Airport Investment Partnership Program at 49 U.S.C. § 47134, private airport sponsors are subject to the same federal grant assurances as a public airport sponsor. The only exception is if an exemption from the revenue use requirements is granted that permits the private operator to earn compensation from the operation of the airport. This exemption is subject to the terms and limitations of 49 U.S.C. § 47134, and does not exempt the amount of compensation from review for compliance with § 47107(a)(1), § 47107(b) and § 47133 and associated grant assurances. The exemption is not unlimited since distribution to shareholders at any level are only available after the private operator meets its obligations for investment in airport operations and capital development consistent with the grant assurances.
>
> Under the FAA's 2018 Reauthorization, the limitation on the number of airports participating in the Airport Investment Partnership Program was stricken from 49 U.S.C. § 47134, and thus the Partnership Program is open to applications from any interested airport sponsor.

The National Business Aviation Association (NBAA) provided comments for consideration, reminding the FAA of its statutory obligation to ensure that the interests of the general aviation users of the airport are not adversely affected, and that the interests of future general aviation users are protected.

FAA's Response:

> One of the key provisions in the Airport Investment Partnership Program is the obligation of the FAA is to ensure that the interests of general aviation users of the airport are not adversely affected.
>
> The proposed private sponsor indicated that it will ensure that the general aviation facilities are maintained to a high standard and expanded as necessary to meet current and future demand at the Airport. Additionally, Airglades LLC committed to Hendry County's Capital Improvement Plan and submitted a $15 million general aviation Capital Improvement Plan through 2036.
>
> The FAA carefully takes into consideration the effect of the transaction on general aviation users.

III. The Proposed Privatization Transaction

Summary

Airglades LLC (sponsor/private operator) proposes to purchase Airglades Airport. Under the Purchase and Sale Agreement, Airglades LLC will take possession of the property, manage, develop, and operate the Airport as a general aviation airport and will develop a Cargo Complex. Airglades LLC will be considered the sponsor for receipt of federal grants under the Airport Improvement Program (AIP), in the event federal grants are awarded for the Airport. The Record of Decision for privatization is independent of any future AIP funding determination. Approval of the privatization is not an indication that AIP funds will be awarded.

Parties to the Transaction

Hendry County, Florida
640 South Main Street
LaBelle, Florida 33935

Airglades LLC
111 Ponce de Leon Avenue
Clewiston, Florida 33440

Airglades International Airport, LLC
111 Ponce de Leon Avenue
Clewiston, Florida 33440

Star America
165 Roslyn Road
Roslyn Heights, New York 11577

Hendry County owns Airglades Airport and LaBelle Airport (X14), a small general aviation airport in LaBelle, Florida. Hendry County represents it has the authority to sell the Airglades Airport to a private entity, and that its actions comply with applicable law. Under Chapter 332 (Airports and Other Navigation Facilities), § 332.08 of the 2018 Florida Statutes, the County has authority to sell the airport. The provision provides:

> (3) Notwithstanding any other provision of this section, a municipality participating in the Federal Aviation Administration's Airport Privatization Pilot Program pursuant to 49 U.S.C. § 47134 may lease or sell an airport or other air navigation facility or real property, together with improvements and equipment, acquired or set apart for airport purposes to a private party under such terms and conditions as negotiated by the municipality. If state funds were provided to the municipality pursuant to § 332.007, the municipality must obtain approval of the agreement from the Department of Transportation, which is authorized to approve the agreement if it determines that the state's investment has been adequately considered and protected consistent with the applicable conditions specified in 49 U.S.C. § 47134.

The County advised that under Section 332.01, a "municipality" includes a county. The County has received grants from the Florida Department of Transportation ("FDOT") for planning, design, and construction projects. Accordingly, Hendry County will obtain FDOT approval of the Purchase and Sale Agreement as required by Florida Statute, Title XXV- Aviation, Chapter 332, Airports, and Other Air Navigation on Facilities, Section 332.08 (3). Hendry County is currently in discussions with FDOT and expects FDOT to approve the Purchase and Sale Agreement soon. The County committed to submit the confirmation of FDOT's approval once it is obtained.

Under the proposed transaction, the County will retain an Access Easement in favor of Hendry County that allows it to take over control of the Airport in the event of a default. The Access Easement is retained via the County Deed providing that the title to the property is conveyed subject to "reservation of the easement and rights set forth" in the Deed. The County may exercise its rights under the Access Easement to exercise its police, regulatory and other governmental powers, and authority to protect the health, welfare, and safety of the citizens of and other persons within the jurisdiction of Hendry County, Florida, pursuant to applicable law, including the rights specifically granted relating to the Airport and its operation.

Airglades LLC, incorporated under the laws of Delaware, is designated to serve as the Airport Sponsor and the private operator. Airglades LLC has submitted documentation stating it has the legal authority and the capacity to comply with the grant assurances. Airglades Holdings LLC, manages Airglades LLC.

Airglades Holdings LLC will be fully capitalized at Financial Close. "Financial Close" under this Record of Decision shall mean the delivery of the County Deed conveying the Property to Airglades LLC concurrently with the delivery of the Purchase Price to Hendry County. Airglades Holdings LLC is currently managed by AIA. AIA is a U.S. based company whose member companies are each U.S. based businesses. At Financial Close, the shareholders of AIA expect to invest the majority of their estimated $30 million of development costs into Airglades Holdings LLC.

Star America is a U.S. based company and its voting rights are held by two individual U.S. citizens. Star America expects to invest approximately (but not more than) $100 million of equity.[3]

Upon Financial Close, AIA and Star America anticipate that Star America Airglades LLC will own approximately 85 to 90 percent of Airglades Holdings LLC, and AIA will own approximately 10 to 15 percent of Airglades Holdings LLC.[4] Airglades Holdings LLC will continue to be the sole member of Airglades LLC, and therefore Star America Airglades LLC and AIA will each be indirect owners of Airglades LLC at the same stated percentages.[5]

Airglades LLC has proposed AvPORTS Management LLC (AvPORTS) to operate the Airport once construction of the Cargo Complex nears completion, in preparation for the commencement of cargo operations.

Airport Property

The United States opened the Airport's first airfield on November 12, 1942, as Riddle Field. Riddle Field was deactivated on December 31, 1945, and declared surplus in 1946. The War Assets Administration acquired the facility and deeded the property to the State of Florida in 1948, for use as an airport under the Surplus Property Act of 1944. By Quitclaim Deed, the State of Florida deeded the Airport to the County of Hendry in 1962. Federal grant funds were not used to acquire any of the Airport land.

The Airport Master Record dated August 15, 2019, indicates the existing property covers 2,560 acres. Appendix 3, Exhibit A, of the Final Application includes a legal description and map of the Airport property to be transferred from Hendry County to Airglades LLC. The County will retain three parcels of land (three retained parcels), which are now airport property. The three retained parcels are a landfill on the north side, a suspected possible landfill adjacent to the runway, and the Borrow Pits on Flaghole Road, and are excepted in the property description in Appendix 2. The

---

[3] See Final Application, Appendix 7 for a complete description of Star America.
[4] See Second Supplement to Final Application, Appendix 2 for an organization chart.
[5] The approval of the Final Application does not address the tax status of Airglades LLC or its direct or indirect owners, or any party to the transaction. In no case does approval of the privatization application stipulate to any purported tax designations by the parties.

legal description and map of the three retained parcels are included in Appendix 2, Exhibit F of the Final Application.[6]

Airglades LLC plans to acquire 305 acres of land, south of the airport, to enable the construction of a new 10,000-foot runway to accommodate primarily air cargo operations, designated as the HBF Option Parcel, and described in Appendix 3, Exhibit B of the Final Application.

Equipment, Personal Property and Funds in Existing Airport Accounts

Per the terms of the Purchase and Sale Agreement, Airglades LLC may elect to purchase Airport Assets included in Exhibit E in Appendix 3 of the Final Application,[7] the value of which shall be determined by an appraiser. The Airport Assets include vehicles, equipment, machinery, and other personal property assets owned by the County, purchased with Airport funds, and used in connection with the operation of the Airport.

The County intends to use the proceeds from the reconciled balance of the Airglades Airport operating fund to reinvest in public safety and for improvements at LaBelle Airport.

Purchase and Sale Terms

In sections below, the FAA summarizes and paraphrases the major terms presented to the FAA in the Final Application, the First Supplement, the Second Supplement, and the and related submissions.

Under the Purchase and Sale Agreement for the Airglades Airport at Appendix 7 in the Second Supplement to the Final Application, the purchase price is $13 million, is subject to the discount discussed below. Airglades LLC will pay ten (10) percent of this amount, plus the $200,000 Option Exercise Fee, as a deposit to the Escrow Agent, within 30-days of the Approval Date of the Purchase and Sale Agreement.

The County agreed that Airglades LLC would receive a $1 million discount for every 100 jobs it can demonstrate will be created by the Airport ("Job Credit Discount"). The total Job Credit Discount is capped at $8 million. Direct and indirect jobs will be included with this total. The Purchase and Sale Agreement includes additional limitations, and specifically it expressly excludes construction jobs from that count. It also delays the calculation until four years after the FAA has authorized the commercial use of the proposed new runway. This time will allow for a clearer picture to determine the total number of jobs. To further increase accuracy, the Purchase and Sale Agreement requires use of the IMPLAN, the economic impact model currently in use by the Hendry County Economic Development Council, to calculate the number of indirect jobs created to

[6] Hendry County agreed through a restrictive covenant that the three retained parcels will not be developed with above or below ground buildings or other improvements, with the exception of improvements associated with a park.
[7] Revised Purchase and Sale Agreement at Appendix 7 in Second Supplement with same exhibits.

calculate the discount. The data inputs to the model are to be mutually agreed upon by the County, Airglades LLC, and the Hendry County Economic Development Council.

The Purchase and Sale Agreement also includes a specific provision affording the County the right to recover discounts should fewer jobs result than expected. The County's potential right to recover discounts will be protected by a letter of credit for the full amount of the discount.

Therefore, at Financial Close, Hendry County will receive $5 million from Airglades LLC to cover the cost of the Airglades Airport acquisition. Four years after the FAA has authorized the commercial use of the proposed new runway, there will be a reconciliation of the agreed upon price of $13 million (subject to Job Credit Discount) and the initial sale price of $5 million based upon the terms and conditions stated in the Purchase and Sale Agreement. Airglades LLC may also elect to purchase the Airport Assets as detailed in Exhibit "E" of the Final Application.

On August 13, 2019, the Hendry County Board of County Commissioners adopted Resolution No. 2019-55 consenting to the filing of the Final Application with the FAA for Airglades Airport, together with any supplements to be filed during the course of the FAA process by the County Administrator. Based on this authority, the County approved the Purchase and Sale Agreement, submitted in the Final Application at Appendix 3, and the County Deed conveying the Airport with the reserved Access Easement, submitted at Appendix 3, Exhibit J.

Airglades LLC plans to acquire the HBF Option Parcel per an "Exclusive Option to Purchase Real Property," an unexecuted copy of which is included in Appendix 3, Exhibit B to the Final Application. The Exclusive Option affords Airglades LLC a five-year opportunity to purchase up to 305 acres to enable construction of the new runway. The Purchase and Sale Agreement contemplates that this Option will be exercised simultaneously with the Financial Close.

Source of Funds

Airglades LLC commits that it will be sufficiently capitalized at Financial Close to satisfy all of its financial obligations at closing, including the purchase of the Airport. Airglades LLC will also commit to retain a sufficient amount of working capital to fund current Airport operations. At Financial Close, final sources and amounts of equity and debt will be determined, and will be subject to legally binding commitments.

The shareholders of AIA expect to invest the majority of their estimated $30 million of development costs into Airglades LLC at Financial Close. Star America expects to invest up to $100 million in Airglades LLC. The cash equity portion of the financing structure will come from Star America's funds and from co-investors.

Airglades LLC will be entitled to call additional capital from Airglades Holdings LLC, and Airglades Holdings LLC in turn will be entitled to call capital from its members. Should Airglades Holdings LLC do so, Star America Airglades LLC will be entitled to call capital from its parent entities. Star America Airglades LLC will be obligated to fund its capital calls on 12 business days' notice, and the limited partners of the parent funds will be obligated to fund their capital calls on 10 business days' notice.

Based on the initial cost estimates, Airglades LLC (and its direct and indirect owners) anticipates that the financial structure will require approximately $480 million in investment to complete the new infrastructure and facilities and begin operations. Of this amount, $190 million is estimated to come from equity investors and $290 million is estimated to come from lenders. The final capital structure will be dependent on total actual costs and lender requirements, but is expected to require no greater than $250 million in equity and no less than $230 million in debt.

The planned 60 percent debt - 40 percent equity split reflects Airglades LLC's (and its direct and indirect owners) best estimates of what lenders will view as an investment grade capital structure. Final determination of the amount of debt and equity will be dependent on the outcome of the lending process, and possibly on the rating agency process.

The Application states that, should the Airport be awarded AIP grants to help defray the cost of the new infrastructure, Airglades LLC intends to use the funds to make principal payments on the debt raised to pay for eligible capital expenditures. Airglades LLC commits that AIP funds will not be used to pay interest on the debt.

The source of operations and maintenance funding will be a series of equity contributions and debt, which will be serviced by projected revenue from throughput fees, ground leases, fuel flowage fees, and other sources. Airglades LLC will be required to adopt Hendry County's rates and charges for the general aviation facilities at the Airport upon acquisition. Moreover, Airglades LLC confirmed that the private operator requested exemption would not have any effect on the Airport's aeronautical user fees.

This Record of Decision is intended to apply to all of these related entities and the investment partners, including but not limited to, Airglades LLC, Airglades Holdings LLC, Star America, Star America Airglades LLC, Airglades International Airport LLC, direct and indirect owners, members, and partners.

This Record of Decision is independent of any future requests for any form of Airport Improvement Program (AIP) determination. Approval of the privatization application is not an indication that AIP funds will be awarded. This Record of Decision neither provides nor guarantees any form of federal financial assistance.

IV. Qualifications of the Private Operator

General

Airglades LLC has submitted documentation stating it has the legal authority and the capacity to comply with the grant assurances. Airglades Holdings LLC is managed by AIA, its sole member.

AIA holds the current management agreement with Hendry County as operator of the existing Airglades Airport.

Star America and its related companies have experience in greenfield infrastructure development. It has an Investment and Asset Management Team with experience in financing infrastructure development projects, as well as in the technical aspects of delivering infrastructure projects. Star America indicates it will work with Airglades LLC to leverage a high level of financial and technical experience to deliver complex infrastructure projects. Additionally, Star America team members have served a variety of roles in helping to deliver airport-related development projects including managing the construction, financing the improvements, and developing comprehensive bids to lease, finance, operate, maintain and improve airports.[8]

AIA a party to the transaction, has managed the Airport under a management agreement with Hendry County for a number of years. Thus, Airglades LLC is prepared to manage the transition of the Airport from public to private control. Airglades LLC satisfies the requirement of the private operator's airport management and operations experience and has available financial resources.

Airglades LLC is required, under the Purchase and Sale Agreement, to complete initial improvements within five years after closing. These projects include: (i) a new 10,000-foot runway; and (ii) hangars, aircraft service facilities, warehouses, office buildings, and general commercial buildings costing at least $50 million in the aggregate to construct. This commitment is stated as a covenant running with the land in the County Deed transferring the property.

Airport Operating Certificate under 14 CFR Part 139

Airglades LLC does not intend to seek Part 139 Certification as a part of the proposed Cargo Complex as it does not intend to provide scheduled passenger service. However, Airglades LLC has stated that they will incorporate certain Part 139 components associated with safety and security into the development of the proposed projects.[9]

This includes:

1. 139.305 and 139.307– Paved and Unpaved surfaces. Design, construct, and maintain paved and unpaved surfaces in compliance with Part 139 and other FAA Design Criteria and Advisory Circulars.
2. 139.309 – Safety Areas. Design, construct, and maintain runway and taxiway safety areas in compliance with Part 139 and other FAA Design Criteria and Advisory Circulars.
3. 139.311 – Marking, signs, and lighting. Provide and maintain runway and taxiway marking, signs and lighting in compliance with Part 139 and other FAA Design Criteria and Advisory Circulars.

[8] See Final Application, Appendix 7, for a complete description of Star America.
[9] The Airport must adhere to FAA design standards as a condition of qualifying for grants under the Airport Improvement Program.

4. 139.315, 139.317, 139.319 – Aircraft rescue and firefighting requirements (i.e. equipment, personnel and operational requirements based on applicable index determination)
5. 139.321 – Handling and storing of hazardous substances and materials.
6. 139.325 – Airport emergency plan.
7. 139.331 and 139.333 – Obstructions and Protection of NAVAIDS.

Airport Security Program under 49 CFR Part 1542

Prior to the opening of the Cargo Complex, Airglades LLC will develop an Airport Security Plan in compliance with 49 CFR Part 1542, as applicable.

AIP Sponsor Qualifications

As part of its evaluation of the capabilities of Airglades LLC, Hendry County determined that Airglades LLC has the capability to assume the airport sponsor's obligations under the grant assurances.

Under the Purchase and Sale Agreement, Hendry County assigns to Airglades LLC and Airglades LLC accepts and assumes all duties and obligations of Hendry County under the five (5) FAA grant agreements listed in Exhibit I.[10] Airglades LLC shall be responsible for performing all federal obligations under each of these grant agreements to the extent arising from and after the Financial Close date. This obligation includes assurances, amendments, modifications, supplements, and renewals subject to any exemption granted by the FAA pursuant to § 47134 or otherwise.

Appendix 4 to the Second Supplement contains an unexecuted legal opinion confirming that Airglades LLC has the legal authority to execute the Purchase and Sale Agreement and perform its obligations under the Purchase and Sale Agreement. Appendix 5 to the Second Supplement contains confirmation from the transactional counsel to Airglades International Airport LLC, that Airglades LLC has been established in that form which, with appropriate approvals by its members at the time, will enable it to carry out the business and comply with all FAA grant and statutory assurances and any conditions imposed in the Record of Decision.

Based upon the Purchase and Sale Agreement, the legal opinions, and 49 U.S.C. § 47134, the FAA concludes that Airglades LLC has the necessary powers and authorities to act as an eligible airport sponsor, and is legally and financially able to assume and carry out the certifications, representations, warranties, assurances, and covenants required of sponsors of federally obligated airports. Accordingly, the FAA finds Airglades LLC to be an eligible sponsor under 49 U.S.C. § 47101, *et seq*., provided that the conditions in the Record of Decision are met prior to Financial Close and continue to be met thereafter.

Airglades LLC, as the Airport owner, shall assume and be contractually obligated to comply with all applicable grant assurances. This is supported by a legal opinion and in the Purchase and Sale

[10] See Second Supplement Appendix 7 Revised Purchase and Sale Agreement.

Agreement under which Airglades LLC agreed to assume all the obligations with respect to AIP grants awarded to Hendry County and identified in the Agreement. As required by the Purchase and Sale Agreement, Airglades LLC will comply with Hendry County's existing grant assurances including but not limited to efforts to assure compatible land use around the Airport, protection of navigation aids, approach lights, runway safety areas, and runway protection zones; and the continuation and extension of avigation easements, among many other legal obligations.

Hendry County is released from its status as sponsor for Airglades Airport, in furtherance of Airglades LLC's participation in the Program. However, Hendry County is responsible to use its zoning authority and best efforts to assist Airglades LLC with hazard removal and mitigation, and compatible land use per the obligations under this Record of Decision, and the restrictive covenant for its three retained parcels. The FAA has the right to exercise its third party beneficiary rights to enforce these requirements.

As provided in § 47115 as amended and § 47134 (g), Airglades LLC as the private sponsor is not prohibited from applying for and receiving discretionary and entitlement funds under §§ 47114 and 47115, subject to FAA approval. This Record of Decision neither provides nor guarantees federal financial assistance. AIP discretionary funds are available on a competitive basis, up to 70 percent federal share of eligible costs for projects that the FAA can fund. (§§ 47109(a)(4), 47115) Entitlement funds shall be available in accordance with 49 U.S.C. § 47114.

Additionally, § 47115(k)[11] permits letters of intent on limited circumstances for participants in the Airport Investment Partnership Program as follows:

> (1)Authority. The Secretary may make grants with funds made available under this section for an airport participating in the program under section 47134 if (A) the Secretary has approved the application of an airport sponsor under section 47134(b) in fiscal year 2019; and (B)the grant will (i) satisfy an obligation incurred by an airport sponsor under section 47110(e) or funded by a nonpublic sponsor for an airport development project on the airport; or ii) provide partial federal reimbursement for airport development (as defined in section 47102) on the airport layout plan initiated in the fiscal year in which the application was approved, or later, for over a period of not more than 10 years.

Although Hendry County is no longer the sponsor of Airglades Airport, it is obligated for the specified obligations set forth in § 47134(c), which the FAA may enforce by means of the third party beneficiary rights granted in the Purchase and Sale Agreement.[12]

[11] See FAA Reauthorization Act of 2018, 115 H.R. 302, § 184.

[12] The Purchase and Sale Agreement provides that the FAA is expressly made a third party beneficiary. The FAA relies on these rights to ensure that the statutory objectives of § 47134 are satisfied.

Competitive Practices

In its review of the Application, § 47134(e) requires the FAA to determine if approval of the Final Application would result in unfair and deceptive practices or unfair methods of competition. To assist in this review, the FAA requires applicants to provide a description of all charges of unfair or deceptive practices or unfair methods of competition brought against the private operator. AIA and Star America report they have had no charges of unfair or deceptive practices or unfair methods of competition brought against them in the past ten years. In addition, the parties report that none of the senior leadership of AIA and Star America has had charges of unfair or deceptive practices or unfair methods of competition brought against them in the past ten years.

Airglades LLC in assuming Hendry County's grant agreements has agreed to be bound by the requirements of 49 U.S.C. § 40103(e) and corresponding Grant Assurance 23, Exclusive Rights. Airglades has not indicated any intent to offer aeronautical services on a proprietary exclusive basis.

V. Requests for Exemption under Section 47134

Airglades Airport is a general aviation airport and Airglades LLC plans to develop proposed airfield and landside facilities to support a Proposed Perishable Air Cargo Complex at the Airport if privatized. The parties represent that the privatization of Airglades Airport and development of the Proposed Perishable Air Cargo Complex will benefit Hendry County, consumers, airlines, general aviation, importers, wholesalers, and the Federal Government.

The FAA believes the extensive review of this application demonstrates that the FAA has exercised its discretion in the privatization area judiciously and decided to approve this transaction only after it confirmed that Hendry County and Airglades LLC considered the interests of the airport, users, and the aviation system. The FAA's consideration of its approval of the three exemptions is premised on the facts and circumstances of this proposed transaction.

Request for Exemption to Use of Revenues under 49 U.S.C. § 47134(b)(1) [13]

The County requests an exemption under 49 U.S.C. § 47134(b)(1) as follows:

> Pursuant to 49 U.S.C. § 47134(b)(1), Hendry County requests an exemption from those provisions of 49 U.S.C. §§ 47107(b) and 47133 and other law, regulation, or grant assurance that prohibits the use of airport revenue for general purposes, including the receipt of a reasonable rate of return by the private airport sponsor. As for those payments necessary to carry out the underlying transaction, Hendry County intends to use the proceeds from the sale of the Airport and the reconciled balance of the Airport operating fund to reinvest in

[13] (b)(1) Use of Revenues. (A) In general. The Secretary may grant an exemption to a sponsor from the provisions of §§ 47107(b) and 47133 of this title (and any other law, regulation, or grant assurance) to the extent necessary to permit the sponsor to recover from the sale or lease of the airport such amount as may be approved by the Secretary (ii) in the case of a non-primary airport, by the Secretary after the airport has consulted with at least 65 percent of the owners of aircraft based at that airport, as determined by the Secretary.

public safety support for the Airport and its surrounding areas. Specifically, the proceeds will be used to enhance the Montura & Flaghole Fire Station and the U.S. 27 Corridor Fire/Emergency Medical Service Station. Additionally, a portion of the proceeds would include investments into Labelle Airport.

Hendry County included the following table in the Final Application to detail its anticipated reinvestment.

Proceeds from Sale of Airglades to be Reinvested		
Proceeds		Amount
Sale of Airport		$5,000,000
Current Balance in the Airglades Airport Operating Fund (Estimated)		$67,000[14]
Total Anticipated Proceeds		$5,067,000
		Estimated Amount
1	Montura & Flaghole Fire Station Improvements US 27 Corridor Fire/Emergency Medical Service Station	$3,492,000
2	LaBelle Airport	
A	Construct T-Hangar Building and Access Drives	$180,000
B	Purchase and Install Emergency Generator	$23,000
C	Construct Hangar Building (Box Units)	$180,000
D	Acquire Commercial Hangar 1	$122,000
E	Acquire Commercial Hangar 2	$122,000
F	Acquire Commercial Hangar 3	$80,000
G	Install Additional 10,000-gallon AVGAS Fuel Tank	$30,000
H	Construct Aircraft Parking Apron - West Side (Phase 1)	$50,000
I	Land Acquisition (1.3 AC)	$30,000
J	Land Acquisition (1.3 AC)	$30,000
K	Land Acquisition (2.2 AC)	$60,000
L	Acquire Land for North RPZ - Parcel N-3	$200,000
M	Acquire Land for North RPZ - Parcel N-2	$344,000
N	Acquire Land for North RPZ - Parcel N-1	$48,000
O	Land Acquisition (0.3 AC)	$4,000
P	Land Acquisition (0.3 AC)	$16,000
Q	Land Acquisition (0.6 AC)	$16,000
R	Land Acquisition (3.6 AC)	$20,000
S	Land Acquisition (3.6 AC)	$20,000
Total Anticipated Reinvestment		$1,575,000
Balance		$0

[14] The County will prepare a full accounting of remaining funds in the Airport Operating Fund at the time of Financial Close.

Airglades Airport is a non-primary (general aviation) airport, and thus this exemption request is subject to confirmation that Hendry County consulted with at least 65 percent of the of aircraft based at the Airport.

The FAA reviewed the Final Application, exhibits, and supplements, including the Meeting Minutes reflecting consultation with general aviation users at the Airport. In addition, the County developed a public website to educate and inform the public and various stakeholders about the Airglades project. The County consulted with the general aviation tenants, including the skydiving service. There are 17-based aircraft at Airglades Airport[15] and thus these outreach efforts reflect consultation with at least 65 percent of the owners of aircraft based at the Airport.[16]

The FAA will protect the interests of general aviation users of the airport when approving an airport's Program application.[17] Here the parties emphasized that they recognize the value of general aviation activities and stated they are committed to maintaining an open dialog with general aviation users to maintain and improve best practices at Airglades Airport.

The FAA notes that Airglades LLC will be required to adopt Hendry County's rates and charges for the general aviation facilities at the Airglades Airport at the time that the private operator acquires the Airport. Airglades LLC has also confirmed that its requested exemption under 49 U.S.C. § 47134(b)(3) will not have any effect on the Airport's aeronautical user fees.

The Administrator is granting an exemption to Hendry County from the provisions of §§ 47107(b) and 47133 of Title 49 (and any other law, regulation, or grant assurance) to the extent necessary to permit the County to recover an amount not to exceed $5 million from the sale of the Airglades Airport.[18]

Accordingly, the Administrator grants the requested revenue use exemption to Hendry County for use of the sale proceeds in an amount not to exceed $5 million.[19]

Request for Exemption to Repay Federal Grant Funds under 49 U.S.C. § 47134(b)(2)[20]

The County requests an exemption under 49 U.S.C. § 47134(b)(2) as follows:

---

[15] Report to Congress National Plan Integrated Airport Systems, 2019-2023, Appendix A https://www.faa.gov/airports/planning_capacity/npias/reports/media/NPIAS-Report-2019-2023-Appendix-A.pdf
[16] Also, see Section VI. below.
[17] 49 U.S.C. § 47134(f)
[18] Any proceeds Hendry County receives from the sale of Airglades Airport Assets these should be invested in projects at LaBelle Airport
[19] Any proceeds Hendry County recovers for discounts after the reconciliation of the $13 million purchase price and the initial $5 million discounted price should be invested in projects at LaBelle Airport.
[20] (b)(2) Repayment Requirements. If the Secretary grants an exemption to a sponsor pursuant to paragraph (1), the Secretary shall grant an exemption to the sponsor from the provisions of §§ 47107 and 47152 of this title (and any other law, regulation, or grant assurance) to the extent necessary to waive any obligation of the sponsor to repay to the Federal Government any grants, or to return to the Federal Government any property, received by the airport under this title, the Airport and Airway Improvement Act of 1982, or any other law.

> As provided in § 160 of the FAA Reauthorization Act of 2018, if the Secretary grants an exemption with respect to the use of airport revenues under § 47134(b)(1), the Secretary shall grant an exemption from the provisions of 49 U.S.C. §§ 47107 and 47152, (and any other law, regulation or grant assurance) to the extent necessary to waive any obligation of the sponsor to repay Federal Grants or to return to the Federal Government any property This exemption is necessary to allow the County to expend the sale proceeds on the purposes described in Part III.B.2 of the Final Application.

The County states this exemption will allow the County to expend the sale proceeds and the remaining airport operating fund balance generally for public safety support for the Airglades Airport and its surrounding areas. The County further states it intends to use the proceeds to enhance the Montura & Flaghole Fire Station improvement and the U.S. 27 Corridor Fire/Emergency Medical Service Station. The County indicates it will also commit $1,575,000 for investments into the LaBelle Airport to support general aviation.

The County accepted $4,059,354 in AIP grants, since 2003 via five (5) grants listed in the Assignment and Assumption Agreement attached as Exhibit L to the Purchase and Sale Agreement at Appendix 7 in the Second Supplement.[21] The Federal Government deeded the Airglades Airport to the State of Florida in 1948 under the Surplus Property Act of 1944, and the State of Florida deeded the Airport to Hendry County in 1962. Hendry County and Airglades LLC proposed an amendment to the 1948 Quitclaim Deed.

Hendry County and Airglades LLC acknowledge that the transaction associated with Record of Decision is structured so that the FAA retains its original reverter under the Surplus Property Act in the Quitclaim Deed (1948 Quitclaim Deed) conveying the Airport to the State of Florida in 1948. Additionally, the parties believe that investors will be comfortable with the FAA holding a reverter as a backstop should any issues not ultimately be resolved under Hendry County's reserved Access Easement. This is premised on the FAA's role in regulating the national airport system.

As stated above, the exemption under 49 U.S.C. § 47134(b)(1) was granted. Thus the Administrator hereby grants an exemption to Hendry County from the provisions of 49 U.S.C. §§ 47107 and 47152 (and any other law, regulation, or grant assurance) to the extent necessary to waive any obligation of Hendry County to repay to the Federal Government any grants, or to return airport property deeded by the Federal Government under Title 49, the Airport and Improvement Act of 1982, or any other law.

Under the exemption, Hendry County is not required to repay $4,059,354 for the grants it received. Additionally, the exemption is granted to the extent necessary to waive Hendry County's obligation to return federally obligated airport property; the Federal Government's reverter is not extinguished and will continue to run with the airport property. Therefore, any airport property conveyed by

[21] Airglades LLC will assume the obligations for these five (5) grants.

Hendry County to any purchaser or grantee takes the premises subject to the Federal Government's reverter.

Furthermore, the exemption extends to Hendry County's three retained parcels that will be released from federal obligations.[22] However, the FAA has the right to exercise its third party beneficiary rights to seek compliance by Hendry County or Airglades LLC in the event Airglades Airport operations are impacted by changes, developments or any other conduct, action or inaction, on or related to any of the three retained parcels.[23]

As to the request for the FAA to amend the 1948 Quitclaim Deed, the FAA will issue a deed amendment to revise certain provisions of the Quitclaim Deed consistent with the exemption granted to Hendry County to the extent necessary to waive any obligation of Hendry County to return the federally conveyed airport property to the Federal Government.

An amendment of the 1948 Quitclaim Deed originally conveying the airport property from the United States to the State of Florida, dated August 24, 1948, and recorded on August 28, 1948, at Liber 24, page 240, (reconveyed by Quitclaim Deed from the State of Florida to Hendry County, dated September 7, 1962, and recorded at Liber 60, page 647), will be issued to:

> (1) Add in missing text from paragraph 2 of the original 1948 Deed and update applicable cites as follows: That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in § 101 of the Federal Aviation Act of 1958, as amended, and Federal Aviation Regulations pertaining thereto, and all structures;
>
> (2) Permit Hendry County to sell the airport to a private firm subject to the Federal Government's reverter;
>
> (3) Allow the leases of the tenants and subtenants to survive in the event of federal reversion of the airport property under the Quitclaim Deed, in order to permit commercial financing and development of the 21S property notwithstanding the Government's reverter; and
>
> (4) Release the three retained parcels in full from the surplus property obligations.

The 1948 Quitclaim Deed will not be amended to include the requested notice to lenders provision. However, the FAA will exercise reasonable due diligence to ensure known affected parties have adequate notice conditioned on leases and financing instruments being subordinate to federal obligations under the surplus property deed restrictions and grant assurances. This is intended to ensure that the Airport will be promptly operated in accordance with the surplus property deed restrictions and grant assurances. The FAA believes the 1948 Quitclaim Deed

---

[22] See the Final Application, Appendix 3. Exhibit F.
[23] Hendry County agreed through a restrictive covenant that the three retained parcels will not be developed with above or below ground buildings or other improvements, with the exception of improvements associated with a park.

amendment that recognizes commercial financing and development of the Airglades Airport (2IS) property affords adequate protection to the lenders since the FAA would revert and take possession subject to the lender's rights to the Airport property so long as lender's actions are consistent with federal obligations.

The 1948 Quitclaim Deed amendment will be conveyed to Hendry County on the day of Financial Close, and it is required that this Deed be recorded in advance of any conveyance from Hendry County to Airglades LLC.

In granting this exemption under 49 U.S.C. § 47134(b)(2) for the Airglades Airport privatization, the Administrator notes the following:

> 1) The federal investment is protected, since the Airglades Airport will continue to function as an airport and all of the facilities and improvements previously financed with AIP grant funds will continue to be used for the purposes of the original grants.
>
> 2) The County intends to use $1,575,000 of the sale proceeds towards maintaining and revitalizing the neighboring general aviation LaBelle Airport. The Administrator considers the $3,492,000 that the County intends to allocate for the building of new emergency response infrastructure will provide collateral benefit to Airglades Airport.
>
> 3) The federally conveyed property comprising Airglades Airport will continue to function as an airport consistent with the surplus property restrictions, including the right to revert the property.

Request for Exemption of Airglades LLC to Earn Compensation under 49 U.S.C. § 47134(b)(3)[24]

Airglades LLC requests an exemption under 49 U.S.C. § 47134(b)(3) as follows:

> As provided in § 160 of the FAA Reauthorization Act of 2018, if the Secretary grants an exemption with respect to the use of airport revenues under § 47134(b)(1), the Secretary shall grant an exemption to the corresponding purchaser from the provisions of §§ 47107(b) and 47133 (and any other law, regulation, or grant assurance to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. Airglades LLC requests an exemption from the provisions of 49 U.S.C. §§ 47107 and 47133 (and any other law, regulation, or grant assurance), including without limitation Grant Assurance 25 (Airport Revenues), to allow Airglades LLC to carry out the Project as

[24] (b)(3) Compensation from Operations. If the Secretary grants an exemption to a sponsor pursuant to paragraph (1), the Secretary shall grant an exemption to the corresponding purchaser or lessee from the provisions of §§ 47107(b) and 47133 of this title (and any other law, regulation, or grant assurance) to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

described in the Final Application and to earn compensation from the operations of the Airport for the purposes described below, including a reasonable rate of return on Airglades LLC's investment and risks undertaken.

The anticipated revenue sources would include:

1. Cargo throughput fees, on a per pound basis, for inbound perishable air cargo volume and outbound "backhaul" cargo. Preliminary fee structure for the proposed Cargo Complex included in First Supplement to Final Application.[25]
2. Landing fees
3. Fuel flowage fees, including Into-Plane fees
4. Concession fees from the ground handler and warehouse operator
5. Maintenance Repair & Overhaul ("MRO") ground lease
6. Aircraft parking fees
7. Other ground leases (outside of the perishable air cargo building) for future tenants that may want to develop on-Airport private facilities compatible with the airport (i.e. on-airport warehousing/storage, maintenance facilities, other airport-related commercial or industrial facilities, etc.)

In addition to the above revenue sources, Airglades LLC states it will seek FAA funding for eligible costs, including through discretionary funding, non-primary entitlement funds, and the calculated cargo entitlement funds, beginning in year three of the Cargo Complex operation. Airglades LLC and its partners advised that it does not view the financing to be independent of federal funds.[26]

Airglades LLC notes that the revenue collected will be used for principal and interest payments on capital improvement project debt; debt service reserve account; operation and maintenance account (airport management, inspection services, labor, utilities, building and airport maintenance, equipment, real estate taxes, insurance); future capital expenditures, federal and state corporate income tax liability, and property taxes or payments in lieu of taxes.

Airglades LLC and its partners advise that an operations and maintenance budget for the Airport has been prepared that will be funded through equity contributions and debt serviced by projected revenue from, *inter alia*, throughput fees, ground leases, and fuel flowage fees. Airglades LLC notes that it intends to develop additional facilities as needed to meet future aeronautical demand from both the general aviation and cargo communities as well as to maintain the airfield and landside infrastructure to a high standard.

---

[25] Airglades LLC notes that the ground lease rates for the Cargo Complex for land with direct airfield access are expected to be higher than the ground lease rates for land without direct airfield access. Ground lease rates at the Airport are currently being negotiated. The rates contained in Appendix 5 to the Final Application are the average rates for general aviation airports in South Central Florida, based on a 2013 FDOT study. Hendry County used the study to establish the rates and charges for the existing general aviation facility at the Airport. The rates contained in Appendix 5 are distinct from the preliminary rates for the Cargo Complex.

[26] This Record of Decision neither provides nor guarantees federal financial assistance.

Airglades LLC states it expects to make a reasonable rate of return on its investment and ensure that the Cargo Complex develops as a profitable business. Airglades LLC states it will reserve the right to make a reasonable rate of return on aeronautical rates and charges after operating and capital cost commitments are satisfied, including cost of capital and risk premium. Airglades LLC explains that the amount of airport revenue to be used as compensation will vary depending upon a number of factors including: the level of operating costs encountered, the extent of any requirements for additional capital expenditure outside the scope of the initial capital improvements, the perishable air cargo volumes that could exceed the anticipated and guaranteed thru-put volumes imported to Airglades Airport, and backhaul cargo volumes and other aviation-related business developments that could occur at the Airport.

Airglades LLC's exemption request also includes the request to permit it to pay payments in lieu of taxes as referenced in § 8.5 of the Purchase and Sale Agreement.

Airglades LLC confirms that the exemption requested will not have any effect on the Airglades Airport's aeronautical user fees.

As stated above, the exemption under 49 U.S.C. § 47134(b)(1) was granted. Thus, the Administrator hereby grants Airglades LLC an exemption from the provisions of §§ 47107(b) and 47133 of Title 49 (and any other law, regulation, or grant assurance) to the extent necessary to permit Airglades LLC to earn compensation from the operations of the Airglades Airport.

The FAA believes that the public investment is protected. Airglades Airport will continue to function as an airport and all of the facilities and improvements previously financed with AIP grant funds or property conveyed via the 1948 Quitclaim Deed will continue to be used for the purposes of the original grants and Deed. In addition, the Purchase and Sale Agreement contains provisions binding Airglades LLC to all of the terms, conditions, and assurances contained in Hendry County's grant agreements. This includes requiring safe operations be maintained at the Airport, and investment in capital improvements substantially in accordance with the Capital Improvement Plans (CIP) included in the Final Application at Appendix 3, Exhibit C, and Appendix 6 of the Second Supplement for the general aviation side of the Airport.

Also, the FAA is relying on the commitment of Airglades LLC that the exemption requested will not have any effect on the Airglades Airport's aeronautical user fees.

Additionally, the FAA is expressly made a third party beneficiary in Section 21.17 of the Purchase and Sale Agreement submitted in the Second Supplement. The third party beneficiary rights are enforceable by the FAA and the agency relies on these rights to ensure that the statutory objectives of § 47134 are satisfied.

The FAA has the right to perform compliance and land use inspections, and may conduct financial audits, or initiate a Notice of Investigation under 14 CFR Part 16 if Airglades LLC, as the airport sponsor, were to violate any of the conditions or grant assurances. In addition, the Administrator may revoke the exemption if the conditions under § 47134 or this Record of Decision are violated.

As a part of its review, the FAA examined confidential commercial and financial information submitted by Airglades LLC, and its direct and indirect owners and partners. The FAA reviewed the organizational structure, projected rate of return, available and committed capital, terms sheets, tax records, and teaming agreements.

The FAA found Airglades LLC's rate of return is not unreasonable for a general aviation airport, subject to the limitations discussed under this exemption.

The Administrator grants Airglades LLC, an exemption from the provisions of 49 U.S.C. §§ 47107(b) and 47133, and grant assurances issued under 49 U.S.C. § 47101 et seq., to the extent necessary to earn compensation from the operation of the Airport, including a reasonable rate of return on the private operator’s investment associated with the operation of the airport, and to pay payments in lieu of taxes. This exemption is subject to the terms and limitations of 49 U.S.C. § 47134, and does not exempt the amount of compensation or payments in lieu of taxes from review for compliance with § 47107(a)(1), § 47107(b) and § 47133 and associated grant assurances. In addition, this exemption is not unlimited since distributions to shareholders at any level are only available after Airglades LLC has covered the costs of airport operations and capital development as required under the grant assurances and the Purchase and Sale Agreement.

Accordingly, the Administrator grants the request from Airglades LLC for an exemption to permit it to earn compensation from the operations of the Airport subject to the terms and limitations of § 47134 and compliance with the terms of this Record of Decision.

Other Requests

Airglades LLC Business Information

As stated above, Airglades LLC requests that certain business information be treated as confidential business information. Counsel for Airglades asserts that the information contains sensitive commercial and financial information that should be treated as confidential and exempt from disclosure under the Freedom of Information Act, (FOIA) 5 U.S.C. § 552 *et seq*., Counsel for Airglades states the information was submitted voluntarily for the sole purpose of allowing evaluation by the U.S. Government. Counsel notes that under Exemption 4 of FOIA, “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential” is exempt from public disclosure. 5 U.S.C. § 552(b)(4). Counsel cites to a recent Supreme Court to assert that “[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019).

Counsel claims that each of the documents submitted with a request for confidential treatment meets the standard under Exemption 4. First, each document contains sensitive commercial or financial information that Airglades LLC and its direct and indirect owners and partners, as applicable, treats as private and does not disclose to the public. Second, each document was submitted pursuant to the Program Application Procedures. Counsel claims that public disclosure would cause substantial competitive harm.

Grant Assurance 26(b) requires the airport sponsor to make all airport records including deeds, leases, operation and use agreements, and regulations available for inspection by the FAA upon reasonable request.

Freedom of Information Act Exemption 4, 5 U.S.C. § 552(b)(4), does permit an agency to withhold trade secrets and commercial or financial information obtained that is privileged or confidential. Under Exemption 4, one of the standards for assessing the confidentiality of information that parties are required to submit to the government is whether disclosure of the information is likely to cause substantial competitive harm to the competitive position of the person from whom the information was obtained.

The burden is on Airglades LLC, in its request for confidential treatment, to persuade the FAA that the information should not be disclosed as consistent with existing law. The FAA believes Airglades LLC has met its burden and finds that the commercial and financial information of Airglades LLC, as a private firm, should not in all cases be subject to the same level of public access as the records of governmental agencies. The FAA recognizes that certain information requested from Airglades LLC, its direct and indirect owners and partners to be confidential commercial and financial business information, and is part of the record for this Record of Decision, but will be withheld from the Docket.

Should Airglades LLC wish to request confidential treatment in the future, it may submit the information with a request for confidentiality, and the FAA will consider the request under FOIA 5 U.S.C. § 552(b). In limited cases, information may be reviewed by the FAA in Airglades LLC offices without the need for submission of documents to the agency. Information on the operation of the Airglades Airport will continue to be made available to the public, including reports requested by the FAA on airport finances and payments, and information on the costs of any airport services and facilities that are included in the rate base of aeronautical users of the Airport. We would expect Airglades LLC to establish aeronautical fees consistent with Grant Assurances 22, Economic Nondiscrimination and 24, Fee and Rental Structure, and in consultation with the Airport's aeronautical users, in accordance with DOT/FAA's Policy Regarding Airport Rates and Charges. (See 78 FR 55330, par. 1.1, *et seq*.)

Comments on Other Grant Assurances

Airglades LLC must maintain a current Airport Layout Plan in conformity with all applicable FAA design standards and criteria. Airglades LLC must also maintain a current airport property map (Exhibit A) for submittal with all grant application, should grants be awarded.

VI. Consultation With General Aviation Users

Among the requirements outlined in the FAA's Application Procedures, is that the applicants must detail the proposed private operator's intentions regarding consultation with general aviation users about both the planned privatization of the airport and the projected effect on general aviation of the proposed changes in operation and management of the airport.

Additionally, as discussed above in the Section V, Requests for Exemption under § 47134, Hendry County was required to consult with at least 65 percent of the owners of aircraft based at the Airport. Correspondingly, Grant Assurance 8, Consultation with Users and Grant Assurance 9, Public Hearings, require an airport sponsor to undertake particular types of outreach toward the local community, namely airport tenants and users, when planning certain types of airport development.

AIA and the County took several steps to ensure the general aviation community at Airglades Airport understands the proposed plans for the Airport. The Airglades Airport Advisory Board, on behalf of Hendry County, provided regular status reports on the privatization plan and these meetings are open to airport tenants and users. AIA, the airport management company, stated it consulted with the Airglades Airport skydiving operator and notified tenants they will receive fuel discounts, due to the relocation of general aviation facilities as part of the planned improvements.

Additionally, the County:

- conducted a public hearing as part of Hendry County's Land Use Study for the Airport,
- conducted stakeholder meetings, community meetings, and public hearings/workshops,
- published notifications and legal advertisements,
- created a website – www.hendryfla.net/land_use_study.php --outlining the Land Use Study,
- mentioned the project on Facebook – www.facebook.com/hendrycounty, and
- monitored the comments received on the Federal Register about the project.

The parties emphasized that they recognize the value of general aviation activities and stated they are committed to maintaining an open dialog with general aviation users to maintain and improve best practices at Airglades Airport.

The FAA reviewed the Final Application, exhibits, and supplements, meeting minutes and public websites, and confirmed that adequate consultation with general aviation users at the Airport was conducted.

VII. Airport Operation and Development

Capital Improvements

AIA, in cooperation with Hendry County, updated the Airport Layout Plan (ALP) for the Airglades Airport, which was unconditionally approved by the FAA on February 14, 2018. A copy of the ALP is included in Appendix 12 of the Final Application.

Airglades LLC states in the Final Application that the primary capital development activity at the Airglades Airport will be an expansion of the facility to include a new runway and control tower, Cargo Complex and associated infrastructure. [27] The existing runway and general aviation facilities will remain in place. Airglades LLC is required under the Purchase and Sale Agreement to complete initial improvements within five years after closing, including: (i) a runway on the Airport having a length of no less than 10,000 linear feet; and (ii) buildings, including, without limitation, hangars, aircraft service facilities, warehouses, office buildings and general commercial buildings costing at least $50 million in the aggregate to construct. This commitment is stated to be a covenant running with the land in the County Deed.

Airglades LLC states in the Application that the proposed layout and estimated facility sizes as depicted on the ALP are conceptual in nature. However, the project components would be developed within the footprint of the area assessed within the Environmental Assessment. As the planning and design process has progressed for the proposed Cargo Complex, the size and layout of the proposed infrastructure anticipated for the initial development have been refined and may continue to evolve based on the actual cargo demand that is identified. The current conceptual layout and capital expenditure (CapEx) estimate for the initial 5-year Capital Improvement Plan, as well as a proposed project timeline, are included in Appendix 12 of the Final Application. Given the framework, the FAA requires annual updates on the Airport's Capital Improvement Plan.

According to information in the Final Application, Star America will serve as AIA's equity partner for the transaction with an overall investment of up to $100 million from the Funds and potentially additional equity investment(s) from other investors, including Star Americas' limited partners, some of whom are generally interested in being co-investor(s). If Star America secures co-investor, the co-investor(s) will invest through a Star America entity and Star America will serve as AIA's single point of contact. Star America is interested in making the investment alongside an equity partner, especially an operator-investor, as well as retaining some or all of the existing owners of AIA as long-term partners and members of the company. Star America remains flexible in structuring the transaction to help ensure that various parties' objectives are met and promote the greatest likelihood of success for the Project.

Additionally, information contained in the Final Application, represents that updated engineering estimates indicate a Design-Build price of approximately $390 million will be sufficient to design and build the entire required airport infrastructure for a fully operational air cargo airport. As outlined in the in the Final Application, the total financing requirement is estimated to be approximately $460 million. This financing estimate includes the cost of capitalizing interest during construction, advisor costs, commission costs and the initial funding of a debt service reserve for the lenders. Design and construction are expected to take place over an estimated 2.5-year period. The

[27] The approval for an air traffic control tower is a separate process through the Air Traffic Organization, and outside the scope of this Record of Decision.

initial modeling assumes that the debt portion of this amount is borrowed as a lump sum at Financial Close and dispersed by the lenders' trustee as construction milestones are met.

According to information on the financing arrangements in the Final Application, the equity portion of the investment will be committed at Financial Close and injected after the debt amount is completely invested. The equity financing will be backstopped by letters of credit for the full amount.[28]

Furthermore, information in the Final Application states that Airglades LLC's financial model assumes a 60 percent debt - 40 percent equity structure will be viewed by lenders as being investment grade. Airglades LLC states it will continue to refine and optimize this ratio as the customer commitments are formalized. Airglades LLC estimates total capitalization of $461 million, meaning $184.6 million attributable to equity and $276.9 million to be covered by debt financing. Airglades LLC plans to keep six months of expected principal and interest in reserve to satisfy investor requirements.

General Aviation Capital Improvements

AIA and Star America state at Financial Close they will commit to both the maintenance and modernization of the general aviation side of the Airport. Appendix 11 to the Final Application contains Hendry County's Capital Improvement Plan through 2025. The projects for general aviation activity include: (1) Rehabilitate Runway 13/31 Lighting and Signage, (2) Rehabilitate Parallel Taxiway and Lighting, (3) Airfield Marking, (4) General Aviation Apron Expansions, (5) Corporate Hangars, and (6) 10-Unit T-Hangar Buildings.

Information in the Final Application reveals that AIA, the manager of Airglades Airport since 2014, is aware of the need for these projects. General aviation needs are also evidenced by a hangar wait list and requests for additional corporate hangar space as referenced in the Final Application. The direct and indirect owners of Airglades LLC have acknowledged that general aviation facilities are to be maintained to a high standard and expanded as necessary to meet current and future demand at the Airport.

Appendix 6 of the Second Supplement contains Airglades LLC's proposed Capital Improvement Program for the maintenance and modernization of the general aviation side of the Airport with a construction budget of $15 million dollars for the period of 2023-2036.

LaBelle Municipal Airport

The County will retain ownership and continue to operate LaBelle Municipal Airport (LaBelle Airport), a general aviation airport approximately 27 miles from Airglades Airport. The County intends to invest $1,575,000 into LaBelle Airport towards improvements and expansion. A list of

[28] See Appendix 12 of the Final Application for an itemized list of projects.

the itemized projects to which the County indicated its intention to fund is included in the table in Section V. Requests for Exemption under § 47134.

Within twelve (12) months of the transfer of Airglades Airport, the County must submit to the FAA a report detailing the progress of all projects at LaBelle Airport funded with the intended $1,575,000 or such other amount. Annual progress reports will be required until all such work is complete. These reports will be due October 1, of each new fiscal year.

If the County receives proceeds from the sale of Airglades Airport Assets, these should be invested in projects at LaBelle Airport. Any proceeds Hendry County recovers for discounts after the reconciliation of the $13 million purchase price and the initial $5 million discounted price, should be invested in projects at LaBelle Airport. These funds are subject to the same reporting requirement as the original sales proceeds.

VIII. Agency Findings and Determination

Record

This Record of Decision consists of the, Final Application; First Supplement to the Final Application; Request for Additional Information; and Second Supplement to the Final Application, collectively, the Final Application. The documents and comments are posted in the FAA Docket No. 2010-1052. The FAA considered the comments received in the Docket in making this determination.

Findings

Title 49 U.S.C. § 47134(c) requires that the Administrator make certain findings before issuing an exemption under § 47134 for the privatization of an airport. In consideration of information furnished by the Hendry County and Airglades LLC in the application process, and of comments filed in Docket 2010-1052, the Administrator determined that the Application and the Purchase and Sale Agreement, and ownership and operation by Airglades LLC as the airport sponsor, are consistent with the statutory requirements of 49 U.S.C. § 47134.

Specifically, the Administrator finds the following:

> *(1) The airport will continue to be available for public use on reasonable terms and conditions and without unjust discrimination.*

Airglades LLC will provide continued access to the airport on fair and reasonable terms, without unjust discrimination in accordance with 49 U.S.C. § 47134(c)(1).

By its assumption of the grant assurance obligations, Airglades LLC has committed to make the airport available for public use on terms that are fair, reasonable and applied without unjust discrimination to airport users and those users seeking to provide aeronautical services.

Specifically, Recital H(7), on page 2 of the Purchase and Sale Agreement, as incorporated by reference under Paragraph A, also on page 2, memorializes the obligation that the airport will continue to be available for public use on reasonable terms and conditions and without unjust discrimination.

We find that the Purchase and Sale Agreement includes provisions to ensure that the airport will continue to be available for public use on reasonable terms and conditions and without unjust discrimination.

> *(2) The operation of the airport will not be interrupted in the event that the sponsor becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy.*

The operation of the Airport will not be interrupted in the event that the sponsor becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy. The Purchase and Sale Agreement provides a plan to ensure that the operation of the airport will not be interrupted if the sponsor experiences bankruptcy or other financial difficulty.

The application of the Hendry County and Airglades LLC may be approved only if the Secretary finds that the Purchase and Sale Agreement includes provisions satisfactory to the Secretary to ensure that the operation of the airport will not be interrupted in the event of Airglades LLC's bankruptcy or other financial or legal impairment. [29] We find that the sale of Airglades Airport by and between the Hendry County and Airglades LLC sets out a plan for the continued operation of the airport in the event of bankruptcy or other financial or legal impairment of Airglades LLC. The plan relies on an Access Easement for Hendry County to gain access, through its police and regulatory powers, and requires Hendry County to comply with an FAA directive to restore the airport operation in the event of a material impairment.

The Access Easement is clear that the County's rights are (a) reserved (i.e., not conveyed) and (b) are prior to any mortgages or security interests granted by Airglades LLC to its lenders and such reserved rights of the County may not be foreclosed upon by the holders of any security interests. The Access Easement provides that the County's reserved rights may only be exercised by the County in the event that the operation of the Airport is interrupted as a result of an insolvency or bankruptcy, except in the event Airglades LLC's lender that holds the first mortgage on the property secures a substitute or successor to Airglades LLC that is acceptable to the County and the FAA and such successor commences operation of the Airport as required by the FAA and applicable law.

[29] The Administrator may approve an application only if the Administrator finds that the sale or lease agreement includes provisions satisfactory to the Administrator to ensure the operation of the airport will not be interrupted in the event that the purchaser or lessee becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy, reorganization, insolvency, liquidation, or dissolution proceeding or any petition or similar law seeking the dissolution or reorganization of the purchaser or lessee or the appointment of a receiver, trustee, custodian, or liquidator for the purchaser or lessee or a substantial part of the purchaser or lessee's property, assets, or business. § 47134(c)(2). See also, 62 FR 48693 at 48708.

A condition of this Record of Decision is that Hendry County assert its police or regulatory powers, under the Bankruptcy Code,[30] to enforce its rights to gain access to exercise control over the Airport property and operate the Airport, to ensure uninterrupted operation of the Airport under 49 U.S.C. § 47134(c)(2). In the event of bankruptcy, Hendry County will assume responsibility for Airglades LLC federal obligations.

Under the "Police Powers Exception" provision in Section 362(b)(4) of the Bankruptcy Code (the "Police Power Exception"), the County is permitted to gain entrance to the Airport and to operate the Airport for purposes of enforcing its police or regulatory powers, without regard to the "automatic stay" under Section 362 of the Bankruptcy Code. This Exception authorizes a governmental unit, such as Hendry County, to enforce generally applicable regulatory laws.

To ensure that operations at the Airglades Airport not be interrupted under any of the circumstances contemplated by 49 U.S.C. § 47134(c)(2), it is a condition of the approval of this application that Hendry County assert its police and regulatory power to ensure that operations are not interrupted, and if necessary to prevent interruption, to activate its rights under its Access Easement to gain access to exercise control over the Airport property, operate and control the Airport, and ensure uninterrupted operation of the Airport under 49 U.S.C. § 47134(c)(2).

> *(3) The purchaser will maintain, improve, and modernize the facilities of the airport through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements, and modernization.*

In accordance with § 47134(c)(3), the arrangement between Hendry County and Airglades LLC will "maintain, improve, and modernize" airport facilities through capital investments.

Specifically, Recital H(7), on page 2 of the Purchase and Sale Agreement, as incorporated by reference under Paragraph A, also on page 2, memorializes the obligation of the purchaser that it will maintain, improve, and modernize the facilities of the airport through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements, and modernization.

In accordance with 49 U.S.C. § 47107(a)(15), and Grant Assurance 26, Airglades LLC is required to annually submit a special airport financial and operations report to the FAA identifying how it maintained, improved, and modernized the Airport, together with information related to capital investments made in carrying out the Airport maintenance, improvements, and modernization. The annual report will be due 90 days after the close of Airglades LLC's fiscal year.

We find that the Purchase and Sale Agreement includes provisions to ensure that the sponsor will maintain, improve, and modernize the facilities of the airport and develop the Cargo Complex

[30] Bankruptcy Code 11 U.S.C. § 362(a), (b), provides for an automatic stay (Automatic Stay) to protect the debtor and also provides that the Automatic Stay does not bar a governmental unit from enforce its police and regulatory power.

through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements, and modernization.

> *(4) Every fee of the airport imposed on an air carrier on the day before the date of the lease of the airport will not increase faster than the rate of inflation unless a higher amount is approved.*

> *(5) The percentage increase in fees imposed on general aviation aircraft at the airport will not exceed the percentage increase in fees imposed on air carriers at the airport.*

The provisions under § 47134(c)(4) and (5) are not applicable since Airglades Airport is a general aviation airport. However, we find that there are sufficient provisions in the Purchase and Sale Agreement and the Final Application and Supplements to ensure that fees imposed on general aviation aircraft will be set in a fair and reasonable manner as required by the grant assurances, § 47107(a)(1)(13), and the FAA Policy on Airport Rates and Charges.

Moreover, the Purchase and Sale Agreement asserts that the sponsor will be required to adopt Hendry County's rates and charges for the general aviation facilities at the airport. In addition, Airglades LLC confirms that the exemption requested will not have any effect on the Airglades Airport's aeronautical user fees.

> *(6) Safety and security at the airport will be maintained at the highest possible levels.*

The provisions under § 47134(c)(6) require that safety and security at the airport will be maintained at the highest possible levels. This requirement is met in the Purchase and Sale Agreement. Specifically, Recital H (7), on page 2 of the Purchase and Sale Agreement, as incorporated by reference under Paragraph A, also on page 2, memorializes the obligation that the safety and security at the airport will be maintained at the highest possible levels.

Additionally, Airglades LLC committed to incorporate applicable Part 139 components associated with safety and security into the development of the proposed projects. Also the Final Application and Supplements confirm that after acquisition of the Airglades Airport, and prior to the opening of the Cargo Complex, Airglades LLC will develop an Airport Security Plan in compliance with 49 CFR Part 1542, as applicable.

Changes in control of the Airport could impact the safety and security of the Airport and are thus being addressed under this section. The Purchase and Sale Agreement at section 8.4 recognizes that a "Change in Control" of an Airport Operator may be subject to the FAA's approval and require a new privatization application. As used in this Section 8.4.2, the FAA may define Change in Control in its sole and absolute discretion that may include any transfer of interests in Airglades LLC or the Airport as determined by the FAA to be a "Change in Control."

Airglades LLC must provide the FAA with a 60-day notice of intent to transfer its interest, either in whole or in part, including any action affecting direct ownership interests in Airglades LLC that would result in a transfer or change of control (except for a transfer or change of control in favor of Star America at or prior to Financial Close, as contemplated in the Final Application). Before exercising such a transfer or change in control, Airglades LLC and the proposed transferee must respond to the FAA information requests on relevant financial terms and qualifications of the transferee, such as those listed in the Application Procedures, 62 FR 48693. The FAA will then have the ability to opine on whether it needs to approve a sponsor change if members of Airglades LLC or successor entity change. The FAA must approve any change of the airport sponsor or the airport management firm operating the Airport.

We find that the Purchase and Sale Agreement includes provisions to ensure safety and security at the airport will be maintained at the highest possible levels.

> *(7) The adverse effects of noise from operations at the airport will be mitigated to the same extent as at a public airport.*

In accordance with Section 47134(c)(7), the Purchase and Sale Agreement contains a provision that requires Airglades LLC to mitigate the adverse effects of noise from operations at the Airport. Specifically, Recital H(7), on page 2 of the Purchase and Sale Agreement, as incorporated by reference under Paragraph A, also on page 2, memorializes the obligation of Airglades LLC to mitigate "the adverse effects of noise from operations at the Airport . . . to the same extent as at a public airport."

We therefore find that the Purchase and Sale Agreement sufficiently ensures that the adverse effects of noise from operations at the Airport will be mitigated to the same extent as at a public airport.

> *(8) Any adverse effects on the environment from airport operations will be mitigated to the same extent as at a public airport.*

In accordance with Section 47134(c)(8), the Purchase and Sale Agreement contains a provision requiring Airglades LLC to mitigate the adverse effects on the environment from Airport operations at the airport to the same extent as at public airport. Specifically, Recital H(8), on page 2 of the Purchase and Sale Agreement, as incorporated by reference under Paragraph A, also on page 2, memorializes the obligation of Airglades LLC to mitigate "any adverse effects on the environment from operations at the Airport . . . to the same extent as at a public airport."

We therefore find that the Purchase and Sale Agreement sufficiently ensures that the adverse effects on the environment from operations at the Airport will be mitigated to the same extent as at a public airport.

> *(9) Any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease.*

The provision under § 47134(c)(9) is not applicable since no collective bargaining agreement covers employees of the Airglades Airport.

(10) General aviation user interests

In accordance with § 47134(f), the interests of general aviation users are not adversely affected by the privatization.

In the Final Application, Airglades LLC recognizes the value of general aviation activities and is committed to maintaining an open dialog with general aviation users to maintain and improve best practices at Airglades Airport. The Airport will continue to be available for general aviation activities on reasonable terms and conditions without unjust discrimination. Airglades LLC in cooperation with Hendry County conducted regular meetings with the Airglades Airport Advisory Board, which is made up of the key general aviation users at the Airport.

AIA has been managing the Airglades Airport since 2014, and working in close coordination with the County in the development of the County's Capital Improvement Plan for the general aviation activity and agrees that these projects will need to be implemented. Airglades LLC will ensure that the general aviation facilities are maintained to a high standard and expanded as necessary to meet current and future demand at Airglades Airport.

Additionally, Airglades LLC represents that the revenue use exemption request will not have any effect on the aeronautical users at Airglades Airport.

(11) Effect on competition

In accordance with § 47134(e), approval of the transfer will not result in unfair and deceptive practices or unfair methods of competition.

Airglades LLC agree to comply with statutory provisions regarding exclusive rights and the other federal obligations through its assumption of Hendry County's grant assurance obligations. AIA sent Requests for Information to six potential fuel providers and received statements of interest. After running the process, AIA selected one provider to be the non-exclusive fuel service provider. Airglades LLC has not requested to exercise a proprietary exclusive to offer aeronautical services. AIA and the parties report they have had no charges of unfair or deceptive practices or unfair methods of competition brought against them in the past ten years.

Airglades LLC has not indicated any intent to offer aeronautical services on a proprietary exclusive basis. The FAA finds that the approval of the Airport Investment Partnership Program Application will not result in unfair and deceptive practices or unfair methods of competition.

(12) Private Operator's Fitness

The FAA finds that Airglades LLC has met the requirements for a finding of fitness to operate an airport under the Airport Investment Partnership Program. The company has demonstrated that it has airport management and operations experience. It has identified the responsibility, experience, and expertise of its personnel who will handle the transition of the Airport from public to private control. Airglades LLC (and its direct and indirect owners) has demonstrated that it has the financial resources to handle operating and capital expenses. Airglades LLC is eligible to be an airport sponsor; it will comply with the sponsor grant assurances, and the applicable statutory and regulatory requirements.[31]

The FAA's finding of fitness for Airglades LLC is limited specifically to the Airglades Airport application. This finding of fitness does not apply to any other applications Airglades LLC has filed or may file with the FAA or other offices of the Department of Transportation. Each year, 90 days after the close of Airglades LLC's fiscal year, Airglades LLC will submit to the FAA Airport Compliance Division financial statements, including a balance sheet and income and cash flow statements prepared in accordance with Generally Accepted Accounting Principles, with all footnotes applicable to the financial statements.

(13) Private Sponsor and Good Title

Airglades LLC as the private sponsor is required to provide evidence of good title for the Airglades Airport to the Airport District Office.

Title commitments for the Airport owned by Hendry County (having an effective date of May 28, 2019) and a title commitment for the 305-acre HBF Option Parcel have been completed and were included in the Final Application at Appendix 2.

Airglades LLC must show documentation to the Airport District Office that it recorded copies of the grant agreements it assumes or is awarded, including the grant assurances, in the public land records of the Hendry County Courthouse in order that requirements, encumbrances and restrictions on the obligated land are legally enforceable.

Enforcement

Appropriate enforcement authority exists to resolve any future compliance issues involving the above findings.

Hendry County and Airglades LLC agree to confer third party beneficiary rights on behalf of the FAA to enforce the nine specified obligations set forth in § 47134(c). Airglades must also comply with the statutory objectives under § 47134 and all grant assurances as a condition of the Airglades Airport's participation in the Program. In addition to the process and sanctions available for enforcement of obligations under the grant assurances, § 47134 provides for revocation of the exemptions granted in this Record of Decision upon a finding of knowing violation of the terms of the exemption.

Additionally, Hendry County, under the Purchase and Sale Agreement, retains its regulatory approval, enforcement rights and obligations, and other governmental authority as they may relate to laws or regulations, which may govern the Airport, any improvements thereon, or any operations

[31] Sponsor obligations include but are not limited to federal procurement requirements, Disadvantaged Business Enterprise Program requirements, and non-discrimination requirements.

or activities at the Airport. The County will also retain an Access Easement that allows it to take over control of the Airport in the event of a default, or to enter the Airport under emergency conditions.

Per § 47134(i), the FAA is permitted to revoke the exemptions after notice and the opportunity for a hearing, if the FAA determines that the private operator has knowingly violated any of the conditions specified in § 47134(c). As the operator of a federally obligated airport and a private sponsor, Airglades LLC is obligated to comply with the requirements of the FAA's Airport Compliance Program and is subject to enforcement action conducted under 14 CPR, Part 16, Rules of Practice for Federally Assisted Airport Enforcement Proceedings. Section 47134 also requires that the private sponsor must be given notice and an opportunity to be heard. As a first recourse to correct specific problems, the FAA will continue to rely on FAA Order 5190.6B, its existing airport compliance program and third party beneficiary rights identified in the Purchase and Sale Agreement. Compliance and enforcement action would be exercised before recourse to revocation of the private sponsor's exemption.

Periodic Audits

Hendry County and Airglades LLC acknowledge the right of the FAA under § 47134(k) to conduct periodic audits of the financial records and operations of the Airport. Airglades LLC may reserve the right to request confidential treatment of this information under the Freedom of Information Act. This right as to Hendry County includes monitoring projects at LaBelle Airport, which are funded through Airglades Airport’s sale proceeds.

Financial Audits required by this Record of Decision are to be conducted by independent auditors in accordance with generally accepted auditing standards covering financial audits and standards presented in accordance with 2 CFR Part 200.

In accordance with 49 U.S.C. § 47107(a)(15), and Grant Assurance 26, Airglades LLC shall annually submit a special airport financial and operations report to the FAA identifying how it maintained, improved, and modernized the Airport, together with information related to capital investments made in carrying out the Airport maintenance, improvements, and modernization. The report is due 90 days after the close of Airglades LLC’s fiscal year.

Environmental Review

In the case of privatization, the FAA’s responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, are generally fulfilled through the issuance of a categorical exclusion described in section 5-6.1(m) of FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures* (“FAA administrative actions associated with transfer of ownership or operation of an existing airport, by acquisition or long-term lease, as long as the transfer is limited to ownership, right of possession, and/or operating responsibility.”).

In this case, however, in addition to proposed changes to operating responsibility, the proposed project included the construction of a new perishable air cargo complex, a new primary 10,000 foot runway, maintenance facilities, airport rescue and firefighting facilities, and various associated projects at the Airport. As such, FAA compliance with NEPA was achieved through the preparation of an environmental assessment and a Finding of No Significant Impact and Environmental Record of Decision (FONSI/ROD). Section 1508.9 of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. Parts 1500-1508, states an environmental assessment:

> (a) Means a concise public document for which a federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary. (3) Facilitate preparation of a statement when one is necessary.

An environmental assessment involves a more comprehensive environmental review than a categorical exclusion. Here, the environmental assessment was completed in September 2017, and the FONSI/ROD issued on October 17, 2017.[32] In the FONSI/ROD, the FAA determined that the proposed project "would not result in significant environmental impacts warranting the preparation of an Environmental Impact Statement." Section 9-1(b) of FAA Order 1050.1F; *Environmental Impacts: Policies and Procedures*, provides that:

> If major steps toward implementation of the proposed action (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within three years from the date of issuance of the FONSI, a written re-evaluation must be prepared in accordance with Paragraph 9-2 of this Order (unless a decision has been made to prepare a new or supplemental EA).

Accordingly, should Airglades LLC fail to commence the project, or to take major steps toward its implementation, by October 17, 2020, further environmental review will be required before any development work covered by the environmental assessment may be undertaken.

IX. DECISION AND ORDER

In consideration of the above, the FAA takes the following action on the application of the Hendry County and Airglades LLC for the Sale and Operation of Airglades Airport:

1. The Application filed jointly by the Hendry County and Airglades LLC for the participation of Airglades Airport in the Airport Investment Partnership Program is approved. The FAA finds that the Purchase and Sale Agreement, as supplemented by the Final Application with attachments, and the First and Second Supplement to the Application, includes provisions sufficient to demonstrate

[32] A copy of the FONSI/ROD is included in the Final Application as Appendix 9.

that the private ownership and operation of the Airport meets the terms and conditions in 49 U.S.C. § 47134(c), (e), and (f), subject to the conditions stated in the Record of Decision.

2. Under 49 U.S.C. § 47134(b)(1), the FAA grants the following exemption:

Hendry County is exempted from the provisions of 49 U.S.C. § 47107(b), § 47133 and grant assurances issued under 49 U.S.C. § 47101 *et seq.*, from the prohibition on the use of airport revenue for purposes other than the Airport. The FAA finds that exemption for use of the sale proceeds in an amount not to exceed $3,492,000 meets the requirements of 49 U.S.C. § 47134 (b)(1)(A).

3. Under 49 U.S.C. § 47134(b)(2), the FAA grants the following exemption:

Hendry County is exempted from the provisions of 49 U.S.C. §§ 47107 and 47152 (and any other law, regulation, or grant assurance) to the extent necessary to waive any obligation of Hendry County to repay to the Federal Government any grants, or to return to the Federal Government any property received by Hendry County under Title 49, the Airport Improvement Act of 1982, or any other law upon the sale of the Airglades Airport to Airglades LLC in accordance with the Purchase and Sale Agreement.

The FAA finds that the exemption from the obligation to repay $4,059,354 of grant proceeds, and to return the conveyed airport premises to the Federal Government, and the release of the three parcels retained by Hendry County, meets the requirements of 49 U.S.C. § 47134(b)(2).

4. Under 49 U.S.C. § 47134(b)(3), the FAA grants the following exemption:

Airglades LLC is exempted from the provisions of 49 U.S.C. §§ 47107(b) and 47133, and grant assurances issued under 49 U.S.C. § 47101 *et seq*., to the extent necessary to earn compensation from the operation of the Airglades Airport, including a reasonable rate of return on the private operator's investment associated with the operation of the airport, and to pay payments in lieu of taxes. This exemption is subject to the terms and limitations of 49 U.S.C. § 47134, and does not exempt the amount of compensation from review for compliance with §§§ 47107(a)(1), 47107(b) and 47133, and associated grant assurances. In addition, this exemption is not unlimited since distributions to shareholders at any level are only available after Airglades LLC covered the costs of airport operations and capital development as required under the grant assurances and the Purchase and Sale Agreement.

5. Airglades LLC shall provide executed Assignment and Assumption Agreement of Existing Agreements and New Agreements that includes five (5) AIP grants.

6. In the event of bankruptcy, the FAA requires Hendry County to assert its police or regulatory powers, under the Bankruptcy Code to enforce its rights via its Access Easement to gain access to exercise control over the Airport and operate the Airport, to ensure uninterrupted operation of the

Airport under 49 U.S.C. § 47134(c)(2). In the event of bankruptcy, Hendry County will assume responsibility for Airglades LLC federal obligations.

7. The FAA approves the transaction in accordance with the provisions of the 1948 Quitclaim Deed, and agrees to modify the Quitclaim Deed per the conditions in Section V. of the Record of Decision.

8. Hendry County must comply with Section VII. of the Record of Decision regarding the LaBelle Airport, including the reporting requirement regarding the sale proceeds used for improvements at LaBelle.

9. In accordance with 49 U.S.C.§ 47107(a)(15), and Grant Assurance 26, Airglades LLC shall annually submit a special airport financial and operations report to the FAA identifying how it maintained, improved, and modernized the Airport, together with information related to capital investments made in carrying out the Airport maintenance, improvements, and modernization. The report will be due three months after the close of Airglades LLC fiscal year.

10. Airglades LLC must provide the FAA with a 60-day notice of intent to transfer its interest, either in whole or in part, including any action affecting direct ownership interests in Airglades LLC that would result in a transfer or change of control (except for a transfer or change of control in favor of Star America at or prior to Financial Close, as contemplated in the Final Application). Before exercising such a transfer or change in control, Airglades LLC and the proposed transferee must respond to the FAA information requests on relevant financial terms and qualifications of the transferee, such as those listed in the Application Procedures, 62 FR 48693. The FAA will then have the ability to opine on whether it needs to approve a sponsor change if members of Airglades LLC or successor entity change. The FAA must approve any change of the airport sponsor or the airport management firm operating the Airport.

11. Prior to operation of the Cargo Complex, Airglades LLC will develop an Airport Security Plan in compliance with 49 CFR Part 1542, as stated in the application.

12. The FAA's approval of this Record of Decision is subject to the following conditions related to the Financial Close Date for the transfer of the Airport. Hendry County and Airglades LLC must meet the following conditions, and any additional conditions in this Record of Decision, prior to or contemporaneously with the Financial Close:

A. Airglades LLC shall provide to the FAA executed copies of all documents that were submitted in the Final Application in unexecuted versions. All executed documents shall be submitted in substantially the same form as the unexecuted versions contained within the Final Application. In the event that any term in a document is materially changed, Airglades LLC shall notify the FAA in writing of such change and any such change shall be subject to the approval of the FAA. Submission of the executed documents containing material changes from the unexecuted versions contained within the Final Application will not constitute satisfaction of this condition A unless FAA approval of the changes has been obtained.

B. Airglades LLC shall provide the executed bankruptcy legal opinion for Airglades LLC addressing the plan to ensure operations of the Airport will not be interrupted in the event that Airglades LLC becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy.

C. Hendry County shall provide the executed bankruptcy legal opinion for Hendry County addressing the plan to ensure operations of the Airport will not be interrupted in the event that Airglades LLC becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy.

D. Hendry County shall provide the document that grants Hendry County a substantially identical easement to the reserved Access Easement described in Part III.A.3 of the Final Application to ensure the County's access to any and all Airport property regardless of when such properties are or were acquired.

E. Airglades LLC shall provide the executed Purchase and Sale Agreement, to confirm among necessary other requirements that the FAA is granted third party beneficiary rights.

F. Airglades LLC shall provide the executed legal opinion confirming that Airglades LLC has the legal authority to execute and perform its obligations under the Purchase and Sale Agreement.

G. Airglades LLC must obtain and submit to the FAA an investment grade credit rating for Airglades LLC from a statistical rating organization approved by the SEC for any senior debt issuance by Airglades LLC if required by the senior debt providers. The credit rating required under this paragraph shall not assume or be contingent upon a future grant or commitment of Federal funding.

H. Airglades LLC shall provide the FAA evidence that the perishable volumes included in the existing term sheets related to cargo have been substantially converted to firm contracts.

I. Airglades LLC shall provide the FAA evidence that Airglades LLC has access to sufficient funds to cover the capital and operating cost for the Airport regardless of funding source.

J. At financial close, the shareholders of AIA will commit to invest the majority of their estimated $30 million of development costs into Airglades Holdings LLC, and Star America will commit to invest approximately (but not more than) $100 million of equity. To the extent the capitalization falls below 75% of the expected amount, i.e., below $97.5 million, then the requirement for Financial Close shall not be considered satisfied unless otherwise approved by the FAA in its discretion. Airglades LLC shall provide the FAA with sufficient evidence that the required capitalization has occurred.

K. Airglades LLC will provide the FAA evidence of good title via the Title Insurance in accordance with the Commitment for Title Insurance under Order Number 3906877, dated June 10, 2019, and will provide a title search.

L. Hendry County will provide evidence of Florida Department of Transportation approval of the Purchase and Sale Agreement as required by Florida Statute, Title XXV Aviation, Chapter 332, Airports, and Other Air Navigation on Facilities, Section 332.08 (3), Fla. Stat.

M. Airglades LLC will provide a copy of the Deed containing the reserved Access Easement, and all related transfer documents.

N. The purchase for the HBF Option Parcel cannot exceed fair market value; process must be in accordance with the FAA Appraisal Standards and 49 U.S.C. § 47107(k)(2)(A).

In the event that:

> (i) the conditions contained in this Record of Decision, including but not limited to conditions A through N above, have not been completed to the satisfaction of the FAA either prior to or contemporaneously with the Financial Close, or
>
> (ii) the Financial Close has not occurred on or before October 17, 2020,

then this Record of Decision shall be considered null and void unless the FAA, within its sole discretion, grants an extension of time in writing.

The approval of the Final Application does not constitute a commitment of Federal funds, including, any category of Airport Improvement Program funds, for development of the Airport or its infrastructure or facilities. The FAA will continue to work with Airglades LLC regarding any other remaining requirements to consider a request for a Letter of Intent or any other form of AIP discretionary funds.

This Record of Decision of the U.S. Department of Transportation, Federal Aviation Administration approving the application of Airglades Airport in the Airport Investment Partnership Program filed in FAA Docket No. 2010-1052 is issued by:

D. Kirk Shaffer
Associate Administrator
for Airports

9-30-19
Date