

Memorandum



Date: June 15, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 14(A)(25)

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of the County Manager.

Subject: Resolution approving Farm Lease Agreement with Southern Land Farm, Inc. for farming 433 acres at Homestead General Aviation Airport

RECOMMENDATION

It is recommended that the Board approve the attached Farm Lease Agreement with Southern Land Farm, Inc. for an initial term of five (5) years with five one-year extensions thereafter, for the purpose of farming 433 acres at Homestead General Aviation Airport.

SCOPE

Homestead General Aviation Airport is located primarily within Commissioner Javier D. Souto's District 10.

FISCAL IMPACT/FUNDING SOURCE

This agreement will have a positive fiscal impact on the Aviation Department budget by generating approximately \$225,679.60 in annual revenues. In addition, the agreement will provide positive relief to the Department's cost for grounds maintenance of the 433 acres associated with this agreement.

TRACK RECORD/MONITOR

Southern Land Farm, Inc. has a satisfactory payment record on a previous lease with the Miami-Dade Parks & Recreation Department. This agreement will be monitored by MDAD Business Development Coordinator John B. O'Neal C.M.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the County Mayor or his designee has the authority to exercise the five one-year renewal options and to terminate the agreement.

BACKGROUND

For over 35 years, the Aviation Department has leased land for farming purposes at Homestead General Aviation Airport. The practice of leasing land not needed for aviation-related purposes for farming reduces ground keeping maintenance, provides additional revenues to the Department and contributes to the agribusiness in the South Dade area.

In August 2009, MDAD advertised an invitation to bid for 433 acres of farm land located at Homestead General Aviation Airport. The minimum bid per acre was \$250.00. Eight (8) entities submitted bids for the property:

<u>Entity</u>	<u>Bid Amount per acre</u>
1) Southern Land Farm Inc.	\$521.20
2) Perez Brothers Inc.	\$503.99
3) J&C Tropicals	\$500.00
4) Joe Borek	\$486.86
5) DMJ Produce	\$475.99
6) Torbert Farms Inc.	\$455.00
7) George E. Wright Farms Inc.	\$395.31
8) Ledford Farm Inc.	\$377.26

Southern Land Farms Inc. submitted the highest bid with \$521.20 per acre, which will generate annual revenue of \$225,679.60. This farm land has remained unplanted for the past two growing seasons.

Pursuant to the provisions of R-487-93, which authorizes the County Manager to execute certain standard form Aviation Department leases for a period not to exceed five years, a one-year lease was issued to Southern Land Farms, Inc. on November 1, 2009 to allow them to work the land for the upcoming growing season while this lease underwent Board approval. The previous lessee, Torbert Farms, did not stay current on its lease payments and consequently surrendered the lease.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: June 15, 2010

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 14(A)(25)

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A) (25)
6-15-10

RESOLUTION NO. _____

RESOLUTION RELATING TO HOMESTEAD GENERAL AVIATION AIRPORT; APPROVING FARM LEASE AGREEMENT WITH SOUTHERN LAND FARM, INC. FOR AN INITIAL FIVE YEAR TERM AND FIVE ONE-YEAR EXTENSIONS THEREAFTER; AUTHORIZING MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SUCH LEASE AGREEMENT ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE THE TERMINATION PROVISIONS THEREOF

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the attached farm lease agreement with Southern Land Farm, Inc., for an initial term of five years and five one-year extensions thereafter; authorizes Mayor or Mayor's designee to execute such lease agreement on behalf of Miami-Dade County and to exercise the termination provisions thereof.

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:

- | | |
|----------------------|---------------------------------|
| | Dennis C. Moss, Chairman |
| | Jose "Pepe" Diaz, Vice-Chairman |
| Bruno A. Barreiro | Audrey M. Edmonson |
| Carlos A. Gimenez | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Dorrin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

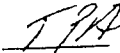
The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of June, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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.



Thomas P. Abbott

Lease No.
Cust. No.
Doc. Name

LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS LESSOR, AND SOUTHERN LAND FARM, INC., AS LESSEE, AT HOMESTEAD GENERAL AIRPORT

THIS LEASE AGREEMENT ("Agreement"), is made and entered into as of this ____ day of _____, 2010, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("County") and SOUTHERN LAND FARM, INC., a Florida corporation ("Lessee").

WITNESSETH:

WHEREAS, the County and Lessee have entered into a license agreement effective as of November 1, 2009 under which the Lessee is entitled by license to make use of the same parcel of property covered by this lease, and the parties desire that such license shall be terminated at the time the County has formally approved this Agreement so that the license shall stand terminated and this Agreement shall become effective as of the effective date of such approval;

FOR, and in consideration of the premises and of the mutual covenants and agreement herein contained, the parties hereto agree as follows:

ARTICLE 1
Term and Premises

1.01 Term: The County hereby leases to the Lessee, and the Lessee hereby leases from the County, the premises described in Article 1.03 (Premises) hereof, for the purposes and uses set forth in Article 2 (Use of Premises) hereof, for a term of five years, ending on October 1, 2014, cancelable by either party at any time without cause upon 180 days written notice. As of the date that the resolution of the Board of County Commissioners approving this Agreement is effective, the License Agreement previously entered into between the parties for the same Premises shall stand terminated and this Agreement shall become effective. Lessee shall remain liable for all obligations that accrued under the License Agreement up to the date of its termination, and as of the

6

effective date of such resolution, Lessee's rights and obligations as to the Premises shall be governed by this Agreement; provided, however, that obligations of Lessee under the License Agreement shall continue to apply under this Agreement.

1.02 Extension: The Lessee may request to extend the Agreement for up to five additional one year terms by so advising the County no later than 180 days prior to the expiration date of the original five year term, and subsequently, 180 days prior to the expiration date of any succeeding one year term. Should the Lessee fail to notify the County within the time prescribed, or if the County does not approve the extension, the Agreement shall terminate at the end of its term.

1.03 Premises: The premises leased herein are located at Homestead General Aviation Airport ("Airport"), and are more particularly described as follows and as shown on Exhibit A attached hereto and made a part hereof ("Premises"):

Parcel 1:

The North 828 feet of the East $\frac{3}{4}$ of Section 5, Township 57 South, Range 38 East less the East 35 feet thereof; plus the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 56 South, Range 38 East, plus the East 300 feet of the North 596 feet of the Northeast $\frac{1}{4}$ of Section 6, Township 57 South, Range 38 East; plus the North 596 feet of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 5, Township 57 South, Range 38 East; Miami-Dade County, Florida.

The above-described Parcel contains 77.8 acres more or less.

Parcel 2:

The Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 6, Township 57 South, Range 38 East, less 16 acres Westerly of the Easterly R/W line of Levee 31 North; Miami-Dade County, Florida.

The above-described Parcel 2 contains 26.2 acres more or less.

Parcel 3:

The South $\frac{3}{8}$ of the South $\frac{1}{2}$ of the North $\frac{1}{2}$ of Section 5, Township 57 South, Range 38 East, less the Westerly 22 acres, and less 1 acre surrounding the MDAD Maintenance Building, plus the East $\frac{3}{4}$ of the South $\frac{1}{4}$ of Section 5, Township 57 South, Range 38 East, less Nixon Hammock, and less the South 1,000 feet and the East 1,100 feet of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 5; Miami-Dade County, Florida.

The above-described Parcel 3 contains 269.7 acres more or less.

Parcel 4:

The South 1,683 feet of the West $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 8, Township 57 South, Range 38 East, plus the East 320 feet of the North 330 feet of the Northwest $\frac{1}{4}$ of Section 8, Township 57 South, Range 38 East, Miami-Dade County, Florida.

The above-described Parcel 4 contains 50.1 acres more or less.

Parcel 5:

The East 450 feet of the East ½ of the Southwest ¼ of the Southwest ¼ of Section 5, Township 57 South, Range 38 East, Miami-Dade County, Florida; plus the East 450 feet of the North 906 feet of the Northwest ¼ of the Northwest ¼ of Section 8, Township 57 South, Range 38 East; Miami-Dade County, Florida.

The above-described Parcel 5 contains 9.2 acres more or less.

The above five Parcels contain 433 acres more or less.

1.04 Modification of Premises: The Premises are subject to modification or deletion of a portion thereof, at the sole discretion of the Aviation Department of the County (“Department”), provided such modification or partial deletion does not significantly adversely impact the use of the Premises by the Lessee. This Agreement shall be administratively revised to reflect such modification or deletion of a portion of the Premises upon one hundred-eighty (180) days advance written notice to the Lessee by the Department.

1.05 Easements: The Agreement is subject to any and all easements, permits and/or rights-of-way now existing on the Premises.

ARTICLE 2
Use of Premises

2.01 Use: The Lessee shall use the Premises for farming only.

2.02 Special Provisions: In farming the Premises, the Lessee shall comply with the following special provisions:

- (A) Lessee shall maintain the fence-line adjoining its premises controlling the growth of weeds and other vegetation.
- (B) Wood stakes for crops may be used in the locations, and under the conditions, as determined and approved by the Airport Operations Manager. **Metal Stakes may not be used on Airport property.**
- (C) Crops remaining after harvesting will be plowed under to discourage birds from being attracted to the airport.
- (D) Vehicles must not block the airport’s roadway.
- (E) Upon termination of the lease, furrows must be leveled and wells sealed.
- (F) Trash and other debris must be removed in a timely manner.
- (G) Proper disposal of chemicals products must be adhered to.

2.03 Concessions: The Lessee may, during normal business operations, provide food and beverage to its employees using an outside vendor, with the prior written approval from the Department. Lessee shall be required to ensure the vendor shall obtain and hold current all applicable Federal, State and Local licenses and permits.

Furthermore, the Lessee shall be required, at its sole cost and expense, to remove from the Premises all trash and refuse which might accumulate and arise from its use of the Premises and the business operations of the vendor under this Agreement.

ARTICLE 3
Rentals and Payments

3.01 Annual Rental: As annual rental for the lease of the Premises, the Lessee shall pay to the County \$225,679.60 in U.S. funds, on or before the effective date and each anniversary date thereafter without billing, at the office of the Department as set forth in Article 3.03. Said rental is computed as follows:

Land

433 acres @ \$521.20 per acre per year TOTAL: \$225,679.60 yearly in advance

Note: Agricultural property is exempt from State sales tax pursuant to s.212.031 Florida Statutes.

3.02 Double Rental: In the event that the Lessee remains in possession of the Premises beyond the expiration or termination of this Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement, however during any such possession of the Premises as a holdover tenant after the County has demanded the return of the Premises, the Lessee shall be liable for double rentals for so long as the Lessee remains in possession after such demand, such rentals to be based upon the rental rates applicable from time to time in whole or in part to the Premise.

3.03 Address for Payments: The Lessee shall pay, by mail, all rentals, fees and charges required by this Agreement to the following:

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

Payments may be made by hand-delivery to the offices of the Department, Monday through Friday, except holidays, during normal working hours.

3.04 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten (10) days after

same shall become due, interest at the rates established from time to time by the Board of County Commissioners of Miami-Dade County, Florida (currently set at 1½% per month), shall accrue against the delinquent payment(s) from the original due date until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the right of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

3.05 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Lessee shall incur and pay a service fee of TWENTY-FIVE DOLLARS, if the face value of the dishonored check or draft is \$50.00 or less, THIRTY DOLLARS, if the face value of the dishonored check or draft is more than \$50.00 and less than \$300.00, FORTY DOLLARS, if the face value of the dishonored check or draft is \$300.00 or more or FIVE PERCENT of the face value of such dishonored check or draft, whichever is greater, plus penalties imposed by law (F.S. 832.08 and 125.0105). Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department.

3.06 Security Deposit: Upon the Lessee's execution of this agreement, the Lessee, shall pay to the County an amount equivalent to three times the monthly rent (annual rent prorated monthly times three). The Department shall be entitled to keep such payment to satisfy any debt of the Lessee to the Department that may then exist, as permitted by law, including but not limited to the Lessee's failure to execute this agreement as awarded, or early termination of this agreement. The Department shall have the right to demand up to an additional four months payment to provide the Department with adequate assurance of the Lessee's payment of its obligation, which assurance is required in the event the Lessee habitually defaults in the timely payment of rents and charges due hereunder.

ARTICLE 4

Maintenance and Repair by Lessee

4.01 Removal of Trash: The Lessee shall, at its sole cost and expense, remove from the Premises all trash and refuse which might accumulate and arise from its use of the Premises and the business operations of the Lessee under this Agreement.

4.02 Excavation of Land: No excavation of any of the land shall be made, and no soil or earth shall be removed from the Premises, without prior written approval from the Department.

ARTICLE 5

Maintenance by County

The County shall have no maintenance responsibility whatsoever within the Premises or the fence-line adjoining its Premises.

ARTICLE 6
Environmental Compliance

6.01 Definitions: For purposes of this Agreement, the following additional definitions apply:

- (A) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement, against Lessee or against or with respect to the Premises or any condition, use or activity on the Premises (including any such action against County), and any claim at any time threatened or made by any person against Lessee or against or with respect to the Premises or any condition, use or activity on the Premises (including any such claim against County), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material or any Environmental Requirement.

- (B) "Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial or agency interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act 42 U.S.C. § 7401 et seq.; the Toxic Materials Control Act 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; Chapters 403, 376 and 373, Florida Statutes; Chapters 24 and 25 of the Miami-Dade County Code, and any other local, state or federal environmental statutes, codes, or ordinances, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- (C) "Environmental Requirement" means any Environmental Law, agreement or restriction (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and

underground or aboveground tanks.

- (D) "Hazardous Material" means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a "hazardous substance, a hazardous waste" or "solid waste," or pesticide, or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance on the Premises or any adjacent Premises or a hazard to the environment or to the health or safety of persons on the Premises.
- (E) "Initial Construction Period" means for any lease which contemplates construction on the Premises a period of time not to exceed six (6) months commencing with the date on which Lessee breaks ground on the Premises for construction of foundations.
- (F) "On" or "in" when used with respect to the Premises or any Premises adjacent to the premises, means "on, in, under, above or about."
- (G) "Recognized Environmental Condition" shall have the meaning set forth in ASTM E 1527-97, Section 3.3.28.

6.02 Lessee's Industrial Classification: Lessee represents and warrants to County that Lessee's Standard Industrial Classification ("SIC") code number, as published in the most recent SIC Manual from the United States Office of Management and Budget, and as used on Lessee's Federal Tax Return is _____.

6.03 Lessee's Acceptance of the Risks and Condition of Premises As-Is: Lessee agrees that the Premises shall be leased and delivered to Lessee in its current "as-is/with all faults" condition. Lessee hereby requests, warrants, covenants, agrees, and acknowledges that:

- (A) Hazardous Materials may be present on the Premises. The County is currently engaged in a significant environmental remediation program at the Kendall-Tamiami Executive Airport and does not desire to accept any additional risk attributable to environmental conditions at the Premises.
- (B) Under Article 8.06 (Lessee Audit) of this Agreement, Lessee is provided the opportunity to conduct an independent investigation of the Premises and the physical condition thereof, including the potential presence of any Hazardous Materials on or about the Premises. Whether Lessee has conducted such an investigation or not, Lessee is fully aware of the condition of the Premises and the properties surrounding Premises, and is willing to proceed with this Agreement in light of the environmental condition of the Premises. Lessee's

report on the investigation, if any such report has been prepared, has been provided to the County and is listed in Schedule 8 attached to this Agreement.

- (C) Because of the possible presence of environmental contaminants on the Premises, County has made no express, implied, or other representations of any kind in connection with the physical condition of the Premises, or any improvements appurtenant thereto, including, without limitation, the physical condition of any building materials, building systems, soils or groundwater conditions, or the presence of Hazardous Materials in, on, under, or about the Premises, and Lessee has relied solely on Lessee's own inspection and examination of such matters.
- (D) Except as to County's obligations set forth in this Article or elsewhere in this Agreement, Lessee expressly assumes the risk that Hazardous Materials that are or may be present on the Premises at the commencement of this Agreement may affect the suitability or usability of the Premises for Lessee's proposed or intended use. Lessee agrees that, except to the extent of County's remediation obligations provided in Article 8.04, County shall have no responsibility or liability with respect to any Hazardous Materials on the Premises. In no event shall County be liable to Lessee for damages relating to physical or personal injury, business interruptions, relocation costs, or any other cost resulting from the presence of Hazardous Materials on the Premises at any time during this Agreement.

6.04 County's Disclosure of Soil and Groundwater Contamination:

- (A) The County shall conduct response actions mandated by existing Environmental Requirements for Hazardous Materials disclosed in the Baseline Audit as defined in Article 8.05 and the Lessee Audit as defined in Article 8.06. If this Agreement contemplates construction by the Lessee, and this is not a renewal lease, any Hazardous Material discovered during any Initial Construction Period as defined in Article 8.01(E) shall be presumed to be a County obligation under this Agreement except to the extent the Department demonstrates to the satisfaction of DERM that the Hazardous Materials were introduced by Lessee, Lessee's agents, employees, contractors, invitees or trespassers, in which case the responsibility therefore is the Lessee's. After any Initial Construction Period, or if this Agreement is a renewal lease, any Hazardous Material discovered on the Premises and not previously identified in the Baseline Audit or Lessee Audit shall be the responsibility of the Lessee, except to the extent that Lessee demonstrates to the satisfaction of DERM that such Hazardous Materials originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; or (2) a discharge, disposal or release of Hazardous Material on the premises prior to Lessee's first occupancy of the

Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees, or trespassers.

- (B) County's responsibility for remediation under this Article 8.04 shall be limited to the Recognized Environmental Conditions required to be remediated under then-existing Environmental Requirements. If County is permitted to leave any Hazardous Material in place under existing Environmental Requirements, County shall have the option of so doing unless a governmental authority requires the removal of Hazardous Materials for Lessee to be able to continue with construction or occupancy of the Premises.
- (C) (1) To the extent they exist, the County has made available to Lessee copies of Contamination Assessment Reports ("CARs") and Remedial Action Plans ("RAPs") regarding any soil and groundwater contamination at the Premises. Such CARs and RAPs are listed in Schedule 8 to this Agreement. The County may have already installed or may have plans to install remediation systems to clean up the contamination described in such CARs and RAPs to the extent they exist. Lessee agrees that during the term of the Agreement, County's authorized representatives shall have the right to enter the Premises in order to operate, inspect, maintain, relocate and replace such systems. Without limiting the generality of the foregoing, the County shall have the right to: (a) install, use, monitor, remove (or, in connection with monitoring wells, abandon in place in accordance with applicable governmental regulations) soil borings, treatment systems, pumps, monitoring wells, and associated equipment; (b) construct, maintain, and ultimately remove various mechanical devices designed to aid in the monitoring and remediating effort; and (c) undertake such related activities as the County or other governmental authorities may require or recommend, utilizing such methods as County or the applicable governmental authorities may elect in order to remediate the contamination described in any CARs and RAPs (collectively, the "Remedial Action").
- (2) County shall utilize reasonable efforts to minimize any disturbance of the Lessee's use of the Premises caused by the Remedial Action and Lessee agrees that it shall not interfere with or obstruct the Remedial Action. County and Lessee each agree to take such action as may be reasonable to coordinate their operations so as to minimize any interference with the other party. If vehicles, equipment, or materials belonging to the Lessee have to be temporarily relocated to permit the Remedial Action to be performed, the Lessee will effect such relocation at no expense to the County. Attached to Schedule 8 is a site sketch of the Premises describing any existing or currently planned Remedial Action equipment and depicting the current and proposed future location of such equipment.
- (3) If Remedial Action equipment or materials need to be temporarily stored in a

secure location on the Premises, the Lessee will provide reasonable storage inside the building on the Premises for such equipment and materials at no expense to the County. The Lessee will provide the County with water and electrical service in connection with the Remedial Action, without charge. The Lessee acknowledges the Remedial Action may be conducted at the locations depicted on the site sketch attached to schedule 8 at any time during the term of the Agreement and may continue until such time as a no further action letter is obtained from the appropriate regulatory authorities.

6.05 Baseline Audit: Unless Lessee has agreed to extend the delivery date until thirty (30) days after the commencement of this Agreement; the County has provided Lessee with a copy of an environmental audit of the Premises, which audit includes analysis of soil and groundwater samples (the initial "Baseline Audit"). Unless this is a renewal lease, the County shall be responsible for any Recognized Environmental Conditions within the meaning of ASTM E 1527-97, Section 3.3.28, disclosed by the Baseline Audit which the County may respond to, to the extent provided in Article 8.04(B) County's Disclosure of Soil and Groundwater Contamination, during the term of the Agreement. Unless this is a renewal lease, Lessee may terminate this Agreement within thirty (30) days of receipt of the Baseline Audit if Lessee, in its sole discretion, determines that the Recognized Environmental Conditions disclosed in such Baseline Audit are unacceptable. If this is a renewal lease, Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Baseline Audit unless Lessee demonstrates to the County's satisfaction that the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; or (2) a discharge, disposal or release of Hazardous Material on the premises prior to Lessee's first occupancy of the Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees, or trespassers.

6.06 Lessee Audit: Lessee, at its sole cost and expense, shall have the right to conduct, within sixty (60) days of receipt of the Baseline Audit, an environmental inspection of the Premises (the "Lessee Audit"), through an independent environmental consultant approved in writing by County, such approval not to be unreasonably withheld or delayed. If Lessee elects to conduct a Lessee Audit, it shall furnish County a copy of the Lessee Audit within thirty (30) days of receipt of the Baseline Audit. The purpose of the Lessee Audit is to determine whether there are present on the Premises any Recognized Environmental Conditions and to delineate the vertical and horizontal extent of any soil or groundwater contamination not identified in the Baseline Audit or any CARs or RAPs. Within thirty (30) days of receipt of such Lessee Audit, the County shall notify Lessee if it disputes the Recognized Environmental Conditions or the delineation of subsurface conditions described in the Lessee Audit. Any such dispute shall be resolved by DERM, which resolution shall be binding on the parties as to the existence of Recognized Environmental Conditions on the Premises as of the commencement of this Agreement. If the Lessee Audit reveals any Recognized Environmental Conditions or delineates any subsurface contamination not disclosed in any CARs, RAPs, or Baseline Audit, then, unless this is a renewal lease, the County, at its option, shall: (i) allow Lessee to terminate

the Agreement within fifteen (15) days of receipt of such notice to the County; or (ii) notify Lessee that it has agreed to be responsible for such Recognized Environmental Conditions and delineated subsurface contamination to the same extent as the County is responsible for the Recognized Environmental Conditions and subsurface contamination disclosed in any CARs, RAPs, and the Baseline Audit. If the County allows Lessee to terminate the Agreement and Lessee elects not to terminate, Lessee's failure to terminate shall constitute a waiver of Lessee's rights to terminate its obligations under this Agreement and a waiver of any claim it may have against the County with respect to Recognized Environmental Conditions and subsurface contamination disclosed in such Lessee Audit. If this is a renewal lease, Lessee shall be responsible for all Recognized Environmental Conditions disclosed in the Lessee Audit unless Lessee demonstrates to the County's satisfaction that the Recognized Environmental Conditions originated from (1) a discharge, disposal or release outside of the Premises, unless such discharge, disposal or release was caused by Lessee, Lessee's agents, employees, contractors or invitees; or (2) a discharge, disposal or release of Hazardous Material on the premises prior to Lessee's first occupancy of the Premises and not caused by Lessee, Lessee's agents, employees, contractors, invitees, or trespassers.

6.07 Environmental Maintenance of Premises: Except for the obligations of the County under this Article 8, Lessee shall, at its sole cost and expense, keep, maintain, use, and operate the Premises at all times in compliance with all Environmental Laws, and shall maintain the Premises in good and sanitary order, condition, and repair.

6.08 Lessee's Use of Hazardous Materials: Lessee shall not use, store, generate, treat, transport, or dispose of any Hazardous Material on the Premises without first obtaining County's written approval. Lessee shall notify County and seek such approval in writing at least thirty (30) days prior to bringing any Hazardous Material onto the Premises. Attached to Schedule 8 is a complete list of all Hazardous Materials, which Lessee intends to use on the Premises during the term of the Agreement. County may withdraw approval of any such Hazardous Material at any time, for reasonable cause related to the threat of site contamination, or damage or injury to persons, Premises or resources on or near the Premises. Upon withdrawal of such approval, Lessee shall immediately remove the Hazardous Material from the site. County's written approval of or failure to approve the use of a Hazardous Material under this paragraph shall not limit or affect Lessee's obligations under this Agreement, including Lessee's duty to remedy or remove releases or threatened releases; to comply with Environmental Laws relating to the use, storage, generation, treatment, transportation, and/or disposal of any such Hazardous Materials; or to indemnify County against any harm or damage caused thereby. Lessee shall promptly and completely answer periodic questionnaires from the County concerning Lessee's practices regarding the generation, use, storage, and disposal of Hazardous Materials.

6.09 Entry by County: Notwithstanding any other right of entry granted to County under this Agreement, County shall have the right to enter the Premises or to have consultants enter the Premises throughout the Term of this Agreement for the purposes of: (1) determining whether the Premises are in conformity with Environmental Law; (2) conducting an environmental audit or investigation of the Premises; (3) determining

whether Lessee has complied with the environmental requirements of this Agreement; (4) determining the corrective measures, if any, required of Lessee to ensure the safe use, storage, and disposal of Hazardous Materials; or (5) removing Hazardous Materials (except to the extent used, stored, or disposed of by Lessee in compliance with Environmental Requirements and the terms of this Agreement). Lessee agrees to provide access and reasonable assistance for such inspections. Inspections shall be conducted in a manner so as to reasonably minimize interruptions of business operations on the Premises.

Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples of soil or groundwater conditions. County shall not be limited in the number of such inspections during the Term of this Agreement. To the extent such inspections disclose the presence of Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors, or invitees in violation of the terms of this Agreement, Lessee shall reimburse County for the cost of such inspections within ten (10) days of receipt of a written statement thereof. If such consultants determine that Hazardous Materials have been released, discharged, stored, or used on the Premises in violation of the terms of this Agreement, Lessee shall, in a timely manner, at its expense, remove such Hazardous Materials and otherwise comply with the recommendations of such consultants to the satisfaction of County and any other regulatory authorities. The right granted to County herein to inspect the Premises shall not create a duty on County's part to inspect the Premises, nor liability of County for Lessee's use, storage, or disposal of Hazardous Materials, it being understood that Lessee shall be solely responsible for all liability in connection therewith.

6.10 Permits and Licenses: The Lessee warrants that it will secure at the times required by issuing authorities all permits or approvals that are required by any governmental authority to enable Lessee to conduct its obligations under this Agreement. Upon request, Lessee shall provide to County copies of all permits, licenses, certificates of occupancy, approvals, consent orders, or other authorizations issued to Lessee under applicable Environmental Requirements.

6.11 Notice of Discharge to County:

- (A) In the event of: (a) the happening of any material event involving the spill, release, leak, seepage, discharge, or clean up of any Hazardous Material on the Premises in connection with Lessee's operation thereon; or (b) any Environmental Claim affecting Lessee from any person or entity resulting from Lessee's use of the Premises, then Lessee shall immediately notify County orally within twenty-four (24) hours and in writing within three (3) business days of said notice. If County is reasonably satisfied that Lessee is not promptly commencing the response to either of such events, County shall have the right but not the obligation to enter onto the Premises or to take such other actions as it shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of or otherwise deal with any such Hazardous Material or Environmental Claim following receipt of any notice

from any person or any entity having jurisdiction asserting the existence of any Hazardous Material or an Environmental Claim pertaining to the Premises or any part thereof, which if true, could result in an order, suit or other action against the County. If Lessee is unable to resolve such action in a manner which results in no liability on the part of County, all reasonable costs and expenses incurred by County shall be deemed additional rent due County under this Agreement and shall be payable by Lessee upon demand.

- (B) With regard to any reporting obligation arising out of Lessee's operations or during the Agreement, Lessee shall timely notify the State of Florida Department of Environmental Protection, Miami-Dade County Department of Environmental Resources Management, and the United States Environmental Protection Agency, as appropriate, with regard to any and all reporting obligations while simultaneously providing written notice to County.
- (C) Within sixty (60) days of execution of this Agreement, Lessee shall submit to County an emergency action plan/contingency plan setting forth in detail Lessee's procedures for responding to spills, releases, or discharges of Hazardous Materials. The emergency action plan/contingency plan shall identify Lessee's emergency response coordinator and Lessee's emergency response contractor.

6.12 Reports to County: For any year in which any Hazardous Materials have been used, generated, treated, stored, transported or otherwise been present on or in the Premises pursuant to the provisions of this Agreement, Lessee shall provide County with a written report listing the Hazardous Materials which were present on the Premises; all releases of Hazardous Materials that occurred or were discovered on the Premises; all compliance activities related to such Hazardous Materials, including all contacts with government agencies or private parties of any kind concerning Hazardous Materials; and all manifests, business plans, consent agreements or other documents relating to Hazardous Materials executed or requested during that time period. The report shall include copies of all documents and correspondence related to such activities and written reports of all oral contacts relating thereto.

6.13 Periodic Environmental Audits: Lessee shall establish and maintain, at its sole expense, a system to assure and monitor continued compliance on the Premises with all Environmental Laws, which system shall include, no less than once each year, a detailed review of such compliance (the "Environmental Audit") by such consultant or consultants as County may approve. Lessee shall provide County with a copy of its annual Environmental Audit, which shall be consistent with ASTM's "Practice for Environmental Regulatory Compliance Audits", or other recognized format approved by County. If the Environmental Audit indicates any violation of any Environmental Law, Lessee shall, at the request of County, provide a detailed review of the status of any such violation by such consultant or consultants (the "Supplemental Audit") within thirty (30) days of the County's request.

6.14 Remediation of Hazardous Material Release: If any Hazardous Materials are released, discharged, or otherwise come to be located on or about the Premises or the Building in violation of this Article 8.14, Lessee shall promptly take all actions, at its sole expense and without abatement of rent, as are necessary to return the affected portion of the Premises or the Building and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release. County shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Lessee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work; (ii) any reports or disclosure statements to be submitted to any governmental authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any governmental authorities. Notwithstanding the foregoing, County's prior consent shall not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Lessee's best efforts, it is not possible to obtain County's consent before taking remedial action to abate such immediate threat, provided that: (a) Lessee shall notify County as soon as possible and shall thereafter obtain County's consent as otherwise provided in this paragraph; and (b) Lessee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this paragraph. In addition to any rights reserved by County in this Agreement, County shall have the right, but not the obligation, to participate with Lessee and Lessee's consultants and contractors in any meetings with representatives of the governmental authorities, and Lessee shall provide County reasonable notice of any such meetings. All remedial work shall be performed in compliance with all Environmental Laws. The County's consent to any remedial activities undertaken by Lessee shall not be withheld so long as County determines, in its sole, good faith judgment, that such activities will not cause any material adverse long-term or short-term effect on the Premises, or other adjoining property owned by County.

6.15 Indemnity: Lessee shall indemnify, defend (with counsel satisfactory to County), and hold County, its directors, officers, employees, agents, assigns, and any successors to County's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorneys' fees), claim, cause of action, judgment, penalty, fine, or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or about the Premises in violation of Lessee's obligations under this Agreement ("Hazardous Materials Release"). This indemnification shall include without limitation: (a) personal injury claims; (b) the payment of liens; (c) diminution in the value of the Premises; (d) damages for the loss or restriction on use of the Premises; (e) sums paid in settlement of claims; (f) actual attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in County's reasonable judgment. County shall have the right but not the obligation to join and participate in, and control, if it so elects for any proceedings or actions in which the County is a named party, any legal proceedings or actions initiated in connection with the Hazardous Materials release. County may also negotiate, defend, approve, and appeal any action in which County is named as a party taken or issued by any applicable

governmental authorities with regard to a Hazardous Materials release. Any costs or expenses incurred by County for which Lessee is responsible under this paragraph or for which Lessee has indemnified County: (i) shall be paid to County on demand, during the term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Lessee on demand. Lessee's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Lessee's successors and assignees and inure to the benefit of County's successors and assignees.

- (A) This indemnity specifically includes the direct obligation of Lessee to perform, at its sole cost and expense, any remedial or other activities required, ordered, recommended or requested by any agency, governmental official or third party, or otherwise necessary to avoid or minimize injury or liability to any person, or to prevent the spread of pollution, however it came to be located thereon. Lessee shall perform all such work in its own name in accordance with Applicable Laws. Lessee acknowledges that the County's regulatory power in this regard is independent of the County's contractual undertakings herein, and nothing herein shall affect the County's right in its regulatory capacity to impose its environmental rules, regulations, and authorities upon the Lessee in accordance with the law.
- (B) Without waiving its rights hereunder, County may, at its option, perform such remedial work as described in paragraph A above, and thereafter seek reimbursement for the costs thereof. Lessee shall permit County or its designated representative access to the Premises to perform such remedial activities.
- (C) Whenever County has incurred costs described in this section, Lessee shall, within thirty (30) days of receipt of notice thereof, reimburse County for all such expenses together with interest from the date of expenditure at the rate of 1.5% per month.
- (D) Without limiting its obligations under any other paragraph of this Agreement, Lessee shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual Hazardous Materials contamination on the Premises. Lessee's responsibility under this paragraph includes but is not limited to responding to such orders on behalf of County and defending against any assertion of County's financial responsibility or individual duty to perform under such orders. Lessee shall assume, pursuant to the Indemnity provision set forth in this Article 8 (County's Disclosure of Soil and Groundwater Contamination), any liabilities or responsibilities, which are assessed against County in any action described under this paragraph.

6.16 Environmental Insurance: Unless otherwise agreed to in writing by the

County, or due to the existence of such coverage in other policies or for other reasons, Lessee shall obtain pollution and remediation legal liability insurance to cover the risks associated with the handling, storage, use, disposal, and possible release of Hazardous Materials at the Premises in the face amount of \$2,000,000. In any such policy, the County shall be named as an additional insured and Lessee, upon execution of this Agreement, shall deliver to County a copy of the insurance policy and certificate consistent with this paragraph.

6.17 Waiver and Release: Lessee, on behalf of itself and its heirs, successors and assigns, hereby waives, releases, acquits and forever discharges County, its principals, officers, directors, employees, agents, representatives and any other person acting on behalf of the County, and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Lessee or any its heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future physical characteristic or condition of the Premises, including, without limitation, any Hazardous Material, in, at, on, under or related to the Premises, or any violation or potential violation of any Environmental Law applicable thereto; provided, however, this Article 8.17 shall not apply to a waiver or release of any obligation of County under Article 8.04(A) (County's Disclosure of Soil and Groundwater Contamination). Lessee acknowledges that County would not enter into this Agreement without Lessee's agreement to the waiver and release provided herein.

6.18 Surrender of Premises: Lessee shall surrender the Premises to County upon the expiration or earlier termination of this Agreement free of debris, waste, and Hazardous Materials used, stored, or disposed of by Lessee or its agents, employees, contractors or invitees or otherwise discharged on the Premises during the term of this Agreement; provided, however, Lessee shall not be responsible to the extent of County's obligations under Article 8.04(A) (County's Disclosure of Soil and Groundwater Contamination). The Premises shall be surrendered in a condition that complies with all Environmental Requirements, recommendations of environmental consultants hired by County, and such other reasonable environmental requirements as may be imposed by County.

6.19 Breach: Any breach by Lessee of any provision of this Article 8 shall, after notice and a reasonable opportunity for Lessee to cure, constitute a default of the Agreement and shall entitle County to exercise any and all remedies provided in the Agreement, or as otherwise permitted by law.

6.20 Survivability of Terms: The terms and conditions of this Article 8, including the indemnity, waiver, and release, shall survive the termination of this Agreement.

ARTICLE 7
Regulations, Licenses and Permits

7.01 Rules and Regulations - General:

(A) The Lessee shall comply with all Ordinances of the County, 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 thereunder, 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, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, Federal air and safety laws and regulations and Federal, State and County environmental laws.

(B) The Lessee agrees to permit the entry, at all reasonable times, of inspectors of the Department, the County's Department of Environmental Resources Management ("DERM"), or any Federal, State or County agency having jurisdiction over any law or requirement referenced in Article 6.01(A) (Rules and Regulations - General) above, to make inspections of the Premises to determine the Lessee's compliance therewith.

(C) Permits and Licenses:

(1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises have been obtained and are being fully complied with.

(2) Such permits and licenses shall include, but not be limited to, a Certificate of Use and Occupancy and any required Industrial Waste or Operating Permits from DERM. Prior to occupancy of the Premises and commencement of operations under this Agreement, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and Occupancy and, as applicable, the appropriate operating Waste Permit(s). Upon written request of the Department, the Lessee shall provide to the Department copies of any permits and licenses, and applications therefore, which the Department may request.

(D) Subject to the provisions of Article 6.02(D)(1) (Environmental Indemnities), the Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County 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 Lessee, its agents, employees, invitees, or trespassers have violated any law, ordinance, regulation, rule or directive described in Article 6.01 (Rules and Regulations - General) above or any plan or program developed in compliance therewith. The Lessee further agrees that the substance of this Article 6.01 (Rules and Regulations - General) above shall be included in every sublease, contract and other agreement, which the Lessee may enter into related to its operations and activities under this Agreement and that any such sublease, contract 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 subcontracting.

ARTICLE 8

Alteration of Premises and Erection of Signs

8.01 Alterations: The Lessee shall not alter the Premises in any manner whatsoever without prior written approval of the Department. In the event the Lessee is given approval to make any alterations to the Premises, the Lessee shall fully comply with the terms and conditions contained in the Department's approval letter and a failure to do so shall constitute a default pursuant to Article 12.03 (Other Defaults) hereof.

8.02 Signage: The Lessee shall not erect, maintain or display any identifying signs or any advertising matter, of any type or kind which is visible to the public.

ARTICLE 9

Assignment and Subletting

9.01 Assignment and Transfer: The Lessee shall not, in any manner, assign, transfer, mortgage, hypothecate, encumber or otherwise convey an interest in this Agreement, or authorize others to exercise the rights granted to the Lessee herein without the prior express written approval of the County.

9.02 Subletting: The Lessee shall not sublet any portion of the leased Premises without the prior express written approval of the Department. Any agreement which permits another party to farm any portion of the leasehold Premises for any period in excess of six (6) months shall be considered a sublease for the purposes of this Article 8.02 and shall be submitted, in writing, for Department approval at least forty-five (45) days prior to the start of the sublease agreement.

The Lessee shall not charge or receive, directly or indirectly, as consideration for any sublease, usage or operating agreement from any person, firm or corporation, any amount

in excess of the rental rate established by this agreement, and paid by the Lessee, for such premises, or the subleased portion thereof, plus an amount not to exceed ten percent (10%).

Further, any such subleases shall be subject to the same conditions, obligations and terms as set forth herein, including as a minimum, but not limited to, requirements for compliance with Airport Rules and Regulations and applicable laws and indemnification to the County. Notwithstanding anything herein contained to the contrary, in the event of an approved sublease, the Lessee shall remain fully liable to the County for fulfilling all obligations, conditions and terms of this Agreement, throughout its entire term.

ARTICLE 10

Indemnification and Hold Harmless

Subject only to the limitations contained in Article 6.02(D) (Environmental Indemnities), the Lessee shall protect, defend, using attorneys reasonably acceptable to the County, and hold the County and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including the leased Premises, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees, through all levels of trial and appellate proceedings), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the leased Premises or the acts or omissions of officers, agents, employees, contractors, subcontractors, licensees, or invitees of the Lessee regardless of where the injury, death, or damage may occur, except to the extent such injury, death or damage is caused (i) solely by an Act of God, or (ii) by the negligence or willful misconduct of the County, its officers, employees or agents. The County shall give the Lessee reasonable notice of any such claims or actions. The provisions of this Article 9 shall survive the expiration or early termination of this Agreement.

ARTICLE 11

Insurance

11.01 **Insurance Required**: In addition to such insurance as may be required by law, the Lessee shall maintain, without lapse or material change, for so long as it occupies the Premises, the following insurance:

- (A) Commercial General Insurance on a comprehensive basis, including Contractual Liability, to cover the Lessee's Premises and operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.
- (B) Automobile Liability Insurance covering all owned, non-owned and hired

vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

- (C) To the extent required under Section 8.16, Pollution and Remediation Legal Liability insurance in an amount not less than \$2,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials at the Lessee's Premises.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee under this Agreement. All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida. Such companies must be rated no less than "A-" as to management, and no less than "VII" as to strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Inc., or its equivalent, subject to approval of the County Risk Management Division.

11.02 Insurance Certificates Required: Prior to the commencement of operations hereunder and annually thereafter, the Lessee shall furnish or cause to be furnished certificates of insurance to the Department which certificates shall clearly indicate that:

- (A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;
- (B) The policy cancellation notification provisions specify at least 30 days advance written notice of cancellation to the County; and
- (C) The County is named as an additional insured with respect to the Lessee's public liability policies.

On said insurance certificates, unless specifically shown to be excluded thereon, comprehensive public liability coverage shall include contractual liability.

The County reserves the right to require the Lessee to provide such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective 30 days after such notice.

11.03 Compliance: Compliance with the requirements of Article 11 (Insurance) shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

11.04 Right to Examine: The Department reserves the right, upon reasonable

notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection at the offices of the Department.

11.05 Personal Property: Any personal property of the Lessee or of others placed in the Premises and Airport shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the sole active negligence of the County, as limited by Section 768.28, Florida Statutes

10.01

ARTICLE 12 Use of Public Facilities

The County grants to the Lessee, to the extent necessary or reasonably necessary, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the roads of egress and ingress, service roads and such other facilities and improvements as may be now in existence or hereafter constructed for the use of persons lawfully using the Premises; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other charges established by the County. Nothing herein contained shall grant to the Lessee the right to use any leasable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

ARTICLE 13 Termination

13.01 Payment Defaults: Failure of the Lessee to make all payments of rentals, fees and charges required to be paid herein when due shall constitute a default, and the County may, at its option terminate this Agreement after five calendar days notice in writing to the Lessee unless the default be cured within the notice period.

13.02 Insurance Defaults: The County shall have the right, upon 5 calendar days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 10 hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period.

13.03 Other Defaults: The County shall have the right, upon 30 calendar days written notice to the Lessee, to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed within such 30 day period, in the sole discretion of the Department, the Lessee has commenced substantial corrective steps within such 30 day period and diligently pursues same to completion:

(A) Failure of the Lessee to comply with any covenants of this Agreement, other than the covenants to pay rentals, fees and charges when due, and the covenants to provide required evidence of insurance coverage.

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

13.04 Actions at Termination:

(A) The Lessee shall vacate, quit, surrender up and deliver the Premises to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall remove all of its personal property from the Premises. Any personal property of the Lessee not removed in accordance with this Article may be removed by the Department for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within 30 days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.

(B) The Lessee shall, at its expense, take all actions required by Federal, State and local laws, regulations or codes to remove from the Premises any hazardous substance or environmental contaminant, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like. All such substances and contaminants shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.

(C) If the County advises the Lessee that it has reasonable grounds to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, during the term of this Agreement or during the terms of any prior leases between the Lessee and the County for the same or substantially the same Premises, then the Lessee at its expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. The Lessee shall comply with the recommendations and conclusions, contingent upon County approval, of such consultant regarding environmental clean up efforts that may be required, and shall comply with any other clean up requirements imposed on the Lessee by Federal, State or local law, regulations or codes.

(D) Notwithstanding any other provisions of this Agreement, the Lessee shall have no liability to the Aviation Department for any violation of environmental law, which is attributable to the acts, or omissions of any person other than the Lessee, its agents, employees, invitees, contractors or trespassers (nor shall such violations constitute a default or breach of this Agreement). Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or County law.

13.05 Lien Upon Personal Property: In the event of termination for default or upon termination of this Agreement by its term, the County shall have a lien upon all personal property of the Lessee on the Premises to secure the payment of any unpaid rentals, fees and charges accruing under the terms of this Agreement.

13.06 Right to Show Premises: At any time after the Lessee has been given notice of termination or default, pursuant to this Article 12 (Termination) or other applicable provisions of this Agreement, the County shall have the right to enter on the Premises for the purpose of showing the Premises to prospective tenants or users.

ARTICLE 14

This Article Intentionally Left Blank

ARTICLE 15

Nondiscrimination

15.01 Employment Discrimination: The Lessee shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry, sexual orientation or disability. The Lessee shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

15.02 Nondiscriminatory Access to Premises and Services: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, sex, national origin, disability, sexual orientation or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, sex, national origin, disability, sexual orientation or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the improvements; and (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.

15.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in Articles 14.01 (Employment Discrimination) and 14.02 (Nondiscriminatory Access to Premises and Services) above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to Article 12.03 (Other Defaults) hereof.

15.04 Affirmative Action and Disadvantaged Business Enterprise Programs: The Lessee agrees that in the event the provisions of 49 CFR Part 23, Disadvantaged Business Enterprises (DBE) and 14 CFR Part 152, Affirmative Action Employment Programs, are applicable to the Lessee under this Agreement, it shall comply with all requirements of the Department, the Federal Aviation Administration and the U. S. Department of Transportation. These requirements may include, but not be limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, keeping of certain records of good faith compliance efforts, and the submission of various reports, including, if directed by the Department, the contracting of specified percentages of goods and services contracts to Disadvantaged Business Enterprises. Failure to comply with these requirements shall constitute a default hereunder and be grounds for termination of this Agreement. In the event it has been determined, in accordance with applicable regulations, that the Lessee has defaulted in the requirement to comply with this section, and the Lessee thereafter fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Lessee, to terminate this Agreement pursuant to Article 12.03 (Other Defaults) hereof.

ARTICLE 16

Security and Special Provisions

The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises and control of access through the Premises by persons and vehicles. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, equipment and property and access through the Premises shall be the sole responsibility of the Lessee and shall involve no cost to the County. Furthermore, the Lessee shall pay its fair share of the cost of any security measures for its leasehold and operations that may be deemed necessary by Federal, State, and local agencies having jurisdiction over the airport.

ARTICLE 17

Control of Employees

17.01 Control of Employees: The Lessee shall properly control the actions of its employees at all times that said employees are working on the Airport, ensuring that any interaction with other airport users is courteous.

17.02 Employee Covenants Violations: In the event the Lessee is in default of the covenants in Article 16.01 (Control of Employees) for failure to properly control its employees, the Lessee understands that the County shall have the right to require the Lessee to take immediate action to correct the discrepancy

ARTICLE 18 Civil Actions

18.01 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.

18.02 Notice of Commencement of Civil Action: In the event that the County or the Lessee commence a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the County and the Lessee agree to waive the procedure for initial service of process. The County and the Lessee agree to submit themselves to the jurisdiction of the court in which the action has been filed whenever service has been made in the following manner:

(A) Upon the County: by Certified Mail, Return Receipt Requested, sent to (i) the party indicated in Article 19.06 (Notices) on behalf of the County and (ii) with a copy to the County Attorney, Aviation Division, P.O. Box 592075, Miami, FL 33159.

(B) Upon the Lessee: by personal service or by Certified Mail, Return Receipt Requested, upon the party indicated in Article 19.06 (Notices) on behalf of the Lessee, with a copy to whatever attorney the Lessee has designated in writing, if any.

In the event that the County and/or the Lessee raise an objection to service of initial pleadings as provided for herein, and the trial court overrules such objection, the objecting party shall pay liquidated damages (attorney's fees) in the amount of \$250.00 to plaintiff in such action, prior to answering the complaint.

18.03 Registered Office/Agent; Jurisdiction: Notwithstanding the provisions of Article 17.02 (Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Lessee 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 an alleged breach of this Agreement.

ARTICLE 19
Trust Agreement

19.01 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, by and between the County and the JPMorgan as Trustee and Wachovia National Bank as Co-Trustee, (the "Trust Agreement") which Trust Agreement is incorporated herein by reference thereto, shall prevail and govern in the event of any conflict or 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 is available for inspection in the offices of the Department during normal working hours.

19.02 Adjustment of Terms and Conditions: If, at any time during the term of this Agreement, a court or Federal Agency 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 County by the Lessee or by other Lessees under other Agreements of the County for the Lease or use of facilities used for similar purposes, are unjustly discriminatory, the County 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 County shall determine is necessary and reasonable so that the rentals, fees and charges payable by the Lessee and others shall not thereafter be unjustly discriminatory to any user of like facilities 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 County has modified the terms and conditions of this Agreement, including any adjustment of the rentals, fees and charges required to be paid to the County pursuant to this provision, this Agreement shall be amended to incorporate such modification of the terms and conditions including the adjustment or rentals, fees and charges upon the issuance of written notice from the Department to the Lessee.

19.03 Lessee Right to Terminate: In the event the terms and conditions of this Agreement, including the rentals, fees and charges payable hereunder, have been substantially modified pursuant to Article 18.02 (Adjustment of Terms and Conditions) above, the Lessee, at any time within one year following the effective date of such modification may terminate this Agreement by giving ninety days written notice to the County, without liability by any party to any other party.

ARTICLE 20
Other Provisions

20.01 No Representation: The County makes no representation, warranty,

guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that the County will not be responsible for any loss, damage or costs which may be incurred by the Lessee by reason of any such physical condition.

20.02 Headings: Any headings preceding the text of any articles, paragraphs or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

20.03 Interference: The Lessee further expressly agrees to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an airport hazard.

20.04 Authorized Uses Only: The Lessee shall not use or permit the use of the Airport for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate, any insurance policies of the County or any policies of insurance written on behalf of the Lessee under this Agreement.

20.05 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.

20.06 Notices: All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the County or Aviation Department:

Director
Miami-Dade County Aviation Department
P. O. Box 025504
Miami, Florida 33102-5504

As to the Lessee:

Southern Land Farm, Inc.
90 N.W. 15th Street

Mr. John Sizemore
Southern Land Farm, INC.

Homestead, Florida 33030

90 N.W. Street
Homestead, Florida 33030

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representative of the Lessee.

20.07 Rights Reserved: Rights not specifically granted the Lessee by this Agreement are reserved to the County.

20.08 Rights to be Exercised by Department: Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

20.09 No Waiver: There shall be no waiver of the right of either party 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 one party, unless such waiver is explicitly made in writing by the other party. Any previous waiver, or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default or non-performance hereof by the other party.

20.10 Right to Regulate: 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, to regulate the Lessee or its operations.

20.11 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 are severable.

20.12 Inspections: The authorized employees and representatives of the County and of any applicable Federal or State agency having jurisdiction hereof shall have the right of access to the Premises at all reasonable times for the purposes of inspection and testing to determine compliance with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

20.13 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, its improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Lessee shall constitute a default pursuant to Article 12.03 (Other Defaults).

20.14 Force Majeure: The terms and conditions of this Agreement (with the exception of the obligation of the Lessee to pay the amounts required by the terms of this Agreement) shall be subject to force majeure. Neither the County nor the Lessee shall be considered in default in the performance of its obligations hereunder, if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, fire, wind, flood or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof or because of any act of God or any other cause whether of similar or dissimilar nature beyond the reasonable control of the party affected, provided that notice of such force majeure is given by the affected party to the other within ten days of the beginning of said force majeure. Should one or both of the parties be prevented from fulfilling its contractual obligations by a state of force majeure lasting continuously for a period of six months, the parties shall consult with each other regarding the future implementation of this Agreement.

20.15 Interpretation of Agreement: This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of or against any of the parties hereto.

20.16 Entirety of Agreement: The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

20.17 Disclosures: The Lessee acknowledges that it has completed and submitted a Drug Free Workplace Affidavit, a Miami-Dade Disclosure Affidavit, a Family Leave Affidavit, a Public Entity Crimes Affidavit, a Known Interests in Property Affidavit, a Criminal Record Affidavit, and a Disability Nondiscrimination Affidavit. The discovery of any misrepresentation of any of these documents shall result in the automatic termination of this Lease by the Department.

20.18 Height Restrictions: The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of any objects of natural growth, other obstructions, or newly constructed structures on the leased Premises and Improvements to such a height so as to comply with Federal Aviation Regulations, Part 77 and with the Code of Metropolitan Miami-Dade County, whichever is more restrictive.

20.19 Right to Regulate: 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, to regulate the Lessee or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, the Zoning appeals Board, the Building and Zoning Department (as it may be renamed from time to time), the Planning Department, or any department, board or agency of the County,

to agree to any specific request of Lessee that relates in any way to the regulatory or quasi-judicial power of the County; and the County shall be released and held harmless by Lessee from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief, nor shall it preclude any action based on the County's bad faith, capricious behavior or arbitrary action.

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

**BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA**

By: _____
County Manager

ATTEST: Clerk

By: _____
Deputy Clerk

(SEAL)

LESSEE: SOUTHERN LAND FARM, INC.

By: *John Simone*
President

John Simone
Print Name

ATTEST:

Kimberly Sizemore

Corporate Secretary

Kimberly Sizemore

Print Name

(CORP. SEAL)