Memorandum

MIAMI-DADE COUNTY

Date:	May 8, 2007
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Award Recommendation – Banking and ATM Concession Services Agreement **(Part A)** Project No. RFP-MDAD-02-05

Agenda Item No. 8(A)(1)(B)

Recommendation

It is recommended that the Board approve the attached resolution awarding a Non-Exclusive Lease and Concession Agreement (Agreement) to Concessionaire, Bank of America, N.A. (Part A), and authorizing execution of the Agreement, substantially in the form attached hereto, with the exhibits on file with the Clerk of the Board, and authorizing execution of renewal, termination or cancellation provisions contained therein.

Scope

Miami International Airport (MIA) is located primarily within Commission District Six, Rebeca Sosa. However, the impact of this agenda item is countywide in nature as MIA is a regional asset.

Fiscal Impact/Funding Source

This agreement is revenue generating to the County.

Track Record/Monitor

The track record for Bank of America, N.A. has been satisfactory according to Sarah Abate, Project Manager, Commercial Operations, who will monitor the contract.

Background

Currently, MIA offers banking and automated teller machines (ATM) services for its customers through Bank of America which is a full service bank located in Concourse 'A' of the North Terminal on the fourth floor, and through a total of nine (9) ATM machines which includes three (3) ATMs operated by Bank of America and six (6) ATM machines operated by Communitel, the current ATM provider. As the original agreements with both Bank of America and Communitel have expired, the services continue to be provided on a month-to-month basis, as provided by the extension terms of the agreements. Additionally, the Miami-Dade Employees Credit Union operates an ATM on the third floor of Concourse B, and the American Airlines Credit Union operates an ATM on the third floor of Concourse A.

The Banking and ATM Concession Services RFP, No. MDAD-02-05, was advertised and issued on April 20, 2006, for: (a) the furnishing, installation, maintenance, management, and operation of a full service bank and automated teller machines (Part A); and (b) furnishing, installation, maintenance, management, and operation of automated teller machines (Part B

-presented to the Board under separate cover) at Miami International Airport. One (1) response to the advertisement was received for Part A from Bank of America, N.A.

The Evaluation/Selection Committee (Committee) met on November 9, 2006, to review the sole response received for Part A and determined that the firm met the minimum qualification requirements set forth in the RFP. The Committee recommended Bank of America, N.A. for award for Part A.

PROJECT LOCATION:	Miami International Airport
COMPANY NAME:	Bank of America, N.A
TERM OFAGREEMENT:	Eight (8) years
OPTION(S) TO RENEW:	Two (2) separate one (1) year terms
PAYMENTS TO THE COUNTY:	**A. Minimum Annual Rental** The Concessionaire shall pay a Minimum Annual Guarantee ("MAG") of $350,000 from the date of beneficial occupancy, subject to a Consumer Price Index ("CPI") increase each year. **B. ATM Transaction Fee** The Concessionaire shall pay an ATM Transaction Fee of $0.20 for each transaction processed through the ATMs. The transaction fee to the customer cannot exceed $2.50 per transaction, unless the Department provides written authorization. **C. Annual Rental** 1) ATMs Annual Rental of $61.90 x 45 square feet (5 locations @ 9 square feet/location) = $2,785.50. 2) Banking Branches Annual Rental of $61.90 x 5,414 square feet (bank location in North Terminal is 4,463 square feet; future bank location in the South Terminal is 951 square feet) = $335,127. The Total Annual Rental (ATM and Banking Branches) is $337,912.50. The Concessionaire shall pay the prevailing Class VI of the Terminal Rates "Annual Rental" for the space occupied by the Banking Branches and the ATMs (approximately 9 square feet per ATM). The Terminal Class VI

rental rate is currently at $61.90 per square foot and is based on rates in effect as of October 1, 2006 and subject to change annually.

D. Additional Payments to the County
A Construction Permit Fee of one percent (1%) of the estimated construction cost for improvements.

CONTRACT MEASURES:	Not Applicable due to lack of Airport Concession Disadvantaged Business Enterprise (ACDBE) subcontractor availability
CONTRACT MEASURES ACHIEVED:	Not Applicable
ACDBE GOALS:	Not Applicable
COMPANY PRINCIPALS:	Odalis G. Martinez, Senior Vice President, Consumer Market Executive, Central Miami Market
COMPANY LOCATION:	16320 NW 57th Avenue Hialeah, Florida 33014-6117
HOW LONG IN BUSINESS:	Seventy-nine (79) years
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	See attached a list of previous agreements with the County
ADVERTISEMENT DATE:	April 20, 2006
USER DEPARTMENT:	Miami-Dade Aviation Department

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: May 8, 2007

FROM: Murray A. Greenberg County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(B)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(B)

05-08-07

RESOLUTION NO. _____

RESOLUTION RELATED TO BANKING AND AUTOMATED TELLER MACHINE SERVICES AT MIAMI INTERNATIONAL AIRPORT; AUTHORIZING AWARD OF NON-EXCLUSIVE LEASE AND CONCESSION AGREEMENT FOR FULL SERVICE BANK AND AUTOMATED TELLER MACHINE SERVICES TO BANK OF AMERICA, N.A.; AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE AGREEMENT; AND AUTHORIZING COUNTY MANAGER TO EXERCISE ALL OTHER RIGHTS INCLUDING CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to meet this need and accomplish the purposes outlined in the accompanying memorandum and documents, which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board authorizes: (i) the award and execution of non-exclusive lease and concession agreement for the provision of banking and automated teller machine services to Bank of America, N.A. (the "Agreement") at Miami International Airport, pursuant to Request for Proposals No. MDAD-02-05; (ii) the Mayor or designee to execute the Agreement; and (iii). County Manager or designee to exercise or enforce any provision of the Agreement, including cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of May, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. clsh

David Stephen Hope

MIAMI-DADE COUNTY

Contact: **Rachel Baum, Finance Director (305) 375-5246**

Arrangement:
The Bank of America Leasing & Capital Corporation currently has a Lease-In-Lease-Out (LILO) facility which was originated in 1998 with current net book value of over $33 million, and a QTE which was originated in 2002 with current net book value of over $31 million.

Contact: **Lidia Monzon-Aguirre, Director Division of Bond Administration, (305) 375-5147**

Arrangement:
In November 1999, the Bank issued a Direct Pay Letter of Credit in the amount of $7,833,408 for a period of 7 years to Miami-Dade County and scheduled to expire in 2006. The Letter of Credit serves as a credit enhancement to the Series 1990 Special Obligation Bonds.

Contact: **Gisela Guth, Director of Cash Management (305) 375-5134 & Leoni Perez, Portfolio Manager**

Arrangement:
At various times, the Bank has invested County funds in securities with maturities of three years or less. Investments have been in Treasury Securities, Agency Securities, Commercial Paper and Banker's Acceptances.

MIAMI-DADE COUNTY – WATER & SEWER

Contact: **Rachel Baum, Finance Director (305) 375-5246**

Arrangement:
In March of 2004, the Miami-Dade County (Water & Sewer) and Bank of America, N.A. (BANA) entered into an ISDA Master Agreement effective October 1, 2005 at a notional amount of $295,240,000.

MIAMI-DADE AVIATION DEPARTMENT

Contact: **Zeida Hernandez, (305) 876-7383**

Arrangement:
The Bank provides depository and other banking services to the Miami-Dade Aviation Department. These various accounts have been opened over a number of years dating

back to 1987. The arrangement is not currently governed by a contract other than the standard banking contract.

Contact: **Sarah Abate, Commercial Operations (305) 876-7732**

Arrangement:
The Bank has a lease and concession agreement for operation of a nonexclusive banking concession at Miami International Airport. The Bank has 2 ATMs on the 2nd floor of Miami International Airport and a 4,473 square foot banking center on the 4th floor. The lease expired on 10/31/2000, and has been renewed on a month-to-month basis since.

PUBLIC HEALTH TRUST OF MIAMI-DADE COUNTY

Contact: **Gisela Guth, Director of Cash Management (305) 375-5134**

Arrangement:
The Bank at various times invests funds on behalf of the Public Health Trust in $5,000,000 blocks in intermediate term government agency securities.

LEASE AND CONCESSION

AGREEMENT BY AND BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

BANK OF AMERICA, N.A.

BANKING AND ATM CONCESSION SERVICES

AT

MIAMI INTERNATIONAL AIRPORT

TABLE OF CONTENTS

	Page
Definitions	1
Article 1 – Term, Extension and Locations	**4**
1.01 Term	4
1.02 Extension	4
1.03 Locations	5
1.04 Not Used	5
1.05 Not Used	5
1.06 Not Used	5
1.07 Addition, Deletion and Modification of Locations	5
1.08 Nonexclusivity	5
1.09 "As Is" Locations	6
1.10 Capital Improvement Program	6
1.11 Request for Proposal Incorporated	6
Article 2 – Use of Locations	**7**
2.01 Locations	7
2.02 Use of Locations	7
2.03 Concessionaire Services and Sales Rights	7
2.04 Not Used	7
2.05 Scope of Services	7
2.06 Not Used	7
2.07 Prohibited Activities	7
Article 3 – Rentals, Payments and Reports	**8**
3.01 Minimum Annual Guarantee	8
3.02 No Negotiations or Administrative Modifications	8
3.03 Adjustment of the Minimum Annual Guarantee	8
3.04 Transaction Fee to the Department	8
3.05 Not Used	9
3.06 Annual Rental	9
3.07 Not Used	9
3.08 Annual Rental Rate Adjustment	9
3.09 Concession Marketing Fee	9
3.10 Not Used	9
3.11 Annual Rent/MAG Security Deposit/Performance Bond	9
3.12 Taxes	10
3.13 Monthly Reports	10
3.14 Other Reports	11
3.15 Late Payment	11
3.16 Dishonored Check or Draft	11
3.17 Address for Payments	11

3.18 Revenue Control Procedures 12
3.19 Annual Audit 12
3.20 Right to Audit/Inspect 12
3.21 Records and Reports 13
3.22 Additional Fees Due 14
3.23 Utilities 14
3.24 Penalties 14

Article 4 – Improvements to the Locations 15
4.01 Improvements to Locations 15
4.02 Design of Improvements 16
4.03 Refurbishment of Locations 16
4.04 Not Used 16
4.05 Certain Construction Contract Terms 16
4.06 Improvements Free and Clear 17
4.07 Other Requirements 17
4.08 Review of Construction 17
4.09 Cost Documentation 17
4.10 Amortization Schedule 18
4.11 Construction Permit Fee 19
4.12 Construction Services 19

Article 5 – Standards of Operation 20
5.01 Standards of Operation 20
5.02 Not Used 21

Article 6 – Obligations of the Department 21
6.01 Department Services 21

Article 7 – Furniture, Fixtures, and Equipment 23
7.01 Furniture, Fixtures, and Equipment 23
7.02 Americans with Disabilities Act Requirements 23
7.03 Disposal of Furniture, Fixtures and Equipment 23

Article 8 – Maintenance 24
8.01 Cleaning 24
8.02 Removal of Trash 24
8.03 Maintenance and Repair 24
8.04 Failure to Maintain 25
8.05 Environmental Recycling 25
8.06 Fire Protection and Safety Equipment 25

Article 9 – Assignment and Ownership 25
9.01 No Assignment 25
9.02 Ownership of the Concessionaire 25
9.03 Change of Control 25

9.04 Holdover Tenant 26

Article 10 – Indemnification 27
10.01 Indemnification Required of Concessionaire 27

Article 11 – Insurance **27**
11.01 Insurance Required of Concessionaire 27
11.02 Certificate of Continuity 28
11.03 Insurance Company Rating Requirements 28
11.04 Concessionaire Liable 28
11.05 Cancellation of Insurance or Bonds 28
11.06 Right to Examine 28
11.07 Personal Property 29
11.08 Survival of Provisions 29
11.09 Not Used 29
11.10 Indemnification, Construction Bonds and Insurance Required 29

Article 12 – Default and Termination by County **32**
12.01 Events of Default 32
12.02 Payment Default 33
12.03 Other Defaults 33
12.04 Habitual Default 33
12.05 Notice of Default and Opportunity to Cure 34
12.06 Unamortized Investment Extinguished 34
12.07 Termination for Abandonment 34
12.08 Termination for Cause 34
12.09 Adequate Assurances 35
12.10 Actions at Termination 35

Article 13 – Claims and Termination by Concessionaire **35**
13.01 Administrative Claim Procedures 35
13.02 Termination 36

Article 14 – Not Used **36**

Article 15 – Rules, Regulations and Permits **36**
15.01 Rules and Regulations 36
15.02 Violations of Rules and Regulations 36
15.03 Permits and Licenses 37

Article 16 – Governing Law **37**
16.01 Governing Law; Venue 37
16.02 Registered Office/Agent Jurisdiction 37

Article 17 – Trust Agreement **37**
17.01 Incorporation of Trust Agreement by Reference 37

17.02 Adjustment of Terms and Conditions 37
17.03 Inspections 38
17.04 Independent Private Sector Inspector General Review 38
17.05 Miami-Dade County Inspector General Review 38

Article 18 – Other Provisions 39
18.01 Payment of Taxes 39
18.02 Alterations by Concessionaire 39
18.03 Rights to be exercised by Department 39
18.04 Administrative Modifications 39
18.05 Security 39
18.06 Rights of Department at Airport 39
18.07 Other Department Rights 40
18.08 Federal Subordination 40
18.09 Notices 40
18.10 Severability 41
18.11 Rights Reserved to Department 41
18.12 Department Lien 41
18.13 Authorized Uses Only 41
18.14 No Waiver 41
18.15 Right to Regulate 41
18.16 Intent of Agreement 41
18.17 Not Used 41
18.18 Radon Disclosure 41
18.19 Trademarks and Licenses 42
18.20 Headings 42
18.21 Binding Effect 42
18.22 Governmental Department 42
18.23 Independent Contractor 42
18.24 Other Liens 42

Article 19 – Sub-Leases 43
19.01 Assignment of Sub-Leases by Department 43
19.02 Department's Right to Approve Sub-Leases 44
19.03 Concessionaire's Sub-Lease Agreement Requirements 44

Article 20 – Waiver of Claims 44

Article 21 – Required, General and Miscellaneous Provisions 44
21.01 Agreements with State of Florida and Miami-Dade County 44
21.02 Right to Amend 45
21.03 Concessionaire Covenants and Assurances 45
21.04 Right to Modify 46
21.05 Tax Exempt Status of Department Revenue Bonds 47
21.06 Remedies 47
21.07 Warranty of Concessionaire as to Conflicts of Interest 47

21.08 Regulations of Department 47
21.09 Interest 47
21.10 Miscellaneous Provisions 47
21.11 Force Majeure 48
21.12 Entire Agreement 49

Attachments

Exhibit A1 - Bank and ATM Locations
Exhibit B - Payment and Performance Bond (construction)
Exhibit C - Not Used
Exhibit D - MAG Performance Bond
Exhibit E - Retail Concessions Design Guidelines
Exhibit F - Tenant Airport Construction-Non-Reimbursable Procedures (TAC-N)
Tenant Airport Construction Reimbursable Procedures (TAC-R)
Exhibit G - Independent Audit Report
Exhibit H - Executed Affidavits and Condition of Award Certificates
Exhibit I - Monthly Report of Gross Revenues
Exhibit J - Prohibited Items List
Exhibit K - Commercial Operations Tenant Handbook
Exhibit L - Standards of Operation
Exhibit M - Scope of Services

DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

The term **"Agreement"** shall mean this Lease and Concession Agreement including all exhibits and attachments thereto and any part thereof entered into by the County and the Concessionaire.

The term **"Airport"** or **"MIA"** shall mean Miami International Airport.

The terms **"Approved Improvements"** are the improvements to a Location which have been approved by the Department which may include the design, equipment, fixtures, flooring and signage.

The term **"Approved Locations** "shall mean those Locations listed in Exhibit A1.

The term **"ATM"** shall mean Automated Teller Machines.

The term **"Base Building Work"** shall mean the sub-flooring, ceiling structure, demising walls, utilities infrastructure and other base building improvements, structures and fixtures which the County installs or causes to be installed in the terminal building. Base Building Work includes delivery of portions of the Locations, other than AS IS Locations, in Shell Condition.

The term **"Beneficial Occupancy"** shall mean the date the Location Bank Facility and ATM space is turned over by the Department to the Concessionaires for business, or when a certificate of occupancy ("CO") or temporary certificate of occupancy ("TCO") has been issued.

The term **"Board"** or **"County Commission"** shall mean Board of County Commissioners of Miami-Dade County.

The term **"Capital Improvement Program"** or **"CIP"** shall mean the Airport's construction program that will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession Locations, and other improvements throughout the Airport.

The **"Clerk of the Board"** shall mean the office serving as ex-officio Clerk of the Board of County Commissioners office and responsible for maintaining the ordinance and resolution indices; receiving bids and requests for proposals; executing contracts, agreements and change orders; and advertising public hearings.

The term **"Code"** shall mean the Code of Miami-Dade County, Florida.

The term **"Concessionaire"** shall mean the person, firm, or entity that enters into this Lease and Concession Agreement with the County.

The term **"Consumer Price Index"** or "CPI" shall mean that index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), for Southeastern U.S. Cities Average: All items.

The term "**County"** shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

The term "**Department"** or **"MDAD"** shall mean the Miami-Dade Aviation Department.

The term **"Director"** shall mean the Director of the Miami-Dade Aviation Department or the Director's designee.

The term **"Gross Revenues"** shall mean all moneys paid or payable to the Concessionaire for all transaction fees paid by customers under the Agreement at the Airport, whether paid or unpaid, whether on a cash or credit basis; provided however, that any taxes imposed by law which are separately stated to and paid by a customer and directly payable by the Concessionaire to at taxing authority, shall be excluded therefrom.

The term "**Initial Minimum Investment**" shall mean the minimum required investment of one hundred seventy-five dollars per square foot ($175 psf) for the South Terminal Facility, which shall be completed in one hundred and twenty days after Turnover Date, and fifty dollars per square foot ($50 psf) for the North Terminal Facility, which shall be completed in one hundred and twenty days after Turnover Date,.

The term **"Lease Effective Date"** shall mean the tenth (10th) business day after the date of execution by the County Manager and attestation by the Clerk of the Board of the Lease and Concession Agreement.

The term **"Location(s)"** shall mean the spaces listed on first page of Exhibit A1.

The term **"Location Commencement Date** - Existing Bank" and all ATM Locations shall mean Beneficial Occupancy. The term "Location Commencement Date - New Bank Facility" shall mean Beneficial Occupancy or 300 days after Turnover Date.

The term "**Nonexclusivity**" shall mean the County is not precluded from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by others in other locations at the Airport during the term of the Agreement.

The term "**North Terminal**" shall mean the area of the terminal building and concourses, within the northern part of the terminal area, landside or airside now known as Concourses A-D.

The term **"Proposal"** shall mean a Proposer's written response to the Solicitation.

The term **"Refurbishment of Locations"** for Part A only shall mean the refurbishment and expenditure by the Concessionaire of not less than twenty-five dollars per square foot ($25psf) for approved improvements no less than five (5) years after the Location Commencement Date.

The term **"Request for Proposal"** or **"RFP"** shall mean this RFP No. MDAD 02-05 and all associated addenda, exhibits, forms, affidavits and attachments.

The term **"Shell Condition"** shall mean smooth concrete floors, demising studs and walls, and the utility services listed below (conduits, lines, pipes, etc.) stubbed to the lease lines of each Location or area immediately adjacent thereto for electric, telephone and data communications, heating ventilating and air conditioning systems including ducts ("HVAC"), fire alarm system and fire sprinkler system.

The term "**Small Business**" shall mean a business with annual gross sales of three million ($3,000,000) or less, regardless of the number of employees, and with its principle place of business in Miami-Dade County, Florida.

The term "**South Terminal**" shall mean the area of the terminal building and concourses, within the southern part of the terminal area, landside or airside which is now known as Concourse H, and a new Concourse J.

The term **"State"** shall mean the State of Florida.

The term **"Term"** shall mean at the sole discretion of the Department, the initial eight (8) year term for the Bank and ATM Concession may be extended for two (2) additional one (1) year terms provided the extension is mutually agreed to by the Department and the Concessionaire in writing.

The term **"TSA"** shall mean the United States Transportation Security Administration, and any successor agency, office or department thereto.

The term "**Turnover Date**" shall apply to the New Bank Facility and any ATM Locations that require ATM to be recessed and shall mean the date approved by the Department for the Concessionaire to commence construction of a Bank at the South Terminal Location or the date that a Location is available for installation of an ATM.

LEASE AND CONCESSION AGREEMENT FOR A NON-EXCLUSIVE BANKING AND ATM CONCESSION SERVICES AT MIAMI INTERNATIONAL AIRPORT

THIS LEASE AND CONCESSION AGREEMENT is made and entered into as of this _____ day of _____, 200__, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida and **Bank of America, N.A.**, ("Concessionaire"), a **Charlotte, North Carolina** Corporation authorized to do business in the State of Florida.

RECITALS:

WHEREAS, the County is the owner of and operates Miami International Airport through the County's Miami-Dade Aviation Department; and

WHEREAS, the Department desires to create a Banking and ATM Concessions program; and

WHEREAS, the Concessionaire has submitted a Proposal in response to RFP No. MDAD-02-05 Part A,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE 1 – TERM, EXTENSION AND LOCATIONS

1.01 TERM: The Department hereby leases to the Concessionaire the concession Locations, Exhibit A1, for a term commencing upon the Lease Effective Date of this Agreement; and shall expire at 11:59 o'clock P.M. on the date eight (8) years from the Lease Effective Date unless sooner terminated, or is extended as herein provided. In no event shall this Agreement afford Concessionaire or any other party any right to use or occupy the Locations (or any part thereof) after the expiration, or termination of this Agreement.

1.02 EXTENSION: At the sole discretion of the Department, the initial eight (8) year term may be extended for a maximum of two (2) separate one (1) year period, provided the extension is mutually agreed to by the Department and the Concessionaire in writing.

In the event the Department elects to extend the Agreement, the Concessionaire shall be notified, in writing, no less than one hundred twenty (120) calendar days prior to the expiration of each term. If the Concessionaire elects not to agree to the extension, it must notify the Department 365 days prior to the expiration of the Term of its intent not to agree to the term extension. In the event the Concessionaire is in default, pursuant to **Article 12 "Default and Termination by**

County" of the Lease and Concession Agreement beyond applicable grace and cure periods, the Department shall not exercise its rights to extend the Agreement.

In the event the Department does not give such notice, this Agreement shall expire accordingly.

1.03 LOCATIONS: The Department has identified the Locations to be those listed in Exhibit A1, for the Bank facilities and the ATM Locations.

1.04 NOT USED

1.05 NOT USED

1.06 NOT USED

1.07 ADDITION, DELETION AND MODIFICATION OF LOCATIONS:

A. **ADDITION OF LOCATION:** If at any time after the Lease Effective Date, the Department, at its sole discretion, identifies any additional Location for a bank and/or an ATM the Department may offer such additional Location to the Concessionaire upon written notification. The Concessionaire will have thirty (30) calendar days to submit a written response accepting or rejecting the additional Location. Acceptance of any additional Location will require the Department and the Concessionaire to mutually agree upon any additional monetary consideration, prior to final approval.

B. **DELETION OR MODIFICATION OF LOCATIONS:** The Department reserves the right, at its sole discretion, to delete or modify any of the Locations due to Airport development/construction, operational necessity, and security or safety considerations. In the event of such deletion or modification the Concessionaire shall be given no less than: (i) thirty (30) calendar days written notice, for such deletion or modification due to operational necessity, and security or safety considerations; and (ii) sixty (60) calendar days written notice, for such deletion or modification due to development/construction.

The Department shall not be held liable to the Concessionaire (except for reimbursement of the unamortized costs, pursuant to **Sub-Article 4.10 "Amortization Schedule"**) for any inconvenience or loss of business as a result of the deletion or modification of any Locations pursuant to this Sub-Article.

C. **ADMINISTRATIVE REVISIONS:** This Agreement shall be administratively revised to reflect any additions, deletions or modifications to the Locations pursuant to the provisions herein. Such revision will include revised exhibits and appropriate changes to the Locations in **Sub-Article 1.03 "Locations"** and total payments due the Department in accordance with **Article 3 "Rentals, Payments and Reports"** and **Article 2 "Use of Locations"**.

1.08 NONEXCLUSIVITY: This Agreement is nonexclusive in character and in no way prevents the Department from entering into an agreement with any other parties for the sale or offering of competitive services, products or items by other concessionaires and/or others in other locations at the Airport during the Term.

1.09 "AS IS" LOCATIONS: CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEPARTMENT IS LEASING ALL LOCATIONS TO THE CONCESSIONAIRE ON AN "AS IS" BASIS AND THAT THE CONCESSIONAIRE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE DEPARTMENT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THOSE LOCATIONS including: (i) the quality, nature, adequacy and physical condition and aspects of the Locations, including utility systems; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Locations; (iii) the development potential of the Locations, the use of the Locations, and the habitability, merchantability, or fitness, suitability, value or adequacy of the Locations for any particular purpose; (iv) the zoning or other legal status of the Locations or any other public or private restrictions on use of the Locations; (v) the compliance of the Locations or its operation with any applicable laws, regulations, statutes, ordinances, codes, covenants, conditions, and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of hazardous materials or industrial wastes on, under or about the Locations; (vii) the quality of any labor and materials used in any improvements on the Locations; (viii) the condition of title to the Locations; (ix) the agreements affecting the Locations; and (x) the Proposal submitted by Concessionaire to the Department, including any statements relating to the potential success or profitability of such Proposal. Concessionaire represents and warrants that it has made an independent investigation of all aspects of its Proposal contemplated by this Agreement. Except as specifically provided in this Agreement, the Concessionaire has satisfied itself as to such suitability and other pertinent matters by the Concessionaire's own inquiries and tests into all matters relevant in determining whether to enter into this Agreement. The Concessionaire accepts the Locations in their existing condition, and hereby expressly agrees that if any remediation or restoration is required in order to conform the Locations to the requirements of applicable law, the Concessionaire assumes sole responsibility for any such work.

1.10 CAPITAL IMPROVEMENT PROGRAM: The Capital Improvement Program is currently underway and will involve the refurbishment of terminal interiors, airline relocations, changes in access to the terminal and concourses, construction of new concession locations, and other improvements that may affect concession operations in the terminal building and on the concourses and access at the curbside or on the airfield. The CIP may affect the operation of the Locations, and **THE DEPARTMENT NEITHER MAKES NOR IMPLIES ANY WARRANTIES AS TO THE EFFECT OF SUCH CAPITAL IMPROVEMENT PROGRAM ON SAID OPERATIONS DURING THE TERM OF THIS AGREEMENT.** The Department shall use good faith efforts to the extent possible, so as to mitigate any adverse impact on the business operations of Locations that will not be demolished by the CIP.

1.11 REQUEST FOR PROPOSAL INCORPORATED: The Concessionaire acknowledges that it has submitted to the County a Proposal in response to Request for Proposal No. MDAD-02-05, that was the basis for the award of this Agreement and upon which the County relied. IN THE EVENT THERE ARE ANY CONFLICTS BETWEEN THIS LEASE AND CONCESSION AGREEMENT AND THE RFP, THE TERMS OF SAID AGREEMENT SHALL GOVERN.

ARTICLE 2 – USE OF LOCATIONS

2.01 LOCATIONS: The Locations as referenced in Exhibit A1 shall be used solely for its assigned and approved purpose unless otherwise modified pursuant to **Sub-Article 2.03 "Concessionaire Services and Sales Rights"**.

2.02 USE OF LOCATIONS: The Concessionaire shall have the right, privilege, and obligation to finance, design and construct, lease, manage, operate, and maintain the Locations, depicted in Exhibit A1, for the purpose of establishing high quality Banking and ATM concession Program as approved by the Department.

2.03 CONCESSIONAIRE SERVICES AND SALES RIGHTS: The Concessionaire shall not allow any services or the sale of any item or product not specifically approved in this Agreement. In the event of such violation, the Concessionaire shall discontinue the sale or service of the unapproved product immediately, upon written notice from the Department. Failure by Concessionaire to discontinue such sales within twenty-four (24) hours of such notice shall subject the Concessionaire to penalties pursuant to **Sub-Article 3.24 "Penalties".**

2.04 NOT USED

2.05 SCOPE OF SERVICES: The Scope of Services is attached to this Agreement, as **Exhibit M**.

2.06 NOT USED

2.07 PROHIBITED ACTIVITIES: Without limiting any other provision herein, Concessionaire *shall not*, without the prior written consent of the Department which may be withheld in its sole discretion: (a) advertise or hold any distress, fire, or bankruptcy sales, (b) cause or permit anything to be done, in or about the Locations, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the MIA terminal building or any of its contents, (ii) create a nuisance or annoyance or safety hazard, or (iii) obstruct or interfere with the rights of others in the MIA terminal building; (c) commit or suffer to be committed any waste upon the Locations; (d) use, or allow the Locations to be used, for any improper or unlawful purpose; (e) do or permit to be done anything in any way tending to injure the reputation of the Department, the County, the Board of County Commissioners, or the appearance of the Airport; or (f) construct any improvement on or attach any equipment to the roof of the Airport. Except as required to permit Concessionaire to perform its maintenance and repair obligations under this Agreement, Concessionaire shall not gain access to the roof of the MIA terminal building without the consent of the Department, which may be withheld in the Department's sole discretion.

ARTICLE 3 – RENTALS, PAYMENTS AND REPORTS

3.01 MINIMUM ANNUAL GUARANTEE: (Part A, only) In addition to the Location Rent described in **Sub-Article 3.06 "Annual Rental"**, the Concessionaire shall pay a minimum annual guarantee ("MAG") for the Bank Facilities of $ **350,000.00 (Three Hundred Fifty Thousand Dollars and Zero Cents)**.

The MAG payment shall commence on the first day of Beneficial Occupancy of any and all Locations (which may be at different time periods) and shall be paid in U.S. funds, prorated and payable in twelve equal monthly payments on or before the first day of each month, in advance, without billing or demand.

Since the North Terminal facility is in place and the South Terminal facility may not be ready for business at the time of award of this Agreement, the MAG amount shall be pro-rated at eighty percent (80%) until the Location Commencement Date - New Bank Facility, and shall be payable in US funds, prorated and payable in twelve (12) equal monthly payments on or before the first day of each month, in advance, without billing or demand, plus any applicable state taxes as may be required by law.

3.02 NO NEGOTIATIONS OR ADMINISTRATIVE MODIFICATIONS: The Concessionaire understands and agrees, as a condition precedent to the County's consideration of the proposal, that the terms and conditions of **Sub-Article 3.01 "Minimum Annual Guarantee"**, and **Sub-Article 3.04 "Transaction Fee to the Department"** are not subject to negotiation or adjustment for any reason, including, but not limited to, airport construction, airline relocation, airline bankruptcies, change in airline service, except in the event of an act of God or an event of force majeure as such term is defined in **Sub-Article 21.11 "Force Majeure"**. The County shall not be liable for any reduction in sales or disruptions or delays caused in whole or in part by any of the foregoing at any time during the Term of this Agreement, including any extensions. If the Concessionaire's Locations are so damaged as to significantly impact the Concessionaire's operations for a period in excess of seventy-two (72) hours, the Department shall provide a proportionate abatement of the MAG for that portion of the Locations rendered unusable for that period of time that the County is unable to make repairs required by **Sub-Article 6.01 "Department Services"**.

3.03 ADJUSTMENT OF THE MINIMUM ANNUAL GUARANTEE: The Minimum Annual Guarantee shall be adjusted annually based on the Consumer Price Index for the Miami Area for the prior twelve months or 2.5% over the prior year, whichever is greater.

3.04 TRANSACTION FEE TO THE DEPARTMENT: The Concessionaire shall pay the Department a Transaction Fee of **$0.20 (Twenty Cents and Zero Dollars)** per transaction on all transactions through Concessionaire's ATMs. This monthly Transaction Fee shall initiate on the date of Beneficial Occupancy, and is due on the tenth (10th) day of the month following the month during which the transactions occurred. Monthly Transaction Fee payments to the Department payable on any unreported transactions, determined by the annual audit required pursuant to **Sub-Article 3.19 "Annual Audit"**, are considered as having been due on the tenth (10th) day of the month following the month during which the unreported Gross Transaction Fees were received or

accrued. The Concessionaire may request an increase/decrease to the transaction fee during the term of the Agreement, in writing to the Department. The Department will review such request and advise in writing of any changes to the transaction fee amount.

3.05 NOT USED

3.06 ANNUAL RENTAL: The Concessionaire shall pay rent at the prevailing Class VI Terminal rates for the lease of the Locations in Exhibit A1, prorated and payable as of the date of Beneficial Occupancy, in equal monthly installments in U.S. funds, on the first day of each and every month, in advance and without billing or demand, at the offices of the Department as set forth in **Sub-Article 3.17 "Address for Payments"**. The Terminal Class VI rental rate for Locations in Exhibit A1 is $61.90 per square foot based on rates in effect as of October 1, 2006, plus any applicable taxes.

3.07 NOT USED

3.08 ANNUAL RENTAL RATE ADJUSTMENT: On October 1 of each year of the Agreement, the cost-based rental rates, pursuant to **Sub-Article 3.06 "Annual Rental"** applicable to the Locations rented hereunder, shall be subject to recalculation and adjustment in accordance with the policies and formulae approved by the Board of County Commissioners. When such adjusted rental rates are established, this Agreement shall be considered and deemed to have been administratively amended to incorporate such adjusted rental rates, effective as of such October 1st date. Such adjusted rental rates shall be reflected in writing by letter amendment. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within ten (10) calendar days of same.

3.09 CONCESSION MARKETING FEE: A concession marketing fee of one half (1/2) of one percent (1%) of Gross Revenues will be assessed annually to be paid to the Department monthly, beginning the month following Beneficial Occupancy, on the twentieth (20th) of each month to be used for marketing the concessions at the Airport.

3.10 NOT USED

3.11 ANNUAL RENT/MAG SECURITY DEPOSIT/PERFORMANCE BOND: The Concessionaire shall provide the County with an irrevocable standby letter of credit in the format approved by the Department or cash as a security deposit (the "Security Deposit") in an amount equal to three months of the Monthly Annual Rent, Minimum Annual Guarantee, and Transaction Fee which is equal to **<u>One Hundred Eighty Six Thousand Six Hundred Forty One Dollars and Zero Cents</u> ($186,641.00)**. This amount is calculated based upon twenty five percent (25%) of the Annual Rent and the Minimum Annual Guarantee and twenty five percent (25%) of the amount equal to the Transaction Fee proposed by the Concessionaire times 175,000 annual transactions, plus any sales/use taxes as may be applicable and required by law. The Security Deposit is due to the Department within thirty days (30) of the Lease Effective Date of this Agreement, but prior to beginning business at the MIA. The Security Deposit shall be kept in full force throughout the Term of the Agreement or any extension of the Term of this Agreement, as applicable, and the amount of the Security Deposit shall be adjusted to take into consideration any

changes to the Annual Rent and Minimum Annual Guarantee. Any letter of credit forwarded to the Department as a Security Deposit shall be such that the Department may draw upon such instrument in the event the Concessionaire fails to pay either the Annual Rent, MAG, Transaction Fees or any charges required within the time limits specified herein.

Within thirty (30) calendar days of the award of this Agreement, the Concessionaire shall provide the Department a performance bond (the "Performance Bond") equal to seventy five percent (75%) of the Annual Rent, Minimum Annual Guarantee and Transaction Fee (an amount equal to the Transaction Fee proposed by the Concessionaire times 175,000 transactions) which is equal to **Five Hundred Fifty Nine Thousand Nine Hundred Twenty Four Dollars and Zero Cents ($559,924.00)**, plus any sales/use taxes as may be applicable and required by law. Concessionaire shall keep such Performance Bond in full force and effect during the Term of this Agreement including any and all extensions of the Term, as applicable, and, thereafter, until all financial obligations, reports or other requirements of this Agreement are satisfied. The Performance Bond shall be a surety bond or an irrevocable letter of credit, or other form of security acceptable to the Department and so endorsed as to be readily negotiable by the Department for the payments required hereunder. The Performance Bond shall be effective for the current year of operation with automatic renewals for each of the remaining years under this Agreement, including any extensions naming the County as obligee and issued by a surety company or companies in such form as approved by the County Attorney. The amount of the Performance Bond shall be adjusted to take into consideration any changes to the Annual Rent, Minimum Annual Guarantee and Transaction Fee.

The Department may draw upon such payment security instrument, if the Concessionaire fails to pay any monies or perform any obligations required hereunder following applicable notice and cure periods specified herein. Provided Concessionaire is not in default and fully complies with all the payment requirements of this Agreement, the bond will be returned to Concessionaire within one hundred eighty (180) calendar days after the end of the Term or any Extension of the Term. On January 1st of each year the Concessionaire shall update its Performance Bond to reflect the change in the Annual Rent/MAG and/or Transaction Fees.

3.12 TAXES: The Concessionaire shall be solely responsible for the payment of all applicable sales, use or other taxes, levied upon the fees and other charges payable by the Concessionaire to the Department hereunder, whether or not the same shall have been billed or collected by the Department, together with any and all interest and penalties levied thereon. The Concessionaire hereby agrees to indemnify the Department and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from the Concessionaire and remitted to the taxing authority by the Department, or the amounts, if any, paid directly by the Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interests and penalties payable by the Department as a result thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3.13 MONTHLY REPORTS: On or before the tenth (10th) calendar day following the end of each month throughout the Term of this Agreement, or any extension hereof, the Concessionaire shall furnish to the Department, a statement showing the number of transactions for its ATM Locations for the preceding calendar month as well as a combined total number of ATM transactions and certify as to the accuracy of same in the form prescribed by the Department. The

Department shall have the right to require the Concessionaire to provide other reasonable information such as type of transaction and networks used on such statement. Failure to provide the transaction information within ten (10) calendar days following the due date of the statement shall result in a late fee penalty of $50 per day, until said statement is tendered to the Department as provided in **Sub-Article 3.24 "Penalties".**

3.14 OTHER REPORTS: The Concessionaire shall provide the Department with financial data and operating statistics in a format and frequency specified by the Department, and the Department shall provide no less than thirty (30) days written notice of the format and frequency required for said financial data and operating statistics.

3.15 LATE PAYMENT: In the event the Concessionaire fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) business days of the due date, delinquency charges established by the Board will be imposed. Such rate is 1½% delinquency charge per month.

3.16 DISHONORED CHECK OR DRAFT: In the event the Concessionaire delivers a dishonored check or draft to the Department in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service fee plus penalties imposed by law (Fla. Stat. §§ 832.08 and 125.0105). The service fee shall equal the greater of either: (a) TWENTY-FIVE DOLLARS ($25.00), if the face value of the dishonored check or draft is fifty dollars ($50.00) or less, (b) THIRTY DOLLARS ($30.00) if the face value of the dishonored check or draft is more than fifty dollars ($50.00) and less than three hundred dollars ($300.00), or (c) FORTY DOLLARS ($40.00), if the face value of the dishonored check is three hundred dollars ($300.00) or more; or five percent (5%) of the face value of such dishonored check or draft. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's checks or other means acceptable to the Department.

3.17 ADDRESS FOR PAYMENTS: The Concessionaire shall pay all monies payable, as required by this Agreement, to the following:

In Person: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300

During normal business hours, 8:30 A.M. to 5:00 P.M., Monday through Friday

By Mail: Miami-Dade Aviation Department
Finance Division
P.O. Box 526624
Miami, Florida 33152-6624

By Express Mail: Miami-Dade Aviation Department
Finance Division
4200 N.W. 36th Street
Building 5A, Suite 300
Miami, Florida 33122

By Wire Transfer: In accordance with wire transfer instructions provided by MDAD's Finance Division, 305-876-7383.

3.18 REVENUE CONTROL PROCEDURES: Notwithstanding anything to the contrary contained herein, the Concessionaire shall comply with such revenue control procedures as may be established from time to time by the Department. The Department shall provide the Concessionaire with at least thirty (30) days prior written notice together with a copy of such revenue control procedures prior to requiring the Concessionaire to implement any such revenue control procedures.

3.19 ANNUAL AUDIT: Within ninety (90) calendar days of each anniversary of the Lease Effective Date of this Agreement and within ninety (90) calendar days following expiration or earlier termination of this Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Department on an annual basis, an audited report of monthly gross transaction fees, containing an opinion prepared and attested to by an independent certified public accounting firm, licensed in the State of Florida. The audited report, as detailed in **Exhibit G "Independent Auditor's Report"**, shall include a schedule of monthly transaction fees paid to the Department under this Agreement, prepared in accordance with Generally Accepted Auditing Standards ("GAAS"). The report shall also be accompanied by a management letter containing the findings discovered during the course of the examination, recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under this Agreement. In addition, the audit shall also include as a separate report, a comprehensive compliance review of procedures to determine whether the books of accounts, records and reports were kept in accordance with the terms of this Agreement for the period of examination. Each audit and examination shall cover the period of this Agreement. The last such report shall include the last day of operation. There shall be no changes in the scope of the reports and letters required hereunder without the specific prior written approval of the Department.

If such schedules indicate that the Transaction Fees for such period audited have been underpaid, then the Concessionaire shall submit payment thereof within forty-five (45) days after the completion of thee reports to the Department as stated in **Sub-Article 3.17 "Address for Payments"**, together with interest on any underpaid Transaction Fees at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such fees or charges should have been paid.

3.20 RIGHT TO AUDIT/INSPECT: The Department and the auditors of the County shall have the right, without limitation, at any time during normal working hours, to enter into any locations on or off the Airport, which the Concessionaire may use as administrative, maintenance and operational locations, in connection with its operations pursuant to this Agreement to: (1) verify, check and record data used in connection with operation of this Agreement; (2) inspect, review, verify and check all or any portion(s) of the procedures of the Concessionaire for recording or compiling Gross Transaction Fees information and (3) audit, check, inspect and review all books of account, records, financial reports, financial statements, operating statements inventory records, and state sales tax returns, and work papers relating to operation of this Agreement, and other pertinent information as may be determined to be needed or desirable by the Department. Prior to entering any Locations located on the Airport, the Department shall give reasonable advance notice to the Concessionaire

The Department shall further have the right, upon reasonable written notice to the Concessionaire at the sole cost of the Department except as specified below, to examine or designate a representative to examine the books and records of the Concessionaire which relate to its operations on the Locations to determine the correctness of the Transaction Fees paid by the Concessionaire to the Department for any or all of the Agreement periods immediately preceding such examination. At least ten (10) days prior written notice shall be provided by the Department to the Concessionaire to examine any such books and records which may be located in offices of the Concessionaire, which are not located in the Airport. If, as a result of such examination, it is established that the Transaction Fees for any period examined have been underpaid to the Department, the Concessionaire shall forthwith, upon written demand from the Department, pay the difference to the Department, together with interest thereon at the rate set forth in **Sub-Article 3.15 "Late Payment"** from the date such amount or amounts should have been paid.

Further, if such examination establishes that Concessionaire has underpaid transaction fees for any period examined by three percent (3%) or more, then the entire expense of such examination shall be borne by Concessionaire.

In the event of any conflict between any provisions of this Agreement and GAAP or generally accepted auditing standards ("GAAP"), the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, the Concessionaire shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such GAAP or GAAS.

3.21 RECORDS AND REPORTS: The Concessionaire shall, at all times during the term hereof and in accordance with applicable law, maintain at the Concessionaire's principal corporate office located in the United States and make available to the Department in Miami-Dade County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Locations, in a form consistent with good accounting practice. The form of all such books of account records and reports shall be subject to the approval of the Department and/or the auditors of the County (one (1) or more of the following: the designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County) prior to commencement of operations hereunder.

The Concessionaire shall account for all revenues of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of the Concessionaire and which supports the amounts reported to the Department in the Concessionaire's monthly schedules. At a minimum, the Concessionaire's accounting for such receipts shall include the following:

1. Concessionaire's bank account statements and no receipts from any other source shall be deposited in such accounts.
2. A compiled report of transactions by Location showing all Transaction Fees and all exclusions from Transaction Fees by category, which report shall be subtotaled by day and totaled by

month. The monthly total shall correspond with the amounts reported to the Department on the Concessionaire's monthly "Transaction Reports".

3. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of the Concessionaire's Transaction Fees in accordance with GAAP and the provisions of this Agreement.

   Such records may be in the form of (a) electronic media compatible with the computers available to the Department, or (b) a computer run hard copy. The Department may require other records necessary in its determination to enable the accurate audit of Concessionaire's Transaction Fees hereunder. Upon ten (10) business days written notice from the Department, all such books and records, shall be made available, either at the Locations, or at the Department's option, at the offices of the Department, for inspection by Department through its duly authorized representatives at any time for up to three (3) years subsequent to final termination of the period to be examined to which such books and records relate (and the Concessionaire shall not be obligated to retain such books and records subsequent to the termination of such three (3) year period); provided, however, that any such inspection on the Locations will be conducted during reasonable business hours and in such a manner and at such time as not to interfere unduly with the conduct of the Concessionaire's business.

3.22 ADDITIONAL FEES DUE: If the Department has paid any sum or has incurred any obligation or expense for which the Concessionaire agreed to pay or reimburse the Department, or if the Department is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed additional fees due and subject to an administrative fee of twenty-five percent (25%) of such payment, obligation, or expense.

3.23 UTILITIES: The cost of all utilities used or consumed on the Locations shall be borne by the Concessionaire. Unless the Locations are provided with separate electric, gas, and/or water meters, the Concessionaire agrees to pay for such utilities in the Locations as a monthly charge, plus any applicable taxes, upon billing by the Department, or utility companies. The Department encourages the Concessionaire to provide and install meters for utilities used at the Concessionaire's expense. If billed by the Department, the Department at its sole discretion, will base this monthly charge on (i) a survey of consumption by the Department and current non-discriminatory rates charged others in the terminal building or (ii) at the option and expense of the Concessionaire on actual usage measured by temporary meters, arranged and paid for by the Concessionaire. This monthly charge may also be adjusted on a non-discriminatory basis and billed retroactively from time to time based on changes in consumption and rates. Concessionaire hereby agrees to pay the same within thirty (30) calendar days after it has received Department's invoice thereof. The Concessionaire shall pay for all other utilities used by it including telephones and telephone service hook-up, data lines and additional electrical and communications services required.

The Department shall have no obligation to provide additional utilities to the locations listed in **Sub-Article 1.03 "Locations"**.

3.24 PENALTIES: If Concessionaire defaults under any of the covenants or terms and conditions stated herein, the Department may elect to impose the financial penalties, until said

violations are remedied, in the form of additional compensation described below, as a result of the violation(s), on a daily basis, in addition to any other penalties permissible by law and/or pursuant to the provisions of this Agreement.

Violation	Fee
Violation of Permitted Use of a Location	$100 per day/per Location
Failure to Maintain Required Hours of Operation	$ 25 per hour/per Location
Failure to Submit Required Documents and Reports	$ 50 per day/per Location
Unauthorized Advertising	$ 50 per day/per Location
Failure to maintain Location clean	$ 50 per day/per Location
Installation of Unapproved Items in Locations	$ 50 per day/per Location

The foregoing is due and payable from the Concessionaire. The exact monetary value of said Damages caused by Concessionaire's failure to perform may be difficult and impractical to fix; therefore the Concessionaire agrees that the above stated sums represent fair and reasonable estimates of such monetary value of such damages."

ARTICLE 4 – IMPROVEMENTS TO THE LOCATIONS

4.01 IMPROVEMENTS TO LOCATIONS: The Concessionaire shall invest a minimum (the "Initial Minimum Investment") of one hundred seventy-five dollars per square foot ($175 psf) for the South Terminal Facility and fifty dollars per square foot ($50 psf) for the North Terminal Facility for the design, engineering, construction, furniture, fixtures and equipment (excluding interior signage and inventory) listed in Exhibit A1 and any additional location taken by the Concessionaire pursuant to **Sub-Article 1.07(A) "Addition of Location".** Notwithstanding the actual amount of design and engineering costs incurred with respect to improvements for a Location, the maximum proportion of such soft costs to be permitted to included as Approved Improvements shall be fifteen percent (15%). The Department may, with mutual agreement, fund certain improvements needed to support the concession space and allow the Concessionaire to build such improvements in compliance with MDAD TAC procedures.

Approved Improvements may include but are not limited to the décor, remodeling of the wall and floor coverings, ceiling, lighting, millwork, HVAC, fire detection and fire suppression or such other improvements as are approved by the Department. Such improvements shall be shown in the design detail in the final plans; as such term is defined in **Sub-Article 4.02 "Design of Improvements".**

Improvements not constituting Approved Improvements shall include improvements that (i) are non-fixed, (ii) have not been reimbursed by the Department pursuant to **Sub-Article 4.09 "Cost Documentation"**, and (iii) can be removed without damage to the premises. The Concessionaire is liable and shall indemnify the Department for any damage to the Locations which results from the removal of said improvements. This provision shall survive the termination or expiration of this Agreement.

Off-Airport properties used as storage space will not be considered as Locations, as stated in **Article 4 "Improvements to the Locations"** or as an extension of this Agreement, and costs

incurred by the Concessionaire to provide such storage space shall not constitute Approved Improvements.

Within thirty days (30) after the Turnover Date, the Concessionaire shall provide to the Department an irrevocable Letter(s) of Credit with automatic renewals, in a form acceptable to the Department, in an amount equal to one hundred percent (100%) of the projected improvement costs for the anticipated Locations to be constructed. The Department upon issuance of a CO may release such letter of credit for the built-out Locations.

4.02 DESIGN OF IMPROVEMENTS: Planning and design must be in accordance with (i) MDAD's "**Retail Concessions Design Guidelines**", attached hereto as **Exhibit E,** (ii) **Exhibit F, "Tenant Airport Construction–Non-Reimbursable Procedures (TAC-N)"** and **Tenant Airport Construction Reimbursable Procedures (TAC-R)"** in the Lease and Concession Agreement, (iii) MDAD's Construction and Development Manuals and the Life Safety Master Plan Manual, both of which can be found on the MIA internet web page (http://www.miami-airport.com) as may be established for the Terminal Retail Program[1]. As plans for the improvement of individual Locations or common area improvements are completed, the Concessionaire shall submit to the Department for review, approval or modification detailed final plans (the "Final Plans") and specifications (including materials, colors, textures and fixtures), construction cost estimates and schedules for the construction of the improvements. The Final Plans shall be prepared by an architectural interior design and/or engineering firm registered in the State of Florida and in accordance with the Florida Building Code and all applicable State and local laws, statutes, ordinances, codes, and regulations.

4.03 REFURBISHMENT OF LOCATIONS: The Concessionaire will be required to refurbish the Locations no less than five (5) years after the Location Commencement Date. Employee Facilities are excluded from mid-term refurbishments.

Approved Improvements for the refurbishment of the Locations shall not be less than twenty-five dollars per square foot ($25 psf). There will be no reimbursement or amortization of these costs for refurbishment.

4.04 NOT USED

4.05 CERTAIN CONSTRUCTION CONTRACT TERMS: All contracts entered into by the Concessionaire for the construction of the Approved Improvements shall require completion of the Approved Improvements within the schedules submitted pursuant to **Sub-Article 4.02 "Design of Improvements"** and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages to the Department in the event the contractor fails to complete the construction on time. The Concessionaire agrees that it will use its best efforts to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

Prior to the commencement of any installation work by the Concessionaire, the Concessionaire shall provide or cause to be provided to the Department copies of a fixed price contract or

[1] Click on Construction, and then click on Life Safety Master Plan.

contracts for all work to be performed at the Locations. Additionally, prior to commencement of any construction/installation work the Concessionaire shall provide a performance and payment bond **(the "Surety Bond") Exhibit B**, to the Department for any and all construction/installation work to be performed under such contract(s). The Surety Bond shall be in full force until a Certificate of Occupancy, "CO" is received by the Department.

4.06 IMPROVEMENTS FREE AND CLEAR: The improvements, upon completion, shall immediately become the property of the Department, free and clear of any liens or encumbrances whatsoever, other than the Department's obligation to reimburse the Concessionaire for the un-amortized value of the Approved Improvements as provided in this Agreement. The Concessionaire agrees that any contract for construction, alteration or repairing of the improvements or Locations or for the purchase of material to be used, or for work and labor to be performed shall be in writing and shall contain provisions to protect the Department from the claims of any laborers, subcontractors or material men against the locations or improvements.

4.07 OTHER REQUIREMENTS: The Concessionaire shall apply for and obtain a building permit from the Department for all appropriate inspections and a CO upon completion. Within sixty (60) calendar days following the completion of construction of the Approved Improvements, the Concessionaire shall furnish to the Department one (1) complete set each of legible prints (black line), photo mylars and 35 mm aperture card microfilm of construction drawings, and auto cad files revised to "as built", including all pertinent shop and working drawings, copies of all releases of all claims and a copy of the CO. The Concessionaire shall not disseminate information made confidential by Transportation Security Regulations, 49 C.F.R. 1520, *et alia*, Protection of Sensitive Security Information.

Concessionaire cannot open a facility without obtaining a Temporary Certificate of Occupancy "TCO" or a CO.

4.08 REVIEW OF CONSTRUCTION: The Department shall have the right, but not obligation, to periodically observe the construction to ensure conformity with the final plans and any changes thereof requested by the Concessionaire and approved by the Department.

4.09 COST DOCUMENTATION: Within one hundred eighty (180) calendar days from the date of Beneficial Occupancy, specifically including those improvements described in **Sub-Article 4.01 "Improvements to Locations",** and **Sub-Article 4.03 "Refurbishment of Locations",** the Concessionaire shall submit to the Department a certified audit of the monies actually expended in the design and construction of the Approved Improvements by Location in accordance with the final plans, prepared by an independent certified public accounting firm (the" Auditor"), approved in advance by the Department (the "Certified Audit"). The Concessionaire shall be responsible for documenting for the Auditor that the monies that were expended are true and correct. The costs of design and construction, in accordance with the final plans and any changes thereto requested by the Concessionaire and approved by the Department, including the costs of required bonds, construction insurance and the construction audit, shall not include the cost of any other consultant or accountant fees, financing or legal fees and personal property of the Concessionaire, as the case may be, as provided in **Sub-Article 4.01 "Improvements to Locations".** The audit is to be given to the Department's Finance Manager. No non-receipted expenditures will be credited. Concessionaires not submitting certified audits within the allotted

time may be billed a penalty of $50.00 per day. Upon reconciliation, any difference due the Department shall also include an administrative fee of ten percent (10%) of the monies due the Department on the build-out of the Locations. In the event of any disputes between the Department and the Concessionaire as to whether certain costs are to be included in the audit, said dispute shall be submitted to the consulting engineer named pursuant to the Trust Agreement, as defined in **Sub-Article 17.01 "Incorporation of Trust Agreement by Reference".** The decision of said consulting engineer, acting in good faith, shall be final and binding upon the parties hereto.

The Department shall notify the Concessionaire in writing that it has approved or disapproved the certified costs for each Location and the common area improvements detailed in the Certified Audit within sixty (60) days from the date of its receipt of the Certified Audit. If the Concessionaire fails to submit the Certified Audit within the time prescribed above for any Location, then a penalty will be assessed as noted in **Sub-Article 3.24 "Penalties".** The Approved Improvement cost for purposes of calculating the County's obligation to reimburse the Concessionaire for un-amortized improvement costs for such Location pursuant to **Sub-Article 4.10 "Amortization Schedule"** shall equal the lesser of $175 per square foot or the square footage rate of improvement costs for such Location certified by the Auditor.

If the approved total receipted amount is below the Concessionaire's Initial Minimum Investment and is depicted as such in the results of the Certified Audit, the Concessionaire shall be required to pay to the Department the difference between the expended amount and the Initial Minimum Investment, within one hundred eighty (180) calendar days from the date of Beneficial Occupancy of the corresponding Location. If the approved total receipted amount is below the Concessionaire's Refurbishment investment and is depicted as such in the results of the Certified Audit, the Concessionaire shall be required to pay the Department the difference between the expended amount and the Refurbishment Amount within one hundred eighty (180) calendar days from the date of completion of refurbishment.

4.10 AMORTIZATION SCHEDULE: The Concessionaire shall amortize its capital investment for a period not to exceed sixty (60) months using the straight-line depreciation method. If, at any time during the term of the Agreement, excluding any extension, the Department requires the deletion and/or modification of any Location, the Department may designate new Locations at its sole discretion and reimburse the Concessionaire the unamortized balance of Approved Improvements for that Location.

Investment subject to such reimbursement shall include the following items only:

1. Directly contracted costs of construction.

2. Design and engineering costs not to exceed fifteen percent (15%) of the total approved construction, installation, store displays, furniture, fixture, equipment and signage cost.

There will be no other reimbursement.

A certified audit of monies for the above expenditures performed at the expense of the Concessionaire will be required to confirm the minimum investment within one hundred twenty

(120) calendar days of Beneficial Occupancy for each Location. Expenditures will not be credited without receipts. If the approved total receipted amount is below the one hundred seventy-five dollar per square foot ($175/psf) minimum for the new Location and fifty per square foot ($50 psf) for the existing Location, the Concessionaire will be required to pay the Department the difference between the minimum investment amount and the actual receipted expenditure within ninety (90) calendar days after billing by the Department.

Concessionaires not submitting a certified audit within the allotted time may be billed a penalty of $50.00 per day. Upon reconciliation, any difference due the Department shall also include an administrative fee of twenty-five (25%) of the monies due the Department on the build-out of the Locations.

4.11 CONSTRUCTION PERMIT FEE: The Concessionaire shall pay a permit fee to the Department for improvements which would customarily be paid to the County's Building Department as a condition to issuance of a permit. The permit fee payable by the Concessionaire to the Department at the time the Concessionaire obtains the building permit is an amount equal to one percent (1%) of the construction cost of the improvements. Such fee shall be used to reimburse the Department its costs of maintaining on-site Building Department staff to review Concessionaire's plans/specifications. Such fee shall be non-refundable.

4.12 CONSTRUCTION SERVICES: The Concessionaire shall provide at a minimum, but not limited to, the following design and construction services:

1) Concessionaire Improvements

Pursuant to the terms of this Agreement, the Concessionaire shall construct certain improvements. The Department shall provide the Concessionaire with the scope of such improvements and within a reasonable time period to be mutually agreed to by the Concessionaire and the Department, the Concessionaire shall provide the Department with a preliminary estimate of hard and soft costs for such improvements. Once the Department and the Concessionaire have mutually agreed on the scope of the improvements and the preliminary estimates, the Concessionaire shall proceed to design and construct the improvements in accordance with the provisions of this Agreement.

2) Design and Construction Coordination

Concessionaire shall:

a) Be responsible for construction management and coordination of all Approved Improvements to the Locations and administrative support space.

b) Coordinate the processing and review of improvement submittals. Design and construction shall be in accordance with the MDAD Design Guidelines Manual, Life Safety Master Plan, MDAD Retail Concessions Design Guidelines, Florida Building Code and the TAC-N Procedures, as well as all other applicable codes and regulations.

c) Provide and coordinate access to Location as necessary.

d) Purchase materials and services, and coordinate the fabrication and installation of the concessionaire development requirement, whereby such elements are the designated responsibility of the Concessionaire, if so implemented.

3) Construction

Concessionaire shall:

a) Attend pre-construction meetings, construction meetings, monitor schedule, and coordinate locations development with the Department as required, pursuant to the TAC-N procedures.
b) Adhere to MDAD's TAC-N Design and Construction procedures and requirements.
c) Ascertain that MDAD's TAC-N or TAC-R Design and Construction procedures and requirements, as applicable, are adhered to by all.
d) Monitor and coordinate the construction start, project timetable schedule and completion date for all Locations.
e) Monitor and report to the Department on on-site activities and progress for Approved Improvement work. The Architect/Engineer of record is responsible for day-to-day field observation of all shell and core Locations including, but not limited to, inspections, delivery, coordination and reporting.
f) Monitor construction progress with regard to the schedule and procedures established and make recommendations to the Department for maintaining and improving construction progress as necessary.
g) Establish a uniform system for the timely processing and control of drawings.
h) Review status of drawings with contractor(s) and architect(s) at progress meetings.
i) Review and advise the Department on all changes to the work with regard to cost and impact on the project pro-forma and construction schedule.
j) Monitor punch list completion and review testing and inspection reports for all Locations.
k) Organize and have available upon request completed project files.
l) Coordinate access to the Location to allow staff training and equipment testing.
m) Obtain CO for each Location.
n) Submit Record Drawings (As-Built drawings) as per the TAC-N or TAC-R requirements within sixty (60) days from the issuance date of the CO, and deliver them to the Department pursuant to the TAC-N or TAC-R procedures.

ARTICLE 5 – STANDARDS OF OPERATION

5.01 STANDARDS OF OPERATION: The Concessionaire shall comply with the Department's **"Tenant Handbook"**, attached as **Exhibit K**, the Standards of Operation, attached as **Exhibit L, and the** Construction and Design Requirements as available on **www.miami-airport.com** and all revisions to same promulgated from time to time by the Department.

The Department shall have the right to adopt and enforce reasonable and non-discriminatory rules and regulations and operating performance standards with respect to the use of Locations, which

the Concessionaire agrees to observe and obey. The Department may amend such rules or regulations and operating performance standards from time to time and shall provide copies thereof to the Concessionaire. The Department shall provide the Concessionaire with reasonable prior written notice, not less than fifteen (15) days, prior to the implementation of any such amendment to the rules or regulations and operating performance standards. Those rules include, but are not limited to, any rules and regulations imposed upon the Department by any governmental agency.

The Concessionaire shall implement and comply with all amended requirements, within fifteen (15) days of receipt of such amendment. The Concessionaire shall immediately implement and comply with any rules and regulations promulgated for safety or security reasons.

The Concessionaire understands and agrees that its operation is a service to airline passengers and the users of the Airport and that the Concessionaire shall conduct its operation in a first-class, businesslike, efficient, courteous, and accommodating manner. The Concessionaire acknowledges the desire of the Department, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler an adequate range and quality of service. The Department may monitor, test or inspect the Locations at any time through the use of its own personnel, and/or the use of a shopping service, and/or by any other reasonable means that do not unduly interfere with the operation of the business. The results of such service audits may be employed by the Department to enforce the obligations in this Agreement.

The Department shall retain the right, in accordance with the provisions of this Agreement, to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Locations, pursuant to Scope of Services. Failure to perform any of the services under this Agreement may result in additional compensation being imposed pursuant to **Sub-Article 3.24 "Penalties"**.

5.02 NOT USED

ARTICLE 6 – OBLIGATIONS OF THE DEPARTMENT

6.01 DEPARTMENT SERVICES:

A. DEPARTMENT'S MAINTENANCE OBLIGATION: The Department shall clean, maintain and operate in good condition the terminal building, excluding the Locations. This obligation includes, but is not limited to, all structural (including, but not limited to, the roof and base floor of the terminal building) and all base building work, maintenance of main electrical and mechanical systems, maintenance of walls and ceilings, and repair/maintenance of the roof. The Department shall maintain the public areas in the terminal building furnished and will provide adequate light, cold water and conditioned air. The Department agrees to make all necessary structural repairs to the Locations at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to any equipment installed by the Concessionaire, and further provided that the Concessionaire shall reimburse the Department, within ten (10) calendar days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as a result of the negligent or intentional acts of the

Concessionaire, its officers, partners, employees, agents, contractors, subcontractors, suppliers, vendors, licensees, or invitees. The Concessionaire shall give the Department written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Airport, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the Department. The Department shall commence the repair process promptly after its receipt of such written notice if the Department agrees that such repair is required and is the Department's responsibility hereunder. The Department, except with respect to the "as is" Location shall provide other Location(s) to the Concessionaire in Shell Condition.

B. The Department will provide air conditioning and electrical service as presently existing for the Locations. The Department shall provide to the Concessionaire a utilities matrix, which describes the current utilities for each Location within thirty (30) days from the Lease Effective Date. All new services, extensions, and/or relocations of existing utilities in order to properly meet the Concessionaire's operational needs shall meet all code requirements and such services, extensions and/or relocations shall be provided at no expense to the Department.

Maintenance by the Department may be subject to interruption caused by: (i) repair, (ii) strikes, lockouts, and labor controversies, (iii) inability to obtain fuel, power or parts, (iv) accidents, and breakdowns, (v) catastrophes, and national or local emergencies, and (vi) other conditions beyond the control of the Department. If the Concessionaire's Locations are of such a condition as to significantly impact the Concessionaire's operations for a period in excess of seventy two (72) hours and such damage is not insurable under an insurance policy of the type required to be maintained by the Concessionaire pursuant to this Agreement, the Department shall provide a rent abatement for that portion of the Locations rendered unusable for that period of time that the Department is unable to make repairs required by **Sub-Article 6.01 "Department Services".**

C. NO OTHER OBLIGATION OF DEPARTMENT: The Concessionaire acknowledges that the Department has made no representations or warranties concerning the suitability of the Locations for the Concessionaire or for any other use, and that except as expressly provided in this Agreement, the Department shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Locations or any improvements, furnishings, fixtures, trade fixtures, signage or equipment constructed or used on or in the Locations by the Concessionaire.

1. The Concessionaire hereby represents that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of furnishings, fixtures, trade fixtures, inventory, signs and equipment needed to operate from the Locations hereunder that it has done its own projections of the volume of business expected to be generated that it is relying on its own business judgment concerning its prospects for providing the services required under this Agreement on a profitable basis and that the Department has not made any representations or warranties with respect to any such matters.
2. The Department does not warrant the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to the Concessionaire by the Department or anyone on its behalf, and the Department shall not be responsible for any inaccuracies in such statistics or their interpretation.

3. All statements contained in this Agreement or otherwise made by the Department or anyone on its behalf concerning any measurement relating to the Locations or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by the Concessionaire under or in connection with this Agreement.
4. The Department shall not be liable to the Concessionaire for any loss of business or damages sustained by the Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the construction improvements of the terminal building.

ARTICLE 7–FURNITURE, FIXTURES AND EQUIPMENT

7.01 FURNITURE, FIXTURES AND EQUIPMENT: Any equipment, furnishings, fixtures and signs installed in the Locations by the Concessionaire, shall be in keeping with the decor of the terminal building and must be approved in advance by the Department. Any such equipment, furnishings, fixtures and signs so installed by the Concessionaire, as provided in **Sub-Article 4.01 "Improvements to Locations"**, shall, except as provided in **Sub-Article 7.03(B) "Disposal of Furniture, Fixtures and Equipment"**, be removed from the Locations within five (5) days following the expiration or earlier termination of this Agreement.

7.02 AMERICANS WITH DISABILITIES ACT REQUIREMENTS: The Concessionaire will be responsible, at its cost, for ensuring that the Locations and all equipment therein, and all functions it performs therein as part of the concession, conform in all respects to the requirements of the Americans with Disabilities Act (the "ADA"), including without limitation, the accessibility guidelines promulgated pursuant thereto. The ADA imposes obligation on both public entities, like the Department, and those private entities that offer services for the convenience of users of the public entities' locations. In some circumstances, the public entity must ensure that the operations of the private entity comply with the public entity's ADA obligations. In most cases the ADA obligations of the Department and the Concessionaire will be the same. However, the Department reserves the right to require the Concessionaire to modify its operations or its physical locations to comply with the Department's ADA obligations with respect to the Locations, as the Department in its sole discretion deems reasonably necessary.

7.03 DISPOSAL OF FURNITURE, FIXTURES AND EQUIPMENT: At least thirty (30) calendar days prior to the expiration of this Agreement, or upon termination pursuant to Article 12 **"Default and Termination by County" or Article 13 "Claims and Termination by Concessionaire"** hereof, the Department shall exercise, at its sole discretion, one (1) of the following options as to any equipment, furnishings, fixtures, signs, or carts installed in the Locations by the Concessionaire:

(A) Require the Concessionaire to remove such equipment, furnishings, fixtures, signs, or carts from the Locations within five (5) days following the expiration or earlier termination of this Agreement, subject to the provisions of **Sub-Article 4.01 "Improvements to Locations";** or

(B) Retain any portion of the equipment, furnishings, fixtures, signs, or carts of the Concessionaire (personal property as referred to in **Sub-Article 4.01 "Improvements to**

Locations") in accordance with the provisions of this Agreement; provided however, the Department shall have no right to use or display any proprietary signs or logos (e.g., brand names owned by, or licensed or franchised to Concessionaire).

ARTICLE 8 – MAINTENANCE

8.01 CLEANING: The Concessionaire shall, at its cost and expense, keep the Locations clean, neat, orderly, sanitary, and presentable at all times. If the Locations are not kept clean as stipulated herein, the Concessionaire will be so advised and shall take immediate corrective action. Failure to take immediate corrective action may result in penalties being assessed pursuant to **Sub-Article 3.24 "Penalties"**.

8.02 REMOVAL OF TRASH: The Concessionaire shall, at its cost and expense, remove or cause to be removed from the Locations and properly disposed of in Department provided containers, all trash and refuse of any nature whatsoever which might accumulate and arise from the operations hereunder. If the Concessionaire enters into agreements for the janitorial and trash removal service within the Locations, such service providers must have permits issued by the Department to do business at the Airport. Trash shall neither be stored in any area visible to the public nor cause a private or public hazard through its means of storage. All edible items must be contained so as to minimize exposure to pests. Any trash left or stored in any area visible to the public or edible items not properly contained may result in penalties being assessed pursuant to **Sub-Article 3.24 "Penalties"**.

The Department reserves the right to back charge the Concessionaire for waste disposal a proportionate share in a non-discriminatory manner either indirectly through rental rates or directly by a Department generated bill for actual usage. Such charges shall not exceed the Department's actual costs.

8.03 MAINTENANCE AND REPAIR: Except with respect to the Department's maintenance and repair obligations as set forth in **Sub-Article 6.01 "Department Services"**, the Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Locations. Such maintenance and repairs shall include, but not be limited to, painting, ceiling, walls, floors, laminating doors, windows, equipment, furnishings, fixtures, appurtenances, replacement of ceiling light bulbs, ballast and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by the Concessionaire specifically as a result of their operation shall remain with the Concessionaire. The Concessionaire shall repair or cause to be repaired, at or before the end of the Term of this Agreement, all injury done by the installation or removal of furniture and personal property so as to restore the Locations to the state they were at the commencement of this Agreement, reasonable wear and tear excluded. The Department may, at any time during normal business hours, enter upon the public areas of the Locations, or with appropriate notice, enter upon the non-public areas of the Locations, to determine if maintenance is being performed satisfactorily. The Department may enter upon any Location when a Location is not open for business if the Department provides the Concessionaire notice no less than two (2) hours in advance so that a representative of either the Concessionaire may be present, except in the case of real or perceived emergencies where no

such representatives shall be required to be present. If it is determined that said maintenance is not satisfactory, the Department shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to the satisfaction of the Department within seven (7) calendar days after receipt of such written notice, Department shall have the right to enter upon the Locations and perform such maintenance and charge Concessionaire for such services.

8.04 FAILURE TO MAINTAIN: Upon failure of the Concessionaire to maintain the Locations as provided in this **Article 8 "Maintenance"**, the Department may enter upon the Locations and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof plus twenty-five percent (25%) for administrative costs, shall constitute additional rental, and shall be billed to and paid by the Concessionaire, in addition to any penalties imposed by the Department pursuant to **Sub-Article 3.24 "Penalties"**.

Failure to pay said costs upon billing by the Department will cause this Agreement to be in default as stated in **Sub-Article 12.02 "Payment Default"**.

8.05 ENVIRONMENTAL RECYCLING: The Department is actively engaging in the development of environmental programs. A recycling program is planned at the Airport to include the participation of all Airport concessionaires. Participation in this program, once established, will be mandatory. The Concessionaire shall agree to bear any reasonable and actual costs associated with the implementation and continued operation of this recycling program, or propose for approval by the Department an alternative environmental recycling plan which such approval shall not be unreasonably withheld.

Proper disposal of contaminated and/or regulated materials generated by the Concessionaire is the sole responsibility of the concessionaire. Disposal must be through the use of a licensed vendor regulated by the State of Florida and/or any other federal or local regulatory agency.

8.06 FIRE PROTECTION AND SAFETY EQUIPMENT: The Concessionaire must provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required in or at the Locations by any applicable law, statute, ordinance, rule or regulation, for the Term of this Agreement, and extensions, if any.

ARTICLE 9 – ASSIGNMENT AND OWNERSHIP

9.01 NO ASSIGNMENT: The Concessionaire shall neither assign, transfer, pledge or otherwise encumber this Agreement nor shall the Concessionaire allow others to use the Locations, without the prior written consent of the Department.

9.02 OWNERSHIP OF THE CONCESSIONAIRE: Since the ownership, control, and experience of the Concessionaire were material considerations to the County in the award of this concession and the entering into of this Agreement, the Concessionaire shall take no actions which shall serve to transfer or, sell majority ownership or control of the Concessionaire without the prior written consent of the Department.

9.03 CHANGE OF CONTROL: If Concessionaire is a corporation the issuance or sale,

transfer or other disposition of a sufficient number of shares of stock (deemed to mean more than fifty-percent (50%) of the stock) in the Concessionaire which results in a change of control of Concessionaire shall be deemed an assignment of this Agreement for purposes of this **Article 9 "Assignment and Ownership"**. If the Concessionaire is a partnership, transfer of any interest in the partnership, which results in a change in control of such Concessionaire, shall be deemed an assignment of this Agreement for purposes of this Article 9 "Assignment and Ownership".

9.04 HOLDOVER TENANT:

A. WITH THE DEPARTMENT'S PERMISSION:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations of no less than seventy percent (70%) of the square footage of the Locations thereof after the termination of this Agreement, by written agreement executed by the Department the person or entity remaining in possession shall be deemed a holdover Tenant otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter continue to pay the then applicable Annual Rent amount for all Locations and Minimum Annual Guarantee on a monthly basis, subject to an annual Consumer Price Index adjustment. Such adjustment will be calculated by dividing the most recent Consumer Price Index published immediately prior to the expiration of the Lease and Concession Agreement and the most recent Consumer Price Index published one (1) year immediately prior to the termination date and multiplying such amount by the Minimum Annual Guarantee. The recalculated Minimum Annual Guarantee will be used as the basis for calculating the Minimum Monthly Guarantee. Notwithstanding the adjustment, in no event will any adjustment by the Consumer Price Index cause the Minimum Annual Guarantee for any year to be lower than the amount of such minimum annual guarantee for the term. If the Consumer Price Index is discontinued or revised during the Term, any such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

In addition, the Concessionaire shall pay the applicable monthly Transaction Fee for any ATM's in operation, on account of the holdover use and occupancy of the Locations. One-forty-eighth (1/48) of any un-amortized investment amounts per store Location owed the Concessionaire by the Department, for the slippage in Location turnover shall be extinguished, for each additional month the Concessionaire remains in possession of any portion of the Locations. This provision shall survive the expiration or the termination of this Agreement.

B. WITHOUT DEPARTMENT PERMISSION:

If the Concessionaire (or anyone claiming through Concessionaire) shall remain in possession of the Locations or any part thereof after the termination of this Agreement, without a written agreement executed by the Department, then without limiting the Department's other rights and remedies, the person or entity remaining in possession shall be deemed a Holdover Tenant at sufferance otherwise subject to all of the provisions of this Agreement. The Concessionaire shall thereafter pay on account of its holdover use and occupancy of the Locations a sum, at a rate equal to two times (2x) the MAG and two times (2x) the amount payable monthly as a Transaction Fee for any ATM's in operation pursuant to **Sub-Article 3.04 "Transaction Fee to the Department"**,

plus Annual Rent pursuant to **Sub-Article 3.06 "Annual Rental"**, and with all additional rent also payable as provided in this Agreement (the "Holdover Charges"). Imposition of Holdover Charges, extinguishes any un-amortized investment amounts owed the Concessionaire by the Department, for the slippage in Location turnover. The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, the Concessionaire shall remain liable to the Department for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the Department on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the expiration or the termination of this Agreement.

ARTICLE 10 – INDEMNIFICATION

10.01 INDEMNIFICATION REQUIRED OF CONCESSIONAIRE: The Concessionaire shall indemnify, defend, and hold harmless the Department and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the Department or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Concessionaire or its employees, agents, servants, partners, principles or any other persons. The Concessionaire shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Department, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Concessionaire shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Department or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 11 – INSURANCE

11.01 INSURANCE REQUIRED OF CONCESSIONAIRE: Within thirty (30) day after the date of execution of this Agreement, the Concessionaire shall obtain all insurance required under this Article and submit it to the Department, c/o Risk Management, P.O. Box 025504, Miami, Florida 33102-55004 for approval. All insurance shall be maintained throughout the Term and any extensions, if exercised, of this Agreement. The limits for each type of insurance may be revised upon review and approval of the Concessionaire's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable.

Certificate(s) of insurance from the Concessionaire must show coverage has been obtained that meets the requirements as outlined below during the construction and operation phase of this Agreement:

A. Workers' Compensation as required by Chapter 440, Florida Statutes.

B. Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than

$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Public Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Concessionaire in the performances of this Agreement.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Concessionaire allowed on the Airside Operation Area (AOA) without increasing automobile coverage to $5,000,000 as approved by the Risk Management Office.

11.02 CERTIFICATE OF CONTINUITY: The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with **Article 11 "Insurance"** remain in force for the duration of this Agreement, including any Extension. If insurance certificates are scheduled to expire during the lease period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates for its operations to the Department's Risk Management Unit at a minimum of thirty (30) calendar days before such expiration.

Certificates will show that no modification or change in insurance shall be made without thirty (30) calendar days written advance notice to the certificate holder.

11.03 INSURANCE COMPANY RATING REQUIREMENTS: All insurance policies required above from the Concessionaire shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Department's Risk Management Office.

11.04 CONCESSIONAIRE LIABLE: Compliance with the requirements as to carrying insurance in "**Article 11 "Insurance"** shall not relieve the Concessionaire from liability under any other provision of this Agreement.

11.05 CANCELLATION OF INSURANCE OR BONDS: Cancellation of any insurance or bonds, or non-payment by the construction contractors of any premiums for any insurance policies or bonds required by this Agreement shall constitute a breach of this Agreement.

11.06 RIGHT TO EXAMINE: The Department reserves the right, upon reasonable notice and at the Department's sole cost and expense, to examine the original policies of insurance of the Concessionaire (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The Concessionaire agrees to

permit such inspection at the offices of the Concessionaire, as may be applicable. In addition, upon request (but no later than five (5) days from the date of request, unless such longer period is agreed to by the Department) the Concessionaire agrees to provide copies to the Department, at the Concessionaire's sole cost and expense.

11.07 PERSONAL PROPERTY: Any personal property of the Concessionaire, or of others, placed in the Locations shall be at the sole risk of the Concessionaire or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

11.08 SURVIVAL OF PROVISIONS: The provisions of **Article 11 "Insurance"** shall survive the expiration or earlier termination of this Agreement.

11.09 NOT USED

11.10 INDEMNIFICATION, CONSTRUCTION BONDS AND INSURANCE REQUIRED:

A. INDEMNIFICATION, BONDS AND INSURANCE REQUIRED FROM ANY AND ALL CONSTRUCTION CONTRACTOR(S): The following language, including the indemnification clause, shall be included in all construction contracts between the Concessionaire and its general contractor(s) and subcontractors:

Indemnification: The construction contractor shall defend, indemnify, and save harmless the County, the consulting engineers, the architect/engineer, the field representative, the Lessee of the locations, and their officers (elected or otherwise), employees, and agents (collectively "indemnitees"), from any and all claims, demands, liability, losses, expenses and causes of actions, arising from personal injury (including death), property damage (including loss of use thereof), economic loss, or any other loss or damage, due in any manner to the negligence, act, or failure to act of the contractor or its contractors, subcontractors, sub-subcontractors, material men or agents of any tier or their respective, employees arising out of or relating to the performance of the work covered by the Contract Documents except as expressly limited herein. The contractor shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the County, when applicable, including appellate proceedings, and shall pay all costs and judgments which may issue thereon, provided however, that the contractor's obligation to indemnify or hold harmless the indemnitees for damages to persons or property caused in whole or in part by any act, omission, or default of any indemnitee arising from the contract or its performance shall be limited to the greater of $1 million or the contract amount. Further, this indemnification requirement shall not be construed so as to require the contractor to indemnify any of the above-listed Indemnities to the extent of such indemnities' own gross negligence, or willful, wanton, or intentional misconduct of the indemnitee or its officers, directors, agents, or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused in whole or in part by or result from the acts or omissions of the indemnitor or any of the indemnitor's contractors, subcontractors, sub-subcontractors, material men, or agents of any tier or their respective employees. This indemnification provision is in addition to and cumulative with any other right of indemnification or contribution which any Indemnitee may have in law, equity, or otherwise.

B. SURETY BONDS: Pursuant to and in accordance with Section 255.05, Florida Statutes, the Concessionaire or each contractor performing any part of the work for the Concessionaire shall obtain and thereafter at all times during the performance of the work maintain a combined performance bond and labor and material payment bond for the work (the "Bond") in an amount equal to one hundred percent (100%) of the cost of the improvements, as it may be amended from time to time, and in the form attached hereto as Exhibit B, Surety Bond. Within ten (10) days of issuance, Concessionaire shall record all bonds required by this Agreement in the Department of Public Records of Miami-Dade County. Prior to performing any portion of the Work, the Concessionaire shall deliver to County the Bonds required to be provided by Concessionaire or each contractor as set forth in this Agreement.

All bonds shall be written through surety insurers authorized to do business in the State of Florida as Surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond (Total Contract) Amount	Best's Rating
$ 500,001 to $1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,000 to 10,000,000	A VIII
Over $10,000,000	A IX

For contracts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

a) Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Request for Proposals is issued.

b) Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and

c) Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C.§ 9304-9308.

d) Surety insurers shall be listed in the latest Circular 570 of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

e) For contracts in excess of $500,000 the provision of this Sub-Article must be adhered to, plus the surety insurer must have been listed on the Treasury list for at least three (3) consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.

f) Surety bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.

g) The attorney-in-fact or other officer who signs a **Exhibit B "Surety Bond"** for a surety company must file with such bond a certified copy of his/her power of attorney authorizing him/her to do so.

The required Bond shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.

The Bond shall be delivered to the Department upon execution of the contract between the Concessionaire and its contractor.

Insurance Required of Construction Contractor(s): The limits for each type of insurance may be revised upon review and approval of the construction plans. Additional types of insurance coverage may be required if, upon review of the construction plans, the Department reasonably determines that such coverage is necessary or desirable.

The Concessionaire shall cause its contractor(s) to provide certificates of insurance and copies of original policies, if requested, which shall clearly indicate that the construction contractor has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article. Evidence of such coverage must be submitted prior to any construction:

(A) Workers' Compensation as required by Chapter 440, Florida Statutes.

(B) Public Liability Insurance on a comprehensive basis including Contractual Liability, Broad Form Property Damage and Products and Completed Operations in an amount not less than $5,000,000 per occurrence for Bodily Injury and Property Damage combined. The County and the Concessionaire must be shown as an additional insured with respect to this coverage.

(C) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in an amount not less than $500,000* per occurrence for Bodily Injury and Property Damage combined.

*Under no circumstances is the Concessionaire nor any Contractor allowed on the AOA without increasing automobile coverage to $5,000,000 as approved by the Safety and Insurance Office.

Certificate Continuity: The contractor(s) shall be responsible for assuring that the insurance certificates required in conjunction with this Sub-Article remain in force throughout the performance of the contract and until the work has been accepted by the Concessionaire and approved by the Concessionaire and the Department. If insurance certificates are scheduled to expire during the contract period, the contractor(s) shall be responsible for submitting new or renewed insurance certificates to the Concessionaire at a minimum of thirty (30) calendar days before such expiration.

Insurance Company Rating Requirements: All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide, published by

A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Concessionaire.

Right to Examine: The Department reserves the right, upon reasonable notice, to examine the original policies of insurance (including but not limited to: binders, amendments, exclusions, endorsements, riders and applications) to determine the true extent of coverage. The contractor shall be required by the Concessionaire to agree to permit such inspection at the offices of the Department.

Personal Property: Any personal property of the contractor, or of others, placed in the Locations shall be at the sole risk of the contractor or the owners thereof, and the Department shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

ARTICLE 12– DEFAULT AND TERMINATION BY COUNTY

12.01 EVENTS OF DEFAULT: A default shall mean a breach of this Agreement by the Concessionaire (an "Event of Default"). In addition to those defaults defined in **Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults", and Sub-Article12.04 "Habitual Default",** an Event of Default, may also include one (1) or more of the following occurrences:

(A) the Concessionaire has violated the terms and conditions of this Agreement;

(B) the Concessionaire has failed to make prompt payment to subcontractors or suppliers for any service or work provided for the design, installation, operation, or maintenance of the advertising concessions;

(C) the Concessionaire has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Concessionaire's creditors, or the Concessionaire has taken advantage of any insolvency statute or debtor/creditor law, or the Concessionaire's affairs have been put in the hands of a receiver;

(D) the occurrence of any act which operates to deprive the County of the rights, power, licenses, permits or authorities necessary for the proper conduct and operation of the activities authorized herein;

(E) abandonment or discontinuance of operations by Concessionaire of its business by any act(s) of Concessionaire;

(F) any persistent violation on the part of Concessionaire, its agents or employees of the traffic rules and regulations of the County at Airport or disregard of the safety of persons using the Airports, upon failure by Concessionaire to correct the same;

(G) failure on the part of Concessionaire to maintain the quality of service required by the terms of this Agreement, including, but not limited to, any cessation or diminution of service by reason of Concessionaire being unable for any reason to maintain in its employ the personnel necessary to keep its business in operation and available for public use;

(H) failure by Concessionaire to maintain its other equipment in a manner satisfactory to the Department

(I) the Concessionaire has failed to obtain the approval of the Department where required by this Agreement;

(J) the Concessionaire has failed to provide adequate assurances as required under **Sub-Article 12.09 "Adequate Assurances";**

(K) the Concessionaire has failed in a representation or warranty stated herein; or

(L) the Concessionaire has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

12.02 PAYMENT DEFAULT: Failure of the Concessionaire to pay the Annual Rent and make Transaction Fee Payments and other charges required to be paid herein when due and fails to cure the same within five (5) calendar days after written notice shall constitute a default, and the Department may, at its option, terminate this Agreement after five (5) calendar days notice in writing to the Concessionaire.

12.03 OTHER DEFAULTS: The Department shall have the right, upon thirty (30) calendar days written notice to the Concessionaire to terminate this Agreement upon the occurrence of any one or more of the following unless the same shall have been corrected within thirty (30) calendar days after written notice; provided, however, that if it is not reasonably possible to cure such failure within such thirty (30) day period, such cure period may be extended for an additional period of such duration the Department shall deem appropriate without waiver of any of the Department's rights hereunder, if within the thirty (30) days after such written notice the Concessionaire commences to cure such default and thereafter diligently and continuously continues to cure such default:

(A) Failure of the Concessionaire to comply with covenants of this Agreement other than those that constitute default pursuant to **Sub-Article 12.02 "Payment Default".**

(B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.

(C) Any Event of Default.

12.04 HABITUAL DEFAULT: Notwithstanding the foregoing, in the event that the Concessionaire has frequently, regularly or repetitively defaulted in the performance of or has breached any of the terms, covenants and conditions required herein, to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided for in **Sub-Article 12.02 "Payment Default"** and **Sub-Article 12.03 "Other Defaults"** above, the Concessionaire may be determined by the Department to be an "habitual violator". At the time that such determination is made the Aviation Director shall issue to the Concessionaire a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breach(s) or default (s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the Department may terminate this Agreement upon the giving of written notice of termination to the Concessionaire, such termination to be effective upon the seventh (7) day

following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Airport and proceed to remove all its personal property in accordance with Sub-Article 12.10 "Actions at Termination" hereof.

12.05 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE: If an Event of Default occurs, the Director shall notify the Concessionaire by sending a notice of default Notice, specifying the basis for such Event of Default, and advising the Concessionaire that such default must be cured immediately or this Agreement with the Department may be terminated. The Concessionaire can cure and rectify the Event of Default, to the Department's reasonable satisfaction, within thirty (30) days from Concessionaire's receipt of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the Department's rights hereunder, so long as, the Concessionaire has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the Department prescribes. The notice of default shall specify the Termination Date by when the Concessionaire shall discontinue the services.

12.06 UNAMORTIZED INVESTMENT EXTINGUISHED: Termination of this Agreement based upon **Sub-Article 12.07 "Termination for Abandonment", Sub-Article 12.02 "Payment Default", Sub-Article 12.03 "Other Defaults", Sub-Article 12.04 "Habitual Default",** or **Sub-Article 12.08 "Termination for Cause"**, shall extinguish any unamortized investment amounts owed the Concessionaire by the Department, for the slippage in Location turnover dates.

12.07 TERMINATION FOR ABANDONMENT: This Agreement may be terminated in its entirety upon the abandonment by the Concessionaire of the Locations or the voluntary discontinuance of Concessionaire's services at the Airport for any period of time exceeding twenty-four (24) consecutive hours, unless such abandonment or discontinuance has been caused by civil disturbance, governmental order or Act of God that prevents the Concessionaire from providing services on the Locations for the purposes authorized in **Article 2 "Use of Locations".**

12.08 TERMINATION FOR CAUSE: The Department may terminate this Agreement, effective immediately if: (i) the Concessionaire attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (iii) a principal of the Concessionaire is convicted of a felony during the Term or extension thereof if applicable. The Department may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the Department and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the Department through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County's debarment procedures. The Concessionaire may be

subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida.

12.09 ADEQUATE ASSURANCES: When, in the opinion of the Department, reasonable grounds for uncertainty exists with respect to the Concessionaire's ability to perform the work or any portion thereof, the Department may request that the Concessionaire, within the time frame set forth in the Department's request, provide adequate assurances to the Department, in writing, of the Concessionaire's ability to perform in accordance with terms of this Agreement. In the event that the Concessionaire fails to provide to the Department the requested assurances within the prescribed time frame, the Department may:

1. Treat such failure as a repudiation of this Agreement; and
2. Resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part thereof either by itself or through others.

12.10 ACTIONS AT TERMINATION: The Concessionaire shall, upon receipt of such notice to terminate, and as directed by the Department:

(A) stop all work as specified in the notice to terminate;

(B) take such action as may be necessary for the protection and preservation of the Locations and other Department materials and property; and

(C) vacate, quit and surrender, and account for the administrative support space, all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the Department, on or before the date of termination.

ARTICLE 13 – CLAIMS AND TERMINATION BY CONCESSIONAIRE

13.01 ADMINISTRATIVE CLAIM PROCEDURES: If the Concessionaire has any claim against the County arising under this Agreement, it will be made in writing within thirty (30) calendar days of the occurrence of the event to the Director. The exact nature of the claim, including sufficient detail to identify the basis for the claim and the amount of the claim shall be clearly stated. The dispute will be decided by the Director, who will mail or otherwise furnish a written copy of the decision to the Concessionaire at the address furnished in **Sub-Article 18.09 "Notices"**. The decision of the Director will be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Concessionaire mails or otherwise furnishes to the Department a written appeal addressed to the County Manager. The decision of the County Manager, or his duly authorized representative for the determination of such appeals, will be final and conclusive unless within thirty (30) calendar days of the Concessionaire's receipt of such decision, the Concessionaire files an action in a court of competent jurisdiction. In connection with any appeal proceeding under this provision, the Concessionaire shall be afforded an opportunity to be heard and to offer other evidence in support of the appeal. Pending final decision of a dispute hereunder, the Concessionaire shall proceed diligently with the performance of this Agreement and in accordance with the County's decision. Failure to perform in accordance with the decision of the Director or the County Manager shall be cause for termination of this Agreement in accordance with **Sub-Article 12.03 "Other Defaults"**. The failure of the

Concessionaire to comply with this administrative claim procedure shall be cause for a waiver of claim and an abandonment of any claim arising out of the event.

13.02 TERMINATION: The Concessionaire shall have the right, upon thirty (30) calendar days written notice to the Department to terminate this Agreement, without liability to the Department, at any time after the occurrence of one or more of the following events:

(A) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the injunction remaining in force for a period of more than one hundred eighty (180) calendar days.

(B) A breach by the Department of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the Department and failure of the Department to remedy such breach for a period of one hundred eighty (180) calendar days after receipt of written notice from the Concessionaire of the existence of such breach.

(C) The assumption by the United States of America (the "Government") or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the airport locations or any substantial part, or parts thereof, in such a manner as substantially to restrict the Concessionaire's provision of services for a period of one hundred eighty (180) calendar days.

ARTICLE 14 – NOT USED

ARTICLE 15- RULES, REGULATIONS AND PERMITS

15.01 RULES AND REGULATIONS: The Concessionaire shall comply with the Ordinances of the Department including the Rules and Regulations of the Department, Chapter 25, Code of Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued hereunder, all additional laws, statutes, ordinances, regulations and rules of the federal, State and County governments, and any and all plans and programs developed in compliance therewith, and any County Administrative Orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement.

15.02 VIOLATIONS OF RULES AND REGULATIONS: The Concessionaire agrees to pay, on behalf of the Department, any penalty, assessment or fine issued against the Department, or to defend in the name of the Department any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, State or County governments based in whole or substantial part upon a claim or allegation that the Concessionaire, its agents, employees, or invitees, have violated any law, ordinance, regulation or rule described in **Sub-Article 15.01 "Rules and Regulations"** or any plan or program developed in compliance therewith. The Concessionaire further agrees that the substance of **Sub-Article 15.02 "Violations of Rules and Regulations"** and **Sub-Article 15.01 "Rules and Regulations"** shall be included in every sub-lease and other agreements which the Concessionaire may enter into related to its activities under this Agreement and that any such Sub-lease and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related

provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

15.03 PERMITS AND LICENSES: The Concessionaire shall obtain, pay for and maintain on a current basis and make available to the Department upon request, all permits and licenses as required for the performance of its services hereunder.

ARTICLE 16 – GOVERNING LAW

16.01 GOVERNING LAW; VENUE: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

16.02 REGISTERED OFFICE/AGENT JURISDICTION: The Concessionaire, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Concessionaire is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement. If Concessionaire is a joint venture and not a corporation, the parties to the joint venture hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on the alleged breach of this Agreement.

ARTICLE 17 – TRUST AGREEMENT

17.01 INCORPORATION OF TRUST AGREEMENT BY REFERENCE: Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Restated Trust Agreement, dated as of the 15th day of December, 2002, as amended from time to time, by and between the County and JP Morgan Chase Bank, as Trustee, and Wachovia Bank, National Association, as Co-Trustee (the "Trust Agreement"), which Trust Agreement is incorporated herein by reference, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. A copy of the Trust Agreement may be examined by the Concessionaire at the offices of the Department during normal working hours.

17.02 ADJUSTMENT OF TERMS AND CONDITIONS: If at any time during the Term or the Extensions thereto, as applicable, a court of competent jurisdiction shall determine that any of the terms and conditions of this Agreement, including the rentals, fees and charges required to be paid hereunder to the Department by the Concessionaire or by other Concessionaires under other agreements of the Department for the lease or use of locations used for similar purposes, are unjustly discriminatory, the Department, shall have the right to modify such terms and conditions and to increase or otherwise adjust the rentals fees and charges required to be paid under this Agreement in such a manner as the Department shall determine is necessary and reasonable so that

terms and conditions and the rentals fees and charges payable by the Concessionaire and others shall not thereafter be unjustly discriminatory to any user of like locations and shall not result in any violation of the Trust Agreement or in any deficiency in revenues necessary to comply with the covenants of the Trust Agreement. In the event the Department has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the Department, pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions upon the issuance of written notice from the Department to the Concessionaire.

17.03 INSPECTIONS: The authorized employees and representatives of the Department and of any applicable federal or state agency having jurisdiction hereof shall have the right of access to the Locations at all reasonable times for the purposes of inspection to determine compliance with the provisions of this Agreement or applicable law. The right of inspection shall impose no duty on the Department to inspect and shall impart no liability on the Department should it not make such inspection(s).

17.04 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW: Pursuant to Miami-Dade County Administrative Order No. 3-20 and in connection with any award, the Department has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the Department deems it appropriate to do so. Upon written notice from the Department, the Concessionaire shall make available, to the IPSIG retained by the Department, all requested records and documentation pertaining to this Agreement or any subsequent award, for inspection and copying. The Department will be responsible for the payment of these IPSIG services, and under no circumstance shall the Concessionaire's cost/price for this Agreement be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Concessionaire, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the Department to conduct, audit or investigate the operations, activities and performance of the Concessionaire in connection with this Agreement. The terms of this provision are neither intended nor shall they be construed to impose any liability on the Department by the Concessionaire or third party.

17.05 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW: According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. The audit cost will be deducted by the Department from payments from the Concessionaire. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Board; (j) professional service agreements under $1,000; (k) management

agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

ARTICLE 18 – OTHER PROVISIONS

18.01 PAYMENT OF TAXES: The Concessionaire shall pay all taxes lawfully assessed against its interests in the Locations and its services hereunder, provided however, that the Concessionaire shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute and Event of Default, pursuant to **Sub-Article 12.03 "Other Defaults"** hereof.

18.02 ALTERATIONS BY CONCESSIONAIRE: The Concessionaire shall not alter or modify the Locations, except in accordance with **Article 4 "Improvements to the Locations"** herein, without first obtaining written approval from the Department.

18.03 RIGHTS TO BE EXERCISED BY DEPARTMENT: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

18.04 ADMINISTRATIVE MODIFICATIONS: It is understood and agreed to that the Department, upon written notice to the Concessionaire, shall have the right to modify administratively and to revise Articles and the Exhibits to this Agreement, including the provisions of **Sub-Article 1.07 "Addition, Deletion and Modification of Locations", Sub-Article 18.02 "Alterations by Concessionaire", Sub-Article, 21.02 "Right to Amend",** and **Sub-Article 21.04 "Right to Modify".**

18.05 SECURITY: The Concessionaire acknowledges and accepts full responsibility for the security and protection of the Locations. The Concessionaire fully understands and acknowledges that any security measures deemed necessary by the Concessionaire for protection of the Locations shall be the sole responsibility of the Concessionaire and shall involve no cost to the Department.

18.06 RIGHTS OF DEPARTMENT AT AIRPORT: The Department shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and locations at the Airport. The Department shall, in the exercise of such right, be free from any, and all liability to the Concessionaire for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole acts of negligence or intentional acts of the Department its employees, or agents.

18.07 OTHER DEPARTMENT RIGHTS: The Concessionaire shall be liable for any physical damage caused to the Locations by the Concessionaire, its employees, agents, contractors, subcontractors, suppliers. The liability shall encompass: (i) the Concessionaire's repair of the Locations, or if the Locations cannot be repaired, payment to the Department of the fair market value replacement cost of the Locations; and (ii) any other such damages to the Department or the Airport arising from the physical damage caused by the Concessionaire and its employees, agents, contractors, subcontractors or suppliers. The Department may also initiate an action for specific performance and/or injunctive relief.

18.08 FEDERAL SUBORDINATION: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Department and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

18.09 NOTICES: Any notices given under the provisions of this Agreement shall be in writing and shall be hand delivered or sent by facsimile transmission (providing evidence of receipt), nationally recognized overnight courier service, or Registered or Certified Mail, Return Receipt Requested, to:

To the County:
(Mailing Address)

Director
Miami-Dade Aviation Department
Post Office Box 025504
Miami, Florida 33101-5504

or **(Physical address):**

Miami International Airport
Terminal Building
Director's Office
Concourse E, 5th floor
Miami, Florida 33122

To the Concessionaire:

(Address Here)

with copies to:

(Address Here)

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by: (i) facsimile shall be deemed tendered on the date indicated on the facsimile confirmation receipt; (ii) nationally recognized overnight courier service shall be deemed tendered on the delivery date indicated on the courier service receipt; and (iii) registered or certified mail shall be deemed tendered on the delivery date indicated on the return receipt from the United States Postal Service or on the express mail service receipt.

18.10 SEVERABILITY: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement shall be severable.

18.11 RIGHTS RESERVED TO DEPARTMENT: All rights not specifically granted the Concessionaire by this Agreement are reserved to the Department.

18.12 DEPARTMENT LIEN: The Department shall have a lien upon all personal property of the Concessionaire in the Locations to secure the payment to the Department of any unpaid monies accruing to the Department under the terms of this Agreement.

18.13 AUTHORIZED USES ONLY: The Concessionaire shall not use or permit the use of the Locations or the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the Department on or invalidate any insurance policies of the Department or any policies of insurance written on behalf of the Concessionaire under this Agreement.

18.14 NO WAIVER: There shall be no waiver of the right of the Department to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by the Concessionaire unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the Department to demand strict performance of the provisions, terms and covenants of this Agreement with performance hereof by the Concessionaire.

18.15 RIGHT TO REGULATE: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the Department, as a political subdivision of the State of Florida, to regulate the Concessionaire or its services.

18.16 INTENT OF AGREEMENT: This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries or to any other person; or (b) authorize non-parties to the Agreement to maintain an action for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

18.17 NOT USED

18.18 RADON DISCLOSURE: In accordance with Section 404.056, Florida Statutes, the following disclosure is hereby made: **"Radon Gas: Radon is a naturally occurring radioactive**

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

18.19 TRADEMARKS AND LICENSES: The Department may, from time to time, require the Concessionaire as part of its advertising and marketing program to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the Department in the performance of this Agreement which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Concessionaire and the Department, on behalf of the Department granting the Concessionaire the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo computer software or intellectual property in the using party.

18.20 HEADINGS: The headings of the various Articles and Sub-Articles of this Agreement, and its Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

18.21 BINDING EFFECT: The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

18.22 GOVERNMENTAL DEPARTMENT: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County as a political subdivision of the State of Florida.

18.23 INDEPENDENT CONTRACTOR: The Concessionaire shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Department. All personnel provided by the Concessionaire in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Concessionaire under its sole discretion, and not employees or agents of the Department: Except as provided in § 2-11.1(s) of the Code, the Concessionaire represents and warrants: (i) it has not employed or retained any company or person other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement; and (ii) it has not paid, or agreed to pay any company or other person any fee, commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the Department without any liability to the Concessionaire for any reason.

18.24 OTHER LIENS: Concessionaire shall not permit any mortgages, deeds of trust or similar liens to be imposed on the Locations, the leasehold, or the Furniture, Fixtures and Equipment or any portion thereof. Concessionaire shall not permit or suffer any liens, including mechanics',

material men's and tax liens to be imposed upon the Locations, or any part thereof, without promptly discharging the same. Notwithstanding the foregoing, Concessionaire may in good faith contest any such lien if Concessionaire provides a bond in an amount and form acceptable to Department in order to clear the record of any such liens. Concessionaire further agrees that it shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign or otherwise transfer its leasehold interest in the Locations or any personal property or trade fixtures in the Locations, including any furniture, fixtures and equipment or any part thereof or permit any of the foregoing to occur. Concessionaire shall assume the defense of and indemnify and hold harmless Department against any and all liens and charges of any and every nature and kind which may at any time be established against said Locations and improvements, or any part thereof, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Lease and Concession Agreement.

ARTICLE 19 - SUB-LEASES

19.01 ASSIGNMENT OF SUB-LEASES BY DEPARTMENT: In the event this Agreement is terminated prior to the completion of the Term or any extension(s) if exercised, the Department shall have the following rights and obligations regarding any sub-tenant agreement(s) then in effect:

(a) In case of termination without cause by the Department or if the Concessionaire terminates with cause, the Department and the sub-tenants shall execute assignment agreements with respect to any sub-lease agreements then in effect whereby the Department shall assume the rights and obligations of the Concessionaire, which are conferred by those sub-Lease agreements. This **Sub-article 19.01** shall be included in all sub-lease agreements.

(b) Where the Department terminates this Agreement for cause pursuant to **Sub-Article 12.08 "Termination for Cause", or the Concessionaire stops performance pursuant to Sub-Article 12.07 "Termination for Abandonment"**, the Department may refuse to execute an assignment agreement, to assume those sub-tenant agreements that satisfy any of the following criteria:

(i) sub-tenant is not currently in non-monetary default, beyond all applicable notice and cure periods;
(ii) sub-tenant has an outstanding uncured material default(s) and or material default(s), (cured or uncured), within one (1) year before the proposed assignment date;
(iii) sub-tenant has more than two (2) accumulated defaults of any kind during the previous twelve (12) months under its sub-lease agreement;
(iv) sub-tenant in non-current regarding all payments of any kind for which it is responsible under its sub-lease agreement; or
(v) sub-tenant has no outstanding claim(s) of default against the Concessionaire in its capacity as sublessor under the sub-lease agreement, and has waived any such claims.

The Department has no obligation to assume any sub-tenant agreement which does not (x) conform to the requirements of this Agreement, unless each non-conforming provision was

approved in writing by the Department prior to execution of the sub-lease agreement; or (Y) the Concessionaire executes an assignment agreement whereby the Concessionaire only remains liable for, and indemnifies and holds harmless the Department for any claims arising out of the performance of the sub-lease agreement, up to the effective date of the assignment agreement.

19.02 DEPARTMENT'S RIGHTS TO APPROVE SUB-LEASES: Concessionaire shall not sub-lease this Agreement or any of the rights and privileges hereunder, or contract for the performance of any of the services to be provided by the Concessionaire hereunder without the Department's prior written approval, which approval may be granted or withheld by Department in the exercise of its sole discretion within fourteen (14) days of receipt of said sub-lease agreements.

19.03 CONCESSIONAIRE'S SUB-LEASE AGREEMENT REQUIREMENTS: The Concessionaire's sub-lease agreement(s) must not extend beyond the Term or, if exercised, any Extended Term and must contain comparable terms and conditions, as may be applicable, to those contained herein.

Costs not directly related to a Location of a sub-tenant shall not be imposed upon that sub-tenant except for such costs required by the Department.

ARTICLE 20 - WAIVER OF CLAIMS

The Concessionaire hereby waives any and all claims it now has or may hereafter have against the County and the Department, and against any member, including, without limitation, all members of the Board of County Commissioners, officers, agents or employees of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement or any part thereof, or by judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. The Concessionaire hereby further waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Locations available to the Concessionaire or by reason of any defects or deficiencies in the Locations or in the terminal building including any defect or deficiency in the Locations or in the terminal building which substantially impedes the Concessionaire's ability to operate a concession at the Location(s) or because of any interruption in any of the services thereto, including, but not limited to, power, telephone, heating, air conditioning or water supply systems, drainage or sewage systems, and Concessionaire hereby expressly releases the County and Department from any and all demands, claims, actions, and causes of action arising from any of such causes.

ARTICLE 21 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS

21.01 AGREEMENTS WITH STATE OF FLORIDA AND MIAMI-DADE COUNTY: This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, State, County laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the Department, or the State of Florida, or their boards, agencies or commissions, and to any future agreement between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, State, County funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

21.02 RIGHT TO AMEND: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Concessionaire hereby consents to any and all such modifications and changes as may be reasonably required.

21.03 CONCESSIONAIRE COVENANTS AND ASSURANCES:

A. Covenants Against Discrimination:

1. Concessionaire on behalf of itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Locations or the Airport; (2) that in the installation of any equipment at the Airport and the furnishing or services in connection therewith, no person on the grounds or race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Concessionaire shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. Likewise, Concessionaire shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should Concessionaire authorize another person or entity, with Department's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Concessionaire shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Concessionaire shall furnish the original or a true copy of such agreement to Department.

2. Concessionaire will provide all information and reports required by said Code of Federal Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its locations as may be determined by Department or the Federal Aviation Administration to be pertinent to ascertain whether there has been

compliance with said Regulations and directives. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, Concessionaire shall so certify to Department or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, Department shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to reenter and repossess the Locations and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to Department by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

4. Concessionaire assures Department that no person shall be excluded on the grounds or race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Concessionaire also assures Department that it will require its covered sub organizations to provide assurances to the same effect and provide copies thereof to the Department.

5. Concessionaire further assures Department that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted at or in connection with its operations at the Locations. Concessionaire also assures Department that it will require its contractors and Sub-Concessionaires to provide assurances to the same effect and ensure that such assurances are included in contracts and Sub-lease agreements at all tiers which are entered into in connection with Concessionaire's services hereunder.

6. a) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23.

b) Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

7. Department may from time to time be required by the United States Government or one or more of its agencies, to adopt additional or amended provisions including nondiscrimination provisions concerning the use and operation of the Airport, and Concessionaire agrees that it will adopt such requirements as part of this Agreement.

21.04 RIGHT TO MODIFY: The parties hereto covenant and agree that, during the Term, or any extension of this Agreement, this Agreement may be unilaterally modified by the Department, upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission or FAA rulings or opinions. This Sub-Article shall not preclude Concessionaire from contesting said rulings or opinions.

21.05 TAX EXEMPT STATUS OF DEPARTMENT REVENUE BONDS: The Concessionaire agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided hereunder, as required to permit the Department's capital expansion projects to be planned and constructed by the Department with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by the Concessionaire and delivery to the Department of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport system.

21.06 REMEDIES: All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder.

21.07 WARRANTY OF CONCESSIONAIRE AS TO CONFLICTS OF INTEREST: The Concessionaire represents and warrants to the Department that, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Department has any interest, direct or indirect, in the business of the Concessionaire to be conducted hereunder, and that no such persons shall have any such interest at any time during the Term, or the extension, as applicable.

21.08 REGULATIONS OF DEPARTMENT: The rights and privileges granted to the Concessionaire hereunder and the occupancy and use by the Concessionaire of the Locations shall at all times be subject to reasonable rules and regulations of Department as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of Department's Policy and Procedures Manual as the same may be amended from time to time.

21.09 INTEREST: Any sums payable to the Department by the Concessionaire under any provisions of this Agreement, which may be amended from time to time, which are not paid when due shall bear interest at the rate of (1 1/2%) per month (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

21.10 MISCELLANEOUS PROVISIONS: The Concessionaire and its agents, contractors, sub-contractors and/or employees shall promptly observe and comply with applicable provisions of all federal, State, and local statutes, ordinances, regulations and rules which govern or apply to the Concessionaire or to its services or operations hereunder.

1. The Concessionaire shall, at its own cost and expense, procure and keep in force during the Term and any extension thereto if applicable, all necessary licenses, registrations, certificates,

bonds, permits, and other authorizations as are required by law in order for the Concessionaire to provide its services hereunder and shall pay all taxes, (including sales and use taxes), assessments including, without limitation, storm water utility fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction on Concessionaire's property, on its services, on its Gross Transaction Fees, on its income, on this Agreement and the fees payable to the Department hereunder, on the rights and privileges granted to the Concessionaire herein, on the Locations and on any and all equipment installed on the Locations and the Concessionaire shall make and file all applications, reports, and returns required in connection therewith.

2. The Concessionaire agrees to repair promptly, at its sole cost and expense and in a manner acceptable to the Department, any damage caused by the Concessionaire or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any equipment or property located thereon.

3. The Concessionaire is not authorized to act as the Department's agent hereunder and shall have no authority, express or implied, to act for or bind the Department hereunder and nothing contained in this Agreement shall be deemed or construed by the Department or the Concessionaire or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the Department the joint employer of any employee of the Concessionaire.

4 The Department, through its designated agents, shall have the right during the Concessionaire's normal business hours (and at any time during an emergency) to inspect the Locations and the property of the Concessionaire located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property.

5. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

6. Time is expressed to be the essence of this Agreement.

7. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

8 If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contain herein.

9. Except as otherwise provide herein, if certain action may be taken only with the consent or approval of the Department or the County, or if a determination or judgment is to be made by the Department or the County, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the Department or the County.

21.11 FORCE MAJEURE: Strictly in relation to the obligations of each party to the other under this Agreement, and not for any other purpose or for any benefit of a third party and each

party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by, (i) strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of the Concessionaire, or (ii) embargo's, general shortages of labor, equipment, locations, materials or supplies in the open market, acts of God, acts of the public enemy, acts of governmental authority, including, without limitation, the FAA, the DOT, the TSA, the Environmental Protection Agency, the Department of Justice, or civil and defense authorities, extreme weather conditions, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

21.12 ENTIRE AGREEMENT: This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Concessionaire hereby affirms the completeness and accuracy of the information provided by Concessionaire to Department in the Eligibility and Proposal Form, and in all attachments thereto and enclosures therewith, submitted by Concessionaire to Department in connection with the award of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

CONCESSIONAIRE

Bank of America, N.A
(Legal Name of Corporation)

ATTEST:

Secretary
(Signature and Seal)

Edalis G. Martinez, Senior V.P.
(Type Name & Title)

By: _____
Concessionaire - Signature

Name: Shirley B. Mullen

Assistant Vice President
(Type Name & Title)

INDIVIDUAL, PARTNERSHIP OR JOINT VENTURE

_____
Legal Name

By: _____
Signature

_____
(Type Name & Title)

_____
Legal Name

By: _____
Signature

_____
(Type Name & Title)

Name of Managing Joint Venture:

_____

By: _____
Signature of Authorized Representative
of the Joint Venture

Attest: _____

Witness: _____

Corporate Seal

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURE, AS NEEDED)

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

Approved for Form
and Legal Sufficiency

_____
Assistant County Attorney

Attest: Harvey Ruvin, Clerk

By_____
Deputy Clerk

Resolution No.: _____

Date:_____